COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 6 June 2005

MONEYVAL (05) 13 Summ

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Select Committee of Experts on the evaluation of anti-money laundering measures
(MONEYVAL)

FIRST ROUND DETAILED ASSESSMENT REPORT ON BOSNIA AND HERZEGOVINA

SUMMARY / Report on the observance of standards and codes (ROSC)

A. Introduction

1. This Report on the Observance of Standards and Codes (ROSC) for the FATF Recommendations for Anti-Money Laundering and 8 Special Recommendations for Combating the Financing of Terrorism (FATF 40+8 Recommendations) was prepared by the MONEYVAL Secretariat on the basis of the Detailed Assessment report[1] on Bosnia and Herzegovina, which was adopted at the Plenary meeting of the MONEYVAL Committee in Strasbourg, 30 May-3 June 2005. The report summarises the level of observance of the FATF 40+8 Recommendations and provides recommendations to enhance observance.

B. Information and Methodology used for the Assessment

2. This assessment is based on a review of the AML/CFT legislation and regulations of Bosnia and Herzegovina. Furthermore, the evaluators received from the authorities of Bosnia and Herzegovina information on the capacity and implementation of criminal law enforcement systems, and on supervisory and regulatory systems to deter money laundering and terrorist financing. The assessment team held discussions with officials and technical experts from a number of departments and agencies of Bosnia and Herzegovina, as well as representatives from the private sector. The assessment is based on the information available at the time of the on-site visits in Sarajevo and Banja Luka between 23 and 29 November 2003.

3. The Dayton Peace Agreement established Bosnia and Herzegovina (BiH) as a State comprising two Entities, each with a high degree of autonomy: The Republika Srpska (hereinafter RS) and the Federation of Bosnia and Herzegovina (hereinafter FBiH). When the Dayton Agreement was being negotiated there was no consensus on where the District of Brcko (hereinafter BD) should be placed. Its District Statute provides that it is a single administrative unit of self government existing under the sovereignty of Bosnia and Herzegovina. Constitutionally therefore the current system has the features of a very de-centralised federal system, with each Entity (and District of Brcko) having its own Constitution, President, Government, Parliament, and legislation. Indeed the majority of legislation, at the time of the on-site visit, was passed at the Entity level. Thus, at the time of the on-site visit, the State was vested with a subsidiary competence, and state institutions were only being brought into place slowly, including a State level court system, and a State level Prosecutor's Office. The (Office of the) High Representative is the ultimative authority in BiH. He/she can pass and impose legislation, and dismiss officials, including judges. These powers have been largely used.

4. Under the State Constitution, State institutions include a 3 member State Presidency, a Parliamentary Assembly, and a Constitutionnal Court. A State Court

---

[1] The detailed assessment was prepared by the MONEYVAL Secretariat based on contribution from an evaluation team which consisted of Ms Andrea Lang, Slovenia, Mr. Oleksiy Berezhnyi, Ukraine, Mr Csaba Molnar, Hungary; Mrs Valerie Silensky-Lowe, United States of America, Mr Emmanuel Mathias, France, assisted by a member of the MONEYVAL Secretariat.

has been operating since January 2003 with criminal, administrative and appellate (from its other branches) jurisdiction.

5. All government functions and powers not expressly assigned in the Constitution to the State institutions of Bosnia and Herzegovina shall be those of the entities (Article III.a. of the State Constitution: Annex A). With nearly 900 judges for the entire country, judicial responsibility falls mainly to the Entities. The State Constitution provides in Article VII for a Central Bank but in fact, the FBiH and the RS have their own banking system.

6. Bosnia and Herzegovina inherited the criminal legislation of former Yugoslavia. New Criminal Codes were adopted in 1998 by FBiH, and in 2000 by the RS, together with a new Criminal Procedure Code. BD also has its own Criminal Code and Criminal Procedure Code. A State level Criminal Code came into force in March 2003, which contains, for instance, a separate money laundering offence. The distinction between entity and State level jurisdiction is not yet fully clear (it is largely a matter of interpretation of the seriousness of the case and the economic damage). The creation of a State level FIU was under consideration at the time of the on site visit.[2]

7. The FBiH Law on the prevention of money laundering was the first to be enacted, in March 2000. It became effective in late March 2000. The Law on the prevention of money laundering in RS became operational on 1 March 2002. The Law on the prevention of money laundering in BD was introduced at the time of the on-site visit – it became effective in August 2003. At the time of the on-site visit there were plans to create a State level legal framework for meeting international standards for the prevention of money laundering with the introduction of a State level anti-money laundering Law, and consequent repeal of the Entity and BD Laws. Drafts were available at the time the visit took place.

8. The following section on the main findings takes into account, as far as possible, the situation at State (BiH), entities (FBiH and RS) and Brcko District (BD level).

C. Main findings

9. Though there are differences between the Entities, overall observations can be made which are of general application. Firstly it was accepted that there was a very high level of money laundering activity within the State, the entities and BD. However a clear understanding of the concept of money laundering was far from universal. Several appeared to confuse money laundering with tax evasion, and corruption generally. Some others, however, frankly conceded that money launderers were taking advantage of Bosnia and Herzegovina. It was also understood that as the banks are the main financial intermediaries they were the most vulnerable to money laundering at the placement and layering stages (bank supervision was found by the examiners, indeed, to be weak and incomplete).

