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

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Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

UKRAINE

19 March 2009

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I. PREFACE

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Ukraine was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), complemented – due to the specific scope of evaluations carried out by the Committee – by issues linked to the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (hereinafter the "Third EU Directive" and Directive 2006/70/EC "implementing Directive", in accordance with MONEYVAL's terms of reference and Rules of Procedure, and was prepared using the AML/CFT Methodology 2004[1]. The evaluation was based on the laws, regulations and other materials supplied by Ukraine, and information obtained by the evaluation team during its on-site visit to Ukraine from 21 September to 1 October 2008, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Annex II to the mutual evaluation report.

2. The evaluation team comprised: Mr. Armen Malkhasyan (Head of the Legal Compliance and International Relations Division, Financial Monitoring Center, Central Bank of Armenia) who participated as legal expert, Mr. Iacovos Michael (Investigator/ Financial analyst, Financial Intelligence Unit, Cyprus), who participated as law enforcement expert, Ms. Frosina Celeska (Head of Banking Regulations Unit, Financial stability, banking regulations and Methodology Department, National Bank, "the former Yugoslav Republic of Macedonia") who participated as financial expert, Mr. Jamil Choudhry (Financial Crime Policy Unit, Financial Services Authority, United Kingdom) who participated as financial expert for the FATF; and a member of the MONEYVAL Secretariat. The examiners reviewed the institutional framework, the relevant AML/CFT Laws, regulations and guidelines and other requirements, and the regulatory and other systems in place to deter money laundering and financing of terrorism through financial institutions and designated non-financial businesses and professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

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

4. The evaluators would like to express their gratitude to the Ukrainian authorities, especially to the staff of the State Committee for Financial Monitoring (SCFM) in Kiev and the regional offices of SCFM in Simferopol, Lviv and Donetsk for their assistance and excellent logistical organisation of the assessment mission. The evaluation was complicated by the absence of translations of the full text of relevant acts and of inaccurate translations of the AML/CFT laws and regulations, the majority of which were corrected and received by the evaluation team only after the on-site visit.

[1] As updated in February 2008.

II. 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.

III. MUTUAL EVALUATION REPORT

1 GENERAL

1.1 General information on Ukraine

1. Ukraine is located in East Central Europe, bordering the Russian Federation to the east, Belarus to the north, Poland, Hungary, the Slovak Republic, Moldova, Romania to the west, the Sea of Azov and the Black Sea to the south. It is the second largest country in Europe in terms of area (603,700 sq. km) and fifth in Europe in terms of population (46.2 million people).

2. It is a unitary state, administratively divided into 24 oblasts[1] (regions), the Autonomous Republic of Crimea (ARC)[2], and the cities of Kyiv and Sevastopol (each of which is considered as a separate administrative unit) which are further subdivided into rayons (districts) and towns. Each oblast and the cities of Kyiv and Sevastopol have a governor appointed by the President. Ukrainian is the state language. The official currency is Hryvnia (UAH)[3], which was introduced in September 1996.

3. Ukraine is a member of the Council of Europe as of 9 November 1995. It is also a member of several other international organisations, including the United Nations, the International Monetary Fund, the World Bank, the World Trade Organisation. Relations with the European Union are based on the Partnership and Co-operation Agreement (PCA) of 14 June 1994 (in force on 1 March 1998), and the joint EU-Ukraine Action Plan (21 February 2005).

Economy

4. Ukraine has developed gradually a stronger economy since 2007, with an average real growth rate of 7.4% over the last seven years. It is now considered to be a middle-income country, with a GDP per capita of USD 6, 900 and significant economic potential as a result of its well educated labour force, fast growing domestic market, access to a variety of resources including some of Europe's best agricultural land, significant coal and some oil and gas reserves, and a strategic location connecting Europe, Russia, and Asian markets. The private sector accounts for about 65% of the economy. The strong domestic demand grows led to an acceleration of inflation in 2007- 2008 (Consumer Price Index inflation reached over 30 % by end-April 2008) and to a deterioration of the account deficit. As of January 1, 2008, Ukraine's gross external debt amounted to USD 84.5 billion (60.2 % of GDP), by 55 % more than in the previous year. Shadow economy in Ukraine is estimated as ranging between 40% (according to a government study of the Ministry of Economy of Ukraine released on 30 July 2007) and 60%[4] of the GDP (according to the United Nations Country Team in Ukraine).

System of Government

5. The current Constitution was adopted on 28 June 1996 and amended in 2004 by Law No. 2222-IV, which entered into force on 1 January 2006[5]. It establishes a republican form of government with elements of presidential and parliamentary models. Pursuant to the Constitution, Ukraine has three

[1] Vinnytsia Oblast, Volyn Oblast, Dnipropetrovsk Oblast, Donetsk Oblast, Zhytomyr Oblast, Zakarpattia Oblast, Zaporizhia Oblast, Ivano-Frankivsk Oblast, Kyiv Oblast, Kirovohrad Oblast, Luhansk Ob last, Lviv Oblast, Mykolaiv Oblast, Odesa Oblast, Poltava Oblast, Rivne Oblast, Sumy Oblast, Ternopil Oblast, Kharkiv Oblast, Kherson Oblast, Khmelnytskyi Oblast, Cherkasy Oblast, Chernivtsi Oblast and Chernihiv Oblast

[2] The Autonomous Republic of Crimea (ARC) has a special place within the legal system and has its own parliament, which is however not entitled to adopt laws. Normative legal acts of the Parliament of the ARC and of the Council of Ministers of ARC shall not contradict the Constitution of Ukraine, the laws of Ukraine, acts of the President of Ukraine and the Cabinet of Ministers of Ukraine.

[3] Official exchange rate 5.05 UAH for 1 USD or 7.44 UAH for 1 Euro as of November 2008.

[4] According to the United Nations Country Team in Ukraine (www.un.org.ua).

[5] The constitutional reform modified the distribution of executive powers among the President and the Cabinet of Ministers in favour of the latter and transferred some of the rights (eg. right to appoint the Prime Minister pending approval by the Verkhovna Rada) to the Verkhovna Rada.

branches of state power: the legislative branch, represented by the Verkhovna Rada, the executive branch, represented by the Cabinet of Ministers of Ukraine and headed by the Prime Minister, and the judicial branch, represented by the system of courts, with the Supreme Court at the highest level.

6. The President is the Head of State and the commander in chief of the armed forces, and has certain authority over the executive branch. He is elected every 5 year by universal, equal and direct suffrage, by secret ballot and cannot serve more than two consecutive terms. The President appoints (and dismisses) the General Prosecutor of Ukraine, pending the approval of the Verkhovna Rada.

7. The government (Cabinet of Ministers of Ukraine), which consists of the Prime Minister Ukraine, First Vice Prime Minister, three Vice Prime Ministers and seventeen various departmental Ministers, is the highest body in the executive branch.

8. The Prime Minister heads the Cabinet and directs its work. He is appointed by the Verkhovna Rada upon introduction of the proposal by the President, on the basis of a proposal of the coalition of deputy factions of the Verkhovna Rada of Ukraine formed in compliance with Article 83 of the Constitution of Ukraine, or of a deputy faction comprising the majority of the people's deputies of the constitutional membership of the Verkhovna Rada of Ukraine (article 114) . The Minister of Defence of Ukraine and the Minister of Foreign Affairs of Ukraine shall be appointed by the Verkhovna Rada of Ukraine upon the submission of proposal by the President of Ukraine, whereas other members of the Cabinet of Ministers of Ukraine shall be appointed by the Verkhovna Rada of Ukraine upon the submission of proposal by the Prime Minister of Ukraine. In addition to the Cabinet of Ministers, the system of the national executive body includes ministries, state committees (public services) and special status central agencies of executive power (e.g. National Bank of Ukraine, Ukrainian Chamber of Auditors, State Treasury of Ukraine, Antimonopoly Committee of Ukraine, State Tax Administration of Ukraine, State Administration for Courts, State Customs Service of Ukraine, State Committee of Ukraine for Regulatory Policy and Entrepreneurship, Securities and Stock Market State Commission of Ukraine, Security Service of Ukraine, State Guard Department of Ukraine, State Commission on Financial Services Market Regulation).

9. The Parliament (Verkhovna Rada) of Ukraine is the sole legislative body and consists of 450 national deputies. The power to initiate legislation belongs to the President, people's deputies, Cabinet of Ministers and National Bank of Ukraine. Laws are adopted by the majority of its constitutional membership, unless otherwise provided by the Constitution, they are signed by the Chairman of the Verkhovna Rada and forwarded to the President of Ukraine. The President of Ukraine signs the bills adopted by the Verkhovna Rada (within 15 days) into law, and has the right to veto them and return them to the Verkhovna Rada for amendment.

10. Judicial authority is exercised by Courts. The judicial system is comprised of the courts of general jurisdiction (responsible for civil, criminal, and administrative cases) and the Constitutional Court of Ukraine. The courts of general jurisdiction are organised according to the principles of territoriality and specialisation and have the following four-tier structure: local courts, appellate courts and the Court of Appeal of Ukraine, the supreme specialised courts (commercial and administrative), and the Supreme Court of Ukraine. The Supreme Court of Ukraine (SCU) is the highest judicial body in the system of courts of general jurisdiction. It consists of 85 judges elected for life by the Verkhovna Rada assigned to 4 chambers (civil, criminal, commercial and administrative) and a Military Collegium. The Chairman of the Supreme Court of Ukraine and his deputies are elected to office by the Plenary of the Supreme Court of Ukraine from among judges of SCU for a five-year term by secret vote.

11. The Constitutional Court of Ukraine began its activity on October 18, 1996. It is the sole body of constitutional jurisdiction in Ukraine. According to Article 148 of the Constitution, the Constitutional Court is composed of eighteen judges. The President, the Verkhovna Rada and the Congress of Judges each appoint (or elect) six judges to the Constitutional Court. The judges are appointed for a nine year non-renewable term. The Court decides on issues of conformity of laws and other legal acts with the Constitution and provides the official interpretation of the Constitution and laws of Ukraine. Only the President, at least 45 members of Parliament, the Supreme Court, the Ombudsmen and Verkhovna Rada of the Autonomous Republic of Crimea may file a constitutional appeal regarding the

constitutionality of a legal act. The Head of the Constitutional Court of Ukraine is elected at the meeting of the Constitutional Court of Ukraine among judges of the Constitutional Court of Ukraine for one three-year term only.

Legal system and hierarchy of laws

12. Ukraine's legal system is based on the civil law tradition. In the hierarchy of laws, the Constitution has the highest legal force. International treaties ratified by the Verkhovna Rada take precedence over domestic statutes, while the latter take precedence over other normative acts issued by the President, the Cabinet of Ministers and other agencies. The Verkhovna Rada ratifies or accedes to international agreements in the form of laws of Ukraine. A number of codes were adopted in recent years, including the Criminal Code, the Civil Code (in force in January 2004) and the Civil Procedure Code, the Commercial Code (in force in January 2004) , the Code of Administrative Justice (2005). The Criminal Procedure Code is still governed by the Soviet era Criminal Procedure Code adopted in 1960, with numerous amendments.

13. Laws adopted by the Verkhovna Rada have to be signed by the President, they come into force ten days after their official publication, unless otherwise provided in the law. Secondary legislation implementing general provisions of law can be adopted in the following forms:
    - decrees and directives of the President of Ukraine;
    - resolutions and directives of the Cabinet of Ministers;
    - resolutions, directives, regulations, instructions and orders by ministries and other state authorities.

14. Secondary normative acts issued by ministries and other executive state authorities are to be registered at the Ministry of Justice in case they concern rights, freedoms and lawful interests of citizens or if they are of interagency character.

15. Judicial precedent is not officially recognised. Court decisions do not constitute binding precedents, however decisions by the Supreme Court of Ukraine are usually followed by the lower courts on a quasi-mandatory basis.

Transparency, good governance, ethics and measures against corruption

16. Ukraine has signed and ratified the Civil Law Convention on Corruption (CETS No. 174) and has signed but not ratified the Criminal Law Convention on Corruption (CETS No. 173) and the United Nations Convention against Corruption. In 2003, Ukraine joined the Anti-Corruption Network of the OECD. At national level, the law on combating corruption dates back to 1995. in 2006, an anti-corruption concept - On the Way to Integrity - was developed (Presidential Decree No. 742/2006 of 11 September 2006), together with an Action Plan on the implementation of the anti-corruption concept (Cabinet of Ministers directive No. 657-p of 15 August 2007) which describe corruption as being "one of the most pressing problems to be resolved in Ukraine". There is no single anti-corruption policy for public administration. The authorities advised that a number of relevant draft laws were pending before the Verkhovna Rada on grounds for prevention and counteraction of corruption, amendments of certain legislative acts (Code on administrative offences and Criminal Code) concerning the responsibility for corruption offences and on liability of legal persons for corruption offences.

17. According to recent assessments, the current levels of corruption constitute a real threat to the principles of democracy and the rule of law. The country is perceived as being considerably affected by corruption, the problem being spread throughout the country and its public institutions, at central and local levels. Despite reforms of the judiciary and many positive results achieved, improper influence/ interference in the judicial decision making process is widely considered one of the most serious obstacles to establishing a judiciary governed by the rule of law. Procedures for selecting and promoting judges do not appear to be sufficiently transparent and the law enforcement system required

radical changes to avoid misuse to cover up corruption6. According to a public opinion poll in Ukraine of October 2008, the courts and police are perceived to be the most corrupt sector in Ukraine, with parliamentarians and tax authorities coming fifth and sixth .

1.2 General Situation of Money Laundering and Financing of Terrorism

Money laundering

18. Data gathered by officials indicated that criminals and organised criminal groups in Ukraine use almost all known ways to launder criminal proceeds, and money laundering (ML) schemes identified are rather complex as they include thousand of entities and links form hundreds of transactions. Certain sectors of economy are still cash-oriented, with restricted use of non-cash financial instruments. High risks of ML have been identified in the following economy areas: foreign economic activities, credit and finance, fuel and energy industry, metal and mineral resources market. Major proceeds are primarily generated as result of the following violations:
    - economic crimes (illegal manufacturing, storing and selling of excise-duty goods and violation of business and banking activity procedures);
    - corruption;
    - fictitious entrepreneurship and fraud (including privatization machinations);
    - contraband and crimes against property;
    - drug trafficking.

19. Foreign economic operations (export-import, credit and investments) remain one of the principal and most widely spread methods of ML (eg. purchase of companies, securities of foreign companies and real estate abroad; payment for services provided to foreign partners (marketing, advertising campaign, etc.); use of «structuring» of transactions, export of currency funds abroad using plastic credit cards; export of foreign cash currency by individuals). Part of these funds is later returned to Ukraine, for their use in privatisation processes, in the secondary market of securities, purchase of land, real estate etc.

20. The authorities indicated that in order to launder money, criminals use mostly bank institutions, professional participants on the securities market, real estate dealers and insurance companies.

21. The following instruments are used: structuring or smurfing of transactions, fictitious legal persons, lost/missed, counterfeit passports or other counterfeit documentation, sham natural persons (with criminal records, without permanent place of residence), transactions with non-residents, registered in offshore zones.

22. The Ukrainian authorities have detected an important number of typologies, which have been detailed in comprehensive reports on typologies. Methods identified included:
    - execution of non commodity transactions with fictitious companies
    - residents using agreements/orders purchase of shareholdings of (non-liquid) national economic entities from connected companies non residents at prices exceeding market costs with further removal funds abroad
    - the use of statutory documents of offshore companies
    - conversion and export of funds (eg. crediting import operations, without entry of the product to the customs territory of Ukraine; sale of the securities of the Ukrainian issuers by non-residents to the residents; cross-border transfer of funds pursuant to enforcement documents, on the basis of court judgments; payment of bills of exchange of the Ukrainian issuers, which are presented for payment by non-residents, illegal conversion of cashless funds)
    - carousel commodity schemes accompanied by illegal reimbursement of VAT from budget

[6] Evaluation report on Ukraine, joint first and second evaluation rounds, Group of States against Corruption (21 March 2007).

- transactions with non-residents, registered in offshore zones
- securities fraud (shares, promissory notes)
- reinsurance transactions.

Terrorist financing

23. Ukraine did not appear to suffer from international terrorism incidents, although law enforcement authorities sometimes labelled certain domestic criminal activities as terrorist acts. According to statistical data from the period 2004 to 2007, 18 criminal cases concerning 16 persons were investigated by the Security Service of Ukraine (2004 - 8 cases on 6 persons, 2005 – 7 cases on 10 persons, 2006 - 2 cases, 2007- 1 case) initiated on the basis of article 258 of the Criminal Code (terrorist act). Proceedings in 5 cases for 10 persons were terminated, 3 cases (concerning 7 person) were forwarded to the court with indictment, 2 cases for 3 persons were terminated under justifying grounds. 6 persons were convicted for the perpetration of a terrorist act. On 8 August 2005, 4 persons were convicted for blowing a hand-made explosive device on a flee market which resulted in the death of 1 person and 14 persons wounded.

24. The authorities stated that the analysis of criminal cases investigated indicated that they were not connected to terrorism activity and no evidence was found of any use of natural or legal persons in Ukraine or abroad in order to finance terrorism.

1.3 Overview of the Financial Sector and Designated Non-Financial Businesses and Professions (DNFBP)

1.3.1 Overview of the Financial Sector

25. The types of financial institutions that are authorised to carry out financial activities listed in the Glossary of the FATF 40 Recommendations are summarised in the table below. It can also be used as a reference to link the terminology of the Glossary of the FATF 40 Recommendations with the relevant Ukrainian terminology.

Types of financial activities to which the FATF Recommendations apply	Types of financial institutions performing such activity in Ukraine	Subject to AML/CFT regime & Ukrainian terminology[7]
1. Acceptance of deposits and other repayable funds from the public	Banks Credit Unions	Making or withdrawing a deposit
2. Lending	Banks Credit Unions Pawnshops	Granting or receiving a loan or a credit
3. Financial leasing	Banks Financial leasing companies	Financial leasing
4. The transfer of money or value	Banks Ukrposhta (postal money transfer orders) Credit unions (Credit unions regarding transfers to members which are borrowers of that credit union, according to the Law on Credit Unions)	Money transfer from one account to another
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques,	Banks	Services related to the issue, purchase, sale or servicing of checks, bills of exchange, credit cards, and other payment

[7] These activities are defined in the Basic Law, Article 1, as a financial transaction unless stated otherwise.

money orders and bankers' drafts, electronic money)		instruments
6. Financial guarantees and commitments.	Banks	Provision of financial guarantees and liabilities
7. Trading in: - money market instruments (cheques, bills, CDs, derivatives etc.); - foreign exchange; - exchange, interest rate and index instruments; - transferable securities; - commodity futures trading	Banks Securities traders Trader-depositor[8] Trader-depositor-registrar [9] Stock exchange	Granting guarantees and securities Trading with securities (Law of Ukraine on Financial Services and State Regulation of Financial Markets, Article 4)
8. Participation in securities issues and the provision of financial services related to such issues	Banks Securities traders Depositors[10] Trader-depositor Registrar[11] Trader-depositor-registrar Clearing depositor	Services related to the issue, purchase or sale of securities and other kinds of financial assets
9. Individual and collective portfolio management	Banks Securities trader Trader-depositor Asset managers Non-state pension fund administrators	Trust management of securities portfolio
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	Banks Securities traders* Depositors* Trader-depositor-registrar* Asset managers * Clearing depositor* *except cash depositing and management	Trading with securities (Law of Ukraine on Financial Services and State Regulation of Financial Markets, Article 4)
11. Otherwise investing, administering or managing funds or money on behalf of other persons	Banks Administrators of investment and non-state pension funds	Taking deposits and other financial assets with commitments to their further return Law of Ukraine on financial services, Article 4(4)
12. Underwriting and placement of life insurance and other investment related insurance	Insurance companies Insurance brokers	Insurance
13. Money and currency changing	Banks Ukrposhta Non-banking institutions engaged in foreign exchange operations[12]	Currency exchange Foreign exchange operations

26. The AML/CFT Law also defines the "opening of an account" as a financial transaction. The Ukrainian authorities advised that this is intended to ensure that the AML/CFT obligations begin right at the start of the relationship.

27. In addition, the AML/CFT Law identifies the following institutions which are subject to initial financial monitoring (Article 4):

[8] Combination of trading and depositary activity
[9] Combination of the activity of a trader, depositor and registrar.
[10] Commercial bank or securities trader that is authorised to deposit and serve securities on the securities accounts with regard to securities it owns as well as securities it deposits under the agreement on opening of the securities account.
[11] Registration of nominal securities owners.
[12] There is only one non-bank financial institution : «Ukrainian Financial Group».

- Banks, insurance and other kinds of financial institutions;
- Payment organisations, members of payment systems, acquiring and clearing institutions;
- Commodity, stock and other exchanges;
- Professional operators in securities market;
- Joint investment institutions;
- Gambling, pawnshop institutions and legal entities holding any kinds of lottery;
- Enterprises or institutions that manage investment funds or non-governmental pension funds;
- Communication companies and associations, and other non-credit institutions that transfer funds – this definition covers Ukrposhta.
- Other legal entities that process financial transactions according to law – the Ukrainian authorities advised that this definition is a catch-all requirement which is intended to cover any type of financial institution that is not defined in the above list.

28. The evolution of the national banking system in Ukraine started in March, 1991, after the adoption of the Law of Ukraine On Banks and Banking by the Ukrainian Verhovna Rada. The Ukrainian banking system is a two-tier structure consisting of the National Bank of Ukraine and commercial banks of various types and forms of ownership including the state-owned Export-Import Bank and a specialized commercial Savings Bank.

29. Ukraine started with 76 registered (commercial) banks in 1991, reached 230 banks in 1995 and had 197 banks in 2008. Banks operate under the provisions of the Law on Banks and Banking[13] and are defined as " legal entity which has an exclusive right, under the National Bank of Ukraine license, to perform the following general banking operations in aggregate: attraction of deposits and funds of households and legal entities, allocation of these funds on its own behalf, terms and at its own risk, and opening and servicing accounts of individuals and legal entities".

Indicators	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008 (Sept)**
Number of registered banks	195	189	182	179	181	186	193	198	197
Banks by legal form of governance									
-joint stock companies	136	135	136	133	132	132	134	141	152
- open	98	94	94	94	92	91	91	99	112
-incl. state owned	2	2	2	2	2	2	2	2	2
- closed	38	41	42	39	40	41	43	42	40
- limited liability companies	17	17	20	25	28	31	35	32	29
- cooperative bank	-	-	1	-	-	-	-	-	-
Banks with participation of foreign capital									
- number of banks (incl. with 100% foreign capital)	7	6	7	7	7	9	13	17	18

Source: Bulletin 118/2008 of the National Bank of Ukraine (excerpt)

30. Commercial banks are divided into 4 groups according to their size and performance, the limit assets for the groups of banks for 2007 being: group I (assets of over UAH 5 000 million), group II (assets of over UAH 2 000 million), group III (assets of over UAH 700 million), group IV (assets of lower UAH 700 million). As of 1 January 2008, Group I controls over 64.8% of the assets of banks of Ukraine,

[13] Law of Ukraine No. 2121-III of 7 December 2000 as amended.

while the second group 17.2 % of the assets. Foreign owned banks account for some 37% of the banking system capital, with the foreign capital share being from Cyprus (7.15%), Austria (7.15%), France (4.41%), Russian Federation (3.42%), the Netherlands (2.90%). As of 1 January 2008, the number of branches were 1420, including 1364 acting branches and 60 acting representative offices of the Ukrainian banks, out of which 48 on the territory of Ukraine and 12 abroad. Banking institutions are primarily concentrated in Kyiv-city (16%), 34.9% being concentrated in six regions (8.5% in Donetsk, 6.3% in Dnipropetrovsk, AR of the Crimea, Odessa, and Lviv regions have 5.3%, 5.2% and 5.1% respectively, and Kharkiv region – 4.6%).

Number and type of non-banking financial institutions
regulated by the State Commission on Securities and Stock Market

Type of financial institution	Number[14]
Securities traders	561
Traders - depositaries	222
Traders –depositaries -registrars	34
Registrars	346
Asset management companies	411
Trade organisers	11
Clearing depositories	2

Number and type of non-banking financial institutions
regulated by the State Commission on Regulation of Financial Services Markets

Type of financial institution	Number[15]
Insurance company	472
Insurance broker	63
Credit union	818
Pawnshop	311
Financial company	190
Administrator of non state pension fund	40
Other credit institutions	15
Legal entities of public law	29
The institutions authorized to provide financial leasing services	197
Trust societies[16]	2

31. Ukrainian securities markets and non-bank financial institutions have also grown rapidly in recent years. Securities market capitalization increased from 6% of GDP in 2000 to 42% in 2006. The number of joint investment institutions grew from 29 in 2003 to 519 in 2006 while the number of insurance companies increased from 283 in 2000 to 411 in 2006, and insurance premiums grew from 1.3% of GDP to over 2.5% of GDP over the period. The development of the non-banking financial institutions remained rather limited. In 2005, the total assets of non-bank financial institutions accounted for 10% of the assets of all Ukrainian financial intermediaries, with insurance companies remaining the core of the non-bank financial sector. Only Ukrainian legal entities in the form of a joint-stock company, full partnership, limited partnership or an additional responsibility company may become an insurer in Ukraine. There are two types of insurance intermediaries in Ukraine: agents and insurance and reinsurance brokers.

32. Recent assessments undertaken concluded that Ukraine’s financial sector remains vulnerable and while acknowledging that measures were taken by Ukraine to identify bank owners, raise minimum capital requirements, curb banks' foreign borrowing, they recommended to fully develop consolidated

[14] The data in this table includes information as of 01 January 2009
[15] The data in this table includes information as of 01 September 2008.
[16] These trust societies are not “trusts” as defined in the FATF Glossary but are considered to be financial institutions. The Ukrainian authorities advised that these entities are no longer active (See section 5.2).

supervision, improve banks' stress testing and risk management capabilities, intensify on-site examinations, and impose stronger prudential requirements on banks with deteriorating liquidity positions[17].

Other financial institutions

33. Ukraine considers non-life insurance, reinsurance, pawnshops, cash lotteries and commodity exchanges (auctioneers) to be part of the financial sector. However, since these types of institutions do not fall under the definition of a financial institution or a designated non-financial business or profession (DNFBP), this sector is not discussed in this report, except for section 4.4.

1.3.2 Overview of Designated Non-Financial Businesses and Professions (DNFBP)

34. All the categories of designated non-financial business and professions, apart from trust and company service providers, are found in Ukraine. However, Ukraine has not designated, with the exception of the casinos, the rest of the non-financial business and professions (DNFBPs) listed in the glossary of the FATF 40 Recommendations:

FATF Designated Financial Business and Professions in Basic Law			
Sector	**Designated / not designated**	**Effectively supervised or monitored for compliance (for AML/CFT purposes only**	**Regulator for AML/CFT purposes**
Casinos (including internet casinos)	Designated	No	Ministry of Finance
Real estate agents	Not designated	Not designated	Not designated
Dealers in precious metals and stones	Not designated	Not designated	Not designated
Lawyers	Not designated	Not designated	Not designated
Notaries	Not designated	Not designated	Not designated
Accountants	Not designated	Not designated	Not designated
Trust	N/A	N/A	N/A
Company Service Providers	Not designated	Not designated	Not designated

Casinos, including other forms of gambling

35. Point 2 of the Procedure on execution of internal financial monitoring by business entities that provide business activity on organization and maintenance of casinos, other gambling institutions and pawnshops (Resolution of the Cabinet of Ministers of Ukraine of 20.11.2003 No. 1800) includes definitions of gambling institution, casino and the organisation and performance of gaming in electronic (virtual) casino. Such activities are subject to licensing (Article 9 of the Law of Ukraine on Licensing of Certain Business Activities No. 1775-III of 01.06.2000).

36. The Ministry of Finance is the licensing agency for the organization of gambling activities while the licensing agency for the organization and maintenance of totalizators and gambling institutions is Council of Ministers of Autonomous Republic of Crimea, regional state administrations, Kyiv and Sevastopol city administrations. The control over the observation by business entities of licensing terms is undertaken by the Ministry of Finance and the State Committee for Regulatory Policy and Entrepreneurship.

[17] 2008 Article IV Consultation with Ukraine, IMF Executive Board

37. As of July 1, 2008 the Ministry of Finance of Ukraine granted business entities with 172 licenses for exercising organization of gambling. 55 of licenses grant the right to provide gambling in casino.

38. As of July 1, 2008 oblasts state administrations, Kyiv and Sevastopol city state administrations and the Council of Ministers of the Autonomous Republic of Crimea granted licenses for organization and maintenance of totalizators and gambling institutions to 344 business entities, including by regions: Kyiv - 73, Donetska oblast - 19, Dnipropetrovska oblast - 29, Kharkivska oblast - 39, L'vivska oblast - 20, Autonomous Republic of Crimea - 11, Odesska oblast - 20, Zaporiz'ka oblast - 10, Luganska oblast - 39, Cherkaska oblast - 5, Poltavska oblast - 5, Kyivska oblast - 2, Chernihivska oblast – 4, Sumska oblast - 9, Mykolaivska oblast - 7, Vinnitska oblast - 3, Ivano-Frankivska oblast - 7, Zakarpatska oblast - 8, Zhytomyrska oblast - 3, Khmelnytska oblast - 4, Ternopilska oblast - 2, Khersonska oblast - 12, Volynska oblast - 2, Rivnenska oblast - 4, Kirovogradska oblast -3, Chernivetska oblast - 4.

39. As of July 24, 2008 1 legal entity has right to provide gambling in electronic (virtual) casino in Ukraine.

Real estate agents, Dealers in precious metals and dealers in precious stones, Lawyers, Notaries, Accountants, Trust and Company Service Providers

40. These sectors have not been designated under the AML/CFT law. The Ukrainian authorities provided little information with respect to these sectors and the evaluation team did not meet with any of these professions during the on-site visit.

41. The real estate agents profession has been included in the official classification of professions through the Order No. 26 of the State Committee on technical regulation and Consumer Policy of 26 December 2005. The Real Estate Agents Association was established in 1995 and counts 1116 members.

42. Commercial activity with precious metals and precious stones, precious stones of biogenic rock, semiprecious stone is carried be carried out on the basis of appropriate license granted by Ministry of Finance of Ukraine18. As of 24 July 2008, the Ministry of Finance granted licenses to:
    - 110 business entities to produce precious metals and precious stones, precious stones of biogenic rock, and semiprecious stones;
    - 6373 business entities to produce products out of precious metals and precious stones, precious stones of biogenic rock, and semiprecious stones, trade in precious metals and precious stones, precious stones of biogenic rock, and semiprecious stones;
    - 102 business entities to gather, carry out initial processing of scrap of precious metals and precious stones, precious stones of biogenic rock, and semiprecious stones.

43. Lawyers act pursuant to the Law on advocacy, which provides that they can engage in the following activities: to provide advise and explanations on legal issues and information on legislation, to draft applications, claims and other legal documents, to certify copies of documents related to the cases they process, to represent individuals and legal entities in court and before other state bodies, to provide legal advise to enterprises, institutions and organisations, to provide legal assistance to entrepreneurial and foreign economic activity of individuals and legal entities, to fulfil obligations in the process of inquiry and investigation and to perform other forms of legal assistance (article 5).

44. State or private notaries – working in state notary offices, state notary archives (state notaries) or private offices - operate in Ukraine in accordance with the Law of Ukraine «On notary» and the Decree of the President of Ukraine of August 23, 1998 No. 932/98 «On regulation of activity of notaries in Ukraine». The Ministry of Justice of Ukraine organises the work of notary institutions, inspect their activities, and controls the legality of notary actions by state and private notaries. There

[18] Licensing terms for performance of business activity on manufacturing products of precious metals and stones, precious stones of organogenetic origin, semi-precious stones, trading in products of precious metals and stones, precious stones of organogenetic origin, semi-precious stones, approved by the order of the State Committee of Ukraine on Regulatory Policy and Entrepreneurship, Ministry of Finance of Ukraine of 26.12.2000 No. 82/350

are 822 state notary offices with a total staff of 1565 state notaries and 27 state notary archives with total staff of 69 state notaries. As of 1 January 2008, 801 state notary office operated in Ukraine were 1276 state notaries worked, and in 27 state notary archives 27 state notaries worked. Besides, for notary servicing of people in Ukraine 642 notary districts were established. As of 1 January 2008 notary actions were taken in Ukraine by 4 047 individuals providing private notary practice. State and private notaries annually submit reports on their activities according to the form established by the Order of the Ministry of Justice of Ukraine of 25 May 2005 No. 51/5.

45. Accountant' activities are regulated by the Law of Ukraine on Business Accounting and Financial Reporting in Ukraine as well as the Provisions on Organization of Business Accounting and Financial Reporting in Ukraine approved by Resolution of the Cabinet of Ministers of Ukraine 03.04.1993 No. 250. As of 1 July 2008 the number of business entities providing activity in the area of accounting and which reported during 2008 to the state tax agencies amounted to 9 880 entities.

46. According to the authorities, trust and company service providers as defined under the FATF Glossary do not exist in Ukraine.

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

47. Legal entities are defined in the Civil Code of Ukraine (CvC) and are divided into legal persons of private law, which are established on the base of statutory documents, composed by their founders – natural persons or other legal persons, and legal persons of public law, established by an administrative act of the President of Ukraine, state bodies, authorities of Autonomous Republic of Crimea and self-government bodies. Article 83 of the CvC provides that legal entities can be established in the form of partnerships, entities and other forms pursuant to the applicable legislation. Partnerships are divided according to their activity either as business entities (which undertake entrepreneurship activities for profit), production co-operatives and non-business entities.

48. The basic rules governing the establishment, operation and liquidation of business legal entities are provided in several legal acts, including the Civil Code and Commercial Code (both adopted on 16 January 2003, in force from 1 January 2004), the Law of Ukraine on Companies (19 September 1991 as amended), the Law of Ukraine on the State Registration of Legal Entities and Individual Entrepreneurs (15 May 2003). Legal entities which carry out entrepreneurial activities in order to earn profit must be established in the form of companies. Commercial entities may be established in Ukraine as a:

    - joint-stock company: company whose authorised capital is divided into shares of equal par value. There are two types, open and closed joint stock companies. Shares issued by both open and closed joint stock companies must be registered with the SCSSM. In addition, founders of an open joint stock company must register an offering prospectus, disclose the information about the share issuance and register a report on the result of the open placement of shares with the Securities Commission. Founders of a closed joint stock company must register a report on the results of the closed placement of shares with the SCSSM.
    - limited liability company: company established on a contractual basis, participants are liable only to the extent of their share of the charter capital. Participatory interests in an LLC do not qualify as securities and are not subject to registration with the State Commission on Securities and Stock Market (SCSSM).
    - additional liability company: company whose members are liable to the extent of their contributions to the charter capital and in addition, within a certain agreed amount.
    - General partnerships
    - Limited partnerships.

49. The legislation also provides for several types of enterprises which can be founded in Ukraine: private enterprises, collective enterprises, communal enterprises, state enterprises, other enterprises.

50. There are several forms of non-profit organisations: charitable organisations, political parties and associations of citizens. Their activities are governed by the Law on Charitable Activity and Charity Organisations (16 September 1997), the Law on Political Parties of Ukraine (5 April 2001) and the Law on Association of Citizens (16 June 1992).

51. Charity organisations in Ukraine may have the following organisational/legal forms: membership charity organisations, charity funds, charity institutions, other charity organisations (foundations, missions, leagues, etc.). The core difference between such forms is laid in the scope of competencies of founders and the management structure of organisations. They are formed and act according to the territorial principle of their operation and may have the status of a local charity (its activity covers the territory of a relevant region or of an administrative and territorial unit), a pan-Ukrainian charity (activity covers the entire territory of Ukraine and it has its own offices, departments and representations in the majority of Ukrainian oblasts) and international charity (activity covers the territory of Ukraine and at least one more country). There were 983 charitable organisations registered by the Ministry of Justice of Ukraine as of October 2008, among those 352 were Ukrainian-based organisations, while the remaining 631 were international organisations.

52. Association of citizens, regardless of their title (movement, congress, association, fund, union etc.), can be established either as political parties or public organisations The Ministry of Justice had registered 2723 public organisations (2093 all Ukrainian and 630 international as of October 2008 and 148 political parties as of July 2008).

53. The following statistics were provided by the authorities on the size and financial resources of NPOs:

Statutory size of NPOs		
Charitable organisations	As of October, 2008	UAH 141 547 766
Political Parties	As of October, 2008	UAH 107 265

Incomes of NPOs	
Active charitable organisations	
Year	**Income (thousand UAH)**
2006	1 803 605,527
2007	2 179 778,652
first half of 2008	1 301 765,006
Active parties	
Year	**Income (thousand UAH)**
2006	927 954,372
2007	1 069 467,678
first half of 2008	115 694,532

54. All types of legal entities are required to be registered with the Unified State Register of legal entities and natural persons - entrepreneurs (USR) of Ukraine, which is an automated, open source system on gathering, accumulating, registering and submitting information on legal persons and individual entrepreneurs. Commercial organisations are registered by the State Committee on regulatory policy and entrepreneurship, while the registration of non-profit organisations is carried out by the Ministry of Justice.

55. For registration purposes, a decision of founders on establishment of a legal person, statutory documents, and a document certifying payment of the registration fee should be submitted to registering bodies. Statutory documents of legal persons should contain information on the type of a legal person, the purpose and objectives of its activity, the list of its founders and participants, their denomination and location, the size and the procedure of formation of statutory (consolidated) fund, the procedure of distribution of financial flows, the competence of managing bodies, the procedure of decision making, and amending statutory documents, as well as the procedure of its liquidation and reorganisation.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

56. The Cabinet of Ministers of Ukraine approved the AML/CFT Concept for 2005-2010 in August 2005[19], which defines the main objectives of state institutions in this field and focuses on the following objectives:
    - "The prevention of existence of preconditions for legalization of illegal proceeds and terrorist financing;
    - The prevention of use of weaknesses of the financial system for the purpose of legalization of illegal proceeds and terrorist financing;
    - The improvement of the regulatory and supervisory mechanism for entities of initial financial monitoring;
    - Enhancement of effectiveness of law enforcement agencies activities;
    - Establishment of effective systems of interaction between relevant agencies of executive power;
    - Enhancement of qualification level of experts and level of their technical provision;
    - Participation in international co-operation;
    - Formation of population's realisation of AML/CTF necessity".

57. The AML/CFT Concept paper is implemented through the development and approval by the Cabinet of Ministers of Ukraine and the National Bank of annual AML/CFT action plans, which define the priorities of each of the relevant agencies in this field, in particular as regards the improvement of the legal framework, the improvement of the organisational and managerial work, the enhancement of national and international co-operation in this area, and practical implementation of the AML/CFT legislation. In the period from 2004 to 2007, the Cabinet of Ministers of Ukraine and the National Bank of Ukraine had approved yearly AML/CFT action plans[20]. The AML/CFT action plan for 2008 was adopted on 19 March 2008. An Interagency Working Group was established under the Cabinet of Ministers of Ukraine and is responsible to oversee the implementation of the action plan. Central authorities of executive powers are each responsible to inform on a monthly basis the Cabinet of Ministers on the implementation of the Action Plan.

58. The authorities advised at the time of the on-site visit, one of the main priorities of the Government was the issue of enhancing the effectiveness of law enforcement agencies' action, in particular as regards:
    - the disclosure of facts of concealment or disguise of the illegal origin of proceeds, the sources of their origin, location, ways of transfer, directions of use, as well as conducting of search, seizure of such proceeds and liquidation of their sources;
    - measures concerning their interaction with the financial intelligence unit, in particular during consideration of case referrals and investigation of criminal cases;
    - the effectiveness of operative and investigative activities to disclose and terminate activities of organised groups which carry out money laundering;
    - the disclosure and termination of fictitious companies;
    - the analysis and summary of courts practice in the application of AML/CFT legislation.

59. Furthermore, they reported that a revised draft AML/CFT law was pending before Parliament, as well as several draft legal acts aimed at preventing and combating corruption.

[19] Directive No. 315-p of 3 August 2005.

[20] AML/CTF program for the year 2004 (Resolution of January 16, 2004 № 45) AML/CTF action plan for the year 2005 (Resolution of August 10, 2005 No. 736), AML/CTF action plan for the year 2006 (Resolution of March 18, 2006 No. 359);AML/CTF action plan for the year 2007 (Resolution of January 31, 2007 No. 136).

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

State Commission for Financial Monitoring (SCFM)

60. The State Commission for Financial Monitoring is the leading authority in the AML/CFT system. It is a central agency of executive power with special status, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine, and which is entrusted with the implementation of state policy in the AML/CFT area. The SCFM is the Ukrainian Financial Intelligence Unit and co-ordinates the activities of all state bodies involved in AML/CFT issues. Its powers and duties are listed in the AML/CFT Law and are further detailed in Section 2 of the report.

National Bank of Ukraine (NBU)

61. The National Bank of Ukraine was established in 1991. It is a specialised state institution whose principal objective is ensuring the external and internal stability of the national currency. It is empowered to develop and conduct monetary policy, organise banking settlement and the foreign exchange system, ensure stability of the monetary, financial and banking systems of Ukraine. It has broad regulatory and supervisory functions in the banking sector. Section 3.10 details further the financial institutions supervised and licensed by the NBU.

State Commission on Securities and the Stock Market (SCSSM)

62. The SCSSM is the central agency of executive power authorised to determine and implement a uniform state policy in the area of development and operation of the securities market in Ukraine, and to monitor the compliance of Ukrainian and foreign entities and individuals with the legal requirements governing securities and the securities market. It is subordinate to the President of Ukraine and is accountable to the Verkhovna Rada. It has broad powers with respect to development of overall legislative framework for the operation of the securities' market as well as registration, licensing and enforcement powers. Section 3.10 details further the financial institutions supervised and licensed by the SCSSM. In August 2003, the SCSSM established a Division on financial monitoring counting 5 employees, which is responsible for the co-operation with the financial intelligence unit and other supervisory agencies, for the coordination and conduction of inspections of stock market participants concerning AML issues, for the monitoring of the implementation by stock market participants of AML obligations.

State Commission on Regulation of Financial Services Markets of Ukraine (SCFSMR)

63. The State Commission on Regulation of Financial Services Market was established on 11 December 2002, in accordance with the Law on Financial Services. It is responsible for the implementation of a unified policy on the provision of financial services and for the registration, licensing and supervision of the non-banking financial institutions. Section 3.10 details further the financial institutions supervised and licensed by the SCFSMR.

64. The AML/CFT Law provides that the National Bank of Ukraine, the State Commission on Securities and the Stock Market and the State Commission on Regulation of Financial Services Markets of Ukraine, in their capacity as regulatory and supervisory authorities of obliged entities, are entrusted with the following duties:
    - to require that obliged entities fulfil the tasks and duties set out in the AML/CFT law;
    - to check the quality of professional training of employees and heads of units in charge of reporting and take necessary measures;
    - to check during supervision the compliance with the AML/CFT law and take due measures in accordance with established procedures;
    - to inform the financial intelligence unit on detected cases of violation of legislation by reporting entities;
    - to ensure the storage of information submitted by entities of initial and state financial monitoring and by law enforcement bodies;

- co-ordinate with the financial intelligence unit all implementing legal acts.

Ministry of Finance

65. The Ministry of Finance is the central agency of executive power responsible for the implementation of the single state financial, budgetary, tax, customs policy, policy of state internal financial control, issuing and holding lotteries, development and production of holographic protective elements, under the direction and coordination of the Cabinet of Ministers. It is the competent agency which licences gambling activities, business activities issuing and holding lotteries, business activities that deal in precious metals and stones. Shortly after the visit, the evaluation team was informed that the Ministry of Finance was empowered to supervise compliance of gambling institutions with the AML/CFT legislation.

Ministry of Justice

66. The Ministry of Justice[21] is the central agency of executive power responsible for the implementation of state legal policy and policy in the area of approximation of the Ukrainian legislation with the European Union legislation, including in the AML field, under the direction and co-ordination of the Cabinet of Ministers. The Ministry of Justice organises the work of notary institutions. It registers Bar Associations and non profit organisations. The Ministry of Justice is the central authority for legal assistance in criminal matters concerning acts of procedure in criminal investigations.

Ministry of Foreign Affairs

67. The Ministry of Foreign Affairs is the central agency of executive power responsible for the implementation of state policy in the area of international relations and coordination of relevant measures[22]. According to the Cabinet of Ministers Resolution no. 751 of 25 May 2006, the Ministry of Foreign Affairs is the authority in charge of providing to the financial intelligence unit the information needed for the composition of the list of persons related to terrorist activities (information provided by the United Nations and court convictions, decisions of other competent foreign authorities regarding organisations and individuals related to terrorist activities, which are recognised by Ukraine according to international treaties).

Ministry of Interior

68. The Ministry of Interior is responsible for law enforcement issues, acting in accordance with the Constitution, the Law of Ukraine on Militia, the Law of Ukraine on Operative Search Activity, the Criminal Code and Criminal Procedure Code and other relevant implementing legislation. The Militia is organised as a single law enforcement system within the structure of the Ministry of Interior of Ukraine and operates according to its mandate under the Law on Militia[23]. In accordance with article 112 of the CPC, it conducts pre-trial investigation in ML criminal cases.

Security Service of Ukraine (SSU)

69. The Security Service is the Ukrainian domestic state security and intelligence service, responsible among other issues for the prevention, detection, interruption and investigation of crimes against the peace and security of mankind, terrorism, corruption and organised criminal activities.

State Tax Administration (STA)

70. The State Tax Administration is the special state law enforcement agency responsible for counteracting tax offences. On the enforcement side, its work can include the disclosure and

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[21] Statute on the Ministry of Justice approved by the Cabinet of Ministers' Resolution. No. 1457 of 14 November 2006.
[22] Statute on the Ministry of Foreign Affairs approved by the Cabinet of Ministers' Resolution. No. 960 of 12 July 2006.
[23] Law on Militia of 20 December 1990

investigation of some money laundering cases, in accordance with article 112 of the Criminal Procedure Code.

State Customs Service of Ukraine

71. The State Customs is the central executive body responsible for the implementation of the customs legislation. Its Department on Internal security and Department of Customs Guard and Organisation of Combating Violations of Customs Legislation are also competent to deal with AML issues.

State Border Guard Service

72. The State Border Guard Service is the central executive body responsible for the inviolability of the state border and protection of the sovereignty of Ukraine. Its functions include the execution of border controls and passage across the state border of individuals, vehicles, cargoes and other property, participation in the action against organised crime and illegal migration. Prevention and counteraction of money laundering and terrorist financing is performed by the State Border Service in the framework of execution of the tasks entrusted to it by the Law of Ukraine on the State Border Service.

Prosecution and Courts

73. The Prosecution Authority is responsible for all court prosecutions on behalf of the State, represents the interest of citizens of the State in court in cases determined by law, supervises all bodies that conduct investigative and search activities, inquiry and pre-trial investigation and ensures that they observe the law, supervises the observance of law in the execution of judicial decisions in criminal cases and in the application of other measures. According to the Article 112 of the Criminal Procedure Code, pre-trial investigation of ML criminal cases are carried out by investigators of the prosecution offices. The General Prosecutor's Office (GPO) is the central authority designated to provide legal assistance in criminal matters concerning acts of procedure in criminal investigations. Cases related to AML/CFT are usually channelled through courts of general jurisdiction.

Co-ordination bodies

74. Policy level coordination and 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), established by the Decree of the President of Ukraine on measures for development of the AML/CFT system (Decree No. 740 of 22 July 2003) under the Cabinet of Ministers of Ukraine.

c. The approach concerning risk

75. Ukraine has not formulated a risk-based approach to define which sectors should or should not be designated and 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.

76. Considering the procedures and practices implemented by the supervisory bodies in Ukraine (NBU, SCSSM and SCFSMR), it seems that NBU is the only supervisory body that has appropriate tools for implementing a risk-based approach to AML/CFT supervision. This body employ risk analysis when preparing and performing AML/CFT supervision. However, this positive approach could be significantly diminished by the legal requirement for annual AML/CFT on-site inspections. The NBU could not always be in a position to perform risk-based inspections, whenever the off-site analysis or other information point out a higher level of AML/CFT risks associated with certain banks. The AML/CFT supervision performed by the other two supervisory bodies (SCSSM and SCFSMR) is mainly a compliance-based. It appears that they lack capacity (regulatory and human) to carry-out risk-

based supervision, i.e. there is insufficient basis for a risk-based approach over the entities that fall under the umbrella of SCSSM and SCFSMR.

d. *Progress since the last mutual evaluation*

77. This is Ukraine's third assessment report by MONEYVAL. The on-site visit for the first mutual evaluation report by MONEYVAL took place in May 2000 and the report was adopted in January 2001. The on-site visit for the second mutual evaluation took place in September 2003 and the second mutual evaluation report was adopted in January 2005. Some of the most notable developments, which are detailed in the relevant sections of the mutual evaluation report, include:
    - The clarification by the Supreme Court in 2005, through a resolution, of the practical application of the money laundering offence;
    - The adoption by the SCFM of a large number of methodical rules for the entities of initial financial monitoring[24];
    - The establishment of the State training centre of post-graduate education "Training-methodical centre for re-training and professional development of experts on financial monitoring issues in the sphere of combating legalization (laundering) of criminal proceeds and terrorist financing" within the State Committee for Financial Monitoring of Ukraine, which regularly trains representatives of state agencies involved in AML/CFT issues;
    - A number of changes undertaken by the supervisory authorities to the legal framework with a view to improving AML/CFT requirements on banking and non banking financial institutions, providing methodical instructions and further developing procedures for conducting AML/CFT supervision.

78. However, several recommendations made in 2001 and 2005 have not been followed up, and these recommendations are repeated in this report. They regard in particular the legal system (criminalisation of ML and TF, confiscation, freezing and seizing of proceeds of crime), elements of the suspicious transaction reporting system, the framework for the investigation and prosecution of offences by the law enforcement and prosecution authorities, the lack of resources and powers of the supervisory bodies, the licensing and AML/CFT compliance and supervisory framework for casinos and gambling houses.

[24] Methodical recommendations to the entities of initial financial monitoring – non-banking financial institutions on filling in registration forms and submission of information related to the execution of financial monitoring (Order of SCFM of Ukraine of March 15, 2006 No.45); methodical recommendations on composition of code of type of financial transaction subject to financial monitoring (Order of SCFM of Ukraine of June 23, 2006 No.112); approximate list of criteria for rating of financial transactions as such that could be subject to internal financial monitoring (Order of SCFM of Ukraine of July 31, 2006 No.145); methodical recommendations on the procedure for Termination of financial transaction if its participant is or beneficiary is a person from the list of persons related to execution of terrorist activity by entities of initial financial monitoring for which legislation does not define entities of state financial monitoring performing supervision and control over its activity (Order of SCFM of Ukraine of September 25, 2006 No.184); model rules for execution of internal financial monitoring by non-banking institutions (Order of SCFM of Ukraine of October 31, 2006 No.217); methodical recommendations to the entities of initial financial monitoring non-banking financial institutions on filling in registration forms and submission of information related to execution of financial monitoring (Order of SCFM of Ukraine of December 05, 2006 No.247); model rules for execution of internal financial monitoring by insurance institutions (Order of SCFM of Ukraine of December 22, 2006 No.267); recommendations on execution of financial monitoring by entities of initial financial monitoring – non-governmental pension funds; recommendations on execution of financial monitoring by entities of initial financial monitoring – pawnshops; methodical recommendations to initial financial monitoring entities – non-banking institutions on filing forms of registration and submission of information related to execution of financial monitoring (Order of FIU of Ukraine No.145 of June 26, 2008); methodical recommendations «ML/TF risks management» (Order of FIU of Ukraine No.157 approved of 04.07.2008).

