



Strasbourg, 23 July 2008

MONEYVAL (2008) 12rev

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

POLAND¹

PROGRESS REPORT 2008

¹ Adopted by MONEYVAL at its 27th Plenary meeting (Strasbourg, 7-11 July 2008). For further information on the examination and adoption of this report, please refer to the Meeting Report MONEYVAL(2008)26 at www.coe.int/moneyval.

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Introduction

1. This questionnaire is the means by which the authorities can describe the current AML/CFT situation in their country. Countries should here also describe measures or changes which are not yet in place, but which are planned.
2. The description must fully cover the relevant criteria set out in the Methodology. Descriptions should provide citations, quotes or summaries sufficient to describe the relevant elements of the law or other measures.
3. Please always indicate which recommendations and suggestions in the evaluation report on these issues have been followed.
4. Please indicate in the columns on the right side any changes since the last evaluation. If there have been no changes, please say so.
5. The “Recommended Action Plan to Improve the AML/CFT System” (Appendix 1) is provided for information and to assist your replies to the questionnaire on the relevant issues.
6. Please fill in the statistics tables under section 5 to the extent possible. If the format of these tables does not fit your system (e.g. you have another format for keeping statistics), please adapt it to your country specific situation.
7. If you should have problems filling in this questionnaire, please contact the MONEYVAL Secretariat (dg1.moneyval@coe.int).

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

General overview

The Polish Authorities (PA) has given careful consideration to the recommendations of the Council of Europe MONEYVAL Committee and undertakes efforts to implement the same to the extent possible under available legal, financial and human resources.

Since the IIIrd Round Evaluation more and more investigations and preparatory proceedings initiated in the result of suspicious transaction reporting or otherwise, outside the reporting system have lead to many new indictments and convictions for money laundering which is the best proof of effectiveness of each country's AML system. Investigations initiated by the notification from the General Inspector of Financial Information (GIFI – Polish FIU) that did not lead to the indictment for money laundering often ended with prosecution for other crimes (see statistics).

As a member of the European Union, Poland has extended its participation in the making of decisions on new regulations and measures to be adopted in Member States. The representatives of GIFI actively participate in the works of EU and other international foras, such as the working groups of the Egmont Group, MONEYVAL Committee of the Council of Europe, FATF and will start cooperation with EAG (at the last Plenary meeting Poland received the *Observer* status).

The following new initiatives are planned:

- 1) In 2008-9 – the new secured network will be created to ensure information exchange between FIU and prosecutors offices;
- 2) The new extensive version of training courses will be provided with the use of a website (so called “e-learning”);
- 3) Realization of EU project in Romania – Poland is the project leader and from the September/October together with Romanian FIU will be work on the project “*Fight against money laundering and terrorism financing*”;
- 4) New edition of booklet for obliged institutions – concerning the latest developments in the area of AML/CTF issues;
- 5) Creation of special Task Force leading by GIFI, to identification, monitoring and counteracting on ML and TF activities in cyber space;
- 6) The new “Management information system” which is at the final stage of modification. It will present many different measures of status and efficiency of processes occurring within FIU, e. g. number of active/passive cases per analyst, duration of active analysis of cases, information about documents send from/to reporting institutions/prosecutors and many other information.
- 7) GIFI has registered and intends to engage actively in the FATF Private Sector Consultative Forum. The Forum is an initiative aimed at further enhancing dialogue between the public and the private sector to combat money laundering and terrorist financing. The cooperation within the Forum develops the exchange of knowledge, experience and documents. So far GIFI

principally operates through an electronic contact group. It allows for discussion and comments on the issues raised in the documents submitted.

In the year 2007 the GIFI received 1.920 descriptive notifications on suspicious transactions. The common feature of these notifications is that they include several, a dozen or so and sometimes even several hundreds of transactions that in the opinion of the reporting organisation illustrate and authenticate the suspicion of money laundering. They also include other data and documents that may contribute to the increased effectiveness of the proceedings (e.g. account history, bank account agreement, signature specimen card, copies of documents that were used to open accounts).

As a result of the information received in 2007, the General Inspector of Financial Information:

- **initiated 1.358 analytical proceedings,**
- **demanded suspension of 1 transaction for the amount of 65.000 EUR,**
- **demanded blockade of 97 accounts,** connected with suspicious financial transactions **for the amount of app. 10M EUR (and from their own initiative demanded blockade of 58 accounts for the amount of app. 2M EUR).**

The initiated analytical proceedings concerned the following risk areas, among others:

- illegal or fictitious trade: fuels, scrap metal – 165 proceedings,
- trade in funds most probably originating from fraud or obtained under false pretences – 122,
- trade in funds probably originating from unauthorised access to bank accounts – 14,
- transactions of non-residents – 46,
- transfers of money abroad,
- transfers of money from business entities (suspicion of fictitious invoicing),
- transfer of money related to trading in securities admitted/ not admitted to trading in the public market,
- transfer of real estate related funds.

In comparison to the previous years, the tool of account blockade was most commonly used; it consists in temporal blockade of using all property values collected in the account while maintaining the possibility of their accumulation with incoming funds.

The analytical proceedings conducted formed the basis for blocking demand. It should be noted that the amounts of funds blocked in the account are approximate as during the blockade imposed by GIFI the funds may be paid into the accounts but they cannot be withdrawn.

As a result of the analysis 190 notifications on suspicion of committing the crime as defined in Article 299 of the *Criminal Code* **concerning 440 entities and transactions for the amount of over 200M EUR were submitted to the public prosecutor's office.**

According to the data provided by the Ministry of Justice concerning all proceedings conducted in 2007, the following decisions were issued last year by the public prosecutor's office in the cases on money laundering:

- 296 initiated cases concerning 1436 persons (**out of which 176 cases on the basis of the information received from GIFI**);
- **submitted 82 indictments to court against 288 persons**;
- concluded 63 preparatory proceedings with the decision on investigation discontinuance and 6 proceedings with the decision on the refusal to initiate investigation;
- suspended 57 preparatory proceedings.

The total value of the secured property in cases initiated in 2007 **was the equivalent of app. 11M EUR.** Meanwhile, the data concerning verdict in the money laundering cases indicate that in 2007 **the courts of first instance passed 36 guilty verdicts (55 convicted persons).**

Apart from the notifications submitted to the public prosecutor's office, on the basis of the conducted analytical proceedings, GIFI transmitted 37 items of information on suspicious transactions, inclusive of 22 to the Internal Security Agency, 14 to Fiscal Control Offices and 1 to the Polish Financial Supervision Authority. Whereas acting pursuant to law, GIFI sent 48 motions to tax offices and fiscal control offices concerning examination of the legal origin of particular property values, in order to clarify their origin.

With regard to the manners of money laundering observed when conducting analytical proceedings, it was found that the previously identified methods, sometimes adjusted only to the realities of the financial market and products offered on this market as well as banking services, were still in use.

For a certain time now, it can be observed that the criminal groups *laundering money* have been increasingly using particular categories of financial services. These services facilitate committing the crime by ensuring:

- anonymity in the course of using,
- global scope (possibility of using the service all over the world),
- 24h easy access to financial resources,
- possibility of transferring basic codes, passwords etc. to third parties,
- speedy transfer of financial resources.

Among the said services there are first and foremost payment cards, internet banking and electronic money transfer systems (Western Union Money Transfer and PayPal, among others). In the case of payment cards, a developed network of ATMs enables withdrawal of very large sums of money in cash, also abroad, simultaneously allowing the person

withdrawing cash to remain anonymous in the situation when the card is entrusted with a third party. Internet banking makes it possible to quickly open a bank account without the necessity of contacting bank employees in person. Global scope of the Internet results in the access to funds collected in the account from all over the world and the transactions may be executed also in the places like internet cafes. Such transactions may be executed by third parties who were given the required passwords by the account owner. The WUMT system and other similar systems, enable making almost anonymous transfers of financial resources all over the world. In order to execute the transaction it is only necessary to fill in a payment form and a respective withdrawal form by the recipient of the financial resources. The system offers many additional services, inclusive of the notification of recipient and “on password” remittance, among others.

PayPal is an American company offering money transfer services via Internet and intermediating in transactions on internet auctions. The money transfer system used by PayPal allows every e-mail address holder to safely send and receive financial resources using his credit card or bank account. This system is one of the most popular ways of making electronic payments on internet auctions, and also becomes a cheap way for sellers to accept credit cards instead of using traditional transfers.

In order to counteract money laundering with the use of the abovementioned methods, apart from applying legal tools provided for in the law, General Inspector of Financial Information transmits the knowledge on identified laundering methods to obligated institutions and cooperating units among others in the reissued and updated guide for obligated institutions and co-operating units titled *Counteracting Money Laundering. A Guide for Obligated Institutions and Co-operating Units*, issued for the first time in 2003.

Moreover, in order to prevent development of money laundering methods, GIFI takes preventive measures, attempting to prevent or limit introducing into the market products and services creating favourable conditions for anonymity of parties to the transaction and at the same time belonging to high risk area.

Within the execution of tasks with regard to **counteracting the financing of terrorism**, 7 proceedings concerning transactions conducted by 77 entities were initiated. The proceedings were initiated on the basis of the information from obligated institutions (5) and on own initiative. Moreover, in relation to the actions taken in this area, 2.960 electronic transactions identified as suspicious were verified.

As a result of the actions taken 14 items of information in this regard were sent to the Internal Security Agency.

GIFI is also a member of the Interministerial Group for Terrorist Threats, co-ordinating actions with regard to counteracting terrorism. At the same time, GIFI representative participates in work of the Permanent Expert Group established at the Interministerial Group for Terrorist Threats in order to monitor terrorist threats, assess their level and nature and to present proposals with regard to legal regulations and development of proper procedures.

An enhancement of co-operation between Police and FIU in the field of exchange data concerning suspected transactions is done in the light of legislative provisions regarding money laundering and terrorism financing regulations and in the light of FIU procedure of blocking bank account.

Polish authorities initiated works on the amendment of the Act on foundations. In June 2007 the project of the regulation was directed to the Parliament. The new act is aimed to implement mechanisms which will prevent abuses in foundations. The revision will facilitate effective conducting supervisory activities and will make foundations operate more transparently.

The implementation of the Third EU Directive is in a process. The draft of the amendment of the Polish AML Act in this regard is currently being consulted at the interministerial level. The implementation schedule foresees forwarding the draft law to the Council of Ministers until the end of June this year and then forwarding it to parliamentary discussion until the end of July 2008.

Several amendments to the penal code were drafted. Two of them provided for criminalization of terrorism financing and substantial enbroadenment of possibilities to decree forfeiture of assets of criminal origin, handed over to the third parties. Due to an earlier parliamentary election, these legislative have been terminated and new projects of amendments in the penal procedure and penal law have been drafted.

An amendment to the penal code drafted on 18 April 2008, (Article 165a) criminalizes financing of an offence of terrorist character. After adoption of the amendment, financing of an offence of terrorist character will automatically become a predicate offence, since an offence of money laundering in Polish penal code is based on the concept of “all crime approach”.

The draft amendment of 18 April 2008 also provides for supplementary provision concerning seizure of objects originating directly from the crime or instrumentalities which were used or intended to be used to commit a crime or constituting evidence in a criminal case. According to the Article 607wa of the amended penal procedure code, if such objects and instrumentalities belong to the UE internals covered by European Arrest Warrant (EAW), it will be possible to seize them on the basis of EAW.

The developments:

- 1) **Establishment of the Polish Financial Supervision Authority (PFSA)** – was prescribed by the Act of 21 July 2006 on supervision of the financial market. It started its operation on 19 September 2006, acquiring powers of Pension Funds Supervisory Commission and of the Securities and Exchange Commission. As of the 1st January it also took over competences of the Commission of Banking Supervision. As a result the inspections of banking sector, capital sector and

insurance sector to the extent of compliance with anti-money laundering and counter terrorism financing responsibilities is carried out by the single entity – PFSA. It should also be pointed out that the insurance supervision section of the Office of the Polish Financial Supervision Authority, which is responsible for the supervision of insurance companies activities and estate has intensified its inspections conducted in the insurance companies as regard the introduction into financial circulation of property values derived from illegal or undisclosed sources and on counteracting the financing of terrorism.

- 2) **On 8 August 2007 Poland ratified Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism adopted in Warsaw, on 16 May 2005.** The Convention entered into force on 01 May 2008.
- 3) **The structure of prosecutor's offices.** On 1 October 2007 The Organized Crime Bureau of The National Prosecutor's Office was divided into Central Unit and 11 Local Departments. Tasks and powers of the Organized Crime Bureau have been defined in the Ordinance of Minister of Justice of 27 August 2007. Local Departments of the Bureau have been vested with authority to conduct investigations in the most serious criminal cases including inter alia: terrorist acts, organized criminality, money laundering and corruption in the governing bodies and judiciary. Central Unit of the Bureau is entrusted with tasks encompassing: coordination of prosecutors office's activities in the area of investigating money laundering and other aspects of organized crime, management of IT systems used by the Organized Crime Bureau and elaborating reports of statistical data linked with investigations and prosecutions in money laundering cases.
- 4) **More emphasis has been put on training of the prosecutors and judges.** National Center for Training of Judges and Prosecutors has organized 8 training seminars dedicated to the latest typology of money laundering, methodology of investigation and identification of proceeds of crime.
- 5) **Establishment the Inter-ministerial Team for Terrorist Threat.** Minister for Interior and Administration performs function of the Chairman of the Team which serves as an auxiliary body to the Council of Ministers. Members of the Team are ministers of: National Defence, Finance, Foreign Affairs, chiefs of: special services, Civil Defence, Government Security Agency, Customs, Police, Border Guards, State Fire Service and Military Police as well as General Tax Inspector and General Inspector of Financial Information. The team's tasks are, among others: monitoring terrorist threats, their analysis and assessment, working out projects of standards and procedures in combating terrorism, initiating, coordinating and monitoring activities undertaken by pertinent organs of the government administration, especially in the areas of using information and identifying, countering and combating terrorism, moreover, tabling motions to competent ministers to adopt legislative measures aimed at streamlining methods and forms of combating terrorism, developing co-operation with other countries

in the field of combating terrorism and the co-ordination of information exchange and joint operations as well as initiating trainings and conferences dedicated to combating terrorism.

- 6) **Modification of legal acts and regulations to meet the requirements of the EC Regulation 1889/2005.** Poland had taken an active part in implementation of the EU and the FATF (SR.IX) provisions in a common Community legal and administrative framework. Suitable law changes were made to a statute law separating the community controls on cash movements and domestic ones that had hitherto prevailed. Customs and the Border Guard have had a competence to question persons, may check the form, and may search the person's baggage and means of transport and to seize the cash. Special sanctions are applied at present to infringements of the Community provisions in force with regard to cash controls to fulfill the Community obligation of implementing the effective, proportionate and dissuasive sanctions. There is a dedicated form applied for the purposes of cash controls which covers all the information envisaged by the EU for its risk analysis and statistics. Special internal arrangements were put in place to manage the information deriving from the cash declarations engaging Customs, Ministry of Finance and the General Inspector of Financial Information and led to reinforced cooperation between the FIU and the Customs with a view to developing the financial information contained in the declarations using dedicated IT database. Public is informed on the obligation to declare cash above EUR 10.000 at EU borders via info folders, leaflets, brochures/ information stands and posters. Polish delegation participates in a work of Cash Control Working Group and is familiarized with current developments on cash controls in the EU.
- 7) **Participation of Polish Experts in Council of Europe projects** – PA has given careful consideration to the technical assistance to others countries, because the ML and FT have no borders and without effective cooperation between counterparts it will be impossible to fight with both of them. For that reason the Polish experts were deeply involved in the project in “the former Yugoslav Republic of Macedonia” and Serbia and now are actively involved in the realization of projects in Ukraine and Moldova
- 8) **Egmont Group** - The Polish Financial Intelligence Unit took an active part in the activities aiming at transformation of the Egmont Group into a formal international organisation, getting involved in the works of the Implementation Committee (Subgroup for the Secretariat and the EG Charter). The representative of GIFI as the member of the so-called Representative Board took part in the hearings of candidates for the post of the Secretary of the Egmont Group Secretariat. Finalising works on transforming the Egmont Group concentrating the FIUs from 105 countries into a formal international organization took place during the 15 plenary meeting of the Egmont Group which was held in Hamilton on Bermuda Islands. **As of the 28th of May 2007 the organization formally became a new international organisation. The Polish Financial Intelligence Unit by a cover letter to the Secretariat of the Group confirmed its membership in the organisation and accepted *the Egmont Group Charter.***

Thanks to participation in the works of the Group, the Polish Financial Intelligence Unit has a possibility of a closer cooperation with the units around the world active in the field of counteracting and combating financial crimes.

- 9) **Cooperation with US Department of Treasury** – At the beginning of the year 2007 execution of the co-operation project between the General Inspector of Financial Information and the U.S. Department of Treasury began: mission of the American regional adviser started and arrangements on the *work programme* were made. As a part of the programme, representatives of Interpol presented guidelines of the pilot project called IMLASS, executed by Interpol with the co-operation of financial intelligence units. Considering the possibility of accession to the programme is one of the elements of the co-operation programme with the U.S. Department of Treasury. Moreover, the following activities were implemented as a part of the project: workshops on analytical proceedings for the officers of the Police, Internal Security Agency, Central Anticorruption Bureau and GIFI employees, a training course on counteracting financing of terrorism for the employees of the Department of Financial Information and the Police and an advisory mission of IT specialist. Also under the project with USA, the *Regional Seminar on Combating Money Laundering and Financing of Terrorism* was held in November 2007. The project is running also in 2008.