---

[2] This State Investigation and Protection Agency (SIPA) was established in 2004, with one of its department becoming a national FIU (it came me into effect on 28 December 2004 under the Law on the Prevention of Money Laundering N° 29/04 of 28 June 2004 (which also came into effect on 28 December 2004).

The non-bank financial sector remains insubstantial, and is not considered currently to be a major money laundering or financing of terrorism vulnerability. Some activities, however, would require further analysis befor drawing frim conclusions (e.g. illogical investments in the construction of hotels).

10. It was acknowledged by Prosecutors at Entity and State level that organised crime groups operated widely in all parts of the country dealing in prostitution, trafficking in human beings, corruption, drugs and arms trafficking – all which generate criminal proceeds. The team were advised that there was a State Special Task Force for Human Trafficking, but no money laundering investigation had arisen from their investigations, so far as the team was aware (though statistics on criminal offences were difficult to obtain).

11. There were generally very limited statistics available to illustrate the AML/CFT efforts. As regards money laundering, some investigations would have been initiated by the reporting system, but no conviction obtained so far, bearing in mind the recent introduction of criminalising provisions. Although NGOs and charitablefunds are under scrutiny by the tax authorities and financial irregularities have been detected, no investigation and/or prosecution for financing of terrorism had been recorded at the time of the on-site visit. The team were informed that if Entity Police began probing too deeply in these cases there was a risk of political interference and blocking of investigations at various levels. It was also indicated by most of the authorities at State and Entity level that they had had no real experience, so far, of the offence of financing of terrorism, or, indeed, how it could be detected.

12. There is a great multiplicity of agencies at State and Entity level which can address the money laundering and financing of terrorism issues. The co-ordination of functions and responsibilities was inadequate to meet the size of the problems at the time of the on-site visit. Competencies overlap and separate enquiries can easily be pursued in respect of the same persons. At the time of the on-site visit there were separate FIUs in the Entities and separate law enforcement agencies. The problem of money laundering was essentially being addressed at Entity level and it was a new legal phenomenon in all of them A proposed State FIU was planned as a separate department of an existing institution[3]. It should also be borne in mind that the resources available for investigation are small and spread very thinly across a wide range of institutions at the different levels – State and Entity.

13. Two criminal justice issues were raised during the visit, which either might impact or have impacted on the effectiveness of legislation applied, whether at State or Entity level. The first involves concerns raised with the team about a Law on Amnesty, which had been passed in the context of war crimes committed during the period of 1991/2-1995 (its scope appeared to have been far broader than its initial aims required, thus preventing proceedings and convictions in many economic crimes, including money laundering as it was alleged). A second

[3] A national FIU came into effect on 28 December 2004 under the Law on the Prevention of Money Laundering N° 29/04 of 28 June 2004 (which also came into effect on 28 December 2004).

overarching issue is the large number of elected officials at State and Entity level who may potentially be able to assert immunity from criminal investigation and prosecution.

(i) Criminal Justice Measures and International Co-operation

Criminalisation of Money Laundering and Financing of Terrorism

14. To ensure continuity in interstate relations, Bosnia and Herzegovina recognises treaties previously concluded by the Federal Republic of Yugoslavia (FRY) and the Socialist Federal Republic of Yugoslavia (SFRY). Therefore the *1988 UN Convention against Illicit Traffic with Narcotics Drugs and Psychotropic Substances (hereinafter: the Vienna Convention)* is recognised under the principle of succession of conventions. *The 1999 UN International Convention for the Suppression of the Financing of Terrorism* was ratified by Bosnia and Herzegovina and became effective in 2003. It is implemented in part in the Criminal Code of BiH and in part in the Criminal Code of the FBiH[4]. *The 2000 UN Convention against Transnational Organised Crime (hereinafter: the Palermo Convention)* and its *Protocols* were also ratified. The *Convention on Laundering, Search, Seizure and confiscation of of the Proceeds from Crime* (the Strasbourg Convention) had not yet been ratified at the time of the visit[5].

15. The system for implementing UN Security Council Resolutions appeared to be working in FBiH (the FBiH Banking Agency produced a list of accounts that had been blocked, in amounts totalling KM 89.004.860,28). No figures were provided for RS and BD. There was a general lack of clarity across all the agencies as to appropriate procedures, including for unfreezing, whose responsibility it was to notify financial institutions of listings, and how effective compliance was monitored. These issues need to be clarified.

16. Concerning the criminalisation of money laundering, the practical effectiveness of the provisions has not been tested as they all came into force within the year before the on-site visit and there was no case law. There are both strengths and weaknesses in the criminal legislative framework at all levels. The all- crimes approach was often adopted (FBiH, RS and BD), self-laundering is sometimes covered (RS and BD) as well as negligent money laundering (BiH). In general, indirect proceeds and foreign predicate offences, as well as the possibility to infere knowledge from objective factual circumstances are not (explicitly) covered. At BiH level, the language of the offence reflects partially the Vienna and Strasbourg Conventions. Several recommendations where thus made to harmonise the legal framework throughout the country, in line with the international requirements, and to adopt measures to familiarise practitioners with the issue of money laundering. The examiners also advised that consideration should be given, in the longer term, as to whether it would be more effective to restrict all money laundering cases to the State Court, and abolish the entity and BD jurisdictions. This could ensure a greater consistency of prosecution policy in these cases and easier co-ordination

[4] As well as in the Criminal Codes of RS and BD, as it was explained after the visit.
[5] It was ratified without reservation on 30 March 2004 and entered into force on 1 July 2004.

with one State body (SIPA) if it is ultimately tasked with money laundering investigation generally.