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of money laundering (R.1 and 2)

2.1.1 Description and analysis

Recommendation 1 (Criminalisation of money laundering on the basis of the UN Conventions)

79. Money laundering is criminalised by article 209 of the Criminal Code[25] (CC), which reads as follows:

> **Article 209. Legalization (laundering) of the proceeds from crime**
> 1. Conduct of a financial transaction or concluding a deal involving money or other property obtained as the result of a socially dangerous illicit act that preceded the legalization (laundering) of proceeds, or other actions for the purpose of concealing or disguising the illegal origin of such money or other property, or their possession, or titles to such money or property, or sources of their origin, location or movement, as well as acquisition, possession or use of money or other property obtained as the result of a socially dangerous illicit act that preceded the legalization (laundering) of proceeds, –
>
> shall be punishable by imprisonment for a term of three to six years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to two years, and the confiscation of the money or property obtained illegally, and the confiscation of property.
>
> 2. Actions as provided for by paragraph 1 of this Article, if repeated, or committed by a group of persons upon prior conspiracy, or with regard to large amounts, –
>
> shall be punishable by imprisonment for a term of seven to twelve years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years, and the confiscation of the money or property obtained illegally, and the confiscation of property.
>
> 3. Actions as provided for by paragraphs 1 or 2 of this Article, if committed by an organized group of persons or with regard to especially large amounts, –
>
> shall be punishable by imprisonment for a term of eight to fifteen years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years, and the confiscation of the money or property obtained illegally, and the confiscation of property.
>
> Note:
> 1. For the purposes of this Article, a socially dangerous illicit act that preceded the legalization (laundering) of proceeds is an act punishable under the CC by imprisonment for three years or more (except under Articles 207 and 212 of the CC), or any act which is a criminal offence under the criminal law of a foreign state that is punishable under the CC, and which resulted in unlawful acquiring of proceeds;
> 2. The legalization (laundering) of the proceeds from crime is considered to be committed with regard to large amounts, if it involves money or other property amounting to more than 6000 untaxed minimum incomes of citizen.
> 3. The legalization (laundering) of proceeds from crime is considered committed with regard to especially large amounts, if it involves money or other property amounting to more than 18000 minimum untaxed minimum incomes of citizen."

[25] Provision introduced with the new Criminal Code enacted on 1 September 2001, as amended by the Law of 16 January 2003.

80. 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.

81. The money laundering definition is interpreted and further clarified by the Resolution No. 5 of the Plenum of Supreme Court of Ukraine (15 April 2005), which specifies the physical and material elements of money laundering offence, the scope of predicate offences to it, as well as relevant issues of procedural importance in conducting investigation or court proceedings on money laundering.

82. The analysis of the elements of money laundering as provided by Articles 209 cover the following requirements of both the Vienna Convention [Article 3 (1)(b) (i)-(ii) and (c) (i)] and the Palermo Convention [Article 6(1)(1)(ii) and (b)(i)]:

- "*The conversion or transfer of property*" is intended to be covered in the first part of Article 209 when referring to the "conduct of a financial transaction" or "conclusion of a deal" involving money or property. Financial transaction is defined in the Basic Law (article 1 paragraph 5) and covers any transaction involving the processing or securing of a payment through an entity of initial financial monitoring. The Supreme Court resolution clarifies that the list of types of transactions is not exhaustive and that such transactions can also be processed through other types of economic entities. The conclusion of a deal is defined as the any legal action aimed at acquiring, changing or suspending civil rights and obligations related to that money or property (article 202 of the CvC). The evaluators have doubts that these terms would cover the full ambit of situations of "conversion or transfer of property" and recommend that future legislative clarification is necessary to put the matter beyond doubt.

- "*The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property*" is covered in the first paragraph of Article 209 of the CC, which criminalizes actions for the purpose of concealing or disguising the illegal origin of such money or other property, or their possession, or titles to such money or property, or sources of their origin, location or movement.

- *"The acquisition, possession or use of property"* are also covered by the first paragraph of Article 209 under the wording of "acquisition, possession or use of money or other property obtained as the result of a socially dangerous illicit act which preceded the legalisation of proceeds".

83. Specific elements of money laundering offence are also contained in Article 306[26] of the CC, which provides for actions of laundering of proceeds generated from drug trafficking offence (use of funds generated from illegal circulation of narcotics, psychotropic substances, their analogues or precursors). Article 306 supplements the general money laundering provision and is narrower in scope. The physical and mental elements of the drug related money laundering offence under Article 306 are not covered similarly to Article 209.

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[26] **Article 306. Using proceeds from illegal trafficking in drugs, psychotropic substances, their analogues and precursors**
1. Placing proceeds from illegal trafficking in drugs, psychotropic substances, their analogues or precursors, into banks, enterprises, institutions, organizations and their subdivisions, or using such proceeds for purchasing facilities, property which are subject to privatization, or equipment for productive and other needs, or using such proceeds (money and property) to continue illegal trafficking in drugs, psychotropic substances, their analogues or precursors, shall be punishable by imprisonment for a term of five to twelve years with deprivation of right to hold certain positions or engage in certain activities for a term up to three years, with forfeiture of money or any other property obtained as proceeds from crime, and with confiscation of property.
2. Any such actions as provided for by paragraph 1 of this Article, if repeated, or committed by a group of persons upon prior conspiracy, or in respect of gross amounts, shall be punishable by imprisonment for a term of eight to fifteen years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years and forfeiture of property.
Note: The gross amount shall mean the amount that equals or exceeds 200 tax-free minimum incomes.

84. There is no explicit reference to the mental element in the offence. The evaluators were advised that the element of "knowing that such property is the proceeds of crime" is covered on the basis of the Supreme Court Resolution No. 5, which provides that liability for money laundering may occur when funds or other property were received as a result of committing predicate offence and actions constituting money laundering were committed with a purpose of giving lawful appearance to possessing, using and disposal of these funds or property, their acquiring or with a purpose of concealing their origin. The Ukrainian authorities indicated that according to the current approach, the mental element implies actual knowledge of the specific predicate offence. To prove the mental element of ML, it is sufficient to prove that the money launderer knew that the proceeds which were being laundered had derived from the specific predicate offence, knowledge of the details of that offence is not required.

85. The money laundering offence extends to "money or other property", regardless of its value. Article 190 of the Civil Code of Ukraine (CvC) defines "property" as "separate things, aggregate of things, as well as property rights and obligations". Article 179 of the CvC defines the notion of "thing" as a "subject of material world regarding which civil rights and obligations can appear". However these do not seem to cover intangible assets and legal documents or instruments evidencing title to, or interest in such assets. The authorities provided excerpts of court orders and decisions related to the imposition of seizure and confiscation measures on securities in combined investigations of ML and predicate offences. Nevertheless, the evaluation team remained concerned about the possibility to challenge such orders/decisions, as the scope of property captured within the ML offence does not provide for legal certainty.

86. The evaluators were informed by judges that for the purpose of initiating a money laundering investigation (criminal case), an investigation on a linked predicate offence should also be initiated simultaneously or prior to that. The same concerns convictions for money laundering, that is a prior or simultaneous conviction for the predicate offence is necessary to enable proving that the property is the proceeds of crime and, hence, issuing a conviction on ML. An exception to this practice is cited in the Supreme Court Resolution No. 5 which specifies that it is possible to issue a conviction on money laundering also in cases when a person who committed a predicate offence was exempted from criminal responsibility (for instance, in connection with ending of statute of limitation), or was not subject to such responsibility (for instance, in the case of the death of the person). This practice raises serious concerns on the possibility of investigating an autonomous money laundering offence and on the groundless large volume of evidence which is required in order to achieve a conviction for money laundering. The investigators and prosecutors whom the evaluation team met confirmed that this aspect hindered investigations and money laundering prosecutions.

87. Ukraine determines the underlying predicate offences for money laundering by reference to a threshold linked to the penalty of imprisonment applicable to the predicate offence (threshold approach). Note 1 to Article 209 provides that predicate offences for ML are all acts criminalised under the CC which are punished by a minimum penalty of more than three years, with the exception of two offences - article 207 (evasion of repatriation of foreign currency proceeds) and article 212 (Evasion of taxes, fees (compulsory payments)) – or any act which is a criminal offence under the criminal law of a foreign state which is punishable under the CC and which resulted in unlawful acquisition of proceeds.

88. The range of offences set out in the CC which are predicate offences to ML (see Annex III) include all required categories of offence with the exception of insider trading, market manipulation and financing of terrorism (in all its forms as required under the FATF Recommendations). It is also to be noted also that certain offences are not sufficiently covered, and only certain acts of these offences are covered (i.e. in aggravating circumstances).

89. The applied threshold is too high and does not meet the requirements of Recommendation 1. The practical consequence is that several categories of proceeds generating offences in Ukraine fall out of the designated scope of predicate offences solely on the basis of the high threshold (e.g. unlawful manufacturing - paragraph 1 of Article 204 of the CC, fraud - paragraph 1 of Article 190 of the CC, financial fraud - Article 222 of the CC).

90. Although the exemptions of Article 207 (Evasion of repatriation of foreign currency proceeds) and Article 212 (Evasion of taxes, fees or other compulsory payments) from the scope of predicate offences in Ukraine do not constitute direct shortcomings with regard to FATF Methodology, the evaluation team considers that this could have a negative impact on the overall effectiveness of the money laundering criminalization. The evaluators understand that this approach has been taken in order to avoid a focus on tax recovery rather than on the fight against proceeds of crime. However, a defendant under money laundering investigation may challenge criminal actions against him on the ground that the committed predicate offence by him should be considered as being tax evasion, instead of other similar predicate offences and thus, claim suspending the money laundering investigation. At the same time, this could impact negatively also on law enforcement authorities' action to pursue a money laundering investigation if an offence – money laundering – may not be prosecuted. The significance and importance of this issue is also raised given that the Ukrainian authorities stressed that tax evasion has been and still remains one of the major proceeds generating crimes in Ukraine. This could have a negative effect on the overall effectiveness of the money laundering criminalisation and as such constitutes a gap in the Ukrainian anti-money laundering regime.

91. It is also interesting to note that foreign offences are considered to be predicate to the money laundering offence in Article 209 on the sole condition of dual criminality, without the reference to the 3 year threshold, as in the case of domestic predicate offence.

92. In respect of extraterritorial application of predicate offences, Note 1 to Article 209 of the CC provides that the predicate offence should also embrace "any act which is a criminal offence under the criminal law of a foreign state that is punishable under the CC, and which resulted in unlawful acquiring of proceeds". Hence, it is inferred that predicate offences also extend to conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred in Ukraine. This statement is also proved in practice as the Ukrainian authorities have pointed out to several effective ML investigations, where predicate offences had been committed abroad. Such investigations can only be started in Ukraine when a conviction for the predicate offence has been obtained in the foreign country. Therefore, the evaluators strongly recommend that the criminal legislation should explicitly clarify that proof of the predicate offence (whether domestic or foreign) is possible through circumstantial or other types of evidence.

93. The Ukrainian law enforcement and judiciary authorities have confirmed that there is no distinction between self-laundering and third-party laundering elements either in Articles 209 and 306 of the CC, or in the law-enforcement and punitive practice. Thus, money laundering offence similarly applies to both cases regardless of the nature of a perpetrator.

94. Ukraine's criminal legislation includes a comprehensive range of ancillary offences for any type of crime, inclusive of money laundering. In particular:

- *Conspiracy to commit* is foreseen in Article 14 of the CC, which sets forth conspiracy for an incomplete offence as a criminalized action of "preparation for crime". Also, paragraph 2 of Article 209 and paragraph 2 of Article 306 of the CC stipulate aggravating liability for money laundering actions if they are committed by a group of persons upon prior conspiracy.

- *Attempt* is provided by Article 15 of the CC.

- *Aiding, abetting and facilitating* are covered by paragraphs 4 and 5 of Article 27 of the CC, which set forth such types of accomplices as abettor (who has who has induced another accomplice to a criminal offense) and accessory (who, inter alia, has facilitated the commission of a criminal offense by other accomplices)

- *Counselling the commission* is addressed by the same paragraph 5 of Article 27 of the CC, which stipulates that the accessory is a person who also promised in advance to conceal a criminal offender, tools or means, traces of crime or criminally obtained things.

Additional elements

95. Where the proceeds of crime are derived from the conduct that occurred in another country, which is not an offence in that other country but which would have constituted a predicate offence had it occurred domestically, it is considered by the Ukrainian authorities not to constitute a money laundering offence, since Note 1 of Article 209 of the CC specifies that in case of extraterritorial predicate offence, it should be envisaged under the criminal law of the foreign state.

Recommendation 2

96. In the Ukrainian legal framework, only natural persons can be held criminally liable, including of liability arising from a money laundering offence (article 18 of the Criminal Code). The evaluators were also advised that intention (knowing engagement in an offence) is required for ML.

97. Various types of evidence arising from objective factual circumstances might be used to infer intentional element of ML. In particular, Article 65 of the Criminal Procedure Code (CPC) of Ukraine sets that such circumstances as presence or absence of physical elements of an offence, the guilt of the offender, and other circumstances of importance can be established by testimonies given by a witness, victim, and suspect, accused; expert's opinion, exhibits, records of investigative and judicial actions, records with appropriate attachments drawn up by competent authorities as a result of operational-detective activities, and other documents. The evaluation team was told that in practice the mentioned types of evidence might prove the intentional element of money laundering offence based on factual circumstances such as time, place, the way in which, and circumstances under which money laundering has been committed.

98. Criminal liability for money laundering does not apply to legal persons. It seems that there is no fundamental principle of domestic law that prevents Ukraine from establishing criminal liability for legal persons, the Ukrainian authorities referred in this context to the legal tradition related to the status of legal entities (which were state-owned) during the Soviet period[27].

99. As regards administrative liability of legal persons, the authorities have referred to article 166-9[28] of the Code of administrative offences, which sanctions breaches of the anti-money laundering legislation, and more specifically failure to comply with KYC procedures, registration and reporting of financial transactions, record-keeping requirements and unauthorised disclosure of information reported to the FIU.

100. Furthermore, article 17 of the Basic Law lays down the possibility of imposing criminal, administrative, disciplinary and civil sanctions for violation of the provisions of the law. It specifically provides that legal entities which "conducted financial transactions for legalisation (laundering) of the proceeds or financed terrorism may be liquidated by a court ruling". Other punitive measures under this article include fines of 1000 untaxed minimal incomes or, in case of repeated violation of the law, restriction, suspension or termination of a licence or any other special authorisation to conduct certain types of activities. Civil law provisions (articles 49 and 470 of the Civil Code) allow for some sort of deprivation of income or assets in cases where an agreement goes against the interest of the state and society and the agreement has been voided by a court ruling.

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[27] The evaluation team was informed that a draft law on liability of legal persons for corruption offences (including criminal liability), was currently pending before Parliament.

[28] **Article 166-9 Breach of the anti-money laundering law (the law on prevention and combating of legalization of proceeds of crime)**

Failure to comply with the know-your-customer procedure or procedure for registration of financial operations subject to financial monitoring or reporting of false or misleading information on financial operations to the competent financial monitoring body or failure to keep KYC files, dossiers and documents related to financial transactions in due manner shall entail imposing a penalty on responsible officers of entities subject to primary financial monitoring at the rate from fifty- to one-hundred-fold nontaxable minimum individual income.

Unauthorized disclosure of information reported to the competent financial monitoring body or disclosure of the fact of reporting shall entail a penalty at the rate from one-hundred- to three-hundred-fold nontaxable minimum individual income.

101. In the absence of criminal liability, and considering the situation as described above, it appears that civil or administrative liability of legal persons for ML appear to be deficient in Ukraine. The Ukrainian authorities have provided statistics on sanctions applied by appropriate regulatory authorities, however such sanctions have been issued for non-compliance with legal requirements of the anti-money laundering regime and not for engagement of such institutions in ML activities.

102. As regards natural persons, articles 209 and 306 of the CC prescribe the following range of sanctions applicable for ML acts:

Reference	Qualification	Punishment
Money Laundering (article 209)	Ordinary money laundering (article 209(1))	imprisonment (3 - 6 years), and deprivation of the right to occupy certain positions or engage in certain activities for a term up to 2 years, and forfeiture of the money or property obtained illegally, and the confiscation of property.
(article 209(2))	(aggravating circumstances) Ordinary money laundering if repeated or committed by a group upon prior conspiracy or large scale money laundering (amounts higher than 6000 untaxed minimum incomes[29], that is UAH 1 545 000)	imprisonment (7-12 years) and deprivation of the right to occupy certain positions or engage in certain activities for a term up to 3 years, and the forfeiture of the money or property obtained illegally, and the confiscation of property.
(article 209(3))	(aggravating circumstances) Acts as provided for under 209(1) and 209(2), if committed by an organised group or especially large scale money laundering (amounts higher than 18000 untaxed minimum incomes, that is UAH 4 635 000)	imprisonment (8-15 years) and the deprivation of the right to occupy certain positions or engage in certain activities for a term up to 3 years and forfeiture of the money or property obtained illegally, and the confiscation of property.
Drug related money laundering (article 306)	Article 306 (1) Placement of proceeds from trafficking in drugs, psychotropic substances, their analogues or precursors, into banks, enterprises, institutions, organizations and their subdivisions, or using such proceeds for purchasing facilities, property which are subject to privatization, or equipment for productive and other needs, or using such proceeds (money and property) to continue illegal trafficking in drugs, psychotropic substances, their analogues or precursors	a term of five to twelve years with deprivation of right to hold certain positions or engage in certain activities for a term up to three years, with forfeiture of money or any other property obtained as proceeds from crime, and with confiscation of property

[29] In 2008, the non taxed minimum income of citizens is considered to be equal to UAH 257,50.

	Article 306 (2) (aggravating circumstances) Acts mentioned above if repeated, or committed by a group of persons upon prior conspiracy, or in respect of gross amounts (higher than 200 tax-free minimum incomes, that is UAH 51 500)	imprisonment for the term of 8 to 15 years and deprivation of the right to occupy certain positions or perform certain activities for the term up to 3 years and confiscation of property.

103. According to Article 65 of the CC, when imposing sanctions, judges shall take into consideration the degree of gravity of the committed offence, the character of the guilty person, the method and motives of the committed offence, the nature and size of damages, and the circumstances mitigating or aggravating the punishment. The same article provides that the punishment imposed on an offender should be adequate and sufficient to correct the offender and prevent new offences.

104. Compared with other economic crimes criminalised in the CC, the sanctions for natural persons for ML appear to be proportionate.

105. Investigators and prosecutors have mentioned that there were some inadequacies in the application of sanctions by the court and that since the adoption of the Supreme Court Resolution No. 5, the efficiency of sanctioning practice in money laundering cases had been raised. The evaluation team did not receive statistics related to the number of cases appealed. The prosecutors with whom the evaluation team met stated nevertheless that the number of appeals related to ML cases was relatively low and that they considered that overall, sanctions applied were dissuasive.

Effectiveness

106. Statistics on ongoing/completed investigations and court proceedings are collected and maintained by the Information Center of the Ministry of Interior and by the State Court Administration of Ukraine.

107. The following statistics were provided by the Ukrainian authorities:

Statistics of criminal proceedings under Article 209 of the CC					
Status of proceeding	**2004**	**2005**	**2006**	**2007**	**2008 (1st half)**
Number of initiated criminal cases in the specific year	608	527	473	536	268
Number of continued investigations since previous years	104	92	122	96	96
Number of criminal cases submitted to court	362	282	263	290	161
Number of issued convictions	129	148	116	143	67

Statistics of criminal proceedings under Article 306 of the CC					
Status of proceeding	**2004**	**2005**	**2006**	**2007**	**2008 (1st half)**
Number of initiated criminal cases	158	141	144	112	62
Number of continued investigations since previous years	6	10	2	7	3
Number of criminal cases submitted to court	136	123	127	97	51
Number of issued convictions	45	80	61	68	26

108. Between 2004 and 2008 (first half), there were 603 convictions for money laundering on the basis of article 209 and 280 convictions on the basis of article 306. There is no information available on the number of final convictions, appeals or number of acquittals for money laundering.

109. The judicial practice is that all convictions are achieved simultaneously with a conviction for the predicate offence or are directly linked to a conviction for the predicate offence. The officials met by the evaluation team confirmed that there were in practice no stand alone cases, most cases are predicate offences cases in the context of which ML was detected. The evaluators were told that most common types of predicate offence occur in the economic sphere or are crimes against property. Some cases relate to misuse of official positions and embezzlement.

110. Summaries of selected cases which were provided to the evaluation team indicated that sanctions applied in those cases 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.

111. The evaluation team was informed that prior to the clarifications brought following the adoption of the Supreme Court Resolution No. 5, there were mistakes in the application by judges of article 209 on average in 75% of the total cases. This was confirmed by a number of prosecutors who acknowledged that they had to introduce appeals in order to ensure that the application of the provision led to the appropriate sentencing. All interlocutors met by the evaluation team confirmed that the situation had tremendously improved.

112. The evaluation team was informed that most difficulties experienced by practitioners related to the requirement to identify and prove the specific predicate offence, in particular as regards the collection of evidence in this context and the difficulties experienced in proving the ML corpus delicti. Some persons met indicated that there seemed to be a practice that cases were introduced under article 209, the trial would focus on article 209 however the conviction would only be for the predicate offence.

113. As it can be seen from the above-mentioned statistics in relation to criminal proceedings under article 209, the number of yearly initiated criminal cases has been slightly dropping since 2004, except in 2007. The number of money laundering cases sent to court is also decreasing compared with the initial figures from 2004. The number of ML convictions has slightly increased in 2007.

114. As regards statistics covering the same period for criminal proceedings under article 306 (drug-related ML offence). The total number of initiated criminal cases and cases submitted to court is constantly decreasing, while convictions achieved rose from 45 in 2004 to 80 in 2005 and dropped to

61 in 2006 and 68 in 2007. Nevertheless, when considering the yearly number of criminal cases submitted to court, the overall percentage of achieved convictions out of criminal cases submitted has constantly increased.

115. Though these results can be seen as encouraging, particularly in the light of the efforts undertaken in 2005 by the Supreme Court to clarify the application of article 209, the evaluation team remains reserved on the effectiveness of the implementation of the ML offence in Ukraine.

2.1.2 Recommendations and comments

116. In order to fully comply with recommendations 1 and 2, the Ukrainian authorities should implement the following measures:

- Amend article 209 of the CC to include explicitly the actions of conversion or transfer of property in the physical elements of the ML offence.

- Ensure 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.

- Criminalise market manipulation and insider trading and ensure that the range of offences set out in the CC which are predicate offences to ML include all required categories of offences in all the relevant forms.

- Review the current threshold for predicate offences to bring it in line with the requirements under FATF Recommendation 1.

- Place additional focus on autonomous investigation and prosecution of money laundering offences, which should entail the ability to issue a ML conviction without prior or simultaneous conviction for a predicate offence proving that the property is the proceeds of crime. In this context, authorities should address the issue of the evidence required to establish the predicate criminality in autonomous money laundering cases by testing the extent to which inferences of underlying predicate criminality can be made by courts from objective facts, with a view to obtaining authoritative court rulings. The examiners advise that, as in some other jurisdictions, it may be helpful to put beyond doubt in legislation that a conviction for money laundering can be achieved in the absence of a judicial finding of guilt for the underlying predicate criminality. Further guidance and perhaps consideration of further legislative provision to clarify some of these issues will be necessary.

- Review the current approach concerning criminal liability of legal persons, and consider the possibility of amending the Criminal Code to make legal persons criminally liable, in particular for money laundering offences.

- Review the legal framework in place and measures taken so far so as to ensure that legal persons are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for ML.

- Improve and implement adequate training programmes in order to enhance the capacity of prosecutors to investigate and prosecute ML cases and of judges to effectively apply article 209 , in particular on the types and levels of evidence which the courts might consider acceptable to prove the physical and mental elements of the offence.

2.1.3 Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating
R.1	**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 • out of 20 designated categories of offences (insider trading and market manipulation) and financing of terrorism in all its aspects are 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
R.2	**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

2.2 Criminalisation of terrorist financing (SR.II)

2.2.1 Description and analysis

117. Ukraine is a Party to several international legal instruments related to the prevention and suppression of international terrorism[30]. It ratified the UN International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention) on 6 December 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[31] and amended the Criminal Procedure Code[32].

[30] Convention on offences and certain other acts committed on board aircraft (1963); Convention for the Suppression of unlawful seizure of aircraft (1970); Convention for the suppression of unlawful acts against the safety of civil aviation (1971); Protocol for the suppression of unlawful acts against the safety of civil aviation (1988); Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents (1973); International convention against the taking of hostages (1979); Convention on the physical protection of nuclear material (1980); Convention for the suppression of unlawful acts against the safety of maritime navigation (1988); Protocol of 2005 to the Convention for the suppression of unlawful acts against the safety of maritime navigation (2005); International Convention for the suppression of terrorist bombings (1997); International Convention for the Suppression of acts of nuclear terrorism (2005); European Convention on the Suppression of Terrorism (1977); Council of Europe Convention on the prevention of terrorism (2005).

[31] The evaluation team received three different translations of articles 258 and 258-1-258-4, it is understood that the provisions included in this report reflect the accurate translation.

[32] Law of Ukraine on introducing amendments to the Criminal and Criminal Procedure Code of Ukraine on combating terrorism (21 September 2006).

118. The terrorism offence is criminalised in article 258 of the CC as follows:

" *1. An act of terrorism, that is the use of weapons, explosions, fire or any other actions that exposed human life or health to danger or caused significant pecuniary damage or any other grave consequences, where such actions sought to violate public security, intimidate population, provoke an armed conflict, or international tension, or to exert influence on decisions made or actions taken or not taken by government agencies or local government authorities, officials and officers of such bodies, associations of citizens, legal entities, or to attract attention of the public to certain political, religious or any other convictions of the culprit (terrorist), and also a threat to commit any such acts for the same purposes, shall be punishable by imprisonment for a term of five to ten years.* "

119. The terrorism offence does not appear to cover all acts provided for by article 2(1) of the Terrorist Financing Convention. In particular, the scope of article 258 of the CC does not appear to cover certain actions specified under article 2(1)(a) of the Convention, which refer to the offences defined in one of the treaties listed in the annex (e.g. theft of nuclear material, unlawful seizure of aircraft, etc).

120. The Ukrainian criminal framework does not criminalise terrorist financing as an autonomous offence. The evaluators were informed that the acts constituting terrorist financing could be prosecuted under ancillary offences to terrorism (Articles 258.1-258.4 of the CC, as amended in September 2006) such as:

- Article 258.1 – Involvement in the commission of a terrorist act;
- Article 258.2 - Public calls for the commission of a terrorist act;
- Article 258.3 - Setting up a terrorist group or terrorist organisation;
- Article 258.4 - Facilitating the commission of a terrorist act.

121. The elements of terrorism financing may be found particularly in Article 258.3[33] paragraph 1, which criminalises actions of "[…] *materially, institutionally, or otherwise facilitating the setting up or operation of a terrorist group or a terrorist organisation*", as well as in Article 258.4[34] paragraph 1, which refers to the "[…] *financing, materially supporting, arming, training of a person for the purpose of committing a terrorist act, as well as using a person for such purpose*".

122. It appears that the above-mentioned articles of the CC do not include the whole spectrum of terrorist financing actions as provided in SR.II. Also, criminalisation of terrorist financing solely on the basis of aiding and abetting, attempt or conspiracy does not comply with SR.II. Hence, the referred articles cannot be considered as embedding all the requirements of SR.II in the criminal framework of Ukraine.

123. The noted provisions of the CC use the terms of "materially supporting" or "financing", which do not allow precluding whether such wording extends to "any funds", as it is defined in Article 1 of the Terrorist Financing Convention. The authorities referred in this context to the definition of funds and property contained in the Civil Code (articles 190 and 192). The legislation does not contain an autonomous definition of *funds* in line with the definition set out in the Terrorist Financing Convention and which would also include funds, regardless of whether they are from a legitimate or illegitimate source.

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[33] **Article 258-3. Establishment of terrorist group or terrorist organisation.**
1. Setting up a terrorist group or terrorist organisation, directing such terrorist group or terrorist organisation, or participating therein, as well as materially, institutionally or otherwise facilitating the establishment or the operation of terrorist group or organisation shall be punishable by imprisonment for a term of 8 to 15 years;

[34] **Article 258-4. Assistance in commitment of the terrorist act.**
1. Recruitment, financing (sponsoring), material support, arming, teaching (training) a person with the aim to commit a terrorist act as well as using a person for such purpose shall be punishable by imprisonment from 3 to 8 years.
2. Same actions committed repeatedly or in respect of several persons or by a group of persons upon prior conspiracy or by the state official with the use of his official status shall be punishable by imprisonment from 5 to 10 years.

124. Funding a terrorist group is not a crime unless that group consists of two or more persons which have been united for committing terrorist acts, which would appear to imply the necessary engagement in some preparatory acts for committing a terrorist act, even if the group could not complete the fact. The financing or material support is linked to a specific terrorist act.

125. As mentioned earlier, Ukraine's criminal legislation includes a comprehensive range of ancillary offences for any type of crime are provided for in the general part of the CC (c*onspiracy to commit* - Article 14 of the CC, a*ttempt* - Article 15 of the CC, a*iding, abetting and facilitating,* c*ounselling the commission* - Article 27 of the CC).

126. Since there is no stand alone TF offence, it does not fall in the scope of predicate offences for money laundering. It is also unclear whether the offences will apply regardless of the physical location of the person alleged to have committed the offence.

127. The evaluation team was also concerned about the implementation of criteria 2.2 to 2.5 of Recommendation 2, in the absence of an autonomous offence and given the lack of appropriate legal coverage of the subject matter on the other hand.

128. The evaluation team was advised that there e have not been any investigations of financing of terrorism or cases brought before the Court.

Additional elements

129. There are no statistics available as there were no TF investigations.

2.2.2 Recommendations and comments

130. Despite the fact that the Terrorist Financing Convention has been signed and ratified, there are several shortcomings with respect to the implementation of the provisions of this convention in the criminal substantive law. The evaluators strongly recommend the Ukrainian authorities:

- To ensure that the definition of terrorism fully covers all the terrorist acts set out in article 2(1) of the Terrorist Financing Convention;
- to amend the Criminal Code and introduce an autonomous terrorist financing offence fully in line with the requirements set out in the article 2 of the Terrorist Financing Convention and with the characteristics set out in Special Recommendation II;
- to ensure that the terrorist financing offences are predicate offences for money laundering;
- to ensure that the TF offences would apply, regardless of whether the person alleged to have committed the offence(s) is in the same country or in a different country from the one in which the terrorist/ terrorist organisation is located or the terrorist act(s) occurred/will occur;
- to provide that the law would permit the intentional element of the offence of TF to be inferred from objective factual circumstances;
- to review the current approach concerning criminal liability of legal persons, and consider the possibility of amending the Criminal Code to make legal persons criminally liable for TF, or otherwise subject legal persons to civil or administrative liability for TF;
- to take measures as necessary to ensure that criminal, civil or administrative sanctions for TF applicable to natural and legal persons are effective, proportionate and dissuasive.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**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).

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

2.3.1 Description and analysis

131. The confiscation and other deprivation of instrumentalities and proceeds from crime can be ordered on the basis of Articles 209 and 306 of the Criminal Code , according to which_“ confiscation of the money or property obtained illegally, and the confiscation of property” are both available as a supplementary sanction and can be applied simultaneously[35].

132. The supplementary sanction provided under article 209 (Legalising (laundering) proceeds from crime) covers two different types of confiscation:
a) confiscation of property;
b) special confiscation in the form of confiscation of money or other property obtained as proceeds from crime.

133. The first aspect – confiscation of property - is the one foreseen under Articles 51, 52 and 59 of the CC. They provide that property confiscation, as a supplementary punishment, consists of forceful seizure of all, or a part of, the property of a convicted person without compensation in favour of the state. The law also provides that where a part of property is to be confiscated, the court shall specify which part is to be confiscated or specify the assets to be confiscated. Article 59 provides that it is applied only for grave and special grave offences and only in specific cases provided for in the special part of the Code (for instance in aggravating circumstances of certain offences) [36].

[35] Articles 209 and 306 of the CC provide for a mandatory confiscation of the money or property obtained illegally, and the confiscation of property. Supplementary nature of such measures means that confiscation cannot be applied as a sole sanction in money laundering conviction, that is it should be applied in line with other sanctioning measures, such as e.g. imprisonment.
[36] The following list of property that cannot be not subject to confiscation is provided for by the annex to the CC:
1. Categories of property and items that belong to convicted person on the right of personal property or are a part of common property necessary for convicted or persons supported by convicted person cannot be confiscated:
1. Dwelling house with utility room in countryside if it’s convicted person’ and his family’ permanent residence.
2. Clothes and household goods necessary for convicted and persons supported by convicted person:
a) clothes – for each person: one summer or spring coat, one winter coat or kogyh (sheepskin coat), one winter suit (for women – two warm dresses), one summer suit, (for women – two summer dresses), one hat for each season.
Apart from, for women two summer kerchiefs and one warm kerchief (or shawl);
b) shoes in amount of one leather pair, one rubber pair and one valenki pair for each person;
c) linen in amount of two sets for each person;
d) bed-clothes (mattress, pillow, two bed-sheets, two pillow-cases, blanket) and two personal towels for each person;
e) necessary crockery;
f) furniture – one bed and chair (or stool) for each person, one table, one cupboard and one chest for the family;
g) all children items.
3. Food products, necessary for personal usage of convicted person, members of his family and persons supported by convicted person – for 3 month, of persons who farm - till the new harvest.
4. Fuel, necessary for convicted or persons supported by convicted person for preparing food and house warming during 6 month.

134. The special confiscation is aimed at forfeiting “money or other property obtained as proceeds from crime”, regardless of whether it is owned by an offender or a third party.

135. Although there are certain initiatives to amend the provisions on special confiscation in the CC, at the time of the on-site visit the CC did not further elaborate the scope of property, which was subject to special confiscation.

136. Confiscation of property that has been laundered or which constitutes proceeds from the commission of money laundering offence under measures of special confiscation is thus covered under article 209 of the CC.

137. However, 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 criminal legislation. Furthermore, not all predicate offences under the CC provide for property confiscation measures.

138. As regards the financing of terrorism cases, it is recalled in this context the absence of an autonomous FT offence, whereas existing terrorist related offences (Articles 258, 258.1-258.4 of the CC) do not include specifically confiscation as a sanction. It is also stressed that predicate offences in Ukraine mainly envisage an additional sanction of property confiscation. But, on the basis of Article 59 of the CC, such confiscation may be applied and extends only to the whole or part of the defendants’ personal property and not to any criminal proceeds, regardless of their ownership.

139. Provisional measures, such as seizing or arrest of property, are applied on the basis of Articles 29, 125 and 126 of the CPC and are supplemented by Article 59 of the Law on Banks and Banking of Ukraine. The noted provisions of the CPC authorise the investigator with a power to execute arrest of property for the purposes of securing recovery of material damages, civil claim, or possible confiscation. Article 59 of the Law on Banks and Banking, in line with Article 126 of the CPC, specifies that funds and other values belonging to physical and legal persons deposited on a bank account can be arrested exclusively on the basis of a court decision.

140. Articles 78 and 81 of the Criminal Procedure Code clarify which instrumentalities (“material evidence”) can be subsequently seized in the process of the gathering of evidence (that is items which had been an instrument of crime, preserved traces of crime or were object of criminal actions, money, values and other property from crime, and all other items which can be used as tools for disclosing the crime and detecting guilt […]”).

141. As it was clarified by the Ukrainian authorities, the described provisional measures may be carried out without prior notice. In practice, investigators take a decision (if a court decision is not required) to arrest relevant property. This decision is usually presented to the person holding or owning the property in question with a request to provide such property. If the person cannot be found or he/she impedes the execution of the action, arrest of property can be made without his/her knowledge or consent.

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5. One cow, in case of its absence – heifer; in case of absence of them both – one goat, sheep or pig – for farmers.
6. Food for cattle, that cannot be confiscated - in amount necessary for pasture of cattle on grassland or until gatter of new forage.
7. Seeds necessary for coming crops (autumn and summer), and not yet removed harvest – for farmers.
8. Agriculture equipment – for farmers.
9. Cottage industry tools and handcraft tools, and necessary tool, outfit and books for personal professional work of convicted person, except cases when court deprived convicted person of right to practice current activity.
10. Share dues to co-operation organizations (except cottage building co-operations) and collective farms.
NOTE. Share deposits to house building co-operations can be confiscated in case then building of the house is not finished.
11. In case of confiscation shares of convicted person in common property of collective farming or farming of citizen, undergoing individual labour activity in farming, amount of his share is defined after expel from this property that share of property that can’t be confiscated.

142. In the course of pre-trial investigations, law enforcement authorities are authorised (except for actions to be conducted in personal premises when a substantiated court decision is needed) to search premises, objects, instruments and documents (according to Chapter 16 of the CPC), as well as inspect surrounding area, premises, objects, and documents (according to Chapter 17). These actions are also aimed at identifying and tracing property that may further be subject to confiscation or is suspected of being the proceeds of crime.

143. In general, it is not possible to confiscate property from a third person who has acquired the property in good faith. Article 18 of the Law On Prevention and Counteraction to Legalization (Laundering) of the Proceeds from Crime (hereinafter referred to as the Basic Law) provides that upon a court order, the proceeds shall be confiscated by the state or returned to their owner whose rights and legitimate interests were violated, or their cost shall be compensated.

144. The same article stipulates the authority to void actions and contracts specifying that the agreements aimed at the legalization (laundering) of the proceeds and terrorist financing shall be considered null and void. The procedure of voiding such agreements (transactions) is further provided by the Civil Code of Ukraine.

Additional elements

145. In respect of confiscation of property of organisations found to be primarily criminal in nature, such mechanism is established in Ukraine only regarding terrorist organisations. In particular, Article 24 of the Law On the Fight Against Terrorism specifies that in case of acknowledging, by a court of Ukraine, including, in accordance with its international legal obligations, the activity of the organisation (its affiliations, branches, representative offices) registered outside Ukraine as a terrorist one, the activity of this organisation on the territory of Ukraine will be prohibited, its Ukrainian branch (affiliation, representative office) on the basis of court decision will be liquidated, and its property and property of the noted organisation, which is on the territory of Ukraine, will be confiscated.

146. Confiscation of property without a conviction (civil forfeiture) or confiscation in circumstances where an offender is required to demonstrate the lawful origin of the property are not possible under the Ukrainian legal framework.

Statistics

147. The State Court Administration of Ukraine holds data on judicial verdicts. However, such data does not contain comprehensive statistics on the number of cases in which confiscation was applied, nor on the relevant amounts.

148. The law enforcement agencies make reports on statistics according to the form No 1-LV, which includes also relevant data on arrested/seized property. The following statistics on the arrested/seized property were provided:

Statistics on the arrested/seized property for money laundering					
	2004	**2005**	**2006**	**2007**	**2008 (first half)**
Amount of arrested property (inclusive of proceeds) (in thousand UAH)	44197,6	32589,9	57666,8	58859,7	59901,9
Amount of seized property (in thousand UAH)	20875,7	13610,3	13701,9	18873	11235,4

149. The persons whom the evaluation team met acknowledged that one of the main challenges was to ensure timely arrest of funds so as to enable confiscation.

150. Furthermore, the evaluation team was informed of an on-going project to substantively change the confiscation regime in order to bring it in line with international standards and simplify existing procedures.

151. There are no statistics maintained on the number of ML cases and related amounts of property confiscated, thus no data is available to demonstrate the effectiveness of the confiscation regime.

2.3.2 Recommendations and comments

152. In the context of the planned modernisation of the legal framework for confiscation and seizure, the Ukrainian authorities should ensure that:

- the legal framework explicitly provides for confiscation of instrumentalities, confiscation of property of corresponding value, as well as confiscation of income, profits or other benefits from the proceeds of crime, in the context of a ML offence;
- all the predicate offences to money laundering provide for possibility of confiscation of an offender's property, in line with the FATF requirements;
- confiscation for the property used in or intended for use in terrorist financing cases is provided for;
- comprehensive statistics are kept on an annual basis on the number of cases and the amounts of property frozen, seized and confiscated relating to ML, FT and criminal proceeds.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**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 absence of relevant statistics

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

2.4.1 Description and analysis

General

153. The legal basis to enable freezing of funds used for terrorist financing in accordance with relevant UN Resolutions is set out in the Basic Law (Article 12.1), and in several resolutions of the Cabinet of Ministers of Ukraine which set out the obligations of competent national authorities to duly implement all the measures embedded in such international instruments:

- Resolution No. 351 of 11 April 2001 on implementation of the UNSCR on Talibans (UNSCR 1267 and 1333)
- Resolution No. 1800 of 28 December 2001 on measures to implement UNSCR 1373
- Resolution No. 749 of 1 June 2002 on execution of UNSCR on Usama Ben Laden, Al Qaida and Taliban (UNSCR 1388 and 1390)
- Resolution No. 751 of 25 May 2006 on approval of procedures of composing the lists of persons related to terrorist activity.

154. In addition, the SCFM adopted several orders:

- Order No. 74 of 19 April 2006 on approval of procedure of taking decision by the SCFM of further suspension of financial transactions, if its participant or beneficiary is a person included in the list of persons related to terrorist activity;
- Order No. 84 of 26 April 2006 on approval of procedure of informing entities of initial financial monitoring on the list of persons related to terrorist activity;
- Order No. 115 of 27 June 2006 on approval of procedure of creation of the list of persons and organisations related to terrorist activity by SCFM and informing entities of initial financial monitoring of this list.

155. The NBU, the SCFSMR and SCSSM have also introduced relevant procedures for suspension of financial transactions in March, April and respectively May 2006.

Obligations implemented under UNSCR 1267 (and successor resolutions) and UNSCR 1373

156. The Cabinet of Ministers' Resolution No. 351 of 11 April 2001 on implementation of the UNSCR on Talibans (UNSCR 1267 and 1333) provides that central and local executive power authorities, the Council of Ministers of the Autonomous Republic of Crimea within their competent shall take urgent measures to arrest funds and other assets, including the suspension of bank transactions on accounts, of Usama bin Laden, natural and legal persons associated with him, including funds and assets of Al-Qaida as well as funds received as a result of use or at expense of property under ownership or under direct or indirect control of Usama bin Laden, related natural and legal persons. It also requires them to take measures to prevent direct or indirect use of such funds and assets by Ukrainian citizens or other persons within the Ukrainian territory in the interest of Usama bin Laden, his associates, any enterprises under ownership or direct or indirect control of Usama bin Laden, related natural and legal persons including Al-Qaida.

157. The Cabinet of Ministers' Resolution No. 1800 of 28 December 2001 on measures to implement UNSCR 1373 also requires the Ministry of Finance, the Ministry of Internal Affairs, the State Tax Administration with the participation of the Security Service, the other central and local organs of executive power and the Council of Ministers of the Autonomous Republic of Crimea to take measures in accordance with existing legislation to impose arrest on "facilities, and other financial assets (stopping of bank transactions after the accounts) or economic resources" of persons designated in the context of Resolution 1373. To date, Ukraine has presented 5 reports to the Security Council on the implementation of S/RES/1373 (2001)37.

[37] See http://www.un.org/sc/ctc/countryreports/Creports.shtml (S/2001/1330, S/2002/1030, S/2003/1084, S/2004/863, S/2006/283)

158. Freezing of funds and assets of persons designated in accordance with both resolutions is carried out on the basis of procedures set out in the Criminal and Criminal Procedure Code, and as applicable relevant special laws (ie. law on combating terrorism, law on combating organised crime). Such procedures require prior notice to the designated person involved.

159. There have been no instances of freezing of funds or other assets of persons designated in the context of S/RES/1267(1999) and S/RES/1373(2001).

160. The designation of legal and natural persons involved in terrorist activities is undertaken according to the procedure set out in the Cabinet of Ministers Resolution No. 751 of May 25, 2006. The resolution sets out three grounds for enlisting persons involved in terrorist activities, which are:

- A court decision in legal force which recognises a person guilty of committing a crime under Article 258 (Act of Terrorism) of the CC;
- An information (documents) provided by relevant UN agencies on organisations or natural persons related to terrorist organisations or terrorists;
- court decisions, decisions of foreign competent authorities on organisations or natural persons involved in terrorist activities, which have been recognised by Ukraine according to international treaties of Ukraine.

161. The Resolution No. 751 indicates that information under above-mentioned grounds "a" and "c" is provided to the SCFM by the Security Service of Ukraine, whereas information under ground "b" is provided by the Ministry of Foreign Affairs. Information under "b" and "c" should be provided within one working day following its receipt. The Resolution also specifies the scope of necessary data on persons whether natural or legal, Ukrainian national or foreigner to be included in the terrorist lists.

162. The evaluation team was assured that the designation of terrorists according to UNSCR was done in a timely and effective manner. It was also noted that 5 persons were designated on the basis of Ukrainian court decisions (ground "a"), which had no ties with international terrorist activity. Ukraine has not received any information on decisions of foreign competent authorities (ground "c"), consequently there are no persons designated under this category.

163. Resolution No. 751 provides that upon receipt of relevant information from competent authorities, the SCFM draws up a consolidated list of persons related to terrorist activity within 3 working days, and it has to submit this list to designated financial and non-financial institutions and supervisory entities within 2 working days after the list is established or updated. The said notification procedure is further elaborated in the SCFM Order No. 84 of 26 April 2006. The order stipulates that the notification of banks of the existing and updated lists of terrorists is arranged through e-mail correspondence via the National Bank of Ukraine. The other designated non-bank entities are notified about the lists directly by the SCFM (through email, or if not possible, by post). Based on the same SCFM order, the list of terrorist related persons and all its changes are also placed on the SCFM official website (and any subsequent amendments to this list)[38].

164. Article 12.1 of the Basic Law provides that entities of initial financial monitoring are obliged to suspend execution of financial transaction if its participant or beneficiary is listed in the list of persons related to terrorist activity, and within the same day to report about it to the SCFM. Such suspension of financial transactions shall be performed for a period up to two working days. Then, the same Article stipulates that the SCFM can take a decision on further suspension of such transaction up to five working days and is obliged to inform immediately about it to the entity of initial financial monitoring and also law enforcement authorities. The SCFM has additionally set forth the procedure of executing its power on further suspension of a financial transaction due to the Order No. 74 of 19 April 2006. It was stated by the authorities that the procedure requires that the suspension is taken without prior notice of the designated persons.

[38] SCFM has adopted amendments to the list of persons related to terrorist activity through successive orders (Order No. 20925.10.2006 with changes and amendments approved by the Orders of SCFM of Ukraine #32 dated February 20, 2007; #90 dated March 25, 2007; #109 dated June 21, 2007; #120 dated July 9, 2007; #38 dated February 29, 2008; #91 dated May 15, 2008; #189 dated September 04, 2008; #215 dated October 23, 2008; #224 dated November 4, 2008)

165. The Ukrainian authorities informed the evaluation team that there had been no case of execution of such suspension action so far. It was noted that the SCFM had received signals on disclosed matches with enlisted persons several times, but the urgent checks returned negative results and the suspension of financial transactions had not ultimately been carried out.

166. Article 12.1 of the Basic Law delegates the initial suspension power only to the designated financial and non-financial entities. Thus, if such an entity does not fulfil its obligation to suspend a financial transaction linked with a terrorist, in such a case, from a formal point of view, no Ukrainian authority, inclusive of the SCFM, may timely suspend the transaction by its own initiative.

167. The procedure of designation links the suspension action with the above three categories of terrorists. In the context of UNSCR 1373, it is not clear whether the suspension will extend to the cases where no national court decision or appropriate foreign decision are existent, but the funds are disclosed to be owned or controlled by persons who commit, or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts.

168. Ground "c" of the noted designation provides an opportunity to examine and give effect to actions under freezing mechanisms of other jurisdictions. But, still, as information on designated persons under such a category is provided by the Security Service of Ukraine, it remains unclear whether prompt determination and suspension might be made by the appropriate foreign requests, received by the SCFM or other competent authorities.

169. The Basic Law links the suspension action with a financial transaction and no clarification is issued on which assets should be frozen in that case. It was also unclear whether it was possible to suspend (freeze) funds or other assets not connected with financial transactions. Hence, the evaluators had no legal grounds to assess the implementation of requirements under criterion SR. III.3.

Guidance to financial institutions and DNFBPs

170. Detailed guidance to the designated financial institutions on their actions under suspension mechanisms has been provided by their regulators (for banks - chapter 8 of the Resolution No. 189 of the National Bank of Ukraine adopted on May 14, 2003, for non-bank financial institutions - chapter 6 of the Resolution No. 25 of the State Commission for Financial Services Markets Regulation adopted on August 5, 2003 and the Decision No. 288 of the State Securities and Stock Market Commission adopted on May 12, 2006).

Publicly known procedures for considering delisting requests and for unfreezing the funds of delisted persons

171. The Ukrainian authorities explained that the same procedures which apply to the designation of terrorists are assumed to analogously extend to the de-listing process. They also referred to section 5 of the Cabinet of Minister's Resolution No. 751 which provides that the SCFM can "make a note" (reference) in the list on the existence of grounds for delisting natural or legal persons, though notes on such persons shall not be excluded from the list. Such grounds for delisting natural or legal persons are based on information received either from relevant UN agencies or on court sentences or decisions from other foreign competent authorities.

172. Having considered this argument, the evaluators remained concerned of the fact that the existing provisions do not appear to set out a completely clear and publicly known procedure which would enable to consider de-listing requests on the basis of established criteria other than information received from UN agencies or foreign competent authorities, and to unfreeze the funds or other assets of delisted persons or entities in a timely manner. Furthermore, the evaluators have not seen any text setting out such procedures for persons and entities designated under S/RES/1267(1999). To the evaluators view, this could lead to practical uncertainties of the legal substantiation of unfreezing actions when addressing such requests.

Publicly known procedures for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism

173. The same concerns mentioned above extend to non-existence of procedures for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism.

Authorising access to funds for certain basic expenses in accordance with UNSCR 1452

174. Ukraine has not established any procedure for authorising access to funds or other assets that were frozen and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses.

Right to challenge freezing measures

175. An entity designated by the list of terrorist may challenge any freezing (suspension) action of his funds in the court based on the established administrative procedures. The authorities noted that such an entity may rely on the Code on Administrative Justice of Ukraine, Article 2 of which specifies that any decision, action or inactivity of authorised agencies can be challenged in administrative courts.

Freezing, Seizing and Confiscation in other circumstances

176. Freezing or seizing of terrorist related funds or other assets may also occur through imposing of arrest on funds and other values obtained in a criminal way when conducting a, investigation according to a court decision (Article 59 of the Law on Banks and Banking and Articles 29, 125, 126 of the CPC). Nevertheless, confiscation of such funds is not possible in the course of criminal proceedings as Articles 258, 258.1-258.4 on terrorist related offences do not envisage confiscation of funds as possible sanctions for such offences.

Protecting bona fide third parties

177. The rights of bona fide third parties are protected on the basis of Article 18 of the Basic Law which specifies that upon a court order the proceeds shall be confiscated by the State or returned to their owner whose rights and legitimate interests were violated, or their cost shall be compensated. The concept of "owner" is interpreted widely and covers the protection of rights of third parties acting in good faith.

Monitoring compliance with freezing obligations

178. The regulators supervise compliance with freezing measures taken by financial institutions as a part of their financial monitoring requirements.

179. Sanctions for non-compliance to the mentioned requirements are set in the Basic Law (Article 17) and the relevant financial legislation (Article 73 of the Law on Banks and Banking, Articles 39 and 40 of the Law on Financial Services and State Regulation of Financial Markets, Articles 11-13 of the Law on State Regulation of Securities and the Stock Market). Such sanctions vary from imposition of fines up to withdrawal of the license.