2. Key recommendations

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

PA would like to draw attention to the following technical guideline: Information on changes from the last evaluation, which is filled in the table below, present the exact numeration and wording of the legislation. The numbers of articles cited in the mentioned table refer to the articles of unified amended AML Law, instead of the numeration of the draft amendment of the AML Law.

Recommendation 1 (Money Laundering offence)	
Rating: Largely compliant	
Recommendation of the MONEYVAL Report	<i>Clarify legislative provisions to ensure that all physical and material aspects of money laundering (conversion, acquisition, possession or use) are covered.</i>
Measures taken to implement the Recommendation of the Report	No changes
Recommendation of the MONEYVAL Report	<i>Conspiracy to commit money laundering should be recognised as a criminal offence, unless this is not permitted by fundamental principles of domestic law</i>
Measures taken to implement the Recommendation of the	No changes

Report	
Recommendation of the MONEYVAL Report	<i>Financing of terrorism in all its forms, as explained in the Interpretative Note to SR.II, should be clearly covered as predicate offences to money laundering</i>
Measures taken to implement the Recommendation of the Report	Polish Authorities has prepared draft (is now in Parliament before 2 nd reading) amendments to Penal Code (PC) which provided for an autonomous offence of financing terrorism financing. Terrorism financing is planned to be addressed by the provisions of Article 165a of PC which speaks that: Anyone who collects, transfers or offers instruments of payment, securities or other foreign exchange, property rights, movable or immovable property, in order to finance an offence of terrorist character, shall be subject to imprisonment for a term of up to 3 years. Due to the all-crime approach applied in the article 299 PC (offence of money laundering) terrorism financing will be automatically regarded as a predicate offence.
Recommendation of the MONEYVAL Report	<i>Clarify in the criminal law that property being proceeds covers both direct and indirect property which represent the proceeds (or benefits) of the crime</i>
Measures taken to implement the Recommendation of the Report	No changes
Recommendation of the MONEYVAL Report	<i>More emphasis should be placed on autonomous prosecution of money laundering by third parties</i>
Measures taken to implement the Recommendation of the Report	In the opinion of Polish authorities, the type of money laundering depends on facts established in the course of an investigation and is based on evidence gathered in a given case. Taking this into account, as well as the principle of independence of judges and prosecutors, no legal measures can be taken in order to encourage law enforcement agencies and courts to increase the number of autonomous prosecutions and convictions in this regard. Nevertheless, The Polish Ministry of Justice has intensified the training of prosecutors and judges for the purpose of raising awareness of the importance of autonomous prosecutions. Since June 2007, The National Centre for Training of Judges and Prosecutors has organized a series of 8 training seminars concerning the latest typology of money laundering, methodology of conducting investigations and autonomous prosecutions of money laundering.

Recommendation 5 (Customer due diligence)

I. Regarding financial institutions

Rating: Non compliant

Recommendation of the MONEYVAL Report	<i>Financial institutions should be clearly required to identify customers when starting a business relationship, when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII and when the financial institution has doubts about the veracity or adequacy of previously obtained identification data.</i>
Measures taken to implement the Recommendation of the Report	PA covered this issue in the draft law (from June this year, which is now in the phase of inter-governmental consultation and next will be passed to Council of Ministers, June/July and then to the Parliament) concerning amendments to the Act on 16 November (AML/CTF Law) Art. 8 b ust. 2: Due diligence measures shall be applied in particular: 1) when concluding an agreement with the customer; 2) when carrying out an occasional transaction amounting to EUR 15,000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

	<p>3) when there is a suspicion of money laundering or terrorist financing regardless of the transaction value, customer organisational form and type;</p> <p>4) when there are doubts about the veracity or completeness of previously obtained data.</p>
Recommendation of the MONEYVAL Report	<i>Identification requirements concerning above threshold transactions should be applicable also to customers of electronic money institutions.</i>
Measures taken to implement the Recommendation of the Report	<p>Obligations provided for Art 2 subparagraph 1 of AML/CTF Law also apply to electronic money institutions so these institutions are required to fulfil identification requirements concerning above threshold transactions as well.</p> <p>Article 2 sub. 1e:</p> <p>1) <i>obligated institution: it shall mean:</i></p> <p>e) <i>electronic money institutions, branches of foreign electronic money institutions and settlement agents pursuing business pursuant to the Act on electronic payment instruments of 12 September 2002 (Journal of Laws No. 169, item 1385, of 2004 No. 91, item 870 and No. 96, item 959 and of 2006 No. 157, item 1119),</i></p>
Recommendation of the MONEYVAL Report	<i>The Polish authorities should introduce the concept of beneficial owner as it is described in the Glossary to the FATF Recommendations. Financial institutions should be required to take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source.</i>
Measures taken to implement the Recommendation of the Report	<p>The definition of beneficial owner provided for in the draft of AML/CTF Law is as follows:</p> <p>Article 2 sub. 1a:</p> <p>1a) <i>beneficial owner: it shall mean the natural person who ultimately owns or controls the customer, and also the natural person on whose behalf a transaction or activity is being conducted; the beneficial owner shall at least include:</i></p> <p>a) <i>in the case of legal entities:</i></p> <ul style="list-style-type: none"> - <i>the natural person who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of stake, shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25% plus one share shall be deemed sufficient to meet this criterion,</i> - <i>the natural person who otherwise exercises control over the management of a legal entity,</i> <p>b) <i>in the case of foundations and persons or entities entrusted with administration and distribution of property values:</i></p> <ul style="list-style-type: none"> - <i>where the future beneficiaries have already been determined – the natural person who is a beneficiary of 25% or more of foundation’s property or the legal arrangement whereby administration and distribution of property values was entrusted,</i> - <i>where natural persons that benefit from the legal arrangement or foundation have yet to be determined – a natural person in whose main interest the legal arrangement or foundation is set up or the legal arrangement whereby administration and distribution of property values was entrusted is made, or in whose main interest it is for the foundation or</i>

	<p><i>entity entrusted with administration and distribution of property values to operate,</i></p> <ul style="list-style-type: none"> - <i>the natural person who exercises control over 25% or more of the property of the foundation or the legal arrangement whereby administration and distribution of property values was entrusted;</i> <p>The measures that are to be taken by financial institutions in order to verify identity of beneficial owner refer to general concept of customer due diligence and they are as follows:</p> <p>Article 8b para.3:</p> <p><i>3. Customer due diligence measures shall comprise:</i></p> <ol style="list-style-type: none"> 1) <i>identifying the customer and verifying the customer's identity on the basis of documents or information being in the public domain;</i> 2) <i>taking actions with due diligence to identify the beneficial owner and taking risk-based and adequate measures to verify his/her identity so that the obligated institution obtains the data concerning the identity of the beneficial owner, including understanding of the customer's ownership and control structure;</i>
Recommendation of the MONEYVAL Report	<i>Financial institutions should be required to obtain information on the purpose and intended nature of the business relationship.</i>
Measures taken to implement the Recommendation of the Report	<p>The draft of AML/CTF Law provides for in Art. 8b para.3 subpara. 3 that the institutions covered by the Act have to obtain information on the purpose and intended nature of business relationship of the customer. The specific provision is as follows:</p> <p>Article 8b para.3 subpara. 3:</p> <p><i>3. Customer due diligence measures shall comprise:</i></p> <ol style="list-style-type: none"> 3) <i>obtaining information on the purpose and intended nature of the customer's business relationships;</i>
Recommendation of the MONEYVAL Report	<i>Financial institutions should be required to conduct on-going due diligence on the business relationship and to ensure that documents, data or information collected under CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships.</i>
Measures taken to implement the Recommendation of the Report	<p>Financial institutions obligations referring to on-going due diligence are set out in art. 8b para. 3 subpara. 4 of the draft AML/CTF Law and these are as follows:</p> <p>Art. 8b para.3 subpara. 4:</p> <p><i>3.Customer due diligence measures shall comprise:</i></p> <p>(...)</p> <ol style="list-style-type: none"> 4) <i>conducting ongoing monitoring of the customer's business relationship, including scrutiny of transactions undertaken to ensure that the transactions being conducted are consistent with the obligated institution's knowledge of the customer, the business and risk profile, including, where possible, the source of property values and ensuring that the documents and information held are kept up-to-date.</i>
Recommendation of the MONEYVAL Report	<i>Financial institutions should be required to perform enhanced due diligence for higher risk categories of customers, business relationship or transaction, including private banking, companies with bearer shares and</i>

	<i>non-resident customers</i>
Measures taken to implement the Recommendation of the Report	<p>In accordance with the Law the institutions covered by the Act should apply enhanced customer due diligence measures in circumstances which might indicate a higher risk of money laundering or terrorism financing.</p> <p>The specific provisions are as follows:</p> <p><i>Article 9e. 1. The obligated institutions shall apply, on a risk-sensitive basis, enhanced customer due diligence measures in situations which can present a higher risk of money laundering or terrorism financing, and at least in the situations set forth in paragraphs 2 and 3.</i></p> <p><i>2. Where the customer has not been physically present for identification purposes, to compensate for the higher risk, the obligated institutions shall apply one or more of the following measures:</i></p> <ol style="list-style-type: none"> <i>1) establishing customer's identity by additional documents or information;</i> <i>2) supplementary measures to verify or certify the documents supplied and the authenticity of the signature by the notary public, a government agency, a local government agency or a provider of financial services;</i> <i>3) ensuring that the first transaction is carried out through the customer's account opened with the provider of financial services.</i> <p><i>3. In respect of cross-border correspondent banking relationships with respondent institutions from third countries and equivalent countries, the obligated institutions shall:</i></p> <ol style="list-style-type: none"> <i>1) gather sufficient information on a respondent institution to understand fully the nature of the respondent's business and to determine the reputation of the institution and the quality of supervision;</i> <i>2) assess the correspondent institution's anti-money laundering and anti-terrorist financing controls;</i> <i>3) document the respective responsibilities of each institution;</i> <i>4) with respect to payable-through accounts, ensure that the correspondent credit institution has verified the identity and performed ongoing due diligence on the customers having direct access to accounts of the correspondent and that it is able to provide relevant customer due diligence data to the correspondent institution, upon request;</i> <i>5) obtain approval from management board or designated management board member before establishing new correspondent banking relationships.</i>
Recommendation of the MONEYVAL Report	<i>Financial institutions should not be permitted to open an account when adequate CDD has not been conducted. Where the financial institution has already started the business relationship and is unable to comply with CDD it should be required to terminate the business relationship. In both situations mentioned above financial institutions should be required to consider making a suspicious transaction report.</i>
Measures taken to implement the	Institutions covered by the Law are banned from opening an account as well as they are

Recommendation of the Report	<p>required to terminate existing business relationship if they are unable to fulfil customer due diligence obligations. The specific provision in the draft is as follows:</p> <p><i>Article 8b para. 4.In the event when the obligated institution cannot fulfil the duties referred to in paragraph 3 above[concerning Customer due diligence measures], it shall not carry out the transaction, shall not sign an agreement with the customer or shall terminate the agreements concluded and shall transmit to the General Inspector the information on the given customer along with the information on the transaction planned by him/ her, where justified considering the risk of money laundering or terrorism financing.</i></p>
Recommendation of the MONEYVAL Report	<p><i>Financial institutions should be required to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times</i></p>
Measures taken to implement the Recommendation of the Report	<p>Institutions covered by the Law are required to apply customer due diligence also to existing customers. There is appropriate time given to do so.</p> <p><i>Article 19 of the draft amendment of Polish AML/CTF Law:” The obligated institutions shall conduct for their current clients the risk-based assessment, referred to in Article 8b paragraph 1 of the act, [...], in the wording provided by this Act, within 12 months as of the date of entering into force hereof.”</i></p> <p>Article 8b par. 1. concerns CDD, as follows: “The obligated institutions shall apply customer due diligence. Its scope shall be determined on the basis of the risk-based assessment, in particular, of the customer type, business relationships, products or transactions.”</p>
<p>Recommendation 5 (Customer due diligence) II. Regarding DNFBP²</p>	
Recommendation of the MONEYVAL Report	<p><i>Real estate agents, counsels, legal advisers and foreign lawyers should be required to apply CDD measures in all relevant situations according to the FATF Recommendations and not only in the case of suspicious transactions. Accountants should also be covered by these obligations</i></p>
Measures taken to implement the Recommendation of the Report	<p>It should be emphasised that obligations provided for in the AML/CTF Law also refer to aforesaid designated non-financial businesses and professions unless explicitly indicated otherwise. There is an exemption from the general obligations of applying customer due diligence imposed by the Act, relevant on certain condition to enumerated professions. Specific provision is as follows:</p> <p><i>Article. 8b para.6. Paragraph 2[when CDD should be applied] shall not apply in the event when a lawyer, a legal counsel, a foreign lawyer, an auditor, a tax advisor and the entity being an external accountant are in the course of ascertaining the legal position of the customer or performing their task of defending or representing the customer in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings.”;</i></p> <p>As far as accountants are concerned, the draft law foresees in Art. 2 subpara. 1o) as follows:</p>

² i.e. part of Recommendation 12.

	“1) obligated institution: it shall mean: o) entities being external accountants,”.
Recommendation of the MONEYVAL Report	<i>Poland should fully implement Recommendation 5 and make these measures applicable to DNFBP.</i>
Measures taken to implement the Recommendation of the Report	See above In the database of GIFI 2050 DNFBP’s are registered.

**Recommendation 10 (Record keeping)
I. Regarding Financial Institutions**

Rating: Partially compliant

Recommendation of the MONEYVAL Report	<i>The text of the law should clearly state that all necessary identification data has to be kept for at least five years after the end of the business relationship as required by Recommendation 10.</i>
Measures taken to implement the Recommendation of the Report	It should be noted that the draft of AML/CTF Law indicates a record-keeping obligations. The specific provision is as follows: <i>Article 9k. para. 1. The information obtained as the outcome of customer’s due diligence shall be kept for at least the period of 5 years or more, starting from the first day of the year following the year in which business relationships with the customer were terminated. In the event of liquidation, merger, division or transformation of the obligated institution, for keeping the said documents the provisions of Article 76 the Act on accounting of 29 September 1994 shall apply.</i>
Recommendation of the MONEYVAL Report	<i>Financial institutions should be required to keep documents longer than five years if requested by a competent authority</i>
Measures taken to implement the Recommendation of the Report	In accordance with the Law the period of record-keeping indicated above might be prolonged at the request of the General Inspector or public prosecutor. The specific provision of the draft is as follows: <i>Article 9k para. 2. The General Inspector or the public prosecutor conducting the procedure concerning the act referred to in Article 165a [i.e. financing of terrorism] or Article 299 of the Penal Code [i.e. money laundering] may request the obligated institution to keep the information obtained as the outcome of customer’s due diligence for a definite period of time, longer than set forth in paragraph 1 one above”.</i> (see above for Art. 9 k. para 1);

**Recommendation 10 (Record keeping)
II. Regarding DNFBP³**

Recommendation of the MONEYVAL Report	<i>Poland should fully implement Recommendation 10 and make these measures applicable to DNFBP</i>
Measures taken to implement the Recommendation of the Report	See above

³ i.e. part of Recommendation 12.

