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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

THIRD ROUND DETAILED ASSESSMENT REPORT ON LITHUANIA[1]

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

Memorandum
prepared by the Secretariat
Directorate General of Legal Affairs DG I

[1] Adopted by MONEYVAL at its 21st Plenary meeting (Strasbourg, 28-30 November 2006).

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PREFACE – INFORMATION AND METHODOLOGY USED FOR THE EVALUATION OF LITHUANIA

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Lithuania was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), together with the two Directives of the European Commission (91/308/EEC and 2001/97/EC), in accordance with MONEYVAL's terms of reference and Procedural Rules. The evaluation was based on the laws, regulations and other materials supplied by Lithuania, and information obtained by the evaluation team during its on-site visit to Lithuania from 8 to 14 January 2006, and subsequently. During the on-site the evaluation team met with officials and representatives of a number of relevant Lithuanian state institutions and the private sector. A list of the bodies met is set out in Annex to the mutual evaluation report.

2. The evaluation was conducted by an assessment team, which consisted of Mrs Iarina Prelipceanu (Deputy Director of the Department of Legislation, Studies and Documentation of the Ministry of Justice of Romania) acting as legal evaluator, Mr Arnold Tenusaar (Senior specialist to the FIU, Criminal Police of Estonia) acting as law enforcement evaluator and Mr Herbert Zammit Laferla (Director of the Financial Stability Division of the Central Bank of Malta) acting as financial evaluator. These three examiners were assisted by a colleague from the FATF, Mr John C. Ellis (Risk Review Department of the Financial Services Authority of the United Kingdom) acting as financial evaluator. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

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

EXECUTIVE SUMMARY

Lithuania possesses a legal and institutional AML/CFT system which is quite sound on paper. Various legal or practical adjustments are needed inevitably, given the numerous requirements of the new methodology, in particular with regard to financial and other institutions subjected to the preventive mechanisms. For the time being, the few measurable results remain modest and the examiners could not conclude that the preventive and repressive mechanisms do produce all the expected results.

1. Background Information

The Lithuanian economy experiences a constant growth. The country remains affected by corruption and organised crime activities.

The Lithuanian authorities indicated that there have been no significant changes, since the second evaluation round, concerning the main sources of criminal proceeds. These are still trafficking in drugs, smuggling, production of counterfeit money and securities, trafficking in human beings, car theft, extortion of property, crimes related to VAT (fraud, VAT embezzlement).

VAT fraud has become a particular area of concern for the FCIS since 1999. A special group was created within the FCIS, the work of which has shown that the damage to the state budget amounted to millions of Litas and that "VAT embezzlement" is mostly common in relation with large supply of goods (timber, oil products, metals), but also services. The most common scheme involves fictitious companies, falsifying accounting documents, carrousels type operations etc. The Lithuanian authorities also referred to this scheme as a way to launder assets.

The Lithuanian (criminal) police do not carry out assessments on the financial importance of criminal activities, including of organised crime groups. They acknowledge, on the basis of data for 2004, the existence of 10 well structured organized criminal groups, and 78 groups which are less structured. Whilst the vast majority of them are involved in racket, thefts and drugs, three groups have specialised in money laundering. Different "obschaks" (criminal fund) are present in Lithuania, which allow criminal groups to handle money in cash without using the financial system.

There was little information available on ML trends and techniques apart from the scheme described in relation with VAT fraud. At the time of the on site visit, there were at least 5 cases brought to court for money laundering as a result of FCIS' work, all of which involved VAT-related schemes. The first final conviction for ML was obtained in 2005.

The Lithuanian authorities indicated that they have had no FT case so far (apart from the assets of one suspect appearing on the UN/EU list, which have been frozen) and they consider the country's financial and other operators not exposed to, or involved in FT.

2. Legal Systems and Related Institutional Measures

The "Law on Prevention of Money Laundering" was adopted in June 1997 and last revised in November 2003 (entered into force on 1 January 2004), in the light of the 2nd EU Directive on money laundering. It was also, to some extent, extended to FT.

ML is criminalised in the Criminal Code under Art. 216 on *Legalisation of money or property acquired in a criminal way* and Article 189 on *Acquirement or realisation of property obtained from criminal activity*. None of these definitions provide for a wording broad and systematic enough to cover the various material elements of the international definitions. A third ML definition, provided for in the AML Law, is more comprehensive but the examiners were concerned about the current lack of consistency and suggested to unify the criminal law provisions, in line with the administrative definition. Lithuania has adopted the all crime approach and with the first conviction for ML, it has become accepted that ML is an autonomous offence.

Provisions for confiscation and temporary measures are quite sound. Overall statistics are not available, which would allow to conclude that the authorities are targeting the proceeds of crime (whatever the criminal activity) to deprive the criminals from their benefits.

Financing of terrorism is criminalised under Article 250 para.5 and 6 of the Criminal Code on *Act of terrorism* and covers only the support provided to a group involved in terrorist activities. Lithuania relies to a large extent on the (directly applicable) EU regulations to implement the international anti-terrorist sanctions. The examiners had some doubts as to whether these measures are sufficiently known within the country. So far, only one FT-related report was made to the FIU and temporary measures have been applied in respect of the listed person concerned.

The Financial Crime Investigation Service (FCIS), which has responsibility for the investigation of a wider series of economic offences, is formally designated to act as the Lithuanian Financial Intelligence Unit (FIU). It is a member of the Egmont group. One of its structures, the Money Laundering Prevention Division (MLPD), is centralising and analysing the reports on suspicious transactions and those above a certain threshold. The evaluators found that the MLPD should be given more autonomy and own powers, and that the regulatory framework applicable to the use of information collected should be clarified.

The examiners found that there is over-reliance on the FCIS as regards AML responsibilities and the police is not looking at possible ML schemes as part of its own work. The effectiveness of the police and prosecution work needs to be reviewed since the current structure and characteristics of criminal activities indicate no real improvements in recent years.

Lithuania has a system in place for cross-border declaration – at least at external EU border - but it is limited to cash. Generally speaking, the Customs and Border Guard services need to be more involved in AML/CFT efforts.

3. Preventive Measures – Financial Institutions

Customer identification procedures are generally covered through art. 10 and 11 of the AML Law. Some key elements of the CDD requirements are not provided through primary/secondary legislation and no reference is made to full CDD measures except for identification procedures.

Restrictions exist in relation to the identification of beneficial owners of legal persons. There is no risk based approach.

Correspondent banking relationships are adequately covered by the banking regulations but there are no special regulations on politically exposed persons and threats from new or developing technologies are mostly addressed in the banking sector.

A narrow interpretation of paragraph 1 of Article 10 of the AML Law is that it is not permissible in Lithuania for obliged entities to rely on intermediaries or third parties to perform the client identification. By virtue of other regulations, introduced business is allowed only to a limited extent in the insurance sector and third party reliance may be directly allowed in relation to non face-to-face business transactions. The evaluators found that the concept of the customer/agent relationship in the identification process needs to be re-addressed.

The issue of the lifting of confidentiality in the financial sector such that it facilitates the implementation of the FATF Recommendations is treated differently under the respective laws of the Republic of Lithuania. Although the "safe harbour" provision of Article 16(4) of the AML Law gives the necessary protection for the lifting of confidentiality, yet the different ways that the issue is treated under the different laws for the industry raises some concerns related to consistency. Furthermore, the lifting of confidentiality for the regulatory authorities, with the exception of the Insurance Supervisory Commission, is meant to address prudential information i.e. information on the soundness of an institution, rather than AML related information.

Record keeping procedures for the financial sector are adequately covered through the provisions of Article 12 of the AML Law. The comprehensive data that is required to be kept on the Register of Operations is adequate and sufficient for the authorities to reconstruct individual transactions for evidence in prosecutions. The provisions of SR VII on wire-transfers are not directly addressed but various pieces of legislation seem to be relevant to different aspects. The Lithuanian authorities acknowledge this and expect to fully comply with SR VII once the relevant EU-Regulation is adopted.

The requirement for financial institutions to pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, that have no apparent economic or visible lawful purpose is partially addressed through the STR criteria in Government Resolution N°929 but there is no specific obligation to examine the background of large, complex transactions and to keep written records accordingly.

The AML Law is silent on the issue of business relationships and transactions with persons, including companies and financial institution, from countries which do not or insufficiently apply AML/CFT measures. The issue is addressed in Resolution 183 of the Bank of Lithuania but it is restricted to customers of credit institutions and there is no specific obligation to examine the background of large, complex transactions.

Under the AML Law, obliged entities are required to report suspicious transactions (Art. 9) and transactions above certain thresholds (art. 13). The obligation to report does not clearly address reporting of attempted transactions or reasonable grounds to suspect money laundering. In the case of financial institutions it is limited to financial operations. Furthermore, there is no direct obligation to report financial operations suspected to be linked or related to the financing of terrorism.

Protection for disclosure and the prohibition of tipping off are provided for in art. 16 of the AML Law. Feedback to reporting entities is not a legal requirement for the FCIS but it does take place in practice.

The legal obligation for financial institution to develop AML/CFT internal programmes exists through Article 15 of the AML Law. The extent to which such programmes are defined and established, however, varies. The relevant authorities and the industry have confirmed that appropriate procedures are in place. The major institutions have established comprehensive internal controls which include the appointment of compliance officers, the internal audit function and training requirements. Such procedures are examined by the competent authorities in the course of their supervisory work. No statistics on training have however been provided. The applicability of internal control procedures to cross-border branches and subsidiaries is mostly addressed through supervisory and prudential requirements as could be applied for AML/CFT issues. Consequently, most of the essential criteria are not met. On a materiality basis, the Lithuanian authorities have informed that no financial institution registered in Lithuania has established cross-border branches or subsidiaries, except for representative offices, which do not undertake financial activities. However, if this situation were to change, the obligations necessary to comply with Recommendation 22 would not be in place.

Resolution 183 of the Bank of Lithuania and the provisions of the Law on Banks adequately cover the prohibition for the establishment and use of shell banks and banks in Lithuania seem very aware of the dangers of establishing correspondent relationships with shell banks, even though the industry puts more focus on reputation risks.

The prudential regulatory and supervisory regime for the financial sector in the Republic of Lithuania in general appears to be adequate, efficient and complies with acceptable international standards. This is particularly true for the banking sector. Market entry conditions are strict, requiring appropriate due diligence procedures on promoters, shareholders and senior management. Statistics confirm an ongoing supervisory process with the relevant supervisory authorities being adequately resourced to undertake examinations and fulfil their legal responsibilities. However, the evaluators found that some improvements are needed as regards notably the system of sanctions, the coordination of supervision between the FCIS and financial regulators to ensure guidance is consistent and targeted AML/CFT controls are more systematic.

Money and value transfer services do not raise particular problems, with the exception of those offered by post offices that need to be better controlled.

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

Under the AML Law (art 2(3), the following activities are considered as DNFBP: 1) auditors; 2) accounting undertakings or undertakings providing tax advice services; 3) notaries and persons licensed to perform notarial acts; 4) lawyers and lawyers assistants (when they engage in certain types of services); 5) persons engaged in economic-commercial activities related to trade in real estate, precious stones, precious metals, works of art, antiques and other property, the value of which is in excess of LTL50,000 (Euro15,000) or an equivalent sum in foreign currency where payment is made in cash; 6) gaming companies; 7) providers of postal services who provide services of domestic and international money transfers. The term “other entities” under Article 2 also includes three other categories, i.e: insurance undertakings and insurance broker companies; investment companies with variable capital; management companies.

Regarding the CDD process, the strengths and weaknesses for the financial sector apply also for DNFBPs. Additional weaknesses or shortcomings identified include the timing and verification of the identification process, in particular in the gaming sector, and the basis of the applicability of the identification procedures in relation to the threshold limit. Like for the financial sector, PEPs are not addressed and there is a complete lack of awareness of the risks involved, increased awareness is needed regarding threats from new or developing technologies, the industry needs to be more aware of the threats of money laundering arising out of large complex transactions that may not have economic reasons. Record keeping procedures appear to be globally adequate.

With some exceptions, DNFBPs are in principle subject to the same reporting obligations as financial institutions. Concerns mainly arise out of the fact that the main sectors – legal, notarial, accountancy and gaming – appear to be reluctant to be totally on-board with the programme of the Lithuanian Government in implementing the internationally accepted AML/CFT standards in Lithuania. The number of exceptions in the Law itself for the legal profession in particular is not conducive to remove the reluctance of this profession to acknowledge the important role that it can play in carrying forward the government policies in this regard. To a lesser extent, this may also be true of the gaming sector which believes that in implementing the AML measures it may be losing business. Implementing the full AML obligations to the entire sector of the DNFBPs in particular in sectors, such as real estate and persons dealing in precious specific goods, may prove difficult particularly because the Law does not provide for a risk-based approach.

In principle all DNFBPs are subject to ongoing regulatory and supervisory monitoring, although apparently to different extent due to the subjectivity of the risk based approach of the FCIS. The supervisory regime applied by the FCIS to DNFBP is quite low, guidance remains inconsistent or sometimes absent (for lawyers).

The Lithuanian Authorities acknowledge that non-financial businesses and professions other than those already captured by the AML Law could be at risk of being misused for money laundering activities. Indeed the AML Law has already extended the definition of dealers in precious items beyond that of the FATF.

5. Legal Persons and Arrangements & Non-Profit Organisations

The Lithuanian authorities advised that the concept of trusts is unknown in Lithuania.

The unavailability of information and data on current shareholders in the Register of Legal Persons poses some serious concerns. Financial institutions and other entities cannot complete the identification and verification process satisfactorily when establishing relationships with corporate bodies. Competent authorities may not be able to fulfil their responsibilities in investigating or co-operating both domestically and internationally as they do not have the means of verifying ownership of a legal person.

Non-profit organisations are governed by the Law on Charity and Sponsorship. NPOs have to be registered in the same way as private companies, with the register of legal persons. In addition, they have to register as sponsorship recipient (art. 15 of the Law). The current oversight procedures for NPOs are focused on tax matters and do not take into consideration CFT.

6. National and International Co-operation

An AML Coordination Working Group was created some years ago and reactivated in 2004. The evaluators found that its role needs to be fostered and coordination made more effective.

The Republic of Lithuania has ratified the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 1988), the United Nations Convention against Transnational Organised Crime (Palermo, 2000), the United Nations Convention for the Suppression of the Financing of Terrorism (1999), and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 1990). The key requirements appear to be covered in domestic legislation. Some weaknesses have been identified earlier in this summary. As regards the implementation of the relevant UN Security Council Resolutions, uncertainties remain as to whether all efforts have been made to ensure that these are adequately known and implemented. Results appear to be very modest for the time being.

In principle, Lithuania is able to cooperate widely in the field of mutual legal assistance in criminal matters and extradition. Statistics are insufficient to assess the effectiveness in practice. There are no arrangements for coordinated seizure and confiscation actions with other countries.

FCIS can and does cooperate internationally (e.g. through the Egmont) but its ability to exchange information needs to be clarified in Law. The ability of financial supervisors and the Gaming Control Commission to cooperate internationally and exchange information in AML/CFT matters needs to be specified as well.

The State Security Department remains vigilant on CFT issues, although the exact work in the international context is difficult to assess.

7. Other Issues

The team found that legal texts in Lithuania often lack precision, in particular where they refer to provisions of other texts without naming them.

MUTUAL EVALUATION REPORT

1 GENERAL

1.1 General information on Lithuania

1. With approximately 65,000 km^2 and 3.5 million inhabitants, Lithuania is among the smaller Council of Europe countries. The Constitution of October 1992 established a parliamentary democracy regime. The legal system is based on the civil law tradition.

2. The Lithuanian economy is experiencing a constant growth. Unemployment dropped from 11% in 2003 to 5.3% in 2005. Growing domestic consumption and increased investment have furthered recovery. Lithuania has gained membership in the World Trade Organisation. It also joined the EU in May 2004. Privatisation of the large, state-owned utilities, particularly in the energy sector, is nearing completion. Overall, more than 80% of enterprises have been privatised. Foreign government and business support have helped in the transition to a market economy.

3. The national currency is the Litas (1 Euro = 3,4528 Litas or LTL).

4. In recent years, Lithuania has introduced several reforms to develop good governance and transparency[2], and to combat corruption. The main laws ensuring access to public documents are the Law on the Provision of Information to the Public and the Law on the Right to Obtain Information from State and Local Government Institutions. The former establishes the procedure for obtaining, processing and disseminating public information and sets out the rights and responsibilities of public information producers; the latter secures the right of persons to obtain information from the state and municipal institutions within a 14-day time limit and defines the means for implementation of this right (e.g. how to apply for information, preparation and provision of the information, the appeal procedure, etc.). The latter Law also imposes a positive obligation on state and local government authorities to provide information about their activities. To ensure the transparency of public administration, as well as to eliminate barriers to access to public documents, specific requirements have been added to the newly adopted and drafted legal acts. More detailed procedures are also contained in the Government Act on Standard Order on Services to Citizens and Other Persons in the Public Administration Institutions. Since 2002, E-Government is progressively introduced.

5. Lithuania is still affected by corruption, including sectors which play a leading role in AML/CFT efforts. According to representatives of the Special Investigation Service (SIS – which has a special competence for the investigation of corruption) met on site, 263 offences were recorded in 2004, mainly in the police, border guard, Customs; a few cases also involved prosecutors, judges and lawyers. These figures are significant in the context of a country of that size but they also indicate that Lithuania obtains results in the control of corruption. The figures available from the SIS for the period 1999-2005 also show a recent increase in the number of offences uncovered, which are analysed as an indicator

[2]The information contained in this paragraph is taken from the 2nd evaluation round report of the Group of States against Corruption (GRECO), adopted in May 2005.

for the growing refusal of corruption. Representatives from the Lithuanian Chapter of Transparency International depicted in rather negative terms the situation in the country claiming that a number of public authorities, including some dealing with AML/CFT-related issues, could be affected according to their sociological studies. The industry would pay LTL 1,5 billion annually in kickbacks and bribes. On occasions, representatives from the private sectors (e.g. casinos) underlined that they have daily visits by the supervisory bodies/inspectors; this is a worrying phenomenon, in the examiners' opinion.

6. The introduction of a Code of conduct for officials or the duty for them to report suspicions of corruption and malpractice are recent initiatives[3]. The SIS has been involved in the period 2002-2005 in the screening and background checks of about 1,000 applicants for positions in the civil service. It has also organised a number of awareness raising events on corruption-related issues, including for civil servants.

7. As for the culture of AML/CFT compliance, it was admitted by the FCIS that smaller entities and DNFBP are not yet fully cooperative. It was underlined that sanctions imposed so far on non complying entities have rapidly led to the necessary adjustments. The CFT culture is hard to assess since there is little information indicating so far that Lithuania is a destination for terrorist funding.

8. The representatives of the police, judges and prosecutors met by the examiners did not complain about their general situation. The effectiveness of AML measures remain questionable if one puts in balance on the one hand the few cases generated so far and, on the other hand, the information available on the importance of criminal activities. One of the reasons for this is that the police do not consider it is their task to look at the wider financial dimension of criminal activities detected: money laundering and financial investigations are generally considered to be the FCIS' responsibility.

1.2 General Situation of Money Laundering and Financing of Terrorism

Main sources of criminal proceeds

9. The Lithuanian authorities indicated that there have been no significant changes, since the second evaluation round, concerning the main sources of criminal proceeds. These are still trafficking in drugs, smuggling, production of counterfeit money and securities, trafficking in human beings, car theft, extortion of property, crimes related to VAT (fraud, VAT embezzlement).

10. After the entering into force of the new Criminal Code and Criminal Procedure Code on 1 May 2003, the classification of criminal acts and their registration has been changed, which makes the comparison of statistical data on criminal acts registered in 2002, 2003 and 2004 fairly imprecise. Therefore, only general trends can be observed, according to the table below.

[3] See the GRECO report on Lithuania mentioned earlier.

Registered criminal acts	2001	2002	2003[4]		2004
			until 30 April	since 1 May	
Criminal acts related to psychotropic and narcotic substances	960	937	301	728	1551
Trafficking in human beings	16	20	5	12	24
Property extortion	195	170	78	198	345
Smuggling	104	204	30	72	105
Falsification of accounts	225	210	110	305	325
Introducing false statements about income, profit or property	152	169	37	78	93
Forgery of banknotes or blue chips and their launching into circulation	919	658	231	894	1107
Car thefts	5822	5716	1839	4609	5865

11. Although this does not appear clearly in the above table, according to the Lithuanian authorities, VAT fraud has become one of the major sources of criminal profits and a particular area of concern for the FCIS since 1999. A special group was created within the FCIS, the work of which has shown that the damage to the state budget amounted to millions of Litas and that "VAT embezzlement" is mostly common in relation with large supply of goods (timber, oil products, metals), but also services. The most common scheme involves fictitious companies, falsifying accounting documents, carrousels type operations etc. The Lithuanian authorities also referred to this scheme as a way to launder assets.

12. The Lithuanian (criminal) police do not carry out assessments on the financial importance of criminal activities, including of organised crime groups. They acknowledge, on the basis of data for 2004, the existence of 10 well structured organized criminal groups, and 78 groups which are less structured. Whilst the vast majority of them are involved in racket, thefts and drugs, three groups have specialised in money laundering. Different "obschaks" (criminal fund) are present in Lithuania, which allow criminal groups to handle money in cash without using the financial system.

ML and FT trends and techniques

13. As far as terrorist financing trends and techniques are concerned, there is no information available. The Lithuanian authorities indicated that they have had no case so far (apart from the assets of one suspect appearing on the UN/EU list, which have been frozen) and they consider the country's financial and other operators not exposed to, or involved in FT.

[4]The new Criminal Code and the new Criminal Procedure Code entered into force on 1 May 2003; this has affected the qualification and registration of criminal acts.

14. On money laundering, there was little information available on trends and techniques used in this field before and during the visit apart from the scheme described above in relation with VAT fraud. At the time of the on site visit, there were at least 5 cases brought to court for money laundering as a result of FCIS' work, all of which involved VAT-related schemes.

15. The lack of information could be due to the current distribution of responsibilities where the FCIS is considered to have the exclusive competence for ML issues by the Police bodies, whereas the latter is dealing with criminal activities in general. There does not seem to be consolidated information available, in particular concerning trends of laundering of proceeds derived from crimes dealt with by the police. The Coordination Working Group, whose task is the centralisation and discussion of information on ML techniques has only met 3 times since 2004.

16. The first "Report on the implementation of money laundering prevention measures for 2004" contains a typology and description of certain trends. However, it was unclear whether they are of a general nature or related to Lithuania. The information contained in this document distinguishes between the different ML stages:

- placement: deposits on bank accounts via smurfing type schemes, purchase of series of monetary instruments (cheques, money orders etc.) that are then collected and legally moved to another location, purchase of life insurance policies or carrying out monetary operations in currency exchange offices or casinos etc.

- layering: purchase and sale of investment instruments, wiring of funds through series of accounts at various banks across the globe, local and international payments effected through money transfers or cheques and electronic money transfers, intermediate payments, monetary operations or cheque exchange after which funds are withdrawn in cash or bank cheques, use of businesses (car traders), use of offshore countries and centres (opening accounts locally without real use, on behalf of other foreign companies), use of fraudulent bankruptcy (with companies opening accounts on behalf of other companies), use of money transfer services, use of lawyers to conduct transactions in their own name to keep the criminals' identity secret – sometimes involving foreign shell companies etc.

- integration: acquisition of large stakes in companies (in relation with organised crime and financial fraud), use of mortgage loans where money was received from illicit trafficking, acquisition of real estate with monies from prostitution, anticipated reimbursement of loans, loans repaid by money order, use of casinos (in connection with proceeds of trafficking in drugs/human beings/goods), acquisition of real estate property far above or beyond the real market value, huge investments in real estate by short time foreign residents, establishment of various companies and financial operations of foreign companies without real reason etc.

17. As indicated during a discussion held on site, the phenomenon of fictitious ("ghost") companies can be observed in Lithuania, but there has been no relation established with possible money laundering.

1.3 Overview of the Financial Sector and DNFBP

Financial Sector

18. The provision of financial services in the Republic of Lithuania is generally governed by the Law on Financial Institutions (Law No 1X-1068 of 10 September 2002). In terms of Article 1 of the Law, the purpose of the Law is to specify the services which are considered as financial services; the requirements for the founders, participants and heads of the financial undertakings and credit institutions engaged in the provision of financial services; the rights and duties thereof; and conditions of, procedures for and peculiarities of the establishment, pursuit of business and termination and restructuring of financial institutions. The Law also provides for conditions of, procedures for and peculiarities of the supervision of the activities of the financial institutions providing licensed financial services.

19. The term "financial services" is defined by Article 3 of the Law which establishes the following activities as comprising a financial service:

1. receipt of deposits and other repayable funds;
2. lending (including mortgage loans);
3. financial lease (leasing);
4. money transfer;
5. issuance of payment cards and other means of payment and/or carrying out of operations therewith;
6. provision of financial assurances and financial guarantees;
7. conclusion of transactions, at one's own or a client's expense, on the money market instruments (cheques, bills, deposit certificates, etc.), a foreign currency, financial future and option transactions, the establishment of a currency exchange rate and interest rate, public securities and precious metals;
8. investment services;
9. financial mediation (activities of an agent);
10. administering of money;
11. provision of information as well as advice on issues of the granting and payment of a credit;
12. lease of safes;
13. currency exchange (in cash);
14. settlement of payments between credit institutions (clearing);
15. storage and administering of monetary funds;
16. provision of advice to undertakings on the capital structure, production strategy and related issues as well as the advice and services related to reorganisation, restructuring and purchase of the undertakings;
17. provision of the services related to securities emissions.

20. The law further provides that "licensed financial services" i.e. those of the established financial services that are subject to a licence issued in accordance with the procedures set forth by laws, shall be defined by the respective laws of the Republic of Lithuania. According to Article 3.3 of the Law, therefore, it shall be prohibited to provide licensed financial services without a licence.

21. Furthermore, Article 3.4 of the Law restricts the following activities exclusively to credit institutions:

- receipt of deposits and other repayable funds from non-professional participants of the market;
- borrowings from non-professional participants of the market in excess of the size of the equity capital;
- money transfers; and
- issue and administration of electronic money.

22. A "financial undertaking" is therefore defined as an undertaking established in the Republic of Lithuania in accordance with the relevant laws regulating the provision of financial services and which engages in one or more financial services as defined, with the exception of those activities restricted exclusively to credit institutions.

23. A "credit institution" on the other hand, is defined as an undertaking established in the Republic of Lithuania in accordance with the relevant laws and which apart from engaging in any of the financial services as defined, is further authorised to take deposits and other repayable funds from non-professional participants and in lending thereof, assuming the risk and liabilities related thereto.

24. Article 4 of the Law finally defines a "financial institution" as comprising a financial undertaking or a credit institution.

25. The Bank of Lithuania is the competent authority for licensing, regulating and supervising banks, credit unions and the Central Credit Union.

26. As at September 2005, the Lithuanian banking system, which is governed by the Law on Banks (Law No IX-2085 of 30 March 2004), comprised 10 commercial banks and 2 branches of foreign banks. The commercial banks operate a network of 74 branches throughout the Republic. Foreign exchange activities can only be performed by commercial banks that are so authorised by the Bank of Lithuania.

27. Having adopted the relevant EU Directives on the right of establishment and the right to provide services (referred to as the passporting rights) as an EU Member State, the Bank of Lithuania has received 87 notifications from the financial services supervisory authorities of various other EU Member States informing about the intentions of credit institutions supervised by them to exercise the freedom to provide services in Lithuania without establishing a branch presence.

28. The banking sector continues to dominate the financial sector. As at September 2005, the assets of the domestic banks, at LTL35.84 billion (Euro 10.86 billion) increased by 38.9 per cent over the year. Foreign bank branches held 8.7 per cent of assets. Total bank share capital grew by 2.9 per cent over the year standing at LTL1.37 billion (Euro 415 million). The foreign capital represented 85.6 per cent of the total capital of the banks.

29. According to the Law on Financial Institutions, money transfers, including cross-border transfers and electronic money – can only be effected by credit institutions. The Law on Payments (Law No. VIII -1370 of 28 October 1999) as amended in July 2004 (amending Law No. IX-2404 of 15 July 2004) governs the relationship between credit institutions and customers in effecting payments and the payment procedures. The Post Office, which is not authorised as a credit institution, is an exception and provides money transfer services which are not regulated or monitored by the Bank of Lithuania. The

Law on Payments, furthermore, does not apply to the Post Office although Post Offices providing such services are subject to the AML/CFT regulations.

30. The Central Credit Union, which is governed by the Law on the Central Credit Union, can undertake all activities listed under Article 3 of the Law on Financial Institutions but such activities are only performed with its members – credit unions and trade union organisations. There are currently 64 authorised credit unions with assets exceeding LTL235 million (Euro 71.21 million), representing 0.7 per cent of the bank assets. The activities of credit unions are governed by Article 7 of the Law on Credit Unions. Such activities are restricted to the members, other credit unions and other named entities such as public organisations and institutions authorised by the Government of the Republic of Lithuania.

31. The Insurance Supervisory Commission is the competent authority for licensing, regulating and supervising insurance entities.

32. The insurance sector consists of life and non-life insurance undertakings, insurance broker companies (independent intermediaries) and insurance agents (dependent intermediaries). The activities of the insurance sector are governed by the Law on Insurance (Law No IX-1737 of 18 September 2003). Insurance undertakings are not captured under the definition of a financial institution under the Law on Financial Institutions and hence the provisions of this law do not apply. Indeed, insurance undertakings may not engage in any other commercial economic activity other than insurances, reinsurance and related activities.

33. There are currently 25 authorised insurance undertakings engaging in insurance activity: 9 life assurance and 16 non-life insurance undertakings. There are also 89 authorised insurance broker companies. In terms of the Law on Prevention of Money Laundering (Law No VIII-275 of June 1997) as amended in November 2003 (Amending Law No IX -1842), both types of insurance undertakings and insurance brokers are subject to the AML/CFT regime. There are however also several thousands of insurance agents (dependent intermediaries), but such intermediaries are not directly subject to the AML/CFT regulations.

34. The Securities Commission is responsible to licence, regulate and supervise financial brokerage firms, collective investment undertakings and management and depository companies.

35. The Law on Securities Market (Law No. I-1169 of 16 January 1996) governs the activities of financial brokerage firms which are defined as undertakings licensed to provide investment services. There are currently 22 financial brokerage undertakings operating in Lithuania: 13 financial brokerage firms and 9 financial brokerage departments.

36. According to the Law on Collective Investment Undertakings (Law No IX-1709 of 4 July 2003), a collective investment undertaking is an investment fund or an investment variable capital company. There are currently 14 collective investment undertakings registered in the Republic of Lithuania. The Law also defines a "management company" as an undertaking engaged in the management of investment funds or investment variable capital companies. There are currently 9 management companies. Finally, the law requires that the assets of a collective investment undertaking must be entrusted to one

depository for safe keeping – only commercial banks operating in the Republic of Lithuania can act as a depository.

Designated Non-Financial Businesses and Professions (DNFBPs)

37. The State Gaming Control Commission is the competent authority responsible to licence, regulate and supervise the gaming sector which is governed by the Law on Gaming (Law No IX-325 of 17th May, 2001) as amended in December 2003 (Amending Law No IX-1948 of 23rd December 2003). The Law establishes the conditions and procedures for the operation of gaming which is defined as the playing of a game or mutual betting in accordance with established regulations where the participants seek to win money by voluntarily risking a stake and where winnings and losses depend on chance, an occurrence of any event or the outcome of a sporting event. The Law groups gaming machines into two categories. Category 'A' gaming machines have unlimited winnings where the maximum single winnings is not limited. Category 'B' gaming machines have limited winnings where the maximum single winning does not exceed LTL200 (Euro 60) and the maximum amount of a stake per game does not exceed LTL1 (Euro 0.30 cents).

38. As of October 2005 there were 18 casinos operating in Lithuania, 12 of which are located in Vilnius; 878 Category 'A' machines; 169 gaming tables; 782 category 'B' machines; and 1 bingo centre. Winnings are subject to tax at 33%. The following Table shows the level of activities in the gaming sector over a three year period:

Gaming Operators activity results – 2003-2005

Note 1 - Figures for 2005 reflect first three quarters only
Note 2 - Figures in *italics* denominated in euro equivalent at LTL/Euro 3.3000

No.	Revenue	Paid out winnings	Result from gaming activity
1.	Companies, organizing gaming on Gaming tables/gaming machines category A		
2003	**161,708,183** ***49,002,479***	**121,806,144** *36,910,953*	**39,902,039** *12,091,527*
2004	**269,625,483** *81,704,691*	**198,146,575** *60,044,417*	**71,478,909** *21,660,275*
2005	**282,215,251** *85,519,773*	**210,675,213** *63,840,974*	**71,540,038** *21,678,800*
2.	Companies, organizing gaming on gaming machines category B		
2003	**7,551,741** *2,288,406*	**6,144,188** *1,861,875*	**1,407,554** *426,531*
2004	**54 544 658** *16,528,684*	**45 712 141** *13,852,163*	**8 832 517** *2,676,520*
2005	**77,889,904** *23,603,000*	**65,886,062** *19,965,473*	**12,003,843** *3,637,528*
3.	Betting companies		
2003	**7,729,593** *2,342,301*	**5,458,241** *1,654,012*	**2,271,351** *688,288*
2004	**49 778 328** *15,084,341*	**42 748 421** *12,954,067*	**7 029 907** *2,130275*
2005	**43,898,113** *22,393,367*	**36,897,829** *11,181,160*	**7,000,283** *2,121,298*
Totals 2003	**176,989,517** *53,633,186*	**133,408,573** *40,426,840*	**43,580,944** *13,206,346*
Totals 2004	**373 948 469** *113,317,718*	**286 607 137** *86,850,647*	**87 341 333** *26,467,070*
Totals 2005	**404,003,268** *122,425,232*	**313,459,104** *94,987,607*	**90,544,164** *27,437,625*

39. The Lithuanian Real Estate Development Association, a public legal entity of limited civil liability and a non-profit organisation, is constituted of 26 real-estate legal entities. According to its Articles of Association, the objective is to co-ordinate the activities of its members in the real-estate sector.

40. There are 332 entities dealing in precious metals and precious stones.

41. In May 1999 the Bar Association adopted a code of professional ethics for lawyers. There are 1500 qualified lawyers. However any person can give legal advice. The latter are not subject to the rules of the Bar Association or the AML/CFT regulations. The

Association is the disclosure receiving agency for suspicious transaction reports and currency transaction reports filed by the legal profession.

42. According to Order No 11 of 14th January 1999 of the Minister of Justice of the Republic of Lithuania all notaries shall be members of the Chamber of Notaries. There are currently 213 notaries operating in the Republic.

43. The Chamber of Auditors is a registered legal entity with its own statute. Membership is mandatory and there are currently 410 auditors and 210 auditing companies registered to operate in the Republic of Lithuania.

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

44. At the end of 2005, 289, 2 thousand legal entities were registered in Lithuania, of which 120,4 thousand (i.e. 24%) were deregistered from the register including 3,3 thousand (i.e. 3%) because of bankruptcy procedures. In 2005, 7,6 thousand new companies were registered and 6,3 thousand companies were deregistered including 0,8 thousand companies (i.e. about 13%) deregistered because of bankruptcy procedures.

45. According to the laws of the Republic of Lithuania a legal person is an enterprise, establishment or organisation that has a distinct and independent legal personality, assuming its rights and obligations and can act on its own as defendant or plaintiff in courts. There are different kinds of legal persons that could be classified into *public*, i.e. those established by the State or Municipalities whose aim is to satisfy *public* interests; and *private*, i.e. those that are normally commercial in nature and which aim to satisfy *private* interest, according to their rights and obligations. Legal persons can have a limited or unlimited civil liability.

46. A legal person is deemed incorporated from the date of its registration in the Register of Legal Persons. The Civil Code of the Republic of Lithuania sets the basic rules for the establishment of legal persons. Any natural or legal person may be an incorporator of a legal person (with some exceptions such as individual enterprises). The following document must be produced to incorporate a legal person:

- an application on the prescribed form for the registration for the legal person;
- the incorporation documents of the legal person i.e. the Memorandum and Articles of Association; Statute or other similar incorporation documents;
- a copy of a licence required under any other law prior to incorporation;
- documents verify the authenticity of documents produced to the register and the compliance of such incorporation documents with the provisions of any relevant laws;
- documents verifying the payment of registration fees where due; and
- any other documents prescribed by law.

47. There are various legal forms of legal persons in the Republic of Lithuania that determine the different requirements for their establishment:

- Public/Private Limited Liability Company that is registered under the Law on Companies. The Company has its statutory capital divided into shares with limited liability. Every incorporator (founder) must acquire shares and become a shareholder. The amount of the statutory capital may not be less than LTL150,000 (EURO 45,500) for a public limited liability company and not less than LTL10,000 (EURO 3,000) for a private limited liability company and whose shareholders are limited to 250. The shares of a public limited liability company may be offered for sale and traded publicly whilst those of a private limited liability company may not be so traded. It must be mentioned that the Register of Legal persons does not retain records of movements or changes in shareholders of any type of company (however, more updated information on shareholders is available in the minutes of the last annual general meeting of shareholders which is provided to the Registrar).

- Individual Enterprise registered under the law on Individual Enterprises as a private legal person with unlimited liability. The founder is considered as the owner of the enterprise which is governed by its statute.

- Partnerships are registered under the Law of Partnerships either as general or limited partnership with unlimited civil liability through the general partners. The partnership agreement must be notarised with the founders being limited to no less than 2 and not more than 250.

- State and Municipal Enterprises are registered under the Law on State and Municipal Enterprises through a Government Resolution or Municipal council decisions as the case may be.

- Public Establishments are governed by the Law on Public Establishments as non-profit public legal persons with limited civil liability. Their aim is to satisfy public interests through activities useful to the public in general. The founders may be State or Municipal institutions or other persons not seeking personal gain or benefit. All founders must sign the memorandum of association.

- European Company; European Economic Interest Group and Economic Co-operative Society can be formed under the respective Laws of the Republic of Lithuania transposing the relevant European Union Directives.

48. Under the respective laws of the Republic of Lithuania ownership of a legal person is vested into the shareholders who can be legal or natural persons. Exceptions do exist. For example in the case of an Individual Enterprise only a natural person can be the single owner and that person cannot be the owner of another individual enterprise. All legal persons must have a single person or a collegial management organ and a general meeting of members – unless otherwise provided by law – who exercise control of the entity. Furthermore, all legal persons must have a registered office which is the seat of its legal management organ.

49. A legal person is registered in the Register of Legal Persons on the production of specific lists of documents. Such documents include specific information on the management and

control of the entity including personal details of the members of the entities' management bodies and management organs including those persons having the right to conclude contracts on behalf of the legal person. The founders of a legal person are deemed to be the first shareholders. However, although all data in the Register of Legal Persons is available to the public, the Register can not include updates on shareholding or control changes and movements. As indicated earlier, however, more updated information on shareholders is available in the minutes of the last annual general meeting of shareholders which are provided to the Registrar. Such information is also available from the entities themselves.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

50. The "Law on Prevention of Money Laundering" was adopted in June 1997 and last revised in November 2003 (entered into force on 1 January 2004), in the light of the 2nd EU Directive on money laundering. The Lithuanian authorities explained that the following changes were introduced:

- the list of financial institutions obliged to report was extended to include financial leasing enterprises. The list of responsible institutions was extended to include the State Security Department, the State Gaming Supervisory Commission and the Council of the Lithuanian Bar Association;

- the concept of financing of terrorism was introduced; the preventive measures were extended (the reporting institutions are now obliged to notify immediately the FCIS about money transactions that might be related to financing of terrorism irrespective of the transaction amount);

- the list of professions that have to implement preventive measures of money laundering was extended and supplemented with:
  1) auditors;
  2) insurance undertakings and insurance broker companies;
  3) investment companies with variable capital;
  4) management companies;
  5) accounting undertakings or undertakings providing tax advice services;
  6) notaries and persons authorised to perform notarial acts;
  7) lawyers and lawyer assistants when they are acting on behalf of the client or represent him in financial or immovable property transactions or provide assistance in planning and concluding their clients' transactions relating to purchase and sale of immovable property, companies or rights, management of the financial resources, securities or any other property of their clients, opening and management of bank, savings or securities accounts, the creation, operation or management of undertakings, and administration of establishment contributions;
  8) persons engaged in economic-commercial activities related to trade in real estate, precious stones, precious metals, works of art, antiques and other property the value of which is in excess of LTL 50 000 or an equivalent sum in foreign currency where payment is made in cash;
  9) gaming companies;

10) providers of postal services who provide services of domestic and international money transfers;

- the requirements for insurance companies and casino concerning identification of customers were made stricter;

- if there is a suspicion or if it obvious that a customer acts for somebody else, reporting institutions shall take immediate measures to obtain information about the factual identity of a client and of a person on behalf of whom the client is acting;

- the rights of FCIS were extended. This means that the FCIS will have a right to order reporting institutions to suspend a money transaction for 48 hours if suspicion arises that it may be related to money laundering or terrorism financing while preliminary investigation or analysis is undertaken;

- reporting institutions are obliged to refrain from carrying out money transactions if they know or suspect them to be related to money laundering until they notify the FCIS.

51. This text is in principle the backbone of the AML/CFT preventive mechanism in Lithuania. The text only deals to a limited extent with terrorist financing, though. Additional texts were adopted in 2005 (see below).

52. In 2003 the Seimas of the Republic of Lithuania approved the National Programme for Crime Prevention and Control. The Programme sets the following tasks for the prevention and control of economic and financial crimes:

"1) to orientate law enforcement institutions, to develop control and preventive measures and to apply them to crimes that made great material damage to the state or natural and legal persons, such as money laundering, fraud, property appropriation or dissipation in the economic sphere, forgery of banknotes and their launching into circulation, smuggling, violation of intellectual property rights, forgery of payment cards and computer-assisted crimes;

2) improving the system of law enforcement institutions that detect and investigate economic and financial offences, coordination of activities, information exchange, ensuring proper cooperation between the relevant financial and other institutions;

3) to improve the legal base regulating prevention and control of economic and financial crimes, to eliminate gaps in it and faults in the activity of public authorities;

4) to expand international cooperation, to support and participate in domestic and international investigations by monitoring and analysing the tendencies of money laundering and other economic and financial offences as well as international practice of prevention and control of such crimes;

5) carrying out money laundering prevention, providing information and educating the public and public servants on how to recognise manifestations of money laundering and fighting against them;

6) to raise the level of legal and administrative readiness in order to detect and investigate economic and financial offences committed with the help of computers, telecommunications, fake payment cards, to strengthen interagency and international cooperation."

53. In 2004, a *Report on the Implementation of money laundering prevention measures for 2004* was published by FCIS with EU funding. On page 3 are briefly listed and presented the new priorities for the AML prevention policy:

- stricter client identification procedures based on the "know your customer" principle
- the fight against terrorism
- correspondent banking
- corruption among high ranking officials (and applying the principles related to politically exposed persons)
- coping with new technologies, in particular the Internet.

54. CFT measures are dealt with in the following texts, which were adopted to implement the UN Security Council Resolutions and the EU regulations on the same subject:

- "Law on the implementation of economic and other international sanctions" (22 April 2004)
- Government Decision "On the approval of schedule of supervision order of the international sanctions implementation" (30 December 2004)
- Order of the Director of FCIS "On approval of instructions on supervision of proper implementation of the international sanctions in the field of regulation of the Financial Crime Investigation Service under the Ministry of Interior" (9 November 2005).

Measuring the effectiveness of policies and programmes: new initiatives

55. The FCIS is the leading organisation that could have done such assessments, in cooperation with the other agencies listed in the LPML as responsible for AML/CFT issues, in particular through the Co-ordination Working Group re-activated in 2004. Overall issues of that kind are within its remit and thus, there is theoretically a formal mechanism in place to measure the effectiveness of AML/CFT policies and programmes. The examiners found it has not been effective so far and by the time of the on site visit, it has only met three times (see also Section 6 on national co-ordination).

56. This being said, the Lithuanian authorities also indicated that the reasons for the lack of success in money laundering prosecution, identified in the second evaluation round report, had been examined and that initiatives have been taken to make prosecution of money laundering offences in Lithuania more successful. These initiatives were translated mainly at the level of the Prosecutor General's Office (elaboration of a methodological guidebook on the investigation of the legalisation of the money and property obtained from criminal activity, training seminars on money laundering issues at which prosecutors and investigators were trained to focus more on other material elements of the offence (transaction or use of money/property) and the mens rea of the offender, especially paying attention to the new version of the Article 216 of the Criminal Code).

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

57. Article 3 of the Law on the Prevention of Money Laundering (hereinafter LPML or AML Law) lists the bodies and authorities responsible for the prevention of money laundering (and, indirectly the financing of terrorism).

58. After the revision of the LPML, the Co-ordination Working Group was re-activated by Order No. 113 of 27 May 2004, issued by the Prime Minister. The Co-ordination Working Group is responsible for the collection and discussion of information on money laundering, and for the overall co-ordination of activities in this field. The Working Group currently consists of representatives of the FCIS, the Police Department, the Securities Commission, the Insurance Supervisory Commission, the Law Institute, the Customs Criminal Office, the Bar Association, the State Security Department, the Association of Lithuanian Banks, the General Prosecutor Office, the Ministry of Finance, the State Tax Inspectorate and the Bank of Lithuania.

59. The Financial Crimes Investigation Service (FCIS) is the main institution in the Republic of Lithuania responsible for the implementation of money laundering preventive measures. One of its divisions, the Money Laundering Prevention Division (MLPD) – is responsible for the collection and analysis of reports possibly linked with ML and FT. It also co-ordinates the performance of the ML function at the FCIS. The FCIS as such is the report receiving agency and has been a member of the Egmont Group since 1999. According to Article 5(7) of the Law on the Prevention of Money Laundering, the FCIS is responsible to supervise the activities of financial institutions and other entities (non financial sector) related to the prevention of money laundering. It is also responsible to approve guidance for providers of financial leasing and other non-financial sector entities (DNFBPs), with the exception of the legal professions.

60. In terms of Article 8 of the Law on the Prevention of Money Laundering, law enforcement and other state institutions are obliged to report to the FCIS if there are indications of suspected ML and FT or non compliance with the law together with any measures taken against the perpetrators. The FCIS is the only authority empowered to impose sanctions for breaches of the AML Law.

61. The State Security Department is responsible for the prevention of FT outside the framework of the reporting regime seen above. According to art. 6 of the LPML, "The State Security Department shall: 1) gather and examine intelligence relating to financing of terrorism; 2) co-operate with foreign institutions and international organisations which are gathering intelligence about financing of terrorism; 3) provide intelligence to the institutions specified in Article 4 of this Law about the criteria for identification of financing of terrorism. The State Security Department and the Financial Crimes Investigation Service shall co-operate in implementing the measures for the prevention of financing of terrorism."

62. The Ministry of Foreign Affairs ensures the implementation of the international sanctions in the fight against terrorism in Lithuania. Together with the State Security Department the Ministry follows the implementation of Lithuania's international commitments in this regard.

63. The Ministry of Finance manages the budget and state finances. The Ministry has an overall responsibility for the financial sector; public procurement; and operations of the accounting and auditing sectors. It has responsibilities of the tax and customs administration.