180. As for non-financial institutions, no monitoring mechanism has been established to ensure that these institutions carry out their freezing actions in a due manner.

Additional Elements

181. It appears that the Ukrainian legal framework and the comprehension of the authorities are mainly focused on the list-based approach on the matter of ensuring timely freezing of terrorist funds. Hence, no sufficient guidance has been provided or efforts made to effectively apply measures stipulated by the Best Practices Paper as regards funds of non-designated entities.

182. As mentioned above, Ukraine has not implemented procedures to authorize access to the frozen funds or other assets for basic expenses.

Statistics (terrorist financing freezing data)

183. As there were no related cases, there are no statistics available on the number of persons or entities and the amounts of property frozen pursuant to or under UN resolutions relating to terrorist financing.

2.4.2 Recommendations and comments

184. The Ukrainian authorities have taken a number of measures to implement the United Nations Resolutions relating to the prevention and suppression of the financing of terrorist acts. 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 and implement adequately the requirements of Special Recommendation III.

185. The Basic Law should envisage the power for executing initial suspension (freezing) of financial transactions not only for the designated financial and non-financial entities, but also for authorised state agencies (the SCFM or other).

186. Ukraine should prescribe clearly that suspension (freezing) of terrorist funds extends to the cases where no national court decision or appropriate foreign decision are existent, but the funds are disclosed to be owned or controlled by persons who commit, or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts.

187. Freezing mechanisms of other jurisdictions are undertaken through the Security Service of Ukraine, which provides to the SCFM the submitted court decisions and other decision of foreign competent authorities. It is recommended to enable prompt determination and suspension (freezing) of terrorist funds also on the basis of appropriate foreign requests, received by the SCFM or other competent authorities.

188. The AML/CFT legal framework of Ukraine should enable suspension (freezing) of funds or other assets not connected with financial transactions.

189. Ukraine should review and complete the existing procedures for considering de-listing requests, develop procedures for unfreezing the funds or other assets of delisted persons or entities in a timely manner and take necessary measures to ensure that such procedures are effective and publicly known.

190. Ukraine should establish procedure for authorising access to funds or other assets that were frozen and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses.

191. It is also recommended to review existing provisions to enable confiscation of terrorist related funds in the course of criminal proceedings on terrorist related offences (specified under Articles 258, 258.1-258.4 of the CC).

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**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.

Authorities

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

2.5.1 Description and analysis

Functions and responsibilities

192. The State Department for Financial Monitoring (SDFM) was created by Presidential Decree No. 1199 of 10 December 2001 on Measures Aimed at Prevention of Legalization (Laundering) of the Proceeds from Crime[39], within the Ministry of Finance and started operating in 2002[40]. The FIU became fully operational on 12 of June 2003 when it started receiving information from reporting entities.

193. Following the adoption of the Basic Law[41] in 2002, a series of changes were introduced which modified the national AML/CFT system. Late 2004, with the adoption of the Presidential Decree No. 1144/2004 (dated 28 September 2004, in force on 1 January 2005), the SDFM became the State Committee for Financial Monitoring (SCFM). It is an administrative type of FIU.

194. The powers and duties of the SCFM are listed in the Basic Law (Section IV – Tasks, functions and rights of the authorised agency) and its Statute (articles 3, 4 and 5). The most important ones are:

- 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.

[39] Implemented following the adoption of the Resolution of the Cabinet of Ministers of Ukraine of January, 10, 2002 # 35.
[40] Resolution of the Cabinet of Ministers No. 194 of 18 February 202 approved the Regulations on the SDFM, Resolution No. 187 increased its staff from 40 to 30 employees.
[41] The Law of Ukraine "On Prevention and Counteraction to Legalization (Laundering) of the Proceeds from Crime".

- 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.
- Representing Ukraine in international organisations on matters of combating money laundering and financing of terrorism.

195. The SCFM had at the end of 2007 established regional subdivisions in 25 regions[42] of Ukraine. The main functions of these subdivisions, the description of each being approved by the SCFM are:

- Tracking of case referrals submitted by the SCFM to the law enforcement agencies (control and processing of such cases by law enforcement agencies and any related assistance)
- Providing guidance to reporting entities in the region.
- Forming of registry of financial intermediaries in the region.
- Improving information exchange and co-ordination of the activities of regional divisions of the state agencies involved in AML/CTF.

Receiving, analysing and disseminating disclosures of STRs and other relevant information

196. The Basic law provides that the SCFM receives "information about financial transactions subject to compulsory financial monitoring" from listed entities of initial financial monitoring[43]. It is tasked with taking measures to analyse the information on financial transactions submitted by obliged entities and to check such information (article 13, first bullet). It receives information about financial transactions which fulfil the criteria set out in the Basic Law or other financial transactions when an obliged entity has grounds to believe that a financial transaction is aimed at the legalisation of proceeds.

197. The SCFM is currently 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 co-ordinated by the Cabinet of Ministers of Ukraine. It operates in accordance with the provisions of its Statute[44].

198. According to the Basic Law, the SCFM is responsible for providing guidance to reporting entities on the reporting procedure (Article 13). Guidance on the manner of reporting, the reporting forms and procedures were provided by the National Bank of Ukraine and the SCFM for banks[45] and by the Cabinet of Ministers and SCFM (formerly SDFM) for other reporting entities[46]. Further guidance to reporting entities is provided by the SCFM by the means of a 'hot line'. Consultations are also provided in various meetings held between the SCFM and reporting entities, as well as in training seminars.

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[42] Autonomous Republic of Crimea, Vinnytska, Volynska, Dnipropetrovska, Donetska, Zhytomyrska, Zakarpatska, Zaporizka, Ivano-Frankivska, Kirovogradska, Kyivska, Lvivska, Luganska, Mykolayivska, Odeska, Poltavska, Rivnenska, Sumska, Ternopilska, Kharkivska, Khersonska, Khmelnytska, Cherkaska, Chernivetska and Chernigivska Oblasts.

[43] Article 4: a) banks, insurance and other kinds of financial institutions, b) payment organisations, members of payment systems, acquiring and clearing institutions, c) commodity, stock and other exchanges, d) professional operators in securities market, e) joint investment institutions, f) gambling and pawn institutions and legal entities holding lotteries; g) enterprises, institutions that manage investment funds or non-governmental pension funds, h) communication companies and associations, other non-crediting institutions that transfer funds, i) other legal entities that process financial transactions according to the law.

[44] Presidential decree No. 1527/2004 of 24 December 2004 which was subsequently abrogated and replaced by Resolution No. 100 of 31 January 2007 of the Cabinet of Ministers.

[45] Resolution of the Board of the NBU of May 14,2003 #189 On approving the regulation on implementing financial monitoring by banks, Order of the SCFM No. 259 of 19 December 2006 on approval of Card for registration of the entity of initial financial monitoring –Bank and compliance officers and instruction concerning its completion and submission.

[46] SDFM Orders No. 48 of 13 May 2003 of the SDFM on execution of certain forms relevant to financial monitoring and instructions for their completion, registered with the Ministry of Justice on 23 May 2003 (No. 394/7715) and No. 122 of 28 September 2008 on implementation of procedure of assigning of identification to the entities of initial financial monitoring for submitting information to the SCFM and submitting information in electronic form by non-banking entities of initial financial monitoring; Resolutions of the Cabinet of Ministers No. 644 and No. 646 dated 26.04.2003 on Procedure for the registration of financial operations of entities of initial monitoring and No. 1800 of 20 November 2003 on approval of the procedure for conducting internal financial monitoring by business entities (casinos, gambling institutions and pawnshops).

199. Banking institutions have to submit their reports electronically while non-banking institutions are allowed to submit them either in electronic form or on paper. To submit information to the SCFM, a registration card must be submitted which is used for identity purposes and which includes information on the entity of initial financial monitoring (name, location, contacts, information concerning the compliance officer, etc). The report must contain:

- data on the entity and employee which submitted the transaction, a transaction number, the date and time of submission
- date/time of execution, transaction amount and currency, and grounds for executing the transaction
- information concerning assets, which are transferred during the transaction
- special characteristics about the transaction and explanation of its details
- information concerning client executing the transaction and where relevant, the person or beneficiary on whose behalf the transaction was executed, as well as information concerning other relevant persons/participants
- any other relevant additional information

200. Reports are registered in accordance with the procedures established. Upon receipt, the FIU checks whether the report contains any errors. Such reports are not registered, they are sent back to reporting entities so as to make the necessary corrections. However, such reports are saved within the database in a separate folder and analysis can begin on them before the corrected reports are finally received. The evaluation team was informed that at the beginning, about 12% of the reports received contained mistakes. The percentage of reports not registered by the FIU fell from 4.2% in 2004 to 1.5% during the first eight months of 2008, an indication that the quality of reports received increased. The reporting form for non-banking entities (paper submission) was approved by the SCFM Order No. 48 and the date of implementation of this order was the same with that of the Basic Law. In order to improve the reporting form, separate amendments were introduced by new SCFM Orders[47]. The reporting form for non-banking entities (electronic submission) was approved by the SCFM Order No. 122 of 12 of October 2004. Amendments were also introduced by further SCFM Orders[48]. Regarding the reporting form for banks this has been approved by the NBU Resolution No. 233 of 9 of June 2003.

201. Reports on financial transactions submitted to the SCFM electronically or by paper submission are processed automatically by the IAS (Information Analytical System-software) and they are registered and stored for further investigation by the Analytical Work Department. In cases where mistakes are detected i.e. incorrectly completed fields, in the reports of the financial transactions, the SCFM sends an informational message to the reporting entity. After that the reporting entity is obliged (SCFM Order No 40 from 24.04.2003) to submit the corrected report to the SCFM within 3 days. This processing uses a risk-oriented approach and divides the reports into three separate risk levels – high/medium/low. If a report involves suspicions on terrorist financing this is processed immediately and a case referral is constructed on the same day. All reports for which nothing is initially found remain in the database for future use. Those financial transactions that meet the defined risk criteria are handed over to the Director of the Analytical Work Department, who then distributes the materials between the structural divisions of the Department for further analysis. An analyst then collects all possible information related to the financial transactions, including information related to the subjects that conducted or made an attempt to conduct the transaction. The analysis is conducted by using information from reporting entities, law enforcement agencies, regulators and other state bodies, information from foreign FIUs, information obtained from open sources (internet, commercial databases) etc.

202. ‘Dossiers’ are then prepared which may contain a number of related transactions. Transactions can be linked by the IAS during the initial processing or by the analyst later during his/her analysis. Then a decision is made by the Director of the Analytical Work Department whether the ‘dossiers’ will be

[47] SCFM Orders No 115 of 26 of September 2003, No 161 of 17 of August 2005 and No 87 on 5 of May 2006.
[48] SCFM Orders No 162 of 17 of August 2005 and No 87 of 5 of May 2006.

rejected or whether there are suspicions for ML/FT, in which case they will become case referrals to be submitted to the Expert Commission. The average time required to complete a case referral for presentation to the Expert Commission varies accordingly. If the case is considered to be urgent this should be done within one working day. In other cases it depends on the complexity and volume of the information but the analyst has actually unlimited time until all the necessary information is collected so that a decision can be made on whether there is a suspicion regarding ML/FT.

Access to financial, administrative and law enforcement information

203. The former SDFM had signed a number of joint agreements, which define the type of information it requires, with the following institutions: State Commission on Financial Services Markets Regulation (September 2003), Antimonopoly Committee (November 2004), National depositary of Ukraine (August 2004), Pension Fund (August 2004), State Committee for Regulatory Policy and Entrepreneurship (May 2004), National Bank (January 2004), State Property Fund (December 2003), National Central Bureau of Interpol (September 2003), Ministry of Internal Affairs (May and September 2003), State Committee on Statistics (August 2003), State Customs Service (August 2003), General Division for Control and Revision of Ukraine and SCFM (May 2003), State Committee on State Border (May 2003).

204. The Basic Law (article 14) provides that the SCFM has the right to receive, according to the procedure established by the law, information from executive bodies, law enforcement, local self government authorities, enterprises and institutions.

205. Through the Unified Information System, created in 2007[49] as an interagency system containing information from various databases of state agencies of Ukraine, the SCFM can access directly various external databases such as from the :

- Ministry of Internal Affairs (eg. criminal records, possession of firearms, missing persons, lost passports, registered and stolen vehicles, etc)
- Ministry of Finance (licences),
- Ministry of Economy (entities of foreign economic activity which violated the legislation on foreign economic transactions or which are under special sanctions),
- Security Service of Ukraine (initiated criminal cases on suspicions of ML/TF),
- State Customs Service (customs freight declarations),
- State Tax Administration,
- State Property Fund
- State Commission on Financial Services Markets Regulation
- State Committee for Statistics
- State Commission on Securities and Stock Market
- State Committee on Land Resources
- Administration of State Border Service (information on transit of persons and vehicles, illegal transit)
- General Division for control and revision (results of state financial audit and inspections)
- State Committee for entrepreneurship (list of licences on execution of certain types of economic activity)

206. Regional offices have access to a part of the Unified Information System (composition of the register of reporting entities), access to other information can be obtained through written request.

Additional information

207. Upon request of the SCFM, listed reporting entities[50] are required to provide additional information related to the financial transactions that have been reported, not later than within three working days

[49] Established following the Cabinet of Minister's Resolution No. 1896 of 10 December, 2003 On Single State Informational System in the Sphere of Prevention and Counteraction to Legalisation (Laundering) of the Proceeds from Crime and Financing of Terrorism.

[50] Real estate agents, dealers in previous metals and stones, lawyers, notaries, other independent legal professionals and accountants are not covered by the Basic Law as reporting entities.

from the moment of receiving the request of the FIU[51]. If the request for additional information is related to the execution of a request from a foreign FIU, entities should provide this information within 10 days. The evaluation team was informed that in practice there are no delays, and that a small number of entities are not able to provide the information within the set deadline. In such cases, they can be subjected to administrative sanctions (procedure through courts). The SCFM can also send the information of non compliance to their respective regulator, which has also powers to apply administrative sanctions.

Dissemination of information to domestic authorities

208. Article 13 of the Basic Law authorises the SCFM to disseminate "relevant materials" to law enforcement authorities. The Statute further provides that it provides to law enforcement agencies "case referrals under the availability of reasonable grounds to consider the financial transaction as one that might be related to the laundering of the proceeds from crime and terrorist financing" (article 4(4)).

209. Case referrals in this context are defined as "documents prepared by the SCFM on the basis of information on the financial transaction subject to financial monitoring and other information received" when "there are sufficient grounds to suspect that the financial transaction related to ML or TF". According to Article 7 of the Basic Law incomplete transactions are reported to the SCFM. However, this seems to concern only transactions refused by the reporting entities and not transactions that the client for some reason decides not to execute. Sufficient grounds are considered to be sound grounds for suspicion that financial transactions are performed or are connected with ML/TF i.e. use of forged documents, business entities with fictitious features, inconsistency between performed operations and financial condition etc.

210. The procedures for submission of case referrals are set out in two joint orders, one with the General Prosecutor's Office[52] (2003) and the other one with the State Tax Administration, the Ministry of Internal Affairs of Ukraine and the Security Service[53] (2006). Prior to 2006, specific joint orders with each of the law enforcement agencies were in place.

211. The SCFM prepares the case referrals which are submitted for consideration to an Expert Commission. The Expert Commission was created in March 2005 through the SCFM Order no. 65[54]. The Expert Commission is composed of SCFM members (Head, deputies, Directors of the analytical department, legal department and other experts from the analytical department).

212. The Statute of the Expert Commission sets out its main tasks, that is:

- considering draft case referrals
- taking a decision on the existence of reasonable grounds for case referrals to be submitted to law enforcement agencies
- determining to which law enforcement agency cases should be submitted
- discussing problematic issues on the state of consideration of case referrals previously submitted to law enforcement agencies.

213. Nominated persons from law enforcement agencies (State Tax Administration, the Ministry of the Interior, the Security Service and the General Prosecutor's office) can be invited to participate in the meetings of the Commission according to the Statute, but not if the Commission considers draft case referrals with indicators of terrorism.

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[51] The Law of Ukraine "On Prevention and Counteraction to Legalization (Laundering) of the Proceeds from Crime", Article 5.

[52] Order of the SDFM acting within the Ministry of Finance and the General Prosecutor's Office of Ukraine (20 August 2003) No. 98/40 registered with the Ministry of Justice on 2 September 2003 No. 759/8080.

[53] Order of the SCFM, the State Tax Administration of Ukraine, the Ministry of Internal Affairs, the Security Service dated 28 November 2006 (No. 240/718/1158/755), registered with the Ministry of Justice on 15 December 2006 No. 1312/13186.

[54] SCFM Order no. 65 of 04.03.2005 on establishment of SCFM expert commission for consideration of case referrals (additional materials) elaborated for submission to law enforcement agencies.

214. Case referrals are presented to the Commission by the Head of the analytical department of the SCFM. During meetings, the law enforcement agencies representatives have the right, inter alia, to consider the draft case referrals, introduce proposals on modification and expediency/inexpedience of case referrals submission, introduce proposals on which law enforcement agency the case should be submitted and propose to obtain additional materials for previously submitted case referrals.

215. The Expert Commission decides whether a case referral should be transmitted to a law enforcement agency, and to which agency specifically, whether the case referral is rejected or whether additional materials are necessary, in which case it sets a deadline for the modification of the draft case referral. Decisions are adopted at a simple majority by the Expert Commission (i.e. the FIU). The physical act of transmitting case referrals to the law enforcement authorities is to be carried out by the SCFM within 5 business days.

216. The evaluation team was told that the Commission met 2-3 times each month, but the Statute of the Expert Commission only mentions that meetings are conducted on the basis of availability of case referrals.

217. It was explained that dissemination to one or the other law enforcement agency was taken on the basis of competence for the predicate offence (article 112 of the CPC). The order provides also for the possibility, when several law enforcement agencies are interested in the case referral, that a copy of the case referral be sent to every law enforcement agency (part 3.4.5 of the joint order).

218. Law enforcement bodies are required to provide feedback on the stages of processing case referrals to the SCFM they receive. This takes place once every three months although meetings are held more regularly between the regional law enforcement offices and the regional SCFM subdivisions so as to provide guidance regarding the case referrals to the law enforcement authorities.

Operational independence and autonomy

219. The Basic Law includes provisions on the political independence of the SCFM (article 13-1).

220. Prior to January 2007, the Head of the SCFM was being appointed by the President upon proposal of the Prime Minister for a term of 7 years and was being dismissed by the President. He was personally accountable to the President and the Cabinet of Ministers. Deputies were appointed and dismissed by the President. The first Head of the SCFM remained in office for the period 2002 – end 2007 and then the current Head was appointed. The Head of the FIU cannot be involved in any official political functions.

221. According to its new Statute of 31 January 2007, the Head of the SCFM is appointed upon proposal of the Prime Minister of Ukraine and is dismissed by the Cabinet of Ministers. Deputies are appointed and dismissed by the Cabinet of Ministers. The duration of the term is not specified. The Head of the SCFM is personally responsible for the execution of tasks by the SCFM and the implementation of the AML/CFT state policy.

222. The Head of the SCFM decides upon the structure of the SCFM, the distribution of functions among its Deputies and the degrees of responsibility of Deputy Heads and leaders of the visions, appointments and dismissals subject to the approval of the Vice Prime-Minister. The exact number of employees of the SCFM is approved by the Cabinet of Ministers The Head of the SCFM determines himself the priorities and strategic directions of the SCFM, decides on the distribution of the budget funds and appoints heads of regional subdivisions. As regards major priority directions of the activity, a Board of the SCFM composed of the Head, deputies and heads of divisions is established.

223. The SCFM feels that they can carry out their tasks independently without any influence or interference from third parties.

Protection of information and dissemination

224. Data held by the FIU is securely protected in the FIU database and is properly backed up. It is only disseminated in accordance with the Law[55]. The Criminal Code of Ukraine establishes liability for any illegal disclosure of this information - a person can be punished by a fine of 2000 to 3000 untaxed minimum incomes or imprisonment for a term up to 3 years[56].

225. The SCFM pays much attention to ensure the security of information and access to information held is restricted according to levels of access of staff. The IT department of the FIU possesses all necessary technology which enables the protection of all information held at the FIU.

226. Information disseminated is of "restricted access" and is categorised as confidential and secret. Case referrals which include bank and/or commercial secret information include a specific reference to that effect. Each case referral has confidentiality status and it was explained to the evaluation team that law enforcement agencies would need to request the lifting of the confidentiality status in order for such information to be used in ML investigations as evidence. When hard copies of case referrals are sent to the regional subdivisions this is done through a special courier to protect the secrecy of such information.

Release of reports

227. The SCFM has been issuing annual reports about its activities since 2003[57]. These reports contain information on legislation developments, statistics of reports received, examples of court cases, analytical activity and money laundering activities, the work of the regional subdivisions, inter-agency co-operation, training issues, international co-operation. The SCFM has also published yearly reports on money laundering schemes and typologies.

Egmont Group

228. The Ukrainian FIU has been a member of the Egmont Group since 26 June 2004. Since that time, it has participated in the activities of all the working groups. In 2006, Ukraine was appointed to the administration of Operational Working Group and in October 2007, it hosted a meeting of the working groups in Kyiv.

229. Ukraine takes into account both the Egmont Group Statement of Purpose and its Principles for information exchange between financial intelligence units[58].

Recommendation 30

Structure

230. The structure of the SCFM is adopted by the Head upon approval by the Cabinet of Ministers. The Head of the SCFM has 1 first deputy and three deputies.

231. The SCFM has its headquarters in Kyiv. The SCFM consists of 5 departments (Department for interaction and methodic provision of financial monitoring system, Analytic Work Department, Legal Department, International Co-operation Department and IT Department), 8 divisions (Financial Division, Division for organizational and analytical provision of work of the Head, Human Resources Division, Regime and Security Division, Division for control and revision work, Document keeping division, Division for economic provision, Division for control work), and other units. It also administrates the State Training Centre of Postgraduate Education (Training methodical centre for re-

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[55] The Law of Ukraine on Prevention and Counteraction to Legalization (Laundering) of the Proceeds from Crime, Article 8.
[56] Criminal Code, article 209-1.
[57] These reports are published on the website of the SCFM in Ukrainian and English. See http://www.sdfm.gov.ua/index.php?lang=en
[58] Egmont Group Statement of Purpose and Egmont Group Principles for Information Exchange Between Financial Intelligence Units for Money Laundering.

training and professional developments of experts on financial monitoring issues in the sphere of combating laundering of criminal proceeds and terrorist financing) and the State Company Division for Service and Property. (see annex III)

232. The SCFM has established 25 regional subdivisions, which are subordinate to the Head of the SCFM. Regional subdivisions don't have legal personality and their functions and operations are regulated by the model Statute on regional subdivisions . The subdivisions are an integral part of the SCFM and have no subordinated in their action to the regional authorities.

Resources

233. Financing of the SCFM is carried out from the state budget within the limits of the budget assignations. The budget of the SCFM is being determined annually by a separate article in the Law on State Budget of Ukraine. According to this Law the SCFM estimated budget is proposed by the Head of the FIU and subject to the approval of the Ministry of Finance of Ukraine. The budget of the SCFM and the number of staff has been growing since 2004, as shown by the table below. Furthermore, in 2004 and 2005, 38.9 millions of UAH (approx. 5.5 millions Euros) were assigned from the state budget for the reconstruction of the SCFM building.

	2004	2005	2006	2007	2008*
Budget (UAH millions)	29.30	17.80	33.70	41.00	17.90
Staff number	95	188	257	319	332

*First 6 months

234. The maximum number of staff that can currently be employed at the FIU is 338 persons and at the time of the on-site visit there were only 6 vacancies. The Analytical Department comprises 63 staff . The structure is as follows:

- 49 employees dealing with the analysis and preparation of the data for the Expert Commission's consideration.
- 5 employees dealing with the co-operation with law enforcement agencies i.e. delivery of materials of case referrals to the law-enforcement agencies and further maintenance of case referrals.
- 7 employees with their main tasks being the development of ML/TF Typologies, evaluating the existing criteria of risk, software improvement etc
- 2 employees that are responsible for circulating the documents to the rest of the personnel.

235. Regional subdivisions have each between 6 to 8 staff. The evaluators were told that the turnover of SCFM was quite small. Salaries are determined by the Cabinet of Ministers. An average salary of a chief specialist of SCFM in 2007 was of 4100 UAH (approx. 550 Euros), and the evaluation team was told that the level of salaries of staff were among the highest of civil servants in Ukraine. The SCFM appeared to be satisfied with the budget resources allocated.

236. The SCFM is equipped with modern high-capacity equipment and appropriate software, enabling it to collect, analyse, store and disseminate a large number of STRs. The FIU receives currently about 3,000 STRs per day. By the end of 2007, the FIU had received 3.6 million STRs. The technical infrastructure makes it possible to use the most modern data processing software for handling data and protecting information. The IT system put in place appeared impressive and capable of storing large volumes of data.

Professional Standards

237. The Law of Ukraine on Civil Service contains several requirements regarding the need for staff of competent authorities to maintain high professional standards (articles 5, 10 and 29), including an obligation to preserve state secrecy, information that they may receive as a result of their duties and other information which cannot be made public in accordance with the legislation. Being civil servants, the employees of the FIU must comply with these requirements. The FIU has its own enhanced standards when hiring personnel All employees have job descriptions, containing relevant requirements as regards the professional experience, skills and abilities, business and personal qualifications. The staff of the SCFM is formed from highly skilled experts, all with higher education, mostly with economic backgrounds.

238. The officials of the FIU claimed that although corruption is a major problem in Ukraine, it has not affected the FIU. The SCFM has taken necessary measures in order to prevent and combat cases of corruption. An Internal Security Service has been formed which deals with these issues. Various measures have been applied i.e. restricted access to the information held at the FIU, the analysts cannot take information from their computers, videotaping is prohibited etc.

239. The Statute of regional subdivisions contains explicit requirements regarding the standards applicable for the recruitment of Heads of regional subdivisions: professional standards (high decree of education, record of state service at executive level position of at least 5 years and of other executive position in other sectors of at least 7 years and have experience in personnel management), standards regarding confidentiality of official and state secrecy information and for circulation of documents of restricted access.

Training

240. The staff of the SCFM receives training at the "State Training Centre of Post-Graduate Education - Training-Methodical Centre for Re-Training and Professional Development of Experts on Financial Monitoring Issues in the Sphere of Combating Legalization (Laundering) of Criminal Proceeds, and Terrorist Financing" -hereafter the Training Centre- which was established under the Ukrainian FIU administration as a state educational institution[59]. The main task of the Training Centre is to provide training regarding combating money laundering and financing of terrorism issues to the personnel of the FIU, law enforcement authorities, supervisory authorities, reporting entities and judicial agencies. The training course is approved by the Ministry of Education and Science of Ukraine and by the SCFM and the SCFM programme appeared to be rather comprehensive.

241. In 2007 the Training Centre provided training to 262 employees of the FIU, supervisory, law enforcement and judicial authorities, 12 employees of financial intermediaries . It also trained and experts of the Moldovan FIU, Belarus, Kyrgyz Rep, "the former Yugoslav Republic of Macedonia", Georgia. In the period from 2005 to 2007 training related costs on AML issues amounted to 1.5 millions of UAH (approx. Euros 200 000) at the expense of funds of state budget. A large number of trainings were organised with financial support through a joint programme of the Council of Europe and the European Commission (MOLI–UA) . The SCFM elaborated and published an AML/CFT manual , 3500 copies which were disseminated free of charge to law enforcement agencies, institutes and to SCFM staff who undertook the training.

[59] Directive of the Cabinet of Ministers of Ukraine of December, 13, 2004 # 899-p "On Establishment of the Training-Methodical Centre for Re-training and Professional Development of Experts on Financial Monitoring Issues in the Sphere of Combating Legalization (Laundering) of Criminal Proceeds, and Terrorist Financing".

Recommendation 32

242. The FIU keeps various detailed statistics, which are provided below.

Year	Number of reports selected for active elaboration	Number of dossiers for creation of which were used such reports	Number of STRs processed
2004	59 392	865	725 959
2005	104 770	925	812 549
2006	159 087	905	841 589
2007	194 756	1 331	1 022 858
I half 2008	77 973	815	520 219

	Year	Number
Number of STRs processed	**2004**	725 959
	2005	812 549
	2006	841 589
	2007	1 022 858
	2008 (6 mon.)	520 219
	Year	Number
STRs submitted to law enforcement	**2004**	--------
	2005	87 197
	2006	207 876
	2007	264 688
	2008 (6 mon.)	103 296

	Year	Number
Case referrals submitted to law enforcement (consisting of various STRs)	**2004**	164
	2005	321
	2006	446
	2007	520
	2008 (6 mon.)	317

243. In 2006, 446 case referrals (representing 207876 reports) were submitted to law enforcement agencies (34 to the General Prosecutor's Office, 117 to the State Tax Administration, 135 to the Ministry of Interior, 160 to the Security Service). As a result, 163 criminal cases were initiated and 8 were submitted to the Court.

244. In 2007, 520 case referrals were submitted to law enforcement agencies (47 to the General Prosecutor's Office, 169 to the State Tax Administration, 145 to the Ministry of Interior, 159 to the Security Service). As a result, 271 criminal cases were initiated and 40 were submitted to the Court.

245. Statistics for 2008 are provided below:

	since 01.01.2008 till 30.06.2008					Totally as 01.07.2008				
	GPO	STA	MIU	SSU	totally	GPO	STA	MIU	SSU	totally
Submitted case referrals	14	100	82	121	**317**	185	507	495	599	**1786**
Case referrals under which criminal cases were initiated (or used at initiation)	4	30	9	10	**53**	112	285	203	156	**756**
Case referrals under which initiation of criminal cases was rejected on the grounds of the Article 6[60] of Criminal-Procedure Code	19	40	37	27	**123**	43	121	125	56	**345**
Number of criminal cases under submitted case referrals (of which used case referrals)	13	83	43	29	**168**	99	304	213	148	**764**
Criminal cases submitted to court	5	24	15	8	**52**	11	52	34	15	**112**
Of them considered by court and sentenced	1	15	12	6	**34**	3	26	16	17	**62**

Effectiveness

246. The timeliness of disclosures to the law enforcement agencies was raised by several interlocutors as one of the recurring issues as the case referrals they received contained financial information which was out of date and on the basis of which it was difficult to take adequate measures. However, the interlocutors indicated that in the previous year, the situation had improved and that the quality of case referrals received had increased significantly. Some of them said that in more than half of the cases, there was a need for additional information from the FIU, which they subsequently received. The law enforcement agencies informed the team that case referrals are used primarily as intelligence information, particularly due to the confidential status of these documents.

247. Although it was mentioned that it is straightforward as to which law enforcement agency will get each case referral, the evaluation team was informed of several cases where a case referral was sent to the wrong law enforcement agency and had to be subsequently transferred to another law enforcement agency for further investigation, which may delay the course of the investigation. However, as there are no available statistics on the number of instances where this occurred, it is difficult to assess whether this is a recurring issue or whether it is incidental.

248. As it can be seen from the statistics, the number of transactions reported to the SCFM has been steadily increasing since 2004 and so has the number of case referrals submitted to the law enforcement authorities.

[60] The authorities indicated that the most frequent grounds under article 6 of the CPC for not initiating criminal cases were part 1 (absence of the occurrence of the crime) and 2 (if the act does not contain elements of crime).

249. The evaluation team did not notice any issues which would appear to impede efficient co-operation and co-ordination between the headquarters in Kiev and the subdivisions.

250. Overall the SCFM functions efficiently and effectively.

2.5.2 Recommendations and comments

251. The SCFM meets Recommendation 26. The evaluation team nevertheless recommends that the SCFM should continue their efforts in increasing the quality of case referrals submitted to all law enforcement authorities, with special attention to the issue of timeliness of such referrals, and in reviewing the dissemination process to ensure that case referrals are submitted to the appropriate law enforcement agency.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**C**	

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

2.6.1 Description and analysis

252. 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).

253. Criminal proceedings are initiated on the basis of the principle of mandatory prosecution. Article 4 of the Criminal Procedure Code establishes an obligation for the prosecutor, investigator or an investigating agency to initiate criminal proceedings in every case of detection of signs of an offence, and to take all measures envisaged by law aimed at investigating a suspected offence. The pre-trial investigation ends with a decision to send the case to court or otherwise to close the case. The procedure is that the investigator draws up an indictment and sends the case to the prosecutor, who approves the indictment (or compiles a new one) and sends the case to the competent court.

254. According to the Criminal Procedure Code (Article 112), pre-trial investigation of criminal cases initiated under Article 209 (laundering of the proceeds from crime) of the Criminal Code shall be carried out by investigators of all four law enforcement bodies.

255. Criminal cases initiated under the Article 209-1 of the Criminal Code (Deliberate violation of requirements of AML legislation) shall be investigated by the agency which is responsible for the investigation of the crime with regard to which a criminal case was initiated.

256. Criminal cases initiated under Articles 258 (terrorist act), 258-1 (Implication into commitment of terrorist act), 258-2 (public calls to commit a terrorist act), 258-3 (establishment of a terrorist group or terrorist organisation), 258-4 (assistance in commitment of a terrorist act) of the Criminal Code are investigated by the SSU.

257. Proceedings in criminal cases initiated under the Article 306 of the Criminal Code (use of funds from illegal turnover of narcotic drugs, psychotropic circumstances, its analogues or precursors) shall be carried out by investigators of the MIA.

258. The GPO supervises law enforcement agencies which carry out pre-trial investigation and the legality of the initiation of criminal proceedings.

Ministry of Interior of Ukraine (Militia)

259. There are three levels of police authorities : central, regional and local. The central unit is the Ministry of Interior of Ukraine. At regional level there are 27 departments of Ministry of Interior in regions, in the Autonomous Republic of Crimea and in Kiev and Sevastopol and 6 departments of Ministry of Interior on each of railways of Ukraine. The Militia is organised as a single law enforcement system within the structure of the Ministry of Interior of Ukraine and operates according to its mandate under the Law on Militia[61]. In accordance with article 112 of the CPC, it conducts pre-trial investigation in criminal cases initiated under articles 209, 209-1 and 306 of the Criminal Code.

260. The official duties of the investigators of the following divisions of the MIA include, exclusively, the investigation of ML cases:

- Division for Combating legalisation of the proceeds of organised groups and criminal organisations (established in 2008 under the Chief administration for combating organised crime) which counts 35 employees at central level and 200 employees in territorial units
- Unit for counteraction of money laundering and counterfeiting of money (under the state department on counteraction of organised crime) which counts 2 employees at central level and 30 employees in territorial units
- Department for counteraction of illegal turnover of drugs (1 employee at central level and 32 employees in territorial units)
- Department on counteraction of human trafficking crimes (2 employees)
- Department of criminal investigation (2 employees)
- Chief investigative division (2 employees at the central office and 66 employees at the regions).
- IT department Functions (division of financial monitoring information) - 5 employees.
- Operational office of the National Bureau of Interpol in Ukraine (Division on Coordination of Counteraction to Economic Crimes – 10 employees.

Public Prosecution / General Prosecutor's Office of Ukraine (GPO)

261. The role and function of the Public Prosecution are set out in the Constitution (articles 121-123). The organisation, principles and operation are defined by the Law of Ukraine On Public Prosecutor's Office of November 5, 1991. It is responsible for all court prosecutions on behalf of the State, represents the interest of citizens of the State in court in cases determined by law, supervises all bodies that conduct investigative and search activities, inquiry and pre-trial investigation and to ensure that they observe the law, supervises the observance of law in the execution of judicial decisions in criminal cases and in the application of other measures. The Prosecution service consists of the Office of the Prosecutor General, public prosecutors offices in 27 regions, including the cities of Kyiv and Sevastopol, towns and districts, in total about 900 prosecution offices (about 10000 prosecutors). In addition to prosecutors, investigators are attached to the prosecution offices (1500 at all levels and about 46 in the central office) which conduct preliminary investigations in criminal matters.

262. According to the Article 112 of the Criminal Procedure Code of Ukraine, pre-trial investigation of criminal cases initiated under the Article 209 of the Criminal Code of Ukraine (laundering of the proceeds from crime), shall be carried out by investigators of the GPO. Also, according to Article 25 of the Criminal Procedure Code of Ukraine, supervision over observation of laws by agencies

[61] Law on Militia of 20 December 1990

providing operative-investigative activity, inquiry and pre-trial investigation shall be performed by the General Prosecutor of Ukraine and subordinated prosecutors.

263. In the structure of the GPO a Division for Supervision over Observation of Laws at Execution of External Economic and Investment Activity, and Combating Laundering of the Proceeds from Crime has been established consisting of 11 persons, executing supervision over observation of the requirements of the AML/CFT Law of Ukraine. Moreover, official duties of other officers of the GPO, including territorial prosecutors, include functions of combating money laundering and terrorist financing.

Security Service of Ukraine (SSU)

264. The Security Service is established by the Law of Ukraine of 25 March 1992 on Security Service. According to the Article 2 of this Law, the Security Service of Ukraine is vested with the protection of national sovereignty, constitutional order, territorial integrity, economical, scientific, technical, and defense potential of Ukraine, legal interests of the state, and civil rights, from intelligence and subversion activities of foreign special services and from unlawful interference attempted by certain organizations, groups and individuals, as well with ensuring the protection of state secrets. The SSU's objectives also include the prevention, detection, interruption and investigation of crimes against the peace and security of mankind, terrorism, corruption and organized criminal activities in the sphere of management and economy, as well as other unlawful acts immediately threatening Ukraine's vital interests.

265. It consists of the Central Departments of the Security Service of Ukraine, subordinate Regional Agencies, the Anti-Terrorist Center at the SSU, and educational, scientific, research, and other SSU establishments and institutions.

266. According to the Article 112 of the Criminal Procedure Code of Ukraine prejudicial investigation in criminal cases initiated under the articles 209, 209-1, 258, 258-1, 258-2, 258-3 and 258-4 of the Criminal Code of Ukraine can be carried out by investigators of the SSU.

267. In the structure of the SSU, AML/CFT investigations are carried out by:

- The Main Division for Combating Corruption and Organized Crime;
- The Department of counterintelligence protection of economy of state;
- The Department for protection of national state organisation.

State Tax Administration of Ukraine (Tax Militia) -STA

268. The activities of the Tax Militia of the STA are established by the Law of Ukraine of December 4, 1990 On Tax Service in Ukraine. The Tax Militia operates in the structure of the STA and carries out control over observation of tax legislation and performs operational-research, criminal-procedural and protective functions.

269. The tasks of Tax Militia include:

- prevention of crimes and other offences in the area of taxation, its disclosure, investigation and proceeding in cases on administrative offences;
- search of payers avoiding paying of taxes and other duties;
- prevention of corruption in agencies of state tax service and disclosure of its facts;
- provision of safety of activity of officials of state tax service agencies, their protection from illegal encroachments related to execution of official duties.

270. According to the Article 112 of the Criminal Code of Ukraine, prejudicial investigation in criminal cases initiated under the articles 209 and 209-1 of the Criminal Code of Ukraine can be carried out by investigators of the Department for Combating Laundering of the Proceeds from Crime of the STA.

Powers to postpone or waive arrest or seizures

271. 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. The evaluation team was informed by law enforcement agencies 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.

Additional elements

272. Operational units of the Ministry of Interior, Security Service and State Tax Police can use a variety of special investigative techniques such as: wiretapping and recording telephone conversations, taking photographs and making video recordings, intercepting mail, undercover operations, use of informers, controlled deliveries, examination of premises, buildings and vehicles, etc (article 8 of the Law on Operative and Investigative Activity of 18 February 1992). Operational activities are conducted upon court authorisation which is issued upon request of the head or deputy head of the operational unit concerned and approval of the prosecutor (article 97.5 of the CPC). These measures are used when investigating ML and predicate offences by the law enforcement authorities.

273. Groups specialized in investigating the proceeds from crime are used by Ukrainian law enforcement authorities, on a temporary basis and especially with difficult cases, although as mentioned investigative groups have the necessary knowledge to carry out these tasks. Co-operative investigations with competent authorities of other countries are carried out, especially by the MIA and special investigative techniques are used where necessary.

274. Methods, techniques and trends of ML/TF are considered annually at the meetings of the Interagency working group (IWG). The IWG is composed of representatives of all law enforcement and other state agencies, the coordinator being the SCFM. The various parties exchange information of mutual interest in the AML/CFT area.

Law enforcement powers (Recommendation 28)

275. When conducting investigations of money laundering, terrorist financing and predicate offences, law enforcement agencies are authorized to use a wide range of powers. These powers include:

- the search of persons (article 184 CPC) and premises (article 177) where criminal evidence may be hidden and
- the seizure of documents and other materials related to the crimes (article 178).

276. Search of persons, private home or any other property of an individual can only be conducted with a motivated decision of a judge. The investigator, with the approval of the prosecutor, files a request with the court in the place where the investigation is conducted. If the request is refused, the prosecutor can challenge within the next 3 days the decision before the Court of Appeal. In urgent cases, related to saving a life and property or the direct persecution of the persons suspected as having committed the crime, search can be conducted only with a motivated decision of the investigator or of the prosecutor approved by his/her superior, and information on the search conducted and results has to be submitted to the prosecutor within 24 hours (articles 177, 178, 184 of the CPC).

277. Article 186 of the CPC provides that objects, documents, valuables and property of the accused or suspect can be seized. Correspondence (letters, telegrams, and other correspondence – postal packets, parcels, postal containers, postal money orders, radiograms - of the suspect to the accused to other persons or from others persons to him/her, as well as information they exchange through telecommunications) can also be arrested (article 187). The investigator, upon agreement with the prosecutor, applied to the President of the Court of Appeal (or his/her deputy) who considers the request, reviews records of the case, if necessary hears the investigator and the prosecutor, and then takes a decision. This decision cannot be challenged. The decision should include detailed information (criminal case and grounds, full name of the person and address, types of correspondence to be

arrested, period of arrest, name of telecommunication agency charged with intercepting the correspondence.

278. Article 59 of the Law on Banks and Banking specifies that funds and other values belonging to physical and legal persons deposited on a bank account can be arrested exclusively on the basis of a court decision. The Criminal Procedure Code (article 178) provides that documents covered by bank secrecy can be arrested only upon motivated decision of judge and in the way agreed with the head of the institution concerned At the same time, article 179 of the Code of Criminal Procedure of Ukraine specifies that the documents covered by bank secrecy shall be dispensed and reviewed in compliance with the applicable regulations assuring protection of the national and/or bank secrets. The Head of the institution concerned must follow the procedure established by the National Bank regarding the seizure of bank secrecy documents so as to guarantee the protection of the bank secrecy at the time of seizure.[62]

279. The competent authorities have the powers to take witness statements[63]. A witness can be any person who is known as being aware of circumstances that are important for investigation, with the exception of certain categories such as legal professionals under a duty of professional secrecy. A person summoned is required to testify and in case of no show, compulsory appearance can be ordered and the person can be fined. Witness statements can be used in ML, TF and predicate offence cases by all law enforcement authorities when investigating a case.

Resources and professional standards (Recommendation 30)

280. All law enforcement staff that the evaluation team met with expressed satisfaction with their working conditions, means and resources available.

281. In total approximately 380 employees in the MIA deal with AML issues. AML issues are under the competence of the Main Division for Combating Organized Crime and Territorial Divisions for Combating Organized Crime. As mentioned earlier, there are several other divisions which deal with AML issues. In 2007, 262 criminal cases were initiated by investigators of the MIA under Articles 209, 209-1 and 306 of the Criminal Code of Ukraine.

282. In the structure of the SSU, AML/CFT tasks are executed by the Main Division for Combating Corruption and Organized Crime; the Department of counterintelligence protection of economy of state and the Department for protection of national state organization. Approximately 286 people deal with AML/CFT issues in the SSU - 69 people employed at the central headquarters and 217 people employed in the regions. In 2007, 33 criminal cases were initiated by the SSU under Articles 209, 209-1 and 306 of the Criminal Code of Ukraine.

283. The Department for Combating Laundering of the Proceeds from Crime operating within the structure of the STA counts 39 employees in the central office and 611 employees in the regional divisions. In 2007, 81 criminal cases were initiated by investigators of the STA under Articles 209, 209-1 and 306 of the Criminal Code of Ukraine. In the regions that were visited by the evaluation team (Crimea, Lviv, Donetsk) the number of persons engaged in AML/CFT seemed to be sufficient in relation to the number of initiated criminal cases. For example, in Lviv, the Tax Police has initiated 20 criminal cases in 2008 and those were handled by 28 investigators.

284. Being civil servants, the employees of the law enforcement authorities must comply with the general requirements of the Law of Ukraine On Civil Service' regarding the need for staff of competent authorities to maintain high professional standards.

285. The organisation and operation of the Prosecution is determined by the Law on the General Prosecutor's Office. The Prosecution's organisation is centralised and based on the principle of

[62] Resolution #267 of 14.07.2006 On Approval of the Banking Secrets Keeping, Protection, Utilisation and Disclosure Rules, Par. 4.1 and 4.2

[63] CPC, Article 68.

subordination of junior prosecutors to senior prosecutors. The Prosecution has a coordinating role of law enforcement bodies in all criminal investigations.

286. According to article 122 of the Law of Ukraine on the Public Prosecutor's Office, the Prosecutor General is appointed and dismissed by the President of Ukraine under the agreement of the Verkhovna Rada of Ukraine. The Verkhovna Rada can give a vote of non-confidence to the Prosecutor General of Ukraine that leads to his/her dismissal. The term of the Prosecutor General is 5 years.

287. Prosecutors and investigators must have a higher degree in Law. Persons that have a criminal record, except for rehabilitated crimes, cannot be appointed as prosecutors or investigators. Those that do not have practical expertise pursuant to their degree undergo a probation period of one year. Prosecutors and investigators of the prosecutor's office undergo attestation every 5 years. It is strictly forbidden for prosecutors or investigators to be simultaneously employed in the private sector.

288. The Division for Supervision over Observation of Laws at Execution of External Economic and Investment Activity, and Combating Laundering of the Proceeds from Crime established under the GPO consists of 11 officers, executing supervision over the observation of requirements of the AML/CFT Law of Ukraine. Moreover, official duties of other officers of the GPO, including territorial prosecutors, include functions of combating money laundering and terrorist financing. Overall, 280 people in the GPO deal with AML issues. In 2007, 283 criminal cases were initiated by the GPO under Articles 209, 209-1 and 306 of the Criminal Code of Ukraine.

289. The evaluation team was made aware of several initiatives aimed at reforming the Prosecution services to bring it in line with relevant European standards, in particular as regards independence from risks of political interference. The persons whom the evaluation team met did not express any concerns relating to the operational independence and autonomy of their agencies.

290. Ethics of conduct and job descriptions of employees of law enforcement agencies of Ukraine are also determined by the Laws on Militia, on Security Service of Ukraine, and on Tax Administration however the evaluation team has not been in a position to see the relevant extracts, apart from some information provided by the STA.

Training

291. The SSU has developed various training programs for its employees, such as a "Model training program for investigators of agencies of the Security Service of Ukraine on investigation of criminal cases over money laundering". The system of distance education is also used where training for employees on AML legislative, theoretical and practical issues is carried out on a monthly basis by a special department of the "National Academy of the Security Service of Ukraine". Furthermore, the staff of the SSU receives training at the "State Training Centre of Post-Graduate Education - Training-Methodical Centre for Re-Training and Professional Development of Experts on Financial Monitoring Issues in the Sphere of Combating Legalization (Laundering) of Criminal Proceeds, and Terrorist Financing" - hereafter the Training Center - which was established under the SCFM administration as a state educational institution.

292. The main task of the Training Centre is to provide training regarding combating money laundering and financing of terrorism issues to the personnel of the FIU, law enforcement authorities, supervisory authorities, reporting entities and judicial agencies. The training course is approved by the Ministry of Education and Science of Ukraine and by the SCFM and it includes a special module for law enforcement agencies and judges. During the period 2004-first half of 2008, 109 persons from the SSU were trained.

293. Employees of the MIA receive training regarding AML issues at the National Academy of the Ministry of Internal Affairs of Ukraine. Moreover, training on AML/CFT theory and practice is held using the system of distance education as organized by the Academy. As with all law enforcement authorities employees of the MIA receive training at the Training Centre administered by the SCFM. For the period 2004-first half of 2008, 131 persons from the MIA were trained.

294. Various AML training programs have been developed within the STA. The training program "Organization of combating money laundering" is held at the Centre for Retraining and Professional Development of Administration of State Agencies of Tax Service of Ukraine. The Center of Professional Training of the State Tax Administration of Ukraine and the Faculty for Training, Retraining and Professional Development of Employees of Tax Militia of the National Academy of the State Tax Service of Ukraine provide lectures under the topic "Organization of AML work in agencies of the State Tax Service". The number of persons trained is of 25 persons (in 2004), 77 people in 2005, 78 people in 2006, 50 people in 2007 and during the first half of 2008, 26 people. The staff of the STA also receives training at the Training Centre administered by the SCFM - 135 people were trained for the period 2004-first half of 2008.

295. The General Prosecutors' Office of Ukraine has developed a training system regarding AML issues for prosecutors and investigators of all levels. Training is organised within the Academy of the General Prosecutors Office of Ukraine in Kyiv. Employees from the General Prosecutor's Office also receive training at the Training Centre regarding AML/CFT issues. During the period 2004-first half of 2008 22 people were trained at the Training Centre.

296. The majority of staff were satisfied by the training received on AML issues. In meetings held in the region, some of the persons whom the evaluation team met stated that they would appreciate receiving further training.

Additional Elements

297. AML/CFT training is also provided to the judiciary at the Academy of Judges of Ukraine and the Training Centre of the SCFM of Ukraine. During the period 2004 - first half of 2008, 34 representatives of the judiciary attended the relevant training course at the Training Centre of the SCFM of Ukraine.

298. Furthermore, with the assistance of the TACIS Program of the European Union for Ukraine, in the framework of the Council of Europe Project against money laundering and terrorist financing (MOLI-UA), during 2008, the Academy of Judges of Ukraine trained 12 judges (trainers) on particularities of criminal cases related to ML.