17. The criminalisation of terrorist financing is provided for in the Criminal Codes of BiH and FBiH[6]. The BiH incrimination omits (in the English translation at least) the financing of terrorist organisations. The FBiH incrimination omits the element of the offence where the purpose is to compel an international organisation from doing (or abstaining from) an act. Recommendations where made to address these issues. The team also strongly advised that the investigation and prosecution of financing of terrorism should become primarily a State level responsibility as a matter of urgency, and that a coordinated approach to these investigations is pursued.

18. Criminal liability of legal persons is basically adequately regulated at State level and in FBiH.[7]

19. Criminalisation of failing to report is not criminalised at all and it was recommended that FBiH, RS and BD introduce such provisions to underpin the preventive regimes.

Confiscation of Proceeds of Crime or Property used to Finance Terrorism

20. The provisions of BiH and FBiH on confiscation, seizure and freezing are practically the same. They are basically sound, and confiscation is mandatory for proceeds derived from money laundering. It was however unclear whether this obligation also applies to other serious proceeds-generating crimes and financing of terrorism (it is not explicitly provided for); as a consequence, it was recommended to review the confiscation regime in that respect.

21. The provisions of RS and BD adequately cover most aspects except but there is no regulation on confiscation of income or other benefits from material gain and on confiscation of legally gained property which corresponds to the property, acquired by criminal offence. It also seemed that there is no legal basis in the Criminal Codes of RS and BD to seize and confiscate indirect gains (unlike the position in the other two Criminal Codes). Recommendations were made to address these issues.

22. For the four systems in place, the situation regarding practical problems and deficiencies are similar. It was therefore recommended to clarify that temporary measures can be taken at sufficiently early stages, to establish unified systems to keep statistics on the amounts of property seized and confiscated, and to provide training on final and temporary measures to the administrative, investigative, prosecutorial and judicial authorities. Suggestions for further improvements

---

[6] Since the on-site visit the examiners have been provided with Article 301 of the CC of RS, which they are advised was in force at the time of the on-site visit. It is identical to A.202 in FBiH. Equally the examiners have been advised that financing of terrorism was criminalized in BD at the time of the on-site visit in Article 199 of CC of BD; It too follows the same formulation as in the entities.

[7] The team was advised after the visit that the provisions on corporate criminal liability in RS and BD are similar to those applicable at State level.

included consideration of introducing *in rem* confiscation, and the reversal of the burden of proof post conviction for the purpose of confiscation.

The FIU and processes for receiving, analysing and disseminating intelligence at the domestic and international levels

23. There was, at the time of the on-site visit, no "central, national agency responsible for receiving, (and as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information…" at State level. Three FIUs (not within the Egmont Group definition) based on three different models and practices, operated within BiH at the time of the on-site visit.

24. The reporting obligations and the list of obliged entities are broadly the same. The focus is on CTRs (which in many cases are simply stored) and STRs have insufficient priority. The FIU powers are circumscribed by an overall inability to co-operate internationally and their ability to seek further information from non-reporting obliged institutions is questionable. The effectiveness of the work of each of the FIUs differs, thus making united effective country-wide FIU working impossible.

25. The obliged persons (and the FIUs) commented adversely on the overall poor organisation of the system, lack of personnel and inadequate training for these tasks. Obliged persons advised the team that they had insufficient time to prepare for the implementation of the laws. Training and education of the obliged persons often falls to the FIUs in FBiH, RS and BD, and these were not resourced for this task. The lack of guidelines on STRs issued by them was indicative of this. It is important also that FIU personnel have a much clearer understanding of what money laundering is about, beyond the tax evasion issue.

26. The evaluation team strongly advised the creation of an FIU at State level, with a country-wide jurisdiction. Once it is created, the FIUs at Entity level and in BD should cease to operate. The evaluation team made several suggestions concerning the role, powers, independence at operational level, training and resourcing (both in terms of personnel and IT) etc.of such an FIU. It should be supported by a State AML preventive law that meets international standards.

Law enforcement and prosecution authorities, powers and duties

27. As noted, four Criminal Codes and Criminal Procedure Codes are in force. The State Criminal Procedure Code had only come into force on 1st August 2003. The team were advised that the aim was that one Criminal Code and one Criminal Procedure Code should ultimately apply throughout BiH. At the time of the on-site visit, as indicated, criminal process was primarily for the entities and BD.

28. Similar problems which face the three different poorly-resourced FIUs are mirrored in the fragmented, overlapping and unco-ordinated law enforcement response to the AML / CFT issue, where, if anything, scarce investigative resources are spread even more thinly. At State level, a judicial Police was being discussed, and legislation was being facilitated by the OHR to create a State

Investigation and Protection Agency (SIPA), which would be an administrative organisation within the existing State Ministry for Security and perform police tasks. It was explained that SIPA would act as a BiH equivalent of the FBI and that organised crime and serious financial crime would be within its competence.

29. Overall, the potential numbers of investigators, prosecutors, and judges in different courts who can, in theory, be faced with money laundering cases (without adequate training and guidance on these issues) is very large.

30. Theoretically the laws provide basically adequate powers to pursue such enquiries, where necessary through lawful process. That said, the effectiveness of the provisions in obtaining financial information is questionable.