64. The Bank of Lithuania is the central bank; it is governed by the Law on the Bank of Lithuania and is responsible to licence, regulate and supervise the activities of credit institutions through prudential on-site and off-site examinations and to sanction such institutions for prudential non-compliance. These tasks are performed by the various divisions of the Banking Supervision Department of the Bank of Lithuania. Under Article 4 of the Law on Prevention of Money Laundering, the Bank of Lithuania is required to approve instructions for credit institutions aimed at prevention of money laundering.

65. The Insurance Supervisory Commission is the competent authority financed from deductions of written insurance premiums and from the state budget to exercise prudential supervisory and regulatory responsibilities and licensing activities in the area of insurance, re-insurance, and mediation of insurance and re-insurance activities. The purpose of the supervision of the Commission is to ensure reliability, efficiency, safety and stability of the insurance system and the protection of the interests and rights of the policy holders, insured persons, beneficiaries and third parties. According to Article 4 of the Law on the Prevention of Money Laundering the Commission is required to approve instructions for the insurance sector aimed at the prevention of money laundering.

66. The Securities Commission is an independent authority accountable to Parliament. It is responsible to licence, regulate and supervise the securities market and financial institutions providing investment services. The Commission is required to approve guidelines for the sector in accordance with the provisions of the Law on the Prevention of Money Laundering.

67. The State Gaming Control Commission is the competent authority responsible to licence, regulate and supervise all types of gaming entities that operate in the gaming sector. It is responsible to carry out prudential on-site examinations to ensure compliance with the Law on Gaming and other regulations issued hereunder. In terms of the Law on Prevention of Money Laundering it is the authority responsible to approve guidelines for gaming companies.

68. The Bar Association, through its Council, is responsible for the ethical behaviour of the legal profession. Under the Law on the Prevention of Money Laundering the Council of the Association is responsible to ensure that lawyers and their assistants are adequately qualified and informed on the AML preventive measures under the Law. The Council is also required to issue relevant guidelines in this regard. The legal profession is the only sector under the law that files its AML reports to the Bar Association who is required to forward them to the FCIS within a specified period.

Other bodies

69. The following other bodies are also involved in AML/CFT efforts:

- the State Border Guard Service (under the Ministry of the Interior) and particularly the Customs (under the Ministry of finance) are important bodies – from the perspective of

AML/CFT when it comes to controlling and monitoring cross-border movements of funds and persons. Lithuania has both EU (open) and non EU borders and controls after 1 May 2004 are applied essentially in respect of the latter. The Lithuanian Customs comprise the (central) Customs Department, 5 territorial offices (Vilnius, Kaunas, Klaipėda, Šiauliai and Panevėžys), the Customs Information Systems Centre, the Customs Criminal Service, the Customs Training Centre and the Customs Laboratory. After Lithuania's accession to the EU, 67 customs posts were operating. After May 1, the number of posts was optimised, the customs authorities terminated activities in the bilateral border posts as well as on the border with Poland and Latvia which became an internal EU border on 1 May. To ensure compliance with EU requirements, the infrastructure of the posts at the external EU frontier (with Russia and Bielorussia) was improved.

- Lithuania has developed the specialisation of authorities to deal with serious forms of crime. Concerning law enforcement, at the level of the judicial police, the Organised Crime Bureau is responsible for the investigation of most serious offences connected with organised crime activities (drugs, smuggling, prostitution, trafficking of stolen vehicles etc.). Since January 2005, it comprises a Group against terrorism (which was not fully operational at the time of the on-site visit). In principle both the FCIS and the criminal police can be given ML cases by the prosecutor but in practice – as the examiners found out - the police consider ML as being mainly a matter for the FCIS. The Special Investigation Service is specifically responsible for corruption-related cases involving public officials, including investigations on ML and/or aimed at recovering the proceeds of corruption. It was created in 1997 under the Ministry of Interior, and re-established in 2000 as a body accountable to the President and the Parliament.

- Concerning the Prosecutor General's Office, it comprises, among other departments, a Department for corruption and organised crime investigations. It was created in 1993, with similar departments being established in 1995 at the level of the county prosecution offices of Vilnius, Kaunas, Panevežys, Klaipeda and Šiauliai. This department is the main interlocutor of the MLPD/ FCIS. A prosecutor was appointed for liaison and coordination with the MLPD. This prosecutor decides in every case in which the MLPD suspects money laundering whether to institute criminal proceeding and to which authority to send the case for inquiry. The prosecutor organises and leads the investigation.

- According to the Constitution, justice is administered exclusively by the Courts. ML and FT are handled by the general courts. The Lithuanian Court system consists of the Supreme Court, the Court of Appeal, five County Courts and 54 District Courts (courts of general jurisdiction). In 1999, special courts for the adjudication of administrative cases were established: five County Administrative Courts, the Higher Administrative Court and the Administrative Cases Division of the Court of Appeal of Lithuania. It should be added that the District Courts are the first instance also for administrative cases. (Specialist) criminal sections exist at the level of the Court of Appeal.

c. Approach concerning risk

70. As will be further detailed in the Report one cannot conclude that the Law on the Prevention of Money Laundering is based on a risk based approach. In this regard no financial institution or designated non-financial business or profession has been excluded from the AML coverage on the basis of a low-risk assessment. However, the Law does provide certain risk-based exceptions for identification purposes, mainly in the insurance sector, in line with the provisions of the European Union first and second AML

Directives but does not go beyond these provisions. Furthermore the Law, under Article 13 provides for currency transaction reporting (CTR) but provides an exception under Article 13(8) for financial institutions where the customer's activities involve large scale, periodic and regular financial operations that are in conformity with the criteria determined by the Government. The Law also provides some exceptions to the legal profession but these appear to be more of a compromise with the sector rather than of any risk-sensitivity approach. An element of risk is however taken into consideration in the level of supervision applied – in particular as regards the banking sector – and the degree of internal controls required in the different types of financial institutions or other entities.

d. Progress since the last mutual evaluation

71. **In the legal field**, the Second Round Mutual Evaluation Report had made the following recommendations and/or comments for consideration by the Lithuanian Authorities:

- *Because of no conviction for ML at that time, the examiners urged the authorities to collectively examine the legal and institutional reasons which led to the current failure of Lithuania's criminal law provisions to combat money laundering, and ensure that the amended or new provisions avoid the same shortcomings and enable effective implementation. In order to prevent unnecessary debate on this matter, it was suggested to the authorities to clarify in the law, when revisiting the definition of money laundering, that the prosecution is <u>not</u> required to prove a specific criminal offence form which the proceeds were derived. The examiners also believe that further training of all criminal justice personnel should be organised and made available to judges as well. Judges and prosecutors should be made aware of the autonomous nature of the money laundering offence and the need to draw the necessary inferences from circumstantial evidence on the underlying criminal activity and its link to the laundering offence (para. 186 and 194).* The Lithuanian authorities indicated that meetings were held to raise the awareness among practitioners about this issue and the problem of evidence for the underlying predicate offence. Training was also provided in the area of ML in the framework of an EU-Phare Project. Lithuania has managed in 2005 to obtain the first final conviction for ML and it would have been admitted by this new jurisprudence that a conviction for the predicate offence is not necessary anymore.

- *The second round evaluators had recommended that the definition of the money laundering offence be revised to include the mental (knowledge) element along the lines of major international treaties, including the possibility of inferring knowledge from objective, factual circumstances (para. 193).* As a result, the text of art. 216 was amended in 2004 and the expression "knowing that such money or property [was] acquired in a criminal way] was included. *The Lithuanian authorities were also invited to examine other ways of reducing the burden of proof on prosecutors, e.g. by lowering the knowledge standard to "suspects" or "has reasonable ground to suspect", as has been done in some jurisdictions, or by combining these elements e.g. "knows or suspects" (para. 193).* Since the second round, there have been no changes in this respect.

- *It was also recommended that the definition of the money laundering offence be brought in conformity with the major international treaties (Vienna and Strasburg Conventions)(para. 192).* As a result of this recommendation, art. 216 now refers to both money and property.

- *It was recommended to criminalise negligent money laundering (para. 196).* Since the second round, there have been no changes in this regard.

- *In the second round, it was recommended to consider criminalising failing to report a suspicious transaction (para.198).* Besides administrative sanctions, there are still no criminal law provisions in this respect;

72. **In the law enforcement field**, the Second Round Mutual Evaluation Report had made the following recommendations and/or comments for consideration by the Lithuanian Authorities:

- *It was recommended that the authorities take measures to improve the collection of statistical data on provisional measures, and that they make sure that they can apply the new provisional measures from the earliest stage of criminal investigations in order to prevent the dissipation of criminal assets (para 201).* The third round examiners consider that statistics are available as far as provisional measures are applied in the framework of ML proceedings generated by the FIU; but no such statistics for the police work. The examiners were assured by the Lithuanian authorities that provisional measures can be applied at the earliest stages;

- *In the second round, the examiners recommended that a specific power of postponing suspicious transactions be vested with the MLPD for a time period to be determined, but sufficient for the preliminary examination of the transaction (para. 225).* Under art. 7 of the AML law, the FCIS has now the power to postpone a transaction for 48 hours, which is considered to be a reasonable deadline by the MLPD.

- *Given the rather high volume of profit-generating crimes in Lithuania (frauds, drugs-trafficking, smuggling), the lack of confiscations is astonishing. One of the reasons is that the law enforcement is still predominantly crime-oriented and the recovery of criminal assets is not a priority, even if some police investigations, e.g. those conducted by the ECIS, take this objective into consideration. The evaluation team never-the-less believes that there is a need for a more asset-oriented approach in law enforcement, in particular in relation to financial and drugs-related crime. This in particular requires better asset-tracing capabilities, both in terms of investigative powers and qualified personnel. The evaluation team therefore recommends that a special asset-tracing function be added to the Tax police department's responsibilities and that qualified staff be hired for tracing and detecting criminal proceeds in connection with money-laundering and serious crime investigations (para. 228).* It seems that greater attention is paid to proceeds of economic crime since the cases prosecuted at the time of the 3rd round were dealing with VAT-fraud. This being said, there is still no evidence that the criminal police is looking at the financial dimension/the proceeds in their own cases dealing with other major generating (non economic) crimes.

- *It was recommended that the authorities extend the catalogue of special investigative techniques to include these techniques and if necessary clarify by legislative amendment that they can be applied in money laundering and serious crime related asset investigations (para. 229).* The examiners found that the legal framework for the use of such techniques also in ML and FT cases should be clarified/amended as

appropriate and that it should be made sure that the law on operational activities and the Code of Criminal Procedure are consistent.

- *The examiners had recommend that the MLPD be properly staffed and resourced and once this is done, restructured along the priority functions it should have (data and intelligence gathering, analysis, asset-tracing, international cooperation, etc). In addition, the MLPD needs to liaise closely with the other relevant police units, and Customs (para. 230).* Statutorily, it is the FCIS which acts as FIU. The MLPD – within the FCIS - performs the main FIU function (collection and analysis of information, international cooperation, planning of supervision, training, awareness raising) seems adequately staffed at the moment. Cooperation with law enforcement agencies dealing with economic crime is not an issue anymore since the MLPD is part of the FCIS.

- *The examiners understood that Customs' duty to collect and report information to the MLPD on cross-border movements of cash and other monetary instruments will remain in place even after the planned abolition of cash export restrictions. If it is so, the examiners urge the authorities to extend this obligation to precious metals and other high value items (para 231).* There have been no changes in this respect (in fact, only cash must be declared) according to Government Resolution 1331 and the AML Law.

73. **In the financial field**, the Second Round Mutual Evaluation Report had made the following and/or comments for consideration by the Lithuanian Authorities:

- *The appointment of a single supervisor with appropriate powers and personnel to supervise compliance with the AML law across the board and apply appropriate sanctions, including the revocation of licence for non compliance (para 187 and para 211).* In terms of Article 7 of the AML Law the FCIS is now responsible to supervise the activities of financial institutions and DNFBPs related to prevention of money laundering. The Lithuanian authorities informed that sanctions under Article 172(14) of the Administrative Criminal Code can be imposed by the courts. However, the revocation of a licence remains within the competence of the respective competent authority that issues the licence.

- *Guidance and awareness-raising seminars need to accompany compliance monitoring outside the banking sector in order to create a genuine sense of ownership for prevention efforts (para.208).* – In accordance with the revision of the AML law, supervisory authorities and the FCIS have issued guidance not only to the banking sector but also to the non-bank financial sector (insurance and securities and financial leasing) and the non-financial sector (casinos, notaries, auditors and postal services). However, the 3rd Round evaluation team endorses the feeling of the previous evaluators that some sectors do not feel concerned by the risk of money laundering, which remains.

- *The examiners in the 2nd Round Report were concerned that given the varying scope of the various resolutions and recommendations issued, they were unable to ensure uniformity of the AML framework and hence recommended the issue of binding regulations to all entities by one authority (para 210)* – Article 4 of the AML Law empowers certain supervisory authorities (Bank of Lithuania, Insurance Supervisory Commission, etc) and the FCIS itself to approve guidance on implementation of the

AML framework. This notwithstanding overlaps and inconsistencies remain to an extent and hence the concerns on uniformity expressed by the evaluators in the 2nd Round Report are endorsed by the evaluators in the 3rd Round evaluation.

- *The examiners (2nd Round) consider it important to ensure that all supervisory inspections with regard to the implementation of the AML Law are carried out with the same quality, insightfulness and regularity (para 212).* Although Article 7 of the AML Law now imposes the supervisory responsibilities for all sectors on the FCIS there is no co-ordination with other respective supervisory authorities who undertake also AML inspections, mostly as an element of their prudential examinations, whilst other sectors have not yet been supervised/examined at all.

- *In all cases where business relations are established or transactions carried out on behalf of customers who are physically not present for identification purposes (non-face-to-face operations) additional measures be taken, in particular that copies of relevant documents are obtained as a matter of course to allow verification, not only for new relations or transactions, but to the extent possible, for already accepted customers also (para 214).* – Article 10 of the AML Law requires the presence of the customer himself or his agent for identification purposes whilst Article 11 requires the identification of both the applicant and the customer. The Law however is silent on the obtaining of the relevant identification documents and on applying this requirement to the then existing/accepted customers. Article 1.4 of Government Resolution No 1331 does however specify the information required for identification but does not refer to the retention of relevant documentation – a requirement presumably assumed under the general obligation of retention of records under Article 12 of the AML Law.

- *The Law should clarify that the customer identification is a process under which identification data has to be kept under permanent review (para 215)* – The Law remains silent on this issue.

- *It would be appropriate to explicitly forbid the opening of anonymous accounts or the issue of other bearer products (para 216).* - Article 15(4) of the AML Law specifically forbids the opening of anonymous accounts. There is no explicit reference to the issue of other bearer products.

- *The examiners recommended that Article 3 of the Law on Payments be amended so that the name, address and account number of the originator and the beneficiary are required for all international wire transfers (para 218)* – Article 5(3) of the Law on Payments specifies the data and information that are to accompany a payment instruction. However, Article 3(1) seems to disapply Article 5 when effecting cross-border credit transfers.

- *The examiners (2nd Round) believed that there should be a clear requirement in the AML Law for credit and financial institutions to develop AML programmes, including internal policies, controls and procedures, and an audit function (para 219)* – This recommendation is now broadly covered through Article 15 of the AML Law.

- *They also suggested that a clear requirement be introduced in the AML Law that compliance or reporting officers be appointed at management level (para 220).* –

Article 15 of the AML Law requires financial institutions and other entities to appoint/designate "senior employees" in the position of compliance or reporting officers.

- *Internal Reports on potential suspicious transactions should be always made in writing and the "responsible person" (compliance officer)should record his/her decision in writing as to whether or not an STR should be filed with the FCIS (para 220).* – Article 12 of the AML Law requires financial institutions and other entities to keep a register of suspicious transactions in accordance with Government Resolution No 931 of 22 July 2004. However there is no requirement to keep a written record of the internal assessment of a suspicious transaction.

- *The examiners (2nd Round) therefore recommend that the authorities collectively examine, for example, through the Coordination Working Group, how to restore the balance between the STR and the threshold–related reporting systems (para 223).* The evaluation team (3rd Round) was informed that the Working Group did discuss this issue and it was found that the system was adequate. Despite this, in the examiners' view, the imbalance between the STR and the threshold-related reporting system remains. They express concern as to the identification and examination of STRs where these exceed the threshold limit as opposed to a straight threshold reporting.

- *The examiners (2nd Round) recommend that a specific power of postponing suspicious transactions be vested with the MLPD (FCIS) for a time period to be determined, but sufficient for the preliminary examination of the transaction (para 225).* – According to Article 9 of the AML Law a suspicious transaction that is reported to the FCIS must be immediately suspended by the reporting entity. The FCIS, in terms of Article 7(5) may request financial institutions and other entities (DNFBPs), other than lawyers or lawyers' assistants, to suspend suspicious financial transactions for up to 48 hours.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1, 2 & 32)

2.1.1 Description and Analysis

74. With the introduction of the new Criminal Code in 2003, the criminalisation of money laundering was reviewed. Money laundering is now criminalised under Article 216 dealing with "Legalisation of money or property acquired in a criminal way" and by Article 189, on "Acquirement or realisation of property obtained from criminal activity".

75. Art. 216 was subsequently amended in 2004 with the new wording "knowing that such money or property acquired in a criminal way" added in para. 1.

76. The Lithuanian authorities indicated that the amended Article 216 cures several shortcomings of the old definition (Article 326 of the old Criminal Code), such as the limitation of the types of proceeds that can be laundered to monetary means, the lack of explicit criminalisation of self-laundering and the practical difficulty of applying the money laundering offence to corporate entities for lack of specific penalties applicable to them.

Article 216. Legalisation of money or property acquired in a criminal way

1. Any person who carries out financial operations with his own or another person's money or property or with part of them knowing that such money or property acquired in a criminal way, concludes the agreements, uses them in economic or commercial activity, or makes a fraudulent declaration that they are derived from legal activity, for the purposes of concealing or legitimising these proceeds shall be punished by imprisonment for a term of up to 7 years.

2. Legal persons shall also be held liable for the acts specified in paragraph 1 of this Article.

Article 189. Acquirement or realisation of property obtained from criminal activity

1.Any person who acquired, used or realised property knowing that this property was obtained in a criminal way, shall be punished by fine or restriction of liberty or arrest or imprisonment for a term up to 2 years.

2. Any person who acquired, used or realised property of great value knowing that this property was obtained in a criminal way, shall be punished by fine or arrest or imprisonment for a term up to 4 years.

3. Any person who acquired, used or realised property of small value knowing that

this property was obtained in a criminal way, committed a criminal offence and shall be punished by public tasks or fine or arrest.

4. Legal persons shall also be held liable for the acts specified in the part 1 and 2 of this Article.

77. A definition of ML can also be found in the AML Law, in article 2 para. 7, which reads as follows:

Money laundering - the following conduct when committed intentionally:

1) the conversion or transfer of property, knowing that such property is derived from criminal activity for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;
2) the concealment or disguise of the true nature, source, location, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity;
3) the acquisition, possession or use of property, knowing at the time of receipt/transfer, that such property was derived from criminal activity;
4) preparation, attempts to commit and aiding and abetting in the commission of any of the activities referred to in subparagraphs 1-3 of this paragraph.

Recommendation 1

78. Criterion 1 requires that ML be criminalised in line with the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention), and the United Nations Convention against Transnational Organised Crime (the Palermo Convention). These conventions entered into force in respect of Lithuania in 1998 and respectively 2003.

79. Whilst the wording in the AML Law is quite similar to that of the UN Conventions, Art. 216 and 189 are quite different considered individually, but reflect a number of internationally required elements when considered together.

80. The elements of the international definitions are split into two different Criminal Code articles in Lithuania, with in addition, a third – distinct - definition being provided in the AML Law,. The Lithuanian authorities explained that basically, this was due to historical reasons (art. 189 was taken over from the former Criminal Code, whilst the AML definition was adopted at a much later stage and is has a different purpose from the one pursued by the criminal legislation). In the examiners' view, the existence of three different definitions or mechanisms could generate some difficulties when it comes to ensuring a consistent approach throughout the chain of responses from the authorities, from the initial measures taken by virtue of the AML law to a final conviction on the basis of the Criminal Code provisions.

81. Major concerns concerning consistency are raised by the existence of two criminal law definitions. For instance, self laundering is explicitly incriminated only in Art.216 of the Criminal Code (an optional requirement of criterion 1.6). Art.216 refers to money and property, whereas Art.189 covers only property. Whilst art. 216 provides for no scale of sanctions depending on the seriousness of the case – i.e. the importance of proceeds laundered - there is such a scale provided for in art. 189 which even deals with smaller amounts ("Small value" in Art.189 para.3 means approximately 36 euros). Furthermore, art. 8 of the Criminal Code, which provides for exceptions to the dual criminality principle (see below), refers to art. 216 but not to art. 189. It also speaks for itself that as things stand, art. 216 itself does not explicitly cover the *conversion,* or *transfer* of property, *disguise* of the true nature*,* source, location, disposition, movement, rights with respect to, or ownership of property, acquisition, *possession* or use of property if such conduct is carried out outside the context of a 1) financial operation, 2) conclusion of an agreement, 3) use in an economic or commercial activity, or 4) fraudulent declaration. These criminal acts are covered by Art. 189, to a certain extent, but the examiners remind that art. 189 covers explicitly "property", since Art. 216 leads to a distinction between "money" and "property" as it uses both notions alternatively. As regards the extent to which the *actus reus* is covered, the examiners observe that Art. 189 refers to the following criminal acts: "acquirement", "use" and "realisation". Therefore, it does not explicitly refer to the mere *possession* (without "*use"*). Also, Art. 189 does not explicitly refer to *conversion* and it is pointed out that conversion as such does not require also acquisition, since the owner of the property can be a person different from the one who converts the proceeds and returns them to the owner. The same rationale applies to *disguise (...),* which is not explicitly covered by Art. 189. As regards Art. 189, the Lithuanian authorities explained that "property" covers also "money". However, since both notions are used in the Lithuanian criminal legislation, it would be preferable to eliminate possible confusions deriving from the existence of two different notions. The Lithuanian authorities take the view, however, that these various elements of the international definition are all implicitly included.

82. The offence of ML covers a broader range of proceeds and is not limited to money ("money or property" under art. 216, "property" under art. 189 and in the LPML), as it is required by criterion 1.2. The definitions contain no explicit reference to the coverage of both direct and indirect proceeds; at least, there is no reference to direct proceeds, which suggests that indirect proceeds are also included. This interpretation was confirmed widely during the interviews conducted on site. It might be wise to make explicit provision on this.

83. There was unanimity about the fact that money laundering is now an autonomous offence and that a preliminary or concomitant conviction for a predicate offence is not a requirement anymore, as it was the case in the past. It was explained that although the final conviction reached in 2005 involved also a conviction for the predicate offence(s), the court had made clear in its argumentation that hard evidence for the existence of an assets generating crime can be brought by means other than a conviction. The examiners welcomed this major positive development.

84. As regards criteria 1.3 and 1.4, Articles 216 and 189 reflect the "all crime approach", speaking of "money or property acquired in a criminal way" (Art.216) and "property obtained from criminal activity"(Art.189). Therefore, all criminal offences which generate money or property in the first case and property, in the second case, can be

predicates to money laundering. As it was confirmed by the Lithuanian authorities, the Lithuanian Criminal Code provides for criminalisation mechanisms in relation with each of the 20 "designated categories of offences" in Annex 1 to the Methodology[5].

85. The Lithuanian authorities further explained that the reference to property "acquired in a criminal way" in both articles includes all criminal offences, even if they occurred in another country. Therefore, money laundering is prosecutable in Lithuania even if the predicate offence was committed abroad. The new jurisprudence is likely to consolidate this interpretation.

5

Designated categories of offences	**Articles of Criminal Code of Lithuania**
Participation in an organised criminal group and racketeering	Article 249 (Criminal organisation) Article 181 (Extortion)
Terrorism, including terrorist financing	Article 250 (Act of Terror) Article 251(Hijacking of Airplane, Ship or Stationary Platform on Continental Shelf) Article 252 (Taking of Hostage)
Trafficking in human beings and migrant smuggling	Article 147 (Trafficking in Human Beings) Article 157 (Sale or Purchase of Child) Article 292 (Illegal Transfer of Persons over State Border)
Sexual exploitation, including sexual exploitation of children	Article 149 (Rape) Article 150 (Sexual Violence) Article 151 (Forcing to Sexual Act) Article 151-1 (Sexual Act against Child infringing his Freedom and Inviolability) Article 153 (Molestation of Minor)
Illicit trafficking in narcotic drugs and psychotropic substances	Chapter XXXVII of Criminal Code "Crimes and Misdemeanours Related to Trafficking in Narcotic or Psychotropic, Toxic or similar Substance", in particular Article 260 (Illicit Trafficking in Narcotic and Psychotropic Substances) Article 266 (Illicit Trafficking in Precursors of Narcotic and Psychotropic Substances)
Illicit arms trafficking	Chapter XXXVI of Criminal Code "Crimes and Misdemeanours Related to Trafficking in Firearms, Ammunition, Explosives, Radioactive Substances", in particular Article 253 (Illicit Trafficking in Firearms, Ammunition or Explosives)
Illicit trafficking in stolen and other goods	Article 189 (Acquirement or realisation of Property Obtained from Criminal Activity)
Corruption and bribery	Article 225 (Taking of Bribe) Article 226 (Bribery of Intermediary) Article 227 (Bribery) Article 228 (Abuse of Office)
Fraud	Article 182 (Fraud) Article 207 (Banking Fraud)
Counterfeiting currency	Article 213 (Counterfeiting of Money or Securities)
Counterfeiting and piracy of products	Article 192 (Manufacture, Possession, Trade in Illegal Copies of Products of Literature, Science, Art or similar) Article 204 (Illegal Use of Trademark Sign)
Environmental crime	Chapter XXXVIII of Criminal Code "Crimes and Misdemeanours to Environment and Public Health", in particular Article 270 (Infringement of Rules of Environment Protection or Usage of Natural Recourses) Article 271 (Damage of Protected Territories) Article 272 (Illegal Fishing, Hunting or other use of Wild Fauna Resources)
Murder, grievous bodily injury	Article 129 (Homicide) Article 135 (Serious Health Impairment)
Kidnapping, illegal restraint and hostage-taking	Article 156 (Kidnapping) Article 146 (Illegal Restriction of Personal Freedom) Article 252 (Taking of Hostage)
Robbery or theft	Article 178 (Theft) Article 180 (Robbery)
Smuggling	Article 199 (Contraband)
Extortion	Article 181 (Extortion)
Forgery	Article 214 (Forgery of Non-Cash Means of Payment or Possession of such Item) Article 300 (Forgery of Document and Trafficking in Forged Documents)
Piracy	Article 251(Hijacking of Airplane, Ship or Stationary Platform on Continental Shelf) Article 180 (Robbery)
Insider trading and market manipulation.	Article 217 (Trade in Securities Abusing Private Information) Article 218 (Manipulation of Price of Securities)

86. Interestingly, Para 1 of Article 8 of the Criminal Code provides for the *double criminality principle, except for certain internationally recognised crimes* (e. g. trafficking in human beings, currency counterfeiting, etc.) that are listed in Article 7 of the Criminal Code:

> "Persons who commit the following crimes, specified in international agreements, abroad shall be criminally liable under the criminal statutes of the Republic of Lithuania regardless of their citizenship, their place of residence, the place of commission of the crime, or the punishable character of the committed act under the laws of the place where the crime was committed: crimes against humanity and war crimes (Articles 99 to 113); trafficking in human beings (Article 147); purchase or sale of a child (Article 157); counterfeiting of money or securities, or keeping in possession or transmitting the same (Article 213); money laundering (Article 216); act of terrorism (Article 250); hijacking of an aircraft, a ship or a stationary platform on continental shelf (Article 251); taking of hostages (Article 252); unlawful handling of radioactive materials (Articles 256 and 257); crimes related to narcotic or powerful drugs or controlled substances (Articles 259 to 259)."

87. The above list includes ML as criminalised under art. 216, but not the conduct referred to in art. 189.

88. The Criminal Code of Lithuania makes extensive provision for ancillary offences (criterion 1.7). By way of illustration, art. 22 addresses attempts to commit any criminal act including money laundering. Art. 24 is also of relevance in this context in that it makes provision for, *inter alia*, aiding and abetting and like matters. It should be noted that art. 21 of the Criminal Code adopts a broad approach to the scope of the concept of "arrangement to commit a crime" although this has potential applicability only to art. 216 in so far as money laundering is concerned. Among the matters covered is the "formation of a plan of action" to commit a serious or very serious crime.

Recommendation 2

89. Criterion 2.1 requires that the offence of ML should apply at least to natural persons that knowingly engage in ML activity. This is provided for both in art. 189 and 216.

90. As for Criterion 2.2 on the possibility to infer the intentional element from objective factual circumstances, the Lithuanian law does not explicitly provide for such possibility; but the Lithuanian authorities – the Prosecutor's Office and judges - have assured the evaluators that in Lithuania this is accepted by the general evidence producing rules and case law[6]. The examiners noted, however, that this jurisprudence has not been validated yet in a money laundering decision. It was also explained that negligent money laundering is not criminalised and that this is not under consideration.

91. In line with criterion 2.3, legal persons can be held criminally liable both under art. 189 and 216. Legal persons may be sanctioned with fines, temporary restriction of the

[6]In the Supreme Court Senate decision "On court practice in cases of crimes against personal life" (2004.06.18, No. 46), it was concluded that "about the content of perpetrator's intent courts may judge analysing all circumstances of the committed crime: instruments of crime, method of crime, amount and character of injuries, location of injuries, intensiveness of criminal actions and reasons of their halting, previous relations between perpetrator and victim, their behavior during event, as well as prior and after event (…)."

activities (including closure of the establishment) or liquidation (Articles 43, 47, 52 and 53 of the Criminal Code).

92. Lithuania has several forms of liability. Whereas criminal liability of legal person precludes administrative liability for the same acts due to the principle *ne bis in idem*, on the other hand, criminal liability does not prevent civil liability of a legal person. Civil claims may be brought in the course of criminal proceedings (Articles 109-117 of the Criminal Procedure Code). Also, criminal liability of legal person does not preclude criminal liability of natural persons who perpetrated, abetted or aided in commission of the criminal offence (Article 20, para. 4 of the Criminal Code).

93. Finally, criterion 2.5 requires the existence of effective, proportionate and dissuasive criminal, civil or administrative sanctions. In this respect, the Lithuanian Criminal Code ensures, to a certain extent, the existence of such a framework. Article 216 of the Criminal Code institutes a penalty of up to 7 years of imprisonment for the offence of "Legalisation of money or property acquired in a criminal way". This level of punishment seems proportionate and dissuasive. However the sanctions provided for in Article 189 (which cover all other cases not falling under Art 216 i.e. "acquisition, usage and realisation" - which should probably be understood as acquisition, possession or use, according to the UN Conventions) can be much lower. Article 189 imposes also penalties such as public tasks, fines or restriction orders as alternatives to imprisonment in certain cases. Whilst this can be admissible under para. 3 for minor cases, it raises some concerns in other cases, including under para. 2 dealing with proceeds of "great value" (above the equivalent of € 9050). Also, the maximum term of imprisonment under para. 1 (2 years) seems quite low compared to other countries where the minimum term of imprisonment for money laundering is often 4 years.

94. The examiners noted that in the first case in which a final conviction for money laundering was obtained, plea bargaining was applied for all the accomplices who had provided assistance for the transfer of criminal profits under their name.

95. Legal persons, may be subjected to fine, temporary restriction of their activity (including closure of establishments) or liquidation (Articles 43, 47, 52 and 53 of the Criminal Code) for all criminal offences provided by the Lithuanian law. The lack of cases involving legal persons does not allow to know more about these penalties in practice.

Statistics and practice

96. As indicated in the 2nd round report, there have been 9 prosecutions initiated under the pre-2003 Criminal Code provisions, all of which ended without indictment or were suspended.

97. Since the 2nd round, there have been 5 other cases where charges have been brought. According to the FCIS, all cases initiated deal with VAT fraud, despite a relatively important organised crime activity present in a variety of traditional sectors such as drugs, extortion etc.

98. In April 2005, one conviction was obtained on the basis of art. 216. It became final after the appeal confirmed the first instance verdict in September 2005. This case dealt with an Estonian criminal who was trafficking mobile phones stolen in his country and

came to Lithuania to sell the merchandise abroad, mainly Hong-Kong. The total profit was estimated to equivalent USD 635,000. Part of the profit was sent back to accounts opened in Estonia under the name of straw-men who then withdrew the money in cash. Part of the monies were used to buy a luxury car (€ 79,000) and for other purposes. The accused was convicted in Lithuania both for tax fraud (reimbursement of LTL 270,000 – approx. € 78,000 to the State) and money laundering. It was said that the fact that he was afraid of organised crime groups in Estonia had facilitated his cooperation with the judicial authorities. Following plea-bargaining, the straw-men were not prosecuted for money laundering.

2.1.2 Recommendations and Comments

99. It appears difficult to draw firm conclusions from the Lithuania's (still) limited practice and case law. The results in terms of convictions are very modest despite the alleged presence of serious crime activities on the Lithuanian territory. In this context, the fact that the remaining 5 money laundering proceedings offences are connected with VAT is disappointing. This leads the examiners to conclude that the system is not fully effective. The fact that a first final conviction was obtained is encouraging, though.

100. The main insufficiencies regarding the criminalisation of money laundering derive from the existence of different sets of provisions in the Criminal Code. The following is recommended:

- *to unify the two ML definitions*; having a unique crime of money laundering (instead of two criminal offences) would correspond to the international standard of treating the conducts provided in Article 3(1)(b)&(c) Vienna Convention and Article 6(1) Palermo Convention in a unitary manner, as regards punishment, predictability, seriousness of the crime and would ensure a consistent approach also in respect of the exception to the dual criminality principle provided for in Art.7 of the Criminal Code will include the conduct incriminated in Article 189 of the Criminal Code. Also, this would facilitate the application of confiscation measures (see infra);

- *to consider making an explicit provision, as necessary, specifying that the laundering offence applies to both direct and indirect proceeds;*

- *money laundering should be criminalised more strictly and the legal incrimination should follow Article 3(1)(b)&(c) Vienna Convention and Article 6(1) Palermo Convention, so as to cover also conversion, transfer of property or concealment, disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, if such conduct is carried out outside of a financial operation, conclusion of an agreement, an economic or commercial activity, or by means of a fraudulent declaration;*

- *to provide for the applicability of Art. 21 also to the various offences contained in art. 189;*

- *the effectiveness and the dissuasive character of the criminal sanctions under art. 189 should be reviewed*.

2.1.3 Compliance with Recommendations 1, 2 & 32

	Rating	Summary of factors underlying rating
R.1	**PC**	Consistency of approach between art. 189 and 216 and lack of certain elements and secondary mechanisms deriving thereof; effectiveness issue
R.2	**LC**	Sanctions for ML are not proportionate and dissuasive enough in some cases under art. 189.
R.32	**LC**	No consolidated statistics

2.2 Criminalisation of Terrorist Financing (SR.II & R.32)

2.2.1 Description and Analysis

101. The Lithuanian Criminal Code criminalises the following conduct: "Act of terrorism" (Article 250) and "Arrangement to commit a crime" (Article 21). Terrorist financing is covered partially under art. 250 para. 5 and 6.

Article 250 - Act of Terrorism

1. Any person, who has put the explosive devices with intent to cause or has caused an explosion or arson in an area of inhabitation, gathering or public place, shall be punished by imprisonment for a term to ten years.

2. Any person who has committed the acts specified in paragraph 1 of this Article, where it caused a health impairment of the aggrieved party or a mean of transport, a construction or an equipment in a construction was destroyed or damaged, shall be punished by imprisonment for a term from three to twelve years.

3. Any person who has exploded, set fire to or otherwise destroyed or damaged a building or device, where it caused a danger to the life or health of a great number of people or disseminated radioactive, biological or chemical noxious substances, preparation or micro-organisms, shall be punished by imprisonment for a term from five to fifteen years.

4. Any person who has committed the acts specified in paragraph 3 of this Article, where it was directed at an object of the strategic importance or it causes grave consequences, shall be punished by imprisonment for a term from ten to twenty years or life imprisonment.

5. Any person who created a group of accomplices or organised group for the commitment of the acts mentioned in this Article or participated in its activities, also financed or gave material or other support to such a group, shall be punished by imprisonment for a term from four to ten years.

6. Any person who created a terrorist group with an objective to threat people or illegally demand from a state, its institution or international organisation to perform specified actions or to restrain from them or participated in its activities, also financed or gave material or other support to such a group, shall be punished by the imprisonment for a term from ten to twenty years.

7. Legal person is also responsible for the acts specified in this Article."

Article 21 - Arrangement to commit a crime

1. Arrangement to commit a crime is finding or adjustment of means or instruments; formation of a plan of actions; recruitment of accomplices or any other intentional arrangement of circumstances that facilitate the commission of a crime. A person is liable only for arrangement to commit a serious or very serious crime.

2. Criminal liability for an arrangement to commit a crime is provided under the Article in this Code which covers the appropriate completed crime as well as under paragraph 1 of this Article. The penalty imposed for an arrangement to commit a crime may be lighter than that provided under law for a completed criminal act according to Article 62 of this code.

102. When the LPML was amended in 2003, a definition of financing of terrorism was included, which reads as follows.

Financing of terrorism – definition in the LPML

"Activities aimed at using the proceeds or other assets derived from criminal activities [it was indicated on site that the correct translation should read: "from criminal activities and from any other source"] **for direct and indirect financing of terrorism"**.

103. SR.II requires to criminalise the financing of terrorism, terrorist acts, and terrorist organisations and ensure that such offences are money laundering predicate offences. The Methodology notes that financing of terrorism should extend to any person who wilfully provides or collects funds by any means, directly or indirectly with the unlawful intention that they should be used in or in the knowledge that they are to be used, in full or in part:

1. to carry out a terrorist act(s);
2. by a terrorist organisation; or
3. by an individual terrorist.

104. The Lithuanian authorities consider that these requirements are fulfilled – in addition to Art. 21 - also by the following articles of the Criminal Code: art. 22 on *Attempt to Commit a Criminal Act*, art. 24 on *Conspiracy*, and art. 26 on *Criminal Liability of Accomplices*. The footnote to the Methodology and the FATF Interpretative Note to SR.II make it clear that criminalisation of financing of terrorism solely on the basis of aiding and abetting, attempt or conspiracy does not comply with SR.II. Therefore, by virtue of the methodology, art. 21, 22, 24 and 26 of the Criminal Code are only relevant as additional provisions, not as the main basis for the criminalisation of terrorist financing.

105. The Lithuanian authorities indicated that there has never been a formal investigation, nor charges pressed or a conviction for the offence of establishing or funding a terrorist group or terrorist organisation. Currently, measures have been applied by virtue of the international sanctions against one person and his assets have been frozen. The examiners understood also that the State Security Department is processing a few international cases, but only on intelligence based information. Therefore, it is difficult to determine to what extent the existing provisions of art. 21 and 250 enable the authorities to cope with situations not explicitly envisaged by the criminal legislation.

106. The form of support in Article 250 para. 5 and 6 is identical. It consists of financial, material or other support.

107. The absence of an explicit reference to direct or indirect support suggests that both forms are in principle covered. Likewise, there is no reference to the legitimate or illegitimate origin of the funds or material support. The Lithuanian authorities take the view that supporting terrorist activities is in itself a criminal act and therefore, it does not matter whether this support is based on legitimate or illegitimate funds. The mere fact of criminal support would be the prevailing element, not the type of support.

108. The distinction between the two provisions (para. 5 and 6) is not totally clear. It seems that para. 6 was added at some point by the legislator to cover further (organised) terrorist activities not covered otherwise under the previous para ("a terrorist group with an objective to threat people or illegally demand from a state, its institution or international organisation to perform specified actions or to restrain from them or participated in its activities"). It is true that under art. 250, the concept of *terrorist act* to which para. 5 refers is quite narrow and supposes the use of explosive devices or other destructive means resulting in physical injuries or in the dissemination of chemical and other substances. Para. 6 would allow to address the threat to use such devices and other similar methods used by terrorists (hijacking, taking of hostages etc.) which are contemplated in the 1999 UN Convention for the suppression of the financing of terrorism (and the list of instruments attached to it in annex). The Lithuanian authorities explained that the main difference between Para 5 and 6 of Article 250 of Criminal Code is the organised character of a terrorist group: while para. 5 criminalises activities of simple conspiracy – group of accomplices and organised group, Para 6 criminalises activities of a more integrated group (that group having the nature of a criminal organisation) – a group of terrorists.

109. In any event, Article 250 does not cover such issues as the financing of individual terrorists and individual terrorist acts, or the collection of funds or the funding of terrorist activities independently from the preparation of a concrete terrorist act or the existence of a group. And as indicated earlier, the argumentation of the Lithuanian authorities - according to which although these elements are not explicitly addressed, they would be covered under art. 22, 24 and 26 of the Criminal Code - is insufficient.

110. At the moment, financing of terrorism is not a fully autonomous offence. Therefore, it is perhaps not surprising that the Lithuanian authorities also refer to the "catch-all" approach provided for in Art. 21 which is in fact dealing with the broader concept of conspiracy.

111. There is no explicit reference in the law stating that it is not necessary that funds were actually used to carry out terrorist acts or be linked to a specific terrorist act. This requirement seems to be met only in the instance of funding of terrorist organisations (Art.250 para.5 of the Criminal Code).

112. Attempt to commit a criminal offence is criminalised under Art. 22 of the general part of the Criminal Code. The Lithuanian authorities indicated that this general provision applies to all offences, including those of Art. 250, and that Art. 22 would be a general principle applicable even without specific references to attempt in the special part.

113. Since Articles 216 and 189 adopt the "all crime approach", funding of terrorism – as criminalised under art.250 para. 5 and 6 - constitutes a predicate offence for money laundering (criterion II.2).

114. As indicated earlier (see the part on the criminalisation of money laundering), Lithuania has widened the principle of its extraterritorial competence in Art 7 of the Criminal Code for a series of offences – specified in international agreements -, including those falling under art. 250. As a consequence, a person is criminally liable under the Criminal Code of the Republic of Lithuania regardless of its citizenship, place of residence, place of commission of the crime, or the existence of criminalising provisions in the country or territory where the crime was committed. Lithuania therefore complies with the requirements of criterion II.3.

115. Ancillary offences (participation as an accomplice, organisation or directing others to commit, contribution to the commission) are criminalised under 24 to 26 of the general part of the Criminal Code; they apply to all offences, including those of Art.250.

116. The Criminal Code does not explicitly provide that the moral element of the offence (knowledge and intent) can be inferred from objective factual circumstances. As indicated earlier, the general rules on the producing of evidence (confirmed by the Supreme Court jurisprudence) allow to do so in practice. In the case of FT specifically, the rule was not tested in the jurisprudence since Lithuania has had no conviction for FT so far.

117. The principle of corporate liability is explicitly provided for in relation to FT, under para.7 of Article 250.

118. Funding of a group involved in terrorist acts (Art.250 para.5) is punishable by imprisonment from 4 to 10 years. Funding of a terrorist group (art. 250 para. 6) is punishable by imprisonment from 10 to 20 years. The criminal sanctions are dissuasive. Legal persons, for all criminal offences provided by the Lithuanian law, may be subjected to fine, temporary restriction of its activities (including closure of establishments) or liquidation of the legal person (Articles 43, 47, 52 and 53 of the Criminal Code).

2.2.2 Recommendations and Comments

119. The criminalisation of terrorist financing is quite narrow in Lithuania and it misses various elements required by the international instruments and FATF Recommendation SRII. Therefore, *it is recommended to introduce a separate offence of terrorist*

financing, independently from art. 250 which deals with terrorist activities involving criminal groups, in line with the requirements of SR.II and Art.2 of the 1999 UN Convention for the Suppression of the Financing of Terrorism, with a view in particular to: a) include the collection of funds; c) refer to individual terrorists; d) state that in order to be criminally liable it is not necessary that funds were actually used to carry out terrorist acts or be linked to a specific terrorist act.

2.2.3 Compliance with Special Recommendation II & 32

	Rating	Summary of factors underlying rating
SR.II	**PC**	Only the financing of terrorist groups or organisations is, to some extent, criminalised; the concept of terrorist activity is too narrow
R.32	**NA**	(no criminal proceedings have ever been initiated)

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3 & 32)

2.3.1 Description and Analysis

Confiscation

120. The general regime of confiscation is regulated by Art.72 of the Criminal Code.

"**Article 72. Confiscation of Property**

1. Confiscation of property is the compulsory uncompensated taking into the possession of the state of property held in any manner by the defendant, his accomplice or other persons which has been declared forfeit.

2. Confiscation of property is applicable only in respect of property used as an instrument or a means to commit the crime or which is acquired as the [~~direct~~] result of a criminal act. The court must order compulsory confiscation of:

1) money or other property that has material value, which was delivered to the defendant or his accomplice for the purpose of commission of a criminal offence;

2) money or other property that has material value, which was used in committing a criminal offence;

3) money or other property that has material value, which was acquired through a criminal offence.

3. Property transferred to other natural or legal persons may be confiscated regardless of whether or not criminal proceedings are instituted against the said persons, if:

1) the property has been delivered to them for the purpose of commission of a criminal offence;

2) when acquiring the property, they knew or had to know and could have known that the property, money or the valuables newly acquired with the money have been gained from of a criminal offence committed.

4. The property that was transferred to other natural or legal persons may be subject to

confiscation regardless of the fact whether the person who delivered the property is criminally liable, if that person had to know and could have known that this property may be used in the commission of serious or very serious crime.

5. In case property which is subject to confiscation has been concealed, used up or sold, belong to the third-parties or it is not available to take if for any other reasons, the court recovers from the defendant, his accomplices or other persons that are mentioned in Para 2 to 4 of Article 72 a sum of money equivalent to the value of the property subject to confiscation.

6. Juveniles may be subject to compulsory confiscation of property only in cases defined by Para 2 or 3 of this Article.

7 When making an order for the confiscation of property, the court must specify the articles subject to confiscation or state the monetary value of the property to be confiscated."

121. Criterion 3.1 requires that laws should provide for the confiscation of property that has been laundered, and:

- of property which constitutes proceeds from, instrumentalities used in; and instrumentalities intended for use in the commission of any ML, FT or other predicate offences
- Property of corresponding value
- Property that is derived directly or indirectly from proceeds of crime; including income, profits or other benefits from the proceeds of crime, and all property referred to above, regardless of whether it is held or owned by a criminal defendant or by a third part.

122. The examiners were advised on site, by a prosecutor, that the correct translation in art. 72 para 2 should read "as a result" instead of "as a direct result" (this was also confirmed after the visit by the Lithuanian delegation). The clarification provided was welcome since the expression "direct result" would exclude from the confiscation regime income and other profits derived from criminal assets (as it is required by criterion 3.1.1 a), especially since there is no explicit provision at present regarding the confiscation of income, profits or other benefits from the proceeds of crime[7].

123. Confiscation is mandatory for Lithuanian courts. Art. 72 often refers to the words money and property. The latter is broad enough to cover also intangible assets.