Recommendation 32

299. The following statistics were provided on the number of criminal cases initiated by law enforcement authorities and on the number of criminal cases submitted to court:

Year 2004

Name of agency	**Criminal cases under proceedings under the Article 209 of the Criminal Code of Ukraine**			Criminal cases submitted to court
	Total	Continuous investigations from previous years	Criminal cases initiated in the year	
Ministry of Internal Affairs	**201**	**17**	**184**	**109**
State Tax Administration	**94**	**22**	**72**	**30**
Security Service of Ukraine	**73**	**24**	**49**	**20**
General Prosecutors Office	**344**	**41**	**303**	**203**

TOTAL	712	104	608	362
Name of agency	**Criminal cases under proceedings under the Article 306 of the Criminal Code of Ukraine**			Criminal cases submitted to court
	Total	Continuous investigations from previous years	Criminal cases initiated in the year	
Ministry of Internal Affairs	**163**	**5**	**158**	**136**
General Prosecutors Office	**1**	**1**	**0**	**0**
Name of agency	**Criminal cases under proceedings under the Article 209[1] of the Criminal Code of Ukraine**			Criminal cases submitted to court
	Total	Continuous investigations from previous years	Criminal cases initiated in the year	
General Prosecutors Office	**2**	**0**	**2**	**1**

Year 2005

Name of agency	**Criminal cases under proceedings under the Article 209 of the Criminal Code of Ukraine**			Criminal cases submitted to court
	Total	Continuous investigations from previous years	Criminal cases initiated in the year	
Ministry of Internal Affairs	**152**	**16**	**136**	**82**
State Tax Administration	**89**	**9**	**80**	**14**
Security Service of Ukraine	**45**	**1**	**44**	**23**
General Prosecutors Office	**333**	**66**	**267**	**163**
TOTAL	**619**	**92**	**527**	**282**
Name of agency	**Criminal cases under proceedings under the Article 306 of the Criminal Code of Ukraine**			Criminal cases submitted to court
	Total	Continuous investigations from previous years	Criminal cases initiated in the year	
Ministry of Internal Affairs	**150**	**10**	**140**	**122**
General Prosecutors Office	**1**	**0**	**1**	**1**
Name of agency	**Criminal cases under proceedings under the Article 209[1] of the Criminal Code of Ukraine**			Criminal cases submitted to court

	Total	Continuous investigations from previous years	Criminal cases initiated in the year	
General Prosecutors Office	**5**	**1**	**4**	**1**

Year 2006

Name of agency	Criminal cases under proceedings under the Article 209 of the Criminal Code of Ukraine			Criminal cases submitted to court
	Total	Continuous investigations from previous years	Criminal cases initiated in the year	
Ministry of Internal Affairs	**149**	**14**	**135**	**91**
State Tax Administration	**92**	**25**	**67**	**29**
Security Service of Ukraine	**43**	**10**	**33**	**14**
General Prosecutors Office	**311**	**73**	**238**	**129**
TOTAL	**595**	**122**	**473**	**263**
Name of agency	**Criminal cases under proceedings under the Article 306 of the Criminal Code of Ukraine**			Criminal cases submitted to court
	Total	Continuous investigations from previous years	Criminal cases initiated in the year	
Ministry of Internal Affairs	**146**	**2**	**144**	**127**
Name of agency	**Criminal cases under proceedings under the Article 209[1] of the Criminal Code of Ukraine**			Criminal cases submitted to court
	Total	Continuous investigations from previous years	Criminal cases initiated in the year	
General Prosecutors Office	**7**	**4**	**3**	**1**

Year 2007

Name of agency	Criminal cases under proceedings under the Article 209 of the Criminal Code of Ukraine			Criminal cases submitted to court
	Total	Continuous investigations from previous years	Criminal cases initiated in the year	
Ministry of Internal Affairs	**165**	**14**	**151**	**92**

State Tax Administration	**100**	**19**	**81**	**23**
Security Service of Ukraine	**42**	**9**	**33**	**14**
General Prosecutors Office	**325**	**54**	**271**	**161**
TOTAL	**632**	**96**	**536**	**290**
Name of agency	**Criminal cases under proceedings under the Article 306 of the Criminal Code of Ukraine**			Criminal cases submitted to court
	Total	Continuous investigations from previous years	Criminal cases initiated in the year	
Ministry of Internal Affairs	**118**	**7**	**111**	**96**
General Prosecutors Office	**1**	**0**	**1**	**1**
Name of agency	**Criminal cases under proceedings under the Article 209[1] of the Criminal Code of Ukraine**			Criminal cases submitted to court
	Total	Continuous investigations from previous years	Criminal cases initiated in the year	
General Prosecutors Office	**7**	**1**	**6**	**2**

Year 2008- first six months

Name of agency	**Criminal cases under proceedings under the Article 209 of the Criminal Code of Ukraine**			Criminal cases submitted to court
	Total	Continuous investigations from previous years	Criminal cases initiated in the year	
Ministry of Internal Affairs	**94**	**9**	**85**	**54**
State Tax Administration	**53**	**18**	**35**	**11**
Security Service of Ukraine	**41**	**17**	**24**	**14**
General Prosecutors Office	**176**	**52**	**124**	**82**
TOTAL	**364**	**96**	**268**	**161**
Name of agency	**Criminal cases under proceedings under the Article 306 of the Criminal Code of Ukraine**			Criminal cases submitted to court
	Total	Continuous investigations from previous years	Criminal cases initiated in the year	

Ministry of Internal Affairs	**65**	**3**	**62**	**51**

Name of agency	**Criminal cases under proceedings under the Article 209[1] of the Criminal Code of Ukraine**			Criminal cases submitted to court
	Total	Continuous investigations from previous years	Criminal cases initiated in the year	
Security Service of Ukraine	**1**	**0**	**1**	**0**

Effectiveness

300. As explained above, the current system consists of a number of different agencies which are active in the detection and investigation of ML, TF and predicate offences. The evaluation team was told repeatedly by the designated law enforcement authorities that they did not experience any particular difficulties when investigating such offences, with few interlocutors raising issues of concern. This seemed surprising, particularly as the evaluation team was told that many ML cases appeared to be rather complex.

301. From meetings held, the evaluation team's perception was nevertheless that investigation of ML cases appeared to be dispersed among the different authorities and that in certain cases, this seemed to pose a problem of overlapping competencies or duplication of work, particularly in the event of cases' reassignment.

302. The concerns raised by some of the interlocutors, though not necessarily all confirmed by other officials met at central level, regarded different aspects such as:

- At the level of collection of evidence in the investigation phase, a specific issue is related to banking information and the use of such information received from pre-trial investigative authorities. Some stated that bank information could only be obtained if a criminal case was initiated and such information often related to 1 person and 1 bank account, without any additional information on the flows and operations from that account.
- Difficulties in obtaining a court order to search bank premises, as it was explained that the investigator was required to list the exact documents which are essential, which would then be further detailed in the order granting permission to seize these documents during the search;
- Timeliness of requested necessary information in good time by the investigator from other agencies;
- Some raised the fact that the terms of expertise were too long and that procedures needed to be simplified for economic crimes ;
- Duration of period for pre-trial and court investigations, despite the fact that they are extendable, particularly in complex cases, which put particular pressure on the investigators;
- the high number of returns of cases to some of the law enforcement agencies as indicated by the prosecutors, which would imply a lack of quality of cases[64]
- Lack of sufficient knowledge on economic and financial analysis of investigators.

303. All law enforcement authorities agreed that corruption is one of the main problems they are faced with and they've stated that a number of efforts have been taken in order to address this matter.

[64] The Ministry of Interior indicated that in 2008 only 2 criminal cases were returned to the investigators of the internal affairs bodies with the purpose of their further additional investigation out of 99. This statement was confirmed by the prosecutors, and it was explained by the active role of the prosecutor which conducts the supervision of such cases investigated by the MIA.

304. The statistics show that the number of criminal cases initiated and the number of criminal cases submitted to court have both been falling/rather stable since 2004. Specifically, in 2004, 608 criminal cases were initiated under article 209 while in 2007 only 536 criminal cases were initiated. At the same time, in 2004, 362 cases were submitted to court and only 290 in 2007. Regarding article 306, in 2004, 158 criminal cases were initiated and 136 submitted to court, while in 2007, only 112 criminal cases were initiated and 97 submitted to court. The evaluation team would have expected a significant increase in these numbers taking into account that the number of case referrals provided to the law enforcement by the FIU has been increasing since 2004, the quality of FIU case referrals was said to have improved, constant training has been provided to law enforcement employees regarding AML/CFT issues and that they should have gained experience.

2.6.2 Recommendations and comments

305. Overall, the investigation and prosecuting authorities appeared to have almost all the necessary powers to investigate and prosecute money laundering, TF and predicate offences and interlocutors met expressed their willingness and motivation in pursuing their action to combat these crimes, both at the central level and in the regions. The evaluation team's perception nevertheless was that there remained significant differences in the regions.

306. As explained earlier, all the law enforcement agencies are responsible for investigations. However, the evaluation team had difficulties in understanding fully which body would be responsible in each case, despite the legal provisions to which they were referred to and the procedures for transferring a case from one to the other law enforcement body.

307. Ukraine should review the current situation in the light of the specific concerns raised by the law enforcement agencies, evaluate the existing practical implementation problems related to the procedures applicable to ML/TF investigations and take necessary measures in order to address these concerns and prevent risks of duplication of efforts.

308. The evaluation team noted that authorities in the regions are facing a number of difficulties in obtaining documents and information for use in ML/FT investigations, particularly with regards to information held by financial institutions. Also, some authorities in the regions seemed to be unaware of the possibility to obtain information held by financial institutions through the FIU. The procedures for obtaining documents and information to be used in investigations should be carefully examined and modified. Also, relevant training should be provided to the personnel of authorities in the regions which will enable them to obtain this information more easily.

309. Despite existing policy efforts to eliminate corruption, it is recommended to pursue current efforts in this area to ensure that they do not impede law enforcement authorities' action. Furthermore, given that the evaluation team was not in a position to review the relevant framework covering requirements of professional standards and ethics of conduct, the authorities are recommended to review the current situation and take all necessary measures to ensure that staff of law enforcement authorities are required to maintain high professional and ethic standards.

310. The authorities should also pursue training efforts and provide guidance so as to increase the level of expertise on ML/TF and financial crimes more generally.

311. The law enforcement and judicial authorities' competencies in AML/CFT should definitely be strengthened, particularly in the regions, in particular through training developed and/or continued, placing an emphasis on the systematic recourse to financial investigations, the use of existing tools and investigative techniques, analysis and use of computer techniques, and by providing relevant guidance.

2.6.3 Compliance with Recommendations 27, 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**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.
R.28	**LC**	• There remained concerns as regards the obtaining of necessary information for use in ML/FT investigations

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and analysis

312. The State Customs Service (SCS) is a specially authorised central body of executive power which was created in 1991 with the mission to direct, co-ordinate and control the activigties of customs authorities, specialised customs institutions and organisation in the implementation of the legislation on customs practice. It controls compliance with the rules on cross-border movement of currency values through the custom borders of Ukraine[65].

313. A declaration system operates in Ukraine. The National Bank of Ukraine Resolution no. 148 of 27 May 2008 [66] has established a new Instruction on the transfer of cash and bank metals across the customs border of Ukraine. This instruction has been elaborated in pursuance of the Articles 5, 11, 13 of the Decree of the Cabinet of Ministers of Ukraine of 19 February 1993 N15-93 "On the system of currency regulation and currency control", and Articles 7 and 44 of the Law of Ukraine On the National Bank of Ukraine.

314. According to this Resolution, as regard cash, which is defined as local and foreign currency and traveller's cheques:

- a person is entitled to import into and export out of Ukraine cash in amount not exceeding the equivalent of 10 000 Euros subject to an oral declaration to the customs office.
- a person is entitled to import into and export out of Ukraine cash in amount exceeding the equivalent of 10 000 Euros subject to a written declaration to the customs office.
- a legal person can import/export cash without a restriction on the amount as long as a written declaration is submitted to the customs office.

315. With regard to bank metals, which are defined as including gold, silver, platinum, platinum group metals and coins made of precious metals:

- a person is entitled to import into and export out of Ukraine banking metals in weight not exceeding 500g in form of bars and coins subject to a written declaration to the customs office.

[65] Decree of the Cabinet of Ministers of Ukraine of 19 February 19 1993 #15-93 On System of Currency Regulation and Exchange Control, Article 13 (5).
[66] Resolution of the NBU No. 148 'On Transfer of Cash and Bank Metals Across the Border of Ukraine'.

- a person is entitled to export out of Ukraine banking metals in weight exceeding 500g in the form of bars and coins by obtaining an individual license for exporting banking metals out of Ukraine and subject to a written declaration to the customs office.
- a legal entity -except authorized banks- is prohibited to import/export banking metals in and out of Ukraine.

316. The explanatory form provided with the declaration form of the SCS states that banking metals have to be declared irrespective of the amount and cash or traveler's cheques need to be declared if their value exceeds the equivalent of 10 000 Euros.

Powers of competent authorities upon discovery of a false declaration/disclosure or suspicion of ML/FT

317. The Customs Code details the powers of customs officers, which include the right to inspect goods and vehicles (article 55), inspect and repeat inspection of the vehicles and luggage in the presence or absence of their owner (article 56), carry out personal inspection (article 27), conduct oral interrogation of citizens and officials of enterprises (article 59), use technical and special measures (article 62) and involve specialists and experts (article 65). In accordance with article 22 of the Customs Code, subdivisions of customs guard can detain and conduct inspection of goods, transport vehicles and citizens passing at points of admission and invite persons to the customs agencies for clarification of circumstances of violation of customs rules.

318. Upon discovery of a false declaration (including failure to make a declaration) the customs officers have the right to request information regarding the violation of the customs' rules from the carrier[67].

319. Failure to declare the goods and vehicles is punishable by fine or seizure of these goods and vehicles[68]. They have no powers to stop or restrain declared currency or bearer negotiable instruments based on suspicions of ML/FT, apart from cases where operative information is available or a criminal case is initiated.

Information obtained and retained

320. When detecting a violation of the customs rules, according to article 363 of the Customs Code, the customs officer draw up a protocol which includes information on the date and location, identification data of person, the goods, transport vehicles, documents seized in accordance with article 377 of the Code, the subject matter of the violation and other necessary information. Information on all cases where false declarations were made are kept and included in the Unified Information Analytical System of the Customs Service. Declarations which exceed the prescribed threshold are not kept in the database, as they do not constitute violations of customs rules.

321. The information exchange between the SCFM and the SCS is undertaken on the basis of the joint agreement from 8 August 2003[69] and three related protocols (the text of some of these protocols have not been provided and thus were not assessed by the team):
- Protocol 1 defines the procedure of submission and registration of information from the central database of electronic copies concerning foreign customs declarations on foreign trade transactions
- Protocol 2 prescribes that the SCS shall submit monthly information to the SCFM from the central database of electronic copies of freight customs declarations on foreign trade transactions
- Protocol 3 provides that the SCS shall submit monthly information concerning the list of persons which committed violations of customs rules while exporting/importing foreign or national currency or other currency values (including false declarations) for amounts higher than 15 000 UAH (or equivalent in foreign currency).

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[67] Article 22 of the Customs Code of Ukraine.
[68] Article 340 of the Customs Code of Ukraine.
[69] Agreement on co-operation between the State Customs of Ukraine and SCFM of Ukraine of August 8, 2003 #15493/16вн/13.

322. Through the Unified Information System, the SCFM receives data containing copies of freight customs declarations from the State Customs Service. The Customs Service put into operation the Unified System in 2007.

323. The customs officers the evaluation team met with mentioned that the informative letters sent to the SCFM relate to suspicions of ML, not all types of violations. The evaluation team believes that the establishment of an efficient system for notifying all such incidents to the FIU should be put in place or otherwise all declarations made according to the declaration system are directly available to the FIU and not only freight customs declarations.

Co-ordination among domestic competent authorities

324. Apart from co-operating with the FIU, the SCS co-operates closely with the State Border Service of Ukraine regarding cases of violations of customs rules and smuggling. Each time persons are being detained by the State Border Service the customs officers are informed so that they can take appropriate measures. The SCS also co-operates with other agencies in the currency control sphere, namely the National Bank and the State Tax Administration. The State Customs Service is also a member of the Interagency Working Group.

International co-operation

325. At the time of the visit, the State Customs Service has signed more than 40 bilateral and multilateral agreements on mutual administrative assistance in compliance with the model agreement recommended by the World Customs Organisation.

326. Under information received from the SCS, the SCFM submits informative letters to foreign FIUs regarding non-residents who violated customs rules at the Ukrainian border. During 2007 the FIU submitted 71 informative letters to 19 foreign FIUs. Most often mailing is executed with countries that have joint borders with Ukraine.

327. The Ministry of Foreign Affairs has assisted the State Customs Service in establishing direct contacts between relevant agencies of Korea, China, Croatia and Peru and information is constantly exchanged regarding terrorism issues.

Sanctions

328. Administrative and criminal liabilities for violations of Ukrainian Law are provided by the Customs Code of Ukraine[70] and the Criminal Code of Ukraine[71] .

Sanctions for non-compliance with currency provisions			
Type of sanctions	**Description**	**Subject**	**Sanctions**
Administrative sanctions	False or non-declaration	Natural persons	Fine of 100 times untaxed minimum allowance ($300-$3,000) or seizure.
		Officials of legal entities	Fine of 500 – 1000 times untaxed minimum allowance ($1,500-$3,000) or seizure

[70] Articles 340 and 352 of the Customs Code of Ukraine.
[71] Article 201 of the Criminal Code of Ukraine.

Sanctions for non-compliance with currency provisions			
Type of sanctions	**Description**	**Subject**	**Sanctions**
	Concealment of currency	Natural persons	Fine of 500 – 1,000 untaxed times minimum allowance ($1,500-$3,000) or seizure.
Criminal sanctions	Smuggling (CC, article 201)	Natural persons	3-7 years imprisonment and forfeiture of items.

329. The worth of one minimum allowance is 17 UAH (appx. US$2). Taking into account the level of the fines the evaluation team considers these as rather low.

330. Also, no information was provided by the SCS regarding the circumstances under which, instead of imposing a fine, the currency is seized and on the procedure followed thereafter.

331. If a money laundering or TF offence is suspected or proven, all seizure and confiscation measures apply, as described in section 2.3 of this report. Shortcoming described in section 2.3 and 2.4 (SR.III) have a negative impact.

Precious metals and stones

332. In cases where an unusual cross-border movement of precious metals and stones is detected, the SCS notifies its foreign counterparts (depending on the origin of the items detected) so as to establish the source, destination and purpose of these items. Such co-operation takes place through the various agreements that the SCS has signed with other countries. No specific examples of such co-operation were provided.

Safeguarding information

333. The information kept by the State Customs Service has restricted access. Each customs officer has his/her own password so that control can be executed on which person uses the system.

Additional Elements

334. No information has been provided on whether the country has implemented the measures in the Best Practices Paper for SRIX.

335. Information is stored using the Automated Information System. The FIU accesses information contained in this system through the Unified Information System.

Resources and professional standards (Recommendation 30)

336. To deal with issues of ML/FT and to enhance co-operation between the SCS and the FIU a separate division has been established within the Analytical and Informational Monitoring Department in 2003 at the central office consisting of 5 officers. There are 49 customs offices within the structure of the SCS and within each of them, a special division is also responsible for AML/CFT issues.

337. The customs officers that the evaluation team met with expressed satisfaction with their working conditions, means and resources available.

338. The evaluation team was not provided with sufficient information to understand fully whether they are adequately structured, funded, staffed and provided with sufficient technical and other resources to

fully and effectively perform their functions. After the visit, the authorities indicated that the SCS counts about 18 000 staff.

339. Being civil servants the employees of the SCS must comply with the requirements of the Law of Ukraine On Civil Service, regarding the need for staff of competent authorities to maintain high professional standards. Ethics of conduct are also included in job descriptions. The authorities have advised that the Law no. 2805-IV on Disciplinary Statute of the Customs Service of 2005 sets out the rights and responsibilities of the customs service officials.

340. The authorities indicated that the education and professional development of the officials of custom agencies on AML/CTF issues is carried out on a regular basis at the Kyiv and Khmelnitsky centers of professional development and at the Academy of the Customs Service of Ukraine and that experts of the STA, the SCFM and the National Bank of Ukraine provide lectures.

Recommendation 32

341. No information was provided to the evaluation team on the number and amounts of false cross border declarations. After the visit, the authorities provided information on the cases and amounts of currency and precious metal stones detained by Customs authorities:

Year	Currency (mln. UAH).		Precious stones/metals (mln. UAH)	
	Cases	Amount	Cases	Amount
2004	8635	34,521	147	0,504
2005	7465	53,109	113	0,794
2006	5578	53,271	146	3,471
2007	5773	66,167	134	4,209
2008	3864	60,906	148	5,178

342. The authorities provided also several examples of significant sums of currency, precious metals and stones seized by customs authorities in the period from 2007 to 2008, which ranged from cash amounts of 150.000 to 1 888 973 USD.

343. Furthermore, the following data was received on received informational letters on cross-border cash movements received by the SCFM from the SCS:

2006	2007	2008	Total
26	66	40	132

344. The following data was also provided on fines applied by SCS and property confiscated by courts:

Year	Fines UAH (millions)
2004	2 450
2005	2 851
2006	3 070
2007	3 167
2008	3 673

Year	Property UAH (millions)
2004	135 260
2005	141 098
2006	159 112
2007	164 451
2008	175 586

345. Statistics were also provided regarding the cases submitted to the SCFM which were then forwarder to the law enforcement authorities:

2004 - 3 criminal cases initiated, 6 materials were added to criminal cases
2005 - 3 criminal cases initiated, 9 materials were added to criminal cases
2006 - 8 criminal cases initiated, 9 materials were added to criminal cases
2007 - 7 criminal cases initiated, materials were added to criminal cases
2008 - 11 criminal cases initiated, 15 materials were added to criminal cases

2.7.2 Recommendations and comments

346. In the National Bank of Ukraine Resolution no. 148 of 27 May 2008, the definition of cash includes traveller's cheques, however the term 'traveller's cheques' does not cover all bearer negotiable instruments. This is also the case in the explanatory form (English version), provided with the declaration form of the SCS, which states that cash or traveller's cheques need to be declared if their value exceeds the equivalent of 10 000 Euros. There is no mention of other bearer negotiable instruments except for traveller's cheques. However, in the actual customs declaration (English version) the term 'currency values' is used instead of the term 'traveller's cheques'. Currency values, according to the Customs Code of Ukraine (Article 1), refer to Ukrainian currency, foreign currency, payable documents and other securities and banking metals.

347. Furthermore, the Resolution of the Cabinet of Ministers No. 748 On the list of Information which is proclaimed by the citizens according to the prescribed form in case of transmission by them over the customs border of Ukraine of goods and other objects of 15 July 1997, refers to the 'sum of Ukrainian and foreign currency in cash, payment documents and other securities, banking metals, number of items from precious metals and precious stones of any kind and condition'.

348. It appears that the declaration system obligations do cover all bearer negotiable instruments. However Ukraine should make the necessary amendments in order that the resolution of the NBU and the explanatory form provided with the declaration form of the SCS also refer to all bearer negotiable instruments and not only to traveller's cheques.

349. The SCS should have the authority to restrain currency or bearer negotiable instruments when there is a suspicion of ML or FT.

350. As regards the information available to the financial intelligence unit, the evaluation team was not fully able to assess the scope of such information. It appears that the authorities have put in place a system which enables the SCFM to be notified of certain incidents (list of persons) and freight customs declarations. However, the authorities should review the current and ensure that it covers fully either all suspicious cross-border transportation incidents or enables the FIU to have direct information on all declarations made according to the declaration system. Information contained in customs declarations is not retained by the SCS. A system should be developed for storing this information.

351. The evaluation team considers that the administrative penalties for false or non declarations should be raised considerably. Taking into account the low chances of detection, the fines are not considered to be dissuasive or effective. The possible confiscation of the cash is not dissuasive, in particular not in cases where the cash or bearer negotiable instruments are smuggled on behalf of a third person who actually owns the money.

352. The team was not in a position to assess fully the effectiveness of the action of the SCS based on an assessment of its structure and capacities, given the little information which was provided during the on-site visit and thereafter. Thus the authorities are recommended to undertake a review of the human and financial capacities of the SCS to ensure that it can adequately take necessary measures to detect and prevent cross border movements of currency and bearer negotiable instruments.

Furthermore, additional efforts should be made to cover through relevant guidance and training issues related to cross border cash and bearer negotiable instruments movements and related ML methods involving the movement of cash to and from Ukraine and raise awareness of customs bodies on ML issues. Efforts to prevent and sanction corruption within the Customs Service should be pursued.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**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.

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Overview of legal and regulatory framework

353. The highest form of binding law in Ukraine is the Constitution, the Codes of Ukraine and the laws of Ukraine. The Law of Ukraine on the Prevention and Counteraction to the Legalization (Laundering) of the Proceeds from Crime (Basic Law) sets out the scope and basic AML/CFT obligations for financial institutions including identification, record keeping, and the transaction reporting regime (compulsory monitoring and initial financial monitoring). The Basic Law has been subject to a number of amendments: December 2002, February 2003, May 2004 and December 2005 in order to meet particular FATF requirements. The Basic Law is supported by the Law of Ukraine on Banks and Banking (as amended in April 2007), 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 set out obligations for non-banking financial institutions. For the purposes of the evaluation, these four laws qualify as "law or regulation" as defined in the FATF Methodology.

354. The competent authorities within Ukraine have issued a number of documents, referred to as by-laws and which provide further details on the basic obligations set out in the Basic Law, the Law of Ukraine on Banks and Banking and the Law of Ukraine on Financial Services and State Regulation of Financial Markets.

State Commission on Financial Monitoring (SCFM)

355. According to the Basic Law, Article 13, Part 2, first bullet, the SCFM can make "proposals on the elaboration of legislative acts…", in elaboration of other regulations relating to prevention and counteraction to the legalization (laundering) of the proceeds and financing of terrorism." The SCFM has the power to issue regulations necessary for performing its tasks and functions as per Article 13 of the Law. As a result, the SCFM has issued Order No. 40 which applies to all financial institutions subject to the Basic Law and stipulates the requirements related to procedures which financial institutions implement, including appointing a compliance officer responsible for financial monitoring, establishing procedures for financial monitoring, disclosure of financial transactions to the SCFM and identification of customers.

356. The SCFM also has the power to "provide the coordination and guidance of activity of entities of initial financial monitoring in the sphere of prevention and counteraction to the legalization (laundering of the proceeds and financing of terrorism (Basic Law, Article 13, Part 2, seventh bullet). Therefore, the SCFM issues recommendations and model rules which financial institutions can use to comply with their AML/CFT obligations. These recommendations are considered to be guidance rather than "other enforceable means".

National Bank of Ukraine (NBU)

357. Although not related specifically to AML/CFT, the Board of the NBU under the Law of Ukraine on the National Bank of Ukraine, Article 15 (6), can "issue the enactments, regulations and other subordinate legislation acts of the National Bank." In addition, Article 56 states that the NBU can issue legislative and regulative acts in the form of resolutions, instructions, statutes, approved by resolutions of the Board of the National Bank. These are binding on banks. As such, the NBU has issued Resolution of the National Bank of Ukraine No. 189 On Approving the Regulation on Implementing Financial Monitoring by Banks (14 May 2003) which sets out requirements on procedures for internal financial monitoring, customer identification, disclosures on financial transaction, information that should be submitted to the SCFM, the role and responsibility of the compliance officer, and staff training. The NBU was able to demonstrate that it enforces against breaches in the Basic Law, Law of Ukraine on Banks and Banking and NBU Resolution 189. Although banks are subject to SCFM Order

No. 40, the NBU is not authorised to impose sanctions for breaches of the requirements under this order.

358. The NBU also regularly issues letters to banks to provided further guidance on how to comply with their AML/CFT obligations. These letters are considered to be guidance but to do not establish any formal requirements on banks.

State Commission on Financial Services Markets Regulation (SCFSMR)

359. The State Commission on Financial Services Markets Regulation has a general power under the Law of Ukraine on Financial Services and State Regulation of Financial Markets, Article 28 (1), to draft and approve by-laws that will be obligatory for financial institutions. Instruction No. 25 (5 August 2003)[72] of the State Committee on Financial Services and Regulation of Financial Services Markets provides further details on how financial institutions will need to comply with their AML/CFT obligations. The SCFSMR enforces against breaches in the Basic Law, Law of Ukraine on Financial Services and State Regulation of Financial Market, SCFSMR Instruction No. 25 and SCFM Order No. 40.

State Commission on the Securities and Stock Market (SCSSM)

360. The State Commission on the Securities and Stock Market, in accordance with the Law of Ukraine on State Regulation of Securities Markets in Ukraine, Article 8(13) has the right to issue by-laws which are obligatory for the financial institutions that it supervises. The Decision of the State Commission of Securities and Stock Exchange No. 538 (4 October 2005)[73] provides further details on how financial institutions that it regulates will need to comply with their AML/CFT obligations. The SCSSM enforces against breaches in the Basic Law, Law of Ukraine on Financial Services and State Regulation of Financial Market, Decision No. 538 and SCFM Order No. 40.

361. The by-laws (SCFM Order No. 40, NBU Resolution No. 189, SCFSMR Instruction No. 25 and SCSSM Decision No. 538) require registration with the Ministry of Justice which is responsible for ensuring that they do not conflict with the existing laws of Ukraine. Although in some cases these by-laws are referred to as legislation or regulation under the Ukrainian system, for the purposes of this evaluation they are considered to be "other enforceable means", given that these are not issued or authorised by a legislative body but by the competent authorities using a rule-making power they have from their respective legislations. The by-laws are consistent with the definition of "other enforceable means" as defined by the FATF methodology.

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering or financing of terrorism

362. 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. Please see section 3.2 for further description of these requirements.

[72] Instruction registered with the Ministry of Justice on 15 August 2003 (715/8036), with changes introduced under Instructions No. 121 of 13 November 2003, No. 336 of 15 April 2004, No. 5720 of 28 April 2006, No. 7288 of 10 May 2007

[73] Decision registered with the Ministry of Justice on 16 November 2005 (1379/11659)

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

3.2.1 Description and analysis

Recommendation 5

363. The legal framework for customer due diligence is set out in a variety of legal documents. The basic obligations on customer identification are set out in the Basic Law. The SCFM has issued further requirements stipulating the procedures on conducting customer identification through Order No. 40, 24 April 2003 (SCFM Order No. 40). Both the Basic Law and SCFM Order No. 40 apply to all financial institutions. For banks, further requirements on customer identification are set out in the Law on Banks and Banking, Articles 63-65 and the Resolution of the National Bank of Ukraine No. 189. For non-bank financial institutions similar requirements are provided for in the Law of Ukraine on Financial Services and State Regulation of Financial Services Markets, Article 18, the Instruction No. 25 of the State Committee on Financial Services and Regulation of Financial Services Markets and the Decision of the State Commission of Securities and Stock Exchange No. 538.

364. In addition, the SCFM has issued a number of model rules on internal financial monitoring which includes guidance on customer identification. The model rules repeat much of what is in the Basic Law and SCFM Order No. 40. Due to the large number of these SCFM Orders the Ukrainian authorities were unable to provide all the translations[74]. Orders have been issued on the following:

- No. 248 on approval of model rules and programs for conducting internal financial monitoring by the officials of the bank (06.12.06);
- No. 217 on model rules for conducting internal financial monitoring by non-banking institutions (31.10.07);
- No. 267 on model rules for conducting internal financial monitoring by insurance companies (22.12.06);
- No. 37 on model rules for conducting internal financial monitoring by gambling institutions (28.02.07);
- No. 78 on model rules for conducting internal financial monitoring by credit unions (28.04.07);
- No. 114 on model rules for conducting internal financial monitoring by depositories (27.06.07);
- No. 148 on model rules for conducting internal financial monitoring by securities traders (31.08.07);
- No. 201 on model rules for conducting internal financial monitoring by registers (30.10.07);
- No. 232 on model rules for conducting internal financial monitoring by pawn-shops (25.12.07);
- No. 234 on model rules for conducting internal financial monitoring by leasing provider (26.12.07).

365. These model rules are not treated as other "enforceable means" but rather as "guidance", which the regulators take into account when drafting the enforceable measures (eg. resolutions)..

<u>Anonymous accounts and accounts in fictitious names</u>

366. Financial institutions are explicitly prohibited from opening and maintaining anonymous or numbered accounts (Law on Banks and Banking, Article 64, Part 1 and Law of Ukraine on Financial Services and State Regulation of Financial Services Markets, Article 18, Part 1). In addition, the requirement in the Basic Law, Article 6, Part 1, effectively ensures that anonymous, numbered and fictitious named accounts are not allowed to exist in Ukraine by requiring that "an entity of initial financial monitoring shall, on the basis of submitted original documents or their duly certified copies,

[74] The following Orders were received following the on-site inspection: 114, 148, 232 and 234.

identify the persons engaged in financial transactions subject to financial monitoring pursuant to this law." The financial institutions interviewed by the evaluation team reported that they did not open or maintain anonymous, numbered or fictitious named accounts. In addition, they could not transfer money unless identification had been verified.

367. The NBU also issued on 4 June 2003 Resolution No. 231 on the procedure of closing the anonymous foreign exchange accounts and encoded accounts of physical persons (residents and non-residents) in the foreign currency and national currency of Ukraine, which led to the closure of all previously opened anonymous accounts in banks.

Customer due diligence

When CDD is required

When establishing a business relationship

368. Article 6, Part 1 of the Basic Law, requires that "an entity of initial financial monitoring shall, on the basis of submitted original documents or their duly certified copies, identify the persons engaged in financial transactions subject to financial monitoring pursuant to this law." This ensures that customer identification is required when establishing a business relationship.

Banks

369. The Law on Banks and Banking, Article 64, Part 3, requires that "[…] the banks shall identify the following persons: customers opening accounts with the bank […]customers performing the transactions subject to financial monitoring […]".

Non-bank financial institutions

370. The Law of Ukraine on Financial Services and State Regulation of Financial Services Markets, Article 18, Part 3, requires that "A financial institution shall identify, in accordance with Ukrainian legislation: clients that open accounts in financial institutions and/or conclude the contracts on rendering financial services[…]clients which fulfil the operations which are subjected to financial monitoring."

371. Therefore, all these respective requirements ensure that identification is required when establishing business relations.

When carrying out an occasional transaction

Banks

372. Banks are required to identify "customers performing cash transactions without opening an account in the amounts exceeding equivalent of UAH 50 000.00" (equivalent to approximately just under €7,000) under the Law on Banks and Banking (Article 64, Part 3, 3rd indent). This does not meet the FATF requirement as it is limited to cash transactions and does not cover wider situations.

Non-bank financial institutions

373. Ukraine does not apply any threshold requirements in relation to non-bank financial institutions. The Law of Ukraine on Financial Services and State Regulation of Financial Services Markets, Article 18, Part 3, requires non-bank financial institutions to identify "clients that open accounts […] and/or conclude the contracts on rendering financial services." In addition, Part 4 requires financial institutions to "render corresponding financial services only after establishing of identity of the clients and fulfillment of measures "in compliance" with AML/CFT legislation. Therefore, they will identify the customers regardless of any threshold.

When carrying out wire transfers

374. For wire transfers, the requirements to identify customers is set out in NBU Resolution No. 348, section V, paragraph 4(e). However, this requirement is not set out in law or regulation as required under criterion 5.2 (c).

When there is a suspicion of money laundering

375. The Ukrainian authorities consider this requirement is met by the Basic Law, Article 7, Part 1 which requires that "An entity of financial monitoring shall have the right to refuse financial transaction if such entity finds that the financial transaction is subject to financial monitoring pursuant to this Law; in such case an entity of initial financial monitoring shall identify the persons engaged in the financial transaction, its nature and submit this information to the Authorized Agency." In effect, financial institutions would identify the customer if the transaction is subject to internal financial monitoring i.e. where there is suspicion of money laundering or terrorist financing. Article 12 in the Basic Law provides a list of detailed indicators advising when financial transactions will be subject to internal financial monitoring. This includes:

- "Non-standard or excessively complicated financial transaction that has no evident economic sense or obvious legal aim […]"
- "Non-compliance of a financial transaction with the activity of legal entity defined by statutory documents of such entity[…]"
- "Repeated financial transactions, the nature of which gives grounds to believe that their aim is to evade the procedures of compulsory financial monitoring established by this Law[…]".

376. Article 12 also includes a catch-all indicator which requires that "Internal financial monitoring can also be applied to other financial transactions, when an entity of initial final monitoring has grounds to believe that a financial transaction is aimed at legalization (laundering) of proceeds."

377. The authorities also contended that the obligation under Article 6 (1) of the Basic Law to identify persons engaged in financial transactions subject to financial monitoring would mean that customers would be identified regardless of any exemptions or thresholds. In addition, according to the Basic Law, Article 8, requires that "If employees of the entity if initial financial monitoring engaged in financial transaction is carried out to legalize (launder) the proceeds, this entity shall inform the Authorized Agency (SCFM) of such transaction."

Banks

378. Although banks are able to apply a threshold requirement when conducting identification, there is no requirement in law or regulation which explicitly requires them to undertake due diligence when there is suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds. In addition, the Basic Law references the fact that it is also aimed at the financing of terrorism but this term is not defined. The Ukrainian authorities advised that the terrorist financing is defined in the Criminal Code of Ukraine, Article 258(4). However, no cross reference is provided in the Basic Law to this definition and as discussed in section 2 of this report the definition of terrorist financing does not meet the FATF requirement.

Non-bank financial institutions

379. Given that non-bank financial institutions will have to identify in all situations and do not apply any exemptions or thresholds, criterion 5.2(d) does not apply (the Law of Ukraine on Financial Services and State Regulation of Financial Services Markets, Article 18, Part 3).

When there are doubts about the veracity/adequacy of previously obtained customer identification

380. The Basic Law, in Article 5, Part 1, first bullet , provides that "an entity of financial monitoring shall identify the person engaged in the financial transaction if there are reasons to believe that the information regarding the identification of the person should be clarified." The evaluation team considers that this does not entirely meet the FATF requirement, as there is no explicit reference to conducting CDD in case of doubts about the veracity or adequacy of previously obtained customer identification data, and that as such the existing requirements do not cover the full scope of CDD.

381. In addition, SCFM Order No. 40, paragraph 5.8 requires that "[…] if documents, on the basis of which identification was held, has been amended, or the period of their validity terminated, than upon conducting by the client of financial transaction, which is subject to financial monitoring , the entity […] is obliged to carry out identification in accordance with the legislation." However, this is not laid out in law or regulation.

Banks

382. There is a requirement for banks in NBU Resolution 189, paragraph 3.7, which requires that "In case there is a doubt as to the authenticity of information or documents, submitted by the client, the Bank, taking into consideration the level of risk that the client is engaged in a transaction aimed at laundering or legalization of proceeds from crime, takes actions to verify information and documents submitted by the client." However, this is not laid out in law or regulation.

Non-bank financial institutions

383. The authorities referred in this context to SCFSMR Instruction No. 25 (5.2, second bullet) and SCSSM Decision No. 538 (6.2, Part 2) which both refer to identification of clients in cases where there has been a modification of the information or expiry of documents and to the requirements in SCFM Order No. 40, paragraph 5.8. However, there is no explicit requirement in law or regulation which requires non-bank financial institutions to undertake CDD measures where it has doubts about the veracity or adequacy of previously obtained customer identification data.

Required CDD measures

Natural persons

384. In order to identify natural persons, financial institutions are required to verify identification on the basis of original documents or certified copies (Basic Law, Article 6, Part 1). The following identification data is required under the Basic Law, Article 6, Part 2: surname, name, patronymic name, date of birth, series and number of passport (or other identification document), date of its issue and issuing agency, place of residence and identification number from the State Register of Natural Persons – payers of taxes and other compulsory payments. Similar information is required for non-resident natural persons. These requirements are repeated in SCFM Order No. 40, paragraph 5.3, NBU Resolution 189, paragraph 3.3, SCFSMR Instruction No. 25, paragraphs 5.4 (a) and (c) and SCSSM Decision No. 538, paragraphs 6.4 (a) and (c).

385. The NBU has issued Resolution No. 492 On approval of Regulations for procedure of opening, keeping, and closing of accounts in national and foreign currency which applies to banks. This resolution determines what type of documents are acceptable for identification for the different types of customers. In addition, the NBU regularly provides banks with explanations and clarifications, letters of comment and recommendations to enable them to comply with the identification requirements on natural and legal persons. This information is available on the NBU website.

386. The State Commission on Securities and Stock Market has a "frequently asked questions" section on its website which provides guidance on how firms may comply with identification requirements. Following the onsite visit, the SCSSM advised that these frequently asked questions covered issues

such as identification of beneficial ownership, what type of identification documents are acceptable for residence or temporary residence.

387. The State Commission on Financial Services Market Regulation has not issued any further guidance on identification beyond Instruction No. 25.

388. Financial institutions met by the evaluation team advised that they do not encounter any problems with the identification requirements as all citizens over 16 are required to have a passport. For minors under 16, accounts would be opened with a birth certificate.

389. Within both the Law on Banks and Banking (Article 64, Part 7) and the Law of Ukraine on Financial Services and State Regulation of Financial Services Markets (Article 18, Part 9) there is a provision which entitles all financial institutions to obtain information from the state bodies, banks and other legal entities to verify customer information as required by Ukrainian legislation. These bodies are required to provide such information to the financial institution free of charge within ten working days from the date of acquiring the statement. A number of financial institutions advised that there were difficulties in accessing information from the State Register, particularly related to identification of beneficial owners, and from the State Tax Administration. In many instances, requests for information were rejected by the state bodies. Therefore, the Ukrainian authorities should ensure that financial institutions have greater access to this information to enable them to comply with customer due diligence requirements.

Legal persons

390. For legal persons, the Basic Law, Article 6, Part 2 requires that the following information is collected: name, legal address, state registration documents (including statutory documents, information about officers and their functions, etc.), identification code from the Unified State Register of Enterprises and Organizations of Ukraine, references of the bank which opened the account and account number. The Ukrainian authorities advised that the legal status of a legal person is confirmed by its state registration identification number . For legal persons that are non-resident the full name, location and references of the bank that opened the account and account number will need to be collected. In addition, NBU Resolution No. 189, paragraph 3.4, requires that "the data on the legal person registration based on the copy of legalized extract from trade, banking or court register or on the duly certified document of registration issued by the Authorized body of a foreign country certified by the notary." (This requirement is repeated in SCFSMR Instruction No. 25, paragraph 5.4 (d) and SCSSM Decision No. 538, paragraph 6.4 (d)). Both the requirements for resident and non-resident legal persons are repeated in SCFM Order No. 40, paragraph 5.3, NBU Resolution No. 189, paragraph 3.3, SCFSMR Instruction No. 25, paragraphs 5.4 (b) and (d) and SCSSM Decision No. 538, paragraphs 6.4 (b) and (d). All the information collected will be reviewed.

391. There is a requirement in both the Law on Banks and Banking (Article 64, Part 6) and the Law of Ukraine on Financial Services and State Regulation of Financial Services Markets (Article 18, Part 8) on collecting identification on legal persons similar to the requirements highlighted in the paragraph above on natural persons.

Authorised representatives

392. Both the Law on Banks and Banking (Article 64, Part 3) and the Law of Ukraine on Financial Services and State Regulation of Financial Services Markets (Article 18, Part 3) require that financial institutions should identify "persons authorised to act on behalf of […] customers". There is no specific requirement to verify the identity of the person authorised to act on behalf of the customer. However, both the Ukrainian authorities and financial institutions advised the evaluation team that they considered this to mean that in effect identity will need to be verified.

Beneficial owner

Banks

393. According to the Law on Banks and Banking, Article 64, Part 6 "In order to identify a customer who is a legal entity the bank shall identify the individuals who own, control, either directly or indirectly, or benefit from the activity of such a legal entity.

394. However, this does not cover all elements of the definition of beneficial ownership as defined in the Glossary of the FATF Recommendations. The requirement in Part 6 only refers to a legal entity but there is no reference to the natural person who ultimately owns or controls a customer and/or person (i.e. natural person) on whose behalf a transaction is being conducted. As a consequence, the requirement to identify beneficial owners does not cover all situations expected under the FATF Standards.

Non-bank financial institutions

395. A similar requirement to identify beneficial owners exists in the Law of Ukraine on Financial Services and State Regulation of Financial Services Markets, Article 18, Part 8: "In order to identify the client who is a legal entity, the financial institution shall identify natural persons who are owners of this legal entity, have direct or intermediate influence on it and get an economic benefit from its activity" .

396. The requirement to identify beneficial owners does not cover all situations expected under the FATF standards.

397. The experience of many of the bank and non-bank financial institutions which the evaluation team met suggested that many of them do not look as closely at beneficial ownership as required under the FATF standard. In addition, the current narrow interpretation of beneficial ownership requirements meant that bank and non-bank financial institutions were not covering all situations expected under the FATF standards.

Customer acting on behalf of others

398. Under the Basic Law, Article 6, financial institutions are required to determine whether the customer is acting on behalf of another person, and should then take reasonable steps to obtain sufficient identification data to verify the identity of that other person: "In case when a person represents another person or if an entity of initial financial monitoring has doubts about whether a person acts in its own name or a beneficiary is another person, an entity of initial financial monitoring shall identify, according to the provisions of this Article and other laws that regulate such procedure, the person, on behalf of which the financial transaction is executed, or the beneficiary."

Banks

399. Although there is nothing in the Law on Banks and Banking, NBU Resolution 189, requires that "In case a person acts as a representative of another person [...] the bank shall according to items 3.3 and 3.4 also identify the person in whose name the transaction is performed or who is the beneficiary."

Non-bank financial institutions

400. In addition to the requirements in the Basic Law, the Law of Ukraine on Financial Services and State Regulation of Financial Services Markets, Article 18, part 6, requires that "In the case of doubt that person does not act in his/her name the financial institution shall identify person in whose name the financial operation is going to be fulfilled." Both SCFSMR Instruction No 25, paragraph 5.1 and SCSSM Decision No. 538, paragraph 6.1 require that "If a party acts as a representative of another party, or if the entity has doubts as to whether such a party acts on its own behalf or as to whether

another party is the true beneficiary, the entity must also identify the parties, on whose behalf or instruction the financial transaction is being performed, or who are the beneficiaries."

Identification of beneficial owners of legal persons and legal arrangements

401. The concept of a legal arrangement does not exist in the Ukrainian legal system. Where a customer is a legal person, financial institutions are required under SCFM Order No. 40, paragraph 5.5 to "study the constituent documents of the legal entity and documents which confirm its state registration and in particular the rightness of their registration (taking into account all the registered changes); the make-up of the founders of legal entity and its linked persons; the structure and functions of the management bodies of legal entity; and size of the registered and prepaid charter fund". Similar requirements can be found in NBU Resolution No. 189, paragraph 3.8 and SCFSMR Instruction No. 25, paragraph 5.5. Further guidance is provided by the NBU to banks on what type of documents should be reviewed (Resolution No. 492, 12 November 2003, About Approval of Instruction On the Order of Opening, Use and Closing of Accounts in National and Foreign Currencies, paragraph 3.2 and a letter on the identification of legal entities who have been corporate customers of the bank – 20 November 2003 - 48-012/589-8601). In addition, the SCFM advised that it has provided guidance to financial institutions concerning the identification of legal persons and this is available on the SCFM website.

402. There appears to be an inconsistency between the requirements in SCSSM Decision No. 538 and in SCFM Order No. 40, which may result in a lack of clarity over what financial institutions in the securities sector subject to both these obligations are required to do to understand the ownership and control structure of customers that are legal persons or arrangements. SCSSM Decision No. 538, paragraph 6.5 requires that "If the parties carrying out a financial transaction falling within the entity' criteria of the classification of the parties characterised by the increased degree of the probability of their engaging into transactions, which can be related to legalising (laundering) the proceeds of crime or financing the terrorist activities, then increased attention shall be paid to: the ascertainment of beneficial owners, the correctness of the execution of the constituting documents (taking into account all the registered changes), the founders of the legal entity, the structure of management bodies of the legal entity, and their powers[…]". The reference to "the increased degree of the probability of their engaging into transactions" is only found in SCSSM Decision No. 538 and not in SCFM Order No. 40. This in effect means that only those customers considered as higher risk of money laundering would be subject to the measures and there is no general requirement.

403. There is no separate requirement in Ukrainian legislation requiring financial institutions to determine who are the natural persons that ultimately own or control the customer, including those persons who exercise ultimate effective control over a legal person or arrangement. Instead for banks, the Law on Banks and Banking, Article 64, Part 6 is relied on: "In order to identify a customer who is a legal entity the bank shall identify the individuals who own, control, either directly or indirectly, or benefit from the activity of such a legal entity".

404. For non-bank financial institutions, it is the Law of Ukraine on Financial Services and State Regulation of Financial Services Markets, Article 18, Part 8, "In order to identify the client who is a legal entity, the financial institution shall identify natural persons who are owners of this legal entity, have direct or intermediate influence on it and get an economic benefit from its activity.

Purpose and nature of the business relationship

405. Under SCFM Order No. 40, paragraph 3.5, financial institutions are required to take measures to clarify the nature and purpose of financial transactions.

Banks

406. Under NBU Resolution No. 189, paragraph 3.15, banks are required to establish the purpose and the nature of future business relations when establishing relations with customers. They are also required to maintain an internal questionnaire on every client to implement the customer identification

obligations, which should include information regarding the "purpose and reasons for establishing relations with the bank[…]" (NBU Resolution 189, paragraph 3.1).

Non-bank financial institutions

407. SCFSMR Instruction No. 25, paragraph 3.7, requires that procedures should be established to ascertain the nature and objective of financial transaction.

408. SCSSM Decision No. 538, paragraph 6.5 requires "If the parties carrying out a financial transaction fall within the entity's criteria of the classification of the parties characterised by the increased degree of the probability of their engaging into transactions, which can be related to legalising (laundering) the proceeds of crime or financing the terrorist activities, then the increased attention shall be paid to […] the objective and grounds for the performance of transactions[…]" However it only refers to collecting this information in higher risk situations but does not cover the cases of low or normal risk customers, where such information should also be requested by the financial institution.

Ongoing due diligence

409. There is no specific requirement in law or regulation to conduct ongoing due diligence on the business relationship applicable to all financial institutions. Nor is there a general requirement 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. SCFM Order No. 40, paragraph 5.2, requires financial institutions to have measures to conduct additional study of the customer. In addition, paragraph 5.8 states that "In case if risk of carrying out by the client of financial transaction for the legalization (laundering) of proceeds from crime is estimated by the entity as large, the entity specifies information, received according to the results of identification and studying of client, which carries out financial transaction, not rarely than once a year. For other clients, the terms of information specification should not be more than three years." However, these requirements are not explicit enough to meet the FATF standard - there is no reference within the text to "ongoing due diligence".

Banks

410. NBU Resolution No. 189, paragraph 3.1, part 4, requires that the bank shall quarterly carry out an analysis of client's transactions with regard to their compatibility with client's financial standing and substance of client's business, it must cover all client's accounts opened in the bank's subdivisions. Paragraph 3.12 requires that "The bank updates information regarding identification and research of a client at least once a year, if the risk of performing transactions by the client to legalize (launder) the proceeds from crime is estimated by the bank as high; for other clients information shall be updated each 3 years." However, this is not set out in law or regulation.

Non-bank financial institutions

411. There is no requirement in law or regulation for non – banking financial institutions to conduct on-going due diligence on the business relationship. SCFSMR Instruction No. 25, paragraph 5.5 requires that "While examining the constituting documents and documents confirming the state registration which constituting legal entity, special attention must be paid to: […] the match between financial transaction and the normal business of the legal entity […] a description of sources of origin and methods of the transfer (contribution) of funds used in transactions". In addition this only refers to legal entities.

412. According to SCSSM Decision No. 538, paragraph 6.5 "If the parties carrying out a financial transaction falling within the entity' criteria of the classification of the parties characterised by the increased degree of the probability of their engaging into transactions, which can be related to legalising (laundering) the proceeds of crime or financing the terrorist activities, then increased

attention shall be paid to: […] the conformity of the financial transaction with the usual business of the legal entity […] a description of sources of origin and methods of the transfer (contribution) of funds used in transactions. This does not meet the FATF requirement because it only refers to higher risk situations and does not cover normal and lower risk customers and it does not explicitly require "ongoing due diligence".

413. Financial institutions are required to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships. SCFM Order No. 40, paragraph 5.8 requires that "In case, if documents, on the basis of which identification was held, has been amended, or the period of their validity terminated, then upon conducting by the client of financial transaction, which is subject to financial monitoring, the entity is obliged to carry out identification in accordance with the legislation." This is reinforced by the requirement to update information held at least once a year for higher risk customers and no later than three years for other customers.

Banks

414. Banks are required under NBU Resolution No. 189, paragraph 3.12 to update information held at least once a year for higher risk customers and no later than three years for other customers. A mandatory update of identification information is required when there is a change of essential shareholders, change of location (place of residence) of the account holder), amendments to the statutory documents and the expiration of the validity of the documents provided previously.

