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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

THIRD ROUND DETAILED ASSESSMENT REPORT ON UKRAINE

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

SUMMARY[1]

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

[1] Adopted by MONEYVAL at its 29th Plenary Meeting (Strasbourg, 16-20 March 2009). For further information on the examination and adoption of this report, please refer to the Meeting Report (ref: MONEYVAL(2009)16 at www.coe.int/moneyval)

EXECUTIVE SUMMARY

1. Background Information

1. This report provides a summary of the AML/CFT measures in place in Ukraine as at the date of the on-site visit from 21 September to 1 October 2008 or immediately thereafter. It describes and analyses these measures, and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Ukraine's levels of compliance with the FATF 40 plus 9 Recommendations (see Table 1). The evaluation also includes Ukraine's compliance with *Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing* (hereinafter "3rd EU AML Directive") and the *Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis* (hereinafter "Implementing Directive 2006/70/EC"). However, compliance or non-compliance with the 3rd EU AML Directive and the Implementing Directive 2006/70/EC has been described in a separate Annex but it has not been considered in the ratings in Table 1.

2. This is the third evaluation of Ukraine by MONEYVAL. Since the last evaluation visit in 2003, Ukraine has made a number of changes to its legal framework with a view to improving the AML/CFT requirements on banking and non banking financial institutions. This has included developing a number of methodical instructions for reporting entities, and carrying out numerous training activities on AML/CFT issues, which addressed several of the recommendations raised in the two previous reports. Ukraine has only partly the recommendations regarding the legal system (criminalisation of money laundering and terrorist financing, provisional measures and confiscation, freezing and seizing of proceeds of crime), the suspicious transaction reporting regime, the framework for the investigation and prosecution of offences by the law enforcement and prosecution authorities, the lack of resources and adequate powers of supervisory authorities, the licensing and AML/CFT compliance, and supervisory framework for casinos and gambling houses.

3. As regards the money laundering situation, the Ukrainian authorities have advised that criminals and organised crime groups in Ukraine use almost all known ways to launder criminal proceeds. This includes complex money laundering schemes and involving the use of bank institutions, professional participants on the securities market, real estate dealers and insurance companies. Major proceeds are primarily generated through economic crimes, corruption, fictitious entrepreneurship, fraud and drug trafficking. The authorities have analysed the trends and methods.

4. Concerning terrorist financing, the evaluation team was informed by the Ukrainian authorities that so far, no cases of terrorist financing are known to have been committed on the territory of Ukraine or via Ukraine.

2. Legal Systems and Related Institutional Measures

5. Since the last evaluation, the money laundering (ML) offence set out in article 209 of the Criminal Code has remained unchanged. A positive development however is to be noted, as the Supreme Court issued a resolution in 2005 which clarifies the physical and material elements of the money laundering offence, the scope of predicate offences, as well as relevant issues of procedural importance in conducting investigations or court proceedings on money laundering.

6. Article 209 defines money laundering as an act that includes the completion of a financial transaction or the conclusion of a deal with money or other property obtained as a result of a "socially dangerous illicit act" which preceded the laundering of proceeds, or any other acts in order to conceal or disguise the illegal origin of this money or property, their possession or legitimacy of their ownership, or sources of their origin, location or movement, as well as acquisition, possession, or use of money or property as a result of a socially dangerous illicit act which preceded the laundering. The provision covers most of the elements required in the Vienna and Palermo Conventions. The offence extends to money or other property regardless of its value. However there remain concerns that the scope of property encompasses assets of every kind, including intangible assets and legal documents or instruments evidencing title to or interest in such assets.

7. Ukraine determines the underlying predicate offences by reference to a threshold linked to the penalty of imprisonment applicable to the predicate offence: predicate offences are all acts criminalised under the Criminal Code which are punished by a minimum penalty of more than three years with the exception of capital flight and tax evasion, or any act which is a criminal offence under the criminal law of a foreign state which is punishable under the Criminal Code and which resulted in unlawful acquisition of proceeds. The range of offences which are predicate offences includes all required categories with the exception of insider trading, market manipulation and financing of terrorism in all its forms. The threshold applied is too high and does not meet the requirement of Recommendation 1.

8. Only natural persons can be held criminally liable. Various types of evidence based on objective factual circumstances may be used to infer the intentional element of money laundering.

9. Criminal liability for money laundering does not apply to legal persons through it seems that there is no fundamental principle of domestic law. Existing provisions covering civil and administrative liability appear to be deficient in practice. As regards natural persons, the sanctions are proportionate and dissuasive.

10. Between 2004 and the first half of 2008, there were a total of 603 convictions for money laundering (article 209) and 208 convictions for drug related money laundering (article 306). All convictions are achieved simultaneously with a conviction for the predicate offence or are linked to a conviction for the predicate offence. The penalties imposed in cases provided to the evaluation teams ranged between 2 to 7 years of imprisonment (some with probation period) with confiscation of criminal funds and /or part or entire personal property and/or deprivation of the right to hold administrative positions in companies for a certain period of time. The number of yearly initiated criminal money laundering cases sent to court (under article 209) has been slightly decreasing since 2004, while the number of ML convictions has slightly increased. Considering the size of the country and the money laundering threats it is exposed to, Ukraine should put an additional focus on autonomous investigation and prosecution of money laundering offences.

11. Ukraine ratified the UN International Convention for the Suppression of the Financing of Terrorism on 12 September 2002. The authorities have advised that the Convention has been implemented by a law issued on 21 September 2006 which added articles 258-1 to 258-4 to the Criminal Code and amended the Criminal Procedure Code. However, terrorist financing (TF) is not criminalised as an autonomous offence. Acts constituting terrorist financing can be prosecuted under ancillary offences to terrorism. The whole spectrum of terrorist financing actions is not covered, and criminalisation of terrorist financing solely on the basis of aiding and abetting, attempt or conspiracy does not comply with the requirements of Special Recommendation II. There have been no investigations of financing of terrorism.

12. There were no changes to the legal framework covering the confiscation and provisional measures since the last evaluation, thus the report reiterates concerns raised previously. Confiscation of

instrumentalities intended for use in the commission of any ML offence, confiscation of property of corresponding value, as well as confiscation of income, profits or other benefits from the proceeds of crime do not appear to be captured by the Ukrainian legislation. Not all predicate offences under the Criminal Code provide for property confiscation measures. Existing terrorist related offences do not include specifically confiscation as a sanction.