124. Although Art. 72 does not explicitly provide for the confiscation of property that has been laundered, the Lithuanian authorities indicated that such assets are confiscatable under para.2 item 3, and Art. 3 item 2, like any assets which have been acquired through a criminal offence. The same goes for terrorist funding, which can be confiscated, according to the Lithuanian authorities, on the basis of art.72 para.2. Confiscation of assets in relation with FT (under art. 250 para. 5 and 6) is also possible

[7] Note: this paragraph was kept for practical information purposes

125. Confiscation is applicable also to property transferred to other natural or legal persons if, when acquiring the property, they knew or had to know and could have known that the property, money or the valuables acquired with the money have been obtained through a criminal offence. This formulation is mostly welcome as it allows to confiscate proceeds which have been transferred to / under the name of third persons. Furthermore, the moral element is quite flexible and allows to infer third persons' knowledge from objective factual circumstances.

126. The confiscation is, in principle, conviction based. This being said, para. 3 and 4 contain references to the liability of the person at the origin of the criminal assets. These two para. seem to make a distinction between the 1st and 2nd degree originator: in both cases, the liability of the originator is not required to apply confiscation, but the care taken by the Lithuanian legislator raised some interrogations as to whether confiscation is also possible where the number of intermediaries is higher, as can be the case for money laundering schemes designed to dissimulate the real beneficiary or originator. The Lithiuanian authorities explained that this was a theoretical consideration and that it is admitted that the same rules apply whatever the number of "intermediaries".

127. Art. 72 para. 2 provides for the confiscation of proceeds but also instruments used in, and instruments intended to be used to commit an offence, as it is also required by criterion 3.1. Confiscation is applicable without restrictions to instruments which have been used to commit a crime, and to assets resulting from a crime. Confiscation of money or property given so as to be used to commit a crime, on the basis of para. 2 item 1 ("money or other property that has material value, which was delivered to the defendant or his accomplice for the purpose of commission of a criminal offence"), would sometimes appear to be difficult to apply in practice and one prosecutor indicated on site that para. 5 on value confiscation would allow to circumvent the difficulty. The Lithuanian authorities consider this to be a minority opinion and the Ministry of Justice had never received any proposal to improve this provision.

128. Equivalent value confiscation is provided for in Art.72 para.5 and is applicable when property which is subject to confiscation has been concealed, used up or sold, belongs to third-parties or is not available for confiscation for any other reasons. The provision is broad enough to cover all frequently occurring problems (in particular assets which have been hidden or cannot be repatriated).

Provisional measures

129. With the new Criminal Procedure Code entered into force in 2003, a new provision on "temporary limitation of property rights" was inserted (art. 151).

"**Article 151. Temporary limitation of property right**

1. With a view of securing a civil claim or a likely confiscation of property, a temporary limitation of the property right of a suspect or a natural person who is financially responsible for the actions of the suspect, or of other natural persons who have possession of the property received or acquired in a criminal way may be imposed by a decision of a prosecutor. A temporary limitation of the property rights may be imposed together with a seizure or search or separately from them.

2. A temporary limitation of the property right of a legal person may be imposed:

1) in order to ensure a possible confiscation of the property in the cases provided for by article 72 of the Criminal Code of the Republic of Lithuania (Confiscation of Property);

2) in order to secure a civil claim where there is a sufficient ground for bringing a civil action against a legal person;

3. The property of a person for whom a temporary limitation of the rights of property is being imposed, shall be charged in the presence of persons indicated in Para 4 of Article 145 of the Criminal Procedure Code. All the property charged must be shown to the persons present. The charging list must indicate the quantity of the objects charged and their individual features. A temporary limitation of the property rights, under a list established by the laws of the Republic of Lithuania, may not include objects which are necessary for the suspect, his family members or persons dependant upon him.

4. The property with respect to which a temporary limitation of property right is being imposed shall, at the prosecutor's discretion, be given in trust to/transferred into the custody of a representative of the housing maintenance organisation or a municipal institution, or of the owner of the property or his relative; it must be explained to the aforesaid persons that they are liable under Article 246 of Criminal Code for squandering of this property or its concealment. For this purpose, a written promise shall be taken to that effect. In the event of a necessity, this property may be taken from them. Where a temporary limitation imposed on bank deposits, all transactions involving them shall be suspended provided the decision on a temporary limitation of the property rights does not provided otherwise.

5. A person on whom a temporary limitation of the right of property were imposed shall be entitled to appeal against the decision of a prosecutor to the pre-trial investigating judge. Such an appeal must be examined by the investigating judge within three days from the receipt of the appeal. The decision of the investigating judge may be appealed against to a higher court the decision whereof shall be final and not subject to appeal.

6. A prosecutor's decision on a temporary limitation of the property rights may not be longer than for a period of six months. This term may be extended but for not more than two periods of three months. The refusal of the investigating judge not to extend the temporary limitation of the property rights shall be appealed following the procedure set forth in Article 65 of the Criminal Procedure Code. After the case is referred to the court, the decision regarding the imposition of temporary limitation of the property right or extension of the term thereof shall taken by virtue of a court order by the court to the disposition of which the case belongs. The court order can be appealed against in accordance with the procedure set forth in Part X of this Code.

7. The number of extensions of the temporary limitation of the property right in the cases involving serious or very serious crimes or when the suspect is hiding shall not be subject to any limits.

8. A temporary limitation of the property rights shall be cancelled by the decision of a prosecutor or a court order where this measure becomes unnecessary."

130. Art. 151 introduces a modern system of temporary measures which also addresses several practical issues (safe-keeping, appeal mechanisms etc.). This kind of mechanisms are quite flexible and allow to deal also with intangible assets, including investments, shares hold in a joint stock company etc., although it was admitted on site

that there was limited experience with criminal assets converted into financial products or investments. The principle of appointing civil administrators was familiar to the prosecutors met by the examiners, though.

131. According to para. 2, these measures can also be applied in respect of legal persons.

132. Art. 151 states explicitly that a temporary limitation of property rights is applicable both to ensure the execution of a civil claim, but also to secure a penal confiscation (criterion 3.2). Provisional measures under this article are temporary limited to a period up to six months, renewable two times for no more than 3 months each time (that is 12 months in total). During the pre-trial phase the measure is taken by the prosecutor and extended by the judge. During trial, the measure is taken and extended by the court.

133. Provisional measures during pre-trial investigation, under art. 151, are not subject to a time limit in case of serious and very serious crimes, or when the person is hiding. According to Article 11 of the Criminal Code, "serious crime" is a crime punished by law with a maximum penalty of more than six years of imprisonment. Therefore, as regards Article 216 on "Legalisation of money or property acquired in a criminal way", provisional measures are not subject to a maximum time limit (the penalty is up to 6 years imprisonment), but for Article 189 on "Acquirement or realisation of property obtained from criminal activity" such a limit applies since the sanctions are much lower. Under Art. 250, para. 4 and 5 which deal with terrorist financing, FT is a "serious crime" as well (5 to 10 years and 10 to 20 years respectively).

134. This time limit appears at the moment to be a potential issue, bearing in mind that the mechanism of art. 151 is fairly recent. Since money laundering investigations can last well beyond 12 months, it would be reasonable to amend the system so as to avoid the dilapidation of assets where the crime falls under art. 189 PC, should the case not be sent to court within a year. Changes in this field are required. This could also be achieved as part of the review of provisions as suggested earlier under the Section on criminalisation. In the immediate, Lithuanian authorities need to avoid using art. 189 as far as this is possible.

135. The application of art. 151 can only be done in connection with the opening of a formal pre-trial investigation (criterion 3.3). Freezing and seizure measures can be applied in this framework without prior notice to the suspect.

136. Turning to the powers and means of law enforcement and the FIU (criterion 3.4), the FCIS has the power to suspend for 48 hours a transaction under the LPML (art. 7 item 1 para 1). In addition, reporting entities have according to the LPML (art. 9) the duty to suspend transactions in case of suspicions of money laundering. During the timeframe of 48 hours, the FCIS has to decide whether the suspicion is justified and whether temporary measures under the Code of Criminal Procedure must be applied (a derogatory mechanisms applies to reports by the profession of lawyers). This is not very much but it is considered by the Lithuanian practitioners as sufficient. The examiners noted that the deadline starts to run from the receipt of the report sent by an obliged entity, which avoids the practical constraints deriving from the lack of fully computerised reporting channels. As indicated under Section 3 of this report, the FCIS has generally access to a wide range of information.

137. However, the access to information on legal persons and information held by lawyers seems to present certain difficulties in Lithuania from the prosecutors' point of view (see Sections 3 and 4 on those issues).

138. Article 72 para. 5 of the Criminal Code does not permit the confiscation of property that belongs to *bona fide* third parties (criterion 3.5) and provides that the court recovers from the defendant, his accomplices or other persons that are mentioned in para. 2 to 4 of Article 72 a sum of money equivalent to the value of the property subject to confiscation. There are procedural rules that provide for procedural guarantees, including the right to appeal to court, for persons that may be subjected to restriction of their personal rights and liberties. If the person suffered a damage as a consequence of an illegal decision of the pre-trial investigation officer, a prosecutor or judge (court), a claim for civil damages can also be filed.

139. The provisions of art. 151 para. 4 allow for the application of measures in respect to property subject to temporary limitation of property rights (transferring the property into the custody of a third person etc.), in accordance with the requirements of criterion 3.6.

140. Although this was not illustrated by relevant statistics, law enforcement representatives and prosecutors have underlined during the visit that confiscation measures are regularly applied in practice against instruments and proceeds of crime.

Additional elements

141. There are no special rules that provide for the confiscation of property that belongs to an organisation that was found to be primarily criminal in nature. Confiscation, in such instances, is subject to the provisions of Article 72 of the Criminal Code.

142. Lithuania has not accepted the principle of the reversal of the burden of proof post conviction for the purpose of confiscation. There are no plans to introduce such a mechanism in future. It is admitted that this can hinder in some cases the enforcement of foreign decisions based on civil forfeiture (without conviction).

Recommendation 32

143. As indicated elsewhere in this report, the FCIS is considered to be the sole agency in charge of ML investigations. The police do not look particularly into the financial dimension and wealth of the criminals / criminal groups they are confronted with. This affects seriously, in principle, the efficiency of measures aimed at securing their future confiscation.

144. The computerisation and interconnection of prosecutor's offices was not complete at the time of the on site visit, as was the case for the Lithuanian courts. Despite this, some general figures are available on the total amounts subject to temporary measures, as well as confiscated assets:

Provisional measures (estimates)			
	2005	2004	2003
Pre-trial	€ 250,000	€ 2,000,000	€ 379,000

investigations for money laundering			
Other offences	**LTL 41,284,791**	**LTL 41,830,082**	**LTL 55,456,468**
For ML cases open at the time of the visit	€ 2,200,000 (January 2006)		
Other offences	**No information available**		
For ML cases in court at the time of the visit	€ 120,000 (January 2006)		
Other offences	**No information available**		

Confiscations			
	2005	2004	2003
For ML	**Equivalent of 33,000€ in property and funds (see also para. 98)**	**Not applicable**	**Not applicable**
Other offences	**Not available**	**Not available**	**Not available**

2.3.2 Recommendations and Comments

145. The legal framework for confiscation has significantly improved since the previous evaluation. Most requirements are in place and Lithuania has a powerful mechanism for temporary measures.

146. This being said, some adjustments are still needed:

- *it is recommended to cover explicitly indirect proceeds such as income, profits or other benefits from the proceeds of crime;*
- *furthermore, provisional measures for serious crimes such as ML should be regulated as not to be subject to a short time limit, as far as the conduct incriminated in art.189 of the Criminal Code is concerned;*
- *Lithuania may also wish to reconsider the opportunity of softening the standard of evidence for the purpose of confiscation (sharing or reversing the burden of proof) post conviction;*
- *the Police, which deals with other major assets-generating crimes, should be encouraged to apply as much as possible for temporary measures with a view to confiscation of criminal assets and therefore, to look more systematically at the financial dimension/wealth of criminals / criminal groups;*
- *Statistics on temporary measures and confiscation should be kept.*

2.3.3 Compliance with Recommendations 3 & 32

	Rating	Summary of factors underlying rating
R.3	**LC**	Need to cover explicitly indirect proceeds such as income, profits or other benefits from proceeds of crime; provisional measures for serious crimes such as ML should be regulated as not to be subject to a short time limit, as far as the conduct incriminated in art.189 PC is concerned.
R.32	**PC**	Overall statistics unavailable apart from ML-related cases; effectiveness issue: the police should be encouraged to make use of temporary measures more frequently in relation to their own cases.

2.4 Freezing of funds used for terrorist financing (SR.III & R.32)

2.4.1 Description and Analysis

SR III.1.2-3 Laws and procedures to freeze funds/assets in accordance with UNSCRs 1267 and 1373

147. The examiners had difficulties to fully understand the information and explanations provided by Lithuania in this respect. The various institutions met on site (Ministry of Foreign Affairs, FCIS, State Security Department, prosecutor's office) referred to each other to provide explanations.

148. Before 2004, the Government of the Republic of Lithuania has adopted Resolution No.820 (4 June 2002) to implement financial and other sanctions imposed by the United Nations against Al-Qaida, the Taliban, Usama bin Laden, or persons and entities associated with them. This text, which was meant to implement Security Council Resolutions 1267 and 1373, replaced different Lithuanian resolutions adopted earlier on this matter. The text comprises a series of self commitments by the government to implement UN Security Council Resolution 1333 (2000), 1373 (2001), 1388 (2002) and 1390 (2002). At the same time, the Ministry of Foreign Affairs was instructed to report at regular intervals about the implementation of these SC Resolutions. Lithuania has presented 4 reports to the SC, in January and September 2002, in August 2003 and in December 2004[8]. A series of concrete measures were adopted nationally by virtue of Resolution No. 820.

149. After Lithuania joined the EU in May 2004, the EU regulations apply. In principle, the European regulations are directly applicable in European national systems without the need for domestic implementing legislation. Financial institutions are therefore required to directly implement these regulations and, as far as the EU lists are concerned, when new names are published, financial institutions which identify a customer who is listed should

[8] A fifth report was presented in June 2006.

immediately freeze the account. Funds must be frozen without prior notification to the persons concerned. Decisions on the freezing of assets taken on the basis of the EC Regulations can be challenged before the European Court.

150. This being said, Lithuania took specific measures in relation with EU accession. According to the Law on the Implementation of Economic and Other Sanctions (22 April 2004, No IX-2160), the institutions responsible for the implementation of the financial sanctions have to apply the requirements laid down in EU Regulations and Government Resolutions of the Republic of Lithuania, the latter being adopted for implementation of other legal acts of the EU.

151. On 30 December 2004, the Government adopted a Decision "On the approval of the schedule of supervision order of the international sanctions implementation":

- the Ministry of Foreign Affairs, the Ministry of Economy, the Customs department and the Insurance Supervisory Commission were given responsibility for the supervision of the implementation of economic sanctions in their respective fields;
- the FCIS was given responsibility to regularly check and collect data about the implementation of financial sanctions by obliged entities
- several government bodies and Ministries were given responsibility to implement and supervise the implementation of the political, communication and public sanctions;
- finally, the Ministry of Foreign Affairs was given responsibility for coordinating the implementation of international sanctions.

152. The concrete measures to be taken by the industry were adopted in two phases. The first phase led to the extension in 2003 of the reporting mechanism for suspicious transactions to FT: the list of criteria for the identification of suspicious transactions was amended at the same time with the adjunction of the following criterion:

> 1.20. the client's or his proxy's (if transaction is conducted by a proxy), beneficiary entity's identification data correspond with the data in the lists submitted by responsible foreign state's institutions or international organizations on persons related to terrorist activities;

153. The second phase was inherent to EU accession. But the duty to freeze funds without delay - although the obligation already existed in the EU legislation - was explicitly specified by a recent Order of the director of the FCIS "On approval of instructions on supervision of proper implementation of the international sanctions in the field of regulation of the FCIS under the Ministry of Interior". The Order (No. 96-V) is dated 9 November 2005. Part III of the Order enumerates the requirements as follows:

> 6. Implementation of the international sanctions shall be set and amended by the decisions of the Government of the Republic of Lithuania and regulations of the European Union, directly applied in the Republic of Lithuania. Persons are obligated to implement the financial sanctions and carry out the actions provided in the decisions of the Government of the Republic of Lithuania on implementation of the international sanctions and in the regulations of the European Union on the international sanctions and exceptions of their implementation.
>
> 7. Persons are obligated:
>
> 7.1. to check if their client is not included into the consolidated list of subjects and their groups, for which the

financial sanctions of the European Union are applied (updated consolidated list is published in official website of the European Commission);

7.2. to pay special attention to the clients from the states, which are included in the list of non-cooperating states and territories, made by Financial Action Task Force (hereinafter – FATF) and to financial operations or transactions concluded by them or on their behalf (updated list of non-cooperating states and territories is published in official FATF website).

8. Persons are forbidden (if other legal acts do not provided otherwise):

8.1. to carry out financial operations for the subjects for which the financial sanctions are being implemented;

8.2. to conclude transactions, which execution is forbidden by the financial sanctions being implemented in the Republic of Lithuania.

9. Persons must immediately terminate the transactions, which have been concluded prior setting of implementation of the financial sanctions in the Republic of Lithuania or suspend their execution for the period of implementation of the financial sanctions.

10. Persons must immediately terminate the execution of obligations, which have appeared prior setting of implementation of the financial sanctions in the Republic of Lithuania or suspend it for the period of implementation of the financial sanctions. It is forbidden to assume new obligations, which execution would contradict to the financial sanctions being implemented in the Republic of Lithuania.

11. Financial institutions must ensure that the accounts of the subjects, for which the financial sanctions are being implemented, would not be disposed. **Financial institutions, upon suspending the disposal of the accounts of the subjects, for which the financial sanctions are being implemented must inform the Financial Crime Investigation Service and the Ministry of Foreign Affairs of the Republic of Lithuania about this within 2 working days.**

12. Upon restricting the disposal of accounts of the subjects, for which the financial sanctions are being implemented, usual maintenance expenses of these accounts and included interests and payments under the transactions, concluded prior the implementation of the financial sanctions can be deducted from them only in case, when the subject, for which the financial sanctions are being implemented, would not be able to dispose in any deductions or inclusions.

13. If the decisions of the international organizations, setting the financial sanctions and (or) legal acts of the European Union, except regulations, provide the exceptions of their implementation for humanitarian, provision of peacekeeping missions' purposes or other special cases, implementation of exceptions of the sanctions in the Republic of Lithuania shall be set by the decisions of the Government of the Republic of Lithuania, except the case provided in Part 1 Article 8 of the Law on Implementation of Economic and Other International Sanctions.

14. Persons or subjects, for which the international financial sanctions are being implemented, in order to use the exceptions provided in Clause 13 of these instructions, shall appeal to the Financial Crime Investigation Service. The Financial Crime Investigation Service shall appeal on implementation of the exception in each concrete case to the Ministry of Foreign Affairs of the Republic of Lithuania and shall implement the exception only upon receipt of consent of it. Financial institutions, in order to use the exceptions provided in Clause 13 of these instructions, shall appeal directly to the Ministry of Foreign Affairs of the Republic of Lithuania and shall implement the exception only upon receipt of consent of it.

15. Persons must submit the information on implementation of the financial sanctions to the Financial Crime Investigation Service and financial institutions to the Ministry of Foreign Affairs of the Republic of Lithuania.

16. Persons must submit all data necessary for the carrying out of the supervision to the Financial Crime Investigation Service.

17. Submission of information to the Financial Crime Investigation Service and other institutions, responsible for the supervision of implementation of the international sanctions, shall not be considered as disclosure of

official, industrial, commercial, bank secret or confidential information.

154. Lithuania relies to a significant extent on the mechanisms of the European Union to comply with Criteria III.1 and III.2.

155. It has implemented United Nations Security Council Resolution 1267 (1999) and its successor resolutions under European Union Council Regulation (EC) No. 881/2002, which provides for measures against Al-Qaeda and the Taliban. This European Union Regulation has direct force of law in Lithuania and requires the freezing of funds and economic resources belonging to persons designated by the United Nations Sanctions Committee and listed in the Regulation, and prohibits making funds or economic resources available to such listed persons. These lists are updated regularly by the European Union, and at this point assets are required to be frozen. Enforcement in Lithuania is, in principle, ensured by the designation of the FCIS as the responsible agency for ensuring that the industry takes the freezing measures required. The Code of administrative penalties provides, since 2004, for specific sanctions in case of non compliance with the requirements inherent to the international CFT sanctions. Art. 187-12 contemplates a fine of LTL 500 to 50,000. Furthermore, since 2004 as well, the Criminal Code comprises an Art.123-1 on "Violation of international sanctions" providing for a sanction of up to 5 year imprisonment and for the liability of legal persons. The Lithuanian authorities advised that these sanctions can be applied in case of non compliance with either the national legislation or EU-requirements (European legislation is considered to be part of the domestic legislation) The only figures available on sanctions for non compliance imposed so far are the general ones for the year 2003 and 2004 (23 and 36 occurrences respectively – see the other relevant Sections of this report). No information was available as to the imposition of sanctions for non compliance with (national or international) CFT requirements.

156. The European Union list of designated persons is the same as the United Nations list of persons and is drawn up upon designations made by the United Nations Sanctions Committee. There is no time delay in Lithuania, once the European Union list is created as no further regulation is issued. Thus theoretically, sanctions could be applied from the point of European Union listing.

157. As indicated earlier, FCIS has a special responsibility at operational level, and the Ministry of Foreign Affairs as overall coordinator since 2004. The lists have been sent by the FCIS on one occasion to the sectoral supervisors and self-regulatory organisations for certain DNFBP but no steps were taken to make sure the final end-user had received the list. The Lithuanian authorities take the view that the information is available and the financial (and other) institutions have a general duty to check the websites.

158. This being said, at the time of the on site visit, the Ministry of Foreign Affairs indicated that it was their intention to publish the EU lists on their webpage. This would be the first time that these lists are published in such a way in Lithuania.

159. At the same time, according to the LPML (art. 6), the State Security Department was given the responsibility to gather intelligence related to FT, and to exchange such information with the obliged entities, including for the identification of FT.

160. The reporting duty in relation of listed persons established by the Order of 9 November 2005 complements the provisions of the LPML: the former provides for a duty to report to the FCIS within 48 hours any assets blocked upon the entities own initiative, whilst the latter imposes a duty to report to the FCIS within 3 hours all suspicious transactions (these include those related to listed persons). From there on, the usual procedure on temporary measures is followed upon FCIS' initiative (freezing for 48 hours by the reporting entity in case a transaction reported, provisional measures applied on the basis of the Criminal Procedure Code upon the FCIS' initiative etc.).

161. Measures have so far been applied against one person, not located in Lithuania, allegedly listed as having connections with Bin Laden. Freezing measures were applied following a report made to the FIU in 2005 (other sources indicated that the name was found during an inspection). The account was still frozen (approximately USD 15,000) at the time of the on site visit, although the person turned out to have been subject to measures by mistake (it was not the person listed). The examiners understood this has been the only report received by the FCIS. The examiners understood that the State Security Department (SSD) was gathering information about a few other suspect persons/entities (8 or 9).

S / RES / 1373 (2001)

162. This is implemented in a similar way in Lithuania as S/RES/1267 (1999). With regard to S/RES/1373 (2001), the obligation to freeze the assets of terrorists and terrorist entities in the European Union through Council Common Positions 2001/930/CFSP (Common Foreign and Security Policy) and 2001/931/CFSP. The resulting European Union Regulation is Council Regulation 2580/2001. It requires the freezing of all funds and economic resources belonging to persons listed in the Regulations and the prohibiting or making available of funds and economic resources for the benefit of those persons or entities. In the same way as RES 1267, the Lithuanian authorities consider that the list is self executing.

163. The authority for designating persons or entities lies with the Council of the European Union. Any member State as well as any third party State can propose names for the list. The Council, on a proposal from the Clearing House, establishes, amends and reviews the list. This list, as it applies to the freezing of funds or other assets, does not include persons, groups and entities having their roots, main activities and objectives within the European Union (European Union internals). European Union internals are still listed in an Annex to the Common Position 2001/931/CFSP, where they are marked with an asterisk, showing that they are not covered by the freezing measures but only by an increased police and judicial co-operation by the member States. National legislation is required to deal with European Union internals[9].

[9]In the week of the adoption of the report, the Lithuanian authorities advised that on 9 February 2006, the Government adopted Decree N°137 on measures implementing international sanctions aiming at EU internals (persons and entities). A list of EU internals (persons and entities) subject to financial sanctions is attached to the Decree. In relation to action on behalf of other jurisdictions, the Decree of the Government of Lithuania N° 1411 of 6 September 2006 provides for such action. According to para. 1.20 of the Decree, a financial transaction is to be considered suspicious if data of the client or its proxy corresponds, inter alia, with the data in the list submitted by responsible foreign state institutions.

164. Lithuania retains its capacity to announce decisions under its own Government regulations in cases in which the (European) Council has not acted and made subject to a common position or single action, or where international sanctions are directed against European Union internals. The same goes for the United Nations Resolutions.

165. It remained unclear whether measures have been taken in respect of the issue of requests from third States (criterion III.3), and whether the Clearing House problem in relation to European internals has been solved in Lithuania[10].

Generally

166. Regarding criterion III.4, measures to freeze assets under the United Nations Resolutions must apply to funds or other assets owned or controlled wholly or jointly, directly or indirectly by the persons concerned etc., and to funds or other assets derived or generated from funds or other assets owned or controlled by such persons. The two European Regulations make no mention of the elements underlined. Therefore the definitions of terrorist funds and other assets subject to freezing and confiscation contained in the regulations do not cover the full extent of the definitions given by the Security Council (or FATF) – in particular the notion of control of the funds does not feature in Regulation 881 / 2002, in particular, the European Union Regulations implementing S /RES/1267(1999) simply direct the freezing of all funds and economic resources belonging to, or owned or held by, a natural or legal person, group or entity designated on the list [Article 2 (1)]. However, it is prohibited to make funds available directly or indirectly to or for the benefit of a natural or legal person, or group, or entity designated on the list [Article 2 (2)].

167. Turning to Criteria III.5 and III.6 requiring countries to have effective systems for communicating actions taken under the freezing mechanisms to the financial sector and / or the general public immediately, the Order issued by FCIS on 9 November 2005, together with the Ministry of Foreign Affairs' decision to publish the EU lists on-line were timely initiatives. The FCIS is also answering questions on an ad hoc basis. Providing guidance is primarily a task for the sectoral supervisors and SROs. From the information available, it seems that the notes issued so far deal mostly with AML issues. Particular measures to inform the public at large, to strengthen the dissuasive effect of the CFT mechanisms, have not been taken and it seemed that from the FCIS to the sectoral supervisors, there was a heavy reliance on the fact that obliged entities would check the EU lists regularly as they are required to do by the Order of November 2005.

168. Criterion III.7 requires countries to have in place effective and publicly known procedures for unfreezing (in the case of mistakes and namesakes). Formal de-listing procedures exist under the European Union mechanisms, both in relation to funds frozen under S/RES/1267 (1999) and S/RES/1373 (2001). For 1267 (European Commission) No. 881/002 provides that the Commission may amend the list of persons on the basis of a determination by the United Nations Security Council or the Sanctions Committee (Article 7). For 1373 (EC) N 2580 / 2001 provides that the competent authorities of each member State may grant specific authorisations to unfreeze funds after consultations with other member States and the Commission (Article 6). In practice, therefore a person wishing to have funds unfrozen in Lithuania would have to

[10] ibid

take the matter up with the FCIS who then would turn to the Ministry of Foreign Affairs who, if satisfied, would take the case up with the Commission and / or the United Nations. The same procedure would apply to persons or entities inadvertently affected by freezing upon verification that the person is not a designated person, since Lithuania has no listing/delisting mechanism of its own. These procedures are not publicly known and no reference is made to those issues in the Lithuanian texts provided to the examiners. Indeed it is important that the authorities establish the procedures which need to be followed in these situations.

169. Turning to Criterion III.9, there are no specific provisions in EC No. 881/2002 for authorising access to funds frozen in accordance with S/RES1267 (1999). The Order issued by FCIS on 9 November 2005 contains under clause 12 to 14 (see above) some provisions in this respect (in respect of civil and other liabilities concluded before the application of measures, humanitarian purposes etc.). It is none-the-less important that the Lithuanian authorities advise also the public of the procedures in this type of case.

170. There is a specific procedure in EC No. 2580/2001 (implementing S/RES 1373) for release of basic expenses and related costs and application must be made to the competent authority of the member State in whose territory the funds have been frozen (Article 5). The Lithuanian authorities indicated that these issues are dealt with under the Criminal Procedure Code and decisions are taken by the judicial bodies.

Freezing, seizing and confiscating in other circumstances

171. The general framework and mechanisms on seizure and confiscation have been discussed earlier (see Section 2.3).

Monitoring

172. As indicated earlier, the Government adopted in 2004 a Decision "On the approval of the schedule of supervision order of the international sanctions implementation", which entrusted the FCIS with controlling the proper implementation of the international sanctions. As indicated under Section 2 of this report, FCIS/the MLPD have no supervision department. Controls of AML/CFT requirements are done by all FCIS officers in the course of their inspections. The examiners were not told of any FT-specific controls which would have enabled them to check whether listed persons/entities have assets in Lithuania and whether this had been reported to the FCIS.

173. Interestingly, the Order of November 2005 (part IV) contains a non-mandatory system for internal controls by the industry, in the form of "suggestions":

> 18. Persons are suggested:
>
> 18.1. to assign the employee(s), who would organize the implementation of the financial sanctions, would be responsible for the suspension of disposal of accounts, regular updating of the list of the subjects, for which the financial sanctions are applied, submission of notifications to the Financial Crime Investigation Service and other institutions, responsible for the supervision of implementation of the international sanctions;
>
> 18.2. to approve the internal order, which would ensure proper pursuance of the requirements provided in these instructions;
>
> 18.3. to keep the track of information notifications of the Ministry of Foreign Affairs of the Republic of

Lithuania on the effect of the international sanctions;

18.4. to have and constantly update the list of the subjects, for which the financial sanctions are being applied;

18.5. to establish the respective procedures of the internal control, which would prevent the violations of the implementation of the financial sanctions.

174. The lack of overall coordination, especially when it comes to the supervision of LPML-specific requirements, which potentially creates some gaps in the control of AML-specific requirements, has been discussed under Section 6 of this report. The lack of an adequate and effective monitoring is even more obvious in respect of CFT. Thus, appropriate measures to monitor effective compliance under SR.III were not in place at the time of the on-site visit, as required by Criterion III.13.

Additional elements, statistics, effectiveness

175. Turning to the issues covered in the Best Practices Paper, it was too early for these issues to have been seriously addressed at the time of the on-site visit and the experience with the mechanisms was rather limited (one case only so far, generated following an inspection and not spontaneously by the obliged entity). Although the Ministry of Foreign Affairs is, in principle, taking the lead for the overall implementation of international sanctions, and the FCIS and SSD for operational implementation, there is no real overview of the exact legal and operational situation. As indicated earlier, the various authorities referred to each other for obtaining accurate information. Efforts are needed to make sure both the financial sector and DNFBP, but also the public at large are aware of their obligations and rights.

176. The applicable mechanisms are not well known by the authorities themselves (prosecutors indicated that they are not involved in the freezing measures).

2.4.2 Recommendations and Comments

177. Lithuania has the ability to freeze funds in accordance with S / RES / 1373 and under 1267 under European Union legislation though the definition of funds in the European Commission Regulations does not fully cover the terms in SR.III.

178. In order to fill some gaps, *it is recommended to make sure that*:

- *Lithuania can act in relation to European Union internals and on behalf of other jurisdictions*[11]*;*

[11]In the week of the adoption of the report, the Lithuanian authorities advised that on 9 February 2006, the Government adopted Decree N°137 on measures implementing international sanctions aiming at EU internals (persons and entities). A list of EU internals (persons and entities) subject to financial sanctions is attached to the Decree. In relation to action on behalf of other jurisdictions, the Decree of the Government of Lithuania N° 1411 of 6 September 2006 provides for such action. According to para. 1.20 of the Decree, a financial transaction is to be considered suspicious if data of the client or its proxy corresponds, inter alia, with the data in the list submitted by responsible foreign state institutions.

- *all entities bound to apply international sanctions have been given adequate information about their duties and communication mechanisms exist with all financial intermediaries and DNFBP;*

- *a clear and publicly known procedure is in place for de-listing and unfreezing in appropriate cases in a timely manner.*

179. *It is also recommended to ensure adequate monitoring of compliance is taking place in practice.*

2.4.3 Compliance with Special Recommendation III & 32

	Rating	Summary of factors underlying rating
SR.III	**PC**	Several uncertainties remain: ability of the country to act in relation to EU internals and on behalf of other jurisdictions [12], adequate information and guidance to all financial and non financial sector operators, need to better promote/publicise the international sanctions mechanisms and available remedies
R.32	**PC**	no information on possible sanctions applied for non compliance with international requirements

Authorities

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

2.5.1 Description and Analysis

180. On 10 January 1998, the Money Laundering Prevention Division (MLPD) was established within the Tax Police Department to perform the functions of an FIU. In May 1999, the MLPD became a full member of the Egmont Group and was thus recognised internationally as Lithuania's FIU, being responsible for the collection, analysis of unusual or suspicious transaction information and its dissemination to the competent law enforcement authorities. The MLPD consequently endorsed the Egmont Principles for Information Exchange with foreign counterpart FIUs.

181. On 1 April 2002 the Law on the Financial Crime Investigation Service (FCIS) came into force, according to which the Tax Police Department under the Ministry of the Interior was restructured into the FCIS. Its general responsibilities are enumerated under art. 2 of this law: "The Financial Crime Investigation Service under the Ministry of the Interior of the Republic of Lithuania (hereinafter "the Service") is a state law enforcement agency, accountable to the Ministry of the Interior of the Republic of Lithuania. Its purpose is to detect and investigate crimes, other violations of law against financial system and them related crimes, other violations of law."

[12] ibid

182. The duties are described in more precise terms at art. 7 and 8; these include - but are not limited to ML:

Article 7. Tasks of the Service

The Service shall:
1) protect the state financial system from criminal influences;
2) detect and investigate crimes, other violations of law against financial system and them related crimes, and other violations of law;
3) prevent crimes and other violations of law against financial system and them related violations of law; and
4) carry out other tasks prescribed to the Service by other laws.

Article 8. Functions of the Service

The Service shall:

1) detect and investigate acts related to fraudulent and negligent management of accounting of taxpayers, submission of knowingly false data about taxes, state (local government) collections and other payments to the responsible institutions and agencies, evasion of taxes, state (local government) collections, state social insurance and other payments, not submission of returns approved by the established procedure and other violations of law related to taxes, state (local government) collections, state social security and other payments, in the manner and following the principles laid down by laws;

2) detect and investigate acts related to the **legitimisation of money or asserts derived from criminal activity**, illegal circulation of securities, counterfeit money, other illegal acts related to financial system in the manner and basis laid down by laws;

3) conduct operative activities, interrogation, preliminary investigation, inspection of and inquiry into the economic and financial activities in the manner laid down by laws;

4) co-operate with law enforcement and other institutions and agencies of the Republic of Lithuania and foreign countries, the international organisations on issues within its terms of reference;

5) implement preventive measures against evasion of taxes, state (local government) collections and other payments, appropriation and squander of assets of the state and local government budgets and funds, as well as **anti-money laundering measures**;

6) prepare motions concerning improvement of laws and other legal acts regulating investigation of crimes, other violations of law against financial system and them related violations of laws as well draft legal acts regulating investigation of crimes, other violations of law against financial system and them related violations of laws, submit opinions and proposals concerning influence of the draft legal acts on criminal situation;

7) while carrying out the detection and investigation of and preventive measures against crimes and other violations of law against financial system, co-ordinate interaction between their data system and these of other institutions;

8) collect, store and analyse the information necessary for implementation of the tasks and functions of the Service; and

9) conduct other functions prescribed by the laws.

183. The Law on Prevention of Money Laundering, as revised in 2003, indicates that the FCIS is the body responsible for ML. The AML duties are listed under art. 5:

Article 5. Functions of the Financial Crimes Investigation Service in Implementing Measures for Prevention of Money Laundering

1. The Financial Crimes Investigation Service shall have competence:

1) to collect and record the information set out in this Law about the financial operations of the customer and the customer carrying out such operations;

2) to collect and examine the information relating to the implementation of prevention of money laundering and to make proposals to institutions on how to enhance efficiency of the system for prevention of money laundering;

3) to communicate, according to the procedure determined by the Government, the information to the law enforcement and other state institutions about the financial operations carried out by the customer;

4) to conduct pre-trial investigation of legalisation of the money and assets from crime;

5) to co-operate with foreign state institutions and international organisations implementing the measures for the prevention of money laundering;

6) to provide to financial institutions and other entities information about the criteria for identifying the suspected money laundering and suspicious financial operations or transactions;

7) to supervise the activities of financial institutions and other entities related to prevention of money laundering.

184. Therefore, Lithuania has currently a police-type model of FIU. It was sometimes argued that although the FCIS – as the FIU – within the Ministry of the Interior is a law enforcement body, the MLPD itself would not be a police body. It was also indicated that the MLPD does not conduct any pre-trial investigations. This is done by FCIS' competent departments.

Recommendation 26

185. As seen above, the FCIS is responsible according to law to perform FIU tasks (criterion 26.1). It receives, analyses and disseminates disclosures of suspicious transaction reports (including in relation with FT, although the reporting duty is quite narrow in this respect – see Section 3.7) through its Money Laundering Prevention Division, established within its structure. The reporting regime is described in detail under Section 3.7. Despite the significant number of reports received (see below on statistics and recommendation 32), there are no fully computerised and secured reporting mechanisms in place as yet. Thanks to a recent programme (total cost: € 120,000) run under the EU-PHARE initiative, the MLPD has a system to store and analyse the information. On-line reporting exists only for smaller operators, but larger ones - also because of security and risk issues – need to hand over on CD, with a specific format, all the data and information they report. It is admitted that this can cause some problems in respect of the deadline for reporting (e.g. 3 hours in case of STRs, according to art. 9 LPML) and the exact reporting time/date.

186. The examiners found it uneasy to draw a clear-cut picture of the distribution of respective responsibilities between the MLPD and the rest of FCIS, and at occasions, there were contradictions in the responses provided.

187. The MLPD is basically in charge of informational work (collection and analysis). Other FCIS staff are also responsible to carry out operational work in the field of AML. FCIS has a number of responsibilities in the field of AML/CFT, including overseeing the implementation of the LPML, in addition to the huge number of reports to analyse. The current performance of the system probably owes a lot to the fact that – apart from the staff of the MLPD - a significant part of FCIS' staff are also doing on-site controls dealing with AML as part of their regular work. Currently, there is no supervision department as such within FCIS or the MLPD.

188. Guidance to obliged entities on the manner of reporting (criterion 26.2) is, according to the Lithuanian authorities, a task for the respective supervisors or self-regulatory bodies:

- the Bank of Lithuania for credit institutions,
- the Insurance Supervisory Commission for insurance undertakings and insurance broker companies,
- the Securities Commission for financial brokers, investment companies with variable capital, management companies and the depository,
- the State Gaming Supervisory Commission for gaming companies,
- the Council of the Lithuanian Bar Association for lawyers and lawyers' assistants (its responsibilities include to ensure that lawyers and lawyers' assistants are properly qualified and informed about the measures for prevention of money laundering specified in the LPML and other legal acts
- the FCIS for all the other entities, including providers of financial leasing.

189. In 2005, such AML instructions were approved for some sectors, i.e. credit institutions, financial brokers, investment companies with variable capital, management companies and the depository, financial leasing companies, post offices, notaries and auditors. The remaining sectors need also to be adequately covered and receive relevant instructions. missing instructions.

190. FCIS – that is, in this case at least, the MLPD – also provides continuous information through training events, answering questions from compliance officers and other contact persons within the industry and other obliged entities. The government has adopted a Resolution in 2002 (last revised in 2004) that contains a list of 24 criteria for the reporting of suspicious transactions for AML/CFT (the list includes as CFT indicator only the reference to internationally listed persons). The examiners understood that reporting forms are available for all entities subject to reporting, at least as far as the industry is concerned.

191. Lithuania does not have its own list of persons suspected of terrorism. The international lists have been disseminated by FCIS to the obliged entities' respective supervisors. At the time of the visit, these lists had not been published yet in Lithuania and entities had to consult them via the Internet or by other means. The Ministry of Foreign Affairs expressed their intention to publish on-line the updated UN lists.

192. The FCIS / MLPD have access to various sources of information and data (criterion 26.3), either directly, or indirectly: social security database, register of companies, register of immovable property, Customs database, state border police, central database of taxation authorities. Access to police information is mostly direct. For information on foreign citizens and businesses, the easiness of access by FCIS varies. Co-operation is said to be natural with certain European countries. Agreements are needed with others. In general, art. 7 of the LPML guarantees access for the FCIS to the information they need for AML purposes, although the drafting could be more specific and accurate. Para. 1 (1) provides for an exception concerning information held by lawyers and assistant lawyers. The examiners heard no complain from the side of FCIS / MLPD concerning possible obstacles such as banking or professional secrecy to obtain information and documentation from obliged entities (criterion 26.4). According to art. 11 para. (3) of the Law on FCIS, its officers can ask directly – without further intervention of a judicial authority – the direct communication of banking, financial, commercial and other files from the obliged entities.

193. Turning to criterion 26.5, once the analysis of an STR is complete, the MLPD (in case where a suspicion is confirmed) passes the information collected during the analysis to the respective FCIS territorial unit depending on the location of a person/company. The decision on the starting of the pre-trial investigation is being adopted at the territorial unit. The law also provides that FCIS presents the information about the customer's financial operations to law enforcement and other state institutions upon the order prescribed by the Government[13] .

194. The LPML provides that, where a financial operation or a transaction may be related to FT, the data on the operation or transaction must be forwarded within 24 hours by the FCIS, following the procedure prescribed by the Government, to the State Security Department.

195. Concerning the issue of independence and autonomy (criterion 26.6), to be seen also from the perspective of the institutional set-up (criterion 26.1), the management of FCIS – according to art. 10 of the law on FCIS - is directly subordinated to the Ministry of Interior[14]. The examiners also note that the Director of FCIS is appointed for a specified, reasonable term (5 years). The main source of concern for the examiners remains the full integration of the MLPD into the FCIS which is in fact the FIU. The MLPD has limited decision powers: as regards forwarding a case for further inquiry/investigation, as regards exchanging information with a foreign FIU or authority, requesting the postponement of a transaction etc., the decision of FCIS' Director or Deputy Director iss needed.

[13]This text was adopted after the visit (Government Resolution of 1st June 2006 approving the rules of providing information held by the FCIS)

[14] Article 10. The Management of the Service

1. The Service shall be managed by the Director of the Service who co-ordinates the activities of the Service and is responsible for them.

2. The Director of the Service shall be appointed and dismissed by the Minister of the Interior for a term of five years in the manner prescribed by the Law on the Public Service. The Director of the Service shall be directly subordinate and accountable to the Minister of the Interior.

3. The Deputy Directors of the Service shall be appointed and dismissed by the Minister of the Interior on the advice of the Director of the Service in the manner prescribed by the Law on the Public Service.

196. The examiners were concerned that the information appears mainly to be used in the field of FCIS' various (intelligence or investigative activities rather than for AML and to a lesser extent CFT) purposes. The Lithuanian authorities underlined that this was a consequence of their overall objective to react to any type of criminal activity that would appear as a result of the analysis of information. Looking at the results in terms of investigations for the years 2003 to 2005, the information collected by the MLPD is used to initiate more frequently investigations of fraud, smuggling, forgery of documents and the like, as opposed to ML:

	2005	**2004**	**2003**
Pre-trial investigations for ML triggered by the MLPD	2	5	5
Pre-trial investigations for ML initiated in total by FCIS (MLPD and other departments)	8	9	10
Pre-trial investigations for other crimes triggered by the MLPD (e.g. fraud, smuggling, forgery)	14	13	18

197. Although the Lithuanian authorities have a different view, the examiners believe that the current FIU model needs to be revisited, with a central AML/CFT importance to be given to the MLPD instead of the FCIS.

198. The above issues need to be examined also in relation to criterion 26.7. Although strictly speaking, information held by the FIU – that is FCIS - is securely protected and disseminated only in accordance with the law, it was acknowledged that there are no provisions which would regulate precisely the outcome of information on STRs and CTRs collected by the MLPD. The general regulations (law on FCIS, LPML – in particular art. 16 on "Protection of information Communicated to the Financial Crimes Investigation Service") refer to secondary texts which are not always in place. Art. 16 of the LPML states that information received by FCIS may not be disclosed except in the cases stipulated by law. This Article does not make a distinction between information held by the MLPD and the FCIS, which could suggest that all information collected by the MLPD is available to FCIS' other departments. The evaluators were informed after the visit that information held by the MLPD is specifically regulated by a confidential order of FCIS' Director issued on 24 November 2005, which specifically prohibits the availability of the information to other departments of the FCIS. In the view of the evaluators, this prohibition should be enforced through legislation.

199. Art. 5, para.5 of the Law on FCIS requires that "the Service shall inform the community through the mass media as well as issuing non-periodical newsletters about the implementation of preventive measures against criminal acts and other violations of law, set goals and other information related to the activities of the Service."

200. Therefore, there is no legal requirement for the FCIS / MLPD to publish a periodic report (criterion 26.8) and there was none produced until a first report of 40 pages was drafted in 2005 with the support of a EU PHARE programme (not published on FCIS' website): "Report on the implementation of money laundering prevention measures for 2004". The document contains statistics and typologies/trends but it is not fully clear

whether they are of a general nature or related to Lithuania. It is now the FCIS' intention to produce and publish a report annually, as the examiners were told.

201. As indicated earlier, FCIS joined the Egmont Group in 1999 and endorsed the Statement of Purpose and its Principles for Information Exchange. From the discussions held on site with the MLPD and other FCIS representatives, it seems that most elements of the Principles for Information Exchange are satisfactorily met. This being said, the examiners - as underlined previously – had some concerns about the current legal framework applicable to information held by the MLPD. Some reservations of the examiners in respect of potential problems connected with the absence of explicit reference to information exchange in the AML Law are mentioned under Section 6.5.

Recommendation 30

202. The functioning of FCIS is regulated by the Law on FCIS adopted in 2002. The Service, which employs approximately 460 people, comprises administrative structures, operational divisions and County divisions:

- administrative services: Financial Division, Supervision and Methodology Unit for Pre-trial Investigative Activity, Organisational Division, Auditors Consultants Division, Law and Personnel Division, Internal Auditing Division, Administrative Assistance Division, Internal Facilities and Maintenance Sub-division, Internal Investigations Unit are attributable to administration. The FCIS administration represents 12,7% of the total number of FCIS personnel.

- operational services: Information Technologies Division, Operative Squad, Money Laundering Prevention Division, Special Tasks Divisions, Illegal Use of Support Investigation Division, International Relations Division (it includes OLAF - Lithuania sub-division).

- the County Centres comprise Divisions staffed with investigators conducting the pre-trial investigation, and the Auditors Consultants Divisions (in Kaunas, Klaipėda, Panevėžys, Šiauliai, Vilnius Counties); sub-divisions are present in 5 counties (in Alytus, Marijampolė, Tauragė, Telšiai, Utena).