Non-bank financial institutions

415. SCFSMR Instruction No. 25, paragraph 5.2 requires non-bank financial institutions to have identification procedures which contain measures related to the identification of the party in the event of changes in the information or expiry of information previously held. SCSSM Decision No. 538 has an identical requirement in paragraph 6.2. In addition, paragraph 6.8 requires that if the identification details of the customer have changed or if the validity period of the documents on which identification has been based has expired, then the customer will be subject to identification in accordance with the legislation.

<u>*Risk*</u>

416. There is no general requirement on financial institutions to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions. The Ukrainian authorities believe this is addressed by SCFM Order No. 40, paragraph 4 and 4.1 which stipulates procedures for the disclosure of financial transactions that can be connected with, related to financial transactions subject to financial monitoring and aimed at terrorist financing. However, this seems to refer to procedures for reporting of financial transactions and does not cover categories of customer or business relationship. In addition, there is also no reference to higher risk. Paragraph 4.2 requires to financial institutions developing money laundering risk criteria. Appendix 1 provides a list of criteria:

1) Availability of counterparts – residents of countries (territories), about which it is known from reliable sources that they:

- are not compliant with generally accepted standards in the area of counteraction to legalization (laundering) of proceeds from crime;
- do not envisage disclosure and provision of information concerning financial transactions;
- do not fulfil recommendations of Financial Action Task Force (FATF);
- are countries (territories), where military operations are in place;
- are offshore zones;
- are countries (territories), which do not take part in international co-operation in the area of prevention and counteraction to legalization (laundering) of proceeds from crime and terrorist financing.

2) In financial transaction takes part a person, which:

- is the person, who takes (took) up post, in accordance with which has (had) wide range of powers;
- not presenting financial institution, is engaged in money transfers, transactions for payment of cheques with cash, etc.;
- carries out external economic transactions;
- receives financial assistance from non-residents or provides financial assistance to non-residents;
- is a non-profit organisation;
- initiates conducting of financial transaction without indirect contact with subject

417. The list is not meant to be exhaustive and further criteria can be developed by financial institutions. The financial institutions met by the evaluation team advised that they did build on the criteria provided by the authorities.

Banks

418. NBU Resolution No. 189 requires banks to conduct certain elements of enhanced due diligence including additional verification of customer information, annual updating of identification information and on-site visits to customer premises (3.12 to 3.14). This falls short of meeting the situations envisaged under criterion 5.8 . In addition, paragraph 3.11 requires banks to develop risk criteria and examples on the "presence of counter agents" in Appendix 4 are near identical to those in Appendix 1 of SCFM Order No 40. Appendix 4 of the Resolution provides further risk criteria:

419. A client is a person holding (who held) a position with large powers (with central bodies and local bodies of government, local governments, political parties), or is a member of the family of such person

- A corporate client, who is not a financial institution, is involved in money transfers, cash checks transactions etc.
- A corporate client doing tourism business.
- A corporate client involved in foreign economic operations.
- A corporate client that is a charitable public organization (except for organizations that that act under auspices of well-known international organiations)
- A corporate client that receives financial assistance from non-residents of Ukraine or provides financial assistance to non-residents of Ukraine.

Non-bank financial institutions

420. SCFSMR Instruction No. 25, paragraph 4.5 requires non-bank financial institutions to develop risk criteria and cross-refers to the criteria in SCFM Order No. 40. In addition, it suggests an additional list of criteria that firms may introduce:

- the non-conformity of non-resident insurer and re-insurer counterparties with requirements of the State Financial Service Markets Regulation Commission for financial reliability (stability) ratings of non-resident insurers and re-insurers;
- the onset of an insured accident within short time upon the conclusion of the insurance contract;
- a financial institution registered in a country (on a territory) known to not supervise financial institutions is a party to a financial transaction.

421. However, this does not meet the FATF requirement as there is no reference to the need to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.

422. SCSSM Decision No. 538, paragraph 6.2, does refer to high risk situations and states that the "[…] criteria for categorising parties, descriptions of types of parties characterised by the increased degree

of the probability of their engaging into transactions, which can be related to legalising (laundering) the proceeds of crime or financing the terrorist activities (the general description, the country of origin, the business activity and reputation profile, the prior convictions, etc.) […].” A list of criteria is provided in Annex 2 and financial institutions can develop their own criteria:

- If parties to the transaction are residents of countries, on which it is known from reliable sources that:
- they are not in compliance with the generally accepted standards of combat against legalising (laundering) the proceeds of crime;
- their legislation does not provide for the disclosure or provision of the information about financial transactions;
- they are countries, where hostilities take place;
- are offshore territories.
- If the client is a political activist and, for instance, occupies a leading position in a political party.
- A legal-entity client is a charitable public organisation (except for organisation operated under the aegis of the known international organisations).
- The client is a joint stock company, which has issued bearer securities.

423. SCSSM Decision No. 538, paragraph 6.5 requires that where the customer is considered to be higher risk then the greater scrutiny should be paid to the following:

- the ascertainment of the beneficial owners;
- the correctness of the execution of the constituting documents (taking into account all the registered changes);
- the founders of the legal entity;
- the structure of management bodies of the legal entity, and their powers;
- the size of the registered and paid-in authorised fund;
- the conformity of the financial transaction with the usual business of the legal entity;
- the type of business;
- the objective and grounds for the performance of transactions;
- the assessment of the size and sources of existing and expected proceeds;
- a description of sources of origin and methods of the transfer (contribution) of funds used in transactions;
- the related parties.

424. Ukraine has not implemented the full range of provisions which would allow financial institutions to apply reduced or simplified due diligence. However, under the Basic Law, Article 6, Part 5, “Identification of persons shall not be required in the […] making of agreements between banks registered in Ukraine.” No further information or guidance is provided to banks.

425. Where financial institutions are permitted to determine the extent of CDD measures on a risk sensitive basis, this is consistent with guidelines issued. Within SCFM Order No. 40, NBU Resolution No. 189, SCFMSR Instruction No. 25 and SCSSM Decision No. 538 there is reference to risk criteria which financial institutions use. In practice, financial institutions will develop their own criteria to complement these.

Timing of verification

426. Financial institutions are required to verify the identity of the customer and beneficial owners at the start of the relationship. The Law on Banks and Banking, Article 64, Part 4 requires that “An account for a client shall be opened and the […] transactions may be performed only after identification of the customers and taking the measures required by the [Basic Law].” A similar requirement can be found in Law of Ukraine on Financial Services and State Regulation of Financial Services Market, Article 18, Part 4. Therefore, Ukrainian legislation does not allow for customer identification following the establishment of the business relationship.

Failure to satisfactorily complete CDD

427. In the event that financial institutions are unable to comply with the customer identification requirements they are not permitted to open the account, commence business relations or perform the transactions; and are required to make a suspicion transaction report. Under the Basic Law, Article 7, Part 1, requires "An entity of initial financial monitoring shall have the right to refuse financial transaction if such entity finds that the financial transaction is subject to financial monitoring pursuant to this law; in such case, an entity of initial financial monitoring shall identify the persons engaged in the financial transaction, its nature and submit this information to the Authorized agency." In addition, SCFM Order No. 40, paragraph 8.4 requires if identification of the customer cannot be completed by the end of the third business day after initial contact then the financial institution should submit a report to the SCFM. The financial institution should continue to take measures to obtain the identification data. Once received the relationship should be terminated and a report should be submitted to the SCFM.

Banks

428. According to the Law on Banks and Banking, Article 64, Part 5, "If a customer fails to submit the documents or statements required or submits intentionally the untrue information, the bank shall refuse to service the customer. A similar requirement exists for legal entities (Part 6). In addition, Part 5 also refers to the fact that "If during the identification procedure the information submitted by the client can be reasonably suspected to be incorrect or intentionally misleading the bank shall submit information on the client's financial transactions to the special authorized government agency [SCFM] in charge of the financial monitoring."

Non-bank financial institutions

429. The Law of Ukraine on Financial Services and State Regulation of Financial Services Market, Article 18, Part 8, requires that if the client fails to submit identification documents then the non-bank financial institution should refuse to provide the service or open the account. If the customer has any existing accounts the financial institution should refuse to attend to the customer's request.

430. Where a financial institution has already commenced a business relationship it is required to terminate the business relationship and to make a suspicious transaction report. SCFM Order No. 40, paragraph 8.7 requires "In case of impossibility to conduct complete identification of the client till the end of the third business day, the entity sends to the SCFM of Ukraine report on financial transactions, defining available information. At that it continues to take measures concerning specification of identification data of person, prescribed by Law, upon termination of which it provides the SCFM of Ukraine with additional information."

Existing customers

431. There is no explicit requirement to apply CDD to existing customers which applies to non-bank financial institutions. Only the NBU Resolution No. 189, specifically addresses this issue in its preamble, paragraph 3 : "Banks shall identify in compliance with the current legislation existing clients risk of performing transactions by which to legalise (launder) the proceeds from crime is estimated by the bank as high, by 1 September 2003, and other clients – by 1 January 2004." The State Commission on Financial Services Markets Regulation and the State Commission on the Securities and Stock Market has not stipulated this to financial institutions that they regulate.

432. The Ukrainian authorities consider the requirement in SCFM Order No. 40, paragraph 5.8, to extend CDD requirements to existing customers: "In case if risk of carrying out by the client of financial transaction for the legalization (laundering) of proceeds from crime is estimated by the entity as large, the entity specifies information, received according to the results of identification and studying of client, which carries out financial transaction, not rarely than once a year. For other clients, the terms of information specification should not be more than three years." However, this does not refer to existing customers as at the date that the Ukrainian requirements on CDD came into force.

Recommendation 6

433. There is currently no enforceable requirement for financial institutions to conduct additional measures regarding PEPs as required by FATF Recommendation 6. Ukraine currently relies on a vague reference in SCFM Order No. 40, Appendix 1, which refers to a list of risk criteria that financial institutions should take account of including customers who occupy (occupied) the position in which they have been given a wide range powers. The Ukrainian authorities contend that this would include senior officials of central and local agencies of executive powers, self-regulating bodies and representatives of political parties. However, this is not defined anywhere.

Banks

434. For banks, NBU Resolution No. 189, Appendix 7 provides a list of risk criteria for money laundering which includes "A client is a person holding (who held) a position with large powers (with central bodies and local bodies of government, local governments, political parties), or is a member of the family of such person." This does not meet the FATF definition and there are no further requirements.

Non-bank financial institutions

435. SCSSM Decision No. 538 stipulates an approximate list of criteria for higher money laundering risk which includes if the customer is a " […] political activist and, for instance, occupies a leading position in a political party." This does not meet the FATF definition.

436. There was some awareness of PEP's amongst the financial institutions that were interviewed by the evaluation team and the team was informed that in practice PEP relationships would only be approved by senior management. However, given there is no single or consistent definition of PEPs in Ukraine, the financial institutions had different views on who they would consider a PEP.

Additional elements

437. There is no explicit extension of the above requirements to PEPs who hold prominent public functions domestically. However, the Ukrainian authorities believe the requirements practically cover domestic PEPs.

438. Ukraine has not ratified the United Nations Convention Against Corruption. The President of Ukraine signed on 18 October 2006 the Law No. 251-V on Ratification of UN Convention against Corruption (not yet in force).

Recommendation 7

439. Banks are in a position to offer correspondent related services.

Banks

440. 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 institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action. However, under NBU Resolution 189, Appendix 6, the banks are required to collect the following information on correspondents:

- basic details – name, form of legal entity, place of registration the type of banking license;
- an assessment of the correspondents reputation, exposure to risk of transactions on the legalization of proceeds from crime, and description of financial standing;

- information on the founders, owners of the essential participation, affiliated persons, persons entitled to make mandatory instructions, or those who can impact the client's activity in a different way;
- information on the parent company, corporation, holding group, industrial and financial group or another association of which the client is a member;
- information on the executive bodies of a corporation (legal entity) (structure, information on the persons – members of the executive bodies and their powers) and information on separate independent divisions (if any);
- business history, scope of services on the market (information certifying client's actual existence (example: reference to "The Bankers' Almanac"), information about reorganization, changes in business, actual and former financial problems, business reputation on international and domestic markets, market share, specialization according to financial products, etc.);
- description of services rendered by correspondent to its clients through an account (accounts) opened with the bank (branch) and assessment of risk of their use with the purpose to legalize proceeds from crime or terrorist financing; and
- description of actions taken by the correspondent to prevent legalization of proceeds from crime, and their assessment.

441. The information required in the questionnaire does address some of the key requirements under criterion 7.1, including gathering sufficient information about a respondent institution to understand fully the nature of the respondent's business and the reputation of the institution. However, this should be a more explicit requirement in NBU Resolution No. 189 rather than just included in the questionnaire. In addition, the questionnaire contains no reference to the quality of supervision of the respondent, including whether it has been subject to a money laundering or terrorist financing investigation, or regulatory action.

442. The NBU has issued a resolution on correspondent accounts - No. 209 of 25 May 2005, Regulation on opening and maintenance of correspondent accounts of resident and non-resident banks in foreign currency and correspondent accounts of non-resident banks in hryvnias. Paragraph 2.1 stipulates the information required to open correspondent accounts for resident and non-resident banks including notarized copies of the bank's licence and articles of association, the most recent annual report, the most recent balance sheet, list of correspondent banks

443. In addition, the NBU has issued a letter to banks on the volume of information that shall be clarified by the bank with aim of identifying and studying non-resident respondent institutions (Letter 48-012/109-618 of 18 January 2008). The letter advises that correspondent banking relationships are potentially a higher risk for money laundering. Therefore, banks should ensure they have a full understanding of the nature of the respondent's activities and should access publicly available sources of information concerning the reputation of the respondent and the quality of supervision, including whether it has been subjected to investigations for breaching AML/CFT legislation. The bank should also estimate the measures that the respondent takes for AML/CFT and ensure they are sufficient and effective. The information in the letter complements the requirements of the questionnaire and will go some way in helping banks gather information on a respondent. However, the letter is merely guidance and, therefore, is not considered to be an enforceable requirement.

444. Banks are required to assess the respondent institution's AML/CFT controls but there is no explicit requirement to ascertain that they are adequate and effective. NBU Resolution No. 189, paragraph 3.9 requires that "When entering into correspondent relations, the bank shall clarify if the correspondent bank takes actions aimed at prevention and combating legalization (laundering) of the proceeds of crime." No guidance is provided as to what this will involve although the letter issued by the NBU advised that banks should estimate the measures that the respondent takes for AML/CFT and ensure they are sufficient and effective. However, this not laid out in an enforceable requirement. Paragraph 3.10 recommends that banks should not enter into a correspondent relationship with respondents that do not take actions to prevent money laundering.

445. There is no direct requirement to obtain approval from senior management before establishing new correspondent relationships.

446. NBU Resolution No. 209 requires each institution to document there respective responsibilities in an "Agreement on Establishing Correspondent Relations" (paragraph 2.4). Paragraph 2.5 requires that the agreement should include the following points:

- Subject of Agreement;
- Account maintenance procedure;
- Obligations of parties;
- Responsibility of parties;
- Dispute resolution procedure;
- Validity of Agreement;
- Special provisions;
- Final provisions;
- Details of parties;
- Fee schedule.

447. There are no specific requirements regarding payable-through accounts as the Ukrainian authorities and banks confirmed that they do no exist in Ukraine.

448. The NBU was able to provide an example which demonstrated that it could take action against banks that were not adequately collecting information as required in the Appendix.

Recommendation 8

449. Financial institutions are required under SCFM Order No. 40, paragraph 3.5, to have policies in place to prevent the misuse of technological developments in money laundering or terrorist financing.

450. 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. The Ukrainian authorities advised that a business relationship can only be established on a face-to-face basis. In the Appendix of SCFM Order No. 40, financial institutions are required to assess the risk of customers performing financial transactions on a non-face-to-face basis.

Banks

451. Although business relationships cannot be established on a non-face-to-face basis, during the course of the relationship customers will be able to perform transactions on a non-face-to-face basis. This is particularly the case with internet banking. Therefore, the NBU has issued a letter on 10 January 2006 (No: 48-012/29-192) highlighting the provision of services through the internet is a higher risk for money laundering and terrorist financing and how these risks could be mitigated. The letter includes an extract from the Basel Committee on Banking Supervision, Risk Management Principles for Electronic Banking.

Non-bank financial institutions

452. For the securities sector, the State Commission on the Securities and Stock Market has issued Decision No. 759 (11 July 2008) which advises financial institutions to take into account the higher risk of money laundering and terrorist financing through the internet. It is recommended that they:

- apply additional verification of the customer if it appears the customer intends to use Internet banking, give orders, and submit identification information using Internet
- if the customer uses electronic documents while conducting transactions then essential elements stipulated by the legislation or the agreement and digital signature should be verified;

- have alternative contract details for the customer e.g. e-mail address of the customer and/or telephone and fax numbers;

453. SCSSM Decision No. 759 also advises that special attention shall be focused at the financial transactions if the transactions on the internet are not consistent with the customer profile or the transactions do no make any economic sense.

454. There is no guidance available to other non-bank financial institutions on managing the risks which apply to non-face to face customers. The authorities advised that there is no practice of non- face to face relationships apart from the banking and securities sector.

3.2.2 Recommendations and comments

455. All types of financial institutions as defined in the FATF Glossary are covered by AML/CFT obligations through a combination of the Basic Law, the Law on Financial Services and State Regulation of Financial Markets and the Law of Ukraine on Securities and Stock Market. However, Ukraine would benefit from setting out clearly the definitions in the Basic Law to ensure there is a consistency in terminology.

456. Ukraine has certain key elements relating to customer due diligence set out in law or regulation, with some of the elements covered by other enforceable means. However, there remain a number of gaps (beneficial owner, doubts over veracity or adequacy on information, ongoing due diligence, PEPs etc.) which should be addressed.

457. Some financial institutions went beyond the basic requirements set out in the various documents and used the FATF standards to ensure that they were managing the risks of money laundering and terrorist financing. These firms were also using the risk-based approach to help them comply with their obligations. To some extent, this increases the effectiveness, although this was more related to international standards and the firm’s risk-management practices rather than an interpretation of the measures set out in existing legislation and guidance.

458. Ukraine has a number of legislative and regulatory requirements setting out AML/CFT obligations, many of which duplicate each other and can lead to some inconsistencies in the requirements on financial institutions. Some of the financial institutions interviewed by the evaluation team felt that it would we helpful if the authorities consolidated the requirements into fewer documents which would help simplify things for them. Given that many of the FATF standards are intended to apply equally to all institutions, Ukraine is encouraged to rationalise its legislative and “other enforceable means” requirements to remove the duplication. In particular, Ukraine should consider bringing the asterisk FATF criteria within the Basic Law.

Recommendation 5

459. In relation to Recommendation 5, Ukraine should ensure that the following requirements are clearly covered by law or regulation:

- Banks should be required to undertake CDD when carrying out occasional transactions above the applicable designated threshold, ie should not be limited to cash transactions only;
- Identify customers carrying out occasional transactions that are wire transfers;
- Banks should be required to undertake due diligence when there is suspicion of money laundering or terrorist financing, regardless of any thresholds;
- Undertake CDD when there are doubts about the veracity or adequacy of previously obtained customer identification data. In particular the current requirements could be strengthened by making the requirement more explicit, ensure it refers to undertaking CDD and covers the full scope of CDD;

- The definition of beneficial ownership should cover all elements of the FATF Glossary i.e. natural persons requiring financial institutions to determine who are the natural persons that ultimately own or control the customer;
- conduct ongoing due diligence on the business relationship applicable to all financial institutions.

460. In addition, the following should be set out in law, regulation or other enforceable means:

- Securities institutions should be required to identify the beneficial owner and understand the ownership and control structure of the customer in all situations and not just high risk situations
- Securities institutions should be required to obtain information on the purpose and nature of the business relationship in all situations.
- For non-bank financial institutions there should be a requirement 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.
- Requirement to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions.
- Requirement to apply CDD to existing customers which applies to non bank financial institutions.

461. Ukraine has some recognition of the risk-based approach within the various requirements. However, Ukraine should consider the explicit recognition of the risk-based approach within the law and other enforceable means. This would help Ukraine to make more use of the some of the requirements in the FATF standards which are not currently implemented in Ukraine including simplified and enhanced due diligence.

462. The financial institutions interviewed by the evaluation team advised that they experienced a number of difficulties when accessing information from the State register and the State Tax Administration which prevented the effective implementation of CDD requirements. The Ukrainian authorities should ensure that financial institutions have greater and simpler access to this information.

463. The discrepancy regarding SCFM Orders which are applicable to banks but where the NBU is unable to impose sanctions for any breaches should be addressed. Although the NBU advised that most of the requirements in the SCFM Order are within NBU Resolution No. 189, the authorities should consider to harmonise these requirements in a consolidated manner.

464. The Basic Law should include a cross-reference to the definition of terrorist financing in the Criminal Code of Ukraine.

Recommendation 6

465. As regards Recommendation 6, the Ukrainian authorities should implement the FATF requirements for PEPs as soon as possible. This should include:

- a clear and explicit definition for PEPs consistent with the FATF Glossary;
- requirements 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;
- a requirement to obtain senior management approval for establishing business relationships with PEPs. This should also include where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP; and
- a requirement to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs

- A requirement to conduct enhanced ongoing monitoring on a business relationship with the PEP.

466. In addition, given the concerns the authorities have regarding corruption, Ukraine should consider explicitly extending the provisions to include domestic PEPs.

Recommendation 7

467. Ukraine would benefit by making requirements on correspondent relationships more explicit in NBU Resolution No. 189 rather than just relying on the information that is required in the questionnaire. In particular this should include explicit requirements on the following:

- 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;
- to ascertain that the respondent institutions AML/CFT systems are adequate and effective; and
- to obtain approval from senior management before establishing new correspondent relationships.

Recommendation 8

468. Ukraine should ensure that there is an 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. This is particularly important as Ukraine's financial sector grows and channels such as non-face-to-face business are begun to be used more by financial institutions.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	**Summary of factors underlying rating**
R.5	**PC**	• For banks, CDD measures when carrying out occasional transactions above the applicable designated 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 regulation 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.
R.6	**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
R.7	**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.
R.8	**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.

3.3 Third Parties and introduced business (R. 9)

3.3.1 Description and analysis

469. All financial institutions are obliged to identify their customers under the Basic Law. The Ukrainian authorities advised that financial institutions are, therefore, not permitted to rely on intermediaries or other third parties to perform some of the elements of the CDD process.

470. Intermediaries operate in the insurance and securities sectors. Each entity within the process will have separate obligations to comply with the identification requirements. There are no outsourcing arrangements provided for as foreseen under Recommendation 9.

3.3.2 Recommendation and comments

471. Recommendation 9 does not appear to apply to the Ukrainian system. Considering nevertheless that the law does not explicitly prohibit the use of third parties, it is recommended that the relevant legislation be amended to provide clearly that financial institutions are not permitted to rely on third party verification of identity or introduction of business.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**N/A**	

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and analysis

472. The Basic Law includes requirements which are intended to ensure that all relevant secrecy or confidentiality laws do not inhibit or prevent the implementation of the FATF Recommendations. The specific clauses are related to information provided to the SCFM. Article 8 states that "submission of the information by the entities of initial financial monitoring to the Authorized Agency [SCFM] shall not represent a violation of bank or commercial secret." In addition Article 5 requires that financial institutions should provide additional information requested by the SCFM for transactions that have been reported, including information that is classified as bank and commercial secret. In addition, Article 13 allows the SCFM to "submit, within its jurisdiction, relevant materials to law enforcement bodies in accordance with their competence, given the proofs that a financial transaction may involve the legalization (laundering) of such proceeds and financing of terrorism."

473. According to the Basic Law, Article 14, the SCFM has the right to engage with the central and local executive bodies, enterprises and institutions to consider issues which come under its jurisdiction and receive information (including banking and commercial secrecy information) from them in accordance with the procedures established in the specific laws. This allows for the NBU, the State Commission on Financial Services Markets Regulation and the State Commission on the Securities and Stock Market to be able to share information with the SCFM.

474. The evaluation team was advised that the Ukrainian Supreme Court had prepared a draft Resolution on the disclosure of bank secrecy but this was not provided to the evaluation team as it was still being considered by the Supreme Court

Banks

475. Chapter 10 of the Law on Banks and Banking sets out the rules on banking secrecy and confidentiality of information. Article 62 requires that "The information on legal entities and individuals, which constitutes the banking secrets, may be disclosed by banks:

1) in response to a letter of inquiry or by written permission of the owner of such information;
2) in response to a written order of the court or by the court decision;
3) to bodies of the Office of Public Prosecutor, the Security Service of Ukraine, the Ministry of Internal Affairs of Ukraine and the Antimonopoly Committee of Ukraine – in response to their written order concerning operations on accounts of a particular legal entity or an individual entrepreneur for a specified period of time;
4) to bodies of the State Tax Service of Ukraine – in response to their written order on issues of taxation or foreign exchange control, with regard to operations at accounts of a particular legal entity or an individual entrepreneur for a specified period of time.
5) to the specially authorized executive body responsible for financial monitoring on its written request to provide additional information about the financial transaction that has become the object of financial monitoring.
6) to state executive bodies in response to their written request to provide information on implementation of the court decisions concerning the account status of a specific legal entity or individual entrepreneur."

476. In addition, Article 62 provides specific exemptions from the secrecy provisions: Part 6 states that "Restrictions with regard to obtaining the information containing banking secrets, which are stipulated by this article, shall not apply to employees of the National Bank of Ukraine or persons authorized by them, who, within the powers provided by the Law of Ukraine On the National Bank of Ukraine, exercise functions of banking supervision or foreign exchange control." Part 8 states that the provisions of Article 62 will not apply to disclosure of compulsory or suspicious transaction to the SCFM.

477. The NBU has also issued Resolution No. 267 of 14 July 2006[75] which provides the procedures for keeping, protecting, using and disclosing banking secrecy information.

478. The NBU is able to share information with international competent authorities. Article 62 Part 7 of the Banking law requires that "In accordance with an international treaty of Ukraine or under the principle of reciprocity, the National Bank of Ukraine shall have the right to provide the information received as a result of its banking supervision activity to the banking supervision authority of other country if there are guarantees that the information obtained will be used exclusively for the banking supervision purposes or for prevention of legalization (laundering) of receipts from crime or terrorism financing." The NBU has signed nine MOUs[76] on co-operation in the sphere of banking supervision, five of which include AML/CFT co-operation. On this basis, in 2008, it provided information on business reputation of Ukrainian nationals in response to two inquiries received from another country.

Non-bank financial institutions

479. The Law of Ukraine on Insurance includes provisions on secrecy and confidential information. Article 40 states: "Information about legal entities and individuals that constitutes privacy of insurance shall be provided by an insurer in the following cases:

- at a written request or a written permit of a holder of this information;

[75] Registered with the Ministry of Justice on 3 August 2007 (935/12809), as amended by Resolution No. 428 of 9 November 2006.
[76] Kyrgyzstan, Poland, Armenia, Belarus, Russian Federation.

- in response of written claims of a court or a court's decision;
- to offices of the Prosecutor of Ukraine, the Security Service of Ukraine, the Ministry of Internal Affairs of Ukraine, the Tax Militia and the State Tax Administration – at their written request regarding insurance operations of a given legal entity or a individual under a specific insurance agreement, when criminal proceedings have been instituted in respect of that legal entity or individual."

480. In addition, the State Commission on Financial Services Markets Regulation is able to access information related to insurance secrecy: Article 40 states "Restrictions for receiving information that constitutes privacy of insurance shall not be applied to those officials of the Authorized Body who are engaged in supervision of insurance operations within the authority they have."

481. The Law on Credit Unions, Article 21(5) requires that information subject to secrecy or confidentiality laws can be provided in response to a court decision to the agencies of the Prosecutor's office, the Security Service, Internal Affairs, and other law-enforcement agencies and the State Tax Service, provided there is a written request.

482. However, apart from insurance and credit unions, none of the other non-bank financial institution sectors subject to AML/CFT obligations have provisions related to secrecy or confidentiality. The authorities advised that law enforcement can access information from these sectors on the basis of the powers granted to them under their specific laws and the Criminal procedure Code. They consider that these provisions do not inhibit accessing such information to properly perform their functions.

483. Under the Law of Ukraine on Financial Services and State Regulation of Financial Markets, the State Commission of Financial Services Markets Regulation is able to access information to ensure they are able to perform their functions in combating money laundering and terrorist financing. According to Article 28(12), the SCFSMR is able to request the necessary documents. In addition Article 30(5) states that "for inspection purposes, any person mandated by the [SCFSMR] to carry out an inspection in the place of location of the legal entity that is subject to the inspection shall have the right…to require all necessary information and written documents. Although there is no specific reference to financial institution secrecy, the SCFSMR advised that in practice they do not experience any problems accessing the information they need to carry out their duties.

484. According to Article 9 of the Law of Ukraine on State Regulation of the Securities Market, the SSCM is able to have access to documents and other materials necessary to perform its inspections. Although there is no specific reference to financial institution secrecy, the SSCM advised that in practice they do not experience any problems accessing the information they need to carry out their duties.

485. The Law of Ukraine on Financial Services and State Regulation of Financial Markets, Article 32, provides the State Commission on Regulation of Financial Services Markets with the power to co-operate with international organisations, state agencies and non-government organisations of other countries on issues attributed to their competence. The Commission may provide and obtain information on supervision of financial markets and financial institutions which neither constitute a state secret nor lead to disclosure of professional secret. It may also provide information on activities of individual financial institutions in cases and according to the procedure specified by international agreements in which Ukraine participates.

486. The Law of Ukraine on State Regulation of the Securities Market, Article 7, Part 16 allows the State Commission on Securities and Stock Market to co-operate with public authorities and non-government organisation of foreign states and international organisations on matters relating to its competence.

Sharing of information between financial institutions

487. Within both the Law on Banks and Banking Activity (Article 64, Part 7) and the Law of Ukraine on Financial Services and State Regulation of Financial Services Markets (Article 18, Part 9) there is a provision which entitles all financial institutions to obtain information from the state bodies, banks and other legal entities to verify customer information as required by Ukrainian legislation. These bodies are required to provide such information to the financial institution free of charge within ten working days from the date of acquiring the statement. There is a similar requirement on collecting identification on legal persons in both the Law on Banks and Banking Activity (Article 64, Part 6) and the Law of Ukraine on Financial Services and State Regulation of Financial Services Markets (Article 18, Part 8).

488. The evaluation team had several concerns in particular regarding the financial institution secrecy provisions within Ukraine. The first related to concerns in the scope of sectors subject to secrecy. The banking, insurance and credit unions sector have detailed provisions on secrecy within their respective legislations. The second related to the effectiveness of banking secrecy provisions - a number of law enforcement agencies had advised the evaluation team that it is challenging to obtain information related to banking secrecy with one advising that obtaining a court order was "near impossible". This in effect meant that law enforcement face difficulties to access valuable customer information from banks in a timely manner. It appeared that the problems over effectiveness were greater in the regions. From the meetings held in the regions, the evaluation team found that a number of law enforcement authorities encountered problems obtaining information relating to banking secrecy:

- Court orders would only be granted if law enforcement could provide hard evidence which in many cases was not possible at that time of the investigation;
- Law enforcement felt that the current procedures to get court orders were too complicated and needed to be simplified;
- Law enforcement advised that they were not aware of any alternative procedures to obtain access to banking secrecy information - the only route they were aware of was court orders;
- In some of the regions in Ukraine it could take up to 15 days to get a court decision on banking secrecy.

489. In certain regions, the law enforcement authorities advised that they suffered an additional layer of bureaucracy and further delays bas the approval of the Prosecutor's Office would be needed before the requests for court orders could continue.

490. The financial institutions that were met by the evaluation team had advised that they did not have any experience where they had to share financial institution secrecy information with law enforcement.

491. The NBU provided the following statistics illustrating the disclosure of banking secrecy information to law enforcement on natural and legal persons:

	2006	2007	2008	Total
Search of Bank offices	1	2	5	8
Removal of original documents on banking secrecy	5 408	6 988	11 957	24 353
Written enquiries	32 148	52 510	52 539	137 197
Bank refusals to disclose banking secrecy information	3 893	4 584	7 070	15 547

492. The number of refusals on banking secrecy information appears to be rather high and reinforced the evaluation team's conclusion that there were concerns over the effectiveness of these measures. The NBU advised that the main reason for the large number of refusals was down to the failure of law enforcement agencies to comply with the requirements set out in Article 62 of the Law on Banks and

Banking. This would suggest that law enforcement authorities should be provided with the relevant training to ensure they understand what is required in relation to getting court orders on banking secrecy information.

Ministry of Interior

493. The Ministry of Interior advised that of the 3 470 petitions to the Prosecutor's Office, 2 649 (or 76%) were considered within one day, and 58 (or 1.6%) were considered within three days. For 2007, 2 765 (or 80%) were considered by the court within one day and 172 were considered within three or more days.

	2006	2007	2008
Total requests for from the Prosecutor's Office	2 187	2 802	3 470
Prosecutor Office Refusals	46	37	37
Prosecutor Office Approved	2 141	2 765	3 433
Submitted to court	2141	2765	3433
Court orders granted	2141	2765	3402
Requests for court orders refused	-	-	32

State Tax Administration

494. The State Tax Administration provided the following statistics on bank secrecy disclosures:

	2006	2007	2008
Court orders granted	1 862	2 942	3 562
Court orders refused	145	355	395

495. The regional prosecutors advised that in the course of civil proceedings in 2008, 3 670 cases on the disclosure of information containing bank secrecy on natural and legal persons were presented for judicial trial. At the same time, courts processed 3629 cases of the given category, 2788 out of them were accepted. Information on disclosures related to criminal cases were not available.

3.4.2 Recommendations and comments

496. Ukraine should address the concerns identified by the evaluation team. There is quite a significant issue over the implementation of the banking secrecy provisions, which law enforcement identified as one of the biggest challenges they face.

497. Firstly, it is thus recommended that Ukraine reviews the current limitations which appear to inhibit the ability of law enforcement to access information in a timely manner from some of the sectors and takes necessary measures to address the lack of knowledge of relevant procedures applicable in this area.

498. Secondly, the Ukrainian authorities should streamline and simplify existing procedures and provide relevant training to law enforcement authorities so that they fully understand the requirements and how to comply with them in order to obtain court orders. This should include training on the procedures available to law enforcement.:

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**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 the practical implementation of the banking secrecy provisions

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

3.5.1 Description and analysis

Recommendation 10

Transaction records

499. Article 5 of the Basic Law requires that financial institutions should keep documents on financial transactions for five years following the completion of the transaction. The Law on Banks and Banking, Article 65, Part 1 repeats this requirement. Both laws just refer to "documents" which appears to be a narrow interpretation of the FATF requirement which refers to "all necessary records on transactions". This in effect means that there is no actual requirement to keep anything more than documents such as data. However, the Ukrainian authorities advised that "documents" are defined in the Law on Information, Article 27, which states that "document shall mean those foreseen by the law material form of receiving, keeping, use and dissemination of information by fixation of it on paper, magnetic film, film strip, videotape, photographic film or on the other carrier. As a result identification data and account records (including electronic) are kept by financial institutions. Although this appears to meet the requirements under the FATF standards Ukraine should make clear in the Basic Law that all "necessary records on transactions" should be kept. In practice, the financial institutions interviewed kept all records of transactions. SCFM Order No. 48 and 122 indicate the essential elements that should be submitted on transactions reported to the SCFM and include: the name of the customer, the address of the customer (legal or real), the date of the transaction, the grounds for conducting the financial transaction, the currency and amount of the financial transaction, and the data on the bank which opened the account of the participant of the customer. The SCFM orders were provided to the evaluation team after the on-site visit and, therefore, the effectiveness of these measures could not be assessed. There is no requirement that transaction records should be sufficient to permit reconstruction of individual transactions.

Identification data

500. Article 5 of the Basic Law also requires that financial institutions should "[…] keep the documents on identification of the persons who carried out the financial transaction subject to financial monitoring pursuant to this Law, as well as the documents on financial transactions for five years after conducting such financial transaction." However, no reference is made to the fact that identification documents should be retained for at least five years following the termination of the account or business relationship. SCFM Order No. 40, paragraph 5.9 reinforces this gap: "Entity […] is obliged to keep documents, relevant to identification of persons, and all documentation on performance of financial transaction during five years after its carrying out."

501. The Ukrainian authorities contend that financial institutions are required maintain account files and business correspondence as a result of the requirements in the Law on Information. Article 27 states

that "document shall mean those foreseen by the law material form of receiving, keeping, use and dissemination of information by fixation of it on paper, magnetic film, film strip, videotape, photographic film or on the other carrier. The authorities believe that this includes account records and business correspondence.

Banks

502. Banks are required to maintain records of the identification data. The Law on Banks and Banking, Article 65, Part 2, requires that "The results of identification of the account owner and the person authorised to act on his/her behalf shall be kept by the bank for 5 years from the date of closing the account". In addition, NBU Resolution No. 601 (8 December 2004), Section 2 requires branches, representative offices and outlets of banks to keep documents (agreements/contracts, correspondence) in respect of opening of deposit accounts for 10 years after the closure of accounts for legal entities (point 168) and after the termination of agreement for opening of individual deposit accounts (point 747). This does lead to some inconsistency as the Law on Banks and Banking refers to a 5 year deadline, whereas NBU Resolution No. 601 refers to 10 years. However the NBU clarified that the requirement in NBU Resolution No. 601 to extend the record keeping obligations to 10 years was introduced in order to protect the interests of depositors with the banks.

Non-bank financial institutions

503. SCFSMR Instruction No. 25, paragraph 5.6, requires that "The institution must store the documents related to the identification of parties and the whole documentation related to the performance of a financial transaction for five years after its being performed. SCSSM Decision No. 538, paragraph 6.9 repeats this requirement. These requirements suffer from deficiencies as those in the Basic Law i.e. no reference to retaining documents for at least five years following the termination of the account or business relationship. In practice, financial institutions advised that they would keep records for 5 years or more.

504. There is no explicit requirement to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities. However, the Basic Law, Article 5, requires that financial institutions should "provide […] additional information at the Authorised Agency's [SCFM] request, related to the financial transactions that have become the object of financial monitoring, including information that is classified as bank and commercial secret, not later than within three working days from the moment of receiving the request."

505. The SCFM advised that in practice financial institutions were to provide the information within the deadline. There are a small number of entities that do not reply within the deadline but sanctions are enforced against them.

506. The SCFM provided the following statistics:

- 21 March 2008 – 26 January 2009 : 134 banks did not meet the deadlines for additional information requested by the SCFM.
- Sanctions : 18 individuals were found guilty for not submitting information within the deadline – 14 had a penalty imposed, 3 received a verbal warning and 1 was exempted from payment of fine

507. The NBU provided the following statistics:

- 2005 - the NBU received 5 letters from the SCFM in respect of 27 banks which failed to provide additional information in a timely manner or information that was incomplete.
- 2006 - the NBU received 5 similar letters in respect of 5 banks.
- 2007 – the NBU received 49 letters
- 2008 –see the table below:

	Number of banks	Number of requests from SCFM	Number of transactions involved in request
Failure to meet deadline	63	206	15076
Provision of incomplete information	43	141	6810
Total	88*	343*	21886

* These figures may include some double counting

Special Recommendation VII

508. Ukraine has a number of requirements related to payments systems which can be found in:
- NBU Resolution No. 348, On Approving Regulation and Functioning of Domestic and International Payment Systems in Ukraine, 25 September 2007[77];
- Ukrposhta Order No. 211 on Approval and Enactment of the Procedures Conducting Posting (12 May 2006), this is applicable only to Ukrposhta.

509. NBU Resolution No. 348 applies to banks, non-banking financial institutions with a money transfer licence from the SCFSMR and Ukrposhta (preamble, paragraph 5); and to some extent addresses some of the requirements under SR. VII. NBU Resolution No. 348 applies to banks, non-bank financial institutions and Ukrposhta and covers domestic and international transfers. Ukrposhta Order No. 211 is related to the general functioning and operation of payment systems rather than setting out specific obligations related to AML/CFT. The Ukrainian authorities advised that in practice it is only the banks, Ukrposhta and the Ukrainian Financial Group (which has 28 indirect participants – these are banks) that have access to the payments systems.

510. Wire transfers are defined in Law of Ukraine on Payment Systems and Money Transfers, Chapter 1, Article 1 (a cross reference to this law is included in NBU Resolution No. 348):
- money transfer shall mean a movement of certain amount of money for its entering to the beneficiary's (recipient's) account and further delivering to the recipient in cash form. The same person can be an initiator and a recipient of the transfer;
- order for transfer shall mean either electronic or paper documents used by banks, their customers, clearing institutions, acquiring companies, or other members of the payment system for transmitting money transfer orders.

511. NBU Resolution No. 348, section V, paragraph 4(e) requires that for all wire transfers that are equal to or exceed UAH 5000 (approximately equivalent to €700) in a foreign currency, financial institutions are required to obtain and maintain the following information relating to the originator of the wire transfer: originator's name, surname, patronymic name (if available); data on location and the account number (or a unique account number of the transaction if no account number exists), the originator's bank name and code, place of originator's registration (address may be substituted with a customer's taxpayer identification number or date and place of birth).

Ukrposhta

512. The requirements related to postal wire transfers for Ukrposhta are also set out in Order No. 211, Section 3 which requires the following information to be collected: name, surname, patryonic name, address, telephone of the addressor and addressee. However, this does not meet the requirements under FATF SR.VII as there is no requirement to obtain and maintain the originator's account number (or a unique reference number if no account number exists); and if the address is not available

[77] Registered with the Ministry of Justice of Ukraine on October 15, 2007 (1173/14440), as amended by Resolution No. 165 dated June 5, 2008

allowing for it to be substituted with a national identity number, customer identification number, or date and place of birth.

513. Domestic and cross-border transactions are treated in the same manner under NBU resolution No. 348. NBU Resolution No. 348, section V, paragraph 4(e) requires that the originator information should be accompanied through all stages of the money transfer. The resolution does not provide any exceptions in relation to cross-border batch file transfers where these are from a single payer. The NBU is able to refuse registration of the agreement on membership/participation in international payment system if there is non-compliance with international AML/CFT standards. (NBU Resolution No. 348, section III, paragraph 5). The NBU advised that batch transfers do not exist in Ukraine. There are no technical limitations which prevent the full originator information accompanying a cross-border wire transfer from being transmitted with a related domestic wire transfer.

514. In addition, the Basic Law, Article 5, requires that financial institutions should retain documents on financial transactions for five years following the completion of the transaction. However, this is too high level and does not specify the detailed information required under SR.VII.

515. There is no explicit requirement on beneficiary financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. However, The Basic Law, Article 7, Part 1 requires that "An entity of financial monitoring shall have the right to refuse a financial transaction if such entity finds that the financial transaction is subject to financial monitoring pursuant to this Law; in such case an entity of initial financial monitoring shall identify the persons engaged in the financial transaction, its nature and submit this information to the Authorized Agency." In effect, the lack of complete originator information may be considered as a factor in assessing whether a wire transfer or related transactions are suspicious, and where appropriate will be reported to the SCFM.

516. The NBU is responsible for monitoring compliance of banks with the provisions in NBU Resolution No. 348. The NBU has developed a list of questions which supervisors will take account of when assessing compliance. The authorities advised that they have not encountered any breaches of requirements under NBU Resolution 348 so far.

517. Ukraine does not have measures in place to effectively monitor the compliance of Ukrposhta with the rules and regulations implementing SR VII. Order No. 211 does not meet all the technical criteria set out under SR.VII and although the State Commission on Regulation of Financial Services and Markets is responsible for AML/CFT supervision of Ukrposhta, it has never performed an on-site inspection to assess compliance with AML/CFT obligations.

518. Although NBU Resolution No. 348 applies to banks, non-bank financial institutions and Ukrposhta, the NBU only supervises banks compliance with these requirements. The SCFSMR (for non-bank financial institutions and Ukrposhta) do not have any jurisdiction to supervise the detailed requirements under NBU Resolution No. 348. For non-bank financial institutions, the SCFSMR would supervise them with the general AML/CFT obligations found in the Basic Law and the Instruction No. 25. This leaves a significant gap and as a result non-bank financial institutions and Ukrposhta are not monitored effectively to ensure compliance with the rules and regulations relating to SR. VII.

519. A further issue is that the competent authorities do not have in place effective mechanisms needed for enforcement in relation to SR. VII for non-bank financial institutions and Ukrposhta and as such cannot apply the necessary sanctions for specific breaches under NBU Resolution no. 348.

520. The evaluation team was only provided with a correct translation of Order No. 211 (incomplete) and No. 348 after the on-site visit and, therefore, could not assess the effectiveness of these measures.

3.5.2 Recommendation and comments

521. The financial institutions interviewed by the evaluation team had a good understanding of the record keeping requirements. In addition, although there is no explicit requirement to ensure that all customer and transaction information is available on a timely basis, the evaluation team concluded that the SCFM and the supervisory authorities are generally satisfied with the timely nature of reports and did not consider there to be widespread problems in obtaining further information.

522. As regards Recommendation 10, Ukraine would benefit by setting out the requirements on record keeping more clearly in law or regulation. These include:

- Ensure record keeping requirements refers to “all necessary records on transactions” and not just documents.
- Requiring non-bank financial institutions to maintain records of identification data for at least five years following the termination of the account or business relationship.
- transaction records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activities.

523. The evaluation team had not been provided with the correct translations of the relevant documents setting out the obligations on SR.VII in Ukraine until some time after the on-site inspection, and, therefore, had no basis to evaluate the effectiveness.

524. Ukraine should implement the detailed criteria required by FATF Special Recommendation VII:

- Apply the exemptions that exist
- Ensure the requirements in Order No. 211 are consistent with those under NBU Resolution No. 348 and FATF SR. VII;
- Requirement to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.

525. The Ukrainian authorities should as a matter of urgency effectively supervise non-bank financial institutions and Ukrposhta’s compliance with the rules and regulations relating to SR.VII. In addition, they should introduce mechanisms for the enforcement of specific breaches for non-bank financial institutions and Ukrposhta by competent authorities and ensure that sanctions are adequate, proportionate and effective for specific breaches under-NBU Resolution No. 348.

526. Ukraine should put in places measures to ensure that Ukrposhta is effectively monitored for AML/CFT purposes.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	**Summary of factors underlying rating**
R.10	**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.
SR.VII	**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

Unusual and Suspicious Transactions

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

3.6.1 Description and analysis

Recommendation 11

527. According to article 12 (1) of the Basic Law, any "non standard or excessively complicated financial transaction that has no evident economic sense or obvious legal aim" should be subject to internal financial monitoring. Internal financial monitoring, as defined in Article 1 of the Basic Law, encompass activities for detection of financial operations subject to compulsory financial monitoring and financial operations that may be connected with legalisation (laundering) of the proceeds. The financial monitoring regime of Ukraine is explained in more details under section 3.7.

528. Further requirements are set out in SCFM Order No. 40 of 24 April 2003 on approval of requirements to organisation of financial monitoring by entities of initial financial monitoring in prevention and counteraction to introduction into legal turnover proceeds from crime and terrorist financing[78]. Item 4.1 of SCFM Order No. 40 requires that reporting procedures should contain a procedure for undertaking "measures to find out the essence and purpose of transactions subject to the financial monitoring" which can be "related, aimed or targeted at terrorist financing". This Order also requires entities to keep a register of all data related with the financial transactions subject to financial monitoring (compulsory and internal). Thus, all information, including the "essence and purpose of transactions, subject to financial monitoring", should be written as part of the register.

529. NBU Resolution No. 189 requires banks to register transactions and take sufficient action aimed at clarifying the nature and purpose of transactions subject to financial monitoring, including by requesting additional documents and information related to this transaction. The decision on whether such transaction should be reported is to be taken within 10 days from the registration of the transaction (item 4.3) in accordance with the internal procedures of the bank, and in case of non-reporting, the responsible officer of the bank has to motivate his decision in a report which has to include the following elements: number of registration of the transaction, date of registration, results of actions taken to clarify the essence and purpose of the transaction and the signature of the officer. Provisions for examining the background and purpose of the financial transactions and keeping record of these transactions are also provided for in SCFSMR Instruction No. 25 and SCSSM Decision No. 538 which regulate the financial monitoring performed by the non-banking financial institutions. These provisions are of similar nature to the provisions stipulated in the SCFM Order No. 40.

530. However, the Order No. 40, as well as the relevant sectoral resolutions, do not specify the depth of the examination, i.e. they do not require that the examination should be performed "as far as possible".

531. Article 5 of the Basic Law requires that documents on identification of persons and on financial transactions should be kept for five years after conducting such transaction. This provision could not be regarded as an explicit requirement that financial institutions are obliged to keep the obtained information on the background and purpose of financial transactions available for relevant authorities and auditors for at least five years. However, as explained previously, SCFM Order No. 40 specifies

[78] Registered with the Ministry of Justice on 29 April 2003 (337/7658), as supplemented and amended by the Order of the State Department for Financial Monitoring under the Ministry of Finance No. 73 of 19 July 2004 and SCFM Orders No. 160 of 17 August 2005; No. 163 of 21 August 2006, No. 6 of 16 January 2007, and No. 238 of 26 December 2007.

that all information related with the financial transactions, including the "essence and purpose of transactions, subject to financial monitoring", and the results of such analysis should be included in the register. According to Resolution No. 644 of the Cabinet of Ministers of Ukraine from April 26, 2003, the register should be kept in electronic and/or paper form for 5 years available for competent authorities. Auditors have the right to require necessary documents that relate to the subject of the audit (including such findings), as provided in the Law on Auditing Activities (articles 9 and 18).

532. In addition, the authorities also referred to Order of the SCFM No. 40, which recommends the obliged entities to make questionnaires with data on the identification and analysis of person which carries out financial transaction. These questionnaires should include information on the "purpose and grounds for conducting of transactions". Evaluators confirmed that all financial institutions keep these questionnaires as part of their internal financial monitoring activities and they keep them for at least five years.

533. With the exception of banks, the meetings held with private sector representatives revealed differences in the familiarity of the non-banking financial institutions with the scope of data that should be included in the register.

Recommendation 21

Special attention to countries

534. Article 11 of the Basic Law obliges financial institutions to report to SCFM all financial transactions that are equal or exceed 80 000 UAH or exceed the amount in foreign currency equal to 80 000 UAH, which has one or several indications specified in this Article, so called "compulsory financial monitoring". These indications refer to, inter alia:

- "transfer of funds to anonymous (numbered) account abroad and transfer of funds from anonymous (numbered) account from abroad, as well as transfer of funds to account opened with a financial institution in a country included in the list of offshore zones stipulated by the Cabinet of Ministers of Ukraine" and
- "placement or transfer of funds, granting or receiving a credit (loan), performing financial transactions with securities when at least one of the parties is a physical or legal entity that is registered, located or resident in a country (territory) that does not take part in international co-operation in area of prevention and counteraction of the legalisation (laundering) of the proceeds from crime and financing of terrorism, or if one of parties has an account with a bank registered in such country (territory)".

535. However, the transactions that have one of the above-stated indications would be reported to the SCFM only if they are above the prescribed threshold.

536. The authorities referred in this context also to the provisions of SCFM Order No. 40 (Annex 1), NBU Resolution No. 189 (Annex 7), and SCSSM Decision No. 538 (Annex 2). These acts provide in similar terms a list of risk criteria (which can be supplemented by the relevant institutions, if necessary) which includes residents of countries (territories) about which it is known from reliable sources that they are not compliant with generally accepted AML/CFT standards, they do not fulfil FATF recommendations, they are countries where military operations take place or are offshore countries. Financial institutions have to devote special attention to transactions of this nature. The SCFSMR Instruction No. 25 (Item 4.5) requires institutions to develop their own criteria and refers in this context to the tentative list of criteria set out in SCFM Order No. 40. Authorities advised the evaluators that these risk criteria are considered as requirement and that they expect obliged entities to include them in their internal financial monitoring.