31. As with the FIUs, the money laundering focus is almost exclusively on tax evasion. Training and education on the money laundering issue is required by all those involved in investigating these cases. The BiH authorities fully understood the problems that they faced and summarised themselves their difficulties in effective law enforcement implementation, which included:

    - poor co-ordination among law enforcement bodies
    - professional separation of judges, prosecutors and investigators leading to a lack of shared understanding of the money laundering issue and the evidence required for cases
    - poor financial conditions of some investigators
    - lack of accurate and updated database
    - overlapping competencies
    - inadequate legal regulation of humanitarian organisations
    - inadequate registration procedures for legal entities
    - lack of confidence in the BiH judicial and investigative bodies by their regional counterparts leading to a lack of co-operation
    - slow and complicated procedures for confiscation
    - constant attempts to exercise political influence on entity (and BD) judicial and law enforcement bodies
    - mistakes in the past in granting BiH citizenship to non-residents
    - poorly trained and insufficient investigators.

32. The evaluation team made several recommendations to resolve the general problems, and also to improve the transparency of rules on information exchange, to grant the power to law enforcement to compel production of bank accounts, to draw a list of the databases which are relevant in the AML/CFT context, to introduce the use of controlled delivery not only for drugs, to develop training in modern financial investigation techniques ("to follow the money") etc. The team also invited further to consider:

    - the creation of a body at a sufficiently high level to monitor the national action plan on AML / CFT to ensure that all necessary steps at the legislative and operational levels are being taken and periodically to review progress;
    - so far as money laundering is concerned, it seems that, if this is constitutionally permissible, the investigation and prosecution of major cases involving money laundering should also be primarily focused at

the State level. SIPA, when it becomes operational, could usefully take responsibility for financial investigation and the money laundering aspects of major proceeds-generating cases, and perhaps money laundering cases involving organised crime. The examiners urged particularly that cases which require considerable international legal assistance, should be dealt with at State level, as it should be easier to gain the confidence and support of counterpart agencies abroad for BiH State rather than local institutions;

- the merits for Customs to be constituted as a State level body.

International Co-operation

33. The 1999 *UN International Convention for the Suppression of the Financing of Terrorism* was ratified by Bosnia and Herzegovina and became effective in 2003. Bosnia and Herzegovina has not yet ratified the *European Convention on Extradition* (1957) and its *Additional Protocols* (1975 and 1978), and it has not yet ratified the *European Convention on Mutual Assistance in Criminal Matters* (1959) and its *Additional Protocol* (1978)[8].

34. In October 1996, the *Agreement between the Government of the Republic of Croatia, Government of Bosnia and Herzegovina and Government of Federation of BiH on legal assistance in civil and criminal matters* was concluded. The evaluation team was told during the on-site visit that bilateral agreements on legal assistance in criminal matters were concluded with all ex-republics of the former Socialist Federal Republic of Yugoslavia.

35. The possibilities for the country to provide legal assistance to foreign states appear quite broad. Following the provisions of the four Criminal Procedure Codes, Bosnia and Herzegovina can provide legal assistance to foreign states regarding all investigative measures and procedures, which the domestic authorities can exercise in domestic cases. No bilateral arrangements or multilateral arrangements provided for the provision of mutual legal assistance where the knowledge standard was lower in other countries than in BiH.

36. So far as enforcement of foreign confiscation orders are concerned, in the absence of ratification of the Strasbourg Convention it appeared that Bosnia and Herzegovina could not enforce foreign confiscation orders in the light of Article 410 (2) of the Criminal Procedure Law which requires the sanction to be envisaged by international agreement as well as in accordance with the criminal legislation of Bosnia and Herzegovina. The same requirement applies at Entity level and in BD. Presumably the same problem applies in the case for the taking of provisional measures on behalf of foreign states.

37. The fact that only diplomatic channels of communication are allowed (no direct Prosecutor to Prosecutor co-operation can be effected) is a serious deficiency and a reason for delays in granting legal assistance to foreign country.

---

[8] These Council of Europe conventions and protocols, except the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, were signed by BiH on 30 April 2004 (that is after the on-site visit), but not yet ratified.

38. The evaluation team was told that all competent bodies keep statistics on legal assistance and extradition cases, but those statistics were not made available to them and no information was provided as to the volume and outcome of legal assistance requests. The practical implementation of the Criminal Procedure Code's provisions therefore could not be evaluated.

39. The evaluation team were also told that judicial and law enforcement bodies of Bosnia and Herzegovina have realised a significant level of co-operation with jurisdictions of other states (especially with the USA) in investigations and prosecutions connected with financing of terrorism, but that there is a lack of confidence towards the competent bodies of Bosnia and Herzegovina by EU countries. This may be due to the fact that Bosnia and Herzegovina has not yet ratified the European Legal Assistance in Criminal Matters and Extradition Conventions and lack of clarity as to a Central authority with which to deal, and the inevitable delays in the (inevitably) complex diplomatic structures of Bosnia and Herzegovina.

40. In the light of the situation, it was recommended to urgently consider the possibility of determining also the direct communication between competent foreign and domestic bodies, to implement a system to keep unified statistics on mutual legal assistance and extradition in the area of AML/CFT, to ratify as soon as possible the Council of Europe Conventions of 1057 and 1959 (on extradition and on mutual legal assistance) and their additional protocols), and to put in place provisions to ensure that political motivation should not be a ground for refusing extradition requests in relation to persons alleged to be involved in financing of terrorism. The team also strongly urged the authorities of Bosnia and Herzegovina to analyse whether the non-extradition of own citizens is being followed by a proper transfer of criminal proceedings, and whether those cases are in fact being prosecuted.