203. The FCIS has a variety of tasks and responsibilities in the AML/CFT field. The examiners understood that part of these lie with the MLPD whilst others are dealt with by other services of FCIS:

- the analytical work concerning reports received is done by the MLPD;
- the supervision of the implementation of the LPML and the international requirements in the field of CFT by all obliged entities is done by the 190 FCIS investigators who have inspection powers (including at the territorial divisions), as part of their regular work;
- providing guidance and training to those entities and other actors: this is done by the MLPD;
- the preliminary investigations related to ML: the 190 FCIS investigators.

204. As seen above, the AMLD is basically in charge of the analytical work. It has 13 staff organised in four groups, each one being responsible for certain types of transactions (e.g. Group 1 deals notably with payments and withdrawals on/from accounts, cash and foreign exchange transactions). The MLPD has its own Head and Deputy Head and the Department. MLPD staff work in close cooperation with the 10 regional contact persons (inspectors) at the county territorial divisions. The latter initiate the pre-trial investigations on ML. The MLPD is under the general authority of the Director but it is supervised by one of FCIS' Deputy Directors. Following a preliminary decision by the Head of the MLPD, the Deputy Director decides upon the transmission of a file to FCIS' investigative units.

205. Therefore, and subject to the reservations expressed earlier in respect of Recommendation 26, the requirements of criterion 30.1 seem globally satisfied. It is clear, however, that the multiplicity of tasks can only be addressed at the moment given that the FCIS as such is acting as FIU and can thus mobilise staff and other resources needed. If the MLPD was acting as the FIU, this would impact on the adequateness of the MLPD's resources.

206. A crucial point for any FIU is the existence of an adequate information technologies system to analyse the amount of information received, which is quite significant in Lithuania due to the reporting regime in place which is not limited to STRs. From that point of view, it was indicated that the MLPD has an IT system and analytical software that meets its needs.

207. As regards the high professional standards (criterion 30.2) required for FCIS staff, Chapters IV and V of the Law on FCIS provide for the duty of confidentiality, the prevention of conflicts of interests and the prohibition of secondary activities, the duty to report a crime, the duty to identify themselves with their service card, personal liability in case of infringements and non compliance with the regulations etc. The general rules of the State Service Law also apply and require a clean criminal record in order to be recruited as a civil servant. The conditions for the removal of a person are also listed (Lithuanian courts have already ruled on the illegality of unjustified removals). It was indicated that the Regulation on the MLPD provides for enhanced requirements. 87,8 % of FCIS' statutory officials have higher education (mainly in law or economy), other seek this education at the Lithuanian educational institutions. In order to implement statutory anti-corruption requirements, an Internal Investigations Group was established in February 2005.

208. Turning to criteria 30.3, on-going training is provided as needed and under the recently completed PHARE- financed programme, a number of FCIS staff were provided with expertise in the following areas: analysis of suspicious financial operations, methods and trends of ML, investigation of ML, co-operation with international and national institutions; prevention of terrorist financing, legalisation of proceeds from drug and psychotropic substances trafficking, development of the reporting system.

Recommendation 32

209. As regards the supervisory work, FCIS has drawn in 2003 23, and in 2004 36 administrative protocols for violations to the preventive requirements of the LPML.

210. Detailed statistics are kept by the FCIS/MLPD as regards the number of reports received and their origin, as the tables below show. No statistics are kept on the average duration of analyses/possible backlogs related to unprocessed STRs though. At least, it seems that the counting of reports made under art. 13 of the LPML seems to take some time. At the time of the evaluation (8-14 January 2006), there was no figure available for 2005.

Mandatory reporting, CTRs etc. (art. 13 and 14 LPML – see also Section 3.7 of this report)			
Reporting entities	**2004**	**2003**	**2002**
Credit institutions	1 015 647	714 267	540 271
Financial institutions	61 927	15 590	41 801
Customs	2981	4 083	3 748
Notaries	18 588	13 005	7 788
Casinos	932	803	109
TOTAL	1 100 075	747 748	593 727

Reported STRs (art. 9 LPML – see also Section 3.7 of this report)				
Reporting entities	**2005**	**2004**	**2003**	**2002**
Financial institutions and other subjects	64	47	77	110
State and other institutions	5 (1 from the Securities Commission, 1 from gaming supervision, 3 from citizens)	11	19	3
TOTAL	69	58	96	113

211. Other figures are available, but only for 2005, as regards the information exchanged (including STRs) with foreign countries. The figures indicate that the FCIS is taking advantage of the existing information exchange mechanisms.

STRs sent to foreign FIUs	5
Requests sent to foreign FIUs	105
STRs received from foreign FIUs	5
Requests received from foreign FIUs	65
Requests received from other foreign institutions	33

212. Finally, figures are kept on the outcome of the MLPD work but only those for 2005 are available[15], which does not allow to identify trends.

Intelligence reports provided to local branches of FCIS (as a result from STRs)	74 (46)
Intelligence reports provided to State Tax Inspectorate	19
Pre-trial investigations started on the basis of intelligence reports (as a result from STRs)	14 (8)
Pre-trial investigations started for ML (as a result from STRs)	2 (1) [2004: 5; 2003: 5]
Total of pre-trial investigations started for ML	8
Prosecutions	1

213. These show that the overall results achieved, in terms of preliminary investigations and, above all, prosecutions remain modest when it comes to ML. As indicated under the developments related to Recommendation 26, there are more investigations initiated for other crimes falling within the competence of the FCIS as well (fraud, smuggling etc.). The figures for preliminary ML investigations started as a result of the AML reporting regime (2 in 2005) and prosecutions (1 in 2005) remain low, in the examiners' opinion.

214. The Lithuanian authorities have also advised that both the STRs and CTRs had triggered preliminary investigations (roughly, about one third would be based on the analytical work related to STRs and two thirds would be based on that related to CTRs).

215. Throughout the discussions, the examiners also had the feeling that FCIS is mainly looking at ML from the perspective of its other competencies (economic and financial crime). This might be justified by the fact that VAT fraud is currently considered as the major source of criminal proceeds. But the examiners noted that there are other criminal activities, including those traditionally connected with organised crime groups, for which the FCIS might need the support of other institutions, such as the police (see Section 2.6). As indicated earlier, the Lithuanian authorities take the view that the current picture of cases is a consequence of their overall objective to react to any type of criminal activity that would appear as a result of the analysis of information.

[15] The following figures were provided after the visit

INVESTIGATIONS ON MONEY LAUNDERING

	2003	**2004**	**2005**	**Total at the moment**
Pre-trial investigations started	10	9	8	27
Investigations ongoing	2	3	5	9
Cases in court	1	2	2	5
Prosecutions			1	1
Confiscations			1	1

Investigations ongoing and cases in court showed in respect of the year they were started.

2.5.2 Recommendations and Comments

216. The FCIS is undoubtedly a powerful institution which has significant means – including legal and investigative means – to deal with its many responsibilities in the economic and financial crime fields.

217. The FCIS might be an effective institution to combat economic crime and to protect the financial interests of the State. However, seen from the AML/CFT perspective, in the opinion of the examiners the current Lithuanian FIU model is not fully satisfactory. As things stand, the MLPD within FCIS cannot be considered as an FIU, and the competencies of FCIS – which is legally empowered with FIU responsibilities – are too broad for an FIU. At the moment, the available figures indicate that the AML preventive / reporting regime is mostly used for the detection of other crimes. Whilst this is not unacceptable, the difference is quite significant and leads the examiners to think that there is a risk that ML could become a neglected issue.

218. Therefore, *it is recommended to strengthen the autonomy and identity of the MLPD - within the FCIS – for it to become the Lithuanian FIU; it should be granted its own powers, an IT system protected by adequate regulations in order to ensure that STRs and CTRs are primarily used for AML/CFT purposes independently from the FCIS' own competencies, and in accordance with the Egmont principles.*

219. *The electronic reporting system, with adequate security/safety measures, needs to be completed for all the obliged entities, given the deadlines provided for in the LPML and to avoid unnecessary logistical constraints for the industry.*

220. *Furthermore, the annual report that the Lithuanian authorities have now decided to produce at regular intervals should be the occasion to publish information on ML/FT which would clearly be specific to Lithuania.*

2.5.3 Compliance with Recommendations 26, 30 & 32

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**LC**	MLPD should be given more autonomy and own powers; legal framework applicable to use of information collected needs to be clarified in law
R.30	**C**	(certain critical issues are addressed, according to the Methodology, under R.26)
R.32	**LC**	Figures are available but not systematically for each year

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30 & 32)

2.6.1 Description and Analysis

Recommendation 27

221. As indicated in the previous Section of this report, the FCIS is clearly designated to be the lead agency for ML-related issues; it is also in charge of ML investigations. According to the current distribution of responsibilities - if not in the legal provisions, at least in practice - this investigative competence for ML is exclusive and the police are not – and do not consider themselves – concerned with ML. Therefore, the FCIS is acting both as the Lithuanian FIU and as the investigative body.

222. The State Security Department (SSD) is in charge of investigations for FT, both on its own initiatives or following a report or information forwarded/sent to it by the FCIS.

223. It shares this responsibility with the Lithuanian Criminal Police (Police Department under the Ministry of Interior). The replies to the questionnaire contained no information in their respect and little information was available on-site since the representative of the Group against Terrorism within the Organised Crime Bureau indicated that this Bureau had just been established on 1 January and counted one officer only (the person met by the team) for the time being.

224. The State Security Department has, according to the Lithuanian authorities and the Law on National Security, an overall leading role when it comes to the effectiveness of CFT efforts. The examiners felt during the interviews conducted on site, that the SSD representatives were not fully aware of this responsibility. They indicated that art. 6 of the LPML does not explicitly provide for such a responsibility.

225. Once a formal pre-trial investigation is initiated for ML (by the FCIS) or FT (by the SSD), a prosecutor is appointed. The prosecutor's office can delegate the investigation to the body mostly competent to handle the case, or carry out the investigation itself (through the Department of pre-trial investigation). The prosecutor supervises the investigation in any case. Cases dealing with corruption and organised crime are dealt with, at the prosecutor's office, by the Department for Corruption and Organised Crime.

226. It is quite strange why the police are excluded/exclude themselves from the money laundering field. The examiners wish to remind that one can see criminal assets as a black box for which there are two keys: the preventive regime and the FIU work traditionally allows to detect transactions which enter or leave the box, whilst the police, in the course of their own investigations dealing with criminal activities which generate significant proceeds also can get an insight into that box. They have the second key, so to say. At present, and despite the importance of certain types of major proceeds generating criminal activities which are not within the competence of FCIS, only the latter would be dealing with the financial dimension of those criminal activities. In this context, it is questionable whether FCIS, despite its own investigative competences, is the best placed in all cases to deal with them. Especially in cases where criminal groups have certain connections/complicities/structures related to the financial or business

world and where money is laundered on a regular basis, it would be difficult for FCIS to start an investigation from zero, without intelligence or knowledge of such a group and without having already an overall picture of the predicate offence-related problems. Whatever the real number of cases handled at the moment for money laundering are (5 or slightly more, depending on the source), the majority of them are related to VAT fraud. This is rather disappointing, in the light of the overall crime picture given in the introduction.

227. As far as special investigative techniques are concerned (criteria 27.2 to 27.4), including controlled deliveries, a distinction is needed between two phases.

228. One phase is the so-called "operational phase" which is regulated by the Law on Operational Activities of 2002. This phase comprises, according to art. 3, the "overt and covert intelligence activities by operational entities conducted in accordance with the procedure established by this law". The operational entities are listed in the same article and include (the list is not limitative): the Second Department of Operational Services under the Ministry of National Defence, Service of Financial Crimes Investigation under the Ministry of the Interior, the Customs Department under the Ministry of Finance, the Police Department under the Ministry of the Interior, the Special Investigations Service, the VIP Protection Department under the Ministry of the Interior, the Department of State Security, the State Border Protection Service under the Ministry of the Interior. The law provides for the following investigative methods:

- Covert monitoring of postal parcels, document parcels, money orders and related documents, telegraphic and other communications, mail, as well as the use of technical means (art. 10): the request made by the investigator , with the indication of several details, is approved by the Head of the agency, then submitted to the prosecutor general or his deputy who then submits it for final approval to a county court judge. The measures can be applied for a period of 3 months, which is extendable for an indefinite number of times (but for less than 3 months each time);
- Covert entering of residential and non-residential premises, transport vehicles and searches thereof, temporary seizure of documents, seizure of materials, raw materials and production samples and other articles without disclosing their seizure (art.11); the procedure is similar to the above
- Simulation of a criminal act (art. 12): the duration is indefinite, and the final authorisation is given by the prosecutor.
- Controlled transportation (including cross-border): requires the approval of the prosecutor.

229. In principle, the information collected is classified and used for intelligence purposes. However, art. 17 provides for possibilities to declassify the information and use it as evidence in a criminal case or for other purposes "in cases determined by the laws". This requires that the file contains a document certifying that the operational activities have been implemented according to the law. The admissibility as evidence is examined by the judge.

230. The second phase is the pre-trial phase, regulated by the Criminal Procedure Code but the examiners understood that evidence - including in ML and FT cases - is mostly gathered according to the Law on Operational Activities during the operational phase,

since investigative powers seem to be broader under the former; but in the absence of further information, the examiners could not verify this and analyse the possible repercussions on the procedure. It remained unclear whether the Lithuanian authorities have the legal power to waive arrests or seizures for ML and FT.

231. In any event, the English translation provided to the examiners does not refer under art. 9 on the scope of application to any of the ML and TF offences. Since the measures can also be used, as a general rule, also in cases where the constitutional order or national security is threatened, it is not unlikely that measures would be applied for terrorism-related investigations in some cases. In any event, the concept of terrorism financing, in the FATF and international understanding, is specific and not necessarily a national security matter given its international dimension.

Recommendation 28

232. From the interviews held on site, it seems that FCIS has sufficient means and access to various sources of information (this was rated under the previous Section). The broad powers derive from the Law on FCIS (direct access to documentation and information held by obliged entities) and the Criminal Procedure Code (as regards the pre-trial investigation).

233. FCIS and other operational agencies are also entitled to gather intelligence and information on the basis of the Law on operational activities (that is by using covert investigative techniques, in some cases).

234. Concerning the SSD, the information provided was sometimes contradictory. The SSD themselves indicated that they can obtain directly, through an official request, all the information they need from any financial institution and other entities, including lawyers. On the contrary, the tax administration representatives indicated that the SSD has sometimes limited access to information - for instance from the tax administration itself (only certain officials of the SSD can contact them, the information provided cannot be nominative). The tax administration also underlined that it is often easier for the SSD to request the tax administration to carry out an audit or inspection either of an entity (e.g. a company or charity) or a third party (e.g. the bank where the company or charity has opened an account), given that the tax administration in its audit/inspections can go beyond the fiscal matters. It was also unclear whether there is an agreement in place to facilitate the access of the SSD to information held by the tax administration (while the tax administration said there was no such agreement, the SSD mentioned the existence of various agreements). It was also said that there is a multilateral agreement in place, that was signed by all operational bodies involved in the fight against crime (including ML and FT): the Prosecutor General's office, State Security Department, Special Investigation Service, FCIS, Command Security Department, the Department of Operational Services under the Ministry of Defence, the State Border Guard service, Customs Department and the Police Department. The text of this agreement is confidential, which could explain the contradictory information provided to the examiners.

235. Taking witness statements (criterion 28.2) is provided for in the Code of Criminal Procedure, which also contains measures to protect such persons and collaborators of justice in some cases.

Recommendation 30

236. Assessing the needs of institutions is a delicate task in the case of Lithuania.

237. At present, the MLPD is basically doing analytical work. In this context, resourcing and staffing seem adequate. Should it become a more autonomous entity – within FCIS - performing also in practice supervisory tasks without relying on the inspection work done by the FCIS' other departments, the current situation will need to be reviewed. The issue of greater operational and financial autonomy will also need to be re-examined in that context.

238. Since the police is not competent for ML investigations, it is difficult to assess their needs. Furthermore, the Group against terrorism within the Organised Crime Bureau was only created in January 2006. At the time of the on-site visit, the Group consisted of one officer only (the Head). The department responsible for counterfeited currency and credit cards, although established in (July) 2004, only counted three staff. The needs of these departments must be reviewed. Furthermore, the police needs also to play an active role in the detection and investigation of money laundering. This makes the issue of their means and expertise even more crucial.

239. The SSD, the Customs, the prosecutors and the courts seem, in general, to have the means to carry out their functions. There were no particular complaints from their side. The network and computerisation of the prosecution offices needs to completed. The SIS was subject to a specific evaluation under GRECO and its needs assessed in that context (it was found that it needed to be strengthened and made more familiar with temporary measures in respect of proceeds from corruption, including the means to manage such frozen assets).

240. As indicated earlier in this report, training in the AML field was recently provided on a large scale, with the support of the EU, to a number of law enforcement officers from different agencies and prosecutors. Training activities in this field are continuing under the initiative of the FCIS.

Recommendation 32

241. The work of the FCIS, acting as FIU and main law enforcement agency in charge of ML investigations has been reviewed in the previous section.

242. The information provided to the examiners as regards the main proceeds generating offences shows no real improvements over the last few years regarding the current structure and characteristics of criminal activities, which are still at a high level and involve several organised crime groups. Furthermore, there are no police statistics available, that would demonstrate their commitment to the targeting at an early stage of the proceeds from criminal activities. This puts at question the effectiveness of the police and prosecution work, which thus needs to be reviewed.

2.6.2 Recommendations and Comments

243. *In the light of the above, it is recommended*:

- *to ask the police to also take responsibility for investigations of ML and FT in their own field of competence, and to take awareness-raising measures and continue to provide training on methods to target the proceeds from crime;*

- *to review and clarify in legislation, as needed, access by the SSD to information held by obliged entities;*

- *to clarify/amend as appropriate the legal framework for the use of special investigative techniques also in ML and FT cases, and to ensure that the provisions of the law on Operational Activities and the Code of Criminal Procedure are consistent;*

- *to review the effectiveness of efforts of the criminal police and prosecution services, together with their needs, in particular the services dealing with FT and predicate crimes which are important from the perspective of AML (e.g. department dealing with organised crime and terrorism, department dealing with counterfeited currencies and credit cards etc.).*

2.6.3 Compliance with Recommendation 27, 28, 30 & 32

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**PC**	FCIS focuses on ML in relation with its own field of competence and the police is not looking at ML for cases under its competence (including drugs, prostitution etc.); no clear overall responsibility for FT below the government; special investigative techniques not usable for ML and FT in all cases
R.28	**C**	
R.30	**LC**	Increase of staff is needed for the police units dealing with terrorism and counterfeited currency and credit card fraud
R.32	**PC**	Effectiveness of the police and prosecution work needs to be reviewed since the current structure and characteristics of criminal activities indicates no real improvements in recent years; no statistics kept by the police

2.7 Cross Border Declaration or Disclosure (SR.IX & R.32)

2.7.1 Description and Analysis

244. Cross-border movements of cash are regulated by Government Resolution 1331 of 3 December 1997 (as subsequently amended), as well as the LPML (art. 14):

Resolution 1331

(…)

4. Cash incoming to the Republic of Lithuania from third countries defined in the Law of the Republic of Lithuanian on Customs (Official Gazette (*Valstybės žinios*) No 73-2517, 2004) or outgoing from the Republic of Lithuania to third countries, if a single amount of the incoming or outgoing cash exceeds the amount specified in paragraph 2, Article 14 of the Law on Prevention of Money Laundering, must be declared in writing to the customs offices of the Republic of Lithuania in the manner prescribed by legal acts.

Art. 14 LPML. Activities of Customs Offices

1. Customs offices shall undertake control of the sums of cash brought in to the Republic of Lithuania and taken out from it in a manner prescribed by the Government.
2. Customs offices must record each case of incoming or outgoing cash, if a single sum of the incoming or outgoing cash is in excess of LTL 10 000 or its equivalent in foreign currency.
3. Customs offices must promptly, but not later than within seven working days, notify the Financial Crimes Investigation Service if a person brings in to the Republic of Lithuania or takes out from it a single sum of cash in excess of LTL 50 000 or its equivalent in foreign currency.

245. When combining both texts, one is led to conclude that Lithuania has opted for a declaration mechanism. The threshold of LTL 10,000 (about € 3,000) provided for in Art. 14 para 2 of the LPML is in line with criterion IX.1 (the other threshold mentioned under para. 3 is the limit above which the FCIS must be informed by the Customs of a given movement. The practical modalities of this declaration system are regulated in the Customs Director General's Order No. 423 of 1997 (which was not available at the time of the visit). The declaration system also applies to precious metals and stones.

246. As seen in the statistics under Section 2.5.1, the Customs have filed 3000 to 4000 reports under art. 14 to the FCIS every year during the period 2002-2004.

247. The import / export of cash from/to the Republic of Lithuania is not restricted. No taxes are levied by the Customs on cash imported or exported. Foreign and Lithuanian citizens are subject to the same procedure for declaring cash.

248. The fact that the declaration system is limited to cash, whereas SR.IX is also applicable to bearer negotiable instruments (cheques, securities etc.) is a major lacunae in the system. Those cannot be issued in Lithuania, according to the representatives of the Bank of Lithuania met on site, but they can be issued abroad and imported to, or transit through Lithuania. The Customs representatives confirmed that in case of transit, two declarations must be filled in.

249. On 1 May 2004, when Lithuania joined the EU, the declaration (and control) system ceased to apply to currencies carried from, and to EU countries. The examiners noted that SR.IX, although it is the most recent FATF standard, does not contemplate any exception, nor does it foresee any possible exception in case possible supra-national regulations (in the present case, the Community rules on the freedom of movement of

assets) would contradict this Recommendation. The interpretative note is also silent on this issue and there does not seem to be established "case law" as yet.

250. As regards SR. IX in general, the Customs representatives admitted that they had no indicators to identify ML at their level, and that no special awareness raising measure, information, or documents had been produced, nor made available to them in respect of FT. Nevertheless, they stressed that the Customs have a powerful risk-based management approach and criminal service, which would allow them to mobilise a lot of intelligence. Despite this, there is clearly a need to take measures to strengthen the capacity of the Customs to detect funds possibly linked with ML and FT. Although an agreement exists with FCIS according to which the Customs must share intelligence with the latter in respect of ML (see beneath), at the moment, and apart from the mechanism contained in art. 14, the LPML does not formally require the Customs to report suspicions of ML and FT to FCIS.

251. As regards criterion IX.2 and IX.3, in case of false declaration or undeclared cash, Customs officers, in order to investigate all circumstances of the violation, have the right to inquire about the background of the funds, for ex. purpose of the trip, duration, origin of money, purpose of money, etc. The Lithuanian authorities are also empowered to stop or restrain currency for a reasonable time (3 hours to check the identity, and 5 hours to establish a protocol of findings) in case they need to check the legitimacy of monies. As indicated earlier, there have been no measures taken to make the Customs familiar with AML/CFT issues. They would use the measures described in this paragraph essentially to handle the case as a smuggling case.

252. The FCIS has on-line access to the Customs database and therefore, the information registered is in principle available directly to the FCIS, which meets the requirements of criterion IX.4 and IX.5. Declarations concerning cross-border movements of cash above the value of LTL 50,000 must be reported in any case to the FCIS within 7 working days, according to the LPML. This time limit is quite long and it might need to be reviewed in order to ensure a swift response from FCIS in each case, when it comes to postponing measures etc. (as required under criterion IX.3).

253. Both undeclared assets and declared cross-border movements of cash are registered but it remained unclear for which period of time. Data about persons subject to administrative penalties, including for illegal carriage of cash, are stored in the register of customs law offenders. Data about persons in relation to whom pre-trial investigations concerning smuggling of cash (LR Criminal Code, Art. 199) have been initiated, is stored in the database of the Customs Criminal Service. In principle, data about occasions of illegal carriage of cash which can be related to ML or FT, can be stored as well, in the intelligence databases of the Customs Criminal Service. Since the Customs are not sensitised to AML/CFT issues, the examiners believe it is unlikely that such information is stored in practice.

254. As indicated earlier in this report, an agreement for operational cooperation and overall coordination in criminal matters in general (including ML), was signed between the Prosecutor General's office, State Security Department, Special Investigation Service, FCIS, Command Security Department, the Department of operational services under the Ministry of Defence, the State Border Guard service, Customs Department and the Police Department. According to this text, the Customs must provide the FCIS with

intelligence related to ML. A co-operation instruction was specifically approved between the FCIS and the Customs Department according to which the Customs must inform FCIS about every occurrence of illegal cash smuggling through the territory of the Republic of Lithuania. The mentioned instruction sets rules on exchanging information related to crimes and other violations of financial law as well as the recording of this kind of information.

255. In principle, it is possible to establish joint investigative groups; in practice, once the prosecutor is informed of a case which requires his involvement, he would designate the agency in charge. The examiners observed that, given the apparent lack of experience of the Customs with ML/FT issues, it could be worth using more frequently joint investigative groups in cases where the prosecutor suspects ML/FT.

256. At the international level (criterion IX.7), the Lithuanian Customs cooperate and exchange information with other states' Customs administrations on the basis of mutual cooperation agreements in their field activities, and international conventions (Naples II, Nairobi Convention). During pre-trial investigations, exchange of information is based on agreements of mutual legal assistance in criminal matters and the European Convention on Mutual Assistance in Criminal Matters (1959). In practice, cooperation is taking place on a regular basis (daily, weekly, monthly) for the purposes of data comparison, exchange of experience with trends and criminal techniques, problems of a practical or legal nature etc. International cooperation at the level of the State Border Guard Service was also described as active, and also based essentially on existing international agreements.

257. As regards criterion IX.8 and IX.10, in case of a false statement or disclosure, or non declaration and if the amount of cash is comprised between LTL 10,000 and LTL 31250, the cash is seized and administrative penalties of LTL 3,000 to LTL 10,000 can be applied, against natural persons only, by the Head of the regional Office or the administrative court. If the sums exceed LTL 31, 250, the Customs would initiate a pre-trial investigation for smuggling according to Art 199 of the Criminal Code with penal sanctions (applicable also to legal persons) pronounced by the court (up to 8 years imprisonment and/or a fine). The cash would be seized until the final decision of the court, and then possibly confiscated. There are no specific sanctions as required by criterion IX. 9, apart from the initiation of a criminal investigation, either by the Customs, FCIS or the police on the grounds of the general criminal law provisions on ML and FT (see Part 2 of this report). The Customs, due to their criminal investigative power, have the possibility to apply the provisions of the Criminal Code or the administrative regulations when it comes to the freezing, seizure and confiscation of the goods involved and the instruments. The strengths and weakness as regards the Criminal law provisions have already been discussed under the relevant Section of this report.

258. From the information available, it is hard to conclude that measures have been taken to ensure that the SR.III also applies in the context of persons carrying out a cross-border movement of cash (criterion IX. 11). As indicated earlier, there have been no concrete initiative on FT taken so far at the level of, or involving the Customs, which mainly work on the basis of their own information and intelligence sources and databases. The Border Police representatives indicated that their automated information system would

immediately tell them if the person controlled requires special measures since they are linked with the State Security Service with whom a close cooperation exists.

259. Cross-border movements of precious metals and stones (criterion IX. 12) must in principle be declared, by using the same form as the one used for movements of cash. The data and information collected becomes part of the regular data-comparison exercise done in cooperation with foreign countries, which also includes the sharing of experience and information on trends, incidents etc. The examiners understood that there is no explicit requirement to start an inquiry for every unusual movement which would not fall under the category of undeclared or smuggled goods. From the discussions held on site, it turned out that the Customs would primarily turn to the tax administration, since most criteria triggering a report to other authorities deal with taxation (e.g. persons carrying larger amounts of goods or merchandises but who have unpaid tax debts).

260. The Customs and Border Guard have taken measure to protect the information systems against unauthorised access, to identify and record every access. A division of tasks prevents the alteration of data. At the time of the on-site visit, reports under art. 14 were not made on-line[16]. The FCIS have on-line access to the Customs databases, and upon request, to the information held by the Border Guard.

Recommendation 32

261. There are no ML or FT specific statistics available apart from the figures collected by the FCIS in respect of art. 14 of the LPML on cross-border declarations above LTL 50,000. This is partly explained by the obvious lack of involvement in AML/CFT issues. The examiners noted that in 2005 (see tables under Section 2.5) there has been no suspicion of money laundering reported either by the Customs or the Border Guard

2.7.2 Recommendations and Comments

262. At the moment, the Customs and the Border Guard are not really involved in AML/CFT, which would explain the absence of any specific measure at their level, whereas these authorities seem to be able to contribute significantly in these fields, and they do report regularly under art. 14 to the FCIS.

263. *The implementation of SR.IX as a whole needs to be reconsidered in order to address a number of issues, in particular:*

- *to extend the scope of the reporting duty to bearer negotiable instruments*
- *to make the Customs and Border Guard more aware of, and involved in AML/CFT issues*
- *to review, ideally in consultation with other EU countries, the EU exception to SR. IX*
- *to review the time limit for reporting to FCIS movements above LTL 50,000*
- *to extend the existing national cooperation mechanisms to AML/CFT*

[16] Since then, they are made online.

2.7.3 Compliance with Special Recommendation IX & Recommendation 32

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**PC**	Implementation of SR IX as a whole needs to be revisited (reporting duty is too narrow, Customs and Border Guard need to be more involved in AML/CFT issues, time limit is inadequate for reporting to FCIS movements above LTL 50,000, cooperation mechanisms in place need to extended to AML/CFT
R.32	**PC**	The Customs do cooperate under Art. 14 LPML but no review of effectiveness of measures undertaken by Customs and Border Guard, who are not paying sufficient attention to AML/CFT

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering or terrorist financing

264. The Law on the Prevention of Money Laundering is meant to address money laundering and the financing of terrorism. The Law does not specifically address the issue of the financing of terrorism except to the extent that it requires the FCIS to report to the State Security Department any suspicion that a financial operation or a transaction may be related to the financing of terrorism. Otherwise, at least for reporting entities under the Law, the risk of terrorist financing, taken into account as a separate issue from the risk of money laundering, is restricted.

265. The Law makes no exceptions in the first instance on the applicability of the obligations under the Law to the identified entities in both the financial and non financial sector. Indeed, the law extends these obligations to providers of postal services who provide services of domestic and international money transfers. Furthermore, according to the provisions of Article 3 of the Law on Foreign Exchange only credit institutions specifically so licensed can provide foreign exchange services and therefore there are no separate institutions (e.g. bureau de change) providing such services.

266. The Law does however make certain exceptions on the applicability of the obligations to the entities as identified in the law. Some exceptions refer to the degree of the applicability of the identification procedure in cases as specified by the FATF Recommendations and the EU Directives, such as for the insurance sector. The Law, however, at time goes beyond this and provides certain exceptions to the legal profession which, however, appear to be more of a *compromise* in nature rather than a risk consideration. Other risk based exceptions in the Law can be found in the definition of *financial operations* which excludes payments to state and municipal institutions and other institutions maintained from the budget, the Bank of Lithuania and state and municipal funds, diplomatic missions or consular institutions of foreign countries. Furthermore financial institutions are not required to communicate information or currency transactions in excess of LTL50,000 (Euro15,000) where the

customer's activities involve large scale, periodic and regular financial operations that are in conformity with the criteria determined by the Government – Resolution 931 of July 2004. This exception does not apply to other non-financial entities and professions.

267. Therefore, certain risks are to an extent assessed and taken into consideration in the AML/CFT system in different respects including in the regulatory and supervisory framework. In particular, the Bank of Lithuania applies a risk-based approach in supervising and monitoring the banking system not only in the selection of banks for periodic on-site examinations but also in the application of the inspection procedures. Risk-based supervisory approach in the other financial sectors seems to be less observed.

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

3.2.1 Description and Analysis

Recommendation 5 – Customer Due Diligence Procedures

268. Customer identification procedures are generally covered through Article 10 and Article 11 of the Law on the Prevention of Money Laundering. Article 10 sets out the general obligation to identify the customer either in his presence or in the presence of his agent before opening accounts, accepting deposits, providing services of safe custody or when concluding agreements. The identification obligation also applies when performing a single or several related financial operations or transactions which exceed LTL50,000 (Euro 15,000) or its equivalent in foreign currency. Article 11 further requires the identification of the customer and of the person on whose behalf the customer is acting if he is not acting on his own behalf.

Anonymous accounts or accounts in fictitious names

269. Criterion 5.1 requires that financial institutions are not permitted to keep anonymous accounts or accounts in fictitious names. Article 10(4) of the AML Law prohibits the performance of any operation, including the opening of accounts, specified in the Article unless the required correct identification documents are produced. Article 15(4) specifically prohibits the opening of anonymous accounts. Furthermore although the law is silent on the matter, the Bank of Lithuania informed that certificates of deposits or other securities cannot be issued to bearer or in fictitious names. The evaluators have also been informed that, consequent to the foregoing, numbered accounts are also prohibited.

Customer due diligence

270. Criterion 5.2 requires financial institutions to undertake customer due diligence (CDD) measures when:

- establishing business relationships;
- carrying out occasional single or several interlinked operations above the designated threshold (Euro 15,000);

- carrying out occasional wire transfer transactions (INSRVII)
- there is suspicion of money laundering or financing of terrorism;
- the financial institution has doubts about the veracity or adequacy of previously obtained customer ID data.

271. Article 10 of the AML Law, which does not specifically make references to CDD measures but only to ID procedures, requires the identification of the customers in the presence of the customer himself or his agent when:

- opening accounts, accepting deposits, providing services of safe custody or entering into agreements with or for the customer;
- performing a single or several related financial operations or when entering into transactions which exceed LTL50,000 (Euro 15,000) or its equivalent in foreign currency;

272. The AML Law however is silent on the imposition of CDD measures as defined in Criterion 5.2 which, as a key element of the AML/CFT Methodology, is required to be set out in primary or secondary legislation. Customer identification in relation to wire transfer transactions is partly addressed under Article 5 of the Law on Payments which, however, seems to be disapplied to international or cross-border credit transfers in terms of Article 3 (1) of the same Law. Furthermore, it is only through the Bank of Lithuania Resolution 183 of November 2004 (Article 13) that staff of credit institutions are required to request ID documents when they have a suspicion as to the customer's identity, legality of monetary operation or in other cases. Such an obligation is also imposed under resolutions of other supervisory authorities but the evaluation team could not establish consistency across all resolutions or guidance where, indeed, in some instances, it is only recommended to request ID documentation where there is suspicion. Furthermore, there is no reference that, where suspicion arises, identification is obligatory irrespective of the threshold. Indeed, in some resolutions of supervisory authorities (e.g. Bank of Lithuania) it is specifically stated that "…i.e. only upon having ascertained the sum of a monetary operation and having established that it exceeds the sum prescribed by the law, the credit institution staff must request from the customer the provision of the proof of his identity." Finally, the Law is silent with regards to identification obligations in instances where a financial institution may, in due course have doubts about the veracity or adequacy of previously obtained ID data. Therefore, although in general and as advised by the Lithuanian Authorities the system works, its effectiveness in relation to Criterion 5.2 and its statutory obligations need to be further addressed.

Required CDD measures

273. Further to Criterion 5.2, Criterion 5.3 requires financial institutions to identify the customer's identity and to verify his identity using reliable independent source documents, data or information. The paper of the Basel Committee Working Group on Cross Border Banking entitled 'General Guide to Account Opening and Customer Identification" establishes the type of information that is to be obtained in the case of natural and legal person, including corporations and professional intermediaries, whilst

recommending various methods of verifying such information. The Lithuanian AML Law is completely silent on the type of identification documents required and the verification thereof. However, Government Resolution No 930 establishes the valid identification documents that financial institutions are obliged to require in the case of natural persons, domestic and foreign legal persons and agents acting on behalf of customers. Although the type of documents required under Resolution No 930 are in general adequate in terms of the Basel Paper requirements and therefore conducive to an adequate identification, yet the Resolution itself falls short of suggesting methods of verification of the information as required under the Basel Paper.

274. With regards to legal persons or legal arrangements, Criterion 5.4 requires the verification that any person acting on behalf of a customer is so authorised and is identified together with the verification of the legal status of the legal person or arrangement. The former part of the Criterion is required to be set out in primary or secondary legislation. Other than the requirement under Article 11 of the AML Law for the identification of both the applicant and the beneficiary in the case where a person is not acting on his own behalf, the AML is silent on both issues of Criterion 5.4. However, Government Resolution No 930 requires details of the authorisation for a person to act as an agent where that person acts on behalf of any person (legal or natural). Resolution No. 930 further prescribes that, for legal persons, financial institutions are also required to obtain details of legal form, proof of incorporation and other details but does not require details on directors or provisions regulating the legal representation. The authorities however informed that these are included in the documents of incorporation.

275. Criterion 5.5 addresses the identification of the beneficial owner of a transaction and includes a number of sub-criteria that need to be present in satisfaction of compliance. Article 11 of the AML Law provides that where a customer opening an account or performing other operations referred to in paragraphs 1-3 of Article 10, is acting on behalf of a third party, financial institutions and other entities must establish the identity of both the customer (applicant) and the person on whose behalf that person in acting. The Law and other Government Resolutions in this regard, however, are silent on issues relating to the ownership and control structure of the customer (beneficiary) where the customer is a legal person. The evaluators have been assured that despite this the system functions and is effective. The evaluators however express concern on this assurance because the ownership structure, in particular, cannot be established since the Register of Legal Persons does not record subsequent changes in shareholdings that take place after registration, not only for public but also for private companies.

276. The AML Law does not address the requirements under Criterion 5.6 for obtaining information on the purpose and intended nature of the business relationship. These are partly addressed through Resolution 183 of the Bank of Lithuania for credit institutions but mostly with reference to correspondent banking and through the Law on Securities Market (Art. 24 para. 3). The evaluators therefore question the extent to which financial institutions are effectively applying customer acceptance policies and formulating a customer business profile particularly for ongoing due diligence, even though the Lithuanian Authorities and the industry claim that they do so.

277. Criterion 5.7 requires that financial institutions conduct ongoing due diligence on the business relationship. Such a requirement must be in the form of an obligation

prescribed in primary or secondary legislation. The AML Law is silent on this matter, which is also not addressed under any Government resolutions. Criterion 5.7 is only partly addressed through Resolution 183 of the Bank of Lithuania but is not addressed in relation to other sectors of the financial system. The obligation under this criterion goes beyond the identification process documents, in that it requires the scrutiny of transactions throughout the relationship to ensure that these are conducted consistent with the institution's knowledge of the customer business profile, risk and source of funds. As already established under criterion 5.6 above, there is no obligation for institutions to obtain information to establish a customer's business profile. The evaluators have been assured that, in practice, financial institutions do undertake ongoing scrutiny of transactions. In the case of the banking sector, such scrutiny is checked by the institution's internal audit and by the on-site examiners of the Bank of Lithuania.

Risk

278. As already stated the AML Law does not take a risk-based approach. In the case of credit institutions the risk assessment is addressed through article 12 of the Bank of Lithuania Resolution No 183. Credit institutions are required to complete a list of higher risk customers; establish the principles upon which such lists are compiled; and designate persons responsible to update such lists. Such requirements are not however addressed for other sectors of the financial system, such as the insurance and securities sectors. Criterion 5.8 is therefore only addressed by the banking sector.

279. The application of reduced or simplified measures where there are low risks in terms of Criterion 5.9 are partly addressed by the AML Law, such as in the case of insurance undertakings where the annual premiums for life policies are within the established lower limits (it should be noted that the limits of LTL 3,500 for periodic premiums, and LTL 8,500 for single premiums contained in art. 10 para 2. of the AML Law are in line with the exceptions provided for in art. 3(3) of the 2nd EU Directive). In conclusion, therefore, the Lithuanian AML Law does not currently provide for the application of simplified or reduced client identification measures (the Law makes no reference to 'the full range of CDD measures').

Timing of verification

280. Criterion 5.13 requires the timely verification of the identity of the customer and the beneficial owner. Paragraph 1 of Article 10 of the AML Law requires the identification of customers prior to opening of accounts, accepting deposits, providing safe custody services or concluding agreements or when performing one-off single or several related transactions exceeding the threshold of LTL50,000 (Euro 15,000). In the case of life assurance undertakings identification of the customer and the insured person is linked to the annual premium. Indeed Article 10(4) prohibits the performance of any operations as specified in Article 10 where the identification documents are not produced, are incomplete, or are incorrect. In this regard, the evaluators suggest that provisions in Art. 13 of the Bank of Lithuania Resolution No 183 requiring that "…. only upon having ascertained the sum of a monetary operation and having established that it exceeds the sum prescribed by law, the credit institution staff must request from the customer the provision of the proof of his identity", be reviewed and clarified to

avoid any misleading interpretation (refer to Art. 25 of the Insurance AML instructions as an example of better drafting).

281. As already indicated, in terms of paragraph 1 of Article 10 of the AML Law identification procedures must be completed before the establishment of the business relationship. Indeed, paragraph 4 of Article 10 itself prohibits the performance of any operations unless the correct identification documentation is completed. Therefore, except for the references in Article 13 of the Bank of Lithuania Resolution 183 as mentioned above, criterion 5.14 is not applicable in Lithuania.

Failure to satisfactorily complete CDD

282. Criterion 5.15 requires that where the CDD process cannot be satisfactorily completed then business should not proceed and consideration should be given to making a suspicious report. In terms of Lithuanian AML Law, business cannot proceed unless the relevant correct identification documentation is presented at the time of the establishment of a business relationship (Article 10(4)). The Law however, does not provide for an obligation to consider filing a suspicious report in such circumstances. The evaluation team has been informed that such an obligation arises out of Article 3 of Government Resolution 929 of July 2004. Article 3 provides for reporting agents to report "monetary operations that are suspicious in their opinion even if these operations do not correspond to any criteria specified in part 1." The evaluators do not interpret this obligation as covering the circumstances under criterion 5.15. And this seemed to be borne out by the fact that the industry was unaware of any need to consider filing a suspicious report in such circumstances.

283. Criterion 5.16 requires the termination of the business relationship and the filing of a suspicious report where business has commenced and the identification criteria cannot be met. However, since paragraph 4 of Article 10 prohibits the commencements of business prior to the satisfactory full completion of the identification procedures, such circumstances are not envisaged under the law or any guidance issued by the relevant authorities.

Existing customers

284. The AML Law is silent on the application of CDD measures to customers existing as at the date of its entry into force as is required under Criterion 5.17. Resolution No 183 of the Bank of Lithuania does require credit institutions to regularly ascertain whether the information identifying the customer has changed, and to record any changes but stops short of referring to existing customers or to repeating the CDD process. However, Resolutions or guidance to other sectors of the financial system make no such references. In the course of the evaluation the industry referred to the provisions of the Bank of Lithuania Resolution 183 but it was unclear at what stage these requirements were being applied.

Recommendation 6 - Politically Exposed Persons

285. Paragraph 12.1 of the Bank of Lithuania Resolution No 183 of November 2004 requires credit institutions to compile a list of higher risk customers; to establish the principles for compiling such lists; to designate persons responsible for regular updates; and to

make staff aware of such lists. Politically Exposed Persons (PEPs) or, as referred to by the Resolution, politically compromised persons, are specifically referred to under paragraph 12.2 of the Resolution which requires credit institutions to pay special attention to such customers. Specifically paragraph 12.2.4 requires credit institutions to have in place risk management systems that allow recognition of PEPs and to ascertain, to the extent possible, their source of funds. Accounts of PEPs may only be opened with the approval of the senior management of the institution. The requirement is applied to foreign PEPs.[17] However, the Resolution stops short of referring to the applicability of this requirement in the case of beneficial owners. Resolution No. 68 of the Insurance Supervisory Commission. requires insurance entities to determine whether a potential customer, or beneficial owner, is a PEP. But the Securities Commission has no relevant provisions in its Guidelines on PEPs.

Recommendation 7- Correspondent Banking

286. Correspondent banking relationships are covered by paragraphs 12.3 and 12.4 of Resolution 183 of the Bank of Lithuania.

287. In relation to criterion 7.1, paragraph 12.4 of Resolution 183 provides that credit institutions should take additional measures before entering into business relations with respondent banks by collecting all necessary information about such banks, including evaluating the AML/CFT measures applied by them. In practice, credit institutions must ask respondent banks for information about the latter's AML/CFT controls and must ascertain whether they are adequate and effective. This entails asking the respondent bank to complete a questionnaire covering issues such as: whether it is subject to AML/CFT obligations; if it has in place written AML/CFT procedures; whether it verifies the identity of customers, etc. Responses to the questionnaire are verified by the Lithuanian credit institution concerned.

288. New correspondent bank relationships may only be entered into with the approval of senior management in accordance with paragraph 12.4 of the Resolution.

289. Paragraph 12.3 prohibits credit institutions from entering into correspondent banking relations with banks that are registered as legal persons in jurisdictions where they have no registered office or branch – ie, "shell banks". Also, credit institutions are forbidden to enter into correspondent banking relations with financial institutions of jurisdictions that allow shell banks to use their accounts.

290. As regards Criterion 7.5, on the use of “payable-through accounts”,, Lithuanian banks do not allow payable-through accounts; therefore, criterion 7.5 does not apply.

Recommendation 8 – Threats from new or developing technologies

291. In general, electronic banking is governed by Resolution No 20 of the Bank of Lithuania of August 2001 on the “General Provisions for the Risk Monitoring and Management of Electronic Banking “which is a prudential requirement drawn upon the

[17] Defined as past and present foreign senior officers of government, administration and justice institutions and their family members.

principles of the document of the Basel Committee on Banking Supervision entitled "Risk Management Principles for Electronic Banking".

292. In satisfying Criterion 8.1, the Bank of Lithuania Resolution No. 20, which is of a prudential nature, provides for credit institutions to establish internal procedures not only to authenticate the identity and authorisation of customers carrying our electronic business but also to ensure the integrity of e-banking transactions, records and information. Indeed such procedures should provide for the recording of all e-banking transactions.

293. As stated above, Resolution No 20 is prudential in nature. It does not provide for the establishment of non-face-to-face business relations since, according to Article 10 of the AML Law, a business relationship can only be established upon the identification procedures being completed in the presence of the customer or his agent. However, once the business relationship is established, it is possible for the customer to conduct non-face-to-face operations over the Internet, subject to appropriate safeguards.

294. Other sectors of the financial system, in particular those for the insurance and the securities, are silent on this issue. The evaluators were however informed that, in practice, certain business in these sectors is carried out through electronic means.

3.2.2 Recommendations and Comments

295. Although in general the customer identification procedures (not full CDD measures) are mostly in place, nevertheless the examiners note some shortcomings in relation to the criteria for Recommendation 5, in particular in instances where the key elements are required to be provided for through primary or secondary legislation.

296. Such shortcomings impact on the effectiveness of the system where, in certain instances, the full customer identification process cannot be implemented. Such instances for example, relate to the beneficial owners/shareholders of legal entities.