13. Provisional measures are applied on the basis of Articles 29, 125 and 126 of the Criminal Procedure Code which enable the authorities to execute an arrest/ seizure of property for the purposes of securing recovery of material damages, civil claims or possible confiscation. This is supplemented by article 59 of the Law on Banks and Banking which specifies that funds and other values belonging to natural and legal persons deposited on bank accounts can also be arrested on the basis of a court decision. Such measures can be applied without prior notice, authorities are given powers to identify and trace property that may be subject to confiscation or is suspected of being the proceeds of crime, and there are measures to protect the rights of bona fide third parties.

14. There were no statistics maintained which demonstrated the effectiveness of the confiscation regime and the authorities advised that plans are underway to modify and modernise the legal framework for confiscation and seizure which would address identified gaps and bring it in line with international requirements.

15. Ukraine implements the United Nations Security Council Resolutions (hereinafter UNSCR) 1267 (1999) and its successor resolutions and 1373 (2001) through the Law of Ukraine on the Prevention and Counteraction to the Legalization of the Proceeds from Crime (the Basic Law), in the resolutions of the Cabinet of Ministers, and orders of the State Committee for Financial Monitoring (SCFM). The National Bank of Ukraine (NBU), the State Commission on Financial Services Markets Regulation of Ukraine (SCFSMR) and the State Commission on Securities and Stock Market (SCSSM) have also introduced relevant procedures for the suspension of financial transactions in 2006 and detailed guidance has been provided by regulators to the designated financial institutions. Additional efforts are required in order to complete the existing legal framework and put in place effective laws and procedures to freeze terrorist funds or other assets of persons designated in accordance with the UN Resolutions. There have been no instances of freezing of funds or other assets of persons designated in the context of these resolutions.

16. The State Committee for Financial Monitoring (SCFM), the Ukrainian FIU, is the lead agency responsible for AML/CFT issues. It was granted the status of central agency of executive power, has legal personality and its activities are directed and coordinated by the Cabinet of Ministers. The Ukrainian FIU is an active member of the Egmont Group.

17. It is an administrative type of FIU, whose powers and duties are listed in the Basic Law and its Statute and include:

- Collecting, processing and analysing the information about financial transactions subject to financial monitoring, and requesting further information about these transactions.
- Submitting relevant materials to law enforcement bodies when there are suspicions for money laundering or terrorist financing.
- Creating and supporting the operation of a Unified State Information System on prevention and counteraction of money laundering and financing of terrorism.
- Participating in the implementation of the state policy in the sphere of the prevention and counteraction of money laundering and financing of terrorism.
- Analysing methods and financial patterns of money laundering and financing of terrorism.
- Co-ordinating and providing guidance on AML/CFT issues to entities of initial financial monitoring (obliged entities)
- Co-operating, interacting and exchanging information with the state authorities, competent bodies of other countries and international organisations in the said sphere.

18. The traditional tasks of the FIU (receiving, analysing and disseminating STRs) are performed effectively by the SCFM, which has direct access, through the Unified Information System created in 2007 to numerous databases of state agencies of Ukraine. Guidance on the manner of reporting, the reporting forms and procedures were provided by the National Bank of Ukraine and the SCFM for banks and by the Cabinet of Ministers and SCFM (formerly SDFM) for other reporting entities. Further guidance to reporting entities is provided by the SCFM through a 'hot line'. Guidance is also provided in various meetings held between the SCFM and reporting entities, as well as in training seminars. The SCFM is adequately empowered to receive information from relevant government bodies, law enforcement, local self government authorities, enterprises and institutions and to require additional information from reporting entities. It has been issuing annual reports on its activities since 2003 which include information on legislative developments, statistics of reports received, examples of court cases, interagency cooperation at national level and international cooperation, as well as yearly reports on money laundering schemes and typologies.

19. At the end of 2007, the SCFM had established regional subdivisions in 25 regions of Ukraine. The main functions of these subdivisions, include the tracking of case referrals submitted by the SCFM to the law enforcement agencies, providing guidance to reporting entities in the region, forming a registry of financial intermediaries in the region and improving information exchange and co-ordination of the activities of regional divisions of the state agencies involved in AML/CTF. Regional offices have access to a part of the Unified Information System and access to other information can be obtained through written request.

20. The statistics provided indicate that the number of transactions reported to the SCFM and the number of case referrals submitted to the law enforcement authorities has been steadily increasing since 2004.

21. The Basic Law includes provisions on the political independence of the SCFM and the authorities advised that they have sufficient operational independence and autonomy. Its budget has been growing since 2004. It is equipped with a modern IT equipment which enables storing large volumes of data , and the data held by the FIU is securely protected and disseminated in accordance with the law. It has a maximum number of staff of 338 persons, with only six vacancies at the time of the visit, and a small turnover of staff. It demands high professional standards of its employees, who appear to be highly skilled and trained. It has taken measures to prevent and combat corruption risks, and protect information from unauthorised access by staff.

22. Efforts to combat money laundering and terrorism are shared by the law enforcement agencies throughout the country, that is the Ministry of Interior of Ukraine (MIA), the Public Prosecution/ General Prosecutor's Office of Ukraine (GPO), the Security Service of Ukraine (SSU) and the State Tax Administration of Ukraine (STA), which are responsible for investigations in accordance with the distribution of their competencies as set out in article 112 of the Criminal Procedure Code. The GPO supervises law enforcement agencies which carry out pre-trial investigation and the legality of the initiation of criminal proceedings.

23. There are no explicit provisions which allow law enforcement authorities to postpone or waive the arrests of suspects and/or the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering. However such measures are taken in practice, as these are part of the regular evidence building process and can be undertaken on the basis of the Criminal Procedure Code. When conducting investigations of money laundering, terrorist financing and predicate offences, law enforcement agencies are authorized to use a wide range of powers to obtain documents and information for use in those investigations and prosecutions. The report includes a number of aspects which casted doubts on the effectiveness of the investigations and prosecutions and proposed actions to strengthen the capacities and competencies of relevant bodies. A review of the current situation and of the procedures, in the light of the specific

competencies of the law enforcement agencies, and the enhancing of the current anti-corruption efforts are desirable.

24. Ukraine has put in place measures to detect the physical cross border transportation of currency and a declaration system. Further action is needed to ensure that the Customs have the necessary resources to take measures aimed at preventing and detecting cross border movements of currency and bearer negotiable instruments.