(Other) changes since the last evaluation	
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Recommendation 13 (Suspicious transaction reporting)

I. Regarding Financial Institutions

Rating: Partially compliant

Recommendation of the MONEYVAL Report	<i>More guidance is needed to ensure that reporting entities place sufficient emphasis on the STR regime (as opposed to the above-threshold reporting regime).</i>
Measures taken to implement the Recommendation of the Report	<p>The increase of inspections conducted by GIFI in the DNFBP's sector should be underlined. During the inspections more detailed guidance aimed at the particular obliged institution have been provided.</p> <p>Moreover in the years 2006 – 2007 GIFI made available an e-learning course to the institutions from DNFBP's sector.</p> <p>The syllabus of the course was based on the materials prepared by the employees of the GIFI and consisted of 9 lessons, and in particular - identification of suspicious transactions.</p> <p>In connection with the implementation of the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing the GIFI is going to publish new (third) edition of manual for obliged institutions and co-operating units which will include more specific guidance for DNFBP's. This book will be available after adoption of amendments to the law. At present specialists from GIFI work on it by using own knowledge based on professional experience and knowledge of other countries and international organizations, especially FATF.</p>
Recommendation of the MONEYVAL Report	<i>More attention should be given to outreach to other parts of the financial and non banking financial sector to ensure that they are reporting adequately.</i>
Measures taken to implement the Recommendation of the Report	<p>Due to the fact that the obliged institutions very often reported a demand for training sessions with regard to combating money laundering and financing of terrorism and in order to conduct effective training of employees of these institutions in this field, the training in the so-called traditional form should be replaced with electronic training (<i>e-learning</i>).</p> <p>In 2007 two-week e-learning training sessions were launched as of 1 August.</p> <p>200 persons could participate in the course on a one-off basis (160 employees of obliged institutions and 40 employees of co-operating units), without the necessity of incurring costs related to participation in traditional training, among others costs of business trip and travelling expenses.</p> <p>The syllabus of the course was based on the materials prepared by the employees of the Department of Financial Information and consisted of 9 lessons:</p> <ul style="list-style-type: none"> - Basic issues related to counteracting money laundering and terrorist financing (preceded by the Introduction); - Entities participating in counteracting money laundering; - Tasks of the obliged institutions; - Identification of suspicious transactions; - “Know your client” programme in the entities covered by the <i>Act</i>; - Internal procedure in an obliged institution;

	<ul style="list-style-type: none"> - Transfer of information to GIFI; - Control of compliance with the provisions of the <i>Act</i>; - Criminal responsibility for the infringement of legal provisions. <p>The course was prepared in accordance with methodology and didactics principles and concentrated mainly on the approach to solving problems related to a selected area and methods of task execution. It also contained interactive elements. The course finished with a test and, after successfully passing the test <i>on-line</i>, the participant received the certificate confirming the completion of the course.</p> <p>The total number was 2.074 representatives of the obligated institutions and 116 employees of the co-operating units participated in the e-learning course.</p> <p>In order to intensify the reporting activity of institutions from DNFBP's sector, and in order to provide the above mentioned institutions with the suitable guidance on reporting obligation, from 2006 to 2007 GIFI made available e-learning course for employees of the following institutions from DNFBP's sector:</p> <p>Games of chance, mutual betting – 301 + 542 Real estate agents – 23 + 5 tax advisers – 5 + 10 Notaries public – 11 + 4 Polish post – 19 + 3 Auditors – 7 Foundations – 3 + 2 Commission sale – 2 Pawn shops – 3 + 2 Legal advisers – 6 Entrepreneurs running activity in the scope of precious and semi-precious metals or stones trade – 3</p>
Recommendation of the MONEYVAL Report	<i>The AML Act should clearly provide for attempted suspicious transactions to be reported.</i>
Measures taken to implement the Recommendation of the Report	<p>The AML Act explicitly formulate concept of attempted suspicious transaction as well as reporting duties imposed on obligated institutions. Therefore taking into account the risk of money laundering or terrorism financing they are required to submit the relevant information to the General Inspector.</p> <p>The specific provision is as follows:</p> <p>Article 8b para. 4 <i>In the event when the obligated institution cannot fulfil the duties referred to in paragraph 3 above [i.e. elements comprising CDD], it shall not carry out the transaction, shall not sign an agreement with the customer or shall terminate the agreements concluded and shall transmit to the General Inspector the information on the given customer along with the information on the transaction planned by him/ her, where justified considering the risk of money laundering or terrorism financing.</i></p>
Recommendation of the MONEYVAL Report	<i>More guidance is required on the width of the financing of terrorism reporting obligation.</i>

Measures taken to implement the Recommendation of the Report

During trainings for obliged institutions all aspects connected with TF were discussed. Poland is establishing also the new entity which is going to deal with fight against terrorism. According to assumptions the Polish FIU strictly co-operates with this unit what should be connected as well with the increase of the guidance for obliged institutions.

In 2007 the co-operation with obligated institutions and cooperating units was performed on many planes, inclusive of conducting training sessions, providing information on application of legal provisions concerning counteracting money laundering and financing of terrorism as well as conducting electronic training sessions – the so-called e-learning, among others.

Moreover, a guide for obligated institutions and co-operating units issued by GIFI in 2005, titled *Counteracting Money Laundering - A Guide for Obligated Institutions and Cooperating Units* was further distributed among obligated institutions and co-operating units, participants of training sessions and societies of different professions.

From 2005 to 2008 the obligated institutions and the cooperating units received free of charge 2.239 copies of the handbook; this constituted 96% of the entire paper edition:

- obligated institutions – 766,
- cooperating units – 1,453 (of which supervising authorities – 320).

The guide for the cooperating units and obligated institutions is a source of information concerning the typology of *money laundering* and information about the methods of detecting transactions that might be connected with money laundering or terrorism financing.

As regards doubts concerning execution of regulatory obligations reported by the obligated institutions and co-operating units, as in previous years, written responses to questions were provided.

In 2007 GIFF received and answered over 60 enquiries concerning practical application of legal provisions. Almost half of them (44%) were transferred by the banks. A great majority of enquiries (81%) concerned application of provisions of the AML/CTF Law.

In the autumn 2007, representatives of the Polish Financial Intelligence Unit participated in the VI symposium held under the honourable patronage of the General Inspector of Financial Information by the Polish Police Headquarters with the participation of the Police School in Piła and in the seminar “*Terrorism – counteracting, combating, eliminating consequences*”, held in the Higher Police School in Szczytno.

Moreover, the issues of counteracting money laundering and financing of terrorism were presented by GIFI representatives at the forum organised by the magazine “*Banking Law*” monthly held in September 2007 as a part of the cycle of seminars.

GIFI was also invited to participate in the work of the *Coalition for Security and Transparency of Trade*. The coalition established by the Polish Bank Association forms a cooperation platform for economic, self-government, scientific and state administration circles with regard to enhancing trade security, also in the possible risk of financing of terrorism.

In 2006 lectures and exercises arranged by GIFI covered 12 training activities for the total of 350 persons.

The following institutions were the addressees of training activities:

- banks,
- representatives of insurance companies,
- supervising authority (the Polish Securities and Exchange Commission),
- fiscal control authorities,
- tax offices,
- the Police,
- the Prosecutor's Office,
- the Internal Security Agency.

The training focused on statutory obligations and identification of suspicious transactions.

Apart from training addressed to specific recipients, the Polish FIU participated in seminars, workshops and conferences focused on combating organised crime, providing information about the typology and examples of *money laundering* and terrorism financing.

- Problems with evidence in terrorism-related crimes and effects of operational activities – conference organised under the auspices of the 1st President of the Supreme Court,
- Revealing asset components – a seminar organised by the High Police Training School in Szczytno in cooperation with the Criminal Bureau and the Central Investigation Bureau at the Police Headquarters,
- Pragmatics of combating *money laundering* in Poland – the 5th symposium organised by the Police School in Piła.

In 2008 GIFİ intends to hold a conference on cyber terrorism. The seminar is to be organized by the General Inspector of Financial Information together with the U.S. Department of Treasury under the *Agreement on co-operation between the U.S. Department of Treasury and the Ministry of Finance*. Issues on cyber terrorism covered by the seminar comprise: financing, recruitment, training, possible attacks against the Web, counter measures, like training and INTERPOL Networking. Other matters associated with cyber crime discussed during the seminar encompass: identifying theft, fraud, money laundering and some technical stuff like phishing and BotNets

Moreover, GIFİ uses and continuously updates the part of the website of Ministry of Finance, called „Financial Security” which has been devoted to activities of GIFİ. The website is another channel designed to broadly communicate with obliged institutions and cooperating units. Except for information on AML /CFT system, GIFİ's activities, legal regulations in this area of AML/CFT there is section involving GIFİ's communications concerning reporting obligations.

GIFİ cooperated also actively with Central Bureau of Investigation, especially in the area of special, dedicated trainings concerning TF (2007, 2008 projects – more than 50 specialist were trained)

In December 2007, GIFİ published on its website communications concerning the FATF documents: *FATF Guidance Regarding The Implementation Of Activity-Based Financial Prohibitions Of United Nations Security Council Resolution 1737, 12 October 2007 and*

	<p><i>FATF Statement on Iran, Paris, 11 October 2007.</i></p> <p>GIFI forwarded also the above mentioned guidance (with request for further distribution) on Iran to the following associations and institutions: National Council of Counsels, National Chamber of Auditors, National Chamber of Tax Advisors, National Chamber of Legal Advisers, National Council of Public Notaries, Polish Bank Association, the Polish Chamber of Insurance, the Chamber of Brokerage Houses.</p> <p>In 2008 GIFI published on its website <i>FATF Guidance on Money Laundering & Terrorist Financing Through The Real Estate Sector (29 June 2007)</i> and <i>FATF statement on Uzbekistan, Iran, Pakistan, Turkmenistan, São Tomé and Príncipe and transactions with financial institutions operating in the northern part of Cyprus (28 February 2008)</i>. The guidance and statement were forwarded to associations of obligated institutions, supervisory authorities and cooperating units with recommendation to distribute them to supervised and other relevant agencies.</p>
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**Recommendation 13 (Suspicious transaction reporting)
II. Regarding DNFBP⁴**

Recommendation of the MONEYVAL Report	<i>Poland should fully implement Recommendation 13 in respect to DNFBP</i>
Measures taken to implement the Recommendation of the Report	<p>To ensure that all obliged institutions properly fulfil reporting obligation in relation to suspicious transactions and in order to outreach some DNFBP's, which had opposed to fulfil their reporting obligation (Polish lawyers enquired Court of Justice of the European Communities on obligations imposed by AML Law from 16 November 2000 that were claimed to be against the professional secrecy law), GIFI informed on its website on the following <i>Judgment of the Court of Justice of the European communities (Grand Chamber) of 26 June 2007 (Case C-305/05) in this regard:</i></p> <p>“the obligations of information and of cooperation with the authorities responsible for combating money laundering, laid down in Article 6(1) of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering, as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001, and imposed on lawyers by Article 2a(5) of Directive 91/308, account being taken of the second subparagraph of Article 6(3) thereof, do not infringe the right to a fair trial as guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 6(2) EU.</p> <p>The case came from the actions brought before the Belgian Cour d'arbitrage (Court of Arbitration), by several associations of bars seeking the annulment of certain provisions of a Belgian law transposing into their legal order Directive 2001/97 amending Directive 91/308.</p> <p>The argument was that the extension to lawyers the obligation to inform the competent authorities of any fact of which they are aware which might be an indication of money laundering, infringes the principle of the professional secrecy and independence of lawyers, who are protected by the rights enshrined in the Constitution and in the ECHR.</p>

⁴ i.e. part of Recommendation 16.

The Belgian Cour d'arbitrage turned to the Court of Justice of the European Communities with the question if obligations of information and of cooperation with the authorities responsible for combating money laundering imposed on lawyers do infringe the right to a fair trial.

The Court raised that the provisions of the Directive 2001/97 amending Directive 91/308 refer only to notaries and independent legal professionals when participating in financial or corporate transactions, including providing tax advice, where there is the greatest risk of the services of those legal professionals being misused for the purpose of laundering the proceeds of criminal activity.

However – according to the Court – Member States shall not be obliged to apply the obligations laid down in the provisions of article Directive to notaries, independent legal professionals, auditors, external accountants and tax advisers with regard to information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings.

Stressing that money laundering has an evident influence on the rise of organised crime in general, whereas there is more and more awareness that combating money laundering is one of the most effective means of opposing this form of criminal activity, the Court ruled as mentioned above.”

Additionally, in order to intensify the reporting activity of institutions from DNFBP's sector, and to provide the above mentioned institutions with the suitable guidance on reporting obligation, from 2006 to 2007 GIFI made available e-learning course for employees of the institutions from DNFBP's sector. There were around 850 institutions from the sector of games of chance and mutual betting trained, as well as over 110 institutions comprising of: real estate agents, tax advisers, notaries public, Polish Post, auditors, foundations, commission sale, pawn shops, legal advisers, entrepreneurs running activity in the scope of precious and semi-precious metals or stones trade.

GIFI uses and continuously updates the part of the website of Ministry of Finance, called „Financial Security” which has been devoted to activities of GIFI. The website is another channel designed to broadly communicate with obliged institutions and cooperating units. Except for information on AML /CFT system, GIFI's activities, legal regulations in this area of AML/CFT there is section involving GIFI's communications concerning reporting obligations. Intensifying efforts to outreach the DNFBP's sector and to provide obliged institutions with further guidance, in 2008 GIFI published on its website *FATF Guidance on Money Laundering & Terrorist Financing Through The Real Estate Sector (29 June 2007)* and *FATF statement on Uzbekistan, Iran, Pakistan, Turkmenistan, São Tomé and Príncipe and transactions with financial institutions operating in the northern part of Cyprus (28 February 2008)*. The guidance and statement were forwarded to associations of obligated institutions, supervisory authorities and cooperating units with recommendation to distribute

	them to supervised and other relevant agencies.
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Special Recommendation II (Criminalisation of terrorist financing)

Rating: Non compliant

Recommendation of the MONEYVAL Report	<i>An autonomous offence of terrorist financing should be introduced which explicitly addresses all the essential criteria in SR.II and requirements of the Interpretative Note to SR.II.</i>
Measures taken to implement the Recommendation of the Report	The Ministry of Justice has prepared draft amendments to the Penal Code (PC) which provided for an autonomous offence of terrorism financing. Terrorism financing is planned to be addressed by the Article.165a of PC which speaks that: <i>Anyone who collects, transfers or offers instruments of payment, securities or other foreign exchange, property rights, movable or immovable property, in order to finance an offence of terrorist character shall be subject to imprisonment for a term of up to 3 years</i>
(Other) changes since the last evaluation	

Special Recommendation IV (Suspicious transaction reporting)

I. Regarding Financial Institutions

Rating: Partially compliant

Recommendation of the MONEYVAL Report	<i>The reporting duty needs to be explicitly clarified in the law to include all funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism.</i>
Measures taken to implement the Recommendation of the Report	See above

Special Recommendation IV (Suspicious transaction reporting)

II. Regarding DNFBP

Changes since the last evaluation	In connection with the implementation of the third Directive of UE the Poland is changing law of counteracting money laundering and terrorism financing. One of the main changes will be explicit addition of institutions dealing with a service for the transmission of money to the list of obliged institutions. See also above
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Other Recommendations

In the last report the following FATF recommendations were rated as “partially compliant” (PC) or “non compliant” (NC) (see also Appendix 1). Please, specify for each one what measures, if any, have been taken to improve the situation and implement the suggestions for improvements contained in the evaluation report.

Recommendation 3 (Confiscation and provisional measures)	
Rating: Partially compliant	
Recommendation of the MONEYVAL Report	<i>The confiscation regime should clearly allow for confiscation of instrumentalities which have been transferred to third parties</i>
Measures taken to implement the Recommendation of the Report	No changes have been made.

Recommendation 6 (Politically exposed persons)	
Rating: Non compliant	
Recommendation of the MONEYVAL Report	<i>Poland should implement legislation to deal with PEPs</i>
Measures taken to implement the Recommendation of the Report	<p>The draft of AML/CTF Law provides for regulations regarding both politically exposed persons definition and measures that should be taken in dealing with them.</p> <p>The specific provision are as follows:</p> <p><i>Article 2 subpara 1f. Politically exposed persons: it shall mean foreign natural persons who are entrusted with prominent public functions, such as:</i></p> <ol style="list-style-type: none"> <i>a) heads of state or of government, ministers, vice-ministers or deputy ministers, heads of central authorities, members of parliament, judges of supreme courts, constitutional tribunals and other court authorities whose decisions cannot be appealed against, except for when under the extraordinary procedure, members of audit boards, members of authorities of other supreme control authorities and management board members of central banks, ambassadors, chargés d'affairs and senior military officials, members of administrative authorities, management or supervision authorities of state-owned companies and members of management and supervision authorities of companies with the controlling stake held by the state treasury,</i> <i>b) spouses of the persons referred to in (a) or persons cohabiting with them, parents and children of the persons referred to in (a) and spouses of those parents and children or persons cohabiting with them,</i> <i>c) persons, who are or were in close professional or commercial relationship with the persons referred to in (a) and (b), or co-owners of legal entities or arrangements, and also the sole beneficiary of legal entities or arrangements, when established for the benefit of the politically exposed person</i> <p><i>- who hold positions or remain in the relationships referred to in (a) to (c), or when a</i></p>

	<p><i>period shorter than one year elapsed as of discontinuing the same, ”;</i></p> <p><i>Article 9e para.4. In respect of transactions and accounts of the politically exposed persons, the obligated institutions shall:</i></p> <ol style="list-style-type: none"> <i>1) introduce risk-based procedures to determine whether a customer is a politically exposed person;</i> <i>2) have adequate measures to establish the source of property values introduced into circulation;</i> <i>3) conduct ongoing monitoring of the transactions carried out;</i> <i>4) have prior management board or designated management board member, or the person responsible for the institution’s operations, approval for carrying out the transaction or concluding the agreement with the customer.</i>
(Other) changes since the last evaluation	

Recommendation 7 (Correspondent banking)	
Rating: Non compliant	
Recommendation of the MONEYVAL Report	<i>It is recommended that Poland implements legislation to deal with cross-border correspondent banking relationships</i>
Measures taken to implement the Recommendation of the Report	<p>Although the AML Act refers to the aforesaid issue specific activities in this field in order to deal with cross-border correspondent banking relationship may be undertaken after the Act enters into force.</p> <p><i>Article 9e para.3. In respect of cross-border correspondent banking relationships with correspondent institutions from third countries and equivalent countries, the obligated institutions shall:</i></p> <ol style="list-style-type: none"> <i>1. gather sufficient information on a correspondent institution to understand fully the nature of the correspondent’s business and to determine the reputation of the institution and the quality of supervision;</i> <i>2. assess the correspondent institution’s anti-money laundering and anti-terrorist financing controls;</i> <i>3. document the respective responsibilities of each institution;</i> <i>4. with respect to payable-through accounts, ensure that the correspondent credit institution has verified the identity and performed ongoing due diligence on the customers having direct access to accounts of the correspondent and that it is able to provide relevant customer due diligence data to the correspondent institution, upon request;</i> <i>5. obtain approval from management board or designated management board member before establishing new correspondent banking relationships.</i>
Recommendation of the MONEYVAL Report	<i>Polish authorities should satisfy themselves that branches with headquarters abroad undertake the CDD process</i>