(ii) Preventive measures for Financial Institutions

Prudentially regulated sectors

General framework

41. The laws on Banks define the banking secrecy rules. Article 47 of the Law on Banks in FBiH provides that the provision of information to the Financial Police (FIU) or the Banking Agency under the Article is not to be regarded as a disclosure of professional secrets. There are similar provision in the Law on Banks in RS (Article 101 - which also embraces the Tax Administration in the exclusion from breaches of professional secrecy) and in BD.(Article 15). The three preventive laws do not clearly make provision to free banks or other persons under obligations of reporting etc. from any other obligations they may have in terms of professional secrecy. It follows that there are no provisions on this which cover the insurance and securities sectors

42. In all preventive laws, AML obligations are imposed on * Banks, savings banks and loan co-operatives; * Authorised agencies for money transfers; *Privatisation agencies; * Insurance companies; *Stock exchange and other financial institutions authorised to deal with securities; * Money exchange offices; * Pawnbrokers shops; * Casinos and organisers of games of chance. However the range of designated authorities with explicit competence to ensure effective implementation of laws on AML / CFT was limited at the time of the on-site visit. In FBiH: the FIU, Federal Banking Agency and Securities Commission. In RS: the FIU and Banking Agency. In BD: the Tax Administration and the Prosecutor's Office, each within their competence.

43. The lack of reports from the non-banking sector may be partly due to the lack of provision in the preventive laws freeing them from obligations in relation to professional secrecy. At meetings with law enforcement authorities, the evaluators were informed about problems with some banks that were not cooperating in information disclosure relying on bank secrecy provisions, specifically in cases of transactions and accounts of the so-called fictitious firms, believed to be used for illegal activities, when banks failed or did not want to detect and report their transactions to the FIU. However, no information was available regarding fines or other sanctions imposed on banks by supervising agencies. And as indicated above, there are very few regulatory bodies responsible for supervision of implementation of AML/CFT measures.

44. It was recommended that the preventive law(s) should clearly make provision to free banks or other persons under reporting obligations to the FIU(s) from breaches of professional secrecy and, if clarification is required in law that banks (and other financial institutions) are bound to respond to judicial orders for disclosure in criminal proceedings, this should be provided for. The Banking Agencies should investigate and, as necessary sanction banks that are not complying with legal obligations to disclose under the Criminal Procedure Codes or under the preventive laws. The evaluators also recommended that the preventive legislation clearly specifies AML/CFT mandates for regulatory bodies for the securities and the insurance sectors, and that thorough supervision on these issues commences as a priority.

45. In due course a State Preventive Law should bring the range of obliged entities fully into line with A.2a of the Second EU Directive. Moreover, following A.12 of the Second EU Directive, the BiH authorities should ensure that AML /CFT obligations are extended in whole or in part to professions and to categories of undertakings other than the institutions and persons referred to in A.2a, which engage in activities which are particularly likely to be used for money laundering purposes. Equally, it will be important that there are authorities with responsibility to ensure effective implementation of obligations in respect of money transfer services and exchange offices. It appeared that the banks were not supervising the exchange offices' obligations. Though not within Criteria 44, it is noted here, for completeness, that in the non-financial sector, casinos should be subject to AML / CFT compliance inspection. They were also unsupervised at the time of the on-site visit in BiH for AML / CFT purposes.

Customer Identification

46. The obligation to determine the identity of the clients when opening bank accounts or establishing other kinds of permanent relations is set out in the preventive laws and are generally in line with international practice. The identification process should be performed at the "beginning of a business relationship".
47. Overall, separate laws, and separate banking Agency Decisions, monitored by different banking agencies, make for inconsistency and uncertainty. It seemed to the examiners generally that one clear law (and / or unified and consistent secondary legal regulations) for the whole country, supported by consistent and unified supervision, would be essential.

48. Regarding anonymous accounts, the examiners recommended that two actions need to be taken across the whole State. First, the BiH authorities should amend the existing preventive legislation (or provide in state wide preventive legislation) to impose a specific prohibition on opening and keeping of anonymous accounts or accounts in obviously fictitious names, rather than leave this issue to lower level instruments or guidance. Secondly, regarding bearer accounts, the authorities should collect reliable statistics and assess the AML / CFT risks these accounts present. Depending on the risks, the accounts should either be abolished immediately or phased out within a reasonable period, which from the outset, should oblige banks to verify the identity of holders. The position on coded / numbered accounts was also unclear and the evaluation team recommend that the Banking Agencies specifically check on the existence and numbers of such account holders, among other steps.

49. On Customer identification policies and generally, many of the principles in the Basel Committee's paper "Customer Due Diligence for Banks" have been reproduced comprehensively for banks in the Banking Agencies' Decisions. The production of these Decisions was welcomed by the examiners, even though their precise status and the number of enforcement measures applied in practice remained unclear. The Decisions do not cover, however, the important need to require banks not to enter into correspondent relationships with banks incorporated in jurisdictions where they have no physical presence and this should be included in guidance or regulations. The examiners also strongly urged the Banking Agencies to address the adequacy of customer identification procedures as a priority in supervision.

50. Procedures and Policies on graduated customer acceptance for higher risk customers may, in the examiners' view, be better placed in Law or regulations where they can clearly attract the whole range of sanctions. Moreover, it should be made explicit that the decision to enter into a business relationship with higher risk customers should be taken at the senior management level. Similarly the need to keep customer identification updated (and relevant) by undertaking regular reviews of existing records (especially when a transaction of significance takes place or when there is a material change in the way the account is operated) should also be in law or wholly enforceable regulations, in the examiners' view.