3. Preventive Measures – Financial Institutions

25. All types of financial institutions as defined in the FATF Glossary are covered by the AML/CFT obligations.

26. The Basic Law, sets out the scope of the basic AML/CFT obligations for financial institutions including identification and record keeping. The Basic Law is supported by: the Law of Ukraine on Banks and Banking, which applies to banks; the Law on Securities and Stock Market, which applies to entities performing activities on the stock market, and the Law of Ukraine on Financial Services and State Regulation of Financial Markets, which sets out obligations for non-banking financial institutions. For the purposes of the evaluation, the evaluation team concluded these four laws qualify as "law or regulation" as defined in the FATF Methodology. Further requirements are set out in SCFM Order No. 40, the National Bank of Ukraine Resolution No. 189, SCFSMR Instruction No. 25 and SCSSM Decision No. 538. The evaluation team considered these to be "other enforceable means" as defined by the FATF Methodology.

27. Ukraine has decided to apply its AML/CFT framework equally to all financial institutions irrespective of the level of risk. Although there is no explicit reference to a risk-based approach in Ukrainian legislation, there is some recognition of risk within the various requirements related to customer due diligence.

28. Ukraine has introduced some of the basic elements of CDD. This includes requirements on anonymous accounts, establishing business relationships, identifying and verifying customers, legal persons, authorised representatives, customers acting on behalf of another person, understanding the ownership and legal structure of beneficial owners, the purpose and nature of the business relationship, and the failure to satisfactorily complete CDD.

29. However, there remain a number of gaps including beneficial ownership for customers – natural persons, doubts over the veracity of adequacy of previously obtained customer identification data, ongoing due diligence, the requirements on securities institutions on beneficial ownership and the purpose and nature of the business relationship, and enhanced due diligence.

30. Ukraine has decided not to implement the full range of provisions related to reduced or simplified due diligence and the flexibility the FATF Recommendations provide around the timing of verification.

31. There is currently no definition of PEPs nor any other enforceable requirements to conduct additional measures regarding PEPs as required by Recommendation 6.

32. As regards correspondent banking, the NBU has set out requirements on what banks are expected to collect on correspondent banking relationships. However, the evaluation team concluded that Ukraine would benefit from making these requirements more explicit. This includes gathering sufficient information about a respondent, ascertaining that the respondent institutions' AML/CFT systems are adequate and effective and obtaining senior management approval.

33. Ukraine requires financial institutions to have policies in place to prevent the misuse of technical developments in money laundering or terrorist financing. However, there is no explicit

requirement which requires financial institutions to have policies and procedures in place to address any specific risks associated with non face to face business relationships or transactions.

34. All financial institutions are obliged to identify their customers, financial institutions are thus not permitted to rely on intermediaries or other third parties to perform some of the elements of the CDD process.

35. There are comprehensive secrecy provisions for banks, insurers and credit unions. The current framework needs to be reviewed and streamlined as it appears to limit the ability of law enforcement to access information in a timely manner from some of the sectors and necessary measures should be taken to address the authorities' lack of knowledge of relevant procedures applicable in this area.

36. The key requirements on record keeping obligations are set out in a number of documents. However, Ukraine would benefit from making these more explicit in law or regulation, in particular to ensure that record keeping requirements refer to "all necessary records on transactions" and not just documents and that non-bank financial institutions are required to maintain records of identification data for at least five years following the termination of the account or business relationship.

37. Ukraine has implemented some of the detailed criteria under SR.VII such as the originator information required. However, all the other detailed criteria have not been implemented at this stage. Non-bank financial institutions and the Ukrainian Post Office (Ukrposhta)'s compliance with the rules and regulations relating to SR. VII are not effectively supervised. There are no mechanisms for the enforcement of specific breaches for non-bank financial institutions and Ukrposhta by competent authorities and ensure that sanctions are adequate, proportional and effective for relevant breaches. Measures should be taken to ensure that Ukrposhta is effectively monitored for AML/CFT purposes.

38. A number of requirements are in place for financial institutions to pay special attention to complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. However there is no clear requirement for examining the background and purpose of such financial transactions as far as possible.

39. Ukraine needs to review existing obligations to require financial institutions to explicitly examine the background and purpose of the transactions with persons from or in countries that do not or insufficiently apply FATF recommendations. In addition, the authorities should ensure they have the legal basis to apply appropriate counter-measures.

40. The reporting system of Ukraine is comprised of two types of financial monitoring: compulsory (or obligatory) financial monitoring and internal financial monitoring.

41. Compulsory financial monitoring applies to any transaction that is equal or exceeds 80 000 UAH (or equals or exceeds foreign currency with a counter value of 80 000 UAH) and which falls within one or several of the 14 listed criteria of article 11 of the Basic Law of an objective nature. Many of the criteria that trigger the compulsory financial reporting describe de facto unusual transactions. Internal financial monitoring is defined as the activity of obliged entities to detect financial operations subject to compulsory financial monitoring, and other financial operations that may be connected with legalisation (laundering) of the proceeds. The second type of financial monitoring is more suspicious-based, where the Law sets out the financial transactions which should be subject to suspicious-based analysis and it also provides for a "catch-all" provision. Thus, from the regulatory prospective, the Ukrainian authorities have made substantial efforts to cover all possible transactions that could be regarded as suspicious.

42. However, despite the existence of the catch-all clause for reporting of all suspicious transaction, in the practice when deciding on submitting a suspicious transaction report (STR), most of the reporting institutions only consider the transactions listed in the Basic Law. Obliged entities have to employ substantial resources in order to comply with the reporting requirements, which do not always cover suspicious transactions. This can adversely influence its efficiency, since it leaves an imbalance and may inhibit the development of a suspicious-based regime. According to statistics on the number and the type of reported transactions, it appears that most of them are part of the compulsory financial monitoring.

43. There is a significant difference in the amount of STRs submitted by the banks and by all other financial institutions. 97% of the STRs come from banks. Even though banks are the dominant part of the financial sector, the low number of STRs from the other sectors could not be regarded as efficient and adequate. Although the authorities should be complimented on their efforts to increase the awareness of the non-banking financial institutions, there is a need for further outreach to these sectors in order to improve the effectiveness of the STR regime. Ukraine should provide more guidance to reporting institutions on how to detect suspicious transactions related to terrorism in order to enhance the effectiveness of the system for filing terrorist financing STRs.

44. Reporting entities, their officials and other personnel are protected from disciplinary, criminal and civil liability if they submitted information about a financial transaction to the SCFM in accordance with the Basic Law. There is no mention of a "good faith" prerequisite associated with the reporting requirement nor of protection if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred. The waiver is broader than the standard set out in Recommendation 14, and as such it does not comply with it. Furthermore, there should be clear tipping off provisions in relation to financial institutions and not just directors and other employees of the financial institutions.