	<i>themselves as it is required by Polish Law and do not rely on their headquarters (as the Polish Law does not allow relying on third parties)</i>
Measures taken to implement the Recommendation of the Report	<p>In order to fulfil this duty the AML Act provides for some rules ensuring that relevant application of customer due diligence takes place. Obligated institutions are required to comply with the Act also in branches located abroad as well as they are required to undertake additional measures aimed at complying with anti-money laundering standards.</p> <p>The specific provisions are as follows:</p> <p><i>Article 9j para. 1. Obligated institutions having branches and agencies in the territory of the EU non-member states shall take actions aimed at applying due diligence set forth as herein by those branches and agencies.</i></p> <p><i>2. In the event when the duty set forth in paragraph 1 above cannot be fulfilled, obligated institutions shall apply additional measures to effectively prevent money laundering and terrorism financing.</i></p> <p><i>3. Obligated institutions shall inform the branches and agencies, referred to in paragraph 1 above, about the introduced anti-money laundering and combating terrorism financing procedure and policy.</i></p>
(Other) changes since the last evaluation	

Recommendation 8 (New technologies and non face-to-face business)

Rating: Partially compliant

Recommendation of the MONEYVAL Report	<i>Financial institutions should be required to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering and terrorist financing schemes</i>
Measures taken to implement the Recommendation of the Report	<p>The AML Act provides for some regulatuion that may cover the issue albeit specific policies in order to prevent misuse of technological development may be established after the AML Act enters into force.</p> <p>The specific provision is as follows:</p> <p><i>Article 9g. Obligated institutions shall pay special attention to any money laundering or terrorist financing threat that may arise from products or transactions that might favour anonymity, and take adequate measures to prevent their use therefor.</i></p>
(Other) changes since the last evaluation	

Recommendation 11 (Unusual transactions)

Rating: Partially compliant

Recommendation of the MONEYVAL Report	<i>The examiners strongly recommend to address all the subcriteria of Recommendation 11; particularly financial institutions should be required to pay special attention to all complex, unusual large transactions or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, to examine as far as possible the background and purpose of such transactions and to set forth such findings in writing and to keep them available for competent authorities and auditors for at least five years</i>
Measures taken to	The AML Act provisions cover the issues indicated above.

implement the Recommendation of the Report	<p>The specific provisions of draft are as follows:</p> <p><i>Article 8b para. 3 subpara. 4. Conducting ongoing monitoring of the customer's business relationship, including scrutiny of transactions undertaken to ensure that the transactions being conducted are consistent with the obligated institution's knowledge of the customer, the business and risk profile, including, where possible, the source of property values and ensuring that the documents and information held are kept up-to-date.</i></p> <p><i>Article 9k. para.1. The information obtained as the outcome of customer's due diligence shall be kept for the period of 5 years or more, starting from the first day of the year following the year in which business relationships with the customer were terminated. In the event of liquidation, merger, division or transformation of the obligated institution, for keeping the said documents the provisions of Article 76 the Act on accounting of 29 September 1994 shall apply.</i></p>
(Other) changes since the last evaluation	

Recommendation 12 (DNFBP)

Rating: Non compliant

Recommendation of the MONEYVAL Report	<i>The evaluators recommend working with the different sectors to improve awareness, and overcome any unwillingness to apply AML/CFT requirements. Information campaigns to this end are required. Polish authorities should continue its efforts in this direction, by offering training, publications etc</i>
Measures taken to implement the Recommendation of the Report	See point concerning R.13
Recommendation of the MONEYVAL Report	<i>Poland should fully implement Recommendations 5, 6, 8, 10 and 11 and make these measures applicable to DNFBP</i>
Measures taken to implement the Recommendation of the Report	<p>As was indicated in this report designated non-financial businesses and professions are considered obligated institutions so they are required to fulfil the duties enumerated in the AML Act unless it is provided otherwise. So taking into account above the obligated institutions no matter whether financial or not should undertake measures in order to meet anti-money laundering standards provided for in the Act.</p> <p>Art.8, art. 8a and 8b, art. 9a para. 3, art. 9c</p>
(Other) changes since the last evaluation	

Recommendation 16 (DNFBP)

Rating: Non compliant

Recommendation of the MONEYVAL Report	<i>Poland should fully implement Recommendations 13-15 and 21 in respect to DNFBP</i>
Measures taken to implement the Recommendation of the Report	<p>See above</p> <p>Art. 8 para. 3, art. 11 para. 1 and 3 ,art. 16 para. 1</p> <p>Art. 29, art. 34</p> <p>Art. 10a</p>

Recommendation 17 (Sanctions)

Rating: Partially compliant

Recommendation of the MONEYVAL Report	<i>The evaluators advise to introduce an additional regime of complementary administrative sanctions such as fines to enhance the AML/CFT compliance, especially in the non financial sector</i>
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Measures taken to implement the Recommendation of the Report	The AML Act provides for administrative sanctions, that may be imposed under explicitly indicated prerequisites in the way of General Inspector’s decision.
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The specific provisions of draft are as follows:

Chapter 7a

Fines

“Article 34a. 1. An obligated institution that in violation hereof does not fulfil the duty of registration of a transaction referred to in Article 8, paragraph 1 above, the duty of transfer of the documents relating thereto to the General Inspector or the duty of keeping the register of those transactions or documents relating thereto for the requisite period of time shall be liable to a fine.

2. An obligated institution that in violation hereof does not fulfil the duty of risk analysis for the purpose of applying adequate due diligence measures shall be liable to the fine set forth in paragraph 1 above.

3. An obligated institution that in violation hereof does not fulfil the duty of application of due diligence measures shall be liable to the fine set forth in paragraph 1 above.

4. An obligated institution that in violation hereof does not fulfil the duty of ongoing transaction analysis or keeping the documented results thereof for the requisite period of time shall be liable to the fine set forth in paragraph 1 above.

5. An obligated institution that in violation of Article 10a, paragraph 3 hereof does not fulfil the duty of ensuring for the employees to participate in the training programme shall be liable to the fine set forth in paragraph 1 above.

6. An obligated institution that in violation hereof does not fulfil the duty of timely execution of a control suggestion or recommendation shall be liable to the fine set forth in paragraph 1 above.

Article 34b. 1. An obligated institution that does not fulfil the duty set forth in Chapter 2, Chapter 3, Article 12 or Article 14 of the regulation no. 1781/2006 shall be liable to a fine.

2. An obligated institution that in violation of Article 20d, paragraph 1 hereof does not freeze property values of the person or entity or does not provide the General Inspector with all data held justifying freezing of property values, also electronically, shall be liable to the same fine.

Article 34c.1. The General Inspector shall impose a fine by way of decision, in the amount not exceeding 2% of the fine base, being the income earned by the penalised obligated institution in the previous calendar year.

2. In determining the fine, the General Inspector shall take into account the type and scope of violation, the operations of the obligated institution to date and its finances.

	<p>3. <i>The obligated institution shall provide the General Inspector, within 30 days following the date of request receipt, with the data indispensable for determining the fine base, upon request. Should the data not be provided or should the data provided prevent determination of the fine base, the minister responsible for financial institutions may estimate the fine base, however not lower than PLN IM.</i></p> <p>4. <i>Should the period of the obligated institution's operations be shorter than one calendar year, the amount of PLN IM shall form the fine base.</i></p> <p>5. <i>The fine shall form income of the state budget.</i></p> <p>6. <i>One fine can be imposed only, should in the course of General Inspector's control a breach referred to in Article 34a be declared.</i></p> <p>7. <i>The procedure on imposing the fine shall be carried out pursuant to the Code of Administrative Procedure.</i></p> <p>8. <i>The General Inspector's decision may be appealed against within 14 days with the minister responsible for financial institutions.</i></p> <p>9. <i>Fines shall be enforced under the enforcement proceedings in administration applicable to enforcement of financial duties.</i></p> <p>10. <i>To the matters not governed herein, the provisions of Chapter III of the Act on tax ordinance of 29 August 1997 (Journal of Laws of 2005 No. 8, item 60, as amended.) shall apply.</i></p> <p>11. <i>The institution supervising the operations of a given obligated institution shall be informed about the fine imposed.”;</i></p>
<p>Recommendation of the MONEYVAL Report</p>	<p><i>The competences of the sanctioning authorities should be clarified to avoid double or no sanctioning; legal clarification is needed and working arrangements between the FIU and the supervisory authorities on sanctioning should be set out, preferably by Memoranda of Understanding and greater practical co-ordination.</i></p>
<p>Measures taken to implement the Recommendation of the Report</p>	<p>To avoid the double sanctioning, GIFI has exchanged the plan of inspection with other Supervisory Authorities. In respect of this there was received also in 2007 the information on the inspections conducted by:</p> <ul style="list-style-type: none"> – National Bank of Poland – 1.089 in bureaux de change, – General Inspector for Banking Supervision – 32 at the banks, – National Co-operative Savings and Credit Union – 25 in Co-operative Savings and Credit Unions, – Polish Financial Supervision Authority – 3 in brokerage houses and investment fund society, – Heads of Courts of Appeal – 44 in offices of notaries public. <p>The results of the inspections confirmed the existence of irregularities similar to those discovered by the GIFI inspectors. In comparison with the previous years however, the knowledge of statutory obligations of obligated institutions' employees has improved. Following the thorough analysis of the control results, a justified suspicion of committing the crime grew, thus 5 notifications were submitted to the public prosecutor's office. The proceedings were initiated in one of the cases, in another one the public prosecutor's offices refused to initiate proceedings and in the remaining three cases the proceedings were</p>

	<p>discontinued.</p> <p>Out of all conducted inspections made by GIFI, 33 were planned and 14 were conducted on immediate basis.</p> <p>They were conducted in the following categories of obligated institutions:</p> <ul style="list-style-type: none"> – banks – 9, – brokerage houses – 8, – investment fund societies and funds managed by them – 6, – insurance companies – 2, – legal advisers – 9, – notaries public – 2, – solicitors – 2, – tax advisers – 2, – real estate agencies – 5, – entrepreneurs whose business activity consists in granting secured loans (pawns) – 2. <p>The most important irregularities revealed included the following:</p> <ul style="list-style-type: none"> - formal irregularities: the failure by the obligated institutions to prepare for the fulfilment of statutory obligations due to the failure to set or to adjust the internal procedure to the provisions of the <i>Act</i> and/ or the lack of a person responsible for the fulfilment of obligations imposed by the <i>Act</i> (revealed in 78.7% of the controlled institutions); - functional irregularities: insufficient implementation of the provisions of the <i>Act</i>, mainly in respect of the obligation to register the transactions, to identify entities participating in the transaction, to identify transactions and notify about them and to keep the register of transactions along with the documents relating to the registered transactions, as well as irregularities in keeping the registers of transactions and transmitting information from these registers to GIFI (revealed in all controlled institutions). <p>The findings of the inspections carried out by GIFI inspectors were submitted to the supervising authorities for further processing. 28 written notifications about the results of controls were also submitted.</p>
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Recommendation 18 (Shell banks)	
Rating: Partially compliant	
Recommendation of the MONEYVAL Report	<i>Poland should implement provisions with regard to a prohibition on financial institutions to enter or continue correspondent banking relationship with shell banks</i>
Measures taken to implement the Recommendation of the Report	<p>The draft law introduces the definition of shell bank, which is according to the Art. 2 subpara. 1c of amended AML Act:</p> <p><i>„Shell bank: it shall mean a provider of financial services or an entity engaged in equivalent activities, incorporated in the territory of the entity of international jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is unaffiliated with a regulated financial group”.</i></p> <p>Moreover the Art. 9f stipulates that <i>„Obligated institutions shall be prohibited from entering</i></p>

	<p><i>into or continuing a correspondent banking relationship with a shell bank. Obligated institutions shall take appropriate measures to ensure that they do not engage in or continue correspondent banking relationships with a bank that is known to conclude account agreements with a shell bank.”</i></p> <p>The amended AML Act foresees the sanctioning regime in relation to entering into relationship with shell banks, in line with Art. 34a 8): “8. <i>An obligated institution that in violation of Article 9f hereof establishes or continues correspondent banking co-operation with a shell bank shall be liable to the fine set forth in paragraph 1 above.”</i></p>
Recommendation of the MONEYVAL Report	<i>Financial institutions should be obliged to satisfy themselves that a respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.</i>
Measures taken to implement the Recommendation of the Report	See above

Recommendation 21 (Special attention for higher risk countries)

Rating: Non compliant

Recommendation of the MONEYVAL Report	<i>A requirement to pay special attention to business relationships and transactions with persons from countries that do not or insufficiently apply the FATF Recommendations should be introduced</i>
Measures taken to implement the Recommendation of the Report	<p>There is general obligation imposed on obligated institutions that may apply to relationship and transactions with abovementioned persons.</p> <p>The specific provision is as follows:</p> <p style="padding-left: 40px;"><i>Article 9e para. 1. The obligated institutions shall apply, on a risk-sensitive basis, enhanced customer due diligence measures in situations which can present a higher risk of money laundering or terrorism financing, and at least in the situations set forth in paragraphs 2 [customer has not been physically present for identification purposes] and 3 [cross-border correspondent banking relationships with respondent institutions from third countries and equivalent countries].</i></p> <p>Moreover, to provide some guidelines in this respect, in December 2007, GIFI published on its website communications concerning the FATF documents: <i>FATF Guidance Regarding The Implementation Of Activity-Based Financial Prohibitions Of United Nations Security Council Resolution 1737, 12 October 2007 and FATF Statement on Iran, Paris, 11 October 2007.</i> Additionally, GIFI forwarded the above mentioned guidance (with request for further distribution) on Iran to the following associations and institutions: National Council of Counsels, National Chamber of Auditors, National Chamber of Tax Advisors, National Chamber of Legal Advisers, National Council of Public Notaries , Polish Bank Association, the Polish Chamber of Insurance, the Chamber of Brokerage Houses</p> <p>In 2008 GIFI published on its website <i>FATF statement on Uzbekistan, Iran, Pakistan, Turkmenistan, São Tomé and Príncipe and transactions with financial institutions operating in the northern part of Cyprus (28 February 2008).</i> The statement advised countries that their financial institutions take the risk arising from the deficiencies in AML/CFT regime of those countries into account for enhanced due diligence. The statement was forwarded to associations of obligated institutions, supervisory authorities and cooperating units with</p>

	recommendation to distribute them to supervised agencies and other relevant entities.
Recommendation of the MONEYVAL Report	<i>Financial institutions should be also required to examine the background and purpose of transactions connected with such countries if those transactions have no apparent economic or visible lawful purpose. Written findings should be available to assist competent authorities and auditors</i>
Measures taken to implement the Recommendation of the Report	There is general obligation regarding application of due diligence measures that may refer to abovementioned circumstances. The specific provisions is as follows: <i>Article 8b para.3 subpara 4. (Customer due diligence shall comprise:)Conducting ongoing monitoring of the customer’s business relationship, including scrutiny of transactions undertaken to ensure that the transactions being conducted are consistent with the obligated institution's knowledge of the customer, the business and risk profile, including, where possible, the source of property values and ensuring that the documents and information held are kept up-to-date.</i>

Recommendation 22 (Foreign branches and subsidiaries)

Rating: Non compliant

Recommendation of the MONEYVAL Report	<i>Poland should implement an explicit obligation to require financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with the Polish requirements and FATF recommendations. It should add provisions to clarify that particular attention has to be paid to branches and subsidiaries in countries which do not or insufficiently apply the FATF recommendations and that the higher standard have to be applied in the event that the AML/CFT requirements of the home and host country differ</i>
Measures taken to implement the Recommendation of the Report	As was indicated in the report in order to fulfil this duty the AML Act provide for some rules ensuring that relevant application of customer due diligence takes place. Obligated institutions are required to comply with the Act also in branches located abroad as well as they are required to undertake additional measures aimed at complying with anti-money laundering standards. The specific provisions are as follows: <i>Article 9j para. 1. Obligated institutions having branches and agencies in the territory of the EU non-member states shall take actions aimed at applying due diligence set forth as herein by those branches and agencies.</i> <i>2. In the event when the duty set forth in paragraph 1 above cannot be fulfilled, obligated institutions shall apply additional measures to effectively prevent money laundering and terrorism financing.</i> <i>3. Obligated institutions shall inform the branches and agencies, referred to in paragraph 1 above, about the introduced anti-money laundering and combating terrorism financing procedure and policy.</i>

Recommendation 23 (Regulation, supervision and monitoring)

Rating: Partially compliant

Recommendation of the MONEYVAL Report	<i>Sector specific regulation should be issued by the financial supervisors (including the PSEC which should be also empowered to do so).</i>
Measures taken to implement the	The Polish Financial Supervision Authority (PFSA) – was prescribed by the Act of 21 July 2006 on supervision of the financial market. It started its operation on 19 September 2006,