51. On the identification of beneficial ownership at account opening, the examiners recommended, among other things, that there should be a clear legal provision that

specifically requires financial institutions to take reasonable measures to obtain information on the true identity of the persons on whose behalf an account is opened if there are any doubts as to whether he or she acts on his or her own behalf. It was lso found that a clear provision should be incorporated into the preventive laws specifying that occasional customers who perform cash (or non-cash transactions) above a certain threshold (equivalent to the EU Directives level of 15,000 Euros) should be identified.

52. Finally, the evaluators strongly advised that the company registration regime is promptly addressed, given concerns about its current deficiencies. Re-establishing a State register of customers' bank accounts and developing a single state companies register is a priority.

On-going monitoring of accounts and transactions

53. Specific Preventive laws of the entities or BD do not provide for obligations to pay special attention to unusual transactions and transactions from countries with inadequate AML/CFT systems. The Decisions on Minimum Standards for Banks' Activities issued by the Banking Agencies in RS and FBiH, however, do have some specific requirements in this regard (similar sectorial specific requirements do not exist fro the insurance sector).

54. The evaluators were not provided with detailed information as to how in practice banks implemented the obligations referred to above. No guidance to banks was given by the banking agencies on practical issues of implementing those requirements, beyond what was in their Decisions. The examiners recommended to amend preventive laws and that regulatory / supervisory agencies for financial institutions should provide further practical guidelines on issues relating to ongoing monitoring of accounts, particularly higher risk accounts, and examine compliance. Special guidance should be given to banks on the practical aspects of monitoring of accounts of non-profit organisations, which can be misused for financing of terrorism purposes. Also in the preventive laws a central agency (possibly the Central Bank) should be designated for providing financial institutions on a regular basis with information regarding countries (jurisdictions) having weaknesses in their AML/FT systems.

Record-keeping

55. The Preventive laws in all three entities have provisions that satisfy general record keeping standards (with minimum periods for the keeping of transaction records and identification of 5 years). Further provisions are contained in secondary sector-specific legislation for the banks (in the Decisions on Minimum Standards), but not for the insurance and securities sectors.

56. For the banking sector checking compliance with record keeping obligations should be a part of regular AML examinations. The authorities are advised to monitor the situation in the sector using results of such examinations where non-compliance has been detected. The Absence of implementing legislation on record keeping for the insurance and securities sectors should be urgently addressed. Insurance companies should record initial proposal documentation,

post-sale records associated with the maintenance of the contract and claim settlements. Supervisory authorities in both sectors should play active roles in supervising the implementation of proper record-keeping regimes.

Suspicious transactions reporting

57. The existence on paper of STR regimes in the entities and BD is acknowledged. However, as seen, the amount of reports based on suspicion was very low and is indicative of a lack of regular and detailed sector specific guidance provided by the authorities to the financial sector on red flags, and indicators. The only guidance which had been issued was to the banks and it was unclear if the banks in BD were included. No case of money laundering had resulted from the STR regimes at the time of the on-site visit.

58. It was recommended that detailed guidelines on the identification of STRs should be prepared for the Entities and BD by the supervisory bodies (where they exist), and kept under review and regularly updated. The examiners underlined that if, in due course, a national FIU is created it could take the lead in co-ordinating the issuing of guidelines in conjunction with all the relevant players on a state wide basis and ensure training on them.

59. The examiners also recommended that reporting of transactions linked or related to or to be used to finance terrorism should be explicitly provided for in legislation, .that the preventive law(s) should contain clear provisions which provide protection for financial institutions and their employees from liability arising from disclosures made in good faith to the FIU(s), and to review the tipping off provisions (providing also for adequate sanctions).

Internal control, compliance and audit

60. Financial institutions generally are not required by the preventive laws to establish and maintain internal procedures to prevent their institutions from being used for money laundering or financing of terrorism purposes, or to appoint a compliance officer at management level or to ensure that their foreign branches and subsidiaries observe AML / CFT measures consistent with the home jurisdiction requirement. Some of these requirements are addressed, to some extent, in the Decisions on Minimum Standards issued for the banking sector, and by regulations issued by the FIUs. Little information was available as to the level of implementation of these requirements by the banks, though. The examiners strongly recommended the introduction of necessary changes to the preventive laws to address the deficiencies and to involve the non –banking sectors (develop guidance, dialogue, supervision/inspection, inform about ML/FT trends and techniques).

Integrity standards

61. The preventive legislation of the entities and BD do not have explicit provisions preventing criminals from obtaining possession or control of considerable investments in financial institutions. While, the General Directors of the banks need Agency approval, the Banking Laws do not set out clear “fit and proper”

criteria for the granting of permissions and approvals for general bank management and significant shareholders. No regulations were provided to the evaluators regarding specific integrity standards for the insurance or securities sectors but the team was told that the Securities Commissions examine founders and senior staff and that this includes checks on criminal records. The legislation does not provide specific measures either, to prevent the use of entities that are vulnerable as conduits for criminal proceeds (charitable entities, NGO, etc.). It was thus recommended to address these insufficiencies (providing explicit fit and proper procedures for major shareowners) and it was suggested to initiate a review of all entitities that present high risksfor ML/FT).