45. Ukraine has considered the feasibility of implementing a system whereby financial institutions would be required to report all transactions in currency above a fixed threshold. They have chosen to establish a compulsory reporting of transactions of 80 000 UAH or foreign currency equivalent to 80 000 UAH or higher, if they also meet one or several of the criteria set out in article 11 of the Basic Law.

46. Competent authorities have established guidelines to assist financial institutions to implement and comply with their respective AML/CFT requirements and provide feedback.

47. The current framework covering internal controls, compliance, audit and foreign branches suffer from a number of deficiencies regarding the establishment of appropriate compliance management arrangements by financial institutions. For the non-banking institutions, there is no legal requirement to maintain an adequately resourced and independent audit function to test compliance with these procedures, policies and controls and to put in place screening procedures to ensure high standards when hiring staff. Apart from banks, other financial institutions are not required to pay particular attention to their subsidiaries and branches in countries which do not or insufficiently apply the FATF recommendations.

48. Ukraine has put in place procedures and requirements which serve as a safeguard to prevent the establishment of shell banks and the authorities advised that in practice there is no bank currently authorised and operating in Ukraine which would have the characteristics of a shell bank. The current framework could benefit from more explicit requirements, in particular to require financial institutions to satisfy themselves that a respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.

49. The Basic Law, as well as the sectoral laws, define the regulation and supervision of financial institutions on AML/CFT issues.

50. The National Bank of Ukraine is the competent authority which licenses and supervises banks (Law on the National Bank of Ukraine No. 679 of May 20, 1999 as amended). The licensing and supervision of banks are performed according the Law on Banks and Banking (7 December 2000 as amended as of 2007) . Article 63 of the latter requires the NBU to perform at least an annual supervision over banks' activities in relation to AML/CFT. In addition to these two laws, the NBU issued on 25 June 2005 the Resolution No. 231 with methodical instructions on compliance audit of banks (or affiliates) in the sphere of preventing legalisation of criminal proceeds (anti-money laundering) and composition of report upon results thereof. These instructions are quite comprehensive and cover a large scope of AML/CFT issues.

51. The State Commission on Securities and Stock Market is the licensing and supervisory authority responsible for entities that perform professional stock market activities: activities on securities trading, management of assets of institutional investors, depositary activities and organisation of trading in the stock market. The responsibilities of this authority are defined in the Law on State Regulation of Securities Market in Ukraine and in the Law on Securities and Stock Market, which do not explicitly cover AML/CFT supervision. The SCSSM performs AML/CFT supervision in accordance with the Basic Law, as well as in compliance with the SCSSM Resolution No. 344 of 5 August 2003 on approval of the Rules for Conducting Inspections of the Professional Securities Market Participants, Collective Investment Institutes and Stock Exchanges Regarding Compliance with the Requirements of Effective Legislation on Prevention and Counteraction to Legalisation (Laundering) of Illegally Acquired Proceeds and Financing of Terrorism, as well as with the Order No. 644 (25 July 2008) approving the Methodological Recommendations which define in more details the procedure for AML/CFT supervision.

52. The State Commission on Financial Services Markets Regulation of Ukraine is responsible for the licensing and supervision of credit unions, leasing companies, pawnshops, insurance companies, pension funds and companies, financial companies and other institutions whose exclusive activity is to render financial services. The AML/CFT supervision is conducted according to the SCFSMR Resolution No. 26 on conducting inspections on issues of prevention and counteraction of legalisation (laundering) of proceeds from crime. This sets out the procedure for performing on-site inspections, but it is rather general.

53. There is only one postal company in Ukraine – Ukrposhta. It is a state owned entity that performs postal services in domestic and foreign postal traffic. The Ukrposhta is licensed by the National Commission on the Issues of Communication Regulation in Ukraine for sending postal transfers. In addition, it is registered with the SCFSMR for performing financial services of postal transfer and has received a general license from the NBU on conducting currency transactions. The supervision over Ukrposhta is performed by two supervisory bodies: the SCFSMR (for AML/CFT supervision) and the NBU (for oversight over payment operations). The evaluation team determined a lack of on-site supervision over the operation of the Ukrposhta, especially in the field of AML/CFT. At the time of the on-site visit, the SCFSMR had never performed on-site supervision of the Ukrposhta. This situation places some uncertainty on the adequacy of the AML/CFT processes and procedures of this institution, as well as its AML/CFT awareness, despite the assurances received from the regulator regarding the low level of risk.

54. The legal provisions for non-banking financial institutions, excluding to some extent management companies, do not provide for an explicit barrier of criminals or their beneficial owner from holding a significant or controlling interest in a securities firm. Furthermore, except to a certain degree the securities firms, the fit and proper criteria for persons having a significant or controlling interest in the non-banking financial institutions are very limited.

55. All three financial supervisors have powers to perform AML/CFT supervision, which is a part of their integrated supervision procedures. However, there is a difference in the scope and the quality of AML/CFT supervision performed by these supervisory authorities. NBU has established

necessary elements for applying risk-based AML/CFT supervision. The practical conduct of risk-based AML/CFT supervision seems to be limited by the legal requirement for obligatory annual on-site inspections. It does not appear that the SCSSM and the SCFSMR are in a position to cover AML/CFT issues in satisfactory manner. The latter two institutions conduct on-site and off-site inspections, but their supervisory procedures do not seem to cover risk-based analysis and supervision on consolidated basis. This conclusion is based on the analysis of the AML/CFT supervision procedures and the number of inspections performed during the previous years.

56. Regarding the enforcement powers of the supervisory authorities, they can impose fines in accordance with the procedure set in the Basic Law, the relevant sectoral laws, as well as the Code of Administrative Offences. However, the current sanctions regime needs reviewing with a view to establishing effective, proportionate and dissuasive sanctions to deal with natural and legal persons which fail to comply with AML/CFT requirements and that the range of sanctions is broad and proportionate to the severity of the situation. There is no evidence of appropriate sanctioning regime and practice over the foreign exchange offices and money transfer providers.

57. The number of supervisory staff in all three supervisory authorities is insufficient and does not enable them to cover efficiently AML/CFT supervision of obliged financial institutions. Furthermore, there are some doubts related with the independence and autonomy of the SCFSMR. In addition, this supervisory body experience a high turnover of its staff, which adversely affects its possibility for attracting and sustaining competent staff.

58. The money or value transfer services in Ukraine can be performed through banks that are agents of money transfer providers, non-banking financial institutions and Ukrposhta. These services can only be provided through banks and the Ukrainian Financial Group which has a relevant license. Currently, Western Union and Moneygram perform money transfer services only through banks. The SCFSMR is the competent authority to licence legal persons that perform money or value transfer (MVT) services for AML/CFT purposes. The National Commission on Issues of Communication Regulation licences Ukrposhta to perform MVT services for postal transfers. However, it is monitored by the SCFSMR for AML/CFT obligations. In relation to MVT services, the requirements in relation Recommendations 5, 6, 7, 9, 10, 13, 15, and 22 need to be implemented.