Recommendation of the Report	<p>acquiring powers of Pension Funds Supervisory Commission and of the Securities and Exchange Commission. As of the 1st January 2007 it also took over competences of the Commission of Banking Supervision and on 1st January 2008 the General Inspectorate of Banking Supervision. As a result the inspections of banking sector, capital sector and insurance sector to the extent of compliance with anti-money laundering and counter terrorism financing responsibilities is carried out by the single entity – PFSA.</p> <p>It should also be pointed out that the insurance supervision section of the Office of the Polish Financial Supervision Authority, which is responsible for the supervision of insurance companies activities and estate has intensified its inspections conducted in the insurance companies as regard the introduction into financial circulation of property values derived from illegal or undisclosed sources and on counteracting the financing of terrorism.</p> <p>On the base of art. 4 Financial Supervision Authority responsibilities shall comprise the following:</p> <ol style="list-style-type: none"> 1) exercising supervision over the financial market (banking, pension, insurance, capital market, electronic money institutions, supplementary supervision governed by the provisions of the Act on Supplementary Supervision of Credit Institutions, Insurance Undertakings and Investment Firms in a Financial Conglomerate; 2) taking actions fostering proper operation of the financial market; 3) taking actions promoting development of the financial market and its competitiveness; 4) taking educational and informational actions related to the operation of the financial market; 5) participating in the preparation of drafts of legal acts related to financial market supervision; 6) creating opportunities for amicable and conciliatory dissolution of disputes between the participants of the financial market, including in particular disputes arising from contractual relationships between the entities subject to FSA’s supervision and the customers buying their services; 7) performing other statutorily assigned tasks.
Recommendation of the MONEYVAL Report	<i>The engagement of the prudential supervisors in AML/CFT supervision should be enhanced</i>
Measures taken to implement the Recommendation of the Report	PFSA delivers anti-money laundering and terrorism financing training to its inspectors on regular basis. There had been some handbooks designed intended for internal use which comprise detailed rules of conduct for the inspectors which are useful during inspections. The Capital Supervision Section had developed a questionnaire which is applied by inspectors apart the form, and facilitates full range of counter money laundering and terrorism financing analysis; whereas inspectors are obliged to verify given answers via appropriate anti-money laundering and counter terrorism financing system analysis in operation in a controlled entity.
Recommendation of the MONEYVAL Report	<i>A licensing or registering system should be introduced for MVT services as well as an effective system for monitoring and ensuring compliance with the AML/CFT requirements</i>
Measures taken to implement the Recommendation of the Report	No changes
Recommendation of the MONEYVAL Report	<i>A licensing system as it is understood by the Basel Core Principles should be introduced for Cooperative Savings and Credit Unions</i>

Measures taken to implement the Recommendation of the Report	Commonly binding Law on cooperatives regulates principles of establishing of cooperative (initiation and termination of its activity). National Association of Cooperative Savings and Credit Unions supervises existing credit unions. All credit unions since very beginning of their activity are obliged to comply with prudential standards and other supervisory regulations established by National Association.
Recommendation of the MONEYVAL Report	<i>Financial supervisors should not only check formal compliance with the AML Act but also overall effectiveness of the AML/CFT systems in the financial institutions</i>
Measures taken to implement the Recommendation of the Report	Inspectors place stronger emphasis on the knowledge and some methods implemented by controlled entities during on-the-spot checks. PFSA delivers continued training to its inspectors on counter money laundering and terrorism financing issues. They are obliged to check the way of counteracting money laundering and terrorism financing in the supervised entities.
Recommendation of the MONEYVAL Report	<i>Inspections of the Insurance and Pension Funds Supervision Commission should cover CFT issues. The PSEC inspections of the AML/CFT area are purely formal and should be enhanced</i>
Measures taken to implement the Recommendation of the Report	See above
Recommendation of the MONEYVAL Report	<i>The evaluators recommend that the questionnaire of the PSEC should explicitly address CFT issues</i>
Measures taken to implement the Recommendation of the Report	Form thereof has remained unchanged. However before handling it inspectors are to acquire some answers from controlled entity following some questions enclosed in a special survey. After verifying its reliability they are to provide the controlled entity with the form to fulfill it. That survey contains direct and appropriate references to CTF.

Recommendation 24 (DNFBP – Regulation, supervision and monitoring)

Rating: Partially compliant

Recommendation of the MONEYVAL Report	<i>More controls, and concurrently more resources would be needed to ensure compliance of DNFBP with AML/CFT requirements.</i>
Measures taken to implement the Recommendation of the Report	<p>Inspections carried out by GIFI</p> <p>GIFI inspectors conducted 47 controls. It was an increase by 27% (37 controls) in comparison to 2006.</p> <p>Following the analysis of control results from the last three years, in 2007 the focus was shifted to the execution of 3 basic control directions:</p> <ul style="list-style-type: none"> – activation of operations of obligated institutions – 44.1% of control (units that are not active with regard to transmitting information on transactions or whose activity is minimal), – intensification of operations of obligated institutions – 38.2% of control (units whose activity with regard to transmitting information on transactions is low), – maintenance/ improvement of the quality of operations of obligated institutions – 17.7% of control (units whose activity is at a good or even high level with regard to transmitting information on transactions). <p>Particular units were selected for the control taking into account the abovementioned directions and analytical and control GIFI information, control information of supervision authorities and publications in media.</p> <p>Out of all conducted controls, 33 were planned and 14 were conducted on immediate basis.</p>

They were conducted in the following categories of obligated institutions:

- banks – 9,
- brokerage houses – 8,
- investment fund societies and funds managed by them – 6,
- insurance companies – 2,
- legal advisers – 9,
- notaries public – 2,
- solicitors – 2,
- tax advisers – 2,
- real estate agencies – 5,
- entrepreneurs whose business activity consists in granting secured loans (pawns) – 2.

The most important irregularities revealed included the following:

- formal irregularities: the failure by the obligated institutions to prepare for the fulfilment of statutory obligations due to the failure to set or to adjust the internal procedure to the provisions of the *Act* and/ or the lack of a person responsible for the fulfilment of obligations imposed by the *Act* (revealed in 78.7% of the controlled institutions);
- functional irregularities: insufficient implementation of the provisions of the *Act*, mainly in respect of the obligation to register the transactions, to identify entities participating in the transaction, to identify transactions and notify about them and to keep the register of transactions along with the documents relating to the registered transactions, as well as irregularities in keeping the registers of transactions and transmitting information from these registers to GIFI (revealed in all controlled institutions).

The findings of the controls carried out by GIFI controllers were submitted to the supervising authorities for further processing. 28 written notifications about the results of controls were also submitted.

Inspections carried out by supervising authorities

GIFI received the information on the inspections conducted by:

- National Bank of Poland – 1089 controls in bureaux de change,
- General Inspector for Banking Supervision – 32 controls at the banks,
- National Co-operative Savings and Credit Union – 25 controls in Co-operative Savings and Credit Unions,
- Polish Financial Supervision Authority – 3 controls in brokerage houses and investment fund society,
- Heads of Courts of Appeal – 44 controls in offices of notaries public.

The results of the controls confirmed the existence of irregularities similar to those discovered by the GIFI inspectors. In comparison with the previous years however, the knowledge of statutory obligations of obligated institutions' employees has improved.

Following the thorough analysis of the control results, a justified suspicion of committing the

	crime grew, thus 5 notifications were submitted to the public prosecutor's office. The proceedings were initiated in one of the cases, in another one the public prosecutor's offices refused to initiate proceedings and in the remaining three cases the proceedings were discontinued.
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Recommendation 27 (Law enforcement authorities)

Rating: Partially compliant

Recommendation of the MONEYVAL Report	<i>More emphasis should be placed on Police generated money laundering cases by proactive financial investigation in major proceeds-generating cases</i>
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Measures taken to implement the Recommendation of the Report	<p>Money laundering is criminalized under article 299 of the PC, which points necessity for identification of source criminal activity and mechanism used in order to legalize benefits of the crime.</p> <p>Different topic constitute recognition of the conspiracy to commit money laundering as a criminal offence aimed to conceal origin of funds or prevent them from being seized.</p> <p>In light of above the main goal for investigation proceeds is:</p> <ul style="list-style-type: none"> • to gather evidence concerning source crime; • to prove connection between illegally gained financial means and individually pointed transaction/group of transactions clearly covered as predicate offences to money laundering. <p>Other important goal is to find out information about material status of perpetrator (suspect during investigation) and additionally connections between illicit proceed and property. In that field an increase in securing/seizure and confiscation of financial means was recorded (see the statistics concerning 2007 below).</p> <p>On the base of internal regulations nr 1426 of Commander-in-Chief from 23th December 2004) in certain cases such as considerable detriment of National Treasury, interesting modus operandi of organized criminal group, Commander-in-chief of the Polish Police or Regional Police Commanders are in charge to appoint special investigation groups.</p>
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Recommendation of the MONEYVAL Report	<i>More use should be made of joint teams and co-operative investigations with the GIFI</i>
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Measures taken to implement the Recommendation of the Report	<p>The Police for the sake of investigations supervised by Prosecutor Office is using rights described in legal provisions regarding money laundering and terrorism financing regulations and regulations of Code of Penal Conduct from 06 of June 1997.</p> <p>The Police and the Treasury Control Coordination Team was established in January 2008 to dismantle an organized crime group dealing with extortion of VAT via fictitious trade in cellular phones. The Team comprises representatives of the Police, Offices of the Treasury Control, Department of Departmental Control in the Ministry of Finance and the General Inspector of Financial Information. Its main tasks cover dismantling of the organized group, scrutinized analysis of the criminal method, provide documentary evidence for the prosecution, developing means and methods to counter criminal activities.</p> <p>Also works the Working Group on the Cooperation with Appellate Prosecutor's Office in</p>
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	<p>Krakow in a view of Combating Crime in the Trade of Fuel – consisting the same kind of institutions.</p> <p>Apart from the big joint group needs we also point out that analysts of the FIUs support the prosecutors and investigators from the Police and other law enforcement agencies with their experiences and specialist knowledge both within the trainings provided by the FIU and contacts in connection with conducted proceedings aimed to recognizing and proving money laundering (especially in the terms of realization of the AML/CTF law).</p> <p>Arranging the joint co-operative investigations have proved to be successful. In 2008 the joint cooperation of GIFI, the police and the prosecutor in the case of criminal group smuggling cigarettes resulted in blocking 48 bank and investment accounts amounted to over M1,3 PLN. 26 persons were retained by the police and the total of secured property amounted to app. M11 PLN. The success in the case was the merit of tight cooperation of GIFI, the police and the prosecutor's office.</p> <p>In the case GIFI obtained a report from the Central Bureau of Investigation. They notified about the criminal group smuggling cigarettes, sent data on entities involved in the criminal activity and informed that the group is supported by the bribed bank employee. Given that information GIFI didn't launch the standard procedure of inquiring bank, which held the accounts of criminal group members and FIU explored solely its own databases to search for information on the accounts and transactions. After coordinated investigation with information flow GIFI blocked all the accounts found in its database and in the same day the police arrested key members of the criminal group.</p>
Recommendation of the MONEYVAL Report	<i>A specialised money laundering Unit with dedicated officers and financial investigators trained in modern financial investigative techniques should be considered to improve the performance of the Police in generating money laundering cases outside of the reporting regime</i>
Measures taken to implement the Recommendation of the Report	<p>Investigations concerning economic crimes including money laundering cases are run by specialist Departments inside of Police forces – Special Units for fighting against economic crime in district and regional police Stations and among others – Economic Departments in Central Bureau of Investigations under supervision of National Prosecutor Office or District Prosecutor Office.</p> <p>Police officers serving in those specialistic units have legal or economic background and are regularly trained in the field focused on counterfeiting economic crime and money laundering proceeds.</p>
(Other) changes since the last evaluation	

Recommendation 31 (National co-operation)

Rating: Partially compliant

Recommendation of the MONEYVAL Report	<i>It is recommended to have more coordination of the main AML/CFT players to ensure a consistent approach. The work of the intergovernmental Working Group should be continued and additionally be raised to a more senior strategic level to include other key stakeholders</i>
Measures taken to implement the Recommendation of the	There have been established a few groups aimed at coordinating efforts concentrating on AML/CFT issues on national level.

Report	<p>In the area of CFT there are three main initiatives:</p> <p>1) Interministerial Group for Terrorist Threats (of which GIFI is a member), co-ordinating actions with regard to counteracting terrorism. At the same time, GIFI representative participates in work of the Permanent Expert Group established at the Interministerial Group for Terrorist Threats in order to monitor terrorist threats, assess their level and nature and to present proposals with regard to legal regulations and development of proper procedures.</p> <p>2) Common Polish-American Group to Fight Terrorism established in February, 2008. The main areas discussed by the Group are: security of national borders, financing of terrorism and organized crime, cyber-terrorism, cyber-crime, cooperation of Polish and American army; diplomatic efforts supporting CTF measures, crisis management following terrorist attack, coordinating CTF measures on national level, physical security of national critical infrastructure.</p> <p>One of the aims of the Group is preparatory actions to create the basis for exchange of information on known terrorists or persons suspected of terrorism. At present the memorandum in this respect is being negotiated.</p> <p>3) Interministerial Task Force on Antiterrorist Center (CAT). Round the clock, CAT will coordinate and cooperate with the institutions responsible for combating terrorism as well as financing of terrorism. CAT will be functioning within the Internal Security Agency, and it will consist of the employees of the institutions responsible for the fight with terrorism. The purpose of CAT is to support crisis management in situations of terrorist attack, as well as to verify available information on possible threats and working out reaction procedures suitable in cases of terrorist attack emergency situations. CAT is going to cooperate with its foreign counterparts.</p> <p>Additionally the cooperation among the institutions responsible for AML/CFT measures are involved in the following foras:</p> <p>4) Horizontal Group for International Sanctions</p> <p>5) The Police and the Treasury Control Coordination Team was established in January 2008 to dismantle an organized crime group dealing with extortion of VAT – see above</p> <p>6) Working Group on Combating Crime in the Trade of Fuel</p> <p>7) Working Group on Omnibus Accounts, established at the Board for Financial Market Development</p>
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Recommendation 32 (Statistics)	
Rating: Partially compliant	
Recommendation of the MONEYVAL Report	<i>More detailed statistics should be kept concerning the nature of money laundering investigations, prosecutions and convictions and sentences</i>
Measures taken to implement the Recommendation of the Report	The Polish FIU is going to improve the data base inter alia in the field o statistics. In new IT project what will be realized in the next year the forms of cases' registrations and modifications will be widened by addition of new fields concerning date of change of case

	<p>classification what should enable to generate easily detailed statistics on processing time of each case.</p> <p>On the basis of Ordinance of 27 July 2007 issued by The Minister of Justice and orders issued by The Head of Organized Crime Bureau at The National Prosecutor’s Office on 28 September 2007, Appellate Prosecutors and Heads of Local Departments of Organized Crime Bureau, are obliged to submit precise and complex information on money laundering investigations conducted by the subordinated prosecutors.</p> <p>These pieces of information are processed by the Central Unit of Organized Crime Bureau at The National Prosecutor’s Office, which elaborate reports comprising statistical data relevant to assessment of effectiveness of the Polish law enforcement with regard to combating money laundering. Aforementioned statistical data includes <i>inter alia</i>: number of the on-going and completed investigations, number and origin of notification of money laundering offence, number of suspects, type of charges brought to the suspects, type of predicate offences, value and type of assets seized in the course of each investigation, number of indictments, number of convictions in ML cases, number of convicts and also number of requests for mutual legal assistance and other forms of requests forwarded to Polish and foreign judicial authorities in ML cases.</p>
Recommendation of the MONEYVAL Report	<i>More statistics on provisional measures and confiscation is needed</i>
Measures taken to implement the Recommendation of the Report	On the basis of aforementioned ordinance and orders, statistical data concerning value and type of assets seized in the course of investigations and finally confiscated by virtue of court’s sentences, is also collected.
Recommendation of the MONEYVAL Report	<i>More statistics (e.g. processing times) should be kept to demonstrate the effectiveness of the FIU internally</i>
Measures taken to implement the Recommendation of the Report	As it was explained to the assessors during evaluation an analyse of a case could last from 24 hours (usually in connection with possibilities of money freezing) to even two years (e.g. if analysing the first STR in the case hasn’t confirmed relation with ML which was justified on the grounds of information from the next one) – average is 8-9 months.
Recommendation of the MONEYVAL Report	<i>More detailed statistics should be kept to demonstrate the effectiveness of the law enforcement regime overall. Statistics need enhancing to ensure that those reviewing the system have a clearer picture of the types of money laundering cases that are being brought, whether they are prosecuted as autonomously or as self laundering, seize and number of confiscation orders and whether freezing occurs at early stages to prevent proceeds being dissipated</i>
Measures taken to implement the Recommendation of the Report	<p>Reports elaborated at The Organized Crime Bureau of The National Prosecutor’s Office also encompass the types of money laundering cases, number of cases where seizure of assets has been applied and the value thereof .</p> <p>Polish National Hq for statistical reasons is collecting data concerning money laundering in Police National Information System. The figures are as follows:</p> <ul style="list-style-type: none"> ▪ in 2005 – commencement of 150 proceedings; completion of 76 proceedings, 32 with act of prosecution, all together 162 suspects charged with money laundering; detriment - 991.687.979,00 PLN; recaptured property - 1.725.767,00 PLN, ▪ in 2006 – commencement of 200 proceedings; completion of 113 proceedings, 31 with

	<p>act of prosecution, all together 173 suspects charged with money laundering (art. 299 of Penal Code; detriment - 1.024.146.225,00 PLN; recaptured property - 306.300,00 PLN,</p> <ul style="list-style-type: none"> ▪ in 2007 – commencement of 217 proceedings; completion of 143 proceedings, 57 with act of prosecution, all together 217 suspects charged with money laundering (art. 299 of Penal Code; detriment - 923.337.942,00 PLN, recaptured property - 2.394.970,00 PLN. <p>Above analysis are in accordance with common ground of Criminal Bureau of National Police Hq and Central Bureau of Investigation.</p>
Recommendation of the MONEYVAL Report	<i>More statistical data (e.g. nature of mutual assistance requests; the time required to handle them; type of predicate offences related to requests) is needed to show the effectiveness of the system</i>
Measures taken to implement the Recommendation of the Report	Aforementioned reports provide only for the number and the type of requests for international cooperation in ML cases, however on the basis of information submitted by the Appellate Prosecutors, it's possible to establish without undue delay, predicate offences linked with each request as well as the time of executing thereof.
Recommendation of the MONEYVAL Report	<i>Poland should maintain statistics regarding extradition requests for money laundering or financing of terrorism including the time required to handle them</i>
Measures taken to implement the Recommendation of the Report	Reports elaborated at The Organized Crime Bureau encompass only requests for extradition directed by the Polish law enforcement authorities. During the last two years, such requests were not issued in the ML/FT cases.
Recommendation of the MONEYVAL Report	<i>The National Prosecutor's Office and other relevant authorities should consider to maintain statistical data of the mutual legal assistance requests referring to money laundering cases, or securing / seizure of property on request of foreign countries and on request of Polish authorities.</i>
Measures taken to implement the Recommendation of the Report	Statistical data concerning mutual legal assistance requests referring to money laundering cases, or securing / seizure of property on request of foreign countries and on request of Polish authorities, is maintained at The Organized Crime Bureau of The National Prosecutor's Office. During the last two years requests for securing / seizure of property were not issued.