297. In the light of the foregoing assessment of the criteria to Recommendation 5, the evaluators *recommend that the Lithuanian Authorities take the following measures:`*

- Include in the AML Law a specified reference to the full CDD measures as opposed to identification procedures which, in themselves, are part of the CDD process and provide for the independent verification of the identification information obtained;

- revise Article 3 of the Law on Payments with regards to customer details for cross-border payments;

- include in the AML Law specific identification requirements in the case of suspicion irrespective of the LTL50,000 (Euro 15,000) threshold;

- ensure that the Register of Legal Persons records information on shareholding changes in legal persons following registration;

- as part of the CDD process, financial institutions should be required to draw up customer acceptance policies and business profiles with an obligation for on-going due diligence procedures;

- to introduce a specific obligation for financial institutions to consider reporting where the ID procedures cannot be completely and satisfactorily fulfilled.

298. The issue of PEPs is not addressed through the AML Law. It is only addressed for the banking and insurance sectors through Resolutions of the Bank of Lithuania and the Insurance Supervisory Commission. *It is recommended that rules on PEPs are provided for under the AML Law with specific enhanced customer due diligence requirements.*

299. The evaluators also *recommend that provisions similar to those in Resolution 20 of the Bank of Lithuania are extended to other financial sectors, covering threats from new or developing technologies.*

3.2.3 Compliance with Recommendations 5 to 8

Rec	Summary of factors underlying rating	
R.5	**PC**	Certain key elements not provided for through primary/secondary legislation; no reference to full CDD measures except for identification procedures; restrictions in identification of beneficial owners of legal person; no risk based approach: - in the AML Law, lack of a specified reference to the full CDD measures as opposed to identification procedures which, in themselves, are part of the CDD process and for the independent verification of the identification information obtained; - need to revise Article 3 of the Law on Payments with regards to customer details for cross-border payments; a specific inclusion in the AML Law for identification requirements in the case of suspicion irrespective of the LTL50,000 (Euro 15,000) threshold; - no recording by the Register of Legal Persons of information on shareholding changes in legal persons following registration; - no requirement for financial institutions to draw up customer acceptance policies and business profiles with an obligation for on-going due diligence procedures; - no specific obligation for financial institutions to consider reporting where the ID procedures cannot be completely and satisfactorily fulfilled.
R.6	**PC**	There are no special regulations; PEPs not addressed under the AML Law; PEPs only addressed for the banking and insurance sectors.
R.7	**C**	
R.8	**LC**	Not addressed by all sectors of the financial sector except for the banking sector

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

300. A narrow interpretation of paragraph 1 of Article 10 of the AML Law is that it is not permissible in Lithuania for obliged entities to rely on intermediaries or third parties to perform the client identification. Indeed Article 10(1) requires that the identification procedures must be undertaken in the presence of the customer himself or his agent. The evaluators were informed by the Lithuanian Authorities that third party and introduced business is not applicable in Lithuania. However, it is worth noting that Resolution N-68 seems to allow insurance companies and brokers to rely on a third party for customer identification and verification. Nevertheless, as ultimate responsibility for that process remains with the insurance entity, it must satisfy itself that the third party applies appropriate CDD measures and is regulated for that purpose. The evaluation team were told that an insurance company may rely on CDD performed by a broker, provided that the ultimate responsibility is clear. Where a broker undertakes identity verification, the insurance company collects the identification evidence from the broker.

301. A broader interpretation of the Article, however, is that in the case of non resident customers, an element of reliance on third parties is present when the customer acts through a representative.

302. Both the AML Law and Government Resolution 930 are basically silent on the matter with the latter, however, establishing the information to be obtained in the case of non-resident legal and natural persons acting through an agent.

303. In the course of the evaluation, the examiners have been informed that in the case of non-resident customers, the identification documents have to be notarised and must be made available to the institution in accordance with the Bank of Lithuania Resolution 183, Article 11 and similar provisions in Article 14 of the Securities Commission Resolution No 1K-12. No similar provisions are made for the insurance sector.

304. In the above circumstances, therefore, the reliance for third party identification would be placed on the notary. In this context, however, there are no specific provisions within the requirement under criterion 9.3 (regulated and supervised third party); criterion 9.4 (base country); and criterion 9.5 (responsibility for identification and verification remains with the financial institution).

3.3.2 Recommendations and Comments

305. In the light of the above, whereas it is clear that introduced business is allowed only to a limited extent in the insurance sector and third party reliance may be indirectly allowed in relation to non-face-to-face business, *it is recommended that the concept of the customer/agent relationship in the identification process be re-addressed*.

3.3.3 Compliance with Recommendation 9

Rec	Rating	Summary of factors underlying Rating
R.9	**LC**	Though the full concept of third party and introduced business is not present, yet the elements of the customer/agent identification procedures do not meet all essential criteria.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

306. Confidentiality of information is highly protected under the respective financial laws. Article 172-7 of the Code of the Administrative Law Infringement provides for a fine from LTL 2,000 – LTL20,000 (Euro 600 –Euro 6000) in the case of unlawful disclosure of a bank secret. Article 211 of the Criminal Code further provides for the implementation of sanctions of up to 2 years imprisonment for illegal disclosure of a commercial secret. However, both the AML Law and certain financial legislation provide gateways for the lawful disclosure of information in accordance with the law.

307. Paragraph 2 of Article 16 of the AML Law recognizes that persons who are in breach of the procedures for keeping confidentiality and use of information shall be held liable by law. Paragraph 4 of the same article however specifically provides that the disclosure of information specified in the Law to the Financial Crimes Investigation Service (FCIS) does not constitute a breach of confidentiality with respect to any industrial, commercial or bank secret. Such information disclosed to the FCIS includes STRs, CTRs and any other information prescribed under Article 8 on "Co-operation between State Institutions" of the AML Law.

308. Article 8 of the AML Law provides for co-operation between the State Institutions. Consequently law enforcement and other state institutions are required to report to the FCIS any indication of money laundering, breaches of the AML Law and any measures taken accordingly. Furthermore Article 6 (2) provides for co-operation between the FCIS and the State Security Department in implementing CFT measures.

309. According to the Law on Banks, credit institutions are protected under Article 55 (5) of the Law which allows a bank to provide the information which is considered a secret of the bank to the institutions referred to in the AML Law, also to third parties according to the procedures set forth by laws where, according to the laws, the bank must provide such information thereto.

310. On the other hand, under the Law on Securities Markets there are no specific provisions for brokerage firms and other entities providing services under the Law that specifically lift confidentiality or impose an obligation to report suspicions of money laundering. This is only addressed by paragraph 33 of Resolution 1K-12 of the Securities Commission.

311. Likewise, for insurance undertakings and other insurance intermediaries the Law on Insurance does not address the confidentiality or reporting issue except for Article 21(7) of the Law which requires institutions to establish money laundering prevention

measures as well as measures for recognition and prevention of other violations of law. Otherwise, this is only addressed by paragraph 52 of Resolution No 68 of the Insurance Supervisory Commission.

312. In the case of the Law of the Bank of Lithuania, the Bank of Lithuania can only share information of a prudential nature through Articles 46 and 47. Both Articles refer to information in possession of the Bank through its supervisory function. The evaluators interpret this to refer to prudential information only since, although the Bank includes an AML element in its supervisory functions, yet according to article 5(7) of the AML Law, the AML supervisory function lies with the FCIS.

313. Likewise, the provisions of Article 52 of the Law on Securities lifting confidentiality for the State Securities Commission to share information only applies to prudential information as opposed to AML information.

314. On the other hand, under Article 186 (5.12) of the Law on Insurance, the Insurance Supervisory Commission is authorised to disclose information related to the supervision of insurance entities to law enforcement institutions of the Republic of Lithuania and other persons entitled to receive such information under the legislation of the Republic of Lithuania.

315. As regards DNFBPs it appears that the lifting of confidentiality is mainly covered by the "safe harbour" provision of paragraph 4 of Article 16 of the AML Law. On the other hand, paragraph 7 of Article 9 of the AML Law exempts lawyers and lawyers' assistants from disclosing information when ascertaining their client's legal position. This is in accordance with paragraph 3 of Article 6 of the EU AML Directive but limits the exemption to the legal professions only.

316. As already detailed earlier in the Report, procedures are basically in place for correspondent bank relationships under FATF R.7 whilst third party and introduced business under Recommendation 9 is restricted. In this regard no restriction appears to be present in any law that would hinder financial institutions in complying thereto and to SRVII.

3.4.2 Recommendations and Comments

317. The issue of the lifting of confidentiality in the financial sector such that it facilitates the implementation of the FATF Recommendations is treated differently under the respective laws of the Republic of Lithuania. Although the "safe harbour" provision of Article 16(4) of the AML Law gives the necessary protection for the lifting of confidentiality, yet the different ways that the issue is treated under the different laws for the industry raises some concerns related to consistency. Furthermore, the lifting of confidentiality for the regulatory authorities, with the exception of the Insurance Supervisory Commission, is meant to address prudential information i.e. information on the soundness of an institution, rather than AML related information.

318. The industry and the authorities have confirmed that the system is effective and the necessary protection in lifting confidentiality is given under the respective laws. *The evaluation team, however, recommends that irrespective of the perceived effectiveness*

of the system, there is a need to readdress the issue to align the various legal provisions for the sake of consistency.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**LC**	There is a need to harmonise the provisions under the respective laws lifting confidentiality.

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

3.5.1 Description and Analysis

Recommendation 10 – Record Keeping

319. Article 12 of the AML Law governs the obligation of record keeping for the financial and non financial sectors. For financial institutions the Article provides for the maintenance of a register of financial operations where an operation exceeds LTL50,000 (Euro 15,000) in a single or several related transactions. Credit institutions are also required to register information in the case of a single exchange of one currency into another where the money exchanged is in excess of LTL20,000 (Euro 6,000) or its equivalent in foreign currency. For insurance undertakings the transaction excess limit is set at LTL10,000 (Euro 3,000) representing premiums received from the customer over a calendar year. The Register also includes details of all suspicious transactions conducted by the customer. Where the customer of a financial institution is another financial institution, no details are kept on the register. Financial institutions are also required to appoint a senior officer responsible to maintain and manage the Register.

320. In terms of Article 12(7), the Register keeping regulations have been determined by the Government under Resolution No 931 of 22 July 2004. The Resolution stipulates the data that must be entered into the Register and which must be submitted to the FCIS within 7 days of the date of the operation as follows:

- data on customer identification;
- data on agent identification if transaction is undertaken through an agent;
- financial operation or transaction data (date, value, currency and method if carrying out transaction);
- criteria placing a financial operation or transaction as suspicious; and
- data on beneficiary of financial operation or transaction.

321. In conformity with criterion 10.1 (the key elements of which must be provided for through primary or secondary legislation), Article 12(9) of the AML Law requires that documents related to a financial operation or transaction or legally valid documents

relating to financial operations or transactions entered into must be kept for at least ten (10) years from date of executing a financial operation or concluding a transaction.

322. Furthermore, and in conformity with criterion 10.2 (key element), Article 12(8) of the AML Law requires that copies of documents attesting identity of customers be retained for at least ten (10) years from the date of executing a financial operation or concluding a transaction.

323. Finally, Article 13(6) of the AML Law provides that the data kept on financial operations or transactions kept on the register must be communicated to the FCIS without delay, but not later than within seven (7) working days after the date of the financial operation or the date when the transaction was entered into. The information is also available to supervisory and other authorities according to the relevant laws. Furthermore, in terms of Article 7 of the AML Law the FCIS has a right to obtain all information necessary to perform its functions.

Special Recommendation VII – Wire Transfers

324. The Law on Financial Institutions provides that money (wire) transfers can only be effected by credit institutions. However, the Post Office is an exception and provides wire transfer services. The Post Office is however subject to the AML Law. The AML Law does not specifically provide for any specific obligations on financial institutions in carrying out wire-transfers. The evaluation team has been informed however, that wire transfers are addressed and governed through Article 3 of the Law on Payments. Article 5 of the Law, under paragraph 3, stipulates the information that is to accompany a payment instruction: the amount of funds; the payer and beneficiary, and the accounts of the payer and the beneficiary at the credit institution and, where the payer pays cash to the payer's credit institution, the payer's account shall not be specified in the payment instruction.

325. It is noted that, whereas the Lithuanian Authorities have confirmed that in practice the data under Article 5 of the Law on Payments accompanies both domestic and cross-border payment instructions, yet Article 3 of the Law seems to disapply Article 5 when an institution is effecting cross-border credit transfers. Furthermore, the Law on Payments does not apply to the Post Office even though, as stated, the Post Office carries out wire transfer services.

326. The evaluators were further informed on the provisions of the Civil Code with regards to payment orders, letters of credit and collection orders whereby a bank can refuse to execute a transaction if the payment instructions are not completed and not comprehensive. Furthermore, since there is no specific reference to the AML Law on record keeping of data related to wire-transfers, the evaluation team was informed that according to order No 13 of the Department of Archives all accounting records must be kept for a period of ten (10)years.

327. A full assessment of the essential criteria for SR-VII could not be meaningfully undertaken, however, since little additional information was made or is available. Indeed, the Lithuanian Authorities have confirmed that compliance with the provisions of SRVII will be enhanced once the EU-Regulation on payer's information

accompanying credit transfers sent by money remitters is adopted and automatically becomes part of the Lithuanian legal system.

3.5.2 Recommendations and Comments

328. Record keeping procedures for the financial sector are adequately covered through the provisions of Article 12 of the AML Law. The comprehensive data that is required to be kept on the Register of Operations is adequate and sufficient for the authorities to reconstruct individual transactions for evidence in prosecutions. From discussions with the industry, the evaluation team concluded that the maintenance of the Register is given importance and priority by financial institutions whilst the timely reporting of all data to the FCIS should assist the FCIS in its analysis and investigations. However, due to the extensiveness of the data, and since such data is mainly kept electronically, *the Lithuanian authorities may wish to consider an electronic, secure system of submitting such data to the FCIS.*

329. The provisions of SR VII on wire-transfers are not directly addressed but various pieces of legislation seem to be relevant to different aspects. The Lithuanian authorities acknowledge this and expect to fully comply with SR VII once the relevant EU-Regulation is adopted. *This notwithstanding, the evaluators recommend that the new regulations be made applicable to the Post Office as a provider of wire-transfer services.*

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**C**	
SR.VII	**PC**	Not specifically addressed in relation to various essential criteria. To be re-addressed upon adoption of relevant EU-Regulation.

Unusual and Suspicious Transactions

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

3.6.1 Description and Analysis

Recommendation 11 – Complex, unusual large transactions

330. Article 12 of the AML Law requires the maintenance of the Transaction Register as already detailed in this Report whilst Article 13 requires financial institutions to submit the data kept in the Register to the FCIS. Article 12 also establishes a ten (10) year period for the retention of identification and transaction documents. The Lithuanian Authorities consider that Recommendation 11 is implicitly covered by these provisions.

331. The requirement for financial institutions to pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, that have no apparent

economic or visible lawful purpose goes beyond the ongoing due diligence of monitoring customer transactions in relation to the customer business profile. It also goes beyond the recording and reporting of all transactions beyond an established threshold.

332. Although financial institutions are required to maintain a register of financial operations and transactions as specified, there is no obligation on the financial institution to pay special attention to certain transactions except to the extent whether a transaction is considered suspicious or not and, consequently, no written record of the findings is maintained. The evaluators have further been informed that the retention of a record on the findings is covered by Article 12(8) and Article 12(9) which provide for the general obligation of record keeping of the customer identification and transaction documents. Indeed, the industry confirmed that no procedures are in place except to the extent of meeting their obligations under Articles 12 and 13.

Recommendation 21- Relationships

333. Although the AML Law is silent on business relationships and transactions with persons, including companies and financial institution, from countries which do not or insufficiently apply AML/CFT measures, the Bank of Lithuania Resolution 183 addresses this issue.

334. Paragraph 12.2 of Resolution 183 requires credit institution to pay special attention to customers of credit institutions from states included in the FATF-NCCT list and states where the FATF Recommendations are not applied. Paragraph 46 of the Resolution further requires employees of credit institutions to exchange information with other credit institutions and to be aware of and updated on such issues. The obligations under Resolution 183, however, fall short of requiring credit institutions to analyse the background of transactions that have no apparent economic or visible lawful purpose and to keep a record thereof as specified by Recommendation 11.

335. Similar provisions are included under paragraph 12(2) of the Securities Commission Resolution 1K-12 whilst the matter is not yet addressed for the insurance sector.

3.6.2 Recommendations and Comments

336. Although, to an extent, the provisions of both Recommendation 11 and 21 are addressed through the Resolutions of the Bank of Lithuania and the Securities Commission, yet most of the essential criteria are not met. With regard to Recommendation 11, the requirements go beyond the situation of the general data kept on transactions exceeding the established threshold. As regards Recommendation 21, this is only addressed in relation to customers of credit institutions and not for all financial institutions.

337. *The evaluators recommend that both Recommendations are readdressed and covered through legal provisions or through the respective Resolutions in accordance with the established criteria.* For the sake of uniformity and consistency, the Lithuanian authorities may also wish to consider addressing these Recommendations through a Government Resolution applicable to both the financial and non-financial sectors.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	**PC**	Issue partially addressed through the STR criteria in Government Resolution N° 929 but no specific obligation to examine background of large, complex transactions and to keep written record accordingly.
R.21	**LC**	Mainly addressed for banking sector but restricted to customers of credit institutions only and no specific obligation to examine background of large, complex transactions.

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

3.7.1 Description and Analysis

Recommendation 13 & Special Recommendations IV – Reporting of Suspicious Transactions.

338. The basic obligation to report suspicious transactions is found in Article 9 of the AML Law which requires a suspicious transaction to be reported to the FCIS within 3 working hours of being identified as such. It should be noted that para. 1 requires from the obliged entitity to suspend the operation before reporting it to the FCIS, which is in line with Art. 7 of the second EU Directive. In accordance with paragraph 9 of this Article the Government has issued Resolution No 929 on the criteria under which a transaction may be considered suspicious. Although Resolution 929 has been carried forward by the financial supervisory authorities who have integrated Resolution 929 into their own resolutions, reference in this part of the report is primarily made to the Government Resolution and the AML Law since the Criteria for Recommendation 13 are considered under the Methodology as key elements that need to be reflected in primary or secondary legislation.

339. Criterion 13.1 requires that financial institutions report transactions that they suspect or have reasonable grounds to suspect that funds are the proceeds of a criminal activity. Article 9 of the AML Law imposes an obligation to report "upon establishing that a customer is performing a suspicious financial operation". There are two points of concern. First: the text of the Law does not necessarily cover the fact that an institution "suspects or has reasonable grounds to suspect," but only upon it having *established* that the customer is performing a suspicious financial operation. The Lithuanian Authorities have explained that their interpretation of the Law is one that is within the context of Criterion 13.1. Secondly: the suspicion refers to a "financial operation". The AML Law defines a "financial operation" as:

- depositing or accepting, withdrawal or payment of money, exchange of currency, lending, donation and any other type of payment or receipt of money in civil transactions or in any other manner other than payments to state and municipal institutions, other institutions maintained from the budget, the Bank of Lithuania

and state and municipal funds, diplomatic missions or consular institution of foreign countries or settlement with said entities.

340. Indeed Resolution 929 in setting the criteria whereby a financial operation or a transaction is considered suspicious is more focused on the definition of a financial operation. Arguably the AML Law seems to be making a distinction between a "financial operation" and a "transaction" but falls short of defining the latter.

341. Therefore, the primary obligation for financial institutions to report suspected "financial operations" would not cover suspicions on any transaction that is not considered a "financial operation" e.g. the use of safety deposit boxes or the opening of an account. The fact that Article 3 of Resolution 929 requires the reporting of "financial operations" where these are considered suspicious for reasons beyond those established by the Resolution would still not cover this point. Article 3 still refers to "financial operations." Therefore, the system adopted by Lithuania is not in line with the EU approach either: Art. 6 para. 1 of the second EU Directive provides for the reporting obligation to include "facts which might be an indication of money laundering", a hypothesis which is broader than the concept of transaction or operation). On the other side, the reporting duty is not limited to obliged entities; as also indicated under Section 3.10, it applies – by virtue of art. 8 of the AML Law – also to law enforcement and State institutions, which is broadly in line with Art. 10 of the second EU directive.

342. Criterion 13.2 further requires that the obligation to make an STR should also apply to suspicion that funds are linked or related to terrorist financing.[18] The AML law does not impose a direct obligation on financial institutions to report suspicions that funds may be linked or related to terrorist financing. Paragraph 8 of Article 9 only imposes an obligation on the FCIS to report to the State Security Department within 24 hours of receipt of the relevant data where a financial operation or a transaction may be related to the financing of terrorism. However paragraph 1.20 of Resolution 929 establishes one of the criterion for considering a financial operation as suspicious when:

- the client's or his proxy's (if transaction is conducted by a proxy), beneficiary entity's identification data correspond with data in the lists submitted by responsible foreign states' institutions or international organisations on persons related to terrorist activities.

343. Even if paragraph 1.20 is taken as the obligation for financial institutions to report financial operations suspected to be related to the financing of terrorism, the obligation remains restrictive as it is only related to instances where identification data correspond to international lists.

344. Indeed, the whole AML Law falls completely short of addressing the financing of terrorism. Indeed Article 1 (1) on the "Purpose of the Law" specifically states that:

[18] The English text of paragraph 9 of Article 2 of the AML Law as presented to the evaluators defines "Financing of Terrorism" as *activities aimed at using the proceeds or other assets derived from criminal activities for direct or indirect financing of terrorism*. This definition limits the financing of terrorism to the use of funds that are already proceeds of other criminal activities. The Lithuanian Authorities explained that the definition should include the words *or in any other way* immediately after the words *from criminal activities*. The evaluation team has not been presented with an official revised version of the law.

- The purpose of this law is to establish the measures for prevention of money laundering and designate the institutions responsible for the implementations of the money laundering counter measures.

345. Criterion 13.3 requires that all suspicious transactions, including attempted ones, must be reported irrespective of the amount. Article 9 of the AML Law which imposes the reporting obligations, does not specifically refer to "attempted transactions" although it specifically imposes the obligation irrespective of the amount involved in the operation. The Law requires reporting "upon establishing that a customer is performing a suspicious financial operation." The Lithuanian authorities interpret the words "is performing" to include attempted financial operations. Furthermore, the Law requires reporting irrespective of the amount, the evaluators could sense a certain level of inconsistency between the obligations to report a suspicious transaction under Article 9 of the Law as opposed to the obligations to report currency transactions exceeding the established thresholds under Article 13. It is not clear whether all the industry is fully aware and well guided that a currency transaction report under Article 13 does not substitute a suspicious transaction report under Article 9 where the amount of the financial operation exceeds the established thresholds and the operation is considered suspicious.

346. It must be noted that the requirement to report a suspicious transaction applies regardless of whether the financial operation involves tax or other specific matters. Furthermore, the respective Resolutions issued by the relevant financial sector supervisory authorities require that institutions do not have to establish whether a customer's act constitutes a crime but to report if the operation raises suspicion.

347. As regards SR IV on reporting of transactions suspected to be related or linked to the financing of terrorism, as explained above, there is no direct obligation for such reporting under the AML Law except for an indirect one through the application of paragraph 1.20 of the Government Resolution 929. However, such obligation is considered to be restrictive.

Recommendation 14 – Protection for disclosure, Tipping Off

348. According to paragraph 4 of Article 16 of the AML Law, the disclosure of information specified by the Law shall not be considered as a disclosure of an industrial, commercial or bank secret. The Lithuanian Authorities have confirmed that since the AML Law does not consider such action as a breach of confidentiality, the provision of other laws on breach of confidentiality would not apply. This being said, the AML Law does not specifically provide for a global protection of financial institutions, their directors, officers and employees from any civil or criminal liability, that would meet the requirements of criterion 14.1.

349. Paragraph 3 of Article 16 of the AML Law, on the other hand, specifically prohibits financial institutions, their officials and employees and other institutions from disclosing to a customer or any other person that information about their operations or transactions had been submitted to the FCIS or that that customer is the subject of an investigation. The scope of the prohibition of tipping off is quite broad and in line with Art. 8 (1) of the the second EU directive (which applies also to information related to an on-going investigation).

Recommendation 25 – Feedback on STRs

350. There are no provisions in the law or any of the resolutions issued by the respective authorities that require the provision of feedback to the reporting entities. It was said that it is up to the MLPD to provide feedback or not. The FCIS informed the evaluation team that, in practice, it does provide feedback through training and consultations. It further informed that during 2005 it informed all institutions and other reporting entities on the outcome of all STRs they had filed, and on the number of investigations initiated. The industry claims that there is no specific feedback but there is co-operation from the FIU.

Recommendation 19 – Currency Transaction Reporting

351. Article 13 of the AML Law imposes an obligation on financial institutions and other reporting entities to submit data evidencing the customer's identity and information about the financial operations where the latter exceed established thresholds.

352. Paragraph 1 of Article 13 requires financial institutions to report to the FCIS when a financial operation, as defined in the Law, conducted by a customer involves a sum in excess of LTL50,000 (Euro15,000). The information that must be submitted to the FCIS includes:

- data confirming the customers identification;
- data confirming the agent's identity where the financial operation is conducted through an agent;
- the amount of the financial operation;
- the currency denomination of the financial operation;
- the date of the operation;
- the type of financial operation; and
- the beneficiary.

353. Paragraph 2 of Article 13 requires credit institutions further to supply to the FCIS information on the customer's identity and a financial operation where such operation involves a single exchange of one currency into another if the amount of the operation is in excess of LTL20,000 (Euro 6,000) or its equivalent in foreign currency.

354. Paragraph 3 of the same Article requires insurance undertakings and insurance broker companies to submit to the FCIS data on the customer's identity, the identity of the insured person and information on premiums received if the sum of the premiums from the customer in one calendar year or from an earlier communication in respect of one or several insurance contracts are in excess of LTL10,000 (Euro 3,000) or its equivalent in foreign currency.

355. However, in accordance with paragraph 8 of Article 13 of the AML Law, financial institutions are exempted from communicating the required information to the FCIS if the activities of the customer involve large scale, periodic and regular financial operations that are in conformity with criteria determined by the Government. This exemption does not apply to other reporting entities (DNFBPs).

356. Government Resolution 931 of 22 July 2004 has established (Article 20) that financial institutions that opt to apply the exception under paragraph 8 of Article 13 of the AML Law must inform the FCIS on:

- the identity of the client on whom the exception is to be applied;
- the client's constant activity and the previous year's actual monetary operations both incoming and outgoing; and
- the date as at when the exception is applied.

357. The exception under paragraph 8 does not apply if the customer of the financial institution is a third country undertaking; its branch or agency or if it provides any of the activities listed in paragraph 9 of the same Article 13 of the AML Law.

358. Paragraph 7 of the Article provides for a further exception from reporting when the customer of a financial institution is another financial institution.

359. With regards to DNFBPs, paragraph 4 of the said Article requires notaries or persons authorised to perform notarial acts to communicate to the FCIS all data relating to the identity of their customer and information about any transaction entered into by the client if the amount paid or received under the transaction is in excess of LTL50,000 (Euro 15,000) or its equivalent in foreign currency.

360. All other reporting entities, except notaries or persons authorised to perform notarial acts and lawyers or lawyers' assistants, are likewise required to report to the FCIS where a single payment in cash paid or received exceeds LTL50,000 (Euro15,000) or its equivalent in foreign currency.

361. It therefore follows that lawyers and lawyers' assistants are fully exempted from reporting to the FCIS any financial operation, transaction or payments in cash irrespective of any established thresholds.

362. Paragraph 6 of Article 13 requires such reporting to be effected without delay but not later than within 7 working days from the date of the financial operation or transaction. A number of financial institutions provide the data in accordance with Article 13 in an electronic format.

363. The FCIS has informed that all data received under the provisions of paragraph 8 of Article 13 are retained in a confidential database and used as intelligence in the analysis of STRs. The database information is available to other competent authorities in accordance with the provisions of the law.

Recommendation 32 – Maintenance of Statistics

364. Criterion 32.2 requires the maintenance of statistics. From the aspect of the financial sector and the DNFBPs this requirement is addressed through Article 12 of the AML Law on 'Keeping of Information.' Article 12 obliges financial institutions and other entities to maintain a register of all financial operations and suspicious transactions entered into by their clients. The only minor exception is for lawyers and their assistants who are required to maintain a register of suspicious transactions only. The extent of information to be registered as regards financial operations or transactions is defined by Article 13 of the Law whilst Government Resolution No 931 of July 2004 determines the regulations for the maintenance of such records. The information in these registers is made available to the FCIS and other competent authorities as established by law.

3.7.2 Recommendations and Comments

365. In general the obligation to report suspicious transactions is adequately covered through the AML Law and the Government Resolution 929. It is however not clear whether the obligation applies to attempted transactions or to cases where an institution has reasonable grounds to suspect that a transaction may be related to money laundering. For the financial sector the obligation is restricted to the carrying out of a "financial operation" as defined in the Act and would therefore exclude other transactions not necessarily involving a financial content (contrary to the requirements also of the 2nd EU Directive). *The Lithuanian authorities may wish to reconsider the Law in this regard.*

366. The reporting of suspicions that funds are linked or related to terrorist financing is treated indirectly through the Government Resolution as a suspicion that customer identification documents correspond to data in lists submitted by foreign states' institutions. This renders FT reporting restrictive. *It is recommended that the FT reporting be directly addressed through specific provisions in the AML Law that are not restricted to information on international lists.*

367. The protection offered by the AML Law against possible consequences of reporting or disclosure of information to the FCIS remains insufficient. *It is therefore recommended to insert, in line with the requirements of criterion 14.1, a clearer protection of entities, their directors, officers and employees from any civil or criminal liability when they report and disclose information in good faith to the authorities*.

368. Although the FCIS has informed that it provides feedback to the industry *the Lithuanian Authorities may wish to consider strengthening Article 5 of the AML Law to this effect.*

369. Article 13 of the AML Law is comprehensive in covering the currency transaction reporting by financial institutions and other entities. *The Lithuanian Authorities may however wish to re-visit the exemption of lawyers and lawyers' assistants from such obligation, even though it has been claimed that lawyers' rarely handle cash transactions.*

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

	Rating	Summary of factors underlying rating
R.13	**PC**	The obligation to report does not clearly address reporting of attempted transactions or reasonable grounds to suspect money laundering; in the case of financial institutions it is limited to financial operations; no direct obligation to report financial operations suspected to be linked or related to the financing of terrorism.
R.14	**LC**	No adequate protection when reporting, that would meet the requirements of criterion 14.1
R.19	**C**	
R.25 (25.2)	**C**	
SR.IV	**PC**	The obligation to report suspected FT transactions is only restrictively addressed through Government Resolution 929.

Internal controls and other measures

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

3.8.1 Description and Analysis

Recommendation 15 – Development of AML/CFT Internal Programme

370. Article 15 of the AML Law imposes certain responsibilities on financial institutions in relation to internal controls. Financial institutions must establish appropriate mechanisms of internal control in order to prevent financial operations that may be linked to money laundering. Financial institutions must also ensure that their employees are well informed and properly trained in the measures for the prevention of money laundering as specified in the AML Law and other legal acts.

371. Furthermore, financial institutions must designate senior employees responsible for organising the implementation of measures for prevention of money laundering provided for in the AML Law and to maintain liaison with the FCIS. The FCIS must be informed on the designated employees.

372. These legal obligations have been further integrated in the Resolutions of the respective competent supervisory authorities.

373. The AML Law falls short of defining the powers of the compliance officer established under Article 15 to have full and unhindered timely access to any relevant internal information, including customer identification data and transaction records that would

assist in meeting the responsibilities under the Act and in assessing internal suspicious transactions. Although this issue is to different extents partly and indirectly addressed by the Resolutions of the relevant competent supervisory authorities, in principle it is only through the institutions' own internal procedures that the extent of timely access to relevant information is given to compliance officers. Hence such access could be limited or restricted by the institution itself.

374. Internal audit functions are addressed in the overarching provisions of Art. 23 of the Law on Financial institutions. It is specifically addressed in Article 26 of the Law on Insurance. The Bank of Lithuania Resolution No 148 of September 2004 on the 'Approval of General Provisions of Internal Audit of Banks' requires an adequately resourced and independent audit division that tests compliance with the banks' internal procedures, policies and controls. Article 21 of the Law on Insurance on 'Transparent, Sound and Prudent Management', in requiring the establishment of internal regulations, includes the internal audit function. This requirement is re-enforced through Article 26. For the securities market, the Securities Commission expects the internal audit function to be part of an institution's internal controls.

375. Paragraph 45 of the Bank of Lithuania Resolution No. 183 requires heads of credit institutions to organise training for all their staff with a view to ensure the implementation of the measures for the prevention of money laundering. Similar provisions are made under paragraph 46 of the Securities Commission Resolution 1K-12 of May 2005. Training issues however are not directly addressed for the insurance sector, although the Commission calls for adequate training.

376. Although there are no specific provisions in general within the financial sector, the relevant competent supervisory authorities are very cautions on recruitment of staff by the industry and ensure that there is appropriate screening at all levels prior to recruitment. The financial institutions have confirmed that their internal regulations provide for strict recruitment policies. Provisions of the authorities in place for the recruitment of senior personnel, at times also require the approval or endorsement of the relevant competent authority itself. For example, in the banking sector, employees dealing with customers or their accounts have to complete a special training course and possibly satisfy assessment criteria on issues related to the prevention of money laundering.

Recommendation 22 – Applicability of Recommendation to cross-border branches and subsidiaries.

377. The issue of cross-border establishments by financial institutions registered in Lithuania must be addressed within the context of Lithuania being an EU Member State. The right of establishment and the right to provide services within EU Member States is addressed in Lithuanian Legislation through the adoption of the relevant EU Directives which already provide for anti-money laundering issues. The analysis and comments that follow should therefore be read within this context with particular reference to cross-border establishments in non-EU countries.

378. Article 13 of the Law on Banks defines and establishes the requirements for a bank registered in Lithuania to establish a subsidiary or a branch in a foreign country or to acquire a qualified part of a foreign bank's authorised capital and/or voting rights or to

increase such holding so as to render that foreign bank a subsidiary. The requirements are mainly supervisory and prudential in nature but would cover issues related to compliance to anti-money laundering measures.

379. Similar provisions are found Article 30(2) of the Law on Securities Market. Cross-border establishments however are only addressed by the Law on Insurance in relation to the EU Member States.

380. In conclusion, therefore, there are no special requirements in Lithuanian legislation for cross-border establishments of financial institutions registered in Lithuania to observe anti-money laundering measures.

381. As such, therefore, there are no specific obligations for financial institutions to observe or comply with the relevant essential criteria for Recommendation 22. It must however be noted that credit institutions in Lithuania are supervised by the Bank of Lithuania under the Basel Core Principles. In this context, paragraph 42 of the Bank of Lithuania Resolution 183 provides that in carrying out their activities, credit institutions must follow the provisions of the Lithuania AML Law and the relevant Government and Bank of Lithuania Resolutions and apply such obligations and principles on a group basis.

3.8.2 Recommendations and Comments

382. The legal obligation for financial institutions to develop AML internal control programmes exists through Article 15 of the AML Law. The extent to which such programmes are defined and established, however, varies. The relevant authorities and the industry have confirmed that appropriate procedures are in place. The major institutions have established comprehensive internal controls which include the appointment of compliance officers, the internal audit function and training requirements. Such procedures are examined by the competent authorities in the course of their supervisory work. No statistics on training have however been provided.

383. This notwithstanding, *certain elements need to be addressed further to enhance the existing framework. The powers of the compliance officer for timely access to information could be better reinforced if established through rules or regulations rather than through reliance on institutions themselves.* Admittedly, the evaluation team did not trace or identify any facts where compliance officers have been restricted by their institutions for timely access to information – but this is a difficult issue to examine as applied on a day-to-day basis even though the supervisory authorities have confirmed that this is an aspect that they examine in the course of their on-site prudential examinations.

384. Recommendation 22 is mostly addressed through supervisory and prudential requirements as could be applied for AML/CFT issues. Consequently, most of the essential criteria are not met. On a materiality basis, the Lithuanian authorities have informed that no financial institution registered in Lithuania has established cross-border branches or subsidiaries, except for representative offices, which do not undertake financial activities. However, if this situation were to change, the obligations necessary to comply with Recommendation 22 would not be in place. As a conclusion,

it is recommended to review the implementation of Recommendation 22 so that the essential criteria 22.1 and 22.2 are specifically addressed, formulated and implemented.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	**LC**	There is no legal obligation for financial institutions to develop CFT internal control programmes
R.22	**PC**	Obligations under most of the essential criteria 22.1 and 22.2 need to be specifically addressed, formulated and implemented.

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

385. The establishment of a bank or credit institution in Lithuania is extensively covered by Chapter II of the Law on Banks. The Law establishes the procedures that must be followed both by the applicant entity for a banking licence and by the Bank of Lithuania as the licensing body. These provisions do not allow for the establishment of shell banks since the requirements themselves are conducive for a bank to have a physical operational presence in Lithuania in order to be granted an operating licence.

386. Furthermore, according to paragraph 12.3 of Resolution 183 of the Bank of Lithuania, a bank established or authorised to operate in Lithuania may not enter into correspondent banking relationships and must terminate any existing relations with banks that are registered as legal persons in states and territories where they do not have a registered office and that are not branches of credit institutions that are regulated and supervised. Finally, paragraph 12.3 prohibits credit institutions from entering into correspondent relationships with foreign banks which allow their accounts to be used by shell banks.

3.9.2 Recommendations and Comments

387. Resolution 183 of the Bank of Lithuania and the provisions of the Law on Banks adequately cover the prohibition for the establishment and use of shell banks. In its discussions with the industry, the evaluation team found that banks in Lithuania are very aware of the dangers of establishing correspondent relationships with shell banks, even though the industry puts more focus on reputation risks. It might however be opportune for the Bank of Lithuania to confirm from time to time, through a review of existing correspondence relationships, that none are with shell banks. Bank of Lithuania may wish to consider to periodically seek written assurances from all their banks that they have no direct or indirect correspondent relationships with shell banks.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**C**	

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)

3.10.1 Description and Analysis

Recommendation 23 – Adequate Regulation and Supervision

388. The provision of financial services in the Republic of Lithuania is generally governed by the Law on Financial Institutions. The Law establishes which activities are considered as a financial service whilst the respective laws define which of those activities require to be licensed by a competent authority. All financial institutions, once licensed, become subject to the supervisory regime of the respective licensing authority. All competent supervisory authorities include an element of AML/CFT supervision in the course of their on-site prudential examinations.

389. The AML Law specifically establishes that all financial institutions are subject to AML/CFT Supervision. Indeed, Article 5 (7) of the AML Law charges the FCIS with the responsibility to supervise the activities of financial institutions.

390. Furthermore, Article 8 of the AML Law requires law enforcement and other State institutions – thus including all competent supervisory authorities – to report to the FCIS any indications of suspected money laundering activities (which is in line with Art. 10 of the second EU directive) or violations of the law encountered in the course of their supervisory or other work, including reporting on any measures taken against the perpetrators.

391. In practice, however, the FCIS relies on the supervisory work of the Bank of Lithuania, the Securities Commission and the Insurance Supervisory Commission. As already stated, all authorities include an element of AML compliance in their prudential examinations. It is however clear – and the authorities have confirmed this - that focussed AML/CFT examinations are not being undertaken. The evaluators have been informed by the respective supervisory authorities that focused AML/CFT examinations would be undertaken on behalf of the FCIS if these are requested – however no such requests have ever been made.

392. Furthermore, as Article 8 of the AML Law only requires reporting to the FCIS on infringements, the supervisory authorities do not inform the FCIS of their findings unless there is an infringement of the Law. Consequently the FCIS is not in control of

the type and frequency of such compliance examinations in fulfilling its responsibilities under Article 5(7) of the AML Law.

393. Consequently, although the evaluation team was given information on the number of on-site examinations undertaken by the respective authorities, in most cases the examiners could not identify which of these prudential examinations included an AML/CFT element and the extent to which this was examined.

Recommendation 30 – Adequate Resources

394. The Credit Institutions Supervision Department of the Bank of Lithuania has a staff of about 65 officials, half of whom are involved in the inspections of credit institutions. Three officials are directly involved in dealing with AML/CFT issues. The Bank of Lithuania confirmed that its staff are provided with adequate resources and training to carry out their functions effectively. Such training includes both domestic and overseas training and seminars.

395. The Insurance Supervision Commission consists of 5 members with 38 officials in its administration. The Administration is structured into seven units: Legal; International Relations; Non-Life Insurance; Life Assurance; Insurance Intermediaries; General Services; and Finance. Apart from being financed through the State budget, the Commission is also financed from deductions of written insurance premiums.

396. The Securities Commission, which consist of a chairman and four commissioners, has 43 employees, 37 of whom are public servants. About 6 of these employees are engaged in AML/CFT issues during inspections of the supervised entities. According to the Law on Public Service, public servants in the "A" level category, as for those public servants of the Commission, should possess a higher university education or equivalent. Most AML/CFT training has been given and funded by the EU under the 'Phare' project.

397. The respective laws impose confidentiality obligations on the employees of competent supervisory authorities. Furthermore, all authorities have confirmed that their internal procedures on recruitment require that employees should be of high integrity, appropriately skilled and academically qualified to maintain high professional working and operational standards.

398. Furthermore, Resolution 126 of July 2001 of the Bank of Lithuania establishes the requirements and recommendation for the members of the managerial bodies of the Bank and for its staff. The Resolution provides for the suitability of persons holding a key office and stipulates the criteria and eligibility for such suitability. It also provides a detailed form that has to be completed by all new recruits or appointees.

Recommendation 29 – Power to Supervise

399. Paragraph 7 of Article 5 of the AML Law imposes upon the FCIS the obligation and responsibility to supervise the activities of financial institutions and other entities in relation to the prevention of money laundering. Other legislation imposing supervisory obligations and responsibilities on other authorities (the Bank of Lithuania, the

Securities Commission and the Insurance Supervisory Commission in the financial sector field) do not refer to AML/CFT supervision but to prudential supervision. However, as part of their prudential supervision responsibilities, all relevant competent authorities include an element of AML compliance. The following comments, therefore, mainly and primarily refer to prudential supervisory powers but, any comments made could also be interpreted in relation to AML/CFT issues as appropriate.

400. It is further worth noting that under Article 3 of the AML Law, the financial sector supervisory authorities are recognized as institutions which, according to their competences, shall be responsible for the prevention of money laundering as stipulated in the AML Law. Furthermore, Article 4 of the AML Law requires these authorities to approve instructions aimed at the prevention of money laundering by those entities they license and supervise.

401. Articles 45 and 46 of the Law on the Bank of Lithuania govern the supervisory powers of the Bank of Lithuania. According to paragraph 1 of article 45 the Bank of Lithuania is empowered to supervise the activities of credit institutions that it licences in accordance with the procedures provided for by the laws and other legal acts. Similar provisions are included under Article 193 of the Law on Insurance and under Article 59(1) of the Law on Securities empowering the Insurance Supervisory Commission and the Securities Commission respectively to undertake on-site examinations of the entities that they licence.

402. Under paragraph 1 of Article 46 of the Law on the Bank of Lithuania, the Bank has a right to receive any information that is in the possession of credit institutions and that the Bank considers necessary for the performance of its supervisory functions. Paragraph 2 of Article 69 of the Law on Banks, on the other hand, compels banks to provide such information. Likewise under the respective provisions of the relevant laws, the Securities Commission and the Insurance Supervisory Commission are authorised to demand and receive all information necessary for the performance of their functions. The production of or access to the relevant information and documents does not require a court order.

403. Supervisory Authorities are empowered by their respective laws to impose sanctions. However such sanctions are applied only in respect of the relevant law governing the particular entity and hence such sanctions mainly relate to prudential measures. Otherwise, the initiation of proceedings aimed at imposing sanctions by the courts for breaches of or non-compliance with the AML Law fall within the competence of the FCIS. Although the examiners were informed that sanctions have been imposed by the respective supervisory authorities, it transpired that these only related to prudential issues as any breaches of or non-compliance with the AML Law are immediately reported to the FCIS under Article 8 of the AML Law. That said, however, according to the Lithuanian authorities, Article 8 would exclude any "warnings" that may be issued by the respective supervisory authorities for minor AML/CFT shortcomings.

Recommendation 17 - Sanctions

404. When supervisory bodies uncover AML violations, Article 7 of the LPML requires them to notify the FCIS.

405. Where the FCIS has conducted an on-site visit, there are 3 possible outcomes. First, if a breach of the Criminal Code appears to have been committed, the FCIS would start an investigation. Second, if there appear to have been violations of AML measures, the FCIS would draft a statement on the administrative violation and forward it to the court for a decision. And, third, where there are no suspected criminal offences or administrative violations, the FCIS produces an inspection statement, which describes what procedures or other measures need improving or changing.

406. The FCIS is empowered to demand corrective actions for AML breaches. The Administrative Violation Code (Art. 172-14) provides for fines on Managers of LTL1000 - LTL2000 to be enforced by the courts. In 2003, there were 23, in 2004 36 violations investigated, resulting in court-imposed fines. These violations were mostly technical, relating to client identification defects or, in some cases, failure to appoint a Money Laundering Compliance Officer. Under the Administrative Code, fines may only be imposed on individuals (usually the head of the entity concerned), not on the legal entity itself. Fining the head of an institution tends to lead to rapid improvements subsequently. The FCIS must be informed within 7 days of the necessary remediation to be undertaken to comply with the law.

407. The Criminal Code sets out sanctions that may be applied to both legal and natural persons in case of a criminal offence.

408. Otherwise, the provisions in the relevant financial legislation for the enforcement powers of the competent supervisory authorities do not extend beyond breaches of the relevant financial legislation. These enforcement powers therefore provide for the imposition of sanctions related to supervisory and regulatory breaches.

Recommendation 23 – Market Entry

409. In general, the provisions for establishing a financial institution, the "fit and proper" criteria for senior management and other officials of the institution and the holding and acquisition of shares are addressed by the Law on Financial Institutions. Licensing requirements under the respective financial laws are very comprehensive and strict. The financial laws further provide for the ongoing monitoring of shareholders of financial institutions including the granting or otherwise of the consent of the supervisory authority for an acquisition or disposal of a qualifying holding (10% or more). The examiners consider these provisions very important particularly in the context that the Register of Legal Persons does not register or keep record of any movements in shareholders following the registration of the entity and the initial founders as the first shareholders.

410. According to paragraph 4 of Article 23 of the Law on Banks a bank is required to inform the Bank of Lithuania of every case where 5% or more of the bank's capital and/or voting rights are acquired or when the qualifying holding (10% or more) in the bank's authorised capital and/or voting rights is acquired (increased) or is disposed of within 10 days of the receipt of the mentioned information.

411. Furthermore, Article 24 of the Law requires the consent of the Bank of Lithuania for any person wishing to acquire a qualifying holding of a bank's authorised capital and/or voting rights or to increase it to reach 1/5, 1/3 of 1/2 of the shareholding or such that

such person becomes the controller of the institution. The same Article requires a person who intends to reduce his holding to inform the Bank of Lithuania prior to divesting himself of such holdings.

412. Article 14 of the Law on Insurance specifies the requirements and documentation for a licence application, whilst Article 20 requires that founders and persons controlling insurance undertakings must be of good repute.

413. Article 22 of the Law on Insurance governs the transfer of shares of an insurance undertaking. The Insurance Supervisory Commission must be duly notified under the same circumstances as provided for the banking sector (see above) to enable it to give its consent or otherwise on the basis of its established "fit and proper" criteria.