537. However, having in mind the wording in the SCFM Order No. 40 ("criteria for assessment of such risk, presented in the Appendix 1 to the present Requirements, can form the basis"), these risk criteria could only be regarded as "guidelines", and not as a 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 as such no explicit requirement to pay

special attention to all transactions and business relationships with persons from or in countries that do not or insufficiently apply the FATF Recommendations.

538. As a measure for ensuring that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries, the SCFM prepares and regularly updates the list of offshore countries and distributes it to the obliged entities. The list contains countries included in the FATF statements. In addition, NBU representatives explained that they also inform banks on risks of establishing business relations with countries that do not apply or inadequately apply FATF Recommendations, in particular as regards the FATF statements on countries with shortcomings in the regimes of preventing and counteracting ML, the US lists, the UN Lists etc.

Examination of transactions

539. The requirement to examine the background and purpose of the transactions with countries that do not or insufficiently apply FATF recommendations is indirectly provided through the general obligation for determining the "essence and purpose of transactions, subject to financial monitoring". Through the obligation of keeping registers on all transactions (SCFM Order No. 40), there is a requirement for obliged entities to make available the written findings on transactions with these countries to assist competent authorities. In addition, sectoral laws enable the NBU, SCFSMR and SCSSM to access all documents of the supervised entities that are necessary for adequate execution of their supervisory function. However, there is no explicit obligation for financial institutions to examine '*as far as possible'* the background and purpose of transactions without an apparent economic or visible lawful purpose with persons from or in countries that do not or insufficiently apply FATF recommendations.

Countermeasures

540. The evaluators found the examples below that could be regarded as possible counter measures.

541. The Law on Banks and Banking (Article 24) determines that a foreign bank has a right to open a branch in Ukraine if: "1) the country where the foreign bank has been registered belongs to the countries that participate in the international co-operation in the area of preventing and combating legalization (laundering) of proceeds from crime and terrorism financing and cooperates with the Financial Action Task Force (FATF); 2) banking supervision in the country where the foreign bank has been registered complies with the Core Principles of Banking Supervision of the Basel Committee on Banking Supervision". Based on this provision, the NBU has a right to refuse the establishment of branches of foreign banks in Ukraine. In addition, according to paragraph 1.2 of the Regulation on Establishment of Subsidiary, Branch and Representative Office of Ukrainian Bank in the Territory of Other States79, the NBU issues an approval for establishment of subsidiary, branch and representative office in the territory of other state if, inter alia, the host country has joined international agreements on prevention and counteraction to the legalization of proceeds from crime and terrorism financing, and its financial sector has no negative record in compliance with the key international standards in AML/CFT area.

542. The second example refers to the insurance sector. The Law of Ukraine on Insurance determines that non-resident insurer is allowed to carry out insurance activities in Ukraine only if: "(1) the home country belongs to the countries that do not take part in the international cooperation in the sphere of prevention and counteraction to the legalization (laundering) of the proceeds from crime and terrorism financing and also cooperates with Financial Action Task Force (FATF); 2) a treaty (memorandum) on information exchange has been signed between the respective insurance supervision authority of a country, where the non-resident is registered, and the Authorised body; 3) insurance activity is supervised by the state authority according to the legislation of the country of registration of the non-resident insurer; (…) 5) non-resident insurer is situated on the territory of the country or separate territories which, by the decision of Economic cooperation and Development Organisation of the UN

[79] Registered in the Ministry of Justice of Ukraine on April 20, 2006 under No. 463/12337

do not have the offshore status, or on the territory of the other countries, if non-offshore status of which is confirmed by the report of the respective trade mission; 6) non-resident insurer has proper license on realisation of insurance activities in accord with legislation of the country, in which non-resident insurer is registered".

543. The evaluation team was not provided with any other examples of countermeasures which could be applied against countries that do not or insufficiently apply FATF recommendations .

3.6.2 Recommendations and comments

Recommendation 11

544. Ukraine's legislation should explicitly require financial institutions to examine *as far as possible* the background and purpose of all unusual financial transactions..

545. Authorities should compel more efforts to ensure that non-banking financial institutions are aware of existing requirements and that there is a consistent implementation of the prescribed scope of data included in the register of financial transactions subject of financial monitoring for the different sectors.

Recommendation 21

546. Financial institutions should be explicitly required to give special attention to business relationship and transactions with persons from or in countries which do not or insufficiently apply FATF recommendations.

547. The Ukrainian authorities should amend laws and regulations to provide for a clear obligation for examining, as far as possible, the purpose and background of financial transactions with persons from or in countries that do not implement or insufficiently implement FATF recommendations, if they have no apparent economic or visible lawful purpose.

548. Authorities should make sure that there is an appropriate legal basis which enables to apply appropriate counter measures, for all financial institutions and in all cases where transactions, businesses or other relationships involve countries that continue not to apply or insufficiently apply the FATF Recommendations.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	**Summary of factors underlying rating**
R.11	**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
R.21	**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

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

3.7.1 Description and analysis

Recommendation 13

549. The Basic Law sets out the main aspects of the reporting system in a rather complex manner, several provisions being relevant in this context: articles 5 (tasks and duties of obliged entities), 8 (submission of the information about financial transaction), 11 (financial transactions subject to compulsory financial monitoring) and 12 (financial transactions subject to internal financial monitoring).

550. The system defined in the Basic Law refers to two types of financial monitoring: compulsory and internal. Even though the compulsory financial monitoring is not related with the requirements of Recommendation 13, for the purpose of better understanding of the financial monitoring system of Ukraine, this part of the report contains some explanations on the structure and elements of this type of financial monitoring.

551. 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 an objective nature. Many of the criteria that trigger the compulsory financial reporting describe de facto unusual transactions. The list of transactions is quite comprehensive and exhaustive. Article 5 requires obliged entities to submit to the SCFM information on financial transactions subject to compulsory financial monitoring within 3 days from their registration, regardless of whether the obliged entities considered them to be suspicious, or not. Having in mind the number of transactions that are subject to compulsory financial monitoring, it could be argued that this leads to the employment of a substantial number of staff and shifts resources away from internal financial monitoring.

552. 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.

553. Article 12 sets out the financial transactions which are subject to internal financial monitoring, by setting three main categories, each of them including several criteria:

a) non standard or excessively complicated financial transactions with no evident economic sense or obvious legal aim;
b) non-compliance of a financial transaction with the activity of legal entity defined by the statutory documents of such entity;
c) repeated financial transactions, the nature of which gives grounds to believe that their aim is to evade the procedures of compulsory financial monitoring

554. Article 12 lists in a detailed manner the types of transactions that should be subject to internal financial monitoring, but it also provides for a "catch-all" provision whereby internal financial monitoring can also be applied to other financial transactions when an obliged entity "has grounds to believe that a financial transaction is aimed at laundering proceeds". Thus, the internal financial monitoring covers all transactions that are explicitly defined in Article 12, as well as all other transactions that institutions would consider suspicious.

555. As it was explained by the authorities, the purpose of the internal financial monitoring is to identify transactions that require additional analysis by the obliged entities. The internal financial monitoring does not require obliged entities to report these transactions to SCFM. It is left to the

obliged entities to decide what transactions will be reported, i.e. which transaction will be regarded as suspicious.

556. In addition, article 8 of the Basic Law provides that if an employee of an obliged entity has any reasonable doubts that a certain financial transaction is carried out to legalise (launder) proceeds, it should inform the SCFM of such transaction. There is no evident cross-reference between the reporting obligation specified in Article 8, and the two-tier financial monitoring established with Articles 11 and 12 of the Basic Law. All of the above specifics of the reporting regime established in Ukraine makes it quite specific, may be considered as complex, and not necessarily suspicious-based.

557. The reporting obligation refers to "financial transactions carried out to legalise the proceeds[…]". The term "financial transaction" is defined in article 1 of the Basic Law. The authorities explained that the term "proceeds" is used as a synonym of the term "funds". According to Article 1 of the Basic Law, the proceeds are "any economic benefit resulting from the commitment of a socially dangerous illicit act that precedes the legalisation (laundering) of proceeds and consisting of material property, or titles, also movable or immovable property, and legal papers that confirm the title to such property or a share in it". " This definition encompasses the necessary elements, as provided for by the glossary to the Methodology. It is to be reminded that not all the 20 categories of designated FATF predicate offences are covered by the CC (see section 2.1).

558. The term financing of terrorism is not defined in the Basic Law. However, there is a clear obligation in the Basic Law (Article 8) to report all financial transactions in cases which the obliged entity suspects or should have suspected to be related with financing of terrorist activity, terrorist acts or terrorist organisations. The information should be immediately submitted to the SCFM and the law enforcement bodies. In practice, the list of persons related to terrorist activity prepared, disseminated and published on the website[80] by the FIU to the obliged entities appeared to be the only source used by obliged entities for detecting transactions that should be regarded as suspicious for FT.

559. According to the Basic Law, the reporting of suspicious transactions is not connected with a certain threshold, i.e. all suspicious transactions should be submitted to the SCFM. The reporting requirements cover only a certain form of attempted transactions. Article 7 paragraph 2 of the Basic Law empowers obliged entities to refuse to carry out a financial transaction if they suspect that the transaction is subject to financial monitoring; the entity is obliged to identify the person engaged in the transaction and to report this to the FIU (emphasising that it is a case of not-executed transaction[81]). This provision covers the transactions that were attempted by the clients, but not executed due to refusal by the obliged entity. The attempted transactions that were not executed due to a decision by the client to withdraw from the transaction are not explicitly covered. With this regard, authorities referred to the first paragraph of Article 7 of the Basic Law which requires entities of initial financial monitoring "prior or after a financial transaction" to "determine whether the financial transaction is subject to financial monitoring pursuant to this Law". However, the financial monitoring, as defined in the Basic Law, does not necessarily cover submission of STRs for all transactions that are subject to financial monitoring (only transactions that are covered with the compulsory financial monitoring should be instantaneously submitted to the SCFM).

560. Another normative act that could be referred to in the context of attempted transactions is the NBU Resolution No. 189. The Resolution requires banks to submit to the SCFM all transactions on which the bank has motivated suspicious that are related to an attempt to launder money. Nonetheless, this Resolution covers attempt to launder money, which cannot be considered as an explicit coverage of attempted transaction. Hence, the referred provisions (of the Basic Law and Resolution No. 189) could be considered only as an effort to include certain types of attempted transactions in the STR regime. As this is an asterisked criterion, the need for all attempted suspicious transactions to be reported should be explicitly provided for in either law or regulation.

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[80] The authorities advised after the visit that the official website of the SCFM includes links to the lists of the US Treasury and the EU .

[81] Order of the State Department for Financial Monitoring No. 48 on approval of some forms of registration and submission of information, related to financial monitoring, and Instructions concerning their filling in, from May 13, 2003

561. The Basic Law requires for reporting of all transactions that appear to be suspicious. There is no indication that STRs should not be filed if tax matters are involved. If there is a suspicion of ML or TF, the STR must be filed, even through this might not lead to a conviction, since tax evasion is not considered as a predicated offence for ML.

562. Apart from the specified period for submitting reports under the compulsory financial monitoring (three working days from the moment of registration of the transaction), the Law does not specify the timeframe for submitting STRs to the SCFM. The SCFM Order No. 40 does not provide for any deadline; it only specifies that the compliance officer is responsible for deciding on the transactions that should be reported to the SCFM. The only normative act that regulates the period for submitting STRs to the SCFM is the NBU Resolution No. 189. According to item 5.2 of this Resolution "information about a financial transaction, in respect of which the employees of the bank (branch) have reasonable suspicions that it is effectuated for legalization (laundering) of proceeds from crime, shall be submitted to the Authorized body the very same day when such suspicion arise". The evaluation team considers that the existence of different provisions for different financial institutions could create unequal implementation of the reporting regime.

Additional element

563. STRs are required to be filed when reporting entities suspect or have reasonable grounds to suspect that funds are proceeds, hence it covers proceeds of all criminal acts which would constitute a predicate offence in Ukraine.

Effectiveness

564. The authorities provided after the visit the following statistics:

Year	Total amount	Compulsory financial monitoring		Internal financial monitoring		Compulsory and internal financial monitoring	
		Amount	%	Amount	%	Amount	%
2004	695.566	392.086	56,37%	279.694	40,21%	23.786	3,42%
2005	786.215	435.707	55,42%	326.860	41,57%	23.648	3,01%
2006	821.735	508.654	61,90%	292.027	35,54%	21.054	2,56%
2007	1.003.931	680.931	67,83%	310.260	30,90%	12.740	1,27%
2008	1.067.738	777.253	72,79%	281.120	26,33%	9.365	0,88%

565. Leaving aside the complexity of the reporting regime, from the provided statistics it could be concluded that the STRs submitted on the basis of the compulsory financial monitoring, dominate in the total number of STRs. What is even more important, the share of the STRs from compulsory financial monitoring increased in the previous years, which could not be regarded as positive in terms of the implementation of risk-based reporting regime. In addition, the list of indicators provided in the Law - for compulsory, as well as for internal financial monitoring - applies to all listed obliged entities, regardless of their nature and complexity, and the risks inherent to different sectors.

566. From the interviews with the private sector, the evaluation team understood that some of the obliged entities (especially the non-banking institutions) have considered this list as exhaustive and that they have reported to the SCFM only transactions that are explicitly mentioned in Article 12 of the Basic Law. The interviews have also revealed that the analysis made by the compliance officers of some of these non-banking financial institutions on the financial transactions that according to the Basic Law are subject to financial monitoring (compulsory and internal), does not encompass the necessary deepness that will enable an adequate decision-making related with submission of STRs to

the SCFM. The provided statistics and the growing dominance of the STRs from compulsory financial monitoring confirm this conclusion. Thus, in light of the information received and the feedback from the private sector, the evaluation team has concerns that the current reporting regime, as implemented, focuses to a too large extent on the compulsory financial monitoring as opposed to suspicious based reporting.

567. According to the information received during the on-site visit, most of the disclosures received by the SCFM continue to be from the banks (97% of the submitted STRs during 2007). At the time of the on-site visit, banks demonstrated a solid understanding of the nature and purpose of the reporting obligation, especially the banks with foreign ownership, which have adopted the AML/CFT know-how of their parent banks. The good AML/CFT performance of banks could be demonstrated with one additional argument. According to the received statistics on the reports submitted by banks to the SCFM, during 2006, 2007 and the first 8 months of 2008, on average, 44.7% of the submitted reports relate with transaction which are subject to internal financial monitoring, which is higher than the participation of this type of transactions in the total number of submitted reports by all obliged entities. In addition, NBU has reported that the disclosed transactions that are not explicitly defined in Articles 11 and 12 (transaction falling under the catch-all provision) assume from 12-18% (for the last 3 years) of the total number of disclosed transaction to the SCFM. Thus, it appears that banks pay more attention to detecting suspicious transactions.

568. While this is encouraging for the banking sector, the evaluators have doubts about the effectiveness of the reporting of the non-banking financial institutions. Despite the efforts of the SCFM to prepare guidelines and recommendations for improving the financial monitoring practices and despite the fact that authorities have informed the evaluators that during the previous 2 years the number of STRs submitted by the non-banking institutions has increased (compared with 2006), the number of STRs filed by other financial institutions (figures on STRs are provided in Section 2.5 of the report) is still low and indicates a lack of understanding of other sectors and could be an indication where regulators should focus most of their efforts.

Special Recommendation IV

569. Article 8 of the Basic Law requires entities of initial financial monitoring when they "suspect or should have suspected that such financial transactions are related with or intended for financing terrorist activity, terrorist acts or terrorist organizations, they shall immediately inform the Authorized Agency and the law-enforcement bodies defined by the laws about such financial transactions". The normative acts issued by the NBU, SCSSM and SCFSRM specify that this should occur on the day of detection of such transaction.

570. According to the Basic Law, the reporting of suspicious transactions related with or intended for financing terrorist activity, terrorist acts or terrorist organisations, is not connected with a certain threshold, i.e. all suspicious transactions should be submitted to the SCFM. The information should be immediately submitted to the SCFM and the law enforcement bodies. As it was explained above, attempted transactions are not directly covered in law or regulation. In addition, even though the Basic Law does not restrain the reporting of financial transactions related with tax matters, tax evasion is not a predicate offence.

Effectiveness

571. The authorities did not provide any statistics regarding STRs related to FT, hence the evaluation team could not analyse the effectiveness of the FT suspicious reporting regime. During the visit, the evaluation team was told that the number of reports with a suspicion of terrorist financing was low, given that Ukraine is not exposed to terrorist threats. Another reason for the low number of STRs regarding FT could be the substandard understanding of the FT reporting requirements by the obliged entities, which might require additional efforts by the SCFM and supervisory authorities to improve the understanding of the features of FT.

Recommendation 14 (Safe Harbour and Tipping Off)

572. Reporting entities, their officials and other personnel are protected from disciplinary, administrative, criminal and civil liability if they submitted information about a financial transaction to the FIU in accordance with the Basic Law as well as for other actions related to the implementation of the law (article 8 of 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 may therefore be broader than the standard set out in Recommendation 14 and as such it does not comply with it.

573. The Basic Law prohibits "employees of the entities of initial financial monitoring who have submitted to the Authorized Agency information on any financial transaction subject to financial monitoring pursuant to this Law, to inform about it the persons engaged in financial transactions or any other third persons" (article 8 (4)). NBU Resolution No. 189 (paragraph 5.1) prohibits bank's officers to submit information about a financial transaction being subjected to mandatory financial monitoring to the SCFM to persons who perform such transactions or any third parties. Both provisions appear to be insufficient, as they only cover employees, but not the financial institutions.

574. Illegal disclosure of any information to be provided to the SCFM by an individual who learned such information in the context of its professional or official duty, is punishable under Article 209-1 of the Criminal Code with sanctions in form of fine from 2000-3000 of untaxed minimum incomes of citizens [82], or of imprisonment for a maximum term of three years, or of imprisonment for the same period of time, with revocation of the right to occupy certain positions or carry out certain activities for the period of up to three years. Administrative responsibility is also prescribed by Article 166 of the Administrative Code of Ukraine (penalty of 100-300 untaxed minimum incomes of citizens). The authorities have reported that, so far, they have no case of sanctioning due to violation of tipping off provisions.

575. As mentioned above, the provisions only refer to the employees of the obliged entities and as such there is no provision that prohibits financial institutions from tipping off.

<u>Additional elements</u>

576. The information submitted to the SCFM according to Basic Law is subject to limited access (Article 8 of the Basic Law) and should be exchanged, disclosed and protected in accordance with laws.

Recommendation 19

577. 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[83] or higher, if they also meet one or several of the criteria set out in article 11 of the Basic Law.

<u>Additional elements</u>

578. The SCFM receives compulsory reports from the banks electronically; for other obliged entities there are cases of using other means of reporting. All received reports are kept in the unified information-analytical system of SCFM. Access to this system is restricted; the procedure for access is defined with the Law on Information and the Law on Protection of Information and Information-Telecommunication Systems. More information on this system could be found under section 2.5.

[82] One untaxed minimum income of citizens is defined on an annual basis and, for 2008, it equals 17 UAH. (2 000 – 3 000 UAH equal 34 000-51 000 UAH)

[83] This equals to approx. 10 400 EUR

Recommendation 25 (Feedback related to STRs)

579. The Basic Law requires SCFM to analyze the methods and financial patterns of money laundering and financing of terrorism and to provide guidance to the obliged entities on different issues related with AML/CFT. Based on this provision, SCFM has issued several documents that are in line with the requirements of the criterion 25.2 for providing general feedback to the obliged entities. This documents are published on the SCFM's website and include 3 general types of information:

- Methodical recommendations on the organisation of financial monitoring, especially internal financial monitoring which is regarded as guidance for obliged entities);
- Typologies, as recommendations for detection of money laundering schemes (at the time of the on-site visit 4 reports on typologies had been released), which include feedback, as well as guidance for the obliged entities;
- Statistics on different issues (e.g. submitted case referrals, decisions by the courts, etc.)

580. An important feedback tool is the annual report prepared and published by the SCFM. Among other information, the report for 2007 contains statistics on the received reports from obliged entities (broken down by type of entities and type of financial monitoring – compulsory or internal), total number of submitted case referrals to law-enforcement agencies, amount of seized property and funds and number of court decisions. In addition, the report encloses examples of laundering schemes; within the report for 2007, SCFM has provided the public with four examples of money laundering schemes.

581. Finally, SCFM submits monthly reports to the state regulators and supervisory authorities with analysis on the types of reports submitted by each of the financial institutions during the past month. Supervisory authorities confirmed that they use these reports as a valuable tool when determining the necessity for conducting more stringent supervision over these institutions.

582. As for the specific case-by-case feedback, the procedure for acknowledgement of the receipt of the report is prescribed by the Cabinet of Ministers Resolutions No. 644 and 646. These Resolutions define the registration procedure for financial transactions subject to internal and compulsory financial monitoring and require the SCFM, after receiving the proper report, to inform the reporting entity. The confirmation should be sent within three working days from the receipt of the transaction subject to compulsory and internal financial monitoring. These resolutions apply to all obliged entities, except banks. For banks, the procedure for submission of reports and confirmation by the SCFM is defined by NBU Resolution No. 189; it requires an acknowledgment of the receipt of the report from the SCFM, but it does not specify the confirmation period. Even though the confirmation period is not specified, Ukrainian authorities explained that for banks, the SCFM follows the same practice implemented for all other financial institutions, i.e. the acknowledgment of the receipt is sent within three working days from the receipt of the report.

583. The Law does not require SCFM to submit feedback to obliged entities on information on the decision or result if a case is closed or completed, whether because of a concluded prosecution, because the report was found to relate to a legitimate transaction or for other reasons, and if the information is available.

584. Besides the SCFM, the NBU also provides banks with guidance on the implementation of certain AML/CFT legislative acts and methodical recommendations on the best practice for conducting financial monitoring. During 2007, NBU prepared and submitted 75 letters with explanations and recommendations on financial monitoring. Due to the number of letters, the authorities could not submit an English version of all letters, but have supplied the evaluation team with examples of the content of these letters (performing financial monitoring on transactions with promissory notes, identification and analysis of foreign correspondent banks, types of transactions that could be subject to internal financial monitoring, procedure for terminating financial transaction that is suspected to be connected with financing of terrorism, risks of money laundering connected with internet banking). These documents, along with the responses to the questions received from the banking industry, are published on the NBU's website.

585. The other two supervisors (SCRFSM and SCSSM) provide some general feedback to their supervised entities on AML/CFT issues. The SCSSM provided the evaluators with the annual report for 2007, which contains certain data on its AML/CFT activities, detected problems, as well as some statistics on the number of examinations and determined violations of the Basic Law. There is a requirement for securities firms to provide training for their employees involved in the internal financial monitoring on an annual basis. The trainings should be performed by institutions accredited by the state government, an approved by the SCSSM. Regarding the feedback activities of the SCRFSM, the authorities informed the evaluation team that this supervisory body has prepared documents on AML typologies, implementation of certain AML legal provisions, examples from the practice, etc. In addition, there is a requirement for annual trainings of the compliance officers. These trainings are performed by educational centres approved by the SCRFSM. The trainings program is also agreed with the SCRFSM. Despite of the work performed by the SCRFSM and SCSSM, it could not be regarded as fully sufficient in the context of the requirements of criterion 25.2 (case-by case feedback).

586. As an attempt to provide certain feedback to the non-banking institutions, authorities indicated the operation of the temporary group established for the purpose of considering certain AML/CFT issues for non-banking financial institutions. The Temporary Working Group includes representatives from SCFM, SCSSM, SCRFSM, Ministry of Interior, self-governing organisations (professional associations) and initial financial monitoring entities (from insurance sector). This group has considered and processed 46 issues that non-banking institution face when conducting financial monitoring. During the on-site visit, the authorities have informed the evaluation team on the main issues discussed by this group: practices on disclosure of financial transactions subject to financial monitoring, training on filling forms for submitting reports to the SCFM, explanation of legislation, duties of the compliance officer, etc. The discussed issues are published on the SCFM's website.

3.7.2 Recommendations and comments

Recommendation 13

587. The legal framework covering the Ukrainian reporting regime is complicated in its structure. 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 be regarded as an inhibit for development of a suspicious-based regime. Authorities should consider the possibility for revising the relevant provisions and make them more suspicious based and in conformity with the nature and complexity of different types of obliged entities.

588. Ukraine should criminalise insider trading and market manipulation, so as to enable FIs to report STRs based on the suspicion that a transaction might involve funds generated by the required range of criminal offences.

589. The law or regulation should provide for a definition of the financing of terrorism, as well as for suspicious indicators in relation to financing of terrorism.

590. Although the Basic Law provides for coverage of certain forms of attempted transactions, there needs to be an explicit legal requirement that will require reporting of all types of attempted transactions, not just the one that have been refused by the obliged entities.

591. Authorities should reconsider harmonising the existing regulatory framework to ensure uniform implementation of the reporting regime, especially regarding the period for submitting reports to the SCFM.

592. The predominance of STRs from compulsory financial monitoring indicates a lack of risk-based approach to monitoring and reporting of suspicious transactions to the SCFM and raises concerns as to

effective implementation. The system could benefit from a higher awareness of the AML/CFT regime outside the banking sector, which could be raised through an enhanced training programme.

Special Recommendation IV

593. In the light of the information received during the visit, it appears that 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 TF STRs.

594. The comments expressed for Recommendation 13.3 – 13.4, are also applicable for SR IV. There needs to be an explicit legal requirement that attempted transactions are subject of STRs.

Recommendation 14

595. Authorities should reconsider the wording of Article 8 of the Basic Law, so that it provides for a "good faith" prerequisite associated with the reporting requirement as well as protection of entities, even if they did not know what underlying criminal activity was, and regardless of whether illegal activity occurred.

596. There should be a clear tipping off provisions in relation with financial institutions, not just directors and other employees of the financial institutions. .

Recommendation 19

597. The compulsory reporting regime of Ukraine requires reporting of transactions above a certain fixed threshold, but only if the transaction meets at least one of the criteria specified in Article 11 of the Basic Law.

Recommendation 25

598. The SCFM should be required to provide case by case feedback to obliged entities on information on the decision or result if a case is closed or completed, whether because of a concluded prosecution, because the report was found to relate to a legitimate transaction or for other reasons, and if the information is available.

599. SCFM should consider the possibility of making the reports submitted to the supervisory authorities public, with more general analysis, for ex. by type of entities (without stating the names of the institutions).

600. SCFSRM and SCSSM should enhance their feedback activities, especially with providing the private sector with best practice techniques, methods and trends, as well as more comprehensive statistics. This could positively influence the reporting behaviour of the non-banking sector.

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

	Rating	Summary of factors underlying rating
R.13	**PC**	• The suspicious reporting regime could not be regarded as suspicious 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

R.14	**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
R.19	**C**	
R.25	**LC**	• SCFM does not provide case by case feedback to obliged entities regarding the case referrals transmitted to law enforcement agencies
SR.IV	**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

Internal controls and other measures

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

3.8.1 Description and analysis

Recommendation 15

Generally

601. In the framework of Recommendation 15, the Basic Law requires obliged entities to establish rules for conducting internal financial monitoring. The content of the rules are prescribed in more details in SCFM Order No. 40 (item 3). According to this Order the rules should contain at the minimum (among other issues): measures that should be carried out by the entity for detecting and preventing money laundering and financing of terrorism, procedure for identification of persons that carry out financial transactions, procedure for revealing the character and purpose of the financial transaction, procedure for disclosing information to the SCFM, procedure for collection and retention of data, procedure for informing the employees on the internal documents for financial monitoring.

602. Financial institutions are required by law (Article 5 of the Basic Law) to assign an employee in charge of the monitoring. This employee should be independent and accountable only to the head of the financial institution. SCFM Order No. 40 defines in details the duties and responsibilities of the compliance officer, as well as the qualifying criteria that should be met by the compliance officer (without prior criminal conviction and he/she has to be an employee of the entity). In addition to these qualifying criteria, SCFM has issued a separate Order No. 46 on Requirements for the qualification of the employee responsible for conducting the financial monitoring. This Order defines additional requirements, mainly related with his/hers knowledge and skills in relation to application of the AML/CFT legislation and internal procedures. The SCFM Order No. 46 advices financial institutions to establish the compliance function according to their internal organisational structure (to create a separate compliance division, when that is more appropriate). Each entity is obliged to inform the SCFM on the appointment or dismissal of the compliance officer. Although the Basic Law and the Order demand that the compliance officer reports only to the head of the entity[84], this could not be considered as meeting the requirement that the compliance officer should be at the management level (apart from the special situation for banks).

[84] The evaluation team could not fully verify who is regarded as head of entity in all of the financial institutions.

603. SCFM Order No. 40 requests that the compliance officer is given a right to access all documents and information related to adequate conduct of financial monitoring.

604. Excluding banks, there is no legal requirement for the non-banking institutions to maintain an adequately resources and independent audit function to test compliance with AML/CFT rules.

605. According to the Basic Law, the compliance officer is responsible for training of other employees to analyse the financial transaction subject to financial monitoring. On the basis of this legal provision, the issues that should be covered with the training organised by the compliance officer are defined in the Order No. 40 (for example, familiarity of employees with the AML/CFT legislation and the internal rules for financial monitoring, practical measures for financial monitoring, techniques for money laundering, etc) and are generally in line with the requirements of Recommendation 15.

606. There is no requirement for financial institutions to put in place screening procedure to ensure high standards when hiring staff (apart from the requirements for the compliance officer and certain senior management positions). Authorities referred to Article 7 of the Law on Financial Services and State Regulation of Financial Service Markets which stipulates the conditions for establishment of a financial institution. These conditions require relevant professional skills and business reputation of the staff, which must be in compliance with requirements, established by law. This provision could be regarded as relevant only to a certain extent, since it does not require financial institutions to put in place a screening procedure to ensure high standards when hiring new staff.

Banks

607. Besides the general requirements enclosed in SCFM Order No. 40, which apply to all obliged entities, programs for conducting financial monitoring by banks are elaborated in the NBU Resolution No. 189. The Resolution requires the same minimum elements of banks' programs, as Order No. 40.

608. For certain issues, NBU Resolution No. 189 goes further than SCFM Order No. 40, requiring additional elements that are more in line with Recommendation 15. As an example, this Resolution requires the compliance officer to be appointed by the supervisory board and to be a member of the bank's board. It also provides for more detailed qualifying criteria for the compliance officer: higher legal or economic education, banking experience of no less than 3 years (as an employee of a bank) or one year (as head of a unit in a bank) or three years experience in AML/CFT area, without previous criminal convictions and with good business reputation.

609. The Law on Banks and Banking entails banks to establish Internal Audit Service and determines its responsibilities. It also specifies that the internal audit should be accountable to the supervisory board. In addition, the NBU Resolution No. 189 requires the internal audit of a bank to perform at least annual audits of the bank's compliance with the AML/CFT legislation. The results of the audit are submitted to the supervisory board. The NBU, within its on-site supervision, evaluates the adequacy of the compliance and audit function.

610. The deficiencies of SCFM Order No. 40 related with the "timely" access of the compliance officer to all necessary data and with the precise requirement for screening procedures for all employees, are not covered with NBU Resolution No. 189, as well. However, from the interviews with the banks it seems that in practice they apply their own internal vetting procedure when recruiting staff.

611. Generally, the banks interviewed by the evaluators appeared sufficiently professional and knowledgeable of their internal rules and other obligations under the Basic Law and the Banking Law.

612. Other financial institutions (insurance, exchange offices and securities firms, credit unions, postal organisations, leasing companies)

613. Requirements for the non-banking financial institutions in the context of Recommendation 15 are prescribed in the SCSSM Decision No. 538 (for entities operating on the securities market) and the

SCFSRM Instruction No. 25 (for all non-banking financial institutions). Both of these normative acts, in general, provide for the same requirements as SCFM Order No. 40, thus the same deficiencies are also valid. Regarding the implementation of screening procedures, article 7 of the Law on Financial Services and State Regulation of Financial Service Markets requires existence of relevant professional skills and business reputation of the staff, at the moment of the establishment of the financial institutions. This provision does not require financial institutions to put in place screening procedure to ensure high standards when hiring new staff.

614. From the meetings with the representatives of the financial institutions (apart from banks), the evaluation team considered that these entities lack awareness on the role of the internal audit (some of them are not even familiar with this term). Supervisors of these entities explained that there is no legal obligation for establishing an internal audit function, especially in terms of audit of the AML/CFT compliance.

615. According to the existing legislation[85], non-banking financial institutions and the National postal service operator may perform currency exchange activities, exclusively through accounts with authorized banks and according to the procedure applicable to authorized banks. Authorities explained that the exchange offices operate only with an agreement with a bank and they are obliged to follow all requirements applicable for banks, including AML/CFT standards. Thus, all of the requirements mentioned above, refer to exchange offices, as well. Nevertheless, the evaluators were not able to confirm these legal provisions in practice.

Additional elements

616. According to the Basic Law, the compliance officer is appointed by and is accountable only to the head of the financial institution. Thus, there should not be a reporting level between the compliance officer and the head of the financial institution. The compliance officer is responsible to submit monthly reports to the head on the reported transactions.

Recommendation 22

617. According to the scope of the Basic Law of Ukraine defined in Article 3, its provisions apply to the obliged legal entities, including their branches, offices and other separate units in Ukraine and abroad. This rather broad requirement could not be regarded as an exact fulfilment of the criterion 22.1, since it does not cover all necessary components. It lacks a requirement for financial institutions to pay particular attention to their subsidiaries and branches in countries which do not or insufficiently apply the FATF Recommendations, as well as to ensure implementation of the higher AML/CFT standard by their foreign subsidiaries and branches, to the extent that local laws and regulations permit.

618. As for the requirement of criterion 22.2, according to SCFM Order No. 40, financial institutions are required to inform "the entity of state agency, which according to the legislation executes functions of regulation and supervision over them, in case of failure of its branches and other separated subdivisions, which are situated abroad, to take measures for counteraction to legalization (laundering) of proceeds from crime and terrorist financing, defining reasons of failure to execute them".

619. Article 25 of the Law on Banks and Banking permits Ukrainian banks to open subsidiaries, branches and representative offices on the territory of other countries on the basis of a permit granted by the NBU. At the time of the on-site visit, one bank had a branch abroad (Cyprus) and several banks had subsidiaries in other countries. When issuing the permit[86], NBU considers whether the host country of the subsidiary or branch has "joined international agreements on prevention and counteraction to the legalization of proceeds from crime and terrorism financing, and financial sector

[85] NBU Resolution No. 297 on the Procedure of Issuing Non-Banking Financial Institutions and the National Postal Service Operator General Licenses to carry out Foreign Currency Operations of 9 August 2002, registered with the Ministry of Justice on 29 August 2002 (712/7000), as amended by Resolutions No. 362 (27.09.2002), No. 396 (27.10.2005), No.171 (05.05.2006), No. 45 (27.02.2008).

[86] NBU Resolution No. 143 of 12 April 2006 on Establishment of Subsidiary, Branch and Representative Office of Ukrainian Bank in the Territory of Other States, registered with the Ministry of Justice on 20 April 2006 (463/12337).

whereof has no negative record in the conclusions of international organizations conducting valuation of states and/or their financial sectors compliance with the key international standards in this area". The NBU may decide to limit, stop or terminate bank's transactions performed by a branch, if it determines that "the branch is not able to fulfil the provisions of the Laws of Ukraine as a result of contradictions with the Laws of the host country". Additionally, NBU instructions on performing on-site supervision define the procedure for AML/CFT supervision of foreign branches and subsidiaries. Representatives of the NBU explained that they perform on-site visits of the branch abroad, at least once in every 2 years. So far, they did not encounter any significant problems with the ability of this branch to comply with the prescribed AML/CFT standards.

620. Authorities reported that the financial institutions of other sectors have no branches or subsidiaries in other countries. There are no licensing or other criteria if these institutions would like to open branches or subsidiaries abroad; they just have to inform their supervisory authority.

3.8.2 Recommendation and comments

Recommendation 15

621. Clear provision should be made for compliance officer of the non-banking financial institutions to be designated at management level.

622. Authorities should alter the existing legislation, requiring financial institutions (except for banks) to maintain an adequately resourced and independent audit function to test compliance with AML/CFT rules. Authorities, especially SCFSRM and SCSSM, should place more efforts in raising the institutions' perception on the role and the importance of the internal audit function.

623. Requirements for financial institutions to put in place screening procedures to ensure high standards when hiring staff (apart from the requirements for the compliance officer and certain senior management positions)) should be implemented, through an explicit legal requirement, or through the internal acts or procedures of the financial institutions. In practice, only banks have shown to have internal screening procedures.

Recommendation 22

624. Apart from the special situation for 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.

625. There is no requirement for all financial institutions to ensure implementation of the higher AML/CFT standard by their foreign subsidiaries and branches, to the extent that local laws and regulations permit. Authorities should take appropriate steps to alter the language of the Basic Law, accordingly.

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**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
R.22	**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

3.9 Shell banks (R. 18)

3.9.1 Description and analysis

626. The Law on Banks and Banking defines the procedure for licensing a bank. This Law, along with the NBU Resolution No. 375 of 31 August 2001 on the procedure of establishment and state registration of banks and opening of their branches, representative offices and divisions, contain conditions concerning the required facilities of a bank, which serve as a safeguard to allow the establishment of a shell bank in Ukraine. The NBU advised the evaluation team that the current legislation does not allow a bank to be opened in Ukraine without a physical presence. Along with the documentation submitted to the NBU for issuing a bank license, which, inter alia includes a proof of the premises that the bank will use, the NBU is required within one month after the receipt of the documentation to verify "the availability of premises suitable for housing the bank and building a cash unit". The authorities advised that in practice there is no bank currently authorised and operating in Ukraine which has the characteristics of a shell bank.

627. The NBU Resolution No. 189 recommends that banks do not enter into correspondent relations with banks that do not take AML/CFT actions. This provision is aligned with the requirements of Recommendation 18, but it does not explicitly prohibit establishing relations with shell banks. However, under NBU Resolution No. 343 of 15 August 2001 on Approval of the Rules for registration of banks' correspondent accounts by the National Bank of Ukraine, all correspondent relationships need to be registered with the NBU within 10 days of entering into agreement on correspondent relationship. For the registration of the correspondent accounts, banks should submit to the NBU several documents explicitly listed in the Resolution No. 343. If the foreign (correspondent) bank is not included in "The Bankers' Almanac" (UK) reference, or if it is located in country, which is included in the list of offshore zones, or country, which has not implemented the international agreements for prevention and counteraction to legalization of illegal income and financing of terrorism, or country whose financial sector is negatively assessed by the international organisations performing AML/CFT evaluations, then the bank must provide the NBU with additional information and materials, including a document confirming the presence of the permanent office of the correspondent bank at the location of its registration. According to the received explanations, NBU can reject the registration of the correspondent relation, if the bank does not submit the required documents, or if the documents show that the foreign (correspondent) bank is situated in a country which is on the list of off-shore zones. NBU has a register of all correspondent accounts opened by the Ukrainian banks. This register is up-dated regularly, which enables the NBU to undertake adequate measures if it detects that there is a correspondent accounts that does not fulfil the requirements set in Resolution No. 343.

628. Regarding criterion 18.3, the authorities referred to item 3.9 of the NBU Resolution No. 189 which requires banks, when entering into correspondent relations, to verify if the correspondent bank takes appropriate AML/CFT actions. Again, even though this provision provides certain assurance that banks enter into correspondent relations with banks that do not permit their accounts to be used by shell banks, it could not be considered as an explicit implementation of this criterion. Nevertheless, the NBU should be commended for its supervisory activities aimed at preventing correspondent relations with shell banks. The NBU Resolution No. 231 of 25 June 2005 on methodical instructions on compliance audit of banks (or affiliates) in the sphere of preventing legalization of criminal proceeds (anti-money laundering) and composition of report upon results thereof, requires NBU supervisors to make sure that banks verify "whether the corresponding bank, if any, takes required measures, in due manner, to prevent legalization of criminal proceeds".

3.9.2 Recommendations and comments

629. The established safety measures for preventing correspondent relationship with shell banks could benefit from a specific provision that will explicitly prohibit financial institutions from entering into or continuing correspondent banking relationship with shell banks.

630. There should also be an explicit obligation placed on financial institutions to satisfy themselves that respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**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

Regulation, supervision, guidance, monitoring and sanctions

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

3.10.1 Description and analysis

Authorities/SROs Roles and Duties & Structure and Resources (R. 23 & 30)

Recommendation 23 (overall supervisory framework: criteria 23.1, 23.2)

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

632. Article 10 of the Basic Law outlines the roles and responsibilities of the entities of state financial monitoring, which pursuant to laws perform regulation and supervision of the entities of financial monitoring. Entities of state financial monitoring are: the National Bank of Ukraine, the State Commission on Securities and Stock Market and the specially authorised executive body that regulates the financial services markets, i.e. the State Commission on Financial Services Markets Regulation of Ukraine. The Law identifies the minimum activities that should be performed by the supervisory

authorities for the purpose of AML/CFT supervision. It should be indicated that even though the Law does not define the term financing of terrorism, the minimum supervisory activities include the supervision over the measures undertaken by the financial institutions for combating financing of terrorism. The Basic Law does not specify the entities of the financial monitoring for which, each of these three supervisory authorities is responsible. That is specified with the sectoral laws.

633. 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 annual supervision over banks' activities in relation with 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.

634. Foreign exchange offices can only operate as banks' agents. In compliance with NBU Resolution No. 297[87] on the Procedure of Issuing Non-Banking Financial Institutions and the National Postal Service Operator General Licenses to Carry on Foreign Currency Operations, NBU issues licenses for the establishment and operation of foreign exchange offices. The representatives of the NBU explained that the operation of these institutions is very limited, since the amount of currency transaction is limited at EUR 3 000. All transactions above this limit must be performed by a bank. However, regardless of the possible low risk associated with these institutions, there has to be an adequate AML/CFT regulation in place that will enable the NBU to perform direct AML/CFT supervision over the foreign exchange offices.

635. As regards money transfer providers, the evaluators received an explanation that these entities can only perform their activities through a bank i.e. only a bank can be an agent of an money transfer provider. The NBU issues licenses for these entities to operate through a bank-agent. The representatives of the money transfer providers present in Ukraine confirmed that they have received a license from NBU to perform money transfer services through a bank. As a result, NBU only supervises banks-agents, as a part of its full-scope supervision. In addition to the license received from the NBU, according to the Law on Financial Services and State Regulation of Financial Services Markets, money transfer providers need to be registered by the SCFSMR.

636. The State Commission on Securities and Stock Market (SCSSM) 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.

637. The State Commission on Financial Services Markets Regulation of Ukraine (SCFSMR) 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, which sets the procedure for performing on-site

[87] Resolution of 9 August 2002, registered with the Ministry of Justice of Ukraine on 29 August 2002 (712/7000)

inspections, but is quite general and does not provide for a more detailed list of activities that should be undertaken by the SCFSMR. The evaluators were informed about the existence of more detailed AML/CFT supervisory manuals, but due to the limited information provided in this respect, the evaluators could not completely evaluate the scope of SCFSMR's supervisory activities in the field of AML/CFT.

638. There is only one postal company in Ukraine – the Ukrainian Postal Office (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, it is registered with the SCFSMR for performing financial services of postal transfer and it received a general license from NBU on conducting currency transactions. The supervision over Ukrposhta is performed by two supervisory bodies: SCFSMR (for AML/CFT supervision) and NBU (for supervision 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. Regarding off-site supervision, SCFSMR representatives explained that as supervisors, they receive certain off-site information regarding AML/CFT issues, such as information on the compliance officer.

639. The following table provides an overview of the supervision and licensing regime of financial institutions in Ukraine:

Financial institutions	Supervisory authority	Licensing authority	Legal basis
Banks	NBU	NBU	Law on Banks and Banking Basic Law
Credit unions	SCFSMR	SCFSMR	Law of Ukraine on Credit Unions Law on Financial Services and State Regulation of Financial Markets Basic Law
Securities traders	SCSSM	SCSSM	Law on Securities and Stock Market Law on State Regulation of Securities Market Basic Law
Depositors	SCSSM	SCSSM	Law on Securities and Stock Market Law on State Regulation of Securities Market Law on National Depository System and Peculiarities of Electronic Securities Circulation Basic Law
Stock exchanges	SCSSM	SCSSM	Law on Securities and Stock Market Law on State Regulation of Securities Market Basic Law
Administrators of non-state pension funds	SCFSMR	SCFSMR	Law on Financial Services and State Regulation of Financial Markets Law of Ukraine on Non-State Pension Provision Basic Law
Asset management companies	SCSSM	SCSSM	Law of Ukraine on Securities and Stock Market Law of Ukraine on the Institutes of Common Investment (share and corporate

			funds) Basic Law
Insurance companies and insurance brokers	SCFSMR	SCFSMR	Law on Financial Services and State Regulation of Financial Markets Law of Ukraine on Insurance Basic Law
Foreign Exchange Offices	NBU	NBU	NBU Resolution No. 297 on the Procedure of issuing non-banking financial institutions and the National postal services operator general license to carry out foreign currency operations Basic Law
National Postal Office	Ministry of Transport and Communication / SCFSMR (AML/CFT) NBU (for the payment system operation)	National Commission on the Issues of Communication Regulation in Ukraine / NBU	Law on Postal Communication Law on Payment Systems and Money Transfer in Ukraine Law on Financial Services and State Regulation of Financial Services Markets Basic Law
Providers of money transfer	NBU/SCFSMR	NBU (for banks) / National Commission on the Issues of Communication Regulation in Ukraine (for Post Office) / SCFSMR (for others)	Law on Banks and Banking Law on Financial Services and State Regulation of Financial Services Markets Basic Law
Leasing companies	SCFSMR	SCFSMR	Law on Financial Services and State Regulation of Financial Markets, Law of Ukraine on Financial Leasing, Basic Law

Recommendation 30 (Structure, funding, staffing, resources, standards and training)

National Bank of Ukraine

640. In accordance with the Law on the National Bank of Ukraine, the NBU is an economically independent body financed by its own budget and, in the cases provided by law, also at the expense of the State Budget of Ukraine. The governing bodies of the NBU are the Council of the NBU and the Board of the NBU. The Council consist of the members appointed by the President of Ukraine and Verkhovna Rada of Ukraine. The Governor of the NBU is appointed by Verkhovna Rada of Ukraine on the recommendation of the President of Ukraine.

641. The supervision over the measures undertaken by banks for the purpose of preventing money laundering and financing of terrorism, is performed by a specialised Department for the prevention of the use of the banking system for legalisation of proceeds from crime and financing terrorism. The operation of this Department is defined in a separate Resolution of the Board of NBU No. 296. It is a structural unit of the central office of the NBU. The Department is headed by a Director appointed by and released from the post by the Governor of the NBU. At the time of the on-site visit, the total number of employees of this Department was 35. These 35 people cover the AML/CFT supervision of large banks (i.e. banks of group I and II), as well as banks located in Kyiv and Kyiv region, which totals to 80 banks. According to the Resolution No. 296, the specialised Department is also responsible for the compliance of the rules of the international payment systems with the international standards in the area of prevention of money laundering and financing of terrorism. Besides the on-site supervision, the employees of this Department also prepare AML/CFT by-laws and guidance, ensure co-operation

with foreign banking supervisory authorities in the AML/CFT sphere and participate in trainings of the regional offices on AML/CFT issues. The AML/CFT supervision of other banks [61 in total] that are not covered by the specialised Department is performed by the regional offices of NBU. The total amount of supervisors in these regional offices is 531. These supervisors are responsible for performing the prudential supervision, as well as the AML/CFT supervision.

642. According to the information received from the Ukrainian authorities, the annual turnover of NBU staff involved in AML/CFT supervision stirs from 1 to 2 persons per year. The authorities explained that around 60% of the new staff hired during the previous years comes from the private sector (commercial banks).

643. Having in mind the number of institutions, the amount of responsibilities of the specialised Department and the fact that the Law on Banks and Banking requires at least annual AML/CFT supervision over banks, the number of supervisors could not be regarded as sufficient. The requirement for annual on-site supervision may seem as a more cautious method for addressing AML/CFT issues, but it could also constrain the possibility for developing more risk-based supervisory approach to banks that, according to the level of risk associated with their operation, require more urgent or more frequent AML/CFT supervision. This seems to be an issue that should be adequately reconsidered by the authorities.

644. The hiring of staff is performed according to the NBU Resolution No. 158 of 22 April 1998 on the Reference Guide on Qualification characteristics of professions of employees of the NBU. This Resolution defines the tasks and duties required knowledge and qualification requirements necessary for each position within the NBU. The NBU representatives explained that upon appointment, every employee signs a statement of non-disclosure of information which constitute banking secret.

645. According to the provided statistics, during previous three years, the NBU staff was subject to large number of trainings on AML/CFT issues. From 2006 till the time of the on-site visit, 8 training programmes were organised by the NBU for its employees only on issues directly related with prevention of money laundering. On 21 occasions, representatives of NBU took participation in international AML/CFT seminars.

State Commission on Financial Services Markets Regulation of Ukraine

646. The supervisory function of SCFSMR is performed by the central office and the 8 territorial divisions, with a total number of 290 employees (217 of these employees being in the central office). Within the Legal Department (one of the four departments of the Commission), a separate division of financial monitoring and internal audit is established with 5 employees. Even though the representatives of SCFSMR argued that all of the supervisors are included in AML/CFT on-site examination, this number looks rather scarce in relation with the number of institutions under the umbrella of this supervisory authority (above 2 000 entities). In addition, the authorities recognised an existing problem of high turnover of the SCFSMR employees, which was explained as being mainly associated with the higher salaries offered by the private sector.

647. The financing of the SCFSMR is provided by the State Budget of Ukraine. The decision making is done by the management of the SCFSMR, the head and the members of the Commission, which are appointed by the Cabinet of Ministers of Ukraine. The Law on Financial Services and State Regulation of Financial Markets contains qualification criteria for the head and the members of the Commission. Having in mind the organisational structure of the SCFSMR, it remained unclear whether it possesses sufficient independence and autonomy from undue political influence.

648. Employees of the SCFSMR are civil servants; they are recruited, trained and assessed in accordance with the Law on Civil Services. According to this Law, civil servants have to carry out professional duties with diligence and they are obliged to keep state secret, information about citizens that civil servants may get in the line of duty and other information that cannot be made public in accordance with the laws. The Law also defines the persons who cannot be chosen as civil servants, which inter alia include persons with criminal record. Civil servants are provided with conditions for

training and improvement of professional skills in relevant educational institutions and by means of self-education. As a rule, the training should be made at least once per every 5 years. This period seems too long and could not be regarded as satisfactory.

649. The authorities provided the following information related to AML/CFT trainings organised for the employees of SCFSMR:
- in the period 2005-2008, 91 employees of SCFSMR passed some form of trainings performed by the SCFM's Training Centre;
- annually the SCFSMR conducts internal financial monitoring educational seminars for its employees in the central office and regional divisions (about 50 persons);
- a number of SCFSMR employees took part in several seminars and study visits in Ukraine and abroad.

State Commission on Securities and Stock Market

650. The SCSSM is a state body subordinated to the President of Ukraine and it reports to the Verkhovna Rada of Ukraine. The SCSSM is headed by a Chairman and six Commissioners. The Chairman of the Commission and its members are appointed and dismissed by the President of Ukraine upon consent of the parliament of Ukraine. According to the Law on State Regulation of Securities Market, the SCSSM's financing is dependent on the State Budget.