Recommendation 33 (Legal persons – beneficial owners)

Rating: Partially compliant

Recommendation of the MONEYVAL Report	<i>It is recommended that Poland reviews its commercial, corporate and other laws with a view to taking measures to provide adequate transparency with respect to beneficial ownership</i>
Measures taken to implement the Recommendation of the Report	<p>In recent years legal regulations have been implemented which may support the fight with money laundering and financing of terrorism (Law of 29 November, 2000 on foreign exchange of goods, technologies and services strategic for national security and maintaining international peace). One of these regulations, which lies in competence of Ministry of Economy, creates internal system of control of legal persons which are responsible for trade and exchange of technological and strategic recourses. The main functions of the system are:</p> <ol style="list-style-type: none"> 1. Providing invaluable information about trade agreements made by legal persons with foreign countries concerning technology and strategic recourses. 2. Monitoring foreign trade partners, delivery routes, sort of transportation and the form of financial settlement and payment on delivery. <p>The system is instrumental for national security and protects legal persons from taking illegal actions which may not stand in conformity with Polish and international law.</p>

	Although, it was not directly intended to counteract money laundering process, it became effective tool of monitoring legal persons with respect to beneficial ownership.
Recommendation of the MONEYVAL Report	<i>There are no real measures in place to guard against abuse in the context of R. 33 of bearer shares. Measures should be put in place to address this issue</i>
Measures taken to implement the Recommendation of the Report	Legislative works aimed at amending Polish civil code and the code of commercial companies are being carried out, however issues of bearer shares abuse has not yet been covered by the scope of the works.

**Recommendation 35 (Conventions) and
Special Recommendation I (Ratification and Implementation of UN instruments)**

Rating: Partially compliant (R.35 and SR I)

Recommendation of the MONEYVAL Report	<i>Poland should (effectively) implement all the provisions of the relevant international conventions it has ratified; inter alia it should introduce a full terrorist financing offence and supplement the European Union mechanisms for freezing under the UNSC Resolutions by domestic procedures for European internals</i>
Measures taken to implement the Recommendation of the Report	As far as penal provisions are concerned, draft amendment to the penal code, introducing an offence of terrorist financing, has been prepared. So far, provisions of the penal procedure code regarding means of assets seizure have not been amended.
(Other) changes since the last evaluation	Since last evaluation Poland has ratified the following relevant international conventions: - <i>Council of Europe Convention on the Prevention of Terrorism</i> (ratified 03-03-2008) - <i>Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism</i> (ratified 30-05-2007)

Special Recommendation III (Freeze and confiscate terrorist assets)

Rating: Partially compliant

Recommendation of the MONEYVAL Report	<i>A clear legal mechanism to act in relation to European Union internals should be introduced</i>
Measures taken to implement the Recommendation of the Report	<p>Seizure and confiscation of assets belonging to terrorists, on the basis of penal procedure, will be admissible after the offence of terrorism financing is introduced into Polish penal code.</p> <p>Poland is in the course of preparation relevant changes to internal legislation with aim to address the issue of freezing of assets of UE internals and questions of de-listing and unfreezing .</p> <p>Amended AML Law provides for the whole Chapter on combating financing of terrorism, as follows:</p> <p style="text-align: center;">“Chapter 5a Combating Terrorism Financing</p> <p>Article 20d. 1. The obligated institution shall freeze property values of persons and entities listed in the European Union legislation whereby special limiting measures are introduced against certain persons or entities to combat terrorism financing and in the regulation, referred to in paragraph 3, and shall provide the General Inspector with all the data held and providing rationale for freezing of property values, also electronically.</p>

2. Upon fulfilling the requirements referred to in paragraph 1 above, the obligated institution shall not be responsible for the freezing-based damages.

3. To ensure efficient terrorism combating and considering the duty set forth in paragraph 1 above, the Council of Ministers may establish, by way of regulation, the list of persons and entities linked with terrorists, terrorist organisations and persons financing terrorism or terrorist organisations.

Article 20e. 1. In the event of freezing property values of a person or entity:

- 1) which is not a person or entity listed in the European Union legislation whereby special limiting measures are introduced against certain persons or entities to combat terrorism financing or in the regulation referred to in Article 20d, paragraph 3 or
- 2) whose life or financial situation is poor
 - the person or entity may apply to the General Inspector for defreezing the property values.

2. In the event of declaring the fact referred to in paragraph 1 subparagraph 1, the General Inspector shall resolve to fully defreeze the property values.

3. In the case referred to in paragraph 1, subparagraph 2 above, the General Inspector shall resolve to fully or partly defreeze the property values, unless the minister responsible for international affairs raises an objection thereto; the General Inspector applies to the minister responsible for international affairs in that respect.

4. The objection referred to in paragraph 3 shall be raised, by way of decision, within 14 days following the General Inspector's application receipt. When particularly justified, the General Inspector shall prolong the deadline for objection to be raised to 30 days following the General Inspector's application receipt, upon request of the minister responsible for international affairs.

5. Public authorities shall provide all the assistance required, including transfer of the documents indispensable for establishing the facts and circumstances referred to in paragraph 1 above.

6. The resolution to defreeze the property values shall be made by way of decision issued by the General Inspector.

7. The General Inspector's decision may be appealed against within 14 days with the minister responsible for financial institutions.

8. The procedure to defreeze property values shall be conducted under the Code of Administrative Procedure.

9. A complaint may be lodged against the decision issued by the minister responsible for financial institutions with the administrative court.”;

Recommendation of the MONEYVAL Report

Guidance should be given to all financial intermediaries, DNFBP and the general public

Measures taken to implement the Recommendation of the

In connection with the implementation of the third Directive of UE the Poland is changing law of counteracting money laundering and terrorism financing. One of the main changes will be

Report	addition of separate chapter on counteracting FT. The chapter will include exact procedure of freezing terrorist assets on the basis of the EU regulations concerning financial sanctions on natural and legal person connected with terrorism financing. See also above
Recommendation of the MONEYVAL Report	<i>A clear and publicly known procedure for de-listing and unfreezing in appropriate cases in a timely manner should be developed</i>
Measures taken to implement the Recommendation of the Report	See above
Recommendation of the MONEYVAL Report	<i>A general administrative regime for the implementation of SR.III should be considered</i>
Measures taken to implement the Recommendation of the Report	As mentioned above

Special Recommendation V (International co-operation)

Rating: Partially compliant

Finding of the MONEYVAL Report	<i>Since terrorist financing is currently not an autonomous offence in Poland, that lack of criminality could be used as the basis for denying mutual legal assistance.</i>
Measures taken	The Ministry of Justice of Poland has prepared draft amendments to the PC which provide for an autonomous offence of terrorism financing. After amending the penal code, denying mutual legal assistance on the basis of the lack of criminality will no longer be valid.
Finding of the MONEYVAL Report	<i>Since terrorist financing is not an autonomous offence, it is also not possible to prosecute the offences set forth in the requests of foreign countries.</i>
Measures taken	See above
(Other) changes since the last evaluation	The Ministry of Justice of Poland has prepared draft amendments to the PC which provide for an autonomous offence of terrorism financing. After amending the penal code, prosecuting the offences set forth in the requests of foreign countries will be admissible.

Special Recommendation VI (AML requirements for money/value transfer services)

Rating: Non compliant

Recommendation of the MONEYVAL Report	<i>Poland should implement Special Recommendation VI</i>
Measures taken to implement the Recommendation of the Report	Money transfer providers are in the light of the AML Act considered obligated institutions so they have to fulfil all duties provided for in the Act unless is stated otherwise. The specific provision is as follows: <i>Article 2 para. 1b provider of financial services: it shall mean an entity pursuing business of accepting repayable deposits or other funds entrusted thereto and granting loans or issuing electronic money, on its own behalf and for its own account, under a licence granted by relevant supervisory authorities,</i>
(Other) changes since the last evaluation	In April 2008 Polish FIU has organized the meeting with representatives of Western Union (WU) company and explained them all issues concerning AML/CTF regime. The WU is prepared for changes in the law but even now, on the base of regulation from their head office in Vienna, they have special procedures in respect of it.

Special Recommendation VII (Wire transfer rules)

Rating: Non compliant

Recommendation of the MONEYVAL Report	<i>Poland should implement the whole concept of SR.VII</i>
Measures taken to implement the Recommendation of the Report	<p>As a member of European Union, Poland is obliged to directly apply Regulation 1781/2006 on the information on the payer accompanying funds transfers to payment service providers of payees.</p> <p>The European Regulation 1781/2006, which came into force on 1 January 2007, acts to implement the Financial Action Task Force's Special Recommendation VII in the European Union.</p> <p>The Regulation requires that Payment Service Providers “PSP”s (like banks and wire transfer offices) attach complete information about the payer to funds transfers made by electronic means. They must also check the information that accompanies incoming payments. The purpose of this regulation is to make it easier for the authorities to trace flows of money on occasions where that is deemed necessary.</p> <p>In October 2007 GIFI submitted an inquiry to the General Inspector of Banking Supervision (now in PFSA) and Polish Bank Association to encourage them to exchange opinions on difficulties they meet dealing with issues of European regulations implementing FATF Special Recommendation VII and IX and the situation regarding the application of the <i>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</i> referred to above.</p> <p>According to the opinion of the Polish Bank Association, transfers of funds with no information on the payer do not exceed 10%. Inspections carried out by supervision authorities, proved that banks, after receiving the transfer with no information on the payer accompanying, launch examining procedures and every time seek to obtain complete information on the payer.</p> <p>Draft amendment of AML Law foresees the derogations from Art. 3 and 18 of the Regulation 1781/2006, imposed by Art. 10 c para 1 and 2 of the draft AML Law, which are as follows:</p> <p><i>”Article 10c. 1. The provisions of the regulation no. 1781/2006 shall not apply, provided the beneficiary’s provider of payment services is able to monitor backwards, using the individual reference number, via the beneficiary, the money transfer coming from a legal entity or a natural person who concluded an agreement on delivery of goods and services, also for the transaction amount being below the equivalent of EUR 1,000.</i></p> <p><i>2. Article 5 of the regulation no. 1781/2006 shall not apply for the providers of payment services with the registered office in the territory of the Republic of Poland in respect of money transfers for non-profit organisations, charity organisations, organisations pursuing research, religious, cultural, educational or social activity, provided the money transfer is not above the equivalent of EUR 150 and is made solely within the territory of the Republic of Poland.”;</i></p> <p>Draft AML Law foresees the following sanctioning system for violation of regulation</p>

	<p>1781/2006:</p> <p><i>“Article 34b. 1. An obligated institution that does not fulfil the duty set forth in Chapter 2, Chapter 3, Article 12 or Article 14 of the regulation no. 1781/2006 shall be liable to a fine.</i></p> <p><i>Article 34c.1. The General Inspector shall impose a fine by way of decision, in the amount not exceeding 2% of the fine base, being the income earned by the penalised obligated institution in the previous calendar year.</i></p> <p><i>2. In determining the fine, the General Inspector shall take into account the type and scope of violation, the operations of the obligated institution to date and its finances.</i></p> <p><i>3. The obligated institution shall provide the General Inspector, within 30 days following the date of request receipt, with the data indispensable for determining the fine base, upon request. Should the data not be provided or should the data provided prevent determination of the fine base, the minister responsible for financial institutions may estimate the fine base, however not lower than PLN 1M.</i></p> <p><i>4. Should the period of the obligated institution’s operations be shorter than one calendar year, the amount of PLN 1M shall form the fine base.</i></p> <p><i>5. The fine shall form income of the state budget.</i></p> <p><i>6. One fine can be imposed only, should in the course of General Inspector’s control a breach referred to in Article 34a be declared.</i></p> <p><i>7. The procedure on imposing the fine shall be carried out pursuant to the Code of Administrative Procedure.</i></p> <p><i>8. The General Inspector’s decision may be appealed against within 14 days with the minister responsible for financial institutions.</i></p> <p><i>9. Fines shall be enforced under the enforcement proceedings in administration applicable to enforcement of financial duties.</i></p> <p><i>10. To the matters not governed herein, the provisions of Chapter III of the Act on tax ordinance of 29 August 1997 (Journal of Laws of 2005 No. 8, item 60, as amended) shall apply.</i></p> <p><i>11. The institution supervising the operations of a given obligated institution shall be informed about the fine imposed.”;</i></p>
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Special Recommendation VIII (Non-profit organisations)

Rating: Non compliant

Recommendation of the MONEYVAL Report	<i>It is recommended to undertake a formal analysis of threats posed by the NPO-sector as a whole and then to review the existing system of relevant laws and regulations in order to assess the adequacy of the current legal framework with respect to criterion VIII.1</i>
Measures taken to implement the Recommendation of the Report	<p>The analysis of threats posed by the NPO-sector resulted in reviewing the adequacy of laws and regulations that relate to the sector and as an outcome, in May 2006, the Chancellery of the Prime Minister/Polish authorities initiated works on the amendment of the Act on foundations. In June 2007 the project of the amendment was directed to the Parliament.</p> <p>The new regulation precisely settles the conditions under which the foundations may engage in</p>

	<p>for-profit business operations and obliges to separate values allocated to statutory tasks and values allocated to for-profit business operations (in accounting books statutory operations and business operations should be separated in a way which enables to determine the income, costs and profits from both types of activities).</p> <p>Moreover it sets more precise rules for supervision to be exercised over the foundations. It determines the responsible ministry, obliged to undertake exact actions on foundations, for example initiate proceedings in court in case of illegal activity of a foundation.</p> <p>The project predicts that more provisions are obligatory to be covered by status of a foundation as well. According to the new requirements the status should deal with matters related to the procedure of its changing, the issues of the make-up and others on internal control authorities, procedure to recall members of management bodies and the arrangements on allocating property values after the liquidation of the foundation.</p>
<p>Recommendation of the MONEYVAL Report</p>	<p><i>Consideration should be given to the issuing of guidance to financial institutions on the specific risks of this sector, and of whether and how further measures need to be taken in the light of the Best Practices Paper for SR.VIII. Consideration might usefully be given as to whether and how any relevant private sector watchdogs could be utilised.</i></p>
<p>Measures taken to implement the Recommendation of the Report</p>	<p>No changes</p>
<p>Recommendation of the MONEYVAL Report</p>	<p><i>It would be helpful to raise awareness for SR.VIII among existing control bodies engaged with the NPO sector so that they also could fully take account of SR VIII issues in their oversight</i></p>
<p>Measures taken to implement the Recommendation of the Report</p>	<p>No changes</p>

4. Specific Questions

(1) Criminal liability has been extended to legal persons and several types of sanction can be applied (according to the Act of 28 October 2002 on the Liability of Collective Entities for Acts Prohibited under Penalty). Has this new provision been applied yet? If yes, also in money laundering or terrorist financing cases?

Until the end of 2006 aforementioned act of law was applied 45 times and in 17 cases court imposed penalties on collective entities. None of those cases concerned money laundering or terrorist financing. In 2007, 27 cases were opened and 10 times penalties were imposed on collective entities, but not in ML/TF cases.

(2) Have there been changes at the FIU regarding competencies, resources, staffing etc.?

In order to prepare suitable legal basis for FIU's activity in the field of counteracting money laundering and terrorist financing, there have been some organizational steps as well as legislative initiative taken:

Legislation:

The Ministry of Finance has prepared a new version of the project of the *Act amending the act of 16 November 2000 on Counteracting Introduction into Financial Circulation of Property Values Derived from Illegal or Undisclosed Sources and on Counteracting the Financing of Terrorism and amending the act – Penal Code*.