414. Similar provisions are made under Article 26 of the Law on Securities.

415. The respective legal acts further provide for the "fit and proper" criteria of directors and senior management of a financial institution. In general these positions should be occupied by persons of good repute.

416. The evaluation team has been informed that thorough due diligence is undertaken on the fitness and propriety of prospective shareholders and senior management, including the identification of the source of funds for the acquisition of shares. The laws require that public and municipal authorities must provide to the supervisory authorities, at their request, all the information held by them on the applicant's financial position, activities and other related information that could assist the supervisory authorities in reaching a decision.

417. Furthermore, the legal acts themselves establish a number of measures that must be observed by the relevant supervisory authorities in preventing unfit persons from becoming the owners of a qualifying or controlling interest in an institution or from performing senior managerial functions including those in the executive and supervisory boards.

Recommendation 23 – Ongoing Supervision and Monitoring

418. The Bank of Lithuania monitors and examines institutions on an ongoing basis. On-site and off-site examinations are carried out in accordance with the Bank's "Inspection Manual" which provides comprehensive and detailed guidelines. Banks and foreign bank subsidiaries are examined at least once annually whilst credit unions at least once every two years. The Bank of Lithuania monitors the banking sector within the provisions of the Core Principles. In applying the Core Principles that are relevant to money laundering, the Bank includes an element of AML examination in the course of its supervisory work.

419. In accordance with article 205 of the Law on Insurance, the Insurance Supervisory Commission undertakes ongoing examinations of insurance undertakings once it licenses them to undertake insurance activities in accordance with Article 12 of the Law on Insurance. The Commission has informed that it includes an element of AML examinations in its supervisory work. It must however be noted that the Lithuanian

legislation does not impose the AML regulations on dependant insurance intermediaries or agents who are not therefore subject to direct supervision.

420. According to Article 59(1) of the Law on Securities Market, the Securities Commission can carry out investigations in order to monitor observance of the relevant provisions of the Law. The evaluation team has been informed that this would include AML examinations.

421. As already stated in this Report, paragraph 7 of Article 5 of the AML Law charges the FCIS with the primary responsibility of supervising the activities of financial institutions and other entities related to prevention of money laundering. The Lithuanian Authorities however interpret this provision broader and hence all supervisory competent authorities assume the responsibility of examining AML issues and compliance by those entities that they license and regulate albeit at different levels and extent. The evaluation team welcomes and endorses this broader interpretation. However, the evaluation team notes that the supervisory authorities do not undertake focussed ongoing AML examinations and hence, since the FCIS places reliance on the supervisory authorities for such examinations, in practice no focussed AML examinations are undertaken by the supervisory authorites.

422. In Lithuania, according to paragraph 4 of Article 3 of the Law on Financial Institution, only credit institutions can be authorised to provide a money or value transfer service. Furthermore Article 3 of the Law on Foreign Currency provides that again only credit institutions, if so authorised, can provide currency exchange services.

423. The Post Office in Lithuania however provides money transfer services. It is not subject to the supervision of the Bank of Lithuania for the provision of this financial service. However, being recognised as an entity subject to the provisions of the AML Law under Article 2 of the Law, providers of postal services who also provide services of domestic and foreign money transfers, fall within the supervisory competence of the FCIS in terms of Article 5 (7) of the AML Law. It appears however, that very little supervision is done by the FCIS in this regard.

424. Paragraph 1 of Article 3 of the Law on Financial Institutions establishes which services are considered as constituting a "financial service". The Law further establishes that certain financial services must be authorised or licensed as provided for under the respective laws. "Financial Leasing" is one financial service that need not be licensed. Hence, providers of financial leasing are not subject to a competent supervisory authority – except where such service is provided by a credit institution or a subsidiary of a credit institution in which case it becomes subject to the consolidated supervision of the Bank of Lithuania.

425. However, as providers of "financial leasing" are recognised as subject to the AML Law under Article 2 as a "financial institution", providers of financial leasing activities become subject to the AML supervisory competence of the FCIS in terms of Article 5 (7). Again it appears that very little supervision is done by the FCIS in this area.

Recommendation 32 – Statistics on On-Site Examinations

426. As already stated elsewhere in the Report the FCIS is primarily responsible for supervising financial institutions and other entities in relation to the prevention of money laundering. Other competent authorities include an AML element in their on-site examinations but no focused AML examinations are undertaken.

427. For the period 2003-2005 the Bank of Lithuania has undertaken the following prudential on-site inspections:

Year	Number of on-site inspection			
	Banks	Foreign Branches	Credit Union	Total
2003	10	3	28	41
2004	10	3	34	47
2005	10	2	24	36
				124

428. During 2003-2005 the Insurance Supervisory Commission carried out the following prudential on-site examinations of insurance brokerage firms and insurance undertakings.

Year	Number of on-site inspection		
	Insurance Brokerage	Insurance Undertakings	Total
2003	12	12	24
2004	50	20	70
2005	31	9	40
			134

429. The Securities Commission carried out the following prudential on-site examinations for the period 2003-2005:

Year	Number of on-site examinations			
	Financial brokerage firms	Financial brokerage departments	Management companies	Total
2003	25	7	14	46
2004	10	8	12	30
2005	12	5	8	25
				101

430. In accordance with its supervisory responsibilities and obligations under the AML Law, for the period 2003-2005 the FCIS carried out the following on-site examinations at financial institutions and other entities:

Year	Number of on-site examinations							
	Pawnshops	**Financial brokers**	**Credit unions**	**Casinos**	**Investment companies**	**Brokerage companies**	**Auditors**	**Total**
2003								
2004								
2005	35	6	19	5	4	22	17	108

Recommendation 25 – Guidance other than STRs

431. Article 4 of the AML Law requires those institutions responsible for the prevention of money laundering as identified in the law to approve instructions for financial institutions aimed at the prevention of money laundering. Other provisions of the Law require the Government to determine the procedures for the implementation on those particular provisions, e.g. what constitutes a suspicious transaction; the reporting of an STR and other information to the FCIS and the retention of registers of transactions. In this regard, the Government of Lithuania has issued a number of Resolutions foremost amongst which are:

- Resolution 929 of 22 July 2004 concerning the approval of criteria in observance whereof a monetary operation is considered suspicious;
- Resolution 931 of 22 July 2004 concerning the rules to arrange the register of monetary operations and transactions conducted by the client.
- Resolution 1331 of 3 December 1992 (revised) concerning the procedures for identifying the customer and several related monetary operations; for communicating information on monetary operations or transactions; and for controlling cash incoming to or outgoing from the Republic of Lithuania.
- Resolution 1441 of 15 November 2004 on the approval of the rules of suspension of suspicious monetary operations and communication of information to the FCIS.

432. On the basis of the Government Resolutions, the Securities Commission issued its Resolution No 1K-12 of 12 May 2005. The Resolution includes guidelines for financial brokerage firms, investment companies with variable capital, management companies and depositaries on the prevention of money laundering.

433. Likewise, in March 2005, the Insurance Supervisory Commission issued its Resolution No 68 for insurance companies and insurance brokerage companies on instructions for the prevention of money laundering.

434. For its part, the Bank of Lithuania has issued a number of Resolutions which are mainly prudential in nature. These address issues related to foreign currency operations;

licensing documentation; management of operational risk; recruitment and appointment of senior officials; and the acquisition or disposal of blocks of shares in a bank. Although prudential in nature, these Resolutions nevertheless have a bearing on AML issues. The main AML Resolution of the Bank of Lithuania is, however, Resolution 183 of November 2004 dealing with instructions to credit institutions for the prevention of money laundering.

435. All the above mentioned Resolutions establish instructions and provide guidance for financial institutions aimed at assisting them to implement and comply with the provisions of the AML Law. The evaluation team notes that very often the Resolutions issued by the competent supervisory authorities draw heavily on the relevant government Resolutions, at times even transposing most of the provisions. This procedure could lead to inconsistencies in the relevant provisions which could consequently lend themselves to different interpretations.

3.10.2 Recommendations and Comments

436. Recommendation 23 on regulation and supervision is broad in scope covering various aspects ranging from licensing, control and shareholding to ongoing adequate prudential and AML/CFT supervision.

437. The prudential regulatory and supervisory regime for the financial sector in the Republic of Lithuania in general appears to be adequate, efficient and complies with acceptable international standards. This is particularly true for the banking sector. Market entry conditions are strict, requiring appropriate due diligence procedures on promoters, shareholders and senior management. Statistics confirm an ongoing supervisory process with the relevant supervisory authorities being adequately resourced to undertake examinations and fulfil their legal responsibilities.

438. However, on the AML/CFT supervisory aspect the examination team could identify certain weaknesses. Although the AML Law imposes primary responsibility on the FCIS for AML/CFT supervision, it is comforting to note that all supervisory authorities include an AML component in their prudential examinations. The FCIS appears to place reliance on the financial supervisory authorities. The consequence is lack of co-ordination whereby no AML/CFT detailed and focussed examinations are being undertaken, with the FCIS not being aware or in control of the supervisory aspect.

439. *In this regard it is recommended that procedures be put in place whereby the FCIS, apart from retaining its right of undertaking its own focussed examinations, takes control* by:

- *planning and preparing in collaboration with the supervisory authorities annual inspection programmes;*
- *still leaving the prerogative for the supervisory competent authorities, on their own initiative, to undertake focussed examinations and/or to include an AML/CFT component in their prudential examinations;*
- *ensuring that in all the above instances the FCIS is informed and involved in the ongoing examinations; and that it receives examination reports in all instances*

irrespective of the type of findings. (This may require an amendment to Article 8 of the AML Law).

440. The examiners further noted that efficient procedures based on internationally accepted standards are in place for the relevant supervisory competent authorities to give their consent for the acquisition or disposal of blocks of shares. Yet the authorities have no independent source of confirming shareholding positions at any point in time as the Register of Legal Persons does not keep record of current shareholders. This may also have implications for Lithuania's ability to provide full international co-operation. *It is recommended that procedures are gradually established whereby the Register of Legal Persons keeps record of movements in shareholding.*

441. Although the necessary legal provisions for sanctions and the imposition of fines for AML related breaches of the legislation, the evaluation team considers the fines that can be imposed by the courts low and they can only be imposed on the head of the institution and not on the institution itself. The evaluation team consequently *recommends that the Lithuanian authorities reconsider these provisions accordingly.*

442. As regards guidance to the industry, *the examiners recommend the procedures are put in place to ensure consistency.*

3.10.3 Compliance with Recommendations 23, 30, 29, 17, 32, & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	**LC**	Fines that can be imposed by the courts are low and applicable only to head of institutions and not to institutions themselves.
R.23	**LC**	Risk based approach not present in all sectors; no focussed examinations at financial institutions are undertaken by the supervisory authorities; the FCIS does not have control on the ongoing AML/CFT supervision; there is a need to establish effective methods of coordination between the supervisory authority and the FCIS to co-ordinate and plan on-going supervision.
R.25 (25.1)	**LC**	Although various guidance and instructions are available to the various sectors, there is no one body that ensures consistency.
R.29	**C**	
R.30	**C**	(In relation to financial sector supervisors only)
R.32 (32.2)	**C**	

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis

443. According to Article 3 of the Law on Financial Institutions only credit institutions can be authorised to provide money transfer services and hence become subject to the licensing and supervisory regime of the Bank of Lithuania.

444. The Post Office however can also provide such services under licence from the Communication Regulatory authority. Postal services that also provide money transmission services are subject to the AML Law and hence subject to the FCIS supervision accordingly.

445. The Lithuanian Authorities have informed that there is no information available on the existence of any "informal" money transmission service being operated in Lithuania. According to the law, any person providing an "informal" money transmission service, which is a licensable activity in terms of law, would therefore be carrying out an illegal activity punishable under Article 202 of the Criminal Code (on "illegal performance of economic, commercial, financial or professional activity").

446. It follows therefore that the Bank of Lithuania is fully aware of the number of credit institutions providing money transfer services. The evaluation team, however, doubts whether the FCIS is fully aware of the number of post office outlets or agents authorised by the Communication Regulatory authority to provide money transfer services.

3.11.2 Recommendations and Comments

447. The licensing and registration process for the provision of money or value transfer services is adequately addressed under the respective relevant laws. In principle such service is exclusively provided by credit institutions under the supervisory powers of the Bank of Lithuania. The provision of similar services by the Post Office, however, although authorised by the Communication Regulatory Authority raises doubts on issues related to SRVI, particularly since on-site AML/CFT examination by the FCIS appear to be limited and hence control of the provision of such services by Post Offices appears to be loose. *The Lithuanian Authorities may wish to consider placing the authorisation and supervision of this financial service under the competence of the Bank of Lithuania for the sake of consistency and continuity.*

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**LC**	Money transfer service provided by Post Office needs to be better monitored and controlled by the relevant authorities.

4 PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer due diligence and record-keeping (R.12)

(applying R.5, 6, 8 to 11, & 17)

4.1.1 Description and Analysis

448. Under the AML Law, Designated Non-Financial Businesses and Professions (DNFBPs) are in general referred to as "other entities". In terms of Article 2(3) of the Law, the term "other entities" is defined to comprise:

- auditors;
- accounting undertakings or undertakings providing tax advice services;
- notaries and persons licensed to perform notarial acts;
- lawyers and lawyers assistants when they are acting on behalf of the client or represent him in financial or immovable property transactions or provide assistance in planning and concluding their clients' transactions relating to purchase and sale of immovable property, companies or rights, management of financial resources, securities or any other property of their clients, opening and management of bank, savings or securities accounts, the creation, operation or management of undertakings and administration of establishment contributions;
- persons engaged in economic-commercial activities related to trade in real estate, precious stones, precious metals, works of art, antiques and other property, the value of which is in excess of LTL50,000 (Euro15,000) or an equivalent sum in foreign currency where payment is made in cash – which is in line with art. 2a of the second EU directive;
- gaming companies;
- providers of postal services who provide services of domestic and international money transfers.

449. The term "other entities" under Article 2 also includes three other categories, i.e:

- insurance undertakings and insurance broker companies;
- investment companies with variable capital;
- management companies;

450. For the purposes of this section of the Report, however, these three categories are excluded as they have been already addressed under Section 3 – Preventive Measures (Financial Institutions).

451. Providers of postal services who also provide services of domestic and international money transfers have likewise been already addressed under Section 3. Their inclusion in this section of the Report is for the sake of completeness as, under the Lithuanian supervisory regime, they do not fall within the definition of a "financial institution".

452. Other types of DNFBPs, for example Trust and Company Service Providers, are not included. The Lithuanian authorities have explained that in Lithuania there are no laws on "trusts" and hence the concept is not known. As to Company Service Providers, the evaluation team has been informed that anyone can draw the relevant documents and register a company. Otherwise, any services to companies as envisaged under the FATF Recommendation and the relevant criteria are usually provided by accountants, auditors or the legal profession as part of their normal course of activities.

453. The coverage of Article 2.3 of the AML Law therefore broadly matches that of FATF Recommendation 12 and the EU Directive, with the following exceptions. First, Article 2.3 goes wider than the Recommendation/Directive in (i) covering postal service providers engaged in funds transfer; and (ii) dealers in works of art and antiques. But, second, Article 2.3 is narrower in scope, in that persons who trade in real estate are only subject to the AML Law where the value of the transaction exceeds LTL50,000, or its foreign currency equivalent, or payment is made in cash.

454. The legal obligation to identify customers is contained in Articles 10 and 11 of the AML Law. Article 4 of the Law empowers various regulatory bodies to issue instructions aimed at preventing money laundering. For DNFBPs, the State Gaming Control Commission (SGCC) has issued instructions for gaming companies. The Council of the Lithuanian Bar Association has the responsibility for approving instructions for lawyers and lawyers' assistants and for ensuring that they are properly qualified and informed about the measures for the prevention of money laundering specified in this law and other legislation. The FCIS approves instructions for other obliged entities covered by the AML Law. Where auditors and notaries are concerned, the FCIS prepares instructions jointly with the Chamber of Auditors and Chamber of Notaries. Relevant provisions contained in secondary legislation and instructions from individual regulatory authorities are as follows:

- Resolution of the Government No.930 (22 July 2004) sets out requirements for client identification and defines inter-related monetary operations;

- Resolution of the State Gaming Control Commission No. N-196 (30 September 2005) sets out instructions for entities organising games on the prevention of money laundering;

- FCIS Order No.50-V (14 June 2005) sets out instructions for auditors and companies providing accounting or tax consultation services;

- FCIS Order No.53-V (23 June 2005) sets out instructions for notaries and persons having the right to make notarial actions.

Application of Recommendation 5 – Customer Due Diligence Procedures

455. In general the analysis of Recommendation 5 and the findings and comments under Section 3 of this Report for financial institutions also apply to DNFBPs in applying the implementation of Recommendation 5 to DNFBPs. Some exceptions, which will be examined in the following paragraphs, however exist.

456. In terms of Article 10 of the AML Law, DNFBPs must identify the customer when performing a single or several related financial operations or when entering into transactions which exceed LTL 50,000 (euro 15,000) or its equivalent in foreign currency, irrespective of whether the transaction is performed during a single or several related operations. However, Article 10 also requires identification of the customer – in the presence of the customer himself or his agent – when a DNFBP is concluding agreements with the customer. i.e. at the establishment of the business relationship.

457. In the case of gaming companies, identification of the customer is done if the customer exchanges cash into gambling chips, pays or wins a sum which exceeds LTL3,500 (Euro 1000) or its equivalent in foreign currency (which is in line with the second EU directive – Art. 3 para. 5).

458. Otherwise the Law is silent on the timing of the application of identification (not customer due diligence) procedures for DNFBPs. However, this aspect is further taken up through instructions issued by the FCIS and through Resolution 196 of September 2005 issued by the State Gaming Control Commission for the gaming sector.

459. Resolution 196 of the State Gaming Control Commission requires identification procedure to be applied to the customer or his representative for one-off transactions exceeding LTL50,000 (Euro 15,000) or its equivalent in foreign currency or where the customer exchanges cash into chips or pays in or wins an amount in excess of LTL3,500 (Euro 1000) as required by the Law. It remains unclear however how and when the former or the latter requirement applies for identification purposes, particularly for one-off transactions below the LTL50,000 (Euro 15,000) threshold.

460. The Resolution further requires gaming entities to establish the identification documents required to establish and verify identity. It also requires (Article 13) employees of entities organising games to pay particular attention to:

- personal identification documents presented by stateless persons and foreigners;
- customers from the states included by the FATF in the NCCT lists and monetary operations performed on their behalf;
- whether or not the customer is included in the list of terrorist-related persons compiled by the UNSC; and

- whether or not the customer is included in the consolidated list of persons, their groups and entities and institutions subject to pecuniary sanctions of the European Union.

461. In the course of the evaluation discussions, the evaluation team tried to establish the effectiveness and efficiency of the implementation of the above requirements in instances where, for example, a person is exchanging chips in a casino. It is understood that casinos do not have on-line electronic systems that can search a database within minutes of the exchange transaction being carried out – hence the effectiveness of these requirements remains questionable.

462. As described above, the FCIS has issued instructions to various DNFBPs. All these instructions include guidance on client identification, mainly transposing the relevant provisions of the AML Law and the Government Resolutions.

463. The Council of the Lithuanian Bar Association (LBA) is responsible, under the AML Law, for approving instructions for lawyers on AML measures and for ensuring that they are properly qualified and informed about those measures. However, no instructions have yet been issued, partly because the LBA – at the time of the on-site visit – was being reorganised and also because a new law on the Bar was passed in 2004, and amended in 2005, requiring the adoption of a huge number of new rules, many of which had yet to be adopted. In any case, the LBA's firm view is that AML obligations are of only marginal relevance to the legal profession, because lawyers' functions in Lithuania are almost exclusively associated with representing clients in court. In fact, the LBA estimates that some 95% of information received by lawyers is connected with court cases or with preparing for court cases. In these situations, professional secrecy applies and only occasionally would a lawyer encounter a situation where he might have to report suspicious activity. The evaluation team were told that views differed within the LBA's membership about a lawyer's suspicion reporting duty where, for example, he was consulted about a real estate transaction or management of undertakings. But the LBA itself opposed *any* reporting about a client's business, on the grounds that any breach of client confidentiality by a lawyer would fatally undermine the legal profession, by driving client business towards people unqualified to give legal advice. Such people were not subject to AML obligations. In the LBA's view, where financial or property transactions involving a lawyer were concerned, a bank or notary would also be involved and these entities had their own suspicious activity reporting obligations.

464. In the course of the evaluation discussions, the evaluation team tried to establish the methods adopted and the extent to which the identification procedures are applied. For example it is not clear how the definition of inter-related monetary operations as included in Government Resolution 1331 can be applied to the gaming sector or the accounting profession or on what basis should the LTL50,000 (Euro 15,000) threshold limit be applied by the various categories of "other entities". It transpired, for example, that the accountants/auditors are of the opinion that the threshold limit is applied on the basis of the fees charged to their clients – hence "customers" are only identified if fees exceed the threshold. In this context it must further be noted that no provisions exist for applying various essential criteria of Recommendation 5 on a risk-sensitivity basis.

Application of Recommendation 6 – Politically Exposed Persons

465. As already stated under Section 3 of this Report, Politically Exposed Persons (PEPs) are only partially addressed for the banking and the insurance sectors through the respective Resolutions of the Bank of Lithuania and the Insurance Supervisory Commission. Hence there are no provisions for DNFBPs on their treatment of PEPs as customers/clients. As for the financial sector, DNFBPs are expected to address PEPs through their internal rules. The various DNFBPs that the evaluation team met however have confirmed that no sector of the DNFBPs has established any internal rules concerning PEPs.

Application of Recommendation 8 – Threats from new or developing technologies.

466. According to Article 10 of the AML Law identification procedures must be applied to a customer either in his presence or in the presence of his agent. Hence, for the DNFBPs, the same principle appears to apply that non face-to-face business relationships are not allowed. In the reply to the MEQ, the State Gaming Control Commission claims that whereas the general requirements on technological developments for money laundering are envisaged in the AML Law, the detailed regulation is provided in its Resolution No 196 of September 2005. The evaluation team could not trace any such provisions. Although the DNFBPs that the evaluation team met did not appear to be fully aware of, or conversant with, this issue, it has been claimed that non face-to-face business is limited.

Application of Recommendation 9 – Third Parties and Introduced Business

467. DNFBPs claim that the provisions of the AML Law apply and they would have to identify the customer in his presence or that of his agent. It is further claimed that their customers are mainly residents of Lithuania and the nature of their activity calls for a business relationship with the customer directly and not through third parties. Hence, reliance on third parties to perform the client identification procedures would not be allowed. DNFBPs claim that if the occasion arises that they have a foreign client then they would follow the procedures whereby the identification documents would have to be notarised and made available.

Application of Recommendation 10 – Record Keeping

468. Article 12 of the AML Law addresses the keeping of information. It establishes the maintenance of a register of transactions in accordance with regulations determined by the Government (Resolution 931 of 22 July 2004). The Article further establishes that copies of documents confirming identity must be kept for at least ten years from the end of the relationship with the customer. Other documents relating to financial operations or transactions entered into must kept for at least ten years from the date of executing the financial operation or of concluding the transaction.

469. Paragraph 2 of Article 12 obliges notaries and persons authorised to perform notarial acts to keep a register of suspicious transactions of their clients and transactions involving receipt or payment of an amount exceeding LTL 50,000 (Euro 15,000) or its equivalent in foreign currency.

470. Likewise, paragraph 3 of Article 12 requires all other entities with the exception of notaries (paragraph 2) and lawyers (paragraph 5) to maintain a register of financial operation where a single payment in cash exceeds LTL50,000 (Euro 15,000) and of suspicious financial transactions.

471. Under paragraph 8.2 of Resolution N-196, gaming companies must additionally keep a register of (i) persons who exchange chips into cash, or pay or win an amount exceeding LTL 3.5k or its foreign currency equivalent; and (ii) any suspicious operations.

472. On the other hand, paragraph 5 of Article 12 obliges lawyers and their assistants only to maintain a register of reported suspicious transactions entered into by their clients. The Bar Association is obliged to maintain a similar register of suspicious transactions sent to it. However, the register maintained by lawyers and their assistants is not available to the FCIS – it only has access to that of the Bar Association.

473. All entities, other than lawyers and their assistants must designate a senior employee responsible for the maintenance of the register of transactions and to submit information to the FCIS. The exception for lawyers and their assistants, as understood, appears to be a compromise to get lawyers on board in the prevention of money laundering.

474. The rules and regulations for record keeping are promulgated in the relevant AML instructions and guidance issued by the FCIS. The guidance mainly transposes the obligations under the AML Law and the provisions of Government Resolution 931. The FCIS instructions require that, where possible, registers should be computerised. The evaluation team understand that although in some areas the registers have been computerised, the FCIS does not receive the information "on-line" but through other electronic media.

Application of Recommendation 11 – Complex, Unusual, Large Transaction

475. There is no specific requirement in the AML Law or secondary legislation for obliged entities to pay special attention to complex, unusual large transactions, nor to analyse them and keep records accordingly. Rather, the obligation is to report to the FCIS all transactions over a threshold amount (LTL50,000) and to look for any transactions, irrespective of amount, that might match the criteria, set out in instructions from regulatory authorities, for operations to be categorised as suspicious. This should pick up attempts at "smurfing".

Application of Recommendation 17 – Sanctions

476. As detailed under Section 3 of the Report, the initiation of procedures to impose sanctions for beaches of or non-compliance with the AML Law fall within the competence of the FCIS. Within the various categories of DNFBPs it appears that only the State Gaming Control Commission has enforcement powers. However, its enforcement powers do not extend beyond breaches of the Gaming Law. These powers include: cancellation of gaming licence; suspension of licence; warning of possible cancellation of licence; and fines on individuals of LTL5,000 - LTL15,000 for a first

offence and LTL15,000 - LTL25,000 for a second or subsequent offence. However, the Commission has no powers to ban individuals from any involvement in gaming.

4.1.2 Recommendations and Comments

477. The concerns expressed and weaknesses identified regarding Recommendation 5 for the financial sector apply also for DNFBPs. Additional weaknesses or shortcomings identified include the timing and verification of the identification process, in particular in the gaming sector, and the basis of the applicability of the identification procedures in relation to the threshold limit.

478. As already indicated for the financial sector, PEPs are not addressed through legal provisions and hence for DNFBPs the issue of PEPs is not addressed as there is a complete lack of awareness of the risks involved. *It is again recommended to introduce specific legal provisions accordingly.*

479. There is a need for increased awareness of threats from new or developing technologies among DNFBPs. Although the activities of DNFBPs are mostly related to a one-to one customer relationship, yet developments in technology on the way of carrying out certain activities could pose certain threats.

480. Similarly, as for the financial sector, there is a need for the industry to be aware of the threats of money laundering arising out of large complex transactions that may not have economic reasons. The need to analyse and understand such transactions cannot be over-emphasised, particularly, for example, in the real estate market.

481. Record keeping procedures appear to be adequate although it may be appropriate for Lithuania to revisit certain exceptions made for the legal profession.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**PC**	There is a need to address CDD including identification issues, the provision of a legal basis to certain key elements of the ID process, and the timing and basis of the applicability of the ID process; PEPs are not addressed through legal provisions and hence no awareness within some sectors of the DNFBPs; more awareness on threats arising from technological developments and large complex transactions needed.

4.2 Suspicious transaction reporting (R.16)

(applying R.13 to 15, 17 & 21)

4.2.1 Description and Analysis

482. DNFBPs are in principle subject to the same reporting obligations as financial institutions. Some exceptions, in particular as regards the legal profession, do however

exist. The evaluation team understands that these exceptions have been mainly included as a compromise. Notwithstanding, DNFBPs are required to report suspicious transactions whilst being protected for breach of professional secrecy. DNFBPs are prohibited from "tipping off" a person upon whom a suspicious report has been submitted or who is the subject of an investigation. This prohibition is extended also to informing third parties. Hence, and in order to fully ensure compliance with the law, DNFBPs are also required to develop effective internal controls to prevent money laundering, albeit with some exceptions.

483. The findings for the financial sector as detailed under Section 3 of this Report remain valid and applicable to the DNFBPs. However, in the course of the evaluation, further weaknesses and shortcomings have been identified in relation to DNFBPs which call for the attention of the Lithuanian Authorities to consider and address.

484. The following paragraphs therefore must be read in addition to the findings for the relevant Recommendations under Section 3 of this Report.

Application of Recommendation 13 – Reporting of Suspicious Transactions

485. Article 9 of the AML Law requires all DNFBPs, as identified under the Law, to report to the FCIS irrespective of the amount involved in the operation "upon establishing that a customer is performing a suspicious financial operation". – see relevant comments under Section 3. Lawyers and lawyers' assistants are exempted to the extent that they are likewise required to report to the Lithuanian Bar Association which, in turn, must forward any STRs received to the FCIS.

486. Paragraphs 4 and 5 of Article 9 create an exception for notaries or persons authorised to perform notarial duties and for lawyers and their assistants. Where such persons have suspicion that a transaction carried out by their client is related to money laundering, they are required to forward the relevant documents to the FCIS – for lawyers through the Lithuanian Bar Association – immediately after conclusion of the transaction, irrespective of the amount of money involved in the transaction. For the sake of completeness, it must be noted that, in the case of lawyers and their assistants, the Lithuanian Bar Association must forward the report and documentation to the FCIS within 3 days of receipt.

487. The above raises some concerns. Although the AML Law only defines "financial operations", the Lithuanian authorities make a distinction between a "financial operation" and a "transaction" - a term that is not defined by the AML Law. In this context the Law itself seems to create confusion or conflicts. In the case of notaries, whereas under paragraph 1 they would be caught under the obligation to report a suspicious financial operation within three hours of the raising of the suspicion, in the case of a suspicious transaction, paragraph 4 obliges notaries and persons authorised to perform notarial duties, to report immediately after the conclusion of the transaction. In the case of lawyers the reporting obligations appear to arise only in terms of a "transaction" under paragraph 5, but still immediately after the transaction has been completed.

488. Paragraph 1 of Article 9 also imposes the obligation to suspend the financial operation that is reported for at least 48 hours. Although the Law appears to exempt lawyers and

lawyers' assistants from suspending a financial operation, it appears confusing as to how a transaction, at least in the case of notaries, can be suspended within the provisions of paragraph 4 since it requires submissions to the FCIS after the completion of a transaction.

489. The issue of the "mandatory" suspension of a financial operation that is reported as suspicious to the FCIS also raises concerns on its applicability by other DNFBPs such as auditors, accountants, the gaming sector and others.

490. Paragraph 7 of Article 9, in accordance with Article 6.3 of the EU AML Directive, further exempts lawyers and lawyers' assistants from the obligation to report when ascertaining the legal position of their client, or when defending or representing that client or acting on his behalf in court proceedings.

491. It must be further noted, however, that paragraph 1 of Article 7 expressly prohibits the FCIS from obtaining "data necessary for the performance of its functions and documents about financial operations" from lawyers and lawyers' assistants. Again this prohibition raises conflicts and concerns in relation to paragraph 5 of Article 9. First of all, within the context that the Lithuanian Authorities distinguish between a "financial operation" and a "transaction", Article 7 speaks about the former whilst paragraph 4 of Article 9 speaks about the latter. Furthermore, the prohibition under paragraph 1 of Article 7 in the case of lawyers could have limitations on the efficiency and effectiveness of the FCIS in the investigation of suspicious reports filed by lawyers.

492. In the case of other DNFBPs, the concerns arise on the basis and the timing of reporting a suspicious operation. For example, auditors and accountants have informed that customer identification obligations arise on the basis of the fees charged to their customers and the threshold of LTL50,000 (Euro 15,000). It was not clear during the evaluation discussions whether the reporting obligation is triggered subject to the same basis. Applying the 3 hour rule to instances of reporting by, for example, the gaming sector or dealers in precious goods may prove to be counter productive particularly due to the "mandatory" suspension of a transaction and the uncertainty about reporting of attempted transactions.

493. As detailed under Section 3 of this Report, the AML Law does not place any direct obligation upon DNFBPs to report financial operations or transactions that may be linked or related to the financing of terrorism. Indeed the AML Law is rather silent on the financing of terrorism. A limited reporting obligation only arises out of paragraph 1.20 of the Government Resolution 929.

Application of Recommendation 14 –Protection for disclosure and Tipping Off

494. Paragraph 4 of Article 16 of the AML Law does not qualify the submission of information to the FCIS as specified in the Law to constitute a disclosure of an industrial, commercial or bank secret. The Lithuanian Authorities have confirmed that this would include the term "professional secret" as may be applied in the case of the legal and accountancy professions.

495. Furthermore, paragraph 3 of Article 16 of the AML Law prohibits other entities and their employees from "tipping off" the customer or third parties on the submission of information to the FCIS or that an investigation is being carried out.

Application of Recommendation 15 – Development of AML/CFT Internal Programme

496. The obligation for DNFBPs to develop and establish appropriate mechanisms of internal control that prevent them from being used for money laundering operations and in keeping their employees continuously aware of the obligations under the Law through ongoing training and awareness is addressed through Article 15 of the AML Law. Paragraph 2 of Article 15 further requires the appointment or designation of senior employees responsible for ensuring the implementation of the obligations under the Law and to liaise with the FCIS.

497. It is noted that, presumably for the sake of compromise due to the reluctance of the profession to accept the AML/CFT obligations and responsibilities, the law exempts lawyers and lawyers' assistants from both the above obligations.

498. The evaluation team has been informed that all entities have established internal controls and appointed their compliance officers. It could not however be confirmed that the FCIS has been informed accordingly in all cases related to compliance officers in terms of paragraph 3 of Article 15. Indeed it is not possible to confirm that, for example, all dealers in high value goods have done so.

499. It is consequently not possible to confirm, and the evaluation team expresses concern, that all DNFBPs provide for the necessary functions of the designated compliance officers or the provision of ongoing training and awareness. For example, the State Gaming Control Commission has confirmed that most of the entities it licences have established internal control programmes, which it reviews in the course of its on-site examinations, whilst ensuring that appropriate training and awareness is provided to all employees.

500. As to the application of appropriate recruitment screening procedures, these appear to exist in the gaming sector and the legal/accountancy professions but may not necessarily be likewise applied in other non-financial sectors.

Application of Recommendation 17- Sanctions

501. As detailed under Section 3 of the Report, sanctions for beaches of or non-compliance with the AML Law fall within the competence of the FCIS. Within the various categories of DNFBPs it appears that only the State Gaming Control Commission has enforcement powers. However, it's enforcement powers do not extend beyond breaches of the Gaming Law. These powers include: cancellation of gaming licence; suspension of licence; warning of possible cancellation of licence; and fines on individuals of LTL5,000 - LTL15,000 for a first offence and LTL15,000 - LTL25,000 for a second or subsequent offence. However, the Commission has no powers to ban individuals from any involvement in gaming.

Application of Recommendation 21 - Relationships

502. As already explained under Section 3 of this Report, the AML Law is silent on business relationships and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply AML/CFT measures.

503. Furthermore this issue is not addressed under the relevant guidance resolutions issued by the respective authorities, mainly the FCIS and the State Gaming Control Commission.

504. Indeed, the evaluation team has been informed that such provisions or requirements are not necessary since DNFBPs do not enter into any such relationships.

505. The evaluation team expresses concern on the position taken since certain professions, in particular, the legal, notarial and accountancy professions are likely to encounter and handle transactions emerging from foreign countries which may not be applying the relevant AML standards

4.2.2 Recommendations and Comments

506. The application of the relevant FATF Recommendations to the non-financial sector – other entities or DNFBPs – appears to be lower in some cases than in others and in relation to the financial sector. Concerns mainly arise out of the fact that the main sectors – legal, notarial, accountancy and gaming – appear to be reluctant to be totally on-board with the programme of the Lithuanian Government in implementing the internationally accepted AML/CFT standards in Lithuania. The number of exceptions in the Law itself for the legal profession in particular is not conducive to remove the reluctance of this profession to acknowledge the important role that it can play in carrying forward the government policies in this regard. *It is recommended to reconsider the exceptions in the AML Law for the legal profession*. To a lesser extent, this may also be true of the gaming sector which believes that in implementing the AML measures it may be losing business.

507. Whilst acknowledging that implementing the full AML obligations to the entire sector of the DNFBPs in particular in sectors, such as real estate and persons dealing in precious specific goods, may prove difficult particularly because the Law does not provide for a risk-based approach, *it is highly recommended that DNFBPs are made more aware of their important role in the AML/CFT regime of Lithuania thus ensuring that, in understanding their role better DNFBPs acknowledge and implement the AML obligations further.* In this regard the *Lithuanian Authorities may wish to revisit the AML Law accordingly.*

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**PC**	Need to clarify the definition of a "financial operation" as opposed to that of a "transaction" in relation to reporting; exceptions in AML Law to legal profession. No direct obligation to report suspicion of transactions related

		or linked to financing of terrorism; development and implementation of internal controls; need to establish legal or other mandatory obligations for DNFBPs to pay special attention to relationships and transactions with AML/CFT non compliant countries.

4.3 Regulation, supervision and monitoring (R 24-25)

4.3.1 Description and Analysis

Recommendation 24 – Regulatory and Supervisory Measures

508. The State Gaming Control Commission is responsible to regulate and supervise casinos and other gaming entities. However, although an AML component is claimed to be included in the on-site examination of casinos undertaken by the Commission, the ultimate responsibility to ensure AML/CFT compliance lies with the FCIS. The State Gaming Control Commission, however, remains the sole authority responsible to licence casinos.

509. Licensing procedures for gaming companies are governed by the provisions of the Gaming Law. A company wishing to apply for a licence to open and operate a gaming machine hall, a bingo hall or a gaming establishment (casino) must submit an application to the State Gaming Commission. Such application must include details indicating the name, code, head office address, contact details, types of gaming to be operated, details of company management officials and other relevant information. Such other information includes:

- gaming regulations;
- description of gaming devices and documents attesting ownership or leasing contracts thereto;
- number of gaming devices;
- information of the State Gaming Commission concerning the gaming location and certification thereto;
- documents on ownership of business premises or copies of leasing contracts;
- rules setting entrance fees and payment procedures where applicable;
- list of head of administration, his deputies, chief financiers and staff members providing services to players.

510. The State Gaming Control Commission shall inspect the documentation and operating premises and issue its determination on a permit within 30 days which period may be extended to a maximum of 60 days if additional information is requested. The Commission informs the FCIS accordingly.

511. At the meeting with the State Gaming Control Commission the evaluation team was informed that a due diligence check is carried out on the shareholders/ownership. This

involved information being forwarded to the State Security Department, the FCIS, the Special Investigation Service and the Police, who would each give the Commission their conclusions (see Article 4.2 of the Gaming Law). The Commission further informed that such due diligence procedures are applied in the case of changes in shareholding/ownership. The evaluation team again questions this claim on the basis that the Register of Legal Persons does not record changes in ownership. The Commission claims that it has to be informed by the licence holder of any such changes and that such information would be declared at the shareholders' meeting. In any case, there is no independent means of verifying this information. Indeed the Law on Gaming appears to be silent on the issue of changes in shareholding/ownership following the issue of permit/licence.

512. In two cases, the Commission has refused to issue a licence, simply on the grounds that the Police held negative information on individuals connected with the gaming operator, even though the Police were unable to disclose to the Commission what that information comprised. In one case, the operator challenged the decision in court, but the court upheld the Commission's refusal.

513. The Commission is responsible for checking compliance of gaming operators with the Gaming Law, only one part of which – Article 20.1, concerning the register of persons who exchange cash for tokens or collect winnings exceeding LTL3,500 – is concerned with AML measures. (However, if the Commission's inspectors became aware of any suspicious monetary operations, they would inform the FCIS.) Inspections for compliance with the AML measures of Resolution N-196 are conducted by the FCIS.

514. Any compliance failings are discussed within the Commission and a decision taken about penalties for those breaches. Otherwise, the Commission may simply make recommendations to the gaming operator about desirable changes. The operator is given a copy of the on-site visit report and has an opportunity to express their views. Where corrective measures are necessary, the Commission sends the operator a "control statement" which sets out a timeframe for remedial action. If an operator has been in breach of the law, or received a warning about possible suspension of its licence, the Commission checks that appropriate action has been taken.

515. The Commission has 8 staff in its Control Division, 2 staff in its Gaming Devices Division and 2 staff in its Financial Inspection Division who are together responsible for carrying out on-site inspections. One staff member (the Chief of the Financial Inspection Division) has been given responsibility for liaising with the FCIS on AML issues.

516. For the period 2003 – 2005 the State Gaming Control Commission has carried out the following on-site examinations:

Period	Number of Inspections	Sent to FCIS*
2003	21	3
2004	18	3
2005	23	1**

*Information sent to FCIS regarding possible money laundering features

** The inspections reports are summarized, the final results will be reflected in the anual report of the Control Commission.

517. The Lithuanian Bar Association does no more than ensure its members meet their legal obligation to keep a register (under Article 12.5 of the AML Law) of reported suspicious transactions entered into by their clients. The FCIS is responsible for ensuring that the LBA keeps a register. Under Article 15.1-15.2 of the AML Law, lawyers and lawyers' assistants are *not* obliged to: establish appropriate internal AML controls; train staff about AML measures; or designate a senior employee to be responsible for AML measures and maintain contacts with the FCIS.

518. The AML role of the Chamber of Auditors appears to be limited to providing advice to its members [19]; giving information to members via its website; communicating Government decisions; and including relevant AML measures in the training courses it runs for auditors.

519. The AML role of the Chamber of Notaries is very similar to that of the Chamber of Auditors in organising events, conferences and providing relevant information to members on its website. On-site AML inspections of notaries are carried out by the FCIS, with the Chamber notified of the FCIS's findings. If the FCIS needs to contact a particular notary, it does so: however, broader AML issues affecting the profession tend to be raised by the FCIS through the Chamber of Notaries.

520. As regards other DNFBPs, the FCIS has drafted AML instructions for financial lease providers and for post service providers, providing internal and international post services. But the FCIS has yet to issue specific instructions for dealers in works of art, antiques or precious stones. However, the FCIS told the evaluation team that it had conducted on-site inspections of these enterprises – for example, 35 visits to pawnshops – and found no AML violations.

521. The FCIS has a total of 23 staff available to take part in on-site AML visits: 13 officers in its ML Prevention Division and another 10 officers in county divisions across Lithuania. The FCIS adopts a risk-based approach to planning inspections, according to a number of different criteria – for example, to a firm that has often delayed submitting reports or to a sector that has not filed any reports.

Recommendation 25 – Guidance for DNFBPs (other than STRs)

522. As already detailed under Section 3 of this Report, the main or principal guidance has been issued in the form of Resolutions of the Government of Lithuania which become mandatory and binding for all the financial and non-financial sectors as identified under the AML Law. Foremost amongst these are Resolution 929 of July 2004; Resolution 931 of July 2004; Resolution 1331 of December 1992 (revised) and Resolution 1441 of November 2004.

523. On the basis of the Government Resolutions, which provide further details as required under the AML Law, the State Gaming Control Commission and the FCIS have issued several resolutions to those they regulate or supervise. As mentioned previously, the

[19] After the visit, the Chamber of Auditors approved a list of criteria for the identification of STRs for auditors

Lithuanian Bar Association, although so required by paragraph 5 of Article 4 of the AML Law, has not issued any guidance to lawyers and lawyers' assistants.

524. The principal Resolution issued by the State Gaming Control Commission is Resolution No. 196 of 30 September 2005 on the approval of Recommendations for Entities Organising Games on Prevention of Money Laundering.

525. Those issued by the FCIS are mainly:

- Resolution 17-V of 26 January 2005 for financial lease (leasing) providers;
- Resolution 50-V of 14 July 2005 for auditors and companies providing accounting or tax consulting services;
- Resolution 53-V of 23 June 2005 for notaries and persons having the right to make notarial actions; and
- Resolution 66-V of 19 August 2005 for post office providers providing internal and international post services.

526. Guidance has not been issued to lawyers and their assistants, as already indicated above, and to persons engaged in economic-commercial activities related to trade in real estate, and precious items with value in excess of LTL 50,000, (Euro 15,000).

527. These instructions aim to assist DNFBPs in implementing the provisions under the AML Law. As indicated in Section 3, however, there appear to be inconsistencies in such guidance, whilst at times the requirements cannot in practice be effectively applied. Some examples would be:

- Article 9 of Gaming Resolution No.196 explaining monetary operations in cash gives examples which do not and cannot be applied to the gaming sector;
- Article 13 of Gaming Resolution No. 196 requires identification verification which can only be applied if electronic lists as detailed are available;
- Article 23.1 of Gaming Resolution No. 196 in applying the mandatory suspension of a suspicious monetary operation for 48 hours. The evaluation team was not given any indication as to how this is or could be done in practice.
- The application of inter-related transactions under Government Resolution No. 930 by gaming entities, post office service providers and auditors.
- The application of criteria establishing a suspicious transaction under Government Resolution No. 929 which requires that such criteria for auditors be established by the Chamber of Auditors, for notaries by the Chamber of Notaries and for lawyers by the Council of the Lithuanian Bar Association. Similar provisions are included in the relevant Resolutions of the FCIS (the Bar Association has issued no guidance) in relation to Government Resolution No. 929 but no such criteria has been issued.

4.3.2 Recommendations and Comments

528. In principle all DNFBPs are subject to ongoing regulatory and supervisory monitoring, although apparently to different extent due to the subjectivity of the risk based approach of the FCIS, even though they are all subject to the supervisory regime of the FCIS.

529. The State Gaming Control Commission undertakes on-site examinations at casinos and other gaming entities. It claims to include an AML component in such examinations. As for the financial sector, there are no arrangements in place for the Commission to inform the FCIS in all instances on its findings. In terms of Article 8 of the AML Law the Commission must only inform the FCIS on suspicious activities and violations of the Law.

530. The supervisory regime of on-site examination at other DNFBPs exercised by the FCIS appears to be loose and does not provide for ongoing monitoring. The concerns on focused on-site AML examinations expressed under Section 3 of this Report therefore also apply to DNFBPs.

531. One particular aspect that must be noted regards lawyers and lawyers' assistants. Paragraph 7 of Article 5 in imposing the supervisory obligations on the FCIS for financial institutions and other entities does not exclude lawyers and lawyers' assistants. Yet, paragraph 1 (1) of article 7 prohibits the FCIS from obtaining from lawyers and lawyers' assistants any information or data necessary for the performance of its functions under the Law, including documents relating to financial operations. *This is a contradiction and a limitation on the effectiveness of the powers of the FCIS that need to be addressed immediately.*

532. *It is therefore recommended that appropriate procedures are put in place as detailed under Section 3 of the Report to ensure appropriate ongoing monitoring and supervision.*

533. As regards guidance to the industry *it is again recommended to have procedures in place that ensure consistency and applicability*.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**PC**	No risk-based approach applied; no focused AML on-site examinations; FCIS supervisory regime quite low; no arrangements for FCIS to be aware of on-site examinations by Gaming Commission; no independent checks on shareholders unless Gaming Commission is informed; conflicts in the FCIS supervisory powers over the legal profession.
R.25 (25.1)	**LC**	Although various guidance and instructions have been issued to the various sectors there are inconsistencies and inapplicabilities. No guidance issued to the legal profession.