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

59. Apart from casinos, Ukraine has not extended the AML/CFT obligations to real estate agents, dealers in precious metals and stones, lawyers, notaries, other legal independent professions, company service providers and accountants. Trust and company service providers as defined under the FATF glossary do not exist in Ukraine. Ukraine does not comply with the requirements set out in Recommendations 12, 16, 24 and should as a matter of urgency address these deficiencies.

60. The customer due diligence and record keeping requirements set out in recommendations 5, 6, and 8 to 11, 13 to 15 and 21 do not apply to DNFBPs.

61. Despite the SCFM's efforts to provide additional guidelines for the DNFBPs in detecting suspicious transactions, in terms of effectiveness, DNFBPs seem less aware of their obligations. Overall, the number of reports received from DNFBPs is significantly small. More outreach to this sector is necessary, particularly by providing training and guidance.

62. There is a lack of AML/CFT supervision of DNFBPs. The current regulatory and supervisory regime applicable to gambling institutions needs to be reviewed in order to ensure that casinos are subject to and effectively implementing the AML/CFT measures required under the FATF recommendations.

63. Ukraine has considered applying Recommendations 5, 6, 8-11, 13-15, 17 and 21 to other non-financial businesses and as a result has designated non-life insurance, reinsurance, pawnshops, cash lotteries and commodity exchanges (auctioneers).

5. Legal Persons and Arrangements & Non-Profit Organisations

64. All legal entities, irrespective of their organisational, legal or property form, and natural persons (individual entrepreneurs) in Ukraine required to be registered with the State Register of legal entities and natural persons - entrepreneurs of Ukraine (USR). The registration procedure includes the verification that all the information required is submitted, the verification of documents, the introduction of information into the register, the execution and issuance of the certificate on state registration and relevant extract. Changes to the statutory documents of legal persons, changes of surname/name and place of residence of the natural person - entrepreneur are subject to mandatory state registration. However, the evaluators have not seen any provisions which would require that changes in ownership and control information for all forms of legal entities be kept up to date.

65. Information requested for registration purposes in Ukraine does not appear to include information on beneficial ownership of legal persons. Thus, the legal framework in place does not require adequate transparency concerning the beneficial ownership and control of legal persons. This mechanism does not enable competent authorities to obtain or have timely access to adequate, accurate and current information on beneficial ownership and control of legal persons, as such information is not available in the USR. As regards other information held, it remains uncertain whether such information is accurate and up to date.

66. Only joint stock companies can issue shares. The authorities advised that all shares of a joint stock company are nominal (Article 6 (4) of the Law on Joint Stock Companies) and shall indicate the type of the security, title and location of stock company, series and number of certificate, number and date of issue, international identification number of the security, type and nominal value of the share, name of holder and number of issued shares. The shares are registered and the State Securities and Stock Market Commission of Ukraine maintains a register of nominal shareholders.

67. In the Ukrainian legal framework, trusts or other similar legal arrangements do not exist. Recommendation 34 is not applicable.

68. The Ukrainian authorities have undertaken a limited review of the adequacy of part of the legislation applicable to non profit organisations (NPOs). However this was not done with an aim to determine its vulnerability to terrorist financing. Some measures have been taken to promote supervision of monitoring of NPOs and a range of sanctions is available for violations with the relevant legislation, which are applied by the Ministry of Justice for all Ukrainian NPOs and by the territorial administrations for the local ones and by the Tax Administration for breached of taxation related requirements. The effectiveness of the oversight mechanisms also needs to be reviewed.

69. There is a clear lack of measures to raise awareness in the NPO sector about risks and measures available to protect them against such abuse. Legal requirements need to be introduced to ensure that NPOs maintain information on the identity of person(s) who own, control or direct NPOs activities, including senior officers, board members and trustees and that such information, as well as data on the purpose and objectives of the NPOs activities should be publicly available. Furthermore, there are no legal requirements in place for NPOs to maintain for a period of at least 5 years records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a consistent manner with the purpose and objectives of the organisation and to make them available to appropriate authorities.

6. National and International Co-operation

70. Since the last evaluation, Ukraine has taken significant steps towards enhancing co-operation between the various authorities. Policy level co-operation and co-ordination between all the agencies involved in the AML/CFT efforts is undertaken through the Interagency Working Group regarding research of methods and trends in laundering of proceeds from crime (IWG). The SCFM plays a major leadership role in the co-ordination of the system through the Interagency Working Group.

71. Also, Ukraine appears to have mechanisms in place to review the effectiveness of the AML/CFT system. The implementation of the AML/CFT system is being assessed by the IWG on an annual basis. Efficiency is being determined on the basis of fulfilment of tasks envisaged by the annual AML/CFT action plans. As a result of the work undertaken by the IWG, several important policy and legal proposals were developed.

72. Ukraine has accessed the Vienna and Palermo Conventions, as well as the Terrorist Financing Convention. Nevertheless, the evaluation team reserved substantial concerns on the implementation of the noted conventions, as well as on certain gaps in application of requirements of UNSCRs 1267, 1373 and successor resolutions.

73. Ukraine has ratified a number of international conventions, which created a thorough legal basis for international co-operation. Ukraine has also developed an efficient approach in providing mutual legal assistance (MLA). Such assistance is provided on the basis of multilateral international treaties and bilateral agreements, in the absence of any agreement, as well as on the basis of reciprocity via diplomatic channels. For the better provision of mutual assistance, the evaluation team recommended to set up more detailed legal procedures on rendering various types of MLA requests. Additionally, as regards providing extradition related assistance, the evaluation team advised to eliminate legal impediments posed for certain types of requests and circumstances.

74. Other competent authorities can provide a wide range of international co-operation to their foreign counterparts and there are clear and effective gateways enabling the promote and constructive exchange directly between counterparts upon request, without unduly restrictions. The current framework could be further enhanced by making necessary amendments so that competent authorities are authorised to exchange spontaneously information.

7. Resources and Statistics

75. Not all required statistics are kept by the relevant Ukrainian authorities and the collective review of the performance of the system as a whole and strategic coordination needs developing. In the light of the information received, it appears that the resources allocated to several relevant authorities should be increased in order to ensure that they have the capacity to perform adequately their functions.