Enforcement powers and sanctions

62. The Banking Agencies seemed to consider their powers to issue written warnings and to impose fines on the basis of their Decisions were sufficient. As the insurance and securities sectors had no authority to supervise AML / CFT issues, they had no power to sanction for it. The enforcement powers were also, in the examiners' view, pitched at too low levels. A power to revoke licences for proven involvement in money laundering is necessary, in the examiners' view, given expressed concerns that some banks had been set up for, and had been involved in money laundering. The examiners, therefore, recommended to ensure that the full range of sanctions is available on AML/CFT in the banking sector, and to introduce explicit enforcement and sanctioning powers for supervisory bodies in the insurance and securities sectors.

Co-operation between supervisors and other competent authorities

63. The banking agencies can exercise their supervisory authority while examining banks on AML / CFT issues. They have access to all information on banks' customers and transactions that may be needed during on-site examinations. Little or no supervision appeared to have taken place on AML / CFT issues within the entities and the arrangements for BD meant that banks in BD at that time appeared to be generally unsupervised. The limited resources of the two Agencies were insufficient, in the examiners' view, to cover all the banks and branches effectively. Clearly, the insurance and securities sectors were currently unsupervised on AML / CFT issues. Furthermore, lack of information exchange, both domestically and internationally, between supervisory authorities presents a serious impediment to the effectiveness of the national AML / CFT effort. This concern is recognised by the authorities.

64. The examiners recommended that the Banking Agencies in the short term develop a plan for AML / CFT inspections on a regular basis and ensure its thorough implementation in both entities and in BD. They also advised that the merits of merging the work of the agencies under the authority and direction of the Central Bank are considered (to concentrate the limited number of inspectors available and avoid cooperation problems between the agencies). In any event, more resources for bank supervision should be made available as a priority. The evaluators also strongly recommend to amend the legislation, giving to supervisory agencies in the financial sector an authority to exchange information domestically and internationally.

D. Summary Assessment of the FATF Recommendations

65. Bosnia and Herzegovina still has a considerable way to go before a sufficient level of compliance with the FATF 40 + 8 Recommendations is reached. The AML/CFT efforts require the involvement of all financial institutions (and not-only banks), but also non-financial institutions, bearing in mind the importance of cash in the economy. A sound AML/CFT system is an absolute necessity in a country like Bosnia and Herzegovina where the organised crime activities are so developed.

66. The examiners welcomed the first initiatives aimed at conferring greater competencies to the State level (in particular with the creation of a State level court and the adoption of criminal substantive and procedural legislation, and the project of establishing an FIU with country-wide jurisdiction). Strengthening state-level competences would help overcome cooperation problems between law enforcement and supervisory bodies, and would allow to concentrate the available resources. It could also contribute to put crucial institutions out of reach of local influences.

67. Table 1 beneath summarises recommended actions in areas relating to the FATF 40 + 8 Recommendations.

Table 1. Recommended Action Plan to improve compliance with the FATF Recommendations

Criminal Justice Measures and International Co-operation	Recommended Action
I. Criminalisation of money laundering and financing of terrorism (and implementation of United Nations instruments)	Effective implementation of United Nations Security Council Resolutions needs addressing. All relevant Players should be made aware of relevant procedures, and of the need to act without delay. Procedures need to be in place to monitor compliance with United Nations Resolutions effectively.
• Money laundering criminalisation	<u>State</u> • Financial threshold and qualification which requires the laundering to endanger the common economic space or have detrimental consequences to the operations or financing of institutions at State level should be removed from the incrimination, and jurisdiction should be specified in guidelines, while cases remain prosecutable at all levels. In longer term consideration should be given to restricting all money laundering cases to State level. Penalties should be harmonised across the whole country. • Own proceeds laundering should be included. • Issue guidance to prosecutors and investigators on evidential issues. Consider a legislative amendment to clarify that money laundering prosecutions can be brought in the absence of a judicial finding of guilt for the underlying offence(s) and that these elements can be proved from objective facts and circumstances. Further training and resources are needed for effective implementation. • Review to ensure, subject to constitutional principles, that attempts and conspiracy to commit money laundering are capable of being prosecuted. • Issue guidance to prosecutors and investigators (or if necessary consider legislative amendment) to ensure that the knowledge element is capable of proof on the basis of objective facts and circumstances.[9] • Property which can be laundered proceeds should explicitly cover any type of property that directly or indirectly represents the proceeds of the offence. This should be explicitly provided for. • Consider criminalising failure to report suspicious

[9] This possibility would have been accepted in State level case law after the visit

	transactions. FBiH • Own proceeds laundering should be covered. • Other recommendations above apply also in FBiH.
• Financing of Terrorism	State, FBiH, RS and BD • Law(s) should clearly cover funding of terrorist organisations and individual terrorists • investigation and prosecution of financing of terrorism should become a State level responsibility for effective implementation.
II. Confiscation of proceeds of crime or property used to finance terrorism	State and FBiH • Ensure confiscation is obligatory for offence of financing of terrorism. • Consider in serious proceeds generating offences elements of practice which have proved of value elsewhere, including reversal of burden of proof post conviction. • Clarify that freezing and seizing can take place at early stages of police enquiries. BD and RS • Amend laws to ensure indirect gains including income and other benefits can be seized, frozen and confiscated and to provide for value confiscation orders where criminally acquired property has been dissipated. • Ensure in financing of terrorism offences that assets intended to fund terrorist or terrorist organisations are subject to obligatory confiscation.
III. The FIU, and processes for receiving, analysing, and isseminating financial information, and other intelligence at the domestic and international levels	Overall • Creation of a properly trained and resourced FIU at State level, which meets the Egmont definition and which focuses on money laundering issues beyond the tax predicate, and which has a clear statutory basis for direct international co-operation with counterpart FIUs.
IV. Law enforcement and prosecution authorities, powers and duties	Overall • Overarching Rule of Law issues still need work to ensure that law enforcement and judicial institutions act free from