4.4 Other non-financial businesses and profession/Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

534. The AML Law identifies those entities that are considered as DNFBPs and upon whom it imposes the AML obligations. The FATF recognises dealers in precious stones and precious metals as part of DNFBPs. The Lithuanian legislation has extended this definition to include dealers in works of art, antiques and any other property the value of which is in excess of LTL50,000 (Euro15,000) where payment is made in cash.

535. There are however no empowering provisions in the Law to extend its application to other entities that eventually could be or risk of being misused for money laundering or terrorism financing. The Lithuanian authorities advised that should this eventuality arise the law would be amended accordingly.

536. Although the use of bank accounts and the electronic transfer of money for settlements on direct debit and credit systems together with the use of electronic cards is gaining momentum and importance in the Republic of Lithuania, the economy remains predominantly cash based. Currency in circulation accounted for 7.7 % of GDP for 2005 (7.6 in 2004 and 7.3 in 2003)[20].

4.4.2 Recommendations and Comments

537. The Lithuanian Authorities acknowledge that non-financial businesses and professions other than those already captured by the AML Law could be at risk of being misused for money laundering activities. Indeed the AML Law has already extended the definition of dealers in precious items beyond that of the FATF. This is a welcome initiative that confirms the commitment of the Republic of Lithuania in this regard.

538. The Lithuanian Authorities may however wish to consider intensifying the drive to reduce the use of cash and develop further electronic settlements.

4.4.2 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**C**	

[20] Currency in circulation calculated as period average

5 LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

539. The procedures for establishing a company and the type of companies that can be registered with the Register of Legal Persons are described in Section 1.4 of the Report.

540. The Register of Legal Persons is a public document, available on-line. It includes extensive data on legal persons which is captured upon registration. Such data includes

- data concerning the identification of the legal person; code of legal person; name; legal form; address and registration data;
- data concerning the natural persons involved in the activities of the legal entity: members of management bodies and restrictions on their activities; data on representatives; persons who act jointly; procurator; administrator in bankruptcy and liquidator;
- data on permitted activities and restrictions of the legal person and details on institution imposing the restrictions; and
- data on branches and representative offices of legal person.

541. Legal persons are further required to submit additional data to the Registrar relating to members of the supervisory board and the shareholder if the legal person has only one shareholder. Other data includes changes to the statute, acts of incorporation, annual financial statements and minutes of shareholders' meetings including list of shareholders participating in the meeting.

542. In the course of the discussions with the representatives of the Department of Registers and the Private Law Department, the Lithuanian Authorities informed that as at the time of registration of a company, the founders are considered as the first share-holders. Thereafter, the Register of Legal Persons is not updated with any changes in the shareholding structure (however, more updated information on shareholders is available in the minutes of the last annual general meeting of shareholders which is provided to the Registrar). Hence, although the Register of Legal Persons is, according to Article 2.71 of the Civil Code, a public document, it cannot provide the competent authorities with adequate, accurate and current information on beneficial ownership and control of legal persons.

543. The Lithuanian Authorities have informed that in the case of companies that are publicly listed such information could be obtained either through stock-brokers or through the list of shareholders attending the shareholders meeting. Further discussions proved that this is not the case and hence accurate and timely information on shareholding, beneficial ownership and control of a legal person is not available. The evaluation team was advised that it is part of the identification procedures applied under

the AML Law for financial institutions or other entities to ask the company itself to produce a list of the current shareholders. This may be normal practice, but the current ownership of legal persons should be capable of being verified from independent, authoritative, sources.

544. The Republic of Lithuania prohibits the issue of bearer shares by corporate bodies.

5.1.2 Recommendations and Comments

545. The unavailability of information and data on current shareholders in the Register of Legal Persons poses some serious concerns. Financial institutions and other entities cannot complete the identification and verification process satisfactorily when establishing relationships with corporate bodies. Competent authorities may not be able to fulfil their responsibilities in investigating or co-operating both domestically and internationally as they do not have the means of verifying ownership of a legal person.

546. In the light of the above, the evaluation team highly *recommends that, as a minimum, current qualifying shareholders (10% and more) are recorded in the Register of Legal Persons* and that such information is made available to the relevant competent authorities. *It should be a statutory obligation to keep the Register up to date in this way.*

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	**PC**	Current shareholders and ownership of legal persons not verifiable at the Register of Legal Persons.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

547. The Lithuanian Authorities have advised that the concept of trusts is not known in Lithuania. The only forms of legal persons that are recognised under Law are those defined in Section 1.4 of the Report: no other forms of legal arrangement exist.

5.2.2 Recommendations and Comments
(NA)

5.2.2 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	**NA**	The concept of trusts or other legal arrangements (other than corporate) is not known under the laws of Lithuania.

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

548. Non-profit organisations are governed by the Law on Charity and Sponsorship. NPOs have to be registered in the same way as private companies, with the register of legal persons. In addition, they have to register as sponsorship receipient (art. 15 of the Law). According to Art. 7(1), the following entities registered in the Republic of Lithuania may be the recipients of sponsorship:
1) charity and sponsorship funds;
2) budget-financed institutions;
3) associations;
4) (repealed on 12 January 2006);
5) public agencies;
6) religious communities, associations and religious centres;
7) divisions (chapters) of international public organisations;
8) other legal persons whose activities are regulated by special laws and which participate in not-for-profit activity, while the profit received may not be allocated to their participants.

549. Article 12 of the Law defines the accounting rules for charity and sponsorship and prescribes the obligations for both suppliers and recipients thereof to conduct and prepare accounts and submit financial data to the territorial tax authorities. Article 13 of the Law identifies the institutions that control charity and sponsorship activities and the competences thereof. The state tax inspectorate is responsible for the general tax control in that area. Other state and municipal institutions have also responsibilitities in the fields conferred to them by law (e.g. the FCIS and the police in case of suspicion of involvement in ML or FT). Article 15 prescribes the procedures for annulling the status of a sponsorship recipient upon the recommendation of the control institution. Para 3 provides that the manager of the register of legal entities shall revoke the status of sponsorship recipient on the proposal of a controlling authority, e.g. after having established that the person (the recipient) has committed a violation of the AML Law.

550. In this context, the State Security Department cooperates with the State Tax Inspectorate on a bilateral basis on matters concerning the prevention of the financing of terrorism.

551. In the course of the discussion with the State Tax Inspectorate, the evaluation team was informed that the Tax Inspectorate undertakes two types of audits – a Tax Audit and an Operation Control Audit. The latter is undertaken often at the request of the State Security Department and would involve an unannounced visit which is often focused in a quick collection of information. The Inspectorate also provides the FCIS with information or suspicions that it has on flows of money. In this regard, it has a special agreement with the FCIS beyond its obligations under Article 8 of the AML Law.

552. In the course of the discussion, the State Tax Inspectorate further informed that following a recent review of the laws governing non-profit organisations, there were

major amendments to the Law on Charity and Sponsorship through the Law No. X - 461 of 20 December 2005. These amendments provided for additional obligations of sponsors except for natural persons and legal persons entitled to receive sponsorship to submit to the State Tax Inspectorate not only annually but also monthly reports on sponsorship provided/received and the utilisation of such monies. Monthly reports shall be submitted only in cases when the amount of sponsorship granted to one beneficiary or the amount of sponsorship received from one sponsor exceeds LTL 50,000, starting from the beginning of the calendar year. The Law expanded the list of grounds based on which a competent institution is entitled to address an operator of the legal persons registered for cancellation of beneficiary status e.g. a person us subject to a binding sentence for a crime against economy, business or financial system, or a person committed a breach of AML Law, or a persons committed an offence and granted/received/utilised a charity or sponsorship amount exceeding 250 minimum subsistence figures within one calendar year or 500 min. subsistence figure within 3 consecutive years etc.

5.3.2 Recommendations and Comments

553. Non-profit organisations must prepare annual financial statements and are subject to oversight by the State Tax Inspectorate. However, it appears that such oversight is in principle focused on tax matters. Notwithstanding, the Inspectorate also undertakes examinations for the collection of data on behalf of the state Security Department whilst it also informs the FCIS on any information on flows of money.

554. Amendments have been proposed to the Law. In the process of considering these amendments, the Lithuanian Authorities may also *wish to re-consider the oversight procedures for non-profit organisations to ensure that mechanisms are in place to avoid the use of such organisations for the financing of terrorism.*

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR. VIII	**PC**	The oversight procedures for non-profit organisations need to be reviewed to make sure mechanisms are in place to avoid the use of such organisations for the financing of terrorism.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31 & 32)

6.1.1 Description and Analysis

Recommendation 31 – National Cooperation and Co-ordination

555. Following the adoption of the AML Law as amended, the Co-ordination Working Group has been re-activated by the Order No 113 of the Prime Minister of 27 May 2004. The objective of the Working Group is to collect, analyse and summarise information about ways of legalisation of money and property derived from criminal activity and to coordinate activities related to the prevention of money laundering. As in the case of the AML Law, no reference is made to the financing of terrorism.

556. According to Order 113, the Working Group is currently composed of the:

- FCIS Deputy Director (Head of Group);
- Head of the Money Laundering Prevention Division (MLPD) of the FCIS (Deputy Head of Group);
- Head of Subdivision 1 of the MLPD of the FCIS;
- Head of Activity analysis and Methodology Division of the Governing Chief Board;
- Representatives of the:
  - Law and Supervision Division of the Securities Commission;
  - Criminology Research Department of the Law Institution;
  - Bar Association;
  - State Security Department;
  - Association of Lithuanian Banks;
  - Prosecutor General's Office;
  - Tax Department;
  - State Tax Inspectorate;
  - Bank of Lithuania.

557. The terms of reference of the Working Group as defined in the Order are to:

- submit proposals to the FCIS for improving the money laundering preventive system;
- provide financial institutions and other entities responsible for money laundering prevention with proposals concerning AML measures;

- co-ordinate the co-operation of public authorities, financial institutions and other entities responsible for the prevention of money laundering in implementing AML measures;

- prepare proposals concerning relevant legal acts and submit them to the public institution concerned.

558. Furthermore, Article 3 of the AML Law lists those institutions responsible for the prevention of money laundering. This article, however, is silent on requiring such institutions to co-operate, particularly when all institutions are identified in the Order No 113 of the Prime Minister on the Co-ordination Working Group. Co-operation between state institutions is somewhat addressed under Article 8 of the AML Law but only to the extent that such institutions are obliged to report to the FCIS about any indications of suspected money laundering or violations of the AML Law.

559. Paragraph 5 of Article 9 of the AML Law requires lawyers and lawyers' assistants to report suspicious transactions to the Lithuanian Bar Association and not directly to the FCIS. There do not appear to be any specific co-operation arrangements between the Bar Association and the FCIS in this regard. The evaluation team were told that routing of STRs through the Bar Association preserves client confidentiality. The Bar Association conceals the name of the reporting lawyer but passes all other information (client, amount, circumstances, etc) to the FCIS. However, this putative need to preserve client confidentiality is more theoretical than real. The Bar Association has never received a single STR.

6.1.2 Recommendations and Comments

560. The reactivation of the Co-ordination Working Group is a welcome positive step. However, the evaluation team noted that the existence of the Group was scarcely mentioned during the on-site visit. This suggests to the evaluators that, far from being an effective strategic planning, co-ordination and consultative body, the Group is, effectively, a dead letter and as far as the evaluation team understood, the Group had only met 3 times since its reactivation. Furthermore, it was clear from the discussions that *there is a need to better share information on activities on the supervisory side taken by each institution. It needs to be invigorated, efficiently chaired, and FCIS "ownership" more firmly established. One way of achieving this would be to schedule regular meetings – say, 4 per year – and a forward agenda of key issues to discuss and take forward.*

561. As indicated in earlier parts of this report, there is no global overview commonly shared of ML trends and techniques at present, and in the field of FT, there is no real awareness of the functioning of the mechanisms in place to implement the international sanctions. This picture suggests that the existing coordination mechanisms are not effective. It should not be too difficult to improve the situation, since Lithuania has clearly designated bodies for the overall coordination (the Group discussed above, the FCIS in the ML field, the Ministry of Foreign Affairs and the SSD at their respective levels for CFT).

6.1.3 Compliance with Recommendations 31 & 32 (criteria 32.1 only)

	Rating	Summary of factors underlying rating
R.31	**LC**	Legal and institutional basis in place but questions remain on effectiveness of cooperation and co-ordination, and sharing of information
R.32	**PC**	Effectiveness of co-ordination

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

Recommendation 35

562. The Republic of Lithuania has signed and ratified the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 1988). It entered into force on 6 September 1998. Earlier developments in this report indicate that Lithuania has enacted legislation that encompasses the key requirements of the Vienna Convention. The trafficking in narcotics and other drug related offences are criminalized in Chapter XXXVII of Criminal Code "Crimes and Misdemeanours Related to Trafficking in Narcotic or Psychotropic, Toxic or similar Substance", including in particular Article 260 (Illicit Trafficking in Narcotic and Psychotropic Substances) and Article 266 (Illicit Trafficking in Precursors of Narcotic and Psychotropic Substances). Associated money laundering is also a criminal offence (See recommendations 1 and 2). The Criminal Code and the Criminal Procedure Code provide for the confiscation of proceeds derived from drug related offenses and narcotics and instrumentalities in drug related cases and associated money laundering (See Recommendation 3). Legislation in Lithuania also provides for extradition and mutual legal assistance. Lithuania can extradite both foreigners and its nationals on the basis of international treaties or Security Council Resolutions. Lithuania retains in principle exclusive competence for criminal acts committed on its territory, although crimes related to disposal of drugs and psychotropic substances and ML and are both extraditable offences (see Recommendation 36-39). Lithuania is a party and has signed a number of bilateral and multilateral agreements to facilitate international cooperation in matters covered by the Vienna Convention. Controlled delivery is available as a special investigation technique under Article 13 of Law on Operational Activities. Controlled delivery activities are also possible while using special investigative technique under Articles 158-160 Criminal Procedure Code. The issue of consistency of provisions on special investigative techniques was discussed earlier.

563. The Republic of Lithuania has signed and ratified the United Nations Convention against Transnational Organised Crime (Palermo, 2000). It entered into force on 29 September 2003. The Palermo Convention has been implemented in the AML Law, the Criminal Code and the Criminal Procedure Code. Earlier developments in this report indicate that Lithuania has enacted legislation that encompasses the key requirements of the Palermo Convention. The legislation criminalises the laundering of the proceeds of crime. The participation in an organised criminal group is also an offence under the Criminal Code, Article 249. (see also Recommendation 1 and 2). The Criminal Code and the Criminal Procedure Code provide for the confiscation of means, instruments

and proceeds of crime (See Recommendation 3). MLA and extradition rules are set out in the Criminal Code and Criminal Procedure Code (see Recommendation 36-39). Law enforcement agencies have a full range of investigative techniques at their disposal including those found in the criminal procedure law. These include: searches, seizure, temporary restriction of property rights, monitoring of phone calls and other electronic communication, under cover operation, secret surveillance, etc. The issue of consistency of provisions on special investigative techniques was discussed earlier.

564. The Republic of Lithuania has signed and ratified the United Nations Convention for the Suppression of the Financing of Terrorism (1999). It entered into force on 22 May 2003. Earlier developments in this report indicate that Lithuania has enacted legislation that encompasses the key requirements of this Convention. Lithuania has criminalised the financing of terrorism by virtue of Article 250 of the Criminal Code. These offences can be committed by both natural and legal persons. Insufficiencies regarding the criminalisation mechanisms have already been discussed. This offence is punishable by long terms of imprisonment, including life-time sentences. MLA and extradition rules are set out in the Criminal Code and Criminal Procedure Code (see Recommendation 36-39).

565. The Republic of Lithuania has signed and ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 1990). It entered into force for the Republic of Lithuania on 1 October 1995. The Law of the Republic of Lithuania withdrawing Lithuania's reservation in respect of Article 2 of the Strasbourg Convention was adopted on 8 July 2004 and entered into force on 13 July 2005.

Special Recommendation I

566. As indicated above, Lithuania has signed and ratified the United Nations Convention for the Suppression of the Financing of Terrorism (1999). It entered into force on 22 May 2003.

567. As indicated under Section 2.4, the UN resolutions relating to the prevention and suppression of financing of terrorism are implemented in the Republic of Lithuania through a combination of national provisions and directly applicable EU regulations (EU Council Regulations (EC) N° 881/2002 and 2580/2001). The Government of the Republic of Lithuania adopted the Resolution No. 1281 (31 October 2001), by which implemented the commitments under UN Security Council resolutions: 1267 (1999), 1333 (2000), 1373 (2001), 1388 (2002) and 1390 (2002). Lithuania has implemented the United Nations Security Council Resolutions 1267(1999) and 1373(2001). To implement UNSCR 1267(1999) the Government of Lithuania has adopted resolution No. 1442 on 20 December 1999. To implement UNSCR 1333 (2000) and UNSCR 1373 (2001) the Government has adopted resolution No.1281 on 31 October 2001. To implement UNSCR 1388 (2002) and UNSCR 1390 (2002) the Government has adopted resolution No.820 on 4 June 2002. Lithuania has submitted 4 reports regarding the implementation of the UNSCR 1373(2001) to the UN Counter-Terrorism Committee[21]. Lithuania has also submitted a report regarding the implementation of the UNSCR 1267(1999) to the UN.

[21] A fifth report was presented in June 2006

568. The main insufficiencies identified under Section 2.4.2 concern the lack of clarity as to whether Lithuania can act on behalf of other jurisdictions[22], whether all entities required to implement the UN Resolutions have been given adequate information about their duties, whether communication mechanisms exist with all financial intermediaries and DNFBP, whether a clear and publicly known procedure is in place for de-listing and unfreezing appropriate cases in a timely manner. It was also unclear whether adequate monitoring is in place in practice to ensure compliance with the UNSC Resolutions. To date, only one person was reported. Although Lithuania considers itself immune to terrorist financing problems, this figure is far from impressive. At the time of the evaluation there were plans to publish the international lists on the website of the Ministry of foreign affairs. No information is available as to whether unreported assets have been detected, and on possible measures applied for non compliance with the international sanctions.

6.2.2 Recommendations and Comments

569. The examiners welcome that Lithuania has ratified all the relevant instruments and taken measures to implement their requirements. Insufficiencies regarding the criminalisation of terrorist financing have been discussed earlier, as well as the question of consistency between the Law on operational activities and the Criminal Procedure Code.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**LC**	The key requirements are covered; the limited incrimination of terrorism financing and possible consistency issues as regards the legal framework for special investigative techniques (the provisions applicable to the operational phase seem to be broader than those of the Criminal Procedure Code – which would normally be used for MLA - could be issues in the framework of international cooperation).
SR.I	**PC**	Many uncertainties remain as to whether all efforts have been made to ensure that UNSC Resolutions are adequately known and implemented; results appear to be very modest.

[22]In the week of the adoption of the report, the Lithuanian authorities advised that on 9 February 2006, the Government adopted Decree N°137 on measures implementing international sanctions aiming at EU internals (persons and entities). A list of EU internals (persons and entities) subject to financial sanctions is attached to the Decree. In relation to action on behalf of other jurisdictions, the Decree of the Government of Lithuania N° 1411 of 6 September 2006 provides for such action. According to para. 1.20 of the Decree, a financial transaction is to be considered suspicious if data of the client or its proxy corresponds, inter alia, with the data in the list submitted by responsible foreign state institutions.

6.3 Mutual Legal Assistance (R.36-38, SR.V, R.32)

6.3.1 Description and Analysis

Recommendation 36

570. Providing legal assistance is regulated by the Criminal Code and Criminal Procedure Code. Furthermore, Article 138 of the Constitution of the Republic of Lithuania stipulates that international agreements which are ratified by the Parliament shall be an integral part of the legal system of the Republic of Lithuania. The Law on International Agreements emphasises that international agreements of the Republic of Lithuania which are in force shall be binding. This Law also prescribes that the provisions of the international agreements of the Republic of Lithuania shall be applied in case an effective international agreement ratified by the Republic of Lithuania lays down provisions different from those contained in the Lithuanian laws and other legal acts which were in force at the date of concluding such agreement or became effective after the coming of such agreement into force. The provisions of these legal acts determine the possibility of direct application of ratified international agreement of the Republic of Lithuania in Lithuania and their superiority with respect to the national law.

571. Hence, mutual legal assistance is rendered according to the European Convention on Extradition of 1957 and its Additional Protocols of 1975 and 1978; the European Convention on Mutual Assistance in Criminal Matters of 1959 and its Additional Protocol of 1978; the European Convention on the Transfer of Proceedings in Criminal Matters of 1972; the Convention on the Transfer of Sentenced Persons of 1983, and its 1997 Additional Protocol; the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990; the European Convention on the International Validity of Criminal Judgements of 1970; the European Convention on the Suppression of Terrorism of 1977; the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988; the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000 EU MLA Convention).

572. There is also a number of bilateral agreements on legal assistance.

573. On the basis of the current domestic provisions and the international instruments to which Lithuania is a party, Lithuania is in principle able to provide a wide assistance. Since it has ratified the Palermo Convention and the latter prevails over national legislation, assistance can be provided in all cases mentioned under criterion 36.1:

- the production, search and seizure of information, documents or evidence (including financial records) from financial institutions, or other natural or legal persons;
- the taking of evidence or statements of persons
- providing copies of relevant documents and records as well as any other information and evidentiary items
- effecting service of judicial documents
- facilitating the voluntary appearance of persons who can provide information or a testimony

- identification, freezing, seizure and confiscation of assets laundered or intended to be laundered, procededs of ML and assets used or intended to be used FT, as well as instrumentalities of such offences, and assets of corresponding value.

574. Foreign letters rogatory can also be considered for measures not specified in the Criminal Procedure Code, if such actions do not violate the Constitution and laws of the Republic of Lithuania and do not conflict with the fundamental principles of criminal procedure in the Republic of Lithuania.

575. Although neither the national law nor international treaties and conventions do provide any particular terms for the execution of legal assistance requests from foreign countries, the Lithuanian authorities stressed that such requests are always executed as soon as possible.

576. In every particular case the most effective and the most operative measures for the execution of the request for legal assistance of foreign state are chosen subject to the nature and urgency of the request. Lithuania, as a rule, considers the terms established by the requesting institution for the execution of the request. In cases of extreme urgency the answer to the request for mutual legal assistance is sent by the fastest means of communication: fax, e-mail, and afterwards by post mail. It was indicated that requests are usually executed within 1 month, but in very urgent cases, and if no particular practical problems are encountered, the request can be executed even within one or two weeks.

577. Subject to the applicable rules being fulfilled (international instruments prevailing in any case), the only restrictions (criterion 36.2) are imposed by art. 67 of the Code of Criminal Procedure, according to which, a request can be refused for the reasons mentioned in the international instrument, or when the rendering of assistance would contravene the Constitution, the fundamental principles of the criminal procedure or would constitute a threat for the sovereignty of Lithuania.

578. The receiving authorities have been designated for the execution of foreign request for MLA: the Ministry of Justice and the Prosecutor's Office (and in some cases the courts). Both forward then the request to the competent court or prosecutor. Therefore, Lithuania does not use the diplomatic channel where an agreement exists.

579. Article 66 of the Criminal Procedure Code provides that the procedure of communication of courts and the Prosecutor's Office with foreign authorities and international organisations, as well as the execution procedure of rogatory letters of such authorities and organisations shall be established by the Criminal Procedure Code and the international treaties to which the Republic of Lithuania is a party. If a rogatory letter is received directly, it shall be executed either after the receipt of an authorisation from the Ministry of Justice or the Prosecutor General's Office, or, if the direct transmission is provided by an international treaty to which Lithuania is a party, immediately, directly and with no intermediary formal conditions (according to Art. 67 of the Criminal Procedure Code). For instance, after the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000 EU MLA Convention) came into force, the above mentioned system of execution

of requests was decentralised, permitting in the case of requests from EU countries, to send directly requests to the competent courts and prosecutor offices.

580. MLA is granted also when the offence involves fiscal aspects (criterion 36.4). On April 4th 1995, Lithuania ratified the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (17 March 1978) and undertook the obligation not to exercise the right to refuse assistance solely on the ground that the request concerns an offence which is considered a fiscal offence. Under Article 18 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and others, Lithuania would generally provide assistance even if the request relates to a political or fiscal offence, provided the offence otherwise falls under the definition of money laundering as set out in Article 6 of Convention. Lithuania did not exercise the right established by Para 4 of Article 6 of the Convention to provide a list of offences related to money laundering. Thus, the presence of tax evasion data in a money laundering case under judicial investigation in the requesting jurisdiction does not prevent international cooperation by Lithuania.

581. A request for MLA is not refused on the ground that the law imposes secrecy or confidentiality requirements (criterion 36.5). Article 155 of the Code of Criminal Procedure provides that, with the consent of the pre-trial investigation judge, a prosecutor or an officer of pre-trial investigation by order of a prosecutor has the right to enter any private or public institution and to consult documents or information, and to make copies of them or to obtain the requested information in written if it is necessary for the investigation of the case. Documents and information may also be obtained by executing searches, seizures and other procedural measures. Any private or public institution must provide documents or information requested by the prosecutor or the pre-trial investigation officer who executes the requests for legal assistance of foreign state. The major exception, as in other countries, is information held by lawyers.

582. According to the Lithuanian authorities, the above measures can be applied in the framework of MLA.

583. As regards measures to avoid conflicts of jurisdictions, there have been no particular measures taken, except for the transmission of criminal proceedings and for extradition. The Criminal Procedure Code provides that when the national of a foreign state or another person who committed an offence on the territory of the Republic of Lithuania has left the Republic of Lithuania, the Prosecutor General's Office may decide to forward to the foreign country the request to initiate or carry out the criminal proceedings (art. 68, para. 3); the Prosecutor General's Office by executing a foreign request may initiate or take the criminal prosecution against the Lithuanian national who committed a criminal act in a foreign state and returned to the Republic of Lithuania (art. 68, para. 2); the Republic of Lithuania may extradite or surrender from the Republic of Lithuania to a foreign state (or to the International Criminal Court) a person against whom the criminal procedure has been initiated in this foreign state (ar. 69 and 691). The Ministry of Justice of the Republic of Lithuania or the Prosecutor General's Office of the Republic of Lithuania may forward to a foreign state the request for extradition or to issue European Arrest Warrant for the surrender of a person against whom a criminal prosecution has been initiated in the Republic of Lithuania (art. 69 and 70).

Recommendation 37 (crit. 1)

584. There is no dual criminality requirement in Lithuanian law for MLA. Such a requirement only exists for extradition.

585. Therefore, the rules on dual criminality applied in practice are those provided for in international instruments.

586. For instance, the Republic of Lithuania has made a dual criminality reservation to Article 2 of the European Convention on Mutual Assistance in Criminal Matters whereby it reserves the right not to give effect to a request insofar as its concerns an offence which would not qualify as a "crime" and punishable as such under the Lithuanian law. Notwithstanding this and the ground for refusal established by Article 18 of the Strasbourg Convention, the authorities advised that formal international assistance may be provided under the Strasbourg Convention in money laundering cases where the money laundering offence in the requesting country is wider than in Lithuania. The decision to provide assistance would be taken on a case-by-case basis after examination of the merits of the request and it is not strictly related to the principle of dual criminality.

Recommendation 38

587. As regards appropriate laws and procedures to provide an effective and timely response to MLA requests in respect of ML, FT and criminal proceeds and instruments, the issue was discussed under Recommendation 36. Value confiscation is provided for in the Lithuanian legislation and therefore applicable also for MLA purposes.

588. There are no arrangements for coordinating seizure and confiscation actions with other countries (criterion 38.3). This issue should be re-considered.

589. There is no special assets forfeiture fund either (criterion 38.4). According to item 76 of the *Rules on Derelict, Confiscated Property, Property Inherited by the State or Transferred to the State's Finance, on Transfer, Accounting, Storage, Realization, Return and Recognition as Waste of Exhibits or Findings*, approved by the decree of 26 May 2004 of the Government of the Republic of Lithuania, confiscated assets shall be sold or passed gratuitous to the Bank of Lithuania, public institutions, enterprises and organizations, municipalities. Confiscated assets and funds resulting from the sale of confiscated assets are transferred to the general state budget. This issue may need to be reconsidered.

590. The direct transmission of requests for legal assistance is possible when it is established by international treaties. Currently, the right to forward and to execute requests for legal assistance directly is provided on the basis of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000 EU MLA Convention) and of the Second Additional Protocol of the European Convention on Mutual Assistance in Criminal Matters.

SR V

591. SR. V requires, among other things, that each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organisations.

592. As indicated earlier, international treaties prevail over domestic legislation and their cooperation mechanisms are applicable by Lithuania as in the case of other countries. Lithuania has ratified a number of international instruments which contain MLA mechanisms. The country appears to have made a limited use of reservations, including restrictive declarations.

593. Furthermore, as indicated earlier in this report, according to Art.7 of the Criminal Code, ML and FT are subject to softer dual criminality requirement as far as Lithuania is the prosecuting body (the country acknowledges extraterritorial competence for those crimes).

594. International cooperation in the area of ML and FT could in some instances suffer from certain loopholes in the national legislation, in particular the definitions of ML and FT, and from some limits in the field of temporary or final measures. The examiners were assured that diverging definitions or criminalisation mechanisms in these fields are not a real obstacle for Lithuania to provide assistance, and the spirit of international treaties signed and ratified by Lithuania would prevail. The evaluators were not informed of particular problems as regards seizure and confiscation in cooperation with other countries, apart from the inability to execute civil confiscation orders.

595. As far as information and intelligence is considered, the FCIS and SSD seem to be strongly involved in such exchanges, subject to the reservations expressed by the examiners under section 6.5.1 beneath.

Recommendation 32

596. It is unclear whether statistics are kept on an on-going basis. The Lithuanian authorities provided after the on site visit the following figures concerning the requests for legal assistance received and sent by the Ministry of Justice:

	Countries involved	Incoming requests	Outgoing requests
2004	33 (mainly Belarus, Germany, Latvia, Russia, Sweden, Ukraine)	1674	1290
2005	34 (mainly Belarus, Latvia, Poland, Russia and Ukraine)	1442	1347

597. The figures indicate that Lithuania is itself making a wide use of MLA mechanisms. Interestingly, the figures on outgoing and on incoming requests are comparable.

598. No breakdown is available for the importance of requests dealing with temporary measures, confiscation and other proceedings related to criminal proceeds, money laundering and terrorist financing (at the level of the Ministry of Justice, there have never been such occurrences) and the average time needed for their processing, which might be different from the general average time needed to process MLA requests mentioned earlier, due to the technicality of the matter.

6.3.2 Recommendations and Comments

599. In the absence of any significant legal restrictions in the field of MLA, Lithuania is in principle able to provide a wide range of assistance in the field of criminal proceedings and in ML and FT in particular. The examiners would have welcome figures to corroborate the positive legal picture and information provided concerning MLA in general. It is therefore *recommended to improve the maintenance of statistics, with several breakdowns which would enable also the authorities to review the effectiveness of their international cooperation in the field of AML/CFT.*

600. *It is also recommended to adopt arrangements for coordinating seizure and confiscation actions with other countries.*

601. Finally, Lithuania may wish to establish an assets forfeiture fund to which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education and other purposes.

6.3.3 Compliance with Recommendations 36, 37.1, 38, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	**C**	
R.38	**LC**	No arrangements for coordinating seizure and confiscation actions with other countries
R.37.1	**C**	
SR.V	**C**	
R.32	**PC**	No complete and detailed statistics allowing to assess the effectiveness of cooperation in the field of temporary measures and confiscation, ML and FT-related cooperation.

6.4 Extradition (R.37, 39, SR.V, R.32)

6.4.1 Description and Analysis

Recommendation 37 (crit. 2) and recommendation 39

602. The Criminal Procedure Code (art. 69 to 77) details the general extradition mechanism, as well as the surrender procedure which implements the EU legislation on the European arrest warrant. The provisions also deal with the surrender of persons to the International Criminal Court. A simplified extradition or surrender procedure is also foreseen (art. 75), as contemplated by criterion 39.5 of the Methodology.

603. Art. 71 regulates in particular the extradition from Lithuania:

> Article 71. Surrender of Persons from the Republic of Lithuania (Extradition) or Surrender to the International Criminal Court
>
> 1. Any citizen of the Republic of Lithuania suspected of having committed a criminal act may be surrendered to a foreign state or to the International Criminal Court only if this obligation is set forth in international treaties of the Republic of Lithuania or in the Security Council Resolution of the United Nations.
>
> 2. Foreigners suspected of having committed criminal acts in the territory of the Republic of Lithuania or other states shall be surrendered to the respective states or to the International Criminal Court only if this obligation is set forth in international treaties of the Republic of Lithuania or in the Security Council Resolution of the United Nations.
>
> 3. Surrender of a citizen of the Republic of Lithuania or a foreigner may be refused, if:
>
> 1) the committed acts are not regarded as crimes or criminal misdemeanours under the Criminal Code of the Republic of Lithuania;
>
> 2) the criminal act is committed within the territory of the Republic of Lithuania;
>
> 3) the person is being prosecuted for a crime of political nature;
>
> 4) the person has been convicted of the criminal act, acquitted or relieved from criminal liability or penalty;
>
> 5) the person may be sentenced to capital punishment in another state;
>
> 6) the period for delivering or executing the judgment of conviction has expired by reason of lapse of time;
>
> 7) the person has been released from penalty in accordance with the law on amnesty or an act of clemency;
>
> 8) there are other grounds provided for in international treaties of the Republic of Lithuania.
>
> 4. Persons who have been granted asylum in accordance with the laws of the Republic of Lithuania shall not be punishable under the laws of the Republic of Lithuania for the criminal acts for which they were prosecuted abroad and shall not be extradited to foreign states, except in cases provided for by Article 7 of the Criminal Code of the Republic of Lithuania.

604. Lithuania can extradite both foreigners and its nationals on the basis of international treaties or Security Council Resolutions, which is a positive measure from the perspective of CFT.

605. The limits to extradition of a person are precisely listed under para 3, which notably requires the condition of dual criminality. Likewise, Lithuania retains in principle exclusive competence for criminal acts committed on its territory, although ML and FT are both extraditable offences.

606. The list of conditions does not contain an open ended approach which would, for instance leave discretionary power to the executive or judiciary to decide on a case by case basis.

607. According to Para 2 of Article 2 of the Council Framework Decision on the European Arrest Warrant and the Surrender Procedures between Member States the laundering of the proceeds of crime is the offence which gives rise to surrender pursuant to the European Arrest Warrant without verification of the double criminality of the act. Therefore, the competent authorities of the Republic of Lithuania may render legal assistance at the greatest extent possible even in the absence of dual criminality.

608. The Court, while passing the ruling to extradite or to surrender a person from the Republic of Lithuania, applying the procedure of extradition or executing the European Arrest Warrant does not consider the technical differences between the laws of the requesting and requested countries such as categorising or denomination of the offence. Only the description of acts and omissions has an importance for the court in determining whether the offence is qualified as "crime" and punishable as such. Furthermore, the court does not verify the double criminality of the offence pointed in the list of offences provided in the European Arrest Warrant according Para 2 of Article 2 of the Council Framework Decision on the European Arrest Warrant and the Surrender Procedures between Member States. This approach is consistent with criterion 37.2.

609. In cases when extradition of a Lithuanian citizen is not possible, the judicial authorities may initiate the criminal proceedings, either on their own initiative, or upon request of the country seeking extradition pursuant to the Council of Europe Convention on the Transfer of Proceedings in Criminal Matters of 1972 and other relevant internationals agreements. This is in line with the requirements of criterion 39.2. In principle, if additional information or evidence is needed, the Lithuanian prosecutor or court would request it from the applying country. But there is no formal, legal requirement to cooperate should such a case occur (criterion 39.3).

SR.V

610. Special Recommendation V further requires that countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations, and should have procedures in place to extradite, where possible, such individuals.

611. As indicated earlier, art. 71 of the Code of Criminal Procedure allows the Lithuanian authorities to extradite nationals and non nationals if this is required by an international instrument or a resolution of the Security Council. The way in which this provision is drafted allows it to prevail over the exceptions related to the non-extradition of nationals and Lithuania retaining exclusive competence for crimes committed on its territory.

612. Furthermore, the provisions on extradition are applicable at any stage of the criminal proceedings (from the pre-trial investigation to the prosecution or judgement).

Recommendation 32

613. There were no statistics or information available at the time of the visit that would enable to confirm in practice the overall positive picture concerning Lithuania's large ability to cooperate in extradition-related matters. Figures provided after the visit indicated that in 2004, 21 requests were received (5 persons extradited), and in 2005 36 requests on the basis of the European arrest warrant (27 persons extradited).

6.4.2 Recommendations and Comments

614. In the absence of any significant undue legal restriction in the field of extradition, Lithuania is in principle able to provide a wide range of assistance in the field of extradition. The examiners would have welcome figures to corroborate the positive legal picture and information provided. It is therefore *recommended to improve the keeping of statistics, with several breakdowns which would enable also the authorities to review the effectiveness of their ability to cooperation in the field of extradition in relation with AML/CFT.*

6.4.3 Compliance with Recommendations 37 & 39, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	**C**	
R.37 (2)	**C**	
SR.V	**C**	
R.32	**PC**	No statistics available in a timely manner; no information on background of cases.

6.5 Other Forms of International Co-operation (R.40, SR.V, R.32)

6.5.1 Description and Analysis

Recommendation 40 – Other forms of co-operation

615. In principle, Recommendation 40 requires that appropriate mechanisms are in place that facilitate the direct, either spontaneously or upon request, exchange of information relating to money laundering and predicate offences between the relevant competent authorities and their foreign counterparts.

616. In this respect, Lithuania has ratified various international instruments which provide for direct contacts between judicial authorities (Palermo Convention, Council of Europe Convention on laundering, Search Seizure and Confiscation of the Proceeds from

Crime, the European Convention on Mutual Legal Assistance in Criminal Matters). As an EU member, Lithuania is also involved in cooperation mechanisms such as EUROJUST. As indicated earlier, Lithuania is also a member of the EGMONT Group and the FCIS has endorsed its principles on information exchange. These are applied unless the counterpart requires the existence of a formal agreement, which is the case for some countries.

617. The SSD, which is in charge of investigations related to TF uses different ways to exchange information with foreign counterparts (Interpol, direct contacts etc.). It also uses the FCIS/FIU network channel.

618. On the aspect of co-operation with the authorities responsible for the supervision of credit institutions of other States, Article 47 of the Law on the Bank of Lithuania states that:

> 4.1 In carrying out the functions of the supervision of credit institutions, the Bank of Lithuania shall have the right to exchange information with the institutions of other states performing the supervision of credit institution on the activities of any credit institution, and it shall have to assure the confidentiality of such information. The information received from another institution performing the supervision of credit institutions may be communicated to other persons only in the cases provide for in laws regulating the activities of credit institutions.

619. On the basis of the provisions of Article 47, the Bank of Lithuania has entered into a number of bilateral agreements (MoUs) with the supervisory authorities of other countries providing for co-operation arrangements on mutual interests in the supervision of credit institutions. Indeed, under the provisions of these MoUs, the Bank of Lithuania is able to make both spontaneous disclosures to and entertain requests for information from foreign counterparts with an interest in the supervision of particular credit institutions. Furthermore, MoUs between the Bank of Lithuania and its counterparts provide for the sharing and co-operation in on-site examinations of the relevant foreign institutions operating in Lithuania and vice-versa.

620. The Insurance Supervisory Commission is given broad competences in the exchange of information. Article 186 of the Law on Insurance, in addressing confidentiality aspects, provides for disclosure gateways allowing the Commission to co-operate and exchange information with its foreign counterparts and other national supervisory authorities.

621. Indeed, in listing such authorities, paragraph 5 of Article 186 of the Law states:

> 186(5): The Supervisory Commission shall have the right to furnish information related to supervision of the entities specified in this Law, which is necessary for the execution of functions of recipients of such information, to: ……

622. Furthermore paragraph 6 of Article 186 enables the Commission to conclude bilateral agreements on the exchange of information necessary for fulfilling its supervisory functions with competent authorities of non EU member countries, subject to levels of confidentiality.

623. The legal right of the Supervisory Commission to conclude bilateral agreements (MoUs) for supervisory purposes, although more national in nature, is further strengthened through paragraph 1, sub paragraph 9 of Article 193 which provides that the Commission may:

> 193(1)(9): conclude agreements regarding co-operation and exchange of information with competent authorities, financial and capital market supervision institutions, competition and consumers' rights protection institutions of the Republic of Lithuania, other European Union Member States and non-member states as well as with other institutions of the Republic of Lithuania.

624. On the basis of these legal provisions, the Insurance Supervisory Commission has concluded various Memoranda of Understanding and other bilateral agreements on co-operation and exchange of supervisory information with its foreign counterparts that have an interest in the operations of insurance undertakings operating in Lithuania. These co-operation agreements provide for the spontaneous disclosure of supervisory information that is of mutual interest to both parties and for the provision of prudential information upon request, including the undertaking of such on-site examinations as may be necessary.

625. The Law on Securities Markets similarly provides appropriate gateways for the Securities Commission to provide adequate co-operation and exchange of prudential information with its foreign counterparts. Sub paragraphs (11) and (12) of paragraph (2) of Article 52 of the Law provide that the Securities Commission has the right to:

> (11) conclude agreements with counterpart foreign authorities on co-operation and exchange of information;
> (12) co-operate and exchange information with counterpart foreign authorities.

626. Whilst paragraph (2) of Article 57 of the Law further enables the Commission to conclude agreements on co-operation concerning exchange of confidential information with foreign supervisory authorities established in non EU member Countries. This provision limits the use of such exchange of information for supervisory purposes. Indeed, it further qualifies the authorities with whom such confidential information could be exchanged to those authorities that are broadly related to the prudential supervision of undertakings in the financial sector. Paragraph (5) of the same Article ensures that information received is only used in the manner authorised for supervisory purposes.

627. On the basis of the above legal provisions, the Securities Commission has concluded various bilateral agreements and MoUs with its counterparts in other countries. Such agreements provide for cooperation and exchange of relevant prudential information either spontaneously or upon request. These provisions are further strengthened through paragraph 7 of Article 57 of the Law which allows the Securities Commission to co-operate and exchange information with foreign authorities on breaches of the Law on matters related to insider dealing (Article 9) and market manipulation (Article 10).

628. In the case of DNFBPs there do not appear to be any legal provisions for the exchange of information or cooperation with foreign counterparts, except probably for those requirements particular to certain professions, such as auditors and accountants. The Law on Gaming remains silent on the provision of cooperation and exchange of information by the State Gaming Control Commission.

629. The provisions in this regard for the FCIS in the Law on the Financial Crime Investigation Service are found under paragraph (6) of Article 7 which states that the Service shall:

> 7.6.: co-operate with law enforcement and other institutions and agencies of the Republic of Lithuania and foreign countries, the international organisations on issues within its terms of reference.

630. This provision is further strengthened under paragraph (5) of Article 5 of the AML Law which, in defining the functions of the FCIS, establishes one of the FCIS competences as being:

> 5.5.: to co-operate with foreign state institutions and international organisations implementing the measures for the prevention of money laundering.

631. Therefore, some issues of concern may need to be addressed by the Lithuanian authorities in order to further enhance and strengthen its AML/CFT regime. These issues are discussed in the paragraphs that follow.

632. In the case of the three main financial sector supervisory authorities, there are adequate legal provisions providing gateways and mechanisms to facilitate co-operation and exchange of information. However a thorough analysis of these provisions and the resultant interpretation thereof concludes that such mechanisms are applicable only for prudential and supervisory purposes. The evaluation team expresses reservation as to the application of these provisions for the exchange of information to be possible in relation to information related to both money laundering and the underlying predicate offences, as required under Criterion 40.3. The respective relevant legal provisions do not make such references and hence the provisions of the AML Law would apply. In particular, one notes that the main supervisory authority for AML purposes in terms of the AML Law is the FCIS (Article 5(7)). In the absence of specific provisions in the relevant financial laws for the competent financial supervisory authorities to exchange information related to money laundering and the underlying predicate offences, Article 16 of the AML Law comes into play. Paragraph 2 of Article 16 dealing with sanctions for breaches of confidentiality and use of information and, in particular, paragraph 4 thereof dealing with "tipping off" are of further relevance. In disclosing AML/CFT related information to their counterparts in the absence of specific enabling provisions in the respective laws, financial supervisory authorities may be at risk of breaking the Law.

633. There are no legal provisions for co-operation and exchange of information for the non–financial sector competent authorities. This would, in theory, be possible where the State Gaming Control Commission is concerned, however, other DNFBPs fall within the supervisory competence of the FCIS.

634. The legal provisions under Article 7 of the Law on the FCIS for the FCIS in this regard appear inadequate or inappropriate, although this may be a matter of interpretation. The relevant legal provisions of the Bank of Lithuania, the Insurance Supervisory Commission and the Securities Commission, being the principal supervisory authorities in the financial sector, refer to both "co-operation" and "exchange of information". In the case of the Law on the FCIS, Article 7 only refers to "co-operation" which may not necessarily include the right of the FCIS to the "exchange of information". The Lithuanian Authorities give a broader interpretation of the "co-operation" concept under the FCIS Law to include also the exchange of information. The Lithuanian authorities have confirmed that in practice this issue has not raised any problems. Nevertheless, this interpretation may be challenged on the basis that, whereas in other Lithuanian laws as detailed above, the legislature identifies the need to differentiate between the two elements, the FCIS Law does not make this distinction.

SR.V and Recommendation 32

635. As indicated earlier, according to SR. V, each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organisations.

Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations, and should have procedures in place to extradite, where possible, such individuals.

636. The last development above, concerning cooperation at the level of financial institutions and DNFBPs and the formal legal restrictions to the FCIS' ability to exchange information in addition to cooperating with foreign authorities, are relevant from the perspective also of SR. V. The level of vigilance in practice, at the level of financial institutions and DNFBPs, is difficult to assess. It is also difficult to know to what extent their international contacts are used in the framework of the CDD requirements in respect of CFT.

637. As far as the SSD is concerned, it was indicated – as already mentioned in other parts of this report – that some possible FT-suspects (about 8 or 9) were subject to a close attention. The SSD was looking into the matter with the assistance of foreign authorities, in particular the United States who also follow closely the developments concerning the only person who subject - mistakenly – to the application of international sanctions in Lithuania. Little information is available, apparently due to the confidential nature of the SSD's work.

6.5.2 Recommendations and Comments

638. On the basis of the foregoing analysis, and in order to ensure that different laws dealing with provisions on similar aspects do not lend themselves to different interpretations, *the examiners recommend that the issue of co-operation and exchange of information*

in the Law on the FCIS be further clarified as in other laws by the inclusion of a specific reference to the exchange of information. This may also require an amendment to paragraph 5 of Article 5 of the AML Law.

639. The broad mechanisms and gateways in the financial laws for co-operation and exchange of information which only relate for supervisory and prudential regulation purpose are much welcome as these would also indirectly assist for AML preventive and investigative purposes. *The evaluation team however recommends that the Lithuanian authorities consider the extent to which financial supervisory authorities directly co-operate and exchange information in relation to both money laundering and the underlying predicate offences, as opposed to these functions being vested within the competences of the FCIS, and legislate accordingly.*

640. The above should be similarly addressed for the State Gaming Control Commission.

6.5.3 Compliance with Recommendation 40, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**PC**	The provisions for the FCIS refer to co-operation with foreign institutions but do not provide for exchange of information as in other laws; the provisions for cooperation and exchange of information for the financial sector supervisory authorities need to be clarified in relation to AML issues; no legal provisions for co-operation and exchange of information for the Gaming Control Commission.
SR.V	**LC**	The SSD remains vigilant, although the exact work in the international context is difficult to assess
R.32	**NA**	(the issue of effectiveness and statistics – e.g. at the level of the FCIS – was already discussed under Section 2.5 of the report; confidentiality of on-going CFT inquiries leads to information not being available; difficulty to assess international cooperation between financial and non financial supervisors).