651. The AML/CFT supervision of securities market is carried out by a separate Financial Monitoring Division, established in August 2003, as an organisational part of the SCSSM. This Division counts 5 employees. In addition to the staff of the central office, 81 employees from the regional divisions are included in the AML/CFT supervision. Once again, the evaluators were not convinced that the number of AML/CFT supervisors are enough to cover all pending issues (according to the information received, there are more than 1500 institutions under supervision of SCSSM).

652. Employees of the SCSSM are also civil servants, which mean that they are hired in accordance with the Law on Civil Services and have to comply with its provisions.

653. The provided statistics on the number of trainings illustrate that since 2004, a number of employees of the SCSSM participated in five international seminars on AML/CFT issues, five working visits of foreign state agencies involved in combating money laundering and financing of terrorism and 70 were trained through several seminars in Ukraine, organised by the SCFM's Training Centre. The SCSSM should be commended for the undertaken efforts for adequate AML/CFT training of its employees. The evaluators are under the opinion that the SCSSM should continue in this fashion with even more advanced approach to enhance its supervisory capacity in AML/CFT area.

Authorities powers and sanctions – Recommendations 29 & 17

Recommendation 29 (Adequacy of powers, including on-site inspections and access to information)

654. Article 10 of the Basic Law sets out the general frame, namely the powers of supervisory authorities to monitor compliance with legislation on prevention of money laundering and financing of terrorism, to require obliged entities to fulfil the tasks and duties specified by this Law and to take appropriate measures.

655. The supervisory authorities do not need a court order to compel production of or to obtain access to all records, documents or information.

656. In accordance with Article 17 of the Basic Law, "persons guilty of violation of provisions of this Law, shall be subject to criminal, administrative, disciplinary and civil liabilities". The authorities explained that this provision include directors and senior management, since the Law provides for certain obligations for the officials and employees of the obliged entities. Although, there is no explicit provision in the Basic Law for sanctions of directors and senior management for failure to comply

with AML/CFT legislation, the sanctioning is provided with the sectoral laws and in the Code of administrative offences.

657. The sectoral laws also provide for sanctioning of financial institutions when non compliance is detected. It seems that that there is a "dual sanctioning regime"; in cases of non-compliance with the Basic Law, the sanctioning is performed in accordance with Article 17 of this law, while in cases of non-compliance with AML/CFT provisions of the sectoral laws, the sanctioning regime of those laws is implemented. Regardless of the fact that the authorities explained that they did not experience any problems in practice, the system would benefit from a more simplified structure, where sanctions could be provided for in a single legislative document, or through a clearer cross-reference in relevant legislation and less ambiguity. In addition, in accordance with the sectoral laws, supervisory authorities can demand financial institutions under their supervision to remove senior managers from office, due to non-compliance with legal provisions (including AML/CFT legislation). However, apart from the specific situation with banks, the supervisory authorities can not directly remove managers or ask for an unconditional removal.

658. For violations of this Law, obliged entities could be fined up to 1 000 untaxed minimum incomes (according to the information received during the on-site visit, this amount equals to 17 000 UAH). It is questionable whether this amount could be regarded as sufficient for ensuring compliance with the legislative, and puts a doubt on the efficiency of measures.

659. The Law also specifies that in case of repeated violations by the obliged entities, the court may decide on "restriction, suspension or termination of a license or any other special approval for certain type of activity".

National Bank of Ukraine

660. Article 63 of the Law on Banks and Banking requires the NBU to perform at least annual on-site supervisions over the compliance of banks with the legislation on prevention and combating of money laundering. Procedure for AML/CFT supervision of NBU is prescribed in more details in the NBU 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. This procedure seems quite comprehensive and requires for review of internal documents on preventing money laundering, CDD measures, the manner in which the bank determines the transactions that should be subject to financial monitoring, record keeping, reporting to SCFM, etc. It also demands for sample testing.

661. NBU is also responsible for AML/CFT supervision of foreign exchange offices, payments systems and money transfer providers (if performed thorough a bank-agent) as part of its banking supervision. Although the general provisions on the right of the NBU to perform supervision and to have a free access to all necessary documentation, apply to these entities, the evaluators did not find any explicit provision that specifies the scope of the AML/CFT supervision, and the power of enforcement. It could be argued that there is no need for a separate AML/CFT supervision for money transfer providers, since these entities conduct their activities through banks. However, this argument could not be fully applied on the foreign exchange offices.

662. As for the domestic and international payment systems, according to the Resolution No. 296, the NBU, i.e. the specialised Department, should verify the compliance of the rules of the international payment systems with the international standards in the area of prevention of money laundering and financing of terrorism.

663. The Law on Banks and Banking prescribes that during supervision, banks are obliged to ensure free access to all documents and information "to the National Bank of Ukraine inspectors and other persons authorized by the latter, and during the on-site examination - the possibility of free access to all the premises during the working hours". The NBU supervisors are entitled, in the course of the supervision of banks, "to obtain from banks free-of-charge, the information about their activity, as well as explanations on certain issues of the bank's activity". In addition to these two provisions, the

restrictions with regard to information that are defined as banking secret (according to Article 60 of the Law on Banks and Banking), do not apply to employees of the NBU who perform banking supervision or foreign exchange control.

664. Regarding the enforcement powers of the NBU, Article 73 of the Law on Banks and Banking empowers NBU to use adequate enforcement measures in case of violation of the banking legislation, or any other regulation issued by the NBU. The setback of this article is the fact that it empowers the NBU to undertake measures if there is non-compliance with the banking legislation only. The Basic Law is not part of the banking legislation. The NBU representatives explained that, although this law is not regarded as banking legislation, in practice they have not experienced any problems so far. As mentioned earlier, when there is a breach of the Basic Law, NBU sanctions banks in accordance with Article 17 of the Basic Law and Resolution No. 108 On the Procedure of Imposing Fines by the National Bank of Ukraine for Infringing by Banks the Requirements of Law of Ukraine "On Prevention and Counteraction of Legalization (Laundering) of the Proceeds from Crime". When NBU supervisors determine non compliance with the AML/CFT provisions stipulated in the Law on Banks and Banking, the sanctioning is performed in accordance with this Law and NBU Resolution No. 369 on approval of regulations on application by the National Bank of Ukraine of enforcement measures for the violation of bank legislation.

665. Article 73 paragraph 1 enables the imposition of fines to bank directors as well as temporary removal of bank's officials from office in case of serious or repeated violations of the Law, until the violations are removed. The authorities' view is that they cannot entirely remove somebody from office, since his/her appointment is done by the bank's bodies and they should make the final decision on the removal. Authorities explained that with the fact that the removal lasts as long as the violations are removed, they ensure that it is in the bank's interest to eliminate the violations. It should be emphasised that NBU has used this power to temporarily remove bank's officials from office for the purpose of AML/CFT.

666. In addition to this provision, the NBU representatives referred to paragraph 3 of the same Article, which provides that: "If any bank manager or holder of qualifying holding (natural or artificial person) or else representative of a legal entity possessing the qualifying holding have been accused of committing a crime, but the corpus delicti has not been proven, and only a minor infringement on this Law or the National Bank of Ukraine Regulations has been found to occur, or if such a person has been found guilty of any such a criminal offence without imprisonment, the National Bank of Ukraine has the right to issue the order to the bank to remove that person from his/her office in the bank or to prohibit the exercise of his/her voting rights therein."

667. The existence of different provisions within the Banking Law could not be regarded as an useful tool for implementing an efficient sanctioning regime. Despite the explanations received, the evaluation team considers that there should be a clear power for the NBU to order unconditional removal of banks' managers. This requirement is also in line with the criteria set with the Basel Committee's Core Principle Methodology, which requires supervisors to be able to restrict and replace the powers of managers and Board directors.

State Commission on Financial Services Markets Regulation of Ukraine

668. The Law on Financial Services and State Regulation of Financial Markets gives powers to SCFSMR to perform supervision over the financial institutions, excluding banks and entities operating on the securities market (Article 30). The on-site AML/CFT examinations are also defined in Order No. 26 from 5 August 2003 of Conducting of Inspections on Issues of Prevention and Counteraction to Legalization (Laundering) of the Proceeds from Crime. In addition, according to the replies of the Ukrainian authorities, for each type of financial institutions supervised by the SCFSMR, there is a separate set of internal supervisory manuals. These manuals determine the scope of inspections, which, among other issues, should cover the internal rules of institutions on financial monitoring and retaining documents. The evaluators could not verify this information, since the English version of these instructions was not presented, due to confidentiality reasons. The authorities explained that these manuals extend to sample testing, but this information could not be verified.

669. Article 30 of the Law on Financial Services and State Regulation of Financial Markets enables SCFSMR to request all necessary information and written documents.

670. Section VII of the Law on Financial Services and State Regulation of Financial Markets defines the types of enforcement measures and penalties that could be imposed by the SCFSMR, the procedure for imposing measures and penalties, as well as the administrative and criminal liability for violation of laws. The enforcement measures could be undertaken for violation of laws and normative acts governing the provision of financial services. The cited Section sets the basis for temporary dismissal of managerial staff and for fining of individuals that breach the Law. Although it does not clearly refer to managerial staff, authorities advised the evaluators that these provisions refer to the management of the financial institutions that violate the law. Since the Law on Financial Services and State Regulation of Financial Markets includes AML/CFT requirements, the sanctions defined in this Section could be imposed in cases of violation of these requirements (in addition to the sanctions imposed on the basis of Article 17 of the Basic Law).

State Commission on Securities and Stock Market

671. The supervisory responsibilities of the SCSSM are defined in the Law on State Regulation of Securities Market in Ukraine and the Law on Securities and Stock Market. According to this legislation, the SCSSM performs on-site inspection. In accordance with the internal procedures of SCSSM on performing AML/CFT inspections, during the on-site inspections, supervisors examine the presence of rules for internal financial monitoring performance and programs for its performance, the presence and keeping of financial operations register. The SCSSM explained that the on-site inspections include sample testing, but the evaluators could not verify the extent of the sample testing.

672. During the inspections, the authorised person of the SCSSM has the right to, inter alia:

- access freely the entities of initial financial monitoring;
- require necessary documents and other information in connection with exercising of the supervisory powers.

673. The Law on state regulation of securities market in Ukraine regulates the possibility for imposing fines and administrative measures (Articles 7 and 8). The SCSSM can issue warnings, mandatory orders on elimination of violations of securities legislation; impose administrative warnings, fines and other sanctions for infringement of existing legislation (including the Basic Law) on legal entities and their employees including revocations of professional activities in the securities market. Regarding the enforcement measures against directors and senior management, SCSSM can raise matters concerning dismissal of Heads of stock exchanges, and other institutions of stock market infrastructure, if they fail to comply with existing Ukrainian legislation. Like for the NBU and SCFSMR, SCSSM cannot direct the supervised entity to remove or replace a member of its management bodies.

Recommendation 17 (Sanctions)

674. Article 17 of the Basic Law prescribes that:

a) persons, guilty of violation of provisions of this Law shall be subject to criminal, administrative, disciplinary and civil liability pursuant to the law. They may be deprived of the right to conduct certain types of activity pursuant to the laws;
b) a fine up to one thousand untaxed minimal incomes may be imposed on any financial institution for its failure to comply with the requirements set by this Law.
c) repeated violation of this Law by financial institutions shall result, by court decision, in restriction, suspension or termination of a license or any other special permit for certain kinds of activity in the manner prescribed by the laws.

675. The Criminal Code of Ukraine determines the criminal liability for violation of AML/CFT legislation. Article 209[1] of this Code provides for 3 types of punishments of natural persons : (i) a fine

up to 1 000-2 000 untaxed minimum incomes; (ii) imprisonment for term of up to two years; (iii) imprisonment for the same term with deprivation of right to hold certain positions or engage. This provision sets for a criminal liability for failure to submit, or submission of inaccurate information to the SCFM and for illegal disclosure of any information obtained for the purpose of financial monitoring.

676. The Basic Law does not explicitly empowers the SCFM to issue sanctions or other types of measures. It empowers supervisory authorities to "take due measures according to the establish procedure and this Law" (Article 10 of the Basic Law) while the Administrative and Criminal Code, as well as the sectoral laws lay down the procedure for issuing administrative and criminal sanctions. However, although it is not clearly stipulated in the Basic Law, according to the article 255 of the Code on Administrative Offences, the SCFM is empowered to impose fines for violation of AML/CFT legislation, foreseen by Article 166-9 of this Code. After the on-site visit, authorities explained that SCFM has in practice imposed sanctions. This information could not be verified in the absence of related statistics.

677. Article 17 of the Basic Law sets responsibility for violating the requirements of the Law. Persons that violate the requirements of the Law, carry criminal, administrative and civil responsibility. The sanctioning of the natural persons, i.e. the directors and senior managers of the financial institutions, is also provided in the sectoral laws. Although the latter deal with sanctioning of directors and senior managers, none of them includes the possibility for their permanent removal from office, apart from the specific situation for banks (explained in the paragraphs below).

678. The pecuniary sanctions under the Basic Law equal to maximum of UAH 17 000 (approx. 2 200 EUR), which cannot be considered to be dissuasive and proportionate for financial institutions and should be raised substantially. In addition to this, the sectoral laws provide for different amount of fines, which can create uncertainty on the law that should be followed by the supervisors, i.e. the amount of fines that could be imposed. The range of sanctions defined in the Basic Law and in the sectoral laws does not provide for a broad and proportionate sanctioning and in accordance with the severity of the situation.

679. Pursuant to Articles 72, 73, and 74 of the Law of Ukraine On Banks and the Banking and Articles 255, 257, 234[3], and 221 of the Code of Administrative Offenses of Ukraine, these Regulations set the procedure of drawing up the protocols of administrative offense and forwarding said protocols to the appropriate officials or agencies authorized to hear cases of administrative offenses, and set the procedure of levying penalties provided by Articles 166[5] and 166[6] of the Code.

National Bank of Ukraine

680. The Law on Banks and Banking (Article 73) specifies that the NBU can impose a fine over banks directors (but not other officials) in amounts up to 100 untaxed minimum incomes of citizens. On the other hand, Article 74 provides for somewhat different provision: "fines shall be imposed on the bank management and officials […] pursuant to the procedure envisaged by the Code of Ukraine on Administrative Offences". The NBU Resolution No. 563 (2001) further details the procedure for imposing administrative sanctions pursuant to Articles 72, 73 and 74 and the Code of Administrative Offences. There appears to be an inconsistency between these provisions which could constrain the adequate implementation of the Law.

681. Apart from this inconsistency, the amount of fines (UAH 1 700, or 230 Euros) also appears to be low. The enforcement measures that could be imposed by the NBU include: written warnings and agreements, orders, bans, fines, temporary removal of officials and temporary prohibitions for a shareholder with qualifying holding to use his/hers voting rights in case he/she has seriously or repeatedly violated the requirements of the Law on Banks and Banking. This Law enables for a revocation of a bank's license and initiation of a bank liquidation procedure. Since the Law on Banks and Banking includes AML/CFT requirements, this provision allows for a withdrawal of license if the bank has violated these requirements. However, the provision seems to be of limited capacity, given that it only covers cases when the violations resulted in "a significant loss of assets or income".

682. The decision on imposing fines is taken by a Commission of the NBU on supervision and regulation (in the central office) or a relevant commission in the regional offices of NBU. If a bank fails to pay the fine within 3 working days after receiving the decision, the NBU has a right to address the courts. After the on-site visit, NBU submitted the following statistics on the number of cases taken to the court:

- in 2006, 4 NBU decisions were submitted to the court, 2 of them are still under legal investigation;
- in 2007, 3 decisions were submitted to the court and the court trial still continues;
- in 2008, none of the NBU decisions were appealed by the banks.

683. According to the information received during the on-site visit, it usually takes 1-1.5 years for the court to make a final decision. This period appears to be rather long, which puts a negative light on the efficiency of the sanctioning regime.

684. Despite the above-mentioned deficiencies, The NBU has demonstrated a considerable efficiency in imposing different types of measures and sanctions. The following table displays the number of measures taken to banks for non-compliance with the AML/CFT legislation, as well as the amount of penalties paid from banks (for the whole year). Once again, the paid amount seems on a low end.

	2003	**2004**	**2005**	**2006**	**2007**	**8 months of 2008**
Written warnings	41	42	11	19	47	22
Bank fines	4	44	25	63	43	14
Administrative reports on banks' managers and employees	12	21	27	38	37	7
Suspension of conducting certain bank transactions	-	2	1	3	1	2
Removal of managers or compliance officers	2	3	-	-	2	2
Written agreements	-	-	-	2	-	-
Total	59	112	64	125	130	47
Total paid penalties (in UAH)		> 400 000 (approx. 52 000 EUR)	255 800 (above 33 000 EUR)	687 346 (approx. 90 000 EUR) [88]	622 148 (above 80 000 EUR) [89]	252 873 (approx. 33 000 EUR)

685. There are no statistics on the number of fines and sanctions imposed on non-banking entities that perform currency exchanges. According to the NBU Resolution No. 297 on the procedure for issuing non-banking financial institutions and the National postal services operator a general license to carry on foreign currency operations, the NBU can revoke a license for currency exchange if it has received information from the SCFM or other authorities combating organised crime, that the non-banking financial institution or the national post office were involved in legalisation of proceeds from crime and/or were brought to responsibility for violation of AML/CFT legislation.

State Commission on Securities and Stock Market

686. According to the Law on State Regulation of Securities Market Regulation in Ukraine, SCSSM can "impose administrative warnings, fines and other sanctions for infringement of existing legislation on legal entities and their employees including revocations of professional activities in the securities market". The SCSSM may issue warnings, suspend (for a term up to one year) placement (sale) and

[88] Excluding two decisions of the NBU Commission which are presently under legal investigation (totaling UAH 342 000)
[89] Excluding three decisions of the NBU Commission which are presently under legal investigation (totaling UAH 442 000)

circulation of securities of an issuer, grant permissions (licenses) and void such permissions (licenses) if the securities legislation or normative acts of the Securities and SCSSM are violated, issue mandatory orders on elimination of violations of securities legislation to issuers and professionals, stock exchanges, and self-regulatory organizations, as well as demand submission of necessary documents pursuant to existing legislation, impose administrative reprimands, fines and other sanctions for infringement of existing legislation on legal entities and their employees including revocations of professional activities in the securities market. According to Article 8, item 14 of this Law, SCSSM may impose administrative reprimands, fines and other sanctions for infringement of existing legislation on legal entities and their employees including revocations of professional activities in the securities market. SCFM can, inter alia, impose fines for non-compliance or delayed compliance with orders, resolutions or removal of violations concerning securities regulation on legal entities (up to 500 of citizens' untaxed incomes, or 8 500 UAH) and to individuals or officials (from 20 to 50 of citizens' untaxed incomes, or from 340 to 850 UAH).

687. According to the established procedure, the decision-making on sanctioning of supervised entities is made by the authorised officials of SCSSM: head, members of SCSSM and heads of regional offices. The supervised entity has to pay the imposed penalty not later than 10 days (legal entities) or 15 days (natural persons) after receiving the Decision of the SCSSM. The entity can appeal the SCSSM decision in courts. According to the information received after the on-site visit, it usually takes several weeks to get a court order in first instance. If the decision is not appealed and the entity does not pay the imposed fine, the SCSSM addresses the courts in compliance with the procedure established by law. The court could not reverse the SCSSM decision; it just orders the supervised entity to pay the fine in predetermined period. The authorities explained that on average it takes a month for the court to make a final order.

688. SCSSM has submitted the following statistics after the visit:

	2004	**2005**	**2006**	**2007**	**2008**
Institutions with detected violations	101	124	81	93	84
Written notifications and resolutions		94	131	116	90
Administrative violation		8	11	8	15

	2006	**2007**	**2008**
Amount of imposed fines	41 465 UAH	40 420 UAH	70 890 UAH
Amount of voluntarily paid fines	25 525 UAH	28 775 UAH	24 650 UAH
Difference	15 940 UAH	11 645 UAH	46 240 UAH

689. The amount of fines confirms the conclusion on the low level of fines. In addition, the provided statistics also illustrate a substantial difference between the amount of imposed fines and the amount of voluntarily paid fines (in 2008 this difference is more than double). This put a negative light on the efficiency of the sanctioning regime implemented by the SCSSM.

State Commission on Financial Services Markets Regulation of Ukraine

690. The sanctions undertaken by the SCFSMR are defined in Article 40 of the Law on financial services and state regulation on financial services markets of Ukraine. Measures include imposing fines, obligate institutions to take measures for elimination of violations, suspension or withdrawal of license for provision of financial services, dismissal of managerial staff from the operation of the financial institution and appoint a temporary administration and raise a liquidation of instruction. For evasion from fulfilment or untimely fulfilment of instructions or decisions on eliminating violations in

respect to provision of financial services, a legal entity could be fined up to 500 untaxed incomes, but no more than one percent of the charter capital of the offender. For officials, fines are from 20 to 50 of citizens' untaxed incomes. The evaluation team refers again to the comments made earlier on the low level of fines and the contradictions in the amount of fines defines with the Basic Law and Law on financial services and state regulation on financial services markets. The Law also provides for the criminal liability of officials in cases of violation of the legislation while performing financial services.

691. The authorities submitted the following figures for the measures undertaken to some but not all financial institutions supervised by the SCFSMR:

	2004	**2005**	**2006**	**2007**	**First half of 2008**
Insurance companies and brokers					
Number of other measures	5	21	58	36	28
Fines	13	57	68	50	58
Total amount of fines (UAH)	119 000 (above 15 000 EUR)	209 100 (above 27 000 EUR)	396 100 (above 51 000 EUR)	244 375 (above 31 000 EUR)	158 057 (above 20 000 EUR)
Financial companies					
Number of other measures	-	19	24	2	1
Fines	1	24	22	18	8
Leasing companies					
Number of other measures	-	18	20	2	3
Fines	-	28	15	28	11
Credit Unions					
Number of measures	40	14	94	75	25
Fines	96	41	119	94	41
Administrators of private pension funds					
Number of other measures	-	-	3	5	11
Fines	2	2	8	7	15

692. After the visit, the authorities informed the evaluators that in 2008, due to non-payment of penalties by the entities under SCFSMR supervision, 4 cases were submitted to the courts. According to the received information, these cases are still pending in court.

Market entry

Recommendation 23 (Criteria 23.3, 23.5, 23.7)

693. For an overview of the licensing regime referring to the various financial institutions, see the table above.

Banks

694. Evaluators found several provisions within the Law on Banks and Banking and the NBU Resolution No. 375 [90] in line with the requirements of Recommendation 23.3 (including 23.3.1), which are explained in more details in the following paragraphs.

695. According to Article 14 of the Law on Banks and Banking "owners of qualifying holdings in the bank shall have an irreproachable business reputation and a satisfactory financial position". A qualified owner is a person holding more than 10% of the authorised capital or voting rights. The Law on Banks and Banking, as well as the NBU Resolution No. 375 do not provide for a clear definition of the term "irreproachable business reputation". The understanding of this term could be indirectly derived from these legislations. From the NBU Resolution No. 375 it could be understood that the term refers to persons that have no obligation to pay debt to any bank or to any other natural or legal person; persons whose actions in the past did not result in bankruptcy or liquidation of a bank or any other legal entity; persons that have not been dismissed at the request of the National Bank; or persons that have not been dismissed under the Labour Code of Ukraine.

696. However, this could not be regarded as a definition of this term. From the meetings with the private sector, evaluators could confirm that there is no clear and uniform understanding of the meaning of the term "irreproachable business reputation". During the on-site visit, the representatives of NBU pointed out that a helpful tool for assessing the irreproachable business reputation are the questionnaires that had to be completed by the persons applying for a qualifying holders, their qualifying holders and managers, as well as the managers of the bank.

697. A person "wishing to acquire a qualifying holding in a bank or increase it so that this entity or person would directly or indirectly own or control 10%, 25 %, 50% and 75% of the authorized capital or voting rights of the bank", needs a permission of the NBU. The NBU can reject an application due to several reasons, e.g.: the person who wants to acquire the qualifying holding does not have irreproachable business reputation. If the applicant is a legal entity, this criterion covers the members of the supervisory and executive body of that legal entity, as well as the qualifying holders of that entity which are individuals. Thus, even though the Law does not provide for a definition of a beneficial owner, with this provision, NBU is authorised to cover in its analysis the owners of the person wanting to become a qualifying shareholder of a bank. In addition to the requirements of the Law on Banks and Banking, the Resolution No. 375 empowers NBU to reject the state registration of a bank in case when:

- at least one of the owners of a qualifying holding of a bank, lacks an irreproachable business reputation;
- the Chairman and/or members of the Board (Board of Directors), or the Chief Accountant of the bank is/ are professionally ineligible or lack the irreproachable business reputation.

698. The Law provides for some additional requirements for opening of a foreign bank branch in Ukraine. According to Article 24 "a foreign bank shall have the right to open a branch in Ukraine, provided that :

- the country where the foreign bank has been registered belongs to the countries that participate in the international co-operation in the area of preventing and combating

[90] NBU Resolution No. 375 on the procedure of establishment and state registration of banks and opening of their branches, representative offices and divisions

legalization (laundering) of proceeds from crime and terrorism financing and cooperates with the Financial Action Task Force (FATF);

- banking supervision in the country where the foreign bank has been registered complies with the Core Principles of Banking Supervision of the Basel Committee on Banking Supervision. The National Bank of Ukraine shall have the right to refuse accreditation of a foreign bank's branch on the following grounds: candidates for the posts of the manager and chief accountant do not meet the proficiency and business reputation requirements of this Law and of the rules and regulations of the National Bank of Ukraine."

699. As for the "fit and proper" criteria that should be fulfilled by the bank's directors and senior management, Article 42 deals with the requirements for all bank managers (e.g. professional and educational background, irreproachable business reputation, etc.). According to the Law, managers of a bank are: the Chairman, his/her Deputies and the members of the bank's Supervisory board, the Chairman, his/her Deputies and Members of the Board of Directors, Chief Accountant and his/her Deputy and the managers of bank separate divisions. A NBU approval is necessary for the Chairman of the Board of Directors and the Chief Accountant, and for the other managers, the bank has to inform NBU on dismissal and appointment of new persons. During the licensing process, NBU carries out interviews of the candidates for bank managers.

700. The bank has to inform the NBU if a bank manager, an individual owner of qualifying holding or a representative of a corporate owner of qualifying holding is accused of felony.

Securities firms

701. Entities performing professional stock market activities (hereinafter: securities firms) are defined in Article 16 of the Law on Securities and the Stock Market: securities trading (brokerage, dealing, underwriting and securities management), management of assets of institutional investors, depository activities (custodian, depositary of securities, settlement and clearing, registers) and organisation of trading on the stock market.

702. Professional stock market activities can be performed only with a prior license from the SCSSM. The license is issued for a certain period of validity, after which it has to be renewed. The list of documents necessary to receive a license, the procedure for its issuance and termination, are established with SCSSM Resolution No. 345 (it refers to all professional stock market activities, except the asset management activities which are licensed based on a procedure defined with a separate Resolution). The Resolution lists all documents that have to be submitted to the SCSSM during the licensing process. These documents include data on:

- owners of the applicant (name, identification code, location, share in the applicants capital – in UAH and as a percentage). For an applicant - joint-stock company, the data refers to shareholders who possess over five percent of its authorized fund (capital);
- senior officials and experts of the applicant, who directly exercise the professional activity in the stock market and are certified in the established procedure (name and identification code, experience on the stock market, validity of the certificate, data on previous convictions or fines)
- copy of the payment document that confirms the payment of fines if such were imposed on the applicant during the validity of the previously issued license for the law infringements in the stock market, and which have not been appealed in judicial procedure. In case the fines to the licensee were not applied, the information is submitted, in the arbitrary form, on their absence.

703. The Resolution requires information on the shareholders who possess over five percent of the applicant - joint-stock company, but it seems that the legal requirements stop there, i.e. they do not require for information on the natural persons that are the real beneficial owners of the applicant.

704. Regarding the conditions that should be fulfilled by senior officials, the SCSSM Resolution No. 345 refers to Resolution No. 1 from 5 January 1999 on the definition of the list of senior functionaries

whose realisation of professional activity in the stock market by their legal entities is subject to certification. The evaluators could not verify the criteria for issuing of the required certificate[91].

705. On the grounds of the received documentation, the SCSSM decides on issuing or refusal of the application. SCSSM Resolution No. 345 specifies the cases when the application should be refused, such as:

- the license on performing professional activity in the stock market cannot be obtained by an applicant who, during the validity of the previously issued license, has not ensured elimination of law infringements and had rulings on imposition of sanctions for law violations (including, those that stipulated the payment of appropriate penalties),
- there is non-compliance of the applicant to the requirements set up by the Resolution. The applicant can obtain a new license not earlier than in a year after cancellation of the previously issued license, or elimination of reasons that became the grounds for refusal of a license.

706. These relatively broad provisions do not provide for an explicit barrier for criminals, or their beneficial owners, from holding a significant or controlling interest in a securities firm. The same applies for the members of the management bodies of the securities firms. Since the relevant resolutions were not submitted[92], the evaluators could not fully determine whether the senior management is evaluated on the basis of "fit and proper" criteria, especially related with the managers' integrity (the legislation contains only certain requirements regarding the necessary past experience).

707. SCSSM resolution No. 345 prescribes that licensing requirements should be complied with by the licensee through the whole terms of license's validity (Section 1, Item 17).

708. As it was previously underlined, the licensing of the asset management companies is performed in accordance with the Resolution No. 341 on approval of Licensing terms to engage in stock market professional activities – activities of institutional investors' assets management (asset management activities). The Resolution lays down a somewhat similar licensing procedure, as for all other securities firms. It goes just one step further, requiring information on the persons related with the applicant's owners and individuals related to the applicant's director.

Insurance companies

709. The SCFSMR is the licensing authority responsible for issuing licenses for performing insurance activities. The licensing requirements for insurance activities are defined with the Law on Insurance and the SCFSMR Order No. 40 of 28 August 2003 on licensing conditions for carrying out insurance activities[93]. The SCFSMR does not issue separate approvals for the qualified owners or the senior management of the insurance companies What is more important in the context of Recommendation 23.3, both, the Law and the Order, contain very limited requirements for the persons having a significant or controlling interest in the insurance entity and it's senior managers. The documentation submitted to the SCFSMR should contain information on the members or founders of the insurance company-applicant (shareholders, who hold over 5% of the applicant's authorised capital) and on the Head of the executive body, his/hers deputies and Chief accountant. The Law requires the chief executive officers to be legally capable natural persons and to have a degree in economics or law.

710. The ground for refusal of an application consist only two reasons: (i) unreliability of information provided by the applicant in order to obtain license, and (ii) nonconformity of the documents

[91] The evaluators were informed after the visit that such criteria are established by Resolution No. 93 issued on 29 July 1998 on certification of persons performing professional activities with securities in Ukraine but have not seen the text of this resolution.

[92] Resolution No. 1 from January 5th, 1999 on definition of the list of senior functionaries whose realisation of professional activity in the stock market by their legal entities is subject to certification and Resolution No. 93 issued on 29 July 1998 on certification of persons performing professional activities with securities in Ukraine.

[93] Registered by the Ministry of Justice of Ukraine on 15 September 2003 (805/8126), including amendments in accordance with SCFSMR Orders No. 160 dated 12.11.2003, No. 3329 dated 01.18.05, No. 3433 dated 01.25.05, No. 4125 dated 06.07.05, No. 5377 dated 02.14.06, No. 3329 dated 18.01.05, No. 71 dated 01.17.08)

submitted by an applicant with the licensing conditions (defined in the Order No. 40). Once again, this is a broad provision which does not enable legal or regulatory measures for ensuring adequate ownership or managerial structure of the insurance companies.

Pension funds

711. The term pension funds, used in MER, include following entities: administrator of non-state pension fund, non-state pension fund, depositor of non-state pension fund, keeper (custodian) of pension fund and assets management company of non-state pension funds. All of these entities require some form of license for performing activities related with non-state pension funds. The type of license and the licensing authority is defined with the Law on non-state pension fund provision.

712. A legal entity which intends to carry out activity of administration of pension funds needs a license from the SCFSMR. An entity can be administrator of pension funds if it has a predetermined amount of authorised capital and has staff with relevant qualification level, relevant technical provision and information systems for conducting the activities of an administrator, according to the requirements, prescribed by the SCFSMR. The Law does not set any particular criteria for owners of these entities and does not cover the beneficial owners. It has some criteria for the senior managers, such as:

- are capable;
- correspond to the qualification requirements, prescribed by the SCFSMR;
- do not have restrictions as regards to execution of functions, laid on them, and which arise through their related persons;
- were not convicted for intentional crimes;
- during the last seven years were not heads of legal persons, recognized bankrupts, or exposed to the procedure of forced liquidation in a period, when this person occupied position of the head.

713. These requirements cover also the head of structural subdivisions.

714. The assets management company of a pension fund is carried out on the basis of license issued by the SCSSM, and in accordance with the requirements and the procedure set by this authority. The shortcomings pointed out for the securities market legislation, apply for the asset management companies of a pension funds.

715. As it is stipulated in the Law on non-state pension fund provision, only bank, which meets certain requirements for performing this activity, can be a keeper of pension fund. Thus, the Law does not set licensing criteria; these criteria are covered with the Law on Banks and Banking.

Credit Unions

716. The establishment and operation of the credit unions are defined with the Law on Credit Unions, as well as the SCFSMR Regulation No. 146 of 2 December 2003 on license provisions for credit unions' operations on provision of financial services[94]. The credit unions are registered by the SCFSMR in the State Register of Financial Institutions as any other financial institutions. The Law specifies the documents that should be submitted for state registration and prohibits the SCFSMR to require from the credit unions any documents other than those envisaged by this Law.

717. In contrast with the provisions of the Law on credit unions, the SCFSMR Regulation No. 146 requires licensing of credit unions and is more detailed in the terms of the criteria and documentation for issuing license. Despites the limitations set with the Law; the SCFSMR Regulation No. 146 requires some additional documentation that should be submitted to the SCFSMR in the process of licensing of the credit union. Having in mind the specifics of the credit unions which are managed by their members, the Regulation does not cover any "fit and proper" criteria for founders of the credit unions and their beneficial owners, but it refers to the management bodies of these institutions. The

[94] Registered with the Ministry of Justice of Ukraine on 25 December 2003 (1225/8546), amended and supplemented by SCFSMR Regulations No. 4039 of 16 May 2005, No. 5408 of 21 February 2006, No. 5792 of 18 May 2006, No. 6868 of 27 February 2007, No. 7817 of 14 August 2007

credit unions should submit data on the education of manager and chief accountant, including qualification certificates for compliance of their professional knowledge with standard advance training programs for managers and chief accountants of credit unions, which confirm the compliance of manager and chief accountant with the requirements established by Professional requirements for managers and chief accountants of financial institutions approved by SCFSMR Regulation No. 1590 dated July 13, 2004[95]. Regulation No. 146 also envisages that "individuals that by court decision are deemed legally incompetent or restrictedly competent, those who serve sentences of imprisonment, and individuals who have outstanding convictions for profit-motivated crime may not be members of management bodies of credit union". This provision could be considered to be in line with the requirements of Recommendation 23.

718. The grounds for a decision to refuse a license include: inaccuracy of data in documents filed by the applicant for a license and non-compliance of the applicant's documents with these license provisions. The Regulation No. 146 defines the grounds for suspension of a license: failure of credit union to fulfil requirements of license provisions; repeated violation by licensee during one year of the requirements of license provisions, for which measures of influence were imposed; failure to correct violations that were grounds for preceding measures of influence; imposing measures of influence in the form of removal of management from credit union's administration, etc. Validity of suspended license may be renewed only in case of correcting violations, which were the basis for its suspension.

719. The grounds for cancellation of a license include cases such as failure within the time specified by the decision of the SCFSMR to correct violations of the requirements of license provisions, which were basis for suspension of the license.

720. The SCFSMR is responsible for ensuring compliance of the credit unions with the prescribed criteria. Even though there is no clear cross-reference with other laws governing the operation of the SCFSMR, it could be assumed that SCFSMR can take due actions, such as suspension of managerial staff if it determines non-compliance with the Regulation No. 146.

Foreign exchange offices

721. Non-banking financial institutions and the National Postal Services Operator can perform currency exchange operations, upon a receipt of a license from the NBU. The procedure for issuing of licenses to these institutions is established through a separate Resolution of the NBU No. 297[96] dated 9 August 2002. This Resolution specifies the amount of authorised capital necessary for performing currency exchange, the documentation that should be submitted to the NBU during the licensing, as well as the decision-making process. The non-banking institutions performing currency exchange, must be registered by the SCFSMR, i.e. they have to fulfil the registration criteria established by this supervisory authority.

722. The NBU Resolution No. 297 defines the grounds for refusing a license. NBU will not issue a license for performing foreign currency operations if: "[…]

- the National Bank received from special agencies for combating organized crime negative conclusions concerning issuance of general license;
- instances of violation of requirements of Ukrainian law concerning regulation of financial services markets by non-banking financial institution or the national postal service operator were discovered and/or sanctions for violation of the aforementioned Ukrainian law were applied to said non-banking financial institution or the national postal service operator during the year which precedes the document package receipt date."

[95] Registered with the Ministry of Justice of Ukraine on 2 August 2004 (955/9554) , as revised and amended by the SCFSMR Regulations No. 4346 of 20 July 2005, No. 5771 of 16 May 2006, No. 7271 of 8 May 8 2007 and No. 529 of 17 April 2008.

[96] Registered with the Ministry of Justice on 29 August 2002 (712/7000), as amended by Resolutions No. 362 (27.09.2002), No. 396 (27.10.2005), No.171 (05.05.2006), No. 45 (27.02.2008).

723. This provision provides for some measures to prevent criminals form holding a significant or controlling interest or holding a management function in foreign exchange offices, but it does not explicitly cover the directors, senior managers and beneficial owners.

Post Office

724. As it was explained previously, the Ukrainian Post Office is licensed by the National Commission on the Issues of Communication Regulation of Ukraine (provision of postal transfers), it is registered with the SCFSMR for performing financial services of postal transfer and it received a general license by the NBU (for conducting foreign currency transactions). The evaluators did not receive the licensing and registration terms that apply to the Post Office, and, therefore, could not assess the applicable provisions.

Money transfer services

725. Providers of money transfer services are licensed by the NBU and the SCFSMR. There are no separate legal entities providing only money transfer services, such as Western Union or Moneygram. These institutions can perform their activities only through a bank, i.e. the bank has a role of an agent of these money transfer providers.

726. Apart from the money transfer providers, the Ukrainian legislation provides for a possibility of existing domestic and international payment systems. The registration and licensing of these payment systems is arranged with NBU Resolutions No. 447 and 348. Bank, non-banking financial institutions and national operator of postal services are obliged to register agreements on membership/participation in international payment system before initiation of providing international money transfers.

Other financial institutions

727. Other financial institutions include institutions such as: leasing companies, financial companies and other institutions whose exclusive activity is to render financial services. The Law on financial services and state regulation of financial markets determines the criteria for establishment and operation of the financial institutions. The provisions of this law are broad and only cover the minimum requirements, such as the documents that should be submitted to the SCFSMR and the procedure for the decision-making by the SCFSMR. All other requirements are left for the separate laws or regulations governing each type of financial institution, if any.

<u>Ongoing supervision and monitoring</u>

Recommendation 23 (Criteria 23.4, 23.6, 23.7)

National Bank of Ukraine

728. The NBU conducts on-site and off-site supervision of banks. For the purpose of off-site supervision over the AML/CFT measures undertaken by banks, NBU has issued Resolution No. 403[97] which defines two reporting forms:

- Report on financial transactions, which are subject to financial monitoring (submitted monthly), and
- Report on the number of bank's clients, which are subject to identification (submitted quarterly).

729. The authorities explained that the monthly reports include the following information:

- number of registered financial transactions, which are subject to financial monitoring;

[97] Dated 28 October 2005, registered with the Ministry of Justice of Ukraine on 17 November 2005 (1394/11674)

- reports on financial transactions, submitted to the FIU, which are subject to compulsory and internal financial monitoring (grouped by codes of signs);
- transactions for which the bank had reasonable suspicions that they can be related to terrorist financing;
- transactions that the bank refused to conduct, and reports concerning closure of client's account;
- transactions for which bank took decision not to submit file-report;

730. The quarterly reports envisage information concerning classification of bank's clients which are subject to identification. Based on the received information, NBU prepares analytical information concerning activities of Ukrainian banks in the area of financial monitoring. In addition, this information is used by the NBU during conducting of on-site inspections of banks.

731. With regard to the on-site inspection, Article 63 of the Law on Banks and Banking requires NBU to perform at least annual on-site supervisions over the compliance of banks with the legislation on prevention and combating of money laundering. The procedure for AML/CFT supervision of NBU is prescribed in NBU Resolution No. 231 of 25 June 2005 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. This procedure describes the steps for evaluating the AML/CFT measures of banks. It includes guidelines for the analysis of internal documents on preventing money laundering, CDD measures, the manner in which the bank determines the transactions that should be subject to financial monitoring, record keeping, reporting to SCFM, etc.

732. Although the NBU has established an appropriate system for risk-based analysis, the evaluation team were of the view that as a result of the legal requirement for annual AML/CFT on-site inspections, the NBU could not always be in a position to perform ad-hoc inspections, whenever the off-site analysis or other information point out a higher level of AML/CFT risks associated with certain banks.

733. According to the provisions of the Law on Banks and Banking and the defined scope of supervision, including the AML/CFT supervision, the NBU is able to perform supervision on a consolidated basis, which was already applied in practice.

734. The NBU is also responsible for the supervision of foreign currency exchange offices and international payment systems. The above-mentioned procedure, as well as the reporting forms, apply to foreign exchange offices and international payment systems performed through bank agents (the SCFSMR is responsible for supervision of non-banking financial institutions that provide payment systems). The authorities explained that, since the foreign exchange offices could only operate as agents of banks, the AML/CFT supervision of these entities is provided through the supervision of the banks, i.e. it is part of the banking supervision.

735. The authorities provided the following figures concerning AML/CFT on-site inspections conducted by the NBU (central and regional offices):

	Banks (scheduled and unscheduled full scope AML/CFT inspections)	**International payment systems (scheduled inspections)**
2004	177	-
2005	157	-
2006	199	165
2007	187	170
2008	190	181

736. In accordance with the SCSSM Resolution No. 344 for conducting AML/CFT inspections over securities firms and the SCSSM Order No. 644 with methodological recommendations for inspections of securities firms on compliance with AML/CFT legislation, the SCSSM performs on-site inspections over entities acting on the securities market. During inspections, SCSSM supervisors examine the presence of rules for internal financial monitoring performance and programs for its performance, the presence and keeping of financial operations register. The Order does not define the procedure for determining the entities that are going to be subject to on-site examinations. . The authorities advised the evaluators that the decision making for determining the on-site examinations plan is based on the proposals of the regional bodies and independent units of the SCSSM.

737. The SCSSM representatives explained their off-site supervisory powers only after the visit. The SCSSM has powers to require data from supervised entities that will enable off-site AML/CFT supervision, such as data on the volume and type of transactions, securities bought on the exchange office or over-the-counter, transactions with clients-non-residents, etc. The data on transactions is received in a period of three days after their execution.

738. It remains unclear whether SCSSM has adequate regulatory powers and resources to perform consolidated supervision. In addition, the supervision performed by the SCSSM is a compliance-based one, and it appears that there is a lack of capacity (regulatory and human) to carry-out risk-based supervision of securities firms.

739. As mentioned above, when comparing the low number of staff with the number of institutions under SCSSM supervision, the evaluation team is not convinced that the supervisors of the SCSSM are a position to cover AML/CFT issues in a satisfactory manner.

740. During the meetings with the SCSSM and with several other Ukrainian authorities, evaluators have acknowledged the practice of establishing fictitious companies in Ukraine, which additionally increases the level of money laundering risks in the securities sector and requires further actions from the SCSSM. The SCSSM has informed the evaluation team on the actions taken to deal with this problem. It has defined a three-step approach to deal with this problem: disclosure of securities transaction of “bogus” joint-stock companies; taking measures on cancellation of state registration and securities issue of fictitious joint-stock companies; and taking measures concerning prevention of establishment of new fictitious joint-stock companies.

741. The SCSSM provided the following figures on the number of inspections:

	2006	**2007**	**2008**
Securities trading	91	72	91
Asset management companies	2	35	36
Depositors	5	8	10
Stock Exchanges		1	-
Register holders	128	108	71

742. The number of inspections performed during the previous three years show a positive trend, even though it could not be regarded as fully sufficient , having in mind the total number of financial institutions supervised by the SCSSM.

State Commission on Financial Services Markets Regulation of Ukraine

743. The procedure for conducting AML/CFT supervision over entities supervised by the SCFSMR is defined in Resolution No. 26 on conducting inspections on issues of prevention and counteraction of the proceeds from crime. This Resolution sets the procedure for organising and conducting inspections, but not the scope of those inspections.

744. Ukrainian authorities advised the evaluation team that the scope of the on-site inspection is defined in a separate set of supervisory manuals for each type of financial institution supervised by the SCFSMR. These manuals could not be reviewed by the evaluators, since the English version of these instructions were not presented, due to confidentiality reasons. Therefore, evaluators could not assess the scope of the provisions. It appeared nevertheless that they did not provide for consolidated supervision. From the regulatory framework governing the SCFSMR supervision, as well as from the answers gathered during the on-site visit, it was rather obvious that SCFSMR performed mainly a compliance-based supervision, i.e. there is insufficient basis for a risk-based approach over the entities supervised by the SCFSMR.

745. The authorities provided the following statistics on the AML/CFT inspections performed by the SCFSMR. The figures show a certain variation in the number of inspections performed during the previous years. Having in mind the total number of financial institutions and the total number of AML/CFT supervisors, it does not appear that SCFSMR can cope with AML/CFT issues in a suitable manner.

	2004	**2005**	**2006**	**2007**	**2008***
Insurance companies	67	259	347	369	193
Insurance brokers	5	9	20	18	13
Financial companies	3	11	38	56	21
Leasing companies	53	11	19	53	13
Credit Unions	866	112	274	171	66
Administrators of private pension funds	22	13	22	31	24

* Number of inspections carried out during the first half of 2008

Recommendation 32 (criteria 32.2d)

746. All three supervisory authorities submitted some form of statistics on the number of on-site examinations related with AML/CFT (see paragraphs above) and the number of violations and sanctions applied (see above). Due to the different structure of the received statistics it was difficult to cross-analyse them, and to draw a general conclusion on the adequacy and effectiveness of the entire supervisory statistics.

747. Nevertheless, the statistics confirm the statement on the low amount of maximum fine that could be imposed in accordance with the AML/CFT legislation. As an example, authorities have reported that during 2007 and the first half of 2008, the NBU has identified 7 036 cases of violation of current AM/CFT legislation (Basic Law, Law on Banks and Banking and NBU Resolution No. 189). Contrary to this number of violations, in the same period NBU has issued just 171 measures of influence (100 fines). The NBU representatives explained that the reason for this discrepancy is the limitation on the amount of fine that could be imposed for violation of legislation, i.e. the total amount of fine could not be higher than 1 000 of untaxed incomes (17 000 UAH), regardless of the number of violations. This suggests that an entity with one violation could have the same amount of fine as an entity with several violations, which could lead to a low incentive by the obliged entities to comply with the legislation.

Recommendation 25 (criteria 25.1) – Guidance for financial institutions other than on STRs

748. The Basic Law requires the SCFM to analyze the methods and financial patterns of money laundering and financing of terrorism and to provide guidance to the obliged entities on issues related with AML/CFT. SCFM has issued several documents that encompass recommendations on the organisation of financial monitoring, especially on internal financial monitoring (at the time of the on-site visit, 18 were for banks, and 24 for other non-banking financial institutions). SCFM has also published typologies with examples of money laundering schemes (e.g. scheme of transfer of funds abroad, land purchase transactions through fictitious persons, etc.). These documents are available on the SCFM's website.

749. NBU also provides banks with guidance on the implementation of certain AML/CFT legislative acts and methodical recommendations on the best practice for conducting financial monitoring. During 2007, the NBU prepared and submitted 75 letters with explanations and recommendations on financial monitoring. All of these documents are published on the NBU's website.

750. The other two supervisors (SCRFSM and SCSSM) provide certain guidance on ML and FT techniques and methods to their supervised entities. Apart from the annual reports on the operation of these entities, which includes some information on AML/CFT issues, the activities of these supervisory bodies include a requirement for regular trainings of the employees of the supervised entities. As an example, the typologies report issued by the SCFM in 2007 incorporates 16 examples and 3 case studies of possible methods of laundering money using financial transactions with unmarketable securities.

3.10.2 Recommendations and comments

Recommendation 17

751. The fines established with the Basic Law are on the low end and could not be considered as dissuasive and proportionate to the severity of a situation. In addition, 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 authorities should review these sanctions with a view to establishing effective, proportionate and dissuasive sanctions to deal with natural or 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.

752. During the on-site visit evaluators were informed by the NBU that the courts usually need on average 1-1.5 years to take a final decision, when decisions are appealed. This period appears to be rather long, which puts a negative light on the efficiency of the sanctioning regime.

753. The scope of articles 73 and 74 of the Law on Banks and Banking regarding the possibility to impose fines on bank officials and managers should be harmonised. In addition, this Law should be adequately amended so that the withdrawal of a bank license does not only cover cases when the violations induced "a significant loss of assets or income".

754. There is no evidence for appropriate sanctioning regime and practice over the foreign exchange offices and money transfer providers. The authorities should review the situation and take necessary measures in this respect.

Recommendation 23

755. The SCFSMR should start conducting AML/CFT on-site supervision of the Ukrposhta and enhance off-site supervision.

756. Authorities are advised to provide for a clear definition of the term "irreproachable business reputation", that will be apparent to all banks' stakeholders.

757. The legal provisions for non-banking financial instructions (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 in a securities firm.

758. The "fit and proper" criteria 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.

759. 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.

760. It does not appear that the SCSSM and the SCFSMR are in a position to cover AML/CFT issues in satisfactory manner. These 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.

761. Regardless of the possible low risk associated with the foreign exchange offices, there has to be an adequate AML/CFT framework in place that will enable AML/CFT supervision and resources allocated for this purpose.

762. The SCSSM is encouraged to continue its action aimed at decreasing the number of fictitious companies.

Recommendation 25

763. The SCFSMR and SCSSM should develop further guidance to cover more adequately the various sectors supervised by them.

Recommendation 29

764. Apart from the NBU, the extent to which sample testing is included as part of the on-site supervisory actions of SCFSMR and the SCSSM is not clear. The supervisory authorities should ensure that sample testing is included as part of their on-site supervisory action.

765. There are no explicit provisions that specify the scope of the AML/CFT supervision and the power of enforcement of foreign exchange offices.

766. The sanctioning of directors and senior management for failure to comply with AML/CFT legislation is provided for in the sectoral laws and the Code on administrative offences. However, the sectoral laws set to some extent different sanctioning regime, especially regarding the possibility to fine directors and senior managers. In addition, all of the sectoral laws, apart from the specific situation for banks, do not enable removal of directors and senior managers as a result of non-compliance with legislation. This issue should be revisited as recommended in the report.

767. According to the Law on Banks and Banking, NBU can impose sanctions if it detects violation of the banking legislation. There is no clear reference that the Basic Law is considered as part of the banking legislation, which could constrain its efficient implementation. This issue should be adequately addressed by the authorities. In addition, the authorities are advised to reconsider the provisions of the Law on Banks and Banking with regard to the possibility to remove managers from office.

768. The sanctioning regime implemented with the existing AML/CFT legislation allow for imposing different sanctions, depending on the type of non-compliance (with the Basic Law or with the sectoral

laws). Since this situation could create uncertainty, the system could benefit from clearer provisions in terms of the sanctions that should be imposed.