The new project will implement the provisions of the *Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing* and the *Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis*, to the Polish legal system.

The novel will also encompass recommendations of Financial Action Task Force.

The reason why the new project of the novel is required, is that in the previous version there were not all international standards included – some of them were covered by other regulations: the project of the *Act – Regulations introducing the act on National Fiscal Administration* and the *Act on National Fiscal Administration*. Since works on these regulations have been interrupted, it becomes necessary to incorporate some additional issues in the project of the *Act of 16 November 2000*.

The new regulation is aimed to be entirely compliant within the Polish legal framework and to fully stay in line with international standards. Requirements concerning Polish international commitments, relating to protection of the financial sector from the threat of inflow of money derived from crime, will be accomplished as well.

Any potential consequences of the amended regulations will also be taken into consideration. It is also very much intended to introduce provisions which will not be a *dead regulation*, will not cause interpretative uncertainties and will confirm the preciseness and intentionality of the Polish legislator's activities.

To meet expectations of the obligated institution, it is tended to establish the *vacatio legis* period so that it is sufficient for them to adjust and prepare for the new legal situation.

Resources and staff

The Financial Intelligence Unit – organizational unit to assist the GIFI, acting within the structure of the Ministry of Finance, has 53 permanent posts assured in the ministerial budget. As a result of the legislative initiative taken by GIFI (adoption of new activities and obligations), there has been an effort made to increase the number of posts within the FIU. New 8 posts are expected in 2008-2009.

Other competencies

In 2006 GIFI has become a member of Interministerial Group for Terrorist Threats, coordinating actions with regard to counteracting terrorism. The GIFI representative participates in the work of the Permanent Expert Group established at the interministerial level, in order to monitor terrorist threats, to do proposals with regard to legal regulations and development of proper procedures.

Moreover, GIFI has been invited to participate in The Krakow Initiative (Proliferation Security Initiative), which was announced by the US President. This involvement reflects the importance of GIFI as an element within the whole system built to prevent threats posed by proliferation of weapon and mass destruction.

In the year 2008 a new initiative was announced on the of governmental level – the CAT (Antiterrorist Center) was establish to allowed a proper coordination in case of terrorist's attacks. The GIFI is now one of the main link of that chain.

(3) Please describe the work of the “Polish Financial Supervision Authority” (PFSA) in the AML/CFT area. Amongst other, please provide information concerning its

a. competencies,

According to Article 21(3) of the Act on supervision of the financial market PFSA is authorized to hold controls in the field of AML/CTF while conducting its supervision powers. Under the provision thereof there are some questions related to AML/CFT studied during general and targeted controls. The main competence to control lies at the Polish FIU.

b. staffing,

Currently the introduction into financial circulation of property values derived from illegal or undisclosed sources and on counteracting the financing of terrorism controls are carried out by 20 inspectors.

c. supervision activities (number of onsite inspections; sanctions imposed),

There had been 54 inspections conducted in 2007. A total of 61 inspections are planned for 2008. In case there is a suspicion of a crime or other irregularities are noticed PFSA will forward a notification to the FIU. All the plans for controls targeting ML/TF

(addressed directly to AML/CTF) are arranged with FIU. Since now there have been no any other sanctions applied as a result of inspections than admonitions to appointed directors of monitored entities.

d. cooperation with the Polish FIU (GIFI).

In case of detection of irregularities in the AML/CTF field within the entities controlled under monitoring powers PFSA shall notify the FIU immediately. PFSA and the FIU cooperate at evaluating of the EU Committee for Prevention and the Council of Europe Moneyval Committee documents on regular basis. Pursuant to the cooperation activities we evaluate revision of law, make comments to evaluation missions and evaluate FATF reports. The mutual cooperation means also an attempt to fix common understanding of the scope and concepts of the EU third money laundering directive (precisely: the concept of third equivalent countries).

5. Questions related to the Third Directive (2005/60/EC) and the Implementation Directive (2006/70/EC)⁵

Implementation / Application of the provisions in the Third Directive and the Implementation Directive	
Please indicate whether the Third Directive and the Implementation Directive have been fully implemented / or are fully applied and since when.	The implementation of the Third directive is in process. The draft of the amendment of the Polish AML Act in this regard is currently being consulted at the interministerial level. The implementation schedule foresees forwarding the draft law to the Council of Ministers until the end of June, 2008 and then forwarding it to parliamentary discussion until the end of July, 2008.

Beneficial Owner	
Please indicate whether your legal definition of beneficial owner corresponds to the definition of beneficial owner in the 3 rd Directive ⁶ (please also provide the legal text with your reply)	<p>The concept of beneficial owner is set out in the AML Act. The specific provision is as follows:</p> <p style="text-align: center;"><i>beneficial owner: it shall mean the natural person who ultimately owns or controls the customer, and also the natural person on whose behalf a transaction or activity is being conducted; the beneficial owner shall at least include:</i></p> <p style="text-align: center;"><i>a) in the case of legal entities:</i></p> <ul style="list-style-type: none"> - <i>the natural person who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of stake, shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25% plus one share shall be deemed sufficient to meet this criterion,</i> - <i>the natural person who otherwise exercises control over the management of a legal entity,</i> <p style="text-align: center;"><i>b) in the case of foundations and persons or entities entrusted with administration and distribution of property values:</i></p> <ul style="list-style-type: none"> - <i>where the future beneficiaries have already been determined – the natural person who is a beneficiary of 25% or more of foundation's property or the legal arrangement whereby administration and distribution of property values was entrusted,</i> - <i>where natural persons that benefit from the legal arrangement or foundation have yet to be determined – a natural person in whose main interest the legal arrangement or foundation is set up or the legal arrangement whereby administration and distribution of property values</i>

⁵ For relevant legal texts from the EU standards see Appendix II

⁶ Please see Article 3(6) of the 3rd Directive reproduced in Appendix II

	<p><i>was entrusted is made, or in whose main interest it is for the foundation or entity entrusted with administration and distribution of property values to operate,</i></p> <p><i>- the natural person who exercises control over 25% or more of the property of the foundation or the legal arrangement whereby administration and distribution of property values was entrusted;</i></p>
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Risk-Based Approach	
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<p>Please indicate the extent to which financial institutions have been permitted to use a risk-based approach to discharging certain of their AML/CFT obligations.</p>	<p>In order to fulfil anti-money laundering standards all institutions covered by the AML Act are required to apply risk-based approach.</p> <p>The specific provision is as follows:</p> <p><i>Article 8b. 1. The obligated institutions shall apply customer due diligence. Its scope shall be determined on the basis of the risk-based assessment, in particular, of the customer type, business relationships, products or transactions.</i></p>
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Politically Exposed Persons	
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<p>Please indicate whether criteria for identifying PEPs in accordance with the provisions in the Third Directive and the Implementation Directive⁷ are provided for in your domestic legislation (please also provide the legal text with your reply).</p>	<p>The AML Act provides for regulations regarding both politically exposed persons definition and measures that should be taken in dealing with them.</p> <p>The specific provision are as follows:</p> <p><i>Article 2 subpara 1f. Politically exposed persons: it shall mean foreign natural persons who are entrusted with prominent public functions, such as:</i></p> <ul style="list-style-type: none"> <i>a) heads of state or of government, ministers, vice-ministers or deputy ministers, heads of central authorities, members of parliament, judges of supreme courts, constitutional tribunals and other court authorities whose decisions cannot be appealed against, except for when under the extraordinary procedure, members of audit boards, members of authorities of other supreme control authorities and management board members of central banks, ambassadors, chargés d'affairs and senior military officials, members of administrative authorities, management or supervision authorities of state-owned companies and members of management and supervision authorities of companies with the controlling stake held by the state treasury,</i> <i>b) spouses of the persons referred to in (a) or persons cohabiting with them, parents and children of the persons referred to in (a) and spouses of those parents and children or persons cohabiting with them,</i> <i>c) persons, who are or were in close professional or commercial relationship with the persons referred to in (a) and (b), or co-owners of legal entities or</i>
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⁷ Please see Article 3(8) of the 3rd Directive and Article 2 of Commission Directive 2006/70/EC reproduced in Appendix II.

	<p><i>arrangements, and also the sole beneficiary of legal entities or arrangements, when established for the benefit of the politically exposed person</i></p> <p><i>- who hold positions or remain in the relationships referred to in (a) to (c), or when a period shorter than one year elapsed as of discontinuing the same, ”;</i></p>
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“Tipping off”

<p>Please indicate whether the prohibition is limited to the transaction report or also covers ongoing ML or TF investigations.</p>	<p>The AML Act provides for that all information obtained and transmitted by financial information authorities should be protected. There are specific regulations that enable General Inspector to provide in some circumstances other authorities such as Head of Home Security Agency, General Inspector of Fiscal Control or the President of the Supreme Chamber of Control with gathered information. Both authorities concerned and prerequisites of information disclosure are explicitly enumerated.</p>
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<p>With respect to the prohibition of “tipping off” please indicate whether there are circumstances where the prohibition is lifted and, if so, the details of such circumstances.</p>	<p>AML/CTF Law:</p> <p>Article 30a. 1. Financial information authorities, employees and persons performing activities for the benefit of the unit referred to in Article 3, paragraph 4 shall keep confidential the information they became aware of in the course of their activities – as provided for by separate regulations.</p> <p>2. The confidentiality requirement, referred to in paragraph 1 above, shall survive termination of employment at the unit, referred to in Article 3, paragraph 4 above, and also performance of activities for the benefit thereof under civil law agreements.”;</p> <p>Article 33:</p> <p>6. The persons who came into possession of the information obtained as provided for by paragraphs 1 to 3 above shall protect the information protected under the law as provided for by separate regulations. The confidentiality requirement shall survive termination of employment relationship and performance of activities under civil law agreements or service discontinuation.”;</p>
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“Corporate liability”

<p>Please indicate whether corporate liability can be applied where an infringement is committed for the benefit of that legal person by a person who occupies a leading position within that legal person.</p>	<p>According to the Act of 28 October 2002 on Liability of Collective Entities for Acts Prohibited under Penalty, such a entity incurs criminal liability for prohibited acts which did or could have given the collective entity an advantage and which were committed <i>inter alia</i> by persons acting in the name or on behalf of the collective entity, under the authority or duty to represent it, make decisions in its name or exercise internal control. Consequently, persons who occupy leading positions in collective entities fall within the range of perpetrators whose criminal conduct is a condition of collective entity’s liability.</p>
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<p>Can corporate liability be applied where the</p>	<p>Persuant to the Article 5 of the Act of 28 October 2002 on Liability of Collective Entities for Acts Prohibited under Penalty, the collective entity is liable if found to have failed to exercise</p>
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infringement is committed for the benefit of that legal person as a result of lack of supervision or control by persons who occupy a leading position within that legal person.	due diligence in electing the natural person who committed a prohibited act, or to have had no due supervision over the person. Therefore, any deficiency of supervision over the perpetrator of a prohibited act, committed by a person occupying a leading position in the collective entity, constitutes one of basic terms of liability.
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DNFBPs

Please specify whether the obligations apply to all natural and legal persons trading in all goods where payments are made in cash in an amount of € 15 000 or over.	<p>It should be noticed that duties set out in the AML Act are also applicable to aforementioned persons as they are regarded by the Act as obligated institutions.</p> <p>The specific provision is as follows:</p> <p><i>Article 2 subpara. 1s (Obligated institutions it shall mean:) entrepreneurs, as defined in the Act on freedom of economic activity of 2 July 2004 (Journal of Laws of 2007 No. 155, item 1095 and No. 127, item 880 and No. 180, item 1280), accepting payments for goods in cash equivalent of at least EUR 15,000, also when the amount due for given goods is paid by making more than a single operation;”</i></p>
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6. Statistics

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

2005												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	151	-	161	-	-	45	Not applicable	Not applicable	-	22 633 599	-	-
FT	0	0	0	0	0	0	Not applicable	Not applicable	0	0	0	0

2006												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	535	1078	54	275	58	105	Not applicable	Not applicable	41	12 163 685	10	8 721 883
FT	0	0	0	0	0	0	Not applicable	Not applicable	0	0	0	0

2007												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)

	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	645	1436	82	288	36	55	Not applicable	Not applicable	81	11 896 510	5	102 698
FT	0	0	0	0	0	0	Not applicable	Not applicable	0	0	0	0

b. STR/CTR

Explanatory note:

The statistics under this section should provide an overview of the work of the FIU.

The list of entities under the heading “*monitoring entities*” is not intended to be exhaustive. If your jurisdiction covers more types of monitoring entities than are listed (e.g. dealers in real estate, supervisory authorities etc.), please add further rows to these tables. If some listed entities are not covered as monitoring entities, please also indicate this in the table.

The information requested under the heading “*Judicial proceedings*” refers to those cases which were initiated due to information from the FIU. It is not supposed to cover judicial cases where the FIU only contributed to cases which have been generated by other bodies, e.g. the police.

“*Cases opened*” refers only to those cases where an FIU does more than simply register a report or undertakes only an IT-based analysis. As this classification is not common in all countries, please clarify how the term “cases open” is understood in your jurisdiction (if this system is not used in your jurisdiction, please adapt the table to your country specific system).

2005															
Statistical Information on reports received by the FIU ⁸								Judicial proceedings							
Monitoring entities, e.g.	reports about transactions above threshold	reports about suspicious transactions /activity		cases opened by FIU		notifications to law enforcement/prosecutors ⁹		indictments				convictions			
		ML	FT	ML	FT	ML	FT	ML		FT		ML		FT	
		cases	persons	cases	persons	cases	persons	cases	persons	cases	persons	cases	persons	cases	persons
banks, foreign bank branches	18104720	61473	2050	957	16	175	0	-	-	0	0	-	-	0	0
investment fund, investment funds society	1713964	2116	0												
entrepreneurs conducting leasing and factoring activity	383728	1451	0												
Notaries	321079	1237	32												
Co-operative savings and credit banks	271881	206	1												

⁸ FIU analyses all reports. One notification to the prosecutor can involve more than one STR.

⁹ 79,6% of them were mistakenly sent by the obliged institutions in that the wrong classification was used in the special field of electronic form; 13.656 reports (20,4%) were real STRs / SARs.

insurance companies, the main branches of foreign insurance companies	47829	43	0																
brokerage houses or other entities not being a bank engaged in brokerage activities	43102	36	0																
entrepreneurs conducting activity in the scope of commission sale	25290	1	0																
Joint Stock Company National Depository for Securities	5021	0	0																
entities conducting activity involving games of chance, mutual betting and automatic machine games	3738	0	0																
state public utility enterprise Poczta Polska (Polish Post)	666	0	0																
Residents engaged in currency exchange	142	1	0																
auction houses	70	0	0																
antique shops	31	0	0																
entrepreneurs conducting activity in the scope of precious and semi-precious metals and stones trade	23	0	0																
entrepreneurs giving loans on pawn (pawnshops)	21	0	0																
real estate agents	10	0	0																
Foundations	2	0	0																
legal advisers	0	0	0																
Cooperative units	NA	523	0																
TOTAL	20921317	67087	2083																

2006 ¹⁰															
Statistical Information on reports received by the FIU								Judicial proceedings							
Monitoring Entities, e.g.	reports about transactions above threshold	reports about suspicious transactions /activity		cases opened by FIU		notifications to law enforcement/prosecutors ¹¹		indictments				convictions			
		ML	FT	ML	FT	ML	FT	ML		FT		ML		FT	
		cases	persons	cases	persons	cases	persons	cases	persons	cases	persons	cases	persons	cases	persons
banks, foreign bank branches	21240728	47306	412	1131	8	198	3	19	120	0	0	8	69	0	0
investment fund, investment funds society	899184	20	0												
entrepreneurs conducting leasing and factoring activity	425031	10	0												
Notaries	350665	380	0												
Co-operative savings and credit banks	34064	69	0												
insurance companies, the main branches of foreign insurance companies	48262	52	0												
brokerage houses or other entities not being a bank engaged in brokerage activities	3019795	49	0												
entrepreneurs conducting activity in the scope of commission sale	46	0	0												
Joint Stock Company National Depository for Securities	8	0	0												
entities conducting activity involving games of chance, mutual betting and automatic machine games	2463	2	0												
state public utility enterprise Poczta Polska (Polish Post)	11928	0	0												
Residents engaged in currency Exchange	55060	1	0												
auction houses	70	0	0												
antique shops	2838	0	0												

¹⁰ FIU analyses all reports. One notification to the prosecutor can involve more than one STR.