1 TABLE OF RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

For each Recommendation there are four possible levels of compliance: Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC). In exceptional circumstances a Recommendation may also be rated as not applicable (N/A).

Forty Recommendations	Rating	Summary of factors underlying rating[2]
Legal systems		
1. Money laundering offence	**PC**	• Actions of conversion or transfer of property do not appear to be fully covered • property does not seem to cover intangible assets and legal documents or instruments evidencing title to, or interest in such assets • there are no autonomous investigation and prosecution of the ML offence, as well as no conviction for money laundering without prior or simultaneous conviction for a predicate offence proving that the property is the proceeds of crime • 2 out of 20 designated categories of offences are not fully (insider trading and market manipulation) and financing of terrorism in all its aspects is not covered • The applied threshold for predicate offences is not in line with the requirements of Recommendation 1 • There appear to be difficulties in the implementation of the offence
2. Money laundering offence Mental element and corporate liability	**PC**	• While criminal liability of legal persons for ML is not established, corporate civil or administrative liability for ML, with the exception of liability for breaches of compliance with the AML regime, appears to be deficient • The effectiveness of sanctions could not be fully assessed and in any case, legal persons are not subject to proportionate and dissuasive criminal, civil or administrative sanctions for ML
3. Confiscation and provisional measures	**PC**	• Confiscation of instrumentalities, confiscation of property of corresponding value, as well as confiscation of income, profits or other benefits from the proceeds of crime involved in the commission of ML offence are not covered in the Ukrainian legal framework. • Property from the commission of certain predicate offences cannot be confiscated; • The Ukrainian legislation is deficient in ensuring confiscation of property used in or intended for use in TF. • The effective application of confiscation measures with regard to ML or predicate offences cannot be assessed in the

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

		absence of relevant statistics
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**PC**	• Limitations on the ability of law enforcement authorities to access information in a timely manner from some of the sectors and lack of knowledge of relevant procedures applicable in this area • The evaluation team had significant concerns over practical implementation of banking secrecy provisions
5. Customer due diligence	**PC**	• For banks, CDD measures when carrying out occasional transactions above the applicable threshold are limited to cash transactions • The requirement to undertake CDD measures when carrying out occasional transactions that are wire transfers is not set out in law or regulation • Banks are not explicitly required to undertake CDD when there is a suspicion of money laundering or terrorist financing, regardless of any thresholds • There is no explicit requirement in law or regulation for dealing with doubts about the veracity or adequacy of previously obtained customer identification data. The current requirements do not refer to undertaking CDD and do not cover the full scope of CDD. • The definition of beneficial ownership does not cover natural persons and there is no requirement in law or reguklation requiring financial institutions to determine who are the natural persons that ultimately own or control the customer • Securities institutions are only required identify beneficial owners and understand the ownership and control structure of the customer in higher risk situations. • Securities institutions are only required to obtain information on the purpose and nature of the business relationship in higher risk situations. • There is no specific requirement in law or regulation to conduct ongoing due diligence on the business relationship applicable to all financial institutions. • There is no requirement on non-bank financial institutions that ongoing due diligence should include scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds. • There is no general requirement on financial institutions to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions; the requirements on banks do not cover certain elements of EDD; • There is no explicit requirement for non-bank financial institutions to apply CDD to existing customers.

6. Politically exposed persons	**NC**	• There is no definition for PEPs in other enforceable means • There is no requirement on financial institutions to put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a politically exposed person • There is no requirement to obtain senior management approval for establishing business relationships with PEPs, including where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP. • There is no requirement to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs • There is no requirement to conduct enhanced ongoing monitoring on a business relationship with the PEP
7. Correspondent banking	**PC**	• There is no explicit requirement to gather sufficient information about a respondent to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action. • No requirement to ascertain whether the respondent institutions AML/CFT systems are adequate and effective. • There is no direct requirement to obtain approval from senior management before establishing new correspondent relationships.
8. New technologies and non face-to-face business	**PC**	There is no explicit requirement which requires financial institutions to have policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transactions.
9. Third parties and introducers	**N/A**	
10. Record keeping	**LC**	• Non-bank financial institutions are not required to maintain records of the identification data for at least five years following the termination of the account or business relationship. • No requirement that transaction records should be sufficient to permit reconstruction of individual transactions.
11. Unusual transactions	**LC**	• The obligation to examine as far as possible the background and purpose of all unusual financial transactions is not explicitly covered • There is an inconsistent implementation of the prescribed scope of data included in the register of financial transactions subject to financial monitoring for the non banking financial sector
12. DNFBP – R.5, 6, 8-11	**NC**	• Real estate agents, dealers in previous metals and stones, lawyers, notaries, other independent legal professionals, company service providers and accountants do not have any

		obligations pertaining to Recommendation 5, 6, 8, 9, 10, 11 Casinos R.5 • There is no requirement in law or regulation which requires casinos to undertake CDD when their customers engage in financial transactions equal to or above USD/€3000. • Casinos are not required to undertake CDD when there is a suspicion of money laundering or terrorist financing, regardless of any threshold. • There is no explicit requirement in law or regulation for dealing with doubts about the veracity or adequacy of previously obtained customer identification data. The current requirements do not refer to undertaking CDD and do not cover the full scope of CDD. • The definition of beneficial ownership does not cover natural persons • There is no requirement in law or regulation requiring DNFBPs to determine who are the natural persons that ultimately own or control the customer. • There is no specific requirement in law or regulation to conduct ongoing due diligence on the business relationship • There is no requirement on DNFBP that ongoing due diligence should include scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds. • There is no general requirement on DNFBP to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions. • There is no explicit requirement to apply CDD to existing customers • There are concerns about the effectiveness of implementation of customer identification requirements in the casino sector R.6 • There is no definition for PEPs in other enforceable means • There is no requirement on financial institutions to put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a politically exposed person • There is no requirement to obtain senior management approval for establishing business relationships with PEPs, including where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP. • There is no requirement to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs

		• There is no requirement to conduct enhanced ongoing monitoring on a business relationship with the PEP. R.8 • There is no explicit requirement which requires to have policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transactions. R.9 (N/A) R.10 • Non-bank financial institutions are not required maintain records of the identification data for at at least five years R. 11 • There is no clear requirement for examining as far as possible the background and purpose of all unusual financial transactions • There is an inconsistent implementation of the prescribed scope of data included in the register of financial transactions subject to financial monitoring
13. Suspicious transaction reporting	**PC**	• The suspicious reporting regime could not be regarded as risk-based and in line with the specifics of different sectors • No STR requirement in cases possibly involving insider trading and market manipulation • All types of attempted transactions are not fully covered • Low numbers of STRs outside the banking sector adversely affects the effective implementation
14. Protection and no tipping-off	**LC**	• The Basic Law does not explicitly provide protection of entities if they acted in a "good faith" and even if they did not know what underlying criminal activity was, and regardless of whether illegal activity occurred • Financial institutions are not covered by the tipping off prohibition
15. Internal controls, compliance and audit	**PC**	• Apart for banks, neither law, nor the practice explicitly require compliance officer to be at the management level • There is no legal requirement nor practice for non-banking financial institutions to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls • Low awareness of the non-banking financial institutions on the roles and responsibilities of the internal audit function • Financial institutions are not fully required to put in place screening procedures to ensure high standards when hiring employees
16. DNFBP – R.13-15 & 21	**NC**	• The same deficiencies in the implementation of Recommendations 13-15 and 21 in respect of financial

		institutions apply equally to DNFBP • The effectiveness of the reporting by DNFBP is nul • The compliance and audit functions of DNFBP are not in place
17. Sanctions	**PC**	• The pecuniary sanctions under the Basic Law are not dissuasive and proportionate to the severity of a situation. The Basic Law and the sectoral laws provide for different amount of fines, which can create uncertainty on the amount of fines that could be imposed • The efficiency of the sanctioning regime is questionable • According to the Law on Banks and Banking , the withdrawal of a bank license is limited to cases when banks suffer a significant loss of assets or income • The sanctions are not broad and proportionate to the severity of the violation and the efficiency of the sanctioning regime is questionable • There is no evidence for appropriate sanctioning regime and practice over the foreign exchange offices and money transfer providers.
18. Shell banks	**LC**	Financial institutions are not clearly required to satisfy themselves that respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks
19. Other forms of reporting	**C**	
20. Other DNFBP and secure transaction techniques	**LC**	• AML/CFT obligations extended to other non financial businesses without undertaking a risk assessment
21. Special attention for higher risk countries	**NC**	• There is no clear requirement for financial institutions to give special attention to all business relationship and transactions with persons from or in countries which do not or insufficiently apply FATF recommendations • There is no explicit requirement that the examination of the background and purpose of the financial transactions with countries that do not or insufficiently apply FATF recommendations should be extended as far as possible • No enhanced mechanisms in place to apply full set of counter measures
22. Foreign branches and subsidiaries	**PC**	• Apart from the special situation for banks, there is no requirement for the other financial institutions to pay particular attention to their subsidiaries and branches in countries which do not or insufficiently apply the FATF Recommendations • No requirement to ensure implementation of the higher AML/CFT standard by their foreign subsidiaries and branches, to the extent that local laws and regulations permit
23. Regulation, supervision and monitoring	**PC**	• The SCFSMR does not conduct on-site AML/CFT supervision of the Ukrposta • The legal provisions for non-banking financial institutions (excluding to some extent asset management companies) do

		not provide for an explicit barrier of criminals, or their beneficial owner, from holding a significant or controlling interest • The fit and proper criteria for for persons having a significant or controlling interest in the non-banking financial institutions (except to a certain degree the securities firms) and their senior managers are very limited • The risk-based approach to AML/CFT supervision is not implemented by all supervisors. NBU is the only supervisory authorities that has necessary supervisory techniques to conduct risk-based AML/CFT supervision, but its practical implementation is constrained with the legal requirement for annual AML/CFT on-site inspections • SCSSM and SCFSMR do not implement a risk based and consolidated supervision . • There is no adequate AML/CFT framework for AML/CFT supervision over foreign exchange offices and payment systems
24. DNFBP - Regulation, supervision and monitoring	**NC**	• The Ministry of Finance does not have adequate powers to perform AML/CFT supervision and to monitor and sanction over gambling institutions • Recommendation 17 not implemented in relation to other categories of DNFBP • The licensing regime of gambling institutions sets a risk for different implementation and misuse • The criteria for preventing criminals or their associates from holding or being a beneficial owner or holding a management function, or being an operator of a casino are insufficient • Besides the recent positive trends related with sanctions imposed to the gambling institutions by the SCFM, the general sanctioning practice and effectiveness of gambling institutions is insufficient • Recommendation 24 not implemented in respect of other categories of DNFBP • The resources of the Ministry of Finance to perform AML/CFT supervision is rather insufficient, as well as their competence
25. Guidelines and Feedback	**LC**	• SCFM does not provide case by case feedback to obliged entities regarding the case referrals transmitted to law enforcement agencies • The ML/FT guidance provided by SCFSMR and SCSSM to the specific sectors that they supervise could not be regarded as sufficient • Guidelines for all DNFBPs on issues other than transaction reporting need to be further developed
Institutional and other measures		
26. The FIU	**C**	

27. Law enforcement authorities	**PC**	• There are concerns with the practical implementation of the procedures for ML/TF investigations and regarding risks of duplication of efforts which impact on the proper investigation of ML/TF • Corruption remains an issue of concern • Statistics show a decline in the number of criminal cases initiated and in the number of criminal cases submitted to the court, which casts doubts on the effectiveness of law enforcement authorities' action.
28. Powers of competent authorities	**LC**	• There remained concerns as regards the obtaining of necessary information for use in ML/FT investigations
29. Supervisors	**PC**	• AML/CFT supervisory practices (except NBU's practice) does not clearly extend to sample testing • There are no explicit provisions that specify the scope of the AML/CFT supervision and enforcement powers over foreign exchange offices • Apart from the specific situation of banks, the sanctioning regime does not include the possibility for permanent removal from office of directors and senior managers • Maximum fines against financial institutions are too low
30. Resources, integrity and training	**PC**	• Limited information which does not enable to assess whether the SCS is provided with adequate financial, human and technical resources • Insufficient resources within the Ministry of Justice to number of staff to deal with MLA and extradition • Supervisory authorities are not adequately staffed and as regards the SCFSRM, its independence is questionable as well as its ability to attract and sustain competent staff • Serious doubts regarding the Ministry of Finance's ability to perform AML/CFT supervision of casinos, given its scarce resources • Lack of data on resources used to set up and maintain the AML/CFT system on the policy level • Further training for staff of competent authorities for combating ML and TF appears necessary
31. National co-operation	**LC**	• Existing mechanisms in place point in the right direction, however further feedback and accountability is required, as well as greater co-ordination and co-operation, particularly at operational level and between supervisory authorities
32. Statistics	**PC**	• Collective review of the performance of the system as a whole and strategic co-ordination needs developing; • No comprehensive statistics maintained by competent authorities on an annual basis on: - the number of cases and the amounts of property frozen, seized and confiscated relating to ML, TF and criminal proceeds; - reports files on domestic or foreign currency transactions above a certain threshold, cross border transportation of