Recommendation 30

769. The number of supervisory staff in all three supervisory authorities should be increased in order to provide for efficient AML/CFT supervision over the obliged financial institutions.

770. There are some doubts related with the independence and autonomy of the SCFSMR. In addition, this supervisory body experiences a high turnover of its staff, which adversely affects its possibility to attract and sustain competent staff. The authorities should take necessary measures to address these concerns.

771. According to the Law on Civil servants the training should be made at least once per every 5 years. This period seems too long and should be adequately altered.

772. SCSSM and SCFSMR should continue their efforts for providing their supervisors with adequate AML/ CFT trainings.

3.10.3 Compliance with Recommendations 17, 23, 29 and 25

	Rating	Summary of factors underlying rating
R.17	**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.
R.23	**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
R.25	**LC**	• The ML/FT guidance provided by SCFSMR and SCSSM to the specific sectors that they supervise could not be regarded as sufficient
R.29	**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 removal from office of directors and senior managers • Maximum fines against financial institutions are too low

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and analysis

773. 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 banking license. Currently, Western Union and Moneygram perform money transfer services only through banks.

774. Ukraine has designated the SCFSMR as the competent authority to licence natural and/or legal persons that perform money or value transfer (MVT) services for AML/CFT purposes (Law of Ukraine on Financial Services and State Regulation of Financial Markets, Article 21). The National Commission on Issues of Communication Regulation licences Ukrposhta to perform MVT services (Law of Ukraine on Postal Communication, Article 8) for postal transfers. However, it is monitored by the SCFSMR for AML/CFT obligations.

775. Non-banking financial institutions and Ukrposhta are subject to a two-tier registration process, they are registered by the State Commission on Financial Services Markets Regulation to carry out financial services including transfer of funds in the national currency. The SCFSMR advised that 10 non-bank financial institutions have a license for money transfer. An additional license will be required from the NBU to transfer foreign currency. Both the State Commission on Financial Services Markets Regulation and the NBU maintain a register on non-bank financial institutions that can carry out the transfer of national and foreign currency respectively. The evaluation team was provided with the relevant legislative provisions related to the registration of non-bank financial institutions for the transfer of national or foreign currency only after the on-site visit.

776. The scope of the Basic Law (Article 1, "money transfer from one account to another") and the Law of Ukraine on Financial Services and State Regulation of Financial Markets (Section II, Article 4 – money transfer) includes money or value transfer (MVT) services. Compliance with Recommendations 4 (financial institution secrecy or confidentiality), 5 (CDD), 6 (PEPs), 7 (correspondent banking), R.8 (non-face-to-face business), 9 (third-party introducers), 10 (record keeping), 11 (monitoring of accounts and relationships), 13 (suspicious transaction reporting), 14 (tipping off), 15 (internal controls), 22 (foreign branches and subsidiaries), and 23 (supervision), and the corresponding deficiencies are described earlier in section 3 of this report.

777. 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.

778. The SCFSMR is responsible for monitoring non-bank financial institutions which provide MVT services and Ukrposhta to ensure they comply with the FATF recommendations.

779. 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.

780. The requirements for R.17 apply equally to MVT operators. Statistics on the number of sanctions imposed on MVTs were not provided to the evaluation team and thus the effectiveness could not be assessed

Additional elements

781. Ukraine has adopted some of the measures set out in the Best Practices Paper for SR.VI including licensing of MVTs, being subject customer identification, record keeping and suspicious transaction reporting and monitoring compliance.

3.11.2 Recommendations and comments

782. MVT service operators (whether they are registered to transfer national or foreign currency) should be required to maintain a current list of agents which they use

783. In relation to MVT services, Ukraine should implement requirements in relation Recommendations 5, 6, 7, 9, 10, 13, 15, and 22, as discussed earlier in section 3 of this report.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**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.

4 PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

Generally

784. All the categories of designated non-financial business and professions, apart from trust and company service providers, are found in Ukraine.

785. With the exception of casinos, Ukraine has not designated the other non-financial business and professions (DNFBPs) listed in the glossary of the FATF 40 Recommendations which operate in Ukraine.

786. The Basic Law applies only to casinos (including internet casinos).

787. The Ukrainian authorities advised that trust and company service providers as defined under the FATF glossary do not exist in Ukraine. Instead, trusts operating in Ukraine are defined as those entities which are involved in property management, and managing and settling securities i.e. financial pools for depositing and accumulating privatisation certificates ("company with supplementary liability which performs representative activity according to the agreement concluded with settlors of property on implementation of their owner's rights"). These trusts are not "trusts" as defined in the FATF Glossary but are considered to be financial institutions. In March 1993, a Decree of the Cabinet of Ministers of Ukraine on Trust Societies allowed the existence and operation of trusts. 337 trusts existed between 1993-1996 and were used during the privatization and reform of the Ukrainian economy. As certain trusts were involved in fraudulent behaviour, this led to a ban on the establishment of new trusts through the Resolution of the Verkhovna Rada No. 491/95 on Fight against Abuses Taking Place while Involving Money of Citizens by Economic Entities. There remain only two trusts in existence although they are no longer active and according to this resolution, they are prohibited to conduct any activities.

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

(Applying R.5, 6, and 8-11)

4.1.1 Description and analysis

Applying Recommendations 5 (CDD) and 10 (Record keeping)

Casinos

788. See also sections 3.2-3.3 and 3.5 – 3.6 of this report. The AML/CFT obligations for casinos are set out in the Basic Law and SCFM Order No. 40. In addition, the Cabinet of Ministers issued Resolution No. 1800 (20 November 2003) On the approval of Procedure for conducting internal financial monitoring by the entities of entrepreneur activity, that carry out economic activity from organization and keeping of casinos, other playing establishments and pawnshops, which sets out requirements related to customer identification and is applicable to casinos. This Resolution repeats many of the requirements set out in the Basic Law and SCFM Order No. 40.

789. Furthermore, the SCFM has issued on 28 February 2007 Order No. 37 on model rules for conducting internal financial monitoring by gambling institutions which includes guidance on customer identification. The model rules repeat much of what is in the Basic Law and SCFM Order No. 40. Comments formulated earlier on the CDD requirements apply in this context.

790. The evaluation team met two casino operators. In both cases they were advised that there were strict procedures in place for customer identification: upon entering the casino the customer would be requested to show their identification and when a financial operation takes place (irrespective of the amount). A record of the identification would only be taken if the amount paid out was equal to or over UAH 80 000 (approximately €7 749.81). This would be done in order to comply with the compulsory monitoring requirement under the Basic Law. However, this does not meet the FATF requirement as casinos are required to undertake CDD when their customers engage in financial transactions equal to or above €3 000.

791. The persons whom the evaluation team met seemed to be aware of requirements in place. However, on two separate occasions on which the evaluation team visited a casino there did not appear to be any identification procedures in place.

792. Dealers in precious metals and dealers in precious stones, notaries, real estate agents, lawyers, auditors and accountants, trust and company service providers

793. Ukraine has not extended the application of specific AML/CFT measures to other categories of DNFBP. Though some of the general laws and regulations that apply to certain DNFBPs may contain some limited customer identification and record keeping requirements, it is unlikely that these may meet the specific elements required by Recommendations 5 and 10.

Applying Recommendations 6, 8-9 and 11

794. As mentioned in section 3, the existing provisions which apply also to casinos, cannot be considered as meeting the requirements of recommendations 6, 8, and 11.

795. Ukraine has not introduced requirements which would extend any of the specific obligations under Recommendations 6 (PEPs), 8 (new technologies and non-face to face transactions), and 11 (unusual transactions) to dealers in precious metals and dealers in precious stones, notaries, real estate agents, lawyers, auditors and accountants, and company service providers.

4.1.2 Recommendations and comments

796. Ukraine should review as soon as possible the AML/CFT regime to ensure that all DNFBPs are adequately brought under the AML/CFT regime and that these measures are effectively implemented.

797. Ukraine should impose specific customer identification and record keeping requirements consistent with Recommendations 5 and 10 to real estate agents, dealers in previous metals and stones, lawyers, notaries, other independent legal professionals, company service providers and accountants as soon as possible.

798. The casino operators that were met by the team advised that they had comprehensive identification procedures in place. However, given that they are not adequately supervised to monitor compliance with the AML/CFT obligations, and the experience of the evaluation team of casinos and their procedures in practices, it is highly likely that there is a strong level of non-compliance. Therefore, Ukraine should review the existing framework in respect of casinos to cover all of the relevant criteria and introduce measures to remedy this situation as soon as possible.

799. Specific AML/CFT requirements relating to Recommendations 6, 8, 9 and 11 should be extended to all DNFBP sectors.

800. Ukraine should also take steps to examine ways of to ensure the effectiveness of compliance with these AML/CFT requirements in these sectors.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors underlying rating
R.12	**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

4.2 Suspicious transaction reporting (R. 16)

(Applying R.13 - 15 and 21)

801. As provided by article 4 of the Basic Law, only gambling entities[98] are considered as obliged entities that have to report suspicious transactions to the SCFM. All other DNFBP categories are not covered by the Basic Law.

Casinos

802. All requirements for financial institutions set out in the Basic Law apply also to casinos, which are required to report to the SCFM suspicious transactions. As it was explained under section 3.7 for financial institutions, the same issues and deficiencies apply equally.

803. In addition to the Basic Law, the Cabinet of Ministers approved on 20 November 2003 Resolution No. 1800 on the procedure for conducting internal financial monitoring by the economic entities, conducting economic activities for organisation and maintenance of casinos, other gambling institutions and pawnshops. The Resolution determines the tasks and duties of the compliance officer, the registration of the financial transactions subject to financial monitoring and the CDD measures, and it generally follows the provisions of the Basic Law, without specifying in details the internal financial monitoring having in mind the specifics of the activities performed by the casinos.

804. The SCFM has issued a separate Order No. 37 of 28 February 2007, which sets out the rules for gambling institutions to conduct internal financial monitoring. Part 6 provides that:

a) Payment of any winnings is subject to mandatory financial monitoring if the amount of the transaction is equal or above UAH 80 000 or if it is equal or exceeds its equivalent in currency.

b) Also, the financial transaction is subject to internal financial monitoring if it fulfils one or several of the criteria below:

[98] For the treatment of pawnshops and entities holding any kind of lottery refer to section 4.4.

- client identification information submitted by the person cannot be examined
- refusal by a person to submit client information as prescribed by the legislation and the internal documents of the gambling institution
- losses (winnings) by the person equal or above UAH 10.000 or are equal or exceed its equivalent in currency on slot machines, casino, etc
- repeated losses by the person of amounts equal or higher than UAH 10.000 or are equal or exceed its equivalent in currency on slot machines during short periods of time (3 days)
- presentation of chips without previously held gambling
- purchasing chips of an amount equal or higher than UAH 10.000 or equal or exceeding its equivalent in currency
- client requesting to change gambling rules for his loss/winnings
- repeated losses by the owners of the gambling institution or their relatives in the gambling institution, the amount which is equal or higher than UAH 10.000 or it is equal or exceeds its equivalent in currency

805. Internal financial monitoring can be undertaken also on other financial transactions if the compliance officer of the gambling institution suspects that such financial transaction is executed for money laundering or financing of terrorism purposes.

806. These provisions could be regarded as a helping tool to enable a better understanding and detection of suspicious transactions by the casinos.

807. However, the number of reports submitted by the gambling institutions varies considerably in the previous years (2 in 2005, 2007, and 49 in 2008). Regardless of the evident improvement of the reporting practices of these institutions, their reporting efforts could not be considered as sufficient, having in mind the number of gambling institutions (above 900) and their total number of reports submitted to the SCFM In addition, all of the reported transactions fall under the compulsory financial monitoring, which could not be regarded as a actual STR reporting. The authorities should consider more outreach to this sector in order to enable better understanding of these entities of the legal obligations under the AML/CFT framework.

808. Furthermore, article 8 of the Basic Law specifies that an "entity of initial financial monitoring engaged in financial transaction" is required to report all suspicious transactions. The provisions of this Article seem to limit the reporting only to financial transactions, the definition of which does not necessarily include the activities performed by the DNFBPs. Despite the fact that DNFBPs have reported STRs in the past, the authorities should adequately address this issue.

Applying Recommendation 14

809. The analysis concerning implementation of Recommendation 14 (Tipping off and Safe harbour) as described under section 3.7, applies also for DNFBP.

Applying Recommendation 15

810. The issues of "Internal control, compliance and audit" provisions are extensively described under section 3.8. In addition to the conclusions stated in section 3.8, the meetings with the private sector revealed a somewhat different level of understanding and approach to the implementation of the AML/CFT legislation. Although the legislation enables the compliance officer to report STRs directly to the SCFM without a prior consent from the managers, some of the casino representatives replied that the compliance officer usually consults the manager. The internal audit function is almost non-existent in the DNFBP.

Applying Recommendation 21

811. As already explained under section 3.6, the Basic Law does not adequately cover all criteria of Recommendation 21, especially regarding the explicit requirement for examining the background and purpose of transactions with countries that do not or insufficiently apply FATF recommendations, as

far as possible. Additionally, the mechanisms in place that would enable the authorities to apply counter-measures to countries that do not or insufficiently apply FATF recommendations are insufficient.

Dealers in precious metals and dealers in precious stones, notaries, real estate agents, lawyers, auditors and accountants and company service providers

812. There are no requirements for dealers in precious metals and dealers in precious stones, notaries, real estate agents, lawyers, auditors and accountants, and company service providers implementing adequately Recommendations 13-15, 17 and 21.

813. Under the general provisions of the Basic Law, DNFBP have to report directly to the SCFM (and not via their self-regulatory organisations).

814. DNFBPs are not required to give special attention to business relationships or transactions with persons from or in countries that do not (or insufficiently) apply the FATF recommendations as it is required by Recommendation 21.

4.2.1 Recommendations and comments

815. The same deficiencies in the implementation of Recommendations 13-15 and 21 in respect of financial institutions apply equally to DNFBP. Despite the SCFM's efforts to provide for additional guidelines for the DNFBP in detecting suspicious transactions, in terms of effectiveness, DNFBP seem less aware of their obligations. Overall, the number of reports received from DNFBP is significantly small. More outreach to this sector is necessary, particularly by providing training and guidance.

816. The scope of the Basic law needs to be enhanced so as to bring all types of DNFBP under the STR regime. In the context of Recommendation 13, the reporting of DNFBP should be additionally altered by elevating the existing constrain of Article 8 of the Basic Law, which relates the suspicious reporting only with execution of financial transactions.

817. Apart from the requirement to implement internal rules for financial monitoring, the other requirements of Recommendation 15 are not applied by the DNFBP. Ukraine should adopt the necessary measures to implement Recommendation 15 in relation to DNFBP.

818. DNFBPs should be required to give special attention to business relationships or transactions with persons from countries which do not or insufficiently apply the FATF Recommendations.

4.2.2 Compliance with Recommendation 16

	Rating	**Summary of factors relevant to s.4.2 underlying overall rating**
R.16	**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

4.3 Regulation, supervision and monitoring (R. 24-25)

4.3.1 Description and analysis

Recommendation 24 (Supervision and monitoring of DNFBPs)

Gambling institutions

819. The regulation of the gambling market is contained in many legislative documents, which are spread among a number of central and regional authorities. There is no consolidated piece of legislation which regulates the gambling sector. Evaluators found a list of 18 pieces of legislation which touch upon gambling activities. This situation seems to draw a number of inconsistencies, which sets a risk for different implementation, misuse and unequal treatment of the members of this market.

820. The cited problems are also identified by several institutions and agencies, such as the State Tax Administration, Accounting Chamber of Ukraine, as well as the Ukrainian Parliamentary Committee of Regulatory Politics. These authorities have also acknowledged the presence of numerous legal entities that conduct gambling activity with a trade patent, but without proper license of the Ministry of Finance of Ukraine. According to the information received after the on-site visit, on September 22, 2008, the State committee on regulatory policy and entrepreneurship and the Ministry of Finance adopted the Order No. 117/1164 on Approval of Amendments to License terms on Conducting Organisation of Gambling and Control Procedure over compliance with there licensing terms. Authorities have explained that, with this regulation, the licensing condition have been enhanced with requirements for compliance with the Basic Law.

821. According to the Law on licensing of certain business activities, the organisation and maintenance of slot-machines and gambling institutions is subject to licensing. The licensing should be performed by the:
    - Ministry of Finance
    - the Council of Ministries of Autonomous Republic of Crimea, oblasts state administration, Kyiv and Sevastopol city state administration.

822. The Law outlines the procedure for obtaining a license, while the licensing terms are defined in a separate Order of the State Committee on Regulatory Policy and Entrepreneurship and the Ministry of Finance No. 40/374, which was not provided to the evaluation team. As a consequence, the evaluators could not confirm the licensing terms and whether they include the criteria specified under Recommendation 24.

823. According to the legislation, the Ministry of Finance is responsible for supervision of the gambling entities. Although the casinos and other gambling institutions are considered as obliged entities, the Basic Law does not give clear powers to the Ministry of Finance to perform AML/CFT supervision of these entities. Thus, the Ministry of Finance has never performed any supervision over AML/CFT issues. The evaluation team was informed during the on-site visit that the Ministry of Finance has been granted this power with the Order No. 117/1164. Authorities have explained that, with this regulation, the Ministry of Finance has been empowered (as of October 6, 2008) to verify the compliance of economic entities with the AML/CFT legislation in Ukraine.

824. Regarding compliance with Recommendation 17, the authorities referred to the provisions of the Basic Law. In this regard, the same requirements applicable for financial institutions should apply to DNFBP. Nevertheless, until the on-site visit, the Ministry of Finance was not provided with powers to perform supervisory activities, as well as powers to monitor and sanction. In addition, the authorities did not report any case of sanctions imposed to the gambling institutions.

825. Within the Ministry of Finance of Ukraine there is a separate Department of state regulation of lotteries and other gambling games. With the adoption of the Order No. 117/1164, this Department is responsible for inspections of gambling institutions on compliance with AML/CFT regulations. According to the information received after the on-site visit, within the central office 36 persons are employed in this Department. In the regional offices of the Ministry of Finance, there are 1-2 persons who can be employed for the purposes of the activities performed by the Department of state regulation of lotteries and other gambling games. Despite the fact that evaluators could not verify the provided numbers, it is evident that staffing of the Department is insufficient in relation with the number of gambling institutions, as well as the fact that this sector was never supervised for AML/CFT issues. In addition, the adequacy of the staff in AML/CFT inspection is questionable and could not be confirmed.

826. After the on-site visit, the authorities informed the evaluators that in 2007-2008, the SCFM has submitted to the courts 25 protocols on administrative violations on officials of gambling institution. In addition, SCFM's employees participated in 60 examinations, organised by local prosecution offices. On the basis of these examinations, 54 gambling institutions were given prosecutors' orders on terminating AML/CFT violations. In 2008, there were 26 prosecutors' orders for violations of AML/CFT legislation by gambling institutions in Kiev.

827. Notwithstanding this information which was submitted after the on-site visit, the gaps identified in the supervision and sanctioning of the gambling institutions, leave vast opportunities for misuse of this sector for purposes of money laundering.

828. Dealers in precious metals and dealers in precious stones, notaries, real estate agents, lawyers, auditors and accountants, and company service providers

829. With the exception of the gambling sector, none of the DNFBP sectors has implemented any supervision or monitoring mechanisms to ensure compliance with AML/CFT obligations, since no such obligations have yet been introduced. Some of the above-mentioned sectors are however subject to licensing and/or registration requirements and supervision or monitoring by a government authority, however these procedures are of no relevance in this context. Also, these sectors are subject to wide range of sanctions for violation of applicable laws, regulations, professional ethics and standards, however, in the absence of specific AML/CFT obligations, the applicable sanctions regime is not relevant for the purposes of the report.

Recommendation 25 (25.1 - Guidance for DNFBPs other than guidance on STRs)

830. According to the received replies, the SCFM is the only authority that provides the DNFBPs with certain guidelines that will assist them to implement and comply with the AML/CFT requirements. In addition to the orders issued by the SCFM on the internal financial monitoring performed by DNFBP, the SCFM prepared several methodical recommendations on the procedure for termination of transactions conducted with persons that are related with terrorist activities, on filling in the registration forms and submission of information to the SCFM, on criteria for rating financial transactions, on AML/CFT risks management etc. All these documents are available on the SCFM's website.

831. Regardless of the amount of work conducted by the SCFM in order to provide the DNFBPs with assistance for implementation of AML/CFT requirements, the practice indicates a lack of understanding and awareness of these entities with these requirements. Once again, it illustrates the necessity for additional efforts by all authorities, not just the SCFM, to improve the current situation and enable implementation of adequate AML/CFT standards within this sector.

4.3.2 Recommendations and comments

832. The existing licensing regime of gambling institutions seems to draw a number of inconsistencies, which sets a risk for different implementation, misuse and unequal treatment of the members of this

market. The licensing terms do not cover all necessary criteria regarding the owners and managers of gambling institutions.

833. There is no AML/CFT supervision over gambling institutions, In addition, even though after the on-site visit the Ministry of Finance was empowered to perform on-site examinations, its ability to efficiently perform the examinations are questionable, having in mind the scarce number and competence of the staff allocated to perform AML/CFT supervisions.

834. The SCFM has undertaken the role of initiating the sanctioning of violation of AML/CFT legislation by gambling institutions. Despite the positive trend in the last 2 years, the sanctioning regime over these entities could not be regarded as proportionate and dissuasive. This situation should be addressed through relevant changes to the legal framework.

835. Ukraine is urged to review the current regulatory and supervisory regime applicable to gambling institutions and take legislative and other measures as relevant in order to ensure that casinos are subject to and effectively implementing the AML/CFT measures required under the FATF recommendations.

836. Ukraine should also develop plans to deal efficiently with unlicensed gambling. It should also take measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in or being an operator of a casino.

837. As regards the other categories of DNFBP, once the relevant AML/CFT requirements are introduced, Ukraine should also ensure that DNFBP are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements in line with Recommendation 24.

838. Although SCFM should be commended for its efforts in developing certain guidance to assist DNFBP to implement and comply with their respective AML/CFT requirements, they cannot be considered as sufficient. There is a need for the competent authorities to consider taking additional measures in this area, such as developing sector-specific guidance explaining and supplementing the AML/CFT requirements (on issues other than transaction reporting) and putting resources towards communication and outreach with DNFBPs, in order to eliminate the existing low level of awareness of this sector regarding AML/CFT requirements and provide guidance related to the specific professions' needs and circumstances.

4.3.3 Compliance with Recommendations 24 and 25 (criterion 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.5 underlying overall rating
R.24	**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
R.25. 1	**PC**	• Guidelines for all DNFBPs on issues other than transaction reporting need to be further developed

4.4 Other non-financial businesses and professions/ Modern secure transaction techniques (R.20)

4.4.1 Description and analysis

Other non-financial business and professions

839. 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). As a result all the measures described in section 3 (financial institutions) and sections 4.1 – 4.3 (DNFBPs) apply to these sectors.

840. The Ukraine authorities were unable to provide any evidence or risk assessment which explains why the scope of the AML/CFT obligations extends to these sectors. However, the evaluation team was advised that the sectors were included in scope as a result of international practice.

Modern secure transaction techniques

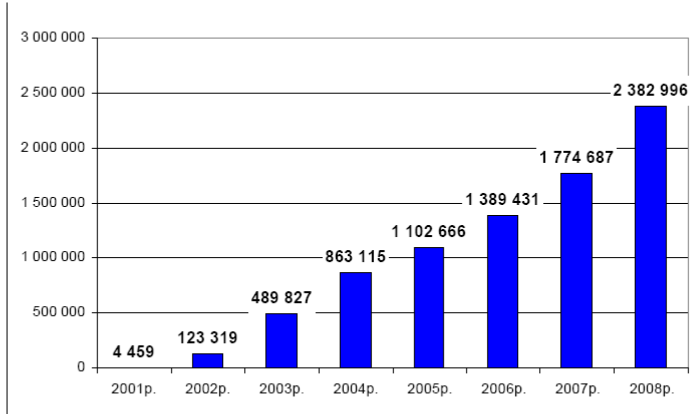
841. As indicated earlier in this report, the shadow economy in Ukraine is considered to be quite large, as according to various estimates, the informal sector would appear to account for 40-60% of the GDP. Certain sectors of economy are still cash-oriented, with restricted use of non-cash financial instruments.

842. However, Ukraine has taken some measures[99] to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering. The Government and the National Bank of Ukraine (NBU Resolution No. 121, 30 March 2006) have approved, NBU Resolution No. 121, Programme of Development of the National System of Mass Electronic Payments for 2006-2008, on 30 March 2006. The programme was designed to increase the share of cashless settlements and develop an infrastructure for the application of payment cards for payment systems in trading, catering, transportation services, social housing projects and widening the area of the application of payment cards. The NBU advised there are 52 participants in the system (50 banks, Ukrposhta and one non-bank financial institution). There are almost 2.4 million cards in circulation and 5 706 terminals have been issued. The annual turnover in 2008 was UAH 25.3 billion which was an increase of 39% on 2007. The average amount for a transaction is UAH 786.1 (compared to UAH 193.30 in 2007).

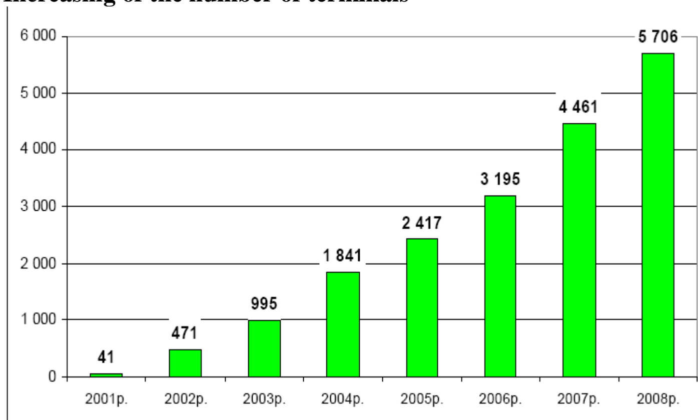
843. The NBU provided the following data :

[99] The Ukrainian authorities advised that on 19 March 2009 a draft law passed the first reading in Parliament, which introduced provisions aimed at restricting the circulation of cash above a fixed amount. All transactions above 80.000 HUA would be required to be performed exclusively through banks.

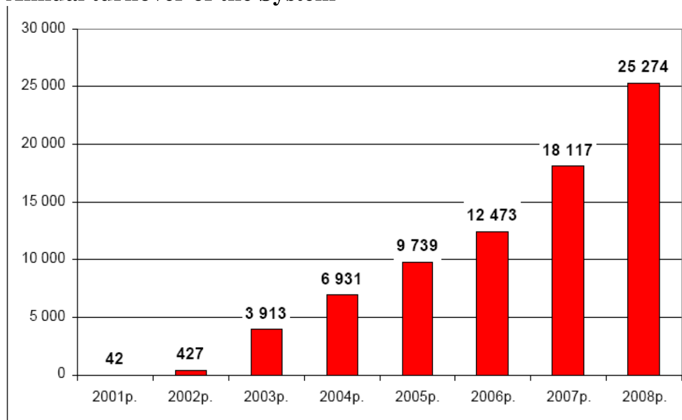
Emission of the payment cards



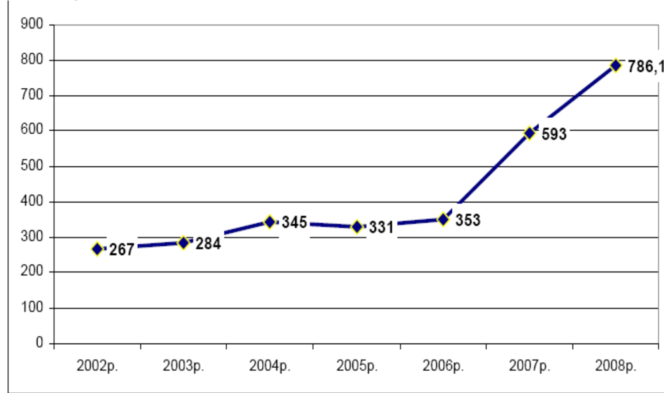
Increasing of the number of terminals



Annual turnover of the System



Average amount of interbank transactions



844. In addition, the largest banknote denomination in Ukraine is UAH 200 which is the equivalent to about € 26.00.

4.4.2 Recommendations and comments

845. Ukraine is largely compliant with this Recommendation. Ukrainian authorities should consider undertaking a risk assessment to review the current non financial businesses and professions which are subject to the AML/CFT obligations.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**LC**	• AML/CFT obligations extended to other non financial businesses without undertaking a risk assessment

5 LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and analysis

Registration

846. 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 Law On state registration of legal entities and natural persons - entrepreneurs (Law on State Registration) of 15 May 2003 describes the data and documents which have to be submitted to the USR for registration of legal persons and individual entrepreneurs. Article 3 of the Law on State Registration makes it possible to legally establish peculiarities of the state registration of associations of citizens (including trade unions), charitable organisations, political parties, agencies of state power and agencies of self-government, banks, commercial and industrial chambers, financial entities (including credit unions), exchanges, as well as other entities and organisations.

847. The following information (33 categories of data) is kept in the USR concerning legal persons (Article 17):

a) "full denomination of legal person and its abbreviation in case of availability;
b) identification code of legal person;
c) organization and legal form;
d) central or local agency of state power, to the area of administration of which state enterprise pertains, or share of state in the statute fund of legal persons, if such share is not less than 25 per cent;
e) location of legal person;
f) the list of founders (participants) of legal person, including name, place of residence, identification number of natural person – tax payer if the founder is a natural person; name, location and identification code if the founder is a legal person;
g) types of activities;
h) surname, name and patronymic name of persons, which have the right to commit legal actions on behalf of legal person without power of attorney, including signing of agreements, their identification numbers of natural persons – tax payers;
i) data on availability of limitations concerning representation on behalf of legal person;
j) data on the size of the statute fund (statute or consolidated capital), including shares of every founder (founders), as well as the size of the paid statute fund (statute or consolidated capital) at the date of state registration conduct and the date of expiration of its formation;
k) date and number of record on conduct of state registration of legal person, dates and numbers of records on its amendments;
l) basis for refusal in state registration;
m) series and number of certificate on state registration, date of issue and amendments to certificate on state registration;
n) data concerning statute documents, dates and number of records on their amendments;
o) basis for refusal in conduct of state registration of amendments to the statute documents;
p) date and number of record on cancellation of state registration of amendments to the statute documents of legal person;
q) data on the date of registration and date of taking off the register in the agencies of statistics, State Tax Service, Pension Fund of Ukraine, funds of social insurance;
r) data on separated subdivisions of legal person;
s) data on the fact that the legal person is in the process of discontinuance, in particular, date of registration of founders' (participants') or agencies, authorized by them, decision concerning discontinuance of legal person, information concerning commission on discontinuance (liquidator, liquidation commission, etc.);
t) data on approval of deed of assignment or distributive balance;
u) data on legal persons, legal successor of which is registered legal person;
v) data on legal persons – legal successors;
w) date on approval, date of entering into force and number of court decision on discontinuance of legal person, which is not related to bankruptcy, concerning institution (discontinuance) of legal proceedings in case on bankruptcy, concerning its recognition as bankrupt, concerning cancellation of state registration of discontinuance;
x) date and number of record on state registration of discontinuance of legal person, basis for its introduction.
y) date and number of record on cancellation of state registration of legal person discontinuance, basis for its introduction;
z) place of state registration conduct, as well as place of conduct of other registration actions, prescribed by the present Law;
aa) location of registration case;
bb) data on issuance of extracts, certificates from the USR;
cc) surname, name and patronymic name of officer, which introduced to the USR record on the state registration of legal person, made amendments to this record and introduced record on state registration of discontinuance of legal person;
dd) date of transfer of registration case to the state archival entity, address of its location;
ee) data, which were received in the procedure of information exchange with institutional registers of agencies of statistics, state tax service, Pension Fund of Ukraine, funds of social insurance: dates

and numbers of records on registration in the agencies of statistics, state tax service, Pension Fund of Ukraine, funds of social insurance, dates and numbers of records on taking out of registration in the agencies of statistics, state tax service, Pension Fund of Ukraine, funds of social insurance, data on types of activities, including concerning the main type of activities;

ff) other additional information on ensuring of connection with legal person."

848. Legal persons founded by foreign legal persons have also to submit for registration purposes a document confirming the registration of the foreign person in the country of its location, in particular extracts from commercial, banking and court register. The passport of the founder of the legal person is also required for registration purposes if the registration is requested by the founder) or , in the case of an authorised person to act on behalf of the founder, the authorised person's passport and document certifying the power of attorney.

849. 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. If no grounds for refusal of a registration are identified, the USR issues a certificate on the state registration. The data is introduced within three working days from the moment of submission of the relevant documents.

850. The above-listed information is public. An exception to the described publicity rule is made by Article 20 of the Law on State Registration, which provides that identification numbers of natural persons – tax payers cannot be disclosed. The information can be obtained by other authorities through a written request to the USR. It is provided to them free of charge if this request is submitted in connection with their duties. The law provides that information requested should be submitted within five working days from the date when the request was received. The evaluation team was assured that upon such requests the necessary information is provided within one day in practice. Furthermore, due to the Action Plan 2008 on prevention and counteraction to legalization (laundering) the criminal proceeds and financing terrorism, approved by Resolution of Cabinet of Ministers of Ukraine and National Bank of Ukraine No. 227 on March 19, 2008 No. 227, a regulation was issued by the State Committee for Regulatory Policy and Entrepreneurship No 95 on July 22, 2008 "On access to the Unified state registry by legal and natural persons-entrepreneurships" recognising entities of financial monitoring (authorised agencies) as direct consumers (users) of the USR. The evaluation team was informed that new software was recently developed to connect competent law enforcement agencies and the SCFM to the USR database and enable them to access such resources on an on-line basis. This connection is not operational, due to the absence of budgetary resources. .

851. 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 (article 4(3)). According to Article 7 of the Law on business associations (Law No. 1576-XII of 19 September 1991) changes which are made in the association's constituent documents and are included into state register are registered according to the procedure established for the state registration of the associations. 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.

852. Financial institutions are also registered in the State Register of Financial Institutions which is established and maintained by the State Commission of Financial Services Market Regulation, in accordance with the SCFSMR Directive No. 41 No.of 28 August 2003 on the Statute of the State Registry of Financial Institutions.

853. Professional participants of the securities market, joint investment and self regulated organisations are also registered in the Register maintained by the SCSSM in accordance with the Law on state regulation of the securities market. Access to the Register of registered securities owners concerning their securities is limited and is performed through written application legalised by the seal and signature of the institution's director.. Access to this register is limited to the issuer, registered persons, prosecution agencies, agencies of Security Service, Ministry of the Interior, the SCSSM in its control functions, the Anti-Monopoly Committee, and other state agencies upon their written request in relation to operations in systems of registration of nominal securities performed by certain legal or

physical entities. Access is free of charge. According to item 2.6. of the Order for Forming and Keeping of Register of Financial Institutions Providing Financial Services on Securities Market approved by the SCSSM Resolution No. 296 of 14 July 2004, users of data from the register are also State Authorities, Local Administration Authorities, citizens of Ukraine, enterprises, institutions, organisations, foreign legal entities and natural persons. The Register holder is obliged to provide the information and copies of relevant documents from the register upon written request of the SCSSM/regional offices within 5 days (unless another term is established in the request).

Records of the beneficial ownership and control of legal persons

854. As described above, 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.

855. Furthermore, the evaluators were advised that fictitious companies existing in Ukraine pose an essential risk for the country's AML/CFT efforts. This issue raised particular concerns on the relative ease of establishment fictitious companies and legal/practical deficiencies of prevention of such a practice.

Access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons

856. 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.

Bearer shares

857. According to Article 6 of the Law on securities and stock market, a share is defined as a registered security that certifies the property rights of its owner (shareholder) that relate to the joint stock company. Only joint stock companies can issue shares and 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.

858. The Ukrainian authorities indicated that bearer securities in circulation were issued before the prohibition of issuing bearer shares took effect in 2006, and that currently they represent less than 1% of the total volume. All transactions with bearer shares are subject to compulsory financial monitoring.

Additional Elements

859. As mentioned above, information contained in the USR is public (with the exception of "identification numbers of natural persons – tax payers"). It is accessible upon written request within 5 days from the request (article 20(4)) and payment of a fee. The authorities advised for instance that in 2008 around 845.000 requests for information from the USR were satisfied. However, the data held does not enable financial institutions to have beneficial ownership and control information of legal persons. Furthermore, during the meetings with the private sector, the evaluators were advised that financial institutions faced considerable problems getting access to the data in the USR, e.g. requests took too long or were usually rejected.

5.1.2 Recommendations and comments

860. Ukraine should make the necessary legislative changes to set up a system which ensures adequate transparency of legal persons concerning their beneficial ownership and control either through

registration procedures or other means. Competent authorities should be able to obtain or have timely access to such information.

861. Ukraine should strengthen preventative measures for deterring from the practice of setting up fictitious companies.

862. The authorities should also consider measures to facilitate access to the data contained in the USR, in particular to the private sector.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**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

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and analysis

863. In the Ukrainian legal framework, trusts or other similar legal arrangements do not exist. Ukraine has not signed nor ratified the 1985 Hague Convention on the Law Applicable to trusts and on their recognition.

864. The Cabinet of Ministers Decree No. 23-93 of Ukraine of 17 March 1993 permits the establishment and operation of "trust partnerships", which are defined as an "added liability company acting as an agent under contract with principals in implementing their property rights". At the time of the on-site visit, there were 2 trusts partnerships, which were registered with the State Commission on Regulation of Financial Services Markets of Ukraine. The authorities explained that the trust partnerships were created in early 1990s as financial pools for depositing and accumulating privatization certificates. Shortly after, a Parliament Commission investigated their activities and qualified their experience to be negative for Ukraine. Consequently, the Parliament Resolution No. 491/95-VR of 22 December 2005 was adopted, which prohibited trust partnerships from using citizens' funds in their line of business. The 2 trust partnerships are no longer active and remained registered only de jure.

5.2.2 Recommendations and comments

865. Recommendation 34 is not applicable in Ukraine.

5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**N/A**	

5.3 Non-profit organisations (SR. VIII)

5.3.1 Description and analysis

866. The Law No. 2460 on Association of Citizens of 16 June 1992 (in force on 18 July 1992) the Law on Charitable Activity and Charity Organisations of 16 September 1997 (in force on 15 October 1997), the Law on Political Parties (5 April 2001) regulate the establishment and activities of non profit organisations.

Review of the NPO sector

867. The authorities have advised that the Ministry of Justice had been working to elaborate and update the Law on Associations of Citizens which was considered obsolete. The authorities advised that the draft law was developed on the grounds of European best practices and Ukrainian legislative framework which ensures legal and organisational grounds relating to the freedom for association and that this draft was pending before Parliament in November 2008.

868. The Ukrainian authorities do not appear to have undertaken reviews of the domestic NPO sector aimed at identifying the features and types of NPOs that are at risk of being misuses for for terrorist

financing by virtue of their activities or characteristics nor conduct periodic reassessments by reviewing new information on the sector's potential vulnerabilities to terrorist activities.

869. The Ukrainian central authorities informed the evaluation team that no case was so far revealed where the NPO sector might be found abused for terrorist financing purposes. They have only inferred that since there was no investigation initiated with regard to terrorist related activities of NPOs, the sector was deemed not being misused for terrorist financing. Notwithstanding that statement, during meetings and discussions with the administrative authorities and law enforcement agencies in the Autonomous Republic of Crimea, the evaluators were informed that one of the major challenges in that region as regards terrorism financing, is the illegal activity of certain ethnic groups, inclusively with the means of setting up NPOs for fundraising and consequent terrorist supporting purposes.

Outreach

870. The authorities advised that in order to increase awareness of the NPO sector about the risks of terrorist abuse, the SCFM permanently updates and publishes the list of persons involved in terrorist activity on its official website. Though this information may target a broad audience, provided that they consult the website out of their own initiative, it cannot be considered sufficient. Apart from this measure, there is no other proactive outreach action targeting specifically the NPO sector.

Measures to promote effective supervision or monitoring

871. The Law on Charitable Activity and Charity Organisations provides that the founder of a charity organisation shall take decision on establishment of charity organization, approve its charter, compose managing body of the organisation, consider reports of supervisory council on control over targeted use of funds and property of charity organisation, and solve other issues within its competence as provided by the law and the charter of the organisation. The charter of a charity organisation should contain, inter alia, information on the objectives and stated activities of the organisation and its management structure. Having been registered, the charter can be accessed by the authorised agencies.

872. The Law on Association of Citizens and the Law on Political Parties in Ukraine also provide for the content of the statutes of such unions, inclusive of parties, which include information on their goals and tasks, structure and peculiarities of composition of managing bodies. The authorities stated that unions maintain information on the identity of person(s) who own, control or direct their activities, including senior officers, board members and trustees in their internal documentation, however no evidencing legal reference was provided that the evaluators could assess.

873. The evaluators were also advised that according to the Law on Association of Citizens (article 14), the Law on Charitable Activities and Charity Organisations (article 8), the Law on Political Parties (article 11), information from the register of all Ukrainian unions of citizens and international public organisations registered by the Ministry of Justice of Ukraine is published in the "Governmental Currier" .

874. Additionally, the Ministry of Justice provided the following statistics on the held examinations over the association of citizens:

Year	Number of examinations
2005	131
2006	80
2007-2008	100
Total	**311**

875. Besides, territorial subdivisions of the Ministry of Justice carried out examinations over the statutory activity of associations of citizens, as specified in the following statistical data:

Year	Number of examinations
2005	5738
2006	5567
2007	6367
2008	7259
Total	**24931**

Sanctions

876. The sanctions for violations of legislation on associations of citizens include: warning, fine, temporary prohibition (suspension) of certain types of activities, temporary prohibition (termination) of activity, compulsory dismissal (liquidation) (article 28 of the Law on Association of Citizens). The Law on Charitable Activities and Charity Organisation (article 8 (10)) provides that the decision on state registration of a charity organisations can be cancelled through judicial procedure in cases when registering agencies detect any falsification of statutory documents .

877. These sanctions are applied by the Ministry of Justice of Ukraine for all Ukrainian NPOs and by the territorial administrations for the local ones. In case of breaches of taxation related requirements, sanctions will be applied by the Tax Administration. The authorities cited two cases where an association of citizens and an international public organisation received from the Ministry of Justice a warning of non compliance with the legislation. The information received did not enable to assess fully whether measures in place were applied effectively.

Licensing or registration

878. All legal entities are registered in Ukraine (see section 5.1 of this report for further details).

879. NPOs shall be considered established after receiving registration on the basis of the Law on State Registration. Article 3 of the Law specifies that the Ministry of Justice of Ukraine and its territorial agencies execute registration (legalization) of associations of citizens (including trade unions and their associations), charity organisations, political parties, creative associations and their territorial centers, lawyers associations, commercial and industrial chambers, exchanges, other entities and organisations, prescribed by law, and issue certificates on state registration, drawn by the state registrar in relevant executive committee of city council of oblast significance or in district, district in the cities of Kyiv and Sevastopol state administrations according to location of legal person.

880. Pursuant to this provision, the Law on Charity and Charitable Organisations clarifies that state registration of All-Ukrainian and international charitable organisations shall be carried out by the Ministry of Justice of Ukraine, while local charitable organisations, as well as offices (departments and representations) of All-Ukrainian and international charitable organisations shall be registered by relevant local bodies of executive power[100].

Record keeping

881. The Ukrainian legal framework does not appear to include an explicit requirement 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 manner consistent with the purpose and objectives of the organisation and to make them available to appropriate authorities. Although the Ukrainian authorities indicated that such information is kept according to the Cabinet of Ministers Order No. 41 of 20 July 1998 on General Archive Division (terms varying between 3 to 10 years

[100] The evaluators were advised, but have not seen the relevant texts, that the registration procedures were set out in the Cabinet of Ministers Resolution No. 382 of 30 March 1998 approving the Statute on the Procedure of State Registration of Charitable Organisations and in the Order No. 47/5 of the Ministry of Justice of 14 February 2007 approving the Statute on main departments of justice in the Autonomous Republic of Crimea, oblasts, cities Kyiv and Sevastopol, cities and towns.

depending on the nature of the document), it was later clarified that this order did not establish such requirements.

Effective information gathering and investigation

882. Control over activities of NPOs, including their compliance to the legislation, is performed by the Ministry of Justice. Additionally, NPOs should also be registered at tax authorities within a month after receiving state registration. NPOs submit tax reports quarterly to the State Tax Administration on the use of their assets and funds. The Tax Administration may perform supervision over the NPOs on the accuracy of their expenditures.

883. The Prosecutor's Office, the Security Service, the Tax Administration and other law enforcement authorities of Ukraine, within their competence defined by the criminal legislation, can investigate cases on NPOs. They can request and obtain any information from public and private entities, including NPOs, on the basis of respective laws managing their activities (such as the Law on Prosecution, the Law on Security Service of Ukraine, etc).

884. The authorities advised that in order to enhance domestic co-operation and promote exchange of information between all appropriate state agencies involved in AML/CFT matters, an InterAgency working group, which involves also the appropriate authorities that hold relevant information on NPOs of potential terrorist financing concern. Interagency co-operation is also dealt in the framework of concluded agreements between the SCFM and the relevant law enforcement authorities. The mentioned capacities for co-operation may also serve as mechanisms for prompt sharing of information, when there is a suspicion or reasonable grounds to suspect that the NPOs are misused in terrorist financing. Nevertheless, the effectiveness of such capacities and measures cannot be assessed as they have never been used to target NPOs abuse.

885. In the course of an investigation, prosecutors have the power to enter premises of NPOs; to have access to documents and materials necessary to carry out checks, including those requested in writing or those containing commercial or bank secrecy or any confidential information; to demand in a written form submission of such documents , including concerning transactions and accounts of legal persons and other organisations; to assign specialists to conduct checks, institutional examinations; to summon officials and citizens. Also, according to Article 25 of the Law on Security Service of Ukraine, in the course of terrorism or terrorism related investigations, the Security Service, its agencies and officials (under the written request of the head of the agency or its operative division) are authorised to receive information and documents on the transactions, balance of accounts and movement of funds through these accounts for a certain period of time (with deciphering of amounts, date of payment and counteragent of the payment), deposits, national and foreign contracts, and certified copies of the documents, on the base of which the account of the legal entity or natural person has been opened from customs, financial and other institutions, enterprises, organizations (regardless form of property). As regards the disclosure of bank secrecy data, pursuant to Article 62 of the Law of Ukraine on Banks and Banking, the information on legal and natural persons that constitutes bank secrecy shall be provided exclusively by the written request of the court or court decision.

Responding to international requests for information about an NPO of concern

886. The SCFM has been authorised as a competent agency to co-operate, interact and exchange information with appropriate authorities of other countries and international organisations in the AML/CFT issues, inclusive of those related to NPOs. In the course of criminal proceedings, the Prosecutor's Office and the Ministry of Justice are considered to be the contact agencies for responding to international requests. Additionally, according to the Law on Security Service of Ukraine, the Security Service may also establish contacts with foreign security services and respond to their requests with regard to NPOs suspected to be linked with terrorist financing.

5.3.2 Recommendations and comments

887. The Ukrainian authorities have undertaken to a limited extent a review of the adequacy of part of the legislation applicable to NPOs however this was not done with an aim to determine its vulnerability to terrorist financing. Considering the concerns expressed by certain authorities about the risks for misuse of such entities, the evaluators urge the authorities to undertake a comprehensive review of the system aiming at reviewing the adequacy of the legal framework, identifying the activities, size and other relevant features of the sector and assessing possible vulnerabilities related to its misuse for terrorist financing.

888. 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. An extensive and proactive outreach to the NPO sector should be carried out for the purpose of protecting the sector from the terrorist financing abuse.

889. Legal requirements should also 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.

890. The authorities should also consider reviewing the effectiveness of measures in place to sanction violations of oversight measures or rules.

891. The Ukrainian authorities should ensure that there are 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 spend in a consistent manner with the purpose and objectives of the organisation and to make them available to appropriate authorities.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**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

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31)

6.1.1 Description and analysis

892. Yearly action plans on prevention and counteraction of legalisation (laundering) of the proceeds from crime and terrorist financing are adopted on a yearly basis since 2004 through a joint resolution of the Cabinet of Ministers and the National Bank of Ukraine[101]. Central authorities of executive powers are each responsible to inform on a monthly basis the Cabinet of Ministers on the implementation of the Action Plan.

893. Under the "Law of Ukraine On the National Bank" (Article 2) the National Bank of Ukraine is a special central body of state administration. That is, it is not an executive authority and it does not submit to the Cabinet of Ministers of Ukraine. At the same time, under the "Law of Ukraine On Prevention and counteraction to legalization (laundering) of the proceeds from crime" the NBU is a state financial monitoring entity and without its participation in preparing annual reports the effective functioning of the AML/CFT national system is not possible.

894. Under the joint Resolution of the Cabinet of Ministers of Ukraine and the NBU No. 1077 "On approval of the 2009 action plan on prevention and counteraction of the legalisation of the proceeds from crime and terrorist financing" dated 12 December 2008, the procedure for reporting regarding the action plan's accomplishment is as follows: every quarter of the year each authority participating in the action plan must, within 10 days of the following month, submit to the SCFM a report on the action plan's accomplishment. Information is processed by the SCFM and in the form of a general report it is submitted to the CMU and the NBU every quarter of the year within 20 days of the following month.

895. The procedure for channelling proposals to the Cabinet for the future yearly action plan is determined by the Regulation of the CMU No. 950 of 18 July 2007. The draft action plan is constructed using the proposals submitted by the concerned authorities and is submitted to the Ministry of Justice and then to the SCFM to be finalised. After the SCFM receives the approval of the Ministry of Justice this is submitted to the CMU for consideration.

896. Policy level coordination and 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), established by the Decree of the President of Ukraine on measures for development of the AML/CFT system (Decree No. 740 of 22 July 2003) under the Cabinet of Ministers of Ukraine. Its structure and operative framework were set out in the Cabinet of Ministers Resolution No. 1565 (2 October 2003).

897. The Statute of the SCFM provides that the SCFM is responsible for arranging the co-operation, interaction and information exchange with state agencies and the Head of the SCFM bares personal responsibility to the Cabinet of Ministers for the implementation of state policy on AML/CFT issues. In practice, the SCFM plays a major leadership role in the co-ordination of the system through the Interagency Working Group.

898. The IWG is a consultative-advisory body composed of 18 members from the following institutions: SCFM, National Bank, State Securities and Stock Market Commission, Security Service , State Commission for regulation of Financial Services Markets, Ministry of Justice, Ministry of Foreign Affairs, Secretariat of the Cabinet of Ministers, Public Prosecutor's Office, Ministry of Interior, Ministry of Economy and European Integration Issues, State Customs Service, Supreme Court, Administration of the President, National Security and Defence Council, State Tax Administration. They are represented at the level of First Deputy Minister, Deputy Minister, Deputy

[101] Resolution No. 736 dated August 10, 2005, Resolution No. 359 dated March 18, 2006, Resolution No. 136 dated January 31, 2007, Resolution No. 227 dated March 19, 2008, Resolution No. 1077 dated December 10, 2008

General Prosecutor. The League of Insurance organisations of Ukraine, the Ukrainian Association of Banks and the National Depository of Ukraine are also members on consent, that is upon invitation. The resolution provides that in case of need, financial experts from state bodies, scientific, public institutions, mass media can be invited to participate in the work of the IWG in an advisory capacity.

899. The main tasks of the IWG are:

a) To analyse of the effectiveness of AML/CFT measures taken;
b) To elaborate of proposals on the implementation of the FATF 40 Recommendations and other