¹¹ 70 % of them were mistakenly sent by the obliged institutions in that the wrong classification was used in the special field of electronic form; 14.804 reports (30 %) were real STRs / SARs.

entrepreneurs conducting activity in the scope of precious and semi-precious metals and stones trade	707	0	0															
entrepreneurs giving loans on pawn (pawnshops)	4	0	0															
real estate agents	1	0	0															
Foundations	119	0	0															
legal advisers	0	0	0															
Cooperative units	N/A	547	0															
TOTAL	26090973	48436	412															

2007¹²

2007 ¹²															
Statistical Information on reports received by the FIU								Judicial proceedings							
Monitoring Entities, e.g.	reports about transactions above threshold	reports about suspicious transactions /activity		cases opened by FIU		notifications to law enforcement/prosecutors ¹³		indictments				convictions			
		ML	FT	ML	FT	ML	FT	ML		FT		ML		FT	
		cases	persons	cases	persons	cases	persons	cases	persons	cases	persons	cases	persons	cases	persons
banks, foreign bank branches	23758317	23484	194	1351	7	190	14	35	147	0	0	13	31	0	0
investment fund, investment funds society	1017681	3	0												
entrepreneurs conducting leasing and factoring activity	579943	8	0												
Notaries	480253	82	4												
Co-operative savings and credit banks	49106	135	0												
insurance companies, the main branches of foreign insurance companies	48575	969	1												
brokerage houses or other entities not being a bank engaged in brokerage activities	4192276	84	0												
entrepreneurs conducting activity in the scope of commission sale	193	0	0												
Joint Stock Company National Depository for Securities	41	0	0												
entities conducting activity involving games of chance, mutual betting and automatic machine games	10986	0	0												
state public utility enterprise Poczta Polska (Polish Post)	19373	0	0												
Residents engaged in currency Exchange	64016	13	0												
auction houses	98	0	0												

¹² FIU analyses all reports. One notification to the prosecutor can involve more than one STR.

¹³ 43% of them were mistakenly sent by the obliged institutions in that the wrong classification was used in the special field of electronic form; 14.714 reports (57 %) were real STRs / SARs.

antique shops	3239	0	0															
entrepreneurs conducting activity in the scope of precious and semi-precious metals and stones trade	2734	0	0															
entrepreneurs giving loans on pawn (pawnshops)	8	0	0															
real estate agents	0	0	0															
foundations	484	0	0															
legal advisers	0	0	0															
Cooperative units	N/A	676	0															
TOTAL	30227323	25454	199															

APPENDIX I - Recommended Action Plan to Improve the AML / CFT System

FATF 40+9 Recommendations	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
Criminalisation of Money Laundering (R.1 and 2; R. 32)	<ul style="list-style-type: none"> • Clarify legislative provisions to ensure that all physical and material aspects of money laundering (conversion, acquisition, possession or use) are covered. • Conspiracy to commit money laundering should be recognised as a criminal offence, unless this is not permitted by fundamental principles of domestic law. • Financing of terrorism in all its forms, as explained in the Interpretative Note to SR.II, should be clearly covered as predicate offences to money laundering. • Clarify in the criminal law that property being proceeds covers both direct and indirect property which represent the proceeds (or benefits) of the crime. • The evaluators advise to set out in legislation or guidance that knowledge (the intentional element) can be inferred from objective factual circumstances. • More emphasis should be placed on autonomous prosecution of money laundering by third parties. • Make it clear in legislation or guidance that the underlying predicate criminality can be proved by inferences drawn from objective facts and circumstances in money laundering cases brought in respect of both domestic and foreign predicate offences. • The Polish authorities are encouraged to use the new powers providing corporate criminal liability proactively in money laundering cases. • More detailed statistics should be kept concerning the nature of money laundering investigations, prosecutions and convictions and sentences.
Criminalisation of Terrorist Financing (SR.II)	<ul style="list-style-type: none"> • An autonomous offence of terrorist financing should be introduced which explicitly addresses all the essential criteria in SR.II and requirements of the Interpretative Note to SR.II.
Confiscation, freezing and seizing of proceeds of crime (R.3; R. 32)	<ul style="list-style-type: none"> • The confiscation regime should clearly allow for confiscation of instrumentalities which have been transferred to third parties. • More statistics on provisional measures and confiscation is needed.
Freezing of funds used for terrorist financing (SR.III)	<ul style="list-style-type: none"> • A clear legal mechanism to act in relation to European Union internals should be introduced.

	<ul style="list-style-type: none"> • Guidance should be given to all financial intermediaries, DNFBP and the general public. • A clear and publicly known procedure for de-listing and unfreezing in appropriate cases in a timely manner should be developed. • A general administrative regime for the implementation of SR.III should be considered.
<p>The Financial Intelligence Unit and its functions (R.26, 30 and 32)</p>	<ul style="list-style-type: none"> • The FIU should further seek outreach to some parts of the financial sector (particularly exchange houses) and DNFBP (particularly casinos) to explain the concept of suspicion in more detail. Additionally, they should consider publishing more periodic reports with statistics, typologies and trends, as well as information about its activities. • More statistics (e.g. processing times) should be kept to demonstrate the effectiveness of the FIU internally.
<p>Law enforcement, prosecution and other competent authorities (R.27, 28, 30 and 32)</p>	<ul style="list-style-type: none"> • More emphasis should be placed on Police generated money laundering cases by proactive financial investigation in major proceeds-generating cases. • More use should be made of joint teams and co-operative investigations with the GIFL. • A specialised money laundering Unit with dedicated officers and financial investigators trained in modern financial investigative techniques should be considered to improve the performance of the Police in generating money laundering cases outside of the reporting regime. • More focused training is required of the Police and prosecutors in difficult evidential issues in money laundering cases; more officers should be trained in modern financial investigation. • More resources for financial investigation and focused money laundering training should be provided. • More detailed statistics should be kept to demonstrate the effectiveness of the law enforcement regime overall. Statistics need enhancing to ensure that those reviewing the system have a clearer picture of the types of money laundering cases that are being brought, whether they are prosecuted as autonomously or as self laundering, seize and number of confiscation orders and whether freezing occurs at early stages

	to prevent proceeds being dissipated.
Cross Border Declaration or Disclosure (SR.IX)	<ul style="list-style-type: none"> • Customs (and Border Guards) should be fully sensitized to all the issues involved in financing of terrorism.
3. Preventive Measures– Financial Institutions	
Risk of money laundering or financing of terrorism	
Customer due diligence, including enhanced or reduced measures (R.5, R.7)	<ul style="list-style-type: none"> • Financial institutions should be clearly required to identify customers when starting a business relationship, when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII and when the financial institution has doubts about the veracity or adequacy of previously obtained identification data. • Identification requirements concerning above threshold transactions should be applicable also to customers of electronic money institutions. • The Polish authorities should introduce the concept of beneficial owner as it is described in the Glossary to the FATF Recommendations. Financial institutions should be required to take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source. • Financial institutions should be required to obtain information on the purpose and intended nature of the business relationship. • Financial institutions should be required to conduct on-going due diligence on the business relationship and to ensure that documents, data or information collected under CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships. • Financial institutions should be required to perform enhanced due diligence for higher risk categories of customers, business relationship or transaction, including private banking, companies with bearer shares and non-resident customers. • Polish authorities should satisfy themselves that branches with headquarters abroad undertake the CDD process themselves as it is required by Polish

	<p>Law and do not rely on their headquarters (as the Polish Law does not allow relying on third parties).</p> <ul style="list-style-type: none"> • Financial institutions should not be permitted to open an account when adequate CDD has not been conducted. Where the financial institution has already started the business relationship and is unable to comply with CDD it should be required to terminate the business relationship. In both situations mentioned above financial institutions should be required to consider making a suspicious transaction report. • Financial institutions should be required to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. • It is recommended that Poland implements legislation to deal with cross-border correspondent banking relationships.
(R.6)	<ul style="list-style-type: none"> • Poland should implement legislation to deal with PEPs.
(R.8)	<ul style="list-style-type: none"> • Financial institutions should be required to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering and terrorist financing schemes.
(R.9)	<p>As the Polish legislation does not allow for reliance on third parties and introduced business, Recommendation 9 is not applicable.</p>
Record keeping and wire transfer rules (R.10 and SR.VII)	<ul style="list-style-type: none"> • The text of the law should clearly state that all necessary identification data has to be kept for at least five years after the end of the business relationship as required by Recommendation 10. • Financial institutions should be required to keep documents longer than five years if requested by a competent authority. • Poland should implement the whole concept of SR.VII
Monitoring of transactions and relationships (R.11 and 21)	<ul style="list-style-type: none"> • The examiners strongly recommend to address all the subcriteria of Recommendation 11; particularly financial institutions should be required to pay special attention to all complex, unusual large transactions or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, to examine as far as possible the background and purpose of such transactions and to set forth such findings in writing and to keep them available for competent authorities

	<p>and auditors for at least five years.</p> <ul style="list-style-type: none"> • A requirement to pay special attention to business relationships and transactions with persons from countries that do not or insufficiently apply the FATF Recommendations should be introduced. • Financial institutions should be also required to examine the background and purpose of transactions connected with such countries if those transactions have no apparent economic or visible lawful purpose. Written findings should be available to assist competent authorities and auditors.
<p>Suspicious transaction reports and other reporting (R.13 and 14, 19, 25 and SR.IV)</p>	<ul style="list-style-type: none"> • More guidance is needed to ensure that reporting entities place sufficient emphasis on the STR regime (as opposed to the above-threshold reporting regime). • More attention should be given to outreach to other parts of the financial and non banking financial sector to ensure that they are reporting adequately. • The AML Act should clearly provide for attempted suspicious transactions to be reported. • More guidance is required on the width of the financing of terrorism reporting obligation. • The reporting duty needs to be explicitly clarified in the law to include all funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. • It would be helpful to state explicitly in the law that all financial institutions, directors, officers and employees should be protected from both criminal and civil liability for breach of any restriction on bona fide disclosures of information. • The tipping off provision should clearly cover the transmission of related information, as well as the fact of reporting.
<p>Internal controls, compliance, audit and foreign branches (R.15 and 22)</p>	<ul style="list-style-type: none"> • The AML/CFT compliance officer and other appropriate staff should have timely access to customer identification data and other relevant information. • All financial institutions (not only the banking and securities sector) should be obliged to have an internal audit function, which also covers AML/CFT policies. • Financial institutions should be required to establish screening procedures to ensure high standards when hiring employees. • Poland should implement an explicit obligation to require financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with the Polish requirements and FATF recommendations. It should add provisions to clarify that particular attention has to be paid to branches and subsidiaries in countries which do not or insufficiently

	<p>apply the FATF recommendations and that the higher standard have to be applied in the event that the AML/CFT requirements of the home and host country differ.</p>
Shell banks (R.18)	<ul style="list-style-type: none"> • Poland should implement provisions with regard to a prohibition on financial institutions to enter or continue correspondent banking relationship with shell banks. • Financial institutions should be obliged to satisfy themselves that a respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.
<p>The supervisory and oversight system – competent authorities and SROs / Roles, functions, duties and powers (including sanctions) (R.17, 23, 29 and 30)</p>	<ul style="list-style-type: none"> • The evaluators advise to introduce an additional regime of complementary administrative sanctions such as fines to enhance the AML/CFT compliance, especially in the non financial sector. • The competences of the sanctioning authorities should be clarified to avoid double or no sanctioning; legal clarification is needed and working arrangements between the FIU and the supervisory authorities on sanctioning should be set out, preferably by Memoranda of Understanding and greater practical co-ordination. • Sector specific regulation should be issued by the financial supervisors (including the PSEC which should be also empowered to do so). • The engagement of the prudential supervisors in AML/CFT supervision should be enhanced. • The financial supervisors, particularly the PSEC, shall apply all necessary on-site tools (review of policies, procedures, books and records including sample testing) also in the AML/CFT area. • More AML/CFT experts are needed within the financial supervisory framework, particularly in PSEC, to be able to cover the complex issue of AML/CFT (supervision, regulation and guidance). • CFT training is needed for financial supervisors, particularly for insurance and securities sector.
Financial institutions – market entry and ownership/control (R.23)	<ul style="list-style-type: none"> • A licensing or registering system should be introduced for MVT services as well as an effective system for monitoring and ensuring compliance with the AML/CFT requirements. • A licensing system as it is understood by the Basel Core Principles should be introduced for Cooperative Savings and Credit Unions.
AML/CFT Guidelines (R.25)	<ul style="list-style-type: none"> • The financial supervisors should consider issuing sector-specific AML/CFT guidance.
Ongoing supervision and monitoring (R23, 29)	<ul style="list-style-type: none"> • Financial supervisors should not only check formal compliance with the AML Act but also overall effectiveness of the AML/CFT systems in the

	<p>financial institutions.</p> <ul style="list-style-type: none"> • Inspections of the Insurance and Pension Funds Supervision Commission should cover CFT issues. The PSEC inspections of the AML/CFT area are purely formal and should be enhanced. • The evaluators recommend that the questionnaire of the PSEC should explicitly address CFT issues.
Money or value transfer services (SR.VI)	<ul style="list-style-type: none"> • Poland should implement Special Recommendation VI.
4. Preventive Measures – Designated Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> • The evaluators recommend working with the different sectors to improve awareness, and overcome any unwillingness to apply AML/CFT requirements. Information campaigns to this end are required. Polish authorities should continue its efforts in this direction, by offering training, publications etc. • Poland should fully implement Recommendations 5, 6, 8, 10 and 11 and make these measures applicable to DNFBP. • Real estate agents, counsels, legal advisers and foreign lawyers should be required to apply CDD measures in all relevant situations according to the FATF Recommendations and not only in the case of suspicious transactions. Accountants should also be covered by these obligations.
Monitoring of transactions and relationships, internal controls, compliance and audit (R. 16)	<ul style="list-style-type: none"> • Poland should fully implement Recommendations 13-15 and 21 in respect to DNFBP.
Regulation, supervision and monitoring (R.17, 24-25)	<ul style="list-style-type: none"> • The evaluators advise to introduce an additional regime of complementary administrative sanctions such as fines to enhance the AML/CFT compliance. • The competences of the sanctioning authorities should be clarified to avoid double or no sanctioning; legal clarification is needed and working arrangements between the FIU and the supervisory authorities on sanctioning should be set out, preferably by Memoranda of Understanding and greater practical co-ordination.
Other designated non-financial	

businesses and professions (R.20)	
5. Legal Persons and Arrangements and Non-profit Organisations	
Legal Persons–Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> • It is recommended that Poland reviews its commercial, corporate and other laws with a view to taking measures to provide adequate transparency with respect to beneficial ownership. • There are no real measures in place to guard against abuse in the context of R. 33 of bearer shares. Measures should be put in place to address this issue.
Legal Arrangements–Access to beneficial ownership and control information (R.34)	
Non-profit organisations (SR.VIII)	<ul style="list-style-type: none"> • It is recommended to undertake a formal analysis of threats posed by the NPO-sector as a whole and then to review the existing system of relevant laws and regulations in order to assess the adequacy of the current legal framework with respect to criterion VIII.1. • Consideration should be given to the issuing of guidance to financial institutions on the specific risks of this sector, and of whether and how further measures need to be taken in the light of the Best Practices Paper for SR.VIII. Consideration might usefully be given as to whether and how any relevant private sector watchdogs could be utilised. • It would be helpful to raise awareness for SR.VIII among existing control bodies engaged with the NPO sector so that they also could fully take account of SR VIII issues in their oversight.
6. National and International Co-operation	
National Co-operation and Co-ordination (R.31)	<ul style="list-style-type: none"> • It is recommended to have more coordination of the main AML/CFT players to ensure a consistent approach. The work of the intergovernmental Working Group should be continued and additionally be raised to a more senior strategic level to include other key stakeholders.
The Conventions and UN Special Resolutions (R.35 and SR.I)	<ul style="list-style-type: none"> • Poland should (effectively) implement all the provisions of the relevant international conventions it has ratified; <i>inter alia</i> it should introduce a full

	terrorist financing offence and supplement the European Union mechanisms for freezing under the UNSC Resolutions by domestic procedures for European internals.
Mutual Legal Assistance (R.32, 36-38, SR.V)	<ul style="list-style-type: none"> • More statistical data (e.g. nature of mutual assistance requests; the time required to handle them; type of predicate offences related to requests) is needed to show the effectiveness of the system.
Extradition (R.32, 37 and 39, and SR.V)	<ul style="list-style-type: none"> • Poland should maintain statistics regarding extradition requests for money laundering or financing of terrorism including the time required to handle them. • All kinds of financing of terrorism offences should be made extraditable also for non-EU-countries.
Other forms of co-operation (R.32)	<ul style="list-style-type: none"> • The National Prosecutor's Office and other relevant authorities should consider to maintain statistical data of the mutual legal assistance requests referring to money laundering cases, or securing / seizure of property on request of foreign countries and on request of Polish authorities.

APPENDIX II

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

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

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;

(ii) the natural person(s) who otherwise exercises control over the management of a legal entity:

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

(i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;

(ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;

(iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;

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

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

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

Article 2

Politically exposed persons

1. For the purposes of Article 3(8) of Directive 2005/60/EC, "natural persons who are or have been entrusted with prominent public functions" shall include the following:

- (a) heads of State, heads of government, ministers and deputy or assistant ministers;
- (b) members of parliaments;
- (c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
- (d) members of courts of auditors or of the boards of central banks;
- (e) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
- (f) members of the administrative, management or supervisory bodies of State-owned enterprises.

None of the categories set out in points (a) to (f) of the first subparagraph shall be understood as covering middle ranking or more junior officials.

The categories set out in points (a) to (e) of the first subparagraph shall, where applicable, include positions at Community and international level.

2. For the purposes of Article 3(8) of Directive 2005/60/EC, "immediate family members" shall include the following:

- (a) the spouse;
- (b) any partner considered by national law as equivalent to the spouse;
- (c) the children and their spouses or partners;
- (d) the parents.

3. For the purposes of Article 3(8) of Directive 2005/60/EC, "persons known to be close associates" shall include the following:

- (a) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in paragraph 1;
- (b) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in paragraph 1.

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