		currency and bearer negotiable instruments - all MLA and extradition requests (including requests relating to freezing, seizing and confiscation that are made or received relating to ML, predicate offences and FT, including the nature of the request, whether it was granted or refused and the time required to respond - on formal requests of assistance received or made relating to or including AML/CFT, and information on whether the requests were granted or refused by supervisors
33. Legal persons – beneficial owners	**PC**	• The existing system does not enable to achieve adequate transparency concerning beneficial ownership and control of legal persons • Relative ease with which fictitious companies can be established hinders the authorities AML/CFT efforts • There are concerns on the timely access to adequate, accurate and current information contained in the USR
34. Legal arrangements – beneficial owners	**N/A**	
International Co-operation		
35. Conventions	**PC**	*Implementation of the Vienna and Palermo Conventions* • Certain elements of criminalisation of ML offence, as well as application of confiscation and provisional measures appear to be deficient • as regards specifically implementation of Palermo Convention, liability of legal persons is deficient • Criminalisation of TF does not cover the elements set forth by article 2 of the Convention • Liability of legal persons is not in line with article 5 of the Convention
36. Mutual legal assistance (MLA)	**PC**	• Detailed procedures on the legal framework for provision of various types of MLA, inclusive of timeframes for responses of MLA requests are missing • Feedback from other countries indicates low quality of materials received • Effectiveness concerns
37. Dual criminality	**LC**	• Rendering MLA in the absence of dual criminality, in particular for less intrusive and non compulsory measures is not possible. • There are certain legal impediments in rendering extradition related assistance. • Gaps in the incrimination of ML/TF offences and predicate offences impact in this context
38. MLA on confiscation and freezing	**LC**	• Loopholes and inconsistencies in identifying, freezing, seizing and confiscating relevant property, as reflected in sections 2.3 and 2.4 effect the ability of executing such actions for MLA.
39. Extradition	**LC**	• There are certain legal impediments in rendering extradition

		related assistance. • Current limitations in relation to the criminalisation of ML impact on Ukraine's ability to extradite persons sought for ML • The effectiveness of the extradition system could not be fully assessed
40. Other forms of co-operation	**LC**	• Gaps in the legal framework to enable exchanges of information spontaneously
Nine Special Recommendations		
SR.I Implement UN instruments	**NC**	• There are a number of gaps in the implementation of the TF Convention and of the • UNSCRs 1267, 1373 and successor resolutions
SR.II Criminalise terrorist financing	**PC**	• Elements of the financing of terrorism are criminalised solely on the basis of aiding and abetting, attempt or conspiracy thus, FT is not criminalised in line with SR II requirements as an autonomous offence • A number of requirements do not appear or are only partly covered (i.e. application to any funds as defined in the TF Convention; II.1(c)ii; II.2, II.3, R. 2 criteria 2.2 – 2.5).
SR.III Freeze and confiscate terrorist assets	**PC**	• Authorised state agencies (the SCFM or other) do not have a power to execute initial suspension (freezing) of financial transactions. • It is not explicit that suspension (freezing) extends to funds owned or controlled by persons who commit, or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts, where no national court decision or appropriate foreign decision are existent. • Prompt determination and suspension (freezing) of terrorist funds on the basis of appropriate foreign requests, received by the SCFM or other competent authorities (besides the Security Service) are not available. • Suspension (freezing) of funds or other assets not connected with financial transactions is not possible. • There are no detailed publicly-known procedures for de-listing requests and for unfreezing the funds of delisted persons or entities in a timely manner, including in the case of persons or entities inadvertently affected by a freezing mechanism • Ukraine had not established procedures for authorising access to funds for basic expenses. • Confiscation of terrorist related funds is not possible in the course of criminal proceedings on terrorist related offences.
SR.IV Suspicious transaction reporting	**PC**	• Shortcoming in the criminalisation of terrorist financing limits the reporting obligation • No STR requirement in law or regulation for all types of attempted transactions • The practice illustrates a lack of understanding of TF STR

		obligation and overall lack of effectiveness of the system • Deficiencies related to R. 40 impact have a negative effect on the rating of this Recommendation.
SR.V International co-operation	**PC**	• The deficiencies related to R. 36-38 - 39 have a negative effect on the rating of this Recommendation. • Reservations about the possibility of extradition for all offences related to terrorist financing
SR.VI AML requirements for money/value transfer services	**PC**	• There is no requirement on the MVT service operators (whether they are registered to transfer national or foreign currency) to maintain a current list of agents which they use. • Implementation of Recommendations 5, 6, 7, 9, 10, 13, 15, and 22 in the MVT sector suffers from the same deficiencies as those that apply to banks and which are described earlier in section 3 of this report. • R.17 – Statistics on the number of sanctions imposed on MVTs were not provided to the evaluation team and thus the effectiveness could not be assessed.
SR.VII Wire transfer rules	**PC**	• The requirements in Order No. 211 for Ukrposhta do not meet the FATF requirements. • There is no explicit requirement on financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. • The competent authorities do not have the necessary powers or measures in place to effectively monitor non-bank financial institutions and Ukrposhta with the requirements in NBU Resolution No. 348. • The competent authorities do not have the necessary mechanisms to impose sanctions for specific breaches in relation to NBU Resolution No. 348
SR.VIII Non-profit organisations	**PC**	• No reviews undertaken of the domestic NPO sector in respect of its misuse for terrorist financing • Lack of outreach to the NPO sector • Deficiency of measures to promote effective supervision or monitoring of NPOs and it is unclear whether existing rules have been adequately enforced • No explicit legal requirement is established stipulating the NPOs to maintain the identity of person(s) who own, control or direct NPOs activities. • There is no explicit legal requirement for NPOs to maintain records for a period of at least 5 years and make available to appropriate authorities, records of domestic and international transactions
SR.IX Cross Border declaration and disclosure	**PC**	• NBU resolution and related explanatory form of the SCS do not appear to cover all bearer negotiable instruments • No powers to stop or restrain declared cash or bearer negotiable instruments in case of a suspicion of ML/FT. • The administrative fines available for false or non-

		declarations are not dissuasive and not effective. • Shortcomings identified in R. 3 and SR.III also apply in this context. • Information and documents regarding various issues were not provided in order to properly understand the functioning of the system (e.g. full scope of information available to the FIU, adequacy of the coordination among relevant authorities) and assess the effectiveness of the system • Doubts about the human and financial resources of the SCS and relevant training.