7 OTHER ISSUES

7.1 Other relevant AML/CFT measures or issues

641. The examiners found that a number of legal texts of the Republic of Lithuania which are relevant in the AML/CFT field are often vague when they refer in their objectives, limits, scope, exceptions, implementation, to the applicability of rules contained in other documents.

642. As an example, Article 5 of the Law on FCIS, which regulates the "Co-operation of the Service with other State, Local Government Institutions and Agencies, Mass Media and Community", provides that : "The Service shall co-operate with other law enforcement institutions and agencies in the manner laid down by laws and other legal acts."

643. This lack of precision is a potential source of problems from the point of view of legal security, both for the state authorities and those legal and natural persons that are subject to the provisions.

644. *Therefore, Lithuanian authorities are advised to be more careful and more accurate when drafting pieces of legislation and regulations or other texts and to specify clearly to what other legal or other texts they refer.*

7.2 General framework for AML/CFT system

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TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system
Table 3: Authorities' Response to the Evaluation (if necessary)

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (na).

Forty Recommendations	Rating	Summary of factors underlying rating
Legal systems		
1. ML offence	**PC**	Consistency of approach between art. 189 and 216 and lack of certain elements and secondary mechanisms deriving thereof; effectiveness issue
2. ML offence – mental element and corporate liability	**LC**	Sanctions for ML are not proportionate and dissuasive enough in some cases under art. 189.
3. Confiscation and provisional measures	**LC**	Time limits under art. 189 PC need to be reviewed
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**LC**	There is a need to harmonise the provisions under the respective laws lifting confidentiality.
5. Customer due diligence	**PC**	Certain key elements not provided for through primary/secondary legislation; no reference to full CDD measures except for identification procedures; restrictions in identification of beneficial owners of legal person; no risk based approach: - in the AML Law, lack of a specified reference to the full CDD measures as opposed to identification procedures which, in themselves, are part of the CDD process and for the independent verification of the identification information obtained; - need to revise Article 3 of the Law on Payments with regards to customer details for cross-border payments; a specific inclusion in the AML Law for

		identification requirements in the case of suspicion irrespective of the LTL50,000 (Euro 15,000) threshold; - no recording by the Register of Legal Persons of information on shareholding changes in legal persons following registration; - no requirement for financial institutions to draw up customer acceptance policies and business profiles with an obligation for on-going due diligence procedures; - no specific obligation for financial institutions to consider reporting where the ID procedures cannot be completely and satisfactorily fulfilled.
6. Politically exposed persons	**PC**	There are no special regulations; PEPs not addressed under the AML Law; PEPs only addressed for the banking and insurance sectors.
7. Correspondent banking	**C**	
8. New technologies & non face-to-face business	**LC**	Not addressed by all sectors of the financial sector except for the banking sector
9. Third parties and introducers	**LC**	Though the full concept of third party and introduced business is not present, yet the elements of the customer/agent identification procedures do not meet all essential criteria.
10. Record keeping	**C**	
11. Unusual transactions	**PC**	Issue partially addressed through the STR criteria in Government Resolution N° 929 but no specific obligation to examine background of large, complex transactions and to keep written record accordingly.
12. DNFBP – R.5, 6, 8-11	**PC**	There is a need to address CDD including identification issues, the provision of a legal basis to certain key elements of the ID process, and the timing and basis of the applicability of the ID process; PEPs are not addressed through legal provisions and hence no awareness within some sectors of the DNFBPs; more awareness on threats arising from technological developments and large complex transactions needed.
13. Suspicious transaction reporting	**PC**	The obligation to report does not clearly address reporting of attempted transactions or reasonable grounds to suspect money

		laundering; in the case of financial institutions it is limited to financial operations; no direct obligation to report financial operations suspected to be linked or related to the financing of terrorism.
14. Protection & no tipping-off	**LC**	No adequate protection when reporting, that would meet the requirements of criterion 14.1
15. Internal controls, compliance & audit	**LC**	There is no legal obligation for financial institutions to develop CFT internal control programmes
16. DNFBP – R.13-15 & 21	**PC**	Need to clarify the definition of a "financial operation" as opposed to that of a "transaction" in relation to reporting; exceptions in AML Law to legal profession. No direct obligation to report suspicion of transactions related or linked to financing of terrorism; development and implementation of internal controls; need to establish legal or other mandatory obligations for DNFBPs to pay special attention to relationships and transactions with AML/CFT non compliant countries.
17. Sanctions	**LC**	Fines that can be imposed by the courts are low and applicable only to head of institutions and not to institutions themselves.
18. Shell banks	**C**	
19. Other forms of reporting	**C**	
20. Other NFBP & secure transaction techniques	**C**	
21. Special attention for higher risk countries	**LC**	Mainly addressed for banking sector but restricted to customers of credit institutions only and no specific obligation to examine background of large, complex transactions.
22. Foreign branches & subsidiaries	**PC**	Obligations under most of the essential criteria 22.1 and 22.2 need to be specifically addressed, formulated and implemented.
23. Regulation, supervision and monitoring	**LC**	Risk based approach not present in all sectors; no focussed examinations at financial institutions are undertaken by the supervisory authorities; the FCIS does not have control on the ongoing AML/CFT supervision; there is a need to establish effective methods of coordination between the supervisory authority and the FCIS to co-ordinate and plan on-going supervision.
24. DNFBP - regulation, supervision and monitoring	**PC**	No risk-based approach applied; no focused AML on-site examinations; FCIS supervisory regime quite low; no arrangements for FCIS to be aware of on-site examinations by Gaming

		Commission; no independent checks on shareholders unless Gaming Commission is informed; conflicts in the FCIS supervisory powers over the legal profession.
25. Guidelines & Feedback	**LC (overall)**	- Although various guidance and instructions are available to the various sectors, there is no one body that ensures consistency (25.1 financial sector). - Although various guidance and instructions have been issued to the various sectors there are inconsistencies and inapplicabilities. No guidance issued to the legal profession (25.1 DNFBP).
Institutional and other measures		
26. The FIU	**LC**	MLPD should be given more autonomy and own powers; legal framework applicable to use of information collected needs to be clarified in law
27. Law enforcement authorities	**PC**	FCIS focuses on ML in relation with its own field of competence and the police is not looking at ML for cases under its competence (including drugs, prostitution etc.); no clear overall responsibility for FT below the government; special investigative techniques not usable for ML and FT in all cases
28. Powers of competent authorities	**C**	
29. Supervisors	**C**	
30. Resources, integrity and training	**C, LC,C**	- (certain critical issues are addressed, according to the Methodology, under R.26) - Increase of staff is needed for the police units dealing with terrorism and counterfeited currency and credit card fraud - all right for financial supervisors
31. National co-operation	**LC**	Legal and institutional basis in place but questions remain on effectiveness of cooperation and co-ordination, and sharing of information
32. Statistics	**PC (overall)**	- No consolidated statistics (R1-R2) - Overall statistics unavailable apart from ML related cases; effectiveness issue: the police should be encouraged to make use of temporary measures more frequently in relation to their own cases (R3) - no information on possible sanctions applied for non compliance with international requirements (SRIII) - Figures are available but not systematically for each year (26-30) - Effectiveness of the police and prosecution work needs to be reviewed since the current

		structure and characteristics of criminal activities indicates no real improvements in recent years; no statistics kept by the police (27) - The Customs do cooperate under Art. 14 LPML but no review of effectiveness of measures undertaken by Customs and Border Guard, who are not paying sufficient attention to AML/CFT (SRIX) - Effectiveness of coordination (R31) - No complete and detailed statistics allowing to assess the effectiveness of cooperation in the field of temporary measures and confiscation, ML and FT-related cooperation (MLA) - No statistics available in a timely manner; no information on background of cases (extrad., Section 6.4) -(the issue of effectiveness and statistics – e.g. at the level of the FCIS – was already discussed under Section 2.5 of the report; confidentiality of on-going CFT inquiries leads to information not being available; difficulty to assess international cooperation between financial and non financial supervisors – Section 6.5)
33. Legal persons – beneficial owners	**PC**	Current shareholders and ownership of legal persons not verifiable at the Register of Legal Persons.
34. Legal arrangements – beneficial owners	**NA**	The concept of trusts or other legal arrangements (other than corporate) is not known under the laws of Lithuania.
International Co-operation		
35. Conventions	**LC**	The key requirements are covered; the limited incrimination of terrorism financing and possible consistency issues as regards the legal framework for special investigative techniques (the provisions applicable to the operational phase seem to be broader than those of the Criminal Procedure Code – which would normally be used for MLA - could be issues in the framework of international cooperation).
36. Mutual legal assistance (MLA)	**C**	
37. Dual criminality	**C**	
38. MLA on confiscation and freezing	**LC**	No arrangements for coordinating seizure and confiscation actions with other countries
39. Extradition	**C**	
40. Other forms of co-operation	**PC**	The provisions for the FCIS refer to co-operation with foreign institutions but do not provide for exchange of information as in

		other laws; the provisions for cooperation and exchange of information for the financial sector supervisory authorities need to be clarified in relation to AML issues; no legal provisions for co-operation and exchange of information for the Gaming Control Commission.
Eight Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I Implement UN instruments	**PC**	Many uncertainties remain as to whether all efforts have been made to ensure that UNSC Resolutions are adequately known and implemented; results appear to be very modest.
SR.II Criminalise terrorist financing	**PC**	Only the financing of terrorist groups or organisations is, to some extent, criminalised; the concept of terrorist activity is too narrow
SR.III Freeze and confiscate terrorist assets	**PC**	Several uncertainties remain: ability of the country to act in relation to EU internals and on behalf of other jurisdictions, adequate information and guidance to all financial and non financial sector operators, need to better promote/publicise the international sanctions mechanisms and available remedies
SR.IV Suspicious transaction reporting	**PC**	The obligation to report suspected FT transactions is only restrictively addressed through Government Resolution 929.
SR.V International co-operation	**C (overall)**	
SR VI AML requirements for money/value transfer services	**LC**	Money Transfer service provided by Post Office needs to be better monitored and controlled by the relevant authorities.
SR VII Wire transfer rules	**PC**	Not specifically addressed in relation to various essential criteria. To be re-addressed upon adoption of relevant EU-Regulation.
SR.VIII Non-profit organisations	**PC**	The oversight procedures for non-profit organisations need to be reviewed to make sure mechanisms are in place to avoid the use of such organisations for the financing of terrorism.
SR.IX Cross Border Declaration & Disclosure	**PC**	Implementation of SR IX as a whole needs to be revisited (reporting duty is too narrow, Customs and Border Guard need to be more involved in AML/CFT issues, time limit is inadequate for reporting to FCIS movements above LTL 50,000, cooperation mechanisms in place need to extended to AML/CFT

Table 2. Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
Criminalisation of Money Laundering (R.1, 2 & 32)	*- to unify the two ML definitions*; *- money laundering should be criminalised more strictly and the legal incrimination should follow Article 3(1)(b)&(c) Vienna Convention and Article 6(1) Palermo Convention, so as to cover also conversion, transfer of property or concealment, disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, if such conduct is carried out outside of a financial operation, conclusion of an agreement, an economic or commercial activity, or by means of a fraudulent declaration;* *- to provide for the applicability of Art. 21 also to the various offences contained in art. 189;* *- to review the effectiveness and the dissuasive character of the criminal sanctions under art. 189;* *- to consider making an explicit provision, as necessary, specifying that the laundering offence applies to both direct and indirect proceeds;*
Criminalisation of Terrorist Financing (SR.II, R.32)	*- to introduce a separate offence of terrorist financing, independently from art. 250 which deals with terrorist activities involving criminal groups, in line with the requirements of SR.II and according to Art.2 of the 1999 UN Convention for the Suppression of the Financing of Terrorism, with a view in particular to: a) include the collection of funds; c) refer to individual terrorists; d) state that in order to be criminally liable it is not necessary that funds were actually used to carry out terrorist acts or be linked to a specific terrorist act*
Confiscation, freezing and seizing of proceeds of crime (R.3, R.32)	*- to cover explicitly indirect proceeds such as income, profits or other benefits from the proceeds of crime;* *- provisional measures for serious crimes such as ML should be regulated as not to be subject to a short time limit, as far as the conduct incriminated in art.189 of the Criminal Code is concerned;* *- the Police, which deals with other major assets-*

	generating crimes should be encouraged to apply as much as possible for temporary measures with a view to confiscation of criminal assets and therefore, to look more systematically at the financial dimension/wealth of criminals / criminal groups. *- Statistics on temporary measures and confiscation should be kept* - Lithuania may also wish to reconsider the opportunity of softening the standard of evidence for the purpose of confiscation (sharing or reversing the burden of proof) post conviction;
Freezing of funds used for terrorist financing (SR.III, R.32)	*- to make sure*: • *Lithuania can act in relation to European Union internals and on behalf of other jurisdictions*[23] • *all entities bound to apply international sanctions have been given adequate information about their duties and communication mechanisms exist with all financial intermediaries and DNFBP* • *a clear and publicly known procedure is in place for de-listing and unfreezing in appropriate cases in a timely manner.* *- to ensure adequate monitoring of compliance is taking place in practice.*
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	*- to strengthen the autonomy and identity of the MLPD - within the FCIS – for it to become the Lithuanian FIU; it should be granted its own powers, an IT system protected by adequate regulations in order to ensure that STRs and CTRs are primarily used for AML/CFT purposes independently from the FCIS' own competencies, and in accordance with the Egmont principles;* *- the electronic reporting system, with adequate security/safety measures, needs to be completed for all the obliged entities, given the deadlines provided for in the LPML and to avoid unnecessary logistical constraints for the industry.*

[23] In the week of the adoption of the report, the Lithuanian authorities advised that on 9 February 2006, the Government adopted Decree N°137 on measures implementing international sanctions aiming at EU internals (persons and entities). A list of EU internals (persons and entities) subject to financial sanctions is attached to the Decree. In relation to action on behalf of other jurisdictions, the Decree of the Government of Lithuania N° 1411 of 6 September 2006 provides for such action. According to para. 1.20 of the Decree, a financial transaction is to be considered suspicious if data of the client or its proxy corresponds, inter alia, with the data in the list submitted by responsible foreign state institutions.

	- furthermore, the annual report that the Lithuanian authorities have now decided to produce at regular intervals should be the occasion to publish information on ML/FT which would clearly be specific to Lithuania.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	*- to ask the police to also take responsibility for investigations of ML and FT in their own field of competence, and to take awareness-raising measures on/and continue to provide training on methods to target the proceeds from crime;* *- to review and clarify in legislation, as needed, access by the SSD to information held by obliged entities;* *- to clarify/amend as appropriate the legal framework for the use of special investigative techniques also in ML and FT cases, and to ensure that the provisions of the Law on Operational Activities and the Code of Criminal Procedure are consistent;* *- to review the effectiveness of efforts of the criminal police and prosecution services, together with their needs, in particular the services dealing with FT and predicate crimes which are important from the perspective of AML (e.g. department dealing with organised crime and terrorism, department dealing with counterfeited currencies and credit cards etc.).*
Cross Border declaration or disclosure (SR.IX)	*- The implementation of SR.IX as a whole needs to be reconsidered in order to address a number of issues, in particular:* • *to extend the scope of the reporting duty to bearer negotiable instruments* • *to make the Customs and Border Guard more aware of, and involved in AML/CFT issues* • *to review, ideally in consultation with other EU countries, the EU exception to SR. IX* • *to review the time limit for reporting to FCIS movements above LTL 50,000* • *to extend the existing national cooperation mechanisms to AML/CFT*
3. Preventive Measures – Financial Institutions	
Risk of money laundering or terrorist financing	
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	*- to include in the AML Law a specified reference to the full CDD measures as opposed to identification procedures which, in themselves, are part of the CDD process and provide for the independent verification of*

	the identification information obtained; *- to revise Article 3 of the Law on Payments with regards to customer details for cross-border payments;* *- to provide for a specific inclusion in the AML Law for identification requirements in the case of suspicion irrespective of the LTL50,000 (Euro 15,000) threshold;* *- to ensure that the Register of Legal Persons records information on shareholding changes in legal persons following registration;* *- as part of the CDD process, financial institutions should be required to draw up customer acceptance policies and business profiles with an obligation for on-going due diligence procedures;* *- to introduce a specific obligation for financial institutions to consider reporting where the ID procedures cannot be completely and satisfactorily fulfilled.* *- to provide for rules regarding PEPs under the AML Law with specific enhanced customer due diligence requirements.* *- provisions similar to those in Resolution 20 of the Bank of Lithuania should be extended to other financial sectors, covering threats from new or developing technologies.*
Third parties and introduced business (R.9)	*- the concept of the customer/agent relationship in the identification process should be re-addressed*.
Financial institution secrecy or confidentiality (R.4)	*- irrespective of the perceived effectiveness of the system, there is a need to readdress the issue to align the various legal provisions for the sake of consistency*
Record keeping and wire transfer rules (R.10 & SR.VII)	- The provisions of SR VII on wire-transfers are not directly addressed but various pieces of legislation seem to be relevant to different aspects. The Lithuanian authorities acknowledge this and expect to fully comply with SR VII once the relevant EU-Regulation is adopted. *This notwithstanding, it was recommended that the new regulations be made applicable to the Post Office as a provider of wire-transfer services.* - the Lithuanian authorities may wish to consider an electronic, secure system of submitting data to the

	FCIS.
Monitoring of transactions and relationships (R.11 & 21)	- *both Recommendations should be readdressed and covered through legal provisions or through the respective Resolutions in accordance with the established criteria.* For the sake of uniformity and consistency, the Lithuanian authorities may also wish to consider addressing these Recommendations through a Government Resolution applicable to both the financial and non-financial sectors.
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	- In general the obligation to report suspicious transactions is adequately covered through the AML Law and the Government Resolution 929. It is however not clear whether the obligation applies to attempted transactions or to cases where an institution has reasonable grounds to suspect that a transaction may be related to money laundering. For the financial sector the obligation is restricted to the carrying out of a "financial operation" as defined in the Act and would therefore exclude other transactions not necessarily involving a financial content (contrary to the requirements also of the 2nd EU Directive). *The Lithuanian authorities may wish to reconsider the Law in this regard.* - *the FT reporting should be directly addressed through specific provisions in the AML Law that are not restricted to information on international lists.* - *to insert, in line with the requirements of criterion 14.1, a clearer protection of entities, their directors, officers and employees from any civil or criminal liability when they report and disclose information in good faith to the authorities*. - Although the FCIS has informed that it provides feedback to the industry *the Lithuanian Authorities may wish to consider strengthening Article 5 of the AML Law to this effect.* - Article 13 of the AML Law is comprehensive in covering the currency transaction reporting by financial institutions and other entities. *The Lithuanian Authorities may however wish to re-visit the exemption of lawyers and lawyers' assistants from such obligation, even though it has been claimed that lawyers' rarely handle cash transactions.*
Internal controls, compliance, audit and foreign branches (R.15 & 22)	- *certain elements need to be addressed further to enhance the existing framework. The powers of the*

	compliance officer for timely access to information could be better reinforced if established through rules or regulations rather than through reliance on institutions themselves. *- to review the implementation of Recommendation 22 so that the essential criteria 22.1 and 22.2 are specifically addressed, formulated and implemented.*
Shell banks (R.18)	-
The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)	*- procedures should be put in place whereby the FCIS, apart from retaining its right of undertaking its own focussed examinations, takes control* by: • *planning and preparing in collaboration with the supervisory authorities annual inspection programmes;* • *still leaving the prerogative for the supervisory competent authorities, on their own initiative, to undertake focussed examinations and/or to include an AML/CFT component in their prudential examinations;* • *ensuring that in all the above instances the FCIS is informed and involved in the ongoing examinations; and that it receives examination reports in all instances irrespective of the type of findings. (This may require an amendment to Article 8 of the AML Law).* *- procedures should be gradually established so that the Register of Legal Persons keeps record of movements in shareholding* *- to reconsider the provisions on sanctions for non compliance in the AML Law* - As regards guidance to the industry*, the procedures should be put in place to ensure consistency.*
Money value transfer services (SR.VI)	The Lithuanian Authorities may wish to consider placing the authorisation and supervision of this financial service under the competence of the Bank of Lithuania for the sake of consistency and continuity.
4. Preventive Measures –Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	*- to address CDD including identification issues, the provision of a legal basis to certain key elements of the*

	ID process, and the timing and basis of the applicability of the ID process; PEPs are not addressed through legal provisions and hence no awareness within some sectors of the DNFBPs; more awareness on threats arising from technological developments and large complex transactions is needed.
Suspicious transaction reporting (R.16)	- *DNFBPs should be made more aware of their important role in the AML/CFT regime of Lithuania thus ensuring that, in understanding their role better DNFBPs acknowledge and implement the AML obligations further.* In this regard the *Lithuanian Authorities may wish to revisit the AML Law accordingly.* - *to reconsider the exceptions in the AML Law for the legal profession*. To a lesser extent, this may also be true of the gaming sector which believes that in implementing the AML measures it may be losing business.
Regulation, supervision and monitoring (R.24-25)	In addition to recommendations under Section 3: - *to immediately review the legal contradictions concerning FCIS' supervisory powers vis a vis lawyers and lawyers' assistants and to put in place appropriate procedures as detailed under Section 3 to ensure appropriate ongoing monitoring and supervision.* - to have procedures in place that ensure consistency and applicability.
Other designated non-financial businesses and professions (R.20)	-
5. Legal Persons and Arrangements & Non-Profit Organisations	
Legal Persons – Access to beneficial ownership and control information (R.33)	- *As a minimum, current qualifying shareholders (10% and more) should be recorded in the Register of Legal Persons and such information should be made available to the relevant competent authorities. It should be a statutory obligation to keep the Register up to date in this way.*
Legal Arrangements – Access to beneficial ownership and control information (R.34)	-
Non-profit organisations (SR.VIII)	- *to re-consider the oversight procedures for non-profit organisations to ensure that mechanisms are in place to avoid the use of such organisations for the financing of terrorism.*
6. National and International Co-operation	
National co-operation and coordination (R.31 & 32)	- *there is a need to better share information on activities on the supervisory side taken by each*

	institution and the Coordination Working Group needs to be invigorated, efficiently chaired, and FCIS "ownership" more firmly established. One way of achieving this would be to schedule regular meetings – say, 4 per year – and a forward agenda of key issues to discuss and take forward.
The Conventions and UN Special Resolutions (R.35 & SR.I)	(major deficiencies are addressed in earlier recommendations)
Mutual Legal Assistance (R.36-38, SR.V, and R.32)	*- to improve the collection of statistics, with several breakdowns which would enable also the authorities to review the effectiveness of their international cooperation in the field of AML/CFT.* *- to adopt arrangements for coordinating seizure and confiscation actions with other countries.* - Lithuania may wish to establish an assets forfeiture fund to which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education and other purposes.
Extradition (R.39, 37, SR.V & R.32)	*- to improve the collection of statistics, with several breakdowns which would enable also the authorities to review the effectiveness of their ability to cooperation in the field of extradition in relation with AML/CFT.*
Other Forms of Co-operation (R.40, SR.V & R.32)	*- the issue of co-operation and exchange of information in the Law on the FCIS should be further clarified as in other laws by the inclusion of a specific reference to the exchange of information. This may also require an amendment to paragraph 5 of Article 5 of the AML Law.* *- to consider the extent to which financial supervisory authorities directly co-operate and exchange information in relation to both money laundering and the underlying predicate offences, as opposed to these functions being vested within the competences of the FCIS, and Lithuanian authorities should legislate accordingly.* *- the above should be similarly addressed for the State Gaming Control Commission.*
7. Other Issues	
Other relevant AML/CFT measures or issues	Lithuanian authorities are advised to be more careful and more accurate when drafting pieces of legislation and regulations or other texts and to specify clearly to what other legal or other texts they refer.
General framework – structural issues	-

Table 3. Authorities' Response to the Evaluation (if necessary)

Relevant sections and paragraphs	Country Comments
/	/

ANNEXES

Annex I – Abbreviations

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
AML Law (or LPML)	Law "On Prevention of Money Laundering" of 1997, as amended on 23 November 2003, No. IX-1842
C	Compliant
CC	Criminal Code
CDD	Customer Due Diligence
CPC	Criminal Procedure Code or Code of Criminal Procedure
CTR	Currency (or cash) Transaction Report
EU	European Union
DNFBP	Designated non Financial Businesses and Professions
FATF	Financial Action Task Force on Money Laundering
FCIS	Financial Crimes Investigation Service
FI	Financial Institutions
FIU	Financial Intelligence Unit
FSAP	Financial Sector Assessment Program
FT	Financing of Terrorism
IMF	International Monetary Fund
KYC	"Know your customer"
LC	Largely Compliant
LPML	Law "On Prevention of Money Laundering" of 1997, as amended on 23 November 2003, No. IX-1842
ML	Money Laundering
MLA	Mutual legal assistance
MLCO	Money laundering compliance officer
MoE	Ministry of Economy
MoF	Ministry of Finance
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
NA	Not Applicable
NBFI	Non Bank Financial Institutions
NC	Non Compliant
NPO	Non Profit Organisation(s)
OSCE	Organisation for Security and Cooperation in Europe
PC	Partially Compliant
PG's office	Office of the Prosecutor General
SAR	Suspicious Activity Report
SIS	Special Investigation Service
SR	Special Recommendation
SSD	State Security Department
STR	Suspicious transaction report

Annex 2 – List of Institutions and Other Entities Met on Site

- Ministry of Justice (Vice-Minister of Justice, Department of Legislation, Central Register of legal persons, Private Law Department)
- Ministry of Economy (department responsible for company law)
- Ministry of Foreign Affairs (including the Security Policy Department)
- Judges (including the Chairman of the Criminal Section of the Court of Appeal of Vilnius)
- Prosecutors office (various departments, including the Department for corruption and organised crime investigations, the International Relations Department)
- Financial Crime Investigation Service (including the Head and other staff of the Money Laundering Prevention Division)
- Police Department of the Ministry of Interior (Criminal Police)
- State Security Department
- Special Investigation Service
- Customs Service and Border Guard Service
- Tax administration (including VAT control Department, Audit Department, tax Inspectorate, Financial Markets Department, Tax Directorate)
- Bank of Lithuania (including the departments responsible for on-site inspection and supervision, licensing, legal affairs)
- Insurance Supervision Department (including the units responsible for non-life insurance, life insurance, legal affairs)
- Securities Commission
- Banking Association and representatives of several commercial banks
- Association of Life Insurance Companies
- Securities Association
- Leasing Association
- State Gambling Control Commission
- National Gambling Association and Games Association
- Bar Association
- Chamber of Notaries
- Chamber of Auditors
- Transparency International

Annex 3. Law on Prevention of Money Laundering no VIII-275 of 19 June 1997

official translation

REPUBLIC OF LITHUANIA
LAW
AMENDING
THE LAW
ON PREVENTION OF MONEY LAUNDERING

1997 June 19 No. VIII-275
Vilnius

(As amended by 2003 November 25, No. IX-1842)

Article 1. New Version of the Law of the Republic of Lithuania on Prevention of Money Laundering

The Law of the Republic of Lithuania on Prevention of Money Laundering shall be amended and set forth to read as follows:

"REPUBLIC OF LITHUNANIA
LAW
ON PREVENTION OF MONEY LAUNDERING

CHAPTER ONE
GENERAL PROVISIONS

Article I. Purpose of the Law

1. The purpose of this Law is to establish the measures for prevention of money laundering and designate the institutions responsible for the implementation of the money laundering countermeasures.

2. The provisions of this Law have been harmonised with the legislation of the European Union indicated in the Annex to this Law.

Article 2. Definitions

1. **Person** - a natural or legal person, an undertaking of a third country.

2. **Financial institutions -** credit and financial institutions defined in the Law on Financial Institutions.

3. **Other entities** - the following persons:

1) auditors;
2) insurance undertakings and insurance broker companies;
3) investment companies with variable capital;
4) management companies;
5) accounting undertakings or undertakings providing tax advice services;
6) notaries and persons licensed to perform notarial acts;

7) lawyers and lawyer assistants when they are acting on behalf of the client or represent him in financial or immovable property transactions or provide assistance in planning and concluding their clients' transactions relating to purchase and sale of immovable property, companies or rights, management of the financial resources, securities or any other property of their clients, opening and management of bank, savings or securities accounts, the creation, operation or management of undertakings, and administration of establishment contributions;

8) persons engaged in economic-commercial activities related to trade in real estate, precious stones, precious metals, works of art, antiques and other property the value of which is in excess of LTL 50 000 or an equivalent sum in foreign currency where payment is made in cash;

9) gaming companies;

10) providers of postal services who provide services of domestic and international money transfers.

4. **Customer -** a person carrying out financial operations or entering into transactions with a financial institution or any another entity other than state or municipal institutions, other institutions maintained from the budget, the Bank of Lithuania, state and municipal funds, diplomatic missions or consular institutions of foreign countries.

5. **Financial operations -** depositing or accepting, withdrawal or payment of money, exchange of currency, lending, donation and any other type of payment or receipt of money in civil transactions or in any other manner other than payments to state and municipal institutions, other institutions maintained from the budget, the Bank of Lithuania and state and municipal funds, diplomatic missions or consular institutions of foreign countries or settlement with said entities.

6. **Money -** banknotes, coins issued by the Bank of Lithuania and funds in accounts, banknotes issued by other states, treasury notes, coins and funds in accounts which are legal tender.

7. **Money laundering -** the following conduct when committed intentionally**:**

1) the conversion or transfer of property, knowing that such property is derived from criminal activity for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;

2) the concealment or disguise of the true nature, source, location, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity;

3) the acquisition, possession or use of property, knowing at the time of receipt/transfer, that such property was derived from criminal activity;

4) preparation, attempts to commit and aiding and abetting in the commission of any of the activities referred to in subparagraphs 1-3 of this paragraph.

8. Prevention of money laundering - implementation of the measures stipulated in this Law.

9. Financing of terrorism - activities aimed at using the proceeds or other assets derived from criminal activities for direct or indirect financing of terrorism.

10. Property – tangibles, cash and securities, other assets and titles to such assets, results of intellectual activity, information, actions and their results as well as other property and non-property values.

CHAPTER TWO

STATE INSTITUTIONS RESPONSIBLE FOR THE PREVENTION OF MONEY LAUNDERING

Article 3. Institutions Responsible for Prevention of Money Laundering

The Government of the Republic of Lithuania, the Financial Crimes Investigation Service under the Ministry of the Interior of the Republic of Lithuania, hereinafter "the Financial Crimes Investigation Service", the State Security Department of the Republic of Lithuania, hereinafter "the State Security Department", the Bank of Lithuania, the Customs Department under the Ministry of Finance of the Republic of Lithuania, the Insurance Supervisory Commission of the Republic of Lithuania, the Securities Commission of the Republic of Lithuania, the State Gaming Supervisory Commission and the Council of the Lithuanian Bar Association shall be the institutions which, according to their competence, shall be responsible for the prevention of money laundering stipulated in this Law.

Article 4. Obligations of the Institutions Responsible for Prevention of Money Laundering

1. The Bank of Lithuania shall approve instructions for credit institutions aimed at prevention of money laundering.

2. The Insurance Supervisory Commission of the Republic of Lithuania shall approve instructions for insurance undertakings and insurance broker companies aimed at prevention of money laundering.

3. The Securities Commission of the Republic of Lithuania shall adopt instructions for financial broker, investment companies with variable capital, management companies and the depository aimed at prevention of money laundering.

4. The State Gaming Supervisory Commission shall adopt instructions for gaming companies aimed at prevention of money laundering.

5. The Council of the Lithuanian Bar Association shall approve instructions for lawyers and lawyers' assistants aimed at prevention of money laundering and shall ensure that lawyers and lawyers' assistants are properly qualified and informed about the measures for prevention of money laundering specified in this Law and other legal acts.

6. The Financial Crimes Investigation Service shall approve instructions for providers of financial leasing and other entities, with the exception of lawyers and lawyers' assistants, intended for prevention of money laundering.

7. The institutions referred to in paragraphs 1-5 of this Article must designate senior employees for organising the implementation of measures for the prevention of money laundering provided for in this Law and liaise with the Financial Crimes Investigation Service.

8. The Financial Crimes Investigation Service must be notified about the designation of employees specified in paragraph 7 of this Article.

Article 5. Functions of the Financial Crimes Investigation Service in Implementing Measures for Prevention of Money Laundering

1. The Financial Crimes Investigation Service shall have competence:

1) to collect and record the information set out in this Law about the financial operations of the customer and the customer carrying out such operations;

2) to collect and examine the information relating to the implementation of prevention of money laundering and to make proposals to institutions on how to enhance efficiency of the system for prevention of money laundering;

3) to communicate, according to the procedure determined by the Government, the information to the law enforcement and other state institutions about the financial operations carried out by the customer;

4) to conduct pre-trial investigation of legalisation of the money and assets from crime;

5) to co-operate with foreign state institutions and international organisations implementing the measures for the prevention of money laundering;

6) to provide to financial institutions and other entities information about the criteria for identifying the suspected money laundering and suspicious financial operations or transactions;

7) to supervise the activities of financial institutions and other entities related to prevention of money laundering.

Article 6. The Functions of the State Security Department in Implementing the Measures for Prevention of Financing Terrorism

1. The State Security Department shall:

1) gather and examine intelligence relating to financing of terrorism;

2) co-operate with foreign institutions and international organisations which are gathering intelligence about financing of terrorism;

3) provide intelligence to the institutions specified in Article 4 of this Law about the criteria for identification of financing of terrorism.

2. The State Security Department and the Financial Crimes Investigation Service shall co-operate in implementing the measures for the prevention of financing of terrorism.

Article 7. Rights of the Financial Crimes Investigation Service in Implementing Measures for Prevention of Money Laundering

1. The Financial Crimes Investigation Service shall have the right:

1) to obtain from state institutions, financial institutions, other entities, except lawyers and lawyers' assistants, data necessary for the performance of its functions and documents about financial operations;

2) to obtain from institutions, financial undertakings and other entities information relating to the implementation of measures for prevention of money laundering;

3) to co-ordinate the activities of institutions related to the implementation of measures for prevention of money laundering;

4) to instruct the administration of institutions, financial undertakings, and other entities about the circumstances and conditions providing possibilities for violating laws and other legislative acts related to the implementation of measures for prevention of money laundering. The administration must study the instructions of the Financial Crimes Investigation Service, and within seven days following the receipt of the instruction, report to the Financial Crimes Investigation Service about the measures taken.

5) to request that financial institutions and other entities other than lawyers or lawyers' assistants, suspend suspicious financial transactions for up to 48 hours.

2. The rights of the officers of the Financial Crimes Investigation Service who are involved in the pre-trial investigation into legalisation of money or assets from crime shall be regulated by the Code of Criminal Procedure.

Article 8. Co-operation between State Institutions

Law enforcement and other state institutions must report to the Financial Crimes Investigation Service about any indications of suspected money laundering, the violations of this Law and the measures taken against the perpetrators. The information which must be communicated by state institutions to the Financial Crimes Investigation Service, and the procedure for communicating this information shall be established by the Government.

CHAPTER THREE
MEASURES FOR PREVENTION OF MONEY LAUNDERING

Article 9. Suspiciousness of Financial Operations

1. Financial institutions and other entities, other than lawyers and lawyers' assistants, upon establishing that a customer is performing a suspicious financial operation, must suspend the operation and report, within three hours, about it to the Financial Crimes Investigation Service, irrespective of the amount involved in the operation. Where financial institutions and other entities do not receive, within 48 hours from the communication of the report, an instruction from the Financial Crimes Investigation Service specified in paragraph 2 of this Article, the operation hall be renewed. Financial institutions and other entities shall not be liable to the customer for non-performance of their contractual obligations and the damage caused in the performance of the obligations specified in this Article.

2. The Financial Crimes Investigation Service must, when it is justifiable, within 48 hours from the receipt of the information referred to in paragraph 1 of this Article, take steps to impose provisional measures in accordance with the procedure provided for in the Code of Criminal Procedure.

3. Where suspension of a financial transaction operation may interfere with the investigation into legalisation of the money or assets derived from crime and other criminal acts related to money laundering, the Financial Crimes Investigation Service must notify the financial institution or another entity.

4. Where notaries or persons authorised to perform notarial duties have suspicion that the transaction carried out by their client is related to money laundering, they must forward the documents evidencing the client's identity and other information specified in paragraph 1, Article 13 of this Law to the Financial Crimes Investigation Service immediately after conclusion of the transaction, irrespective of the amount of money received or paid under the transaction by the customer.

5. When lawyers and lawyers' assistants have suspicion that a transaction which their client is entering into may be related to money laundering, must forward the documents evidencing the client's identity and other information specified in paragraph 1, Article 13 of this Law to the Council of the Lithuanian Bar Association immediately after the transaction has been completed, irrespective of the amount of money received or paid by the client under the transaction, save for the cases indicated in paragraph 7 of this Law.

6. The Council of the Lithuanian Bar Association must, within 3 working hours after the receipt of the information specified in paragraph 5 of this Article, forward it to the Financial Crimes Investigation Service.

7. Lawyers and lawyer's assistants, when ascertaining the legal position for their client, or defending or representing that client or acting on his behalf in court proceedings, including advice on instituting or avoiding proceedings, whether such information is received during or after such proceedings, shall not be obliged to comply with the requirements specified in paragraph 5 of this Article.

8. Where a financial operation or a transaction may be related to financing of terrorism, the data specified in this Article, must be reported, within 24 after the receipt of the data about the operation or transaction, by the Financial Crimes Investigation Service, following the procedure prescribed by the Government, to the State Security Department.

9. The criteria according to which a financial operation or transaction shall be held suspicious shall be determined by the Government.

10. The procedure for suspension of the suspicious financial operations specified in this Article and furnishing the relevant information to the Financial Crimes Investigation Service shall be determined by the Government.

Article 10. Identification of the Customer

1. Financial institutions and other entities, before opening accounts, accepting deposits, providing services of safe custody for valuables or when concluding agreements with their customers must identify the customer in the presence of the customer himself or his agent. Financial institutions and other entities must identify the customer when performing a single or several related financial operations or when entering into transactions which exceed LTL 50,000 or its equivalent in foreign currency, irrespective of whether the transaction is performed during a single or several related operations, with the exception of cases where the customer has already been identified. If during the financial operation the final amount of the operation is not known, financial institutions and other entities must identify the customer immediately after establishing that the amount involved in the operation is in excess of LTL 50, 000 or its equivalent in foreign currency. In the event of several related financial operations the customer must be identified immediately after establishing that several financial operations are related.

2. Life-assurance undertakings must identify the customer and the insured person where the annual single premium payable by the customer is in excess of LTL 8 500 or the amount or amounts of payable periodic premiums is in excess of LTL 3 500 or its equivalent in foreign currency.

3. Gaming companies must identify the customer if he exchanges cash into gambling chips, pays or wins a sum which exceeds LTL 3 500 or its equivalent in foreign currency.

4. It shall be prohibited to perform the operations specified in paragraphs 1-3 of this Article where the customer, in cases specified by this Law, does not produce identification documents or where he does not produce all the documents or where the documents are incorrect.

5. The procedure for identifying the customer and establishing several related financial operations shall be determined by the Government.

Article 11. Opening of Accounts or Performance of Other Financial Operations through an Agent

Where a customer opening an account or performing operations referred to in paragraphs 1-3, Article 10 of this Law, is acting not on his own behalf, financial institutions and other entities must establish identity of the customer and of the person on whose behalf the customer is acting.

Article 12. Keeping of Information

1. Financial institutions must keep a register of the financial operations and suspicious transactions conducted by the customer specified in paragraphs 1 and 2, Article 13 of this Law

with the exception of cases where a customer of a financial institution is another financial institution.

2. Notaries and persons authorised to perform notarial acts must keep a register of suspicious transactions of their clients and transactions involving the receipt or payment of an amount exceeding LTL 50 000 or its equivalent in foreign currency.

3. Other entities, except notaries or persons authorised to perform notarial acts, as well as lawyers or lawyers' assistants must keep a register of financial operations and suspicious financial transactions referred to in paragraph 5, Article 13 of this Law.

4. Insurance undertakings and insurance broker companies must keep a register of premiums received specified in paragraph 3, Article 13 of this Law.

5. Lawyers or lawyers' assistants must keep a register of reported suspicious transactions entered into by their clients.

6. The Council of the Lithuanian Bar Association must keep a register of suspicious transactions entered into by the clients of lawyers or lawyers' assistants forwarded to it.

7. The register keeping regulations shall be determined by the Government.

8. Copies of documents confirming identity must be kept for at least ten years from the end of the relationship with the customer.

9. Documents attesting a financial operation or transaction or other legally valid documents relating to financial operations or transactions entered into must be kept for at least ten years from the date of executing a financial operation of concluding a transaction.

Article 13. Communication of Information to the Financial Crimes Investigation Service

1. Financial institutions conducting financial operations must communicate to the Financial Crimes Investigation Service data evidencing the customer's identity and information about the financial operation where a single monetary operation or several related operations conducted by the customer involve a sum in excess of LTL 50 000 or its equivalent in foreign currency. The information furnished to the Financial Crimes Investigation Service shall indicate the data confirming the customer's identity and where the financial operation is conducted through an agent – data evidencing the agent's identity, the amount of the financial operation, the currency used, the date of the operation, its type, and the beneficiary of the operation.

2. Credit institutions shall communicate to the Financial Crimes Investigation Service data evidencing the customer's identity, and information about a single exchange of one currency into another if the sum of the money exchanged is in excess of LTL 20 000 or its equivalent in foreign currency.

3. Insurance undertakings insurance broker companies shall communicate to the Financial Crimes Investigation Service data evidencing the customer's identity, data attesting identity of the insured person and information about premiums received if the sum of the premiums received from the customer from the start of a calendar year or from an earlier communication under one or several insurance contracts is in excess of LTL 10 000 or its equivalent in foreign currency.

4. Notaries or persons authorised to perform notarial acts must communicate to the Financial Crimes Investigation Service data evidencing the client's identity and information about a transaction entered into by the client if the sum received or paid under the transaction is in excess of LTL 50 000 or its equivalent in foreign currency.

5. Other entities, with the exception of notaries or persons authorised to perform notarial acts, lawyers or lawyers' assistants, shall communicate to the Financial Crimes Investigation Service data attesting the client's identity and information about a single payment

in cash where the sum of the paid and received cash is in excess of LTL 50 000 or its equivalent in foreign currency.

6. The information specified in paragraphs 1-5 of this Article shall be communicated to the Financial Crimes Investigation Service without delay, but no later than within 7 working days after the date of the financial operation or the date when the transaction was entered into.

7. The information specified in paragraph 1 of this Article shall not be communicated to the Financial Crimes Investigation Service if the customer of a financial institution is another financial institution.

8. A financial institution may not communicate to the Financial Crimes Investigation Service the information specified in paragraph 1 of this Article if the customer's activities involve large-scale, periodic and regular financial operations that are in conformity with the criteria determined by the Government.

9. The exception referred to in paragraph 8 of this Article shall not apply if the customer of a financial institution is a third country undertaking, its branch or agency or it:

1) provides legal advice, is a practising lawyer, carries out notarial activities;

2) organises and runs lotteries and bingo games;

3) carries out activities involving ferrous, non-ferrous or precious/rare metals, precious stones, jewellery, works of art;

4) is a car dealer;

5) is in the real estate business;

6) is an auditor;

7) provides individual health care;

8) organises and holds auctions;

9) organises tourism and travels;

10) is a wholesaler in spirits and alcohol products, tobacco goods;

11) is a dealer in oil products;

12) is a dealer in medicinal products.

Article 14. Activities of Customs Offices

1. Customs offices shall undertake control of the sums of cash brought in to the Republic of Lithuania and taken out from it in a manner prescribed by the Government.

2. Customs offices must record each case of incoming or outgoing cash, if a single sum of the incoming or outgoing cash is in excess of LTL 10 000 or its equivalent in foreign currency.

3. Customs offices must promptly, but not later than within seven working days, notify the Financial Crimes Investigation Service if a person brings in to the Republic of Lithuania or takes out from it a single sum of cash in excess of LTL 50 000 or its equivalent in foreign currency.

Article 15. Responsibilities of Financial Institutions and Other Entities

1. Financial institutions and other entities other than lawyers or lawyers' assistants must establish appropriate mechanisms of internal control in order to prevent financial operations relating to money laundering and ensure that their employees are well informed and properly trained in the measures for prevention of money laundering specified in this Law and other legal acts.

2. Financial institutions and entities other than lawyers and lawyers' assistants must designate senior employees responsible for organising the implementation of the measures for prevention of money laundering provided for in this Law and maintain contacts with the Financial Crimes Investigation Service.

3. The Financial Crimes Investigation Service must be informed about the designation of the employees referred to in paragraph 2 of this Article.

4. Financial institutions shall be prohibited from opening anonymous accounts.

Article 16. Protection of the Information Communicated to the Financial Crimes Investigation Service

1. The information specified in this Law which is received by the Financial Crimes Investigation Service may not be disclosed or communicated to other state administration, control or law enforcement authorities except in the cases stipulated by this Law and other laws.

2. Persons who are in breach of the procedure for keeping confidentiality and use of information shall be held liable under law.

3. Institutions, their officials and employees, financial institutions and their employees, other entities and their employees shall be prohibited from disclosing to the customer or any other person that the information about the financial operations performed by them or transactions entered into or an investigation in respect of these operations or transactions has been submitted to the Financial Crimes Investigation Service.

4. Furnishing to the Financial Crimes Investigation Service of the information specified in this Law shall not be qualified as disclosure of an industrial, commercial or bank secret.

CHAPTER FOUR

FINAL PROVISIONS

Article 17. Appeal against the Actions of the Financial Crimes Investigation Service

The actions of the Financial Crimes Investigation Service officers may be appealed against in a manner prescribed by law.

Article 18. Damages

Damage resulting from illegal actions of the Financial Crimes Investigation Service officers in discharge of their duties shall be compensated for in a manner prescribed by law.

Article 19. Liability

Officers and persons who commit a breach of the requirements of this Law shall be held liable in a manner prescribed by law.

Annex to Law of the Republic of Lithuania of 25 November 2003, No. IX-1842

LEGAL ACTS OF THE EUROPEAN UNION WHICH ARE BEING IMPLEMENTED

Council Directive of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (91/308/EEC).

Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use the financial system for the purpose of money laundering- Commission Declaration."

Article 2. Entry into Force

This Law, save for Article 3, shall enter into force on January 1, 2004.

Article 3. Recommendation to the Government the Republic of Lithuania

The Government of the Republic of Lithuania shall adopt, by May 1, 2004, legal acts necessary for the implementation of this Law.

I promulgate this Law passed by the Seimas of the Republic of Lithuania

PRESIDENT OF THE REPUBLIC ROLANDAS PAKSAS