	political interference and command confidence domestically and internationally. In particular delays and obstructions in the investigative processes where they arise should be followed up, and remedial action taken, particularly in financing of terrorism investigations. • Strongly urge financing of terrorism investigated and prosecuted at State level. • Investigation and prosecution of major cases of money laundering as detailed in the report would also be better dealt with at State level. • More resourcing and training for investigators and prosecutors in modern financial investigation techniques in order to follow the money with a view to money laundering investigation and prosecutions beyond the tax predicate. • Training for judges, prosecutors and investigators on evidential issues in money laundering cases, particularly on establishing the underlying predicate offence and proving the mental element. • Reduction of number of overlapping law enforcement agencies involved in AML / CFT detection. • Transparent agreements on information exchange between domestic agencies, and access to databases. • Maintenance of accurate statistics at central level on investigations, prosecutions and convictions for money laundering and financing of terrorism, and on confiscation action. • Creation of a body at a central level to monitor a national action plan on AML / CFT as set out in the report.
V. International co-operation	• Urgent ratification by BiH of European Convention on Extradition and its Additional Protocols, and European Convention on Mutual Assistance in Criminal Matters and its Additional Protocols and ratification of the Strasbourg Convention (ETS 141)[10] • Urgently consider direct communication between competent foreign and domestic bodies in the framework of international legal assistance. • Maintenance of unified statistics regarding AML / CFT money laundering and extradition. • Analyse whether non-extradition of own nationals is being followed by proper transfer of criminal proceedings. • Provisions should be put in place to ensure political motivation should not be a ground for refusing financing of

[10] See fotnote 3

	terrorism-related extradition requests.
Legal and Institutional Framework for all Financial Institutions	
I. General Framework	• Preventive legislation should clearly make provision to free banks or other persons under reporting obligations from breaches of professional secrecy. Any banks not complying with legal obligations to disclose should be investigated. • Preventive legislation should clearly specify AML / CFT supervisory mandates for the regulatory bodies for the securities and insurance sectors.
II. Customer Identification	• There should be a specific legal prohibition on opening and keeping anonymous accounts. • Statistics should be collected on the incidence of bearer accounts and they should be abolished or phased out. • On fundamental FATF standards on Customer identification there should be one clear law or regulation country wide. • On identification of beneficial owners at account opening the examiners recommend there should be a clear legal provision that specifically requires financial institutions to take reasonable measures to obtain information on the true identity of the persons on whose behalf an account is opened if there are doubts as to whether he or she acts on his / her own behalf. A similar legal requirement, where it is required because of doubts, is recommended in respect of principal owners and beneficiaries of legal entities. • Risks in relation to coded / numbered accounts should be assessed and ideally such accounts should be suppressed or subject to strict supervision. • Customer identification issues should be a priority for supervision. • Occasional customers who perform cash or non-cash transactions equivalent to the levels in the EU Directive should be identified. • Binding regulation is required requiring financial institutions to include accurate and meaningful originator information on funds transfers and which ensures that they remain with the transfer throughout the payment chain.
III. Ongoing Monitoring of Accounts and Transactions	• Preventive Laws should be amended. Supervisory bodies should provide further practical guidelines on issues relating to ongoing monitoring of accounts and special guidance

	should be given in respect of the practical aspects of monitoring the accounts of non-profit organisations which can be misused for financing of terrorism purposes.
IV. Record keeping	• Further requirements could be set out in sector specific legislation and attention paid to this issue in supervision.
V. Suspicious Transactions reporting	• Legislative provision required for reporting of transactions related to financing of terrorism. • Reporting requirements in respect of facts which may be indicative of money laundering should be provided for and provision should be made for obliged institutions to refrain from carrying out transactions which they know or suspect to be related to money laundering until they have appraised the authorities. • Detailed guidelines on the identification of STRs should be prepared. • Clear "safe harbour" provisions need introducing. • Tipping of provisions should be introduced which fully reflect FATF Recommendation 17, and the EU Directives.
VI. Internal Control, Compliance and Audit	• Legal obligations should be provided for obliging financial institutions to establish and maintain internal procedures to prevent their institutions being used for AML / CFT purposes, including appointment of compliance officers at management level and to ensure high standards when appointing employees, and to provide ongoing training programmes, and audit functions to test the system, in line with FATF Recommendation 19. • Similar obligations should apply in the insurance and securities sectors. • AML / CFT inspections should cover these issues in banking sector and in insurance and securities.
VII. Integrity Standards	• Legal changes required to ensure explicit fit and proper procedures for owners of significant shares, management, and members of supervisory boards of banks and all financial institutions and to ensure that only persons without criminal records can hold such positions.
VIII. Enforcement powers and sanctions	• In banking sector enforcement powers should include revocation of licences where banks proved to have been involved in money laundering.

	• Legal power to examine AML / CFT compliance and apply dissuasive sanctions needs to be explicitly provided for in the securities and insurance sectors.
IX. Co-operation between supervisors and other competent authorities	• Merits of merging the Banking Agencies should be considered to ensure consistent State wide approach to banking supervision under the direction of the Central Bank. All supervisory agencies in the financial sector need authority to exchange information domestically and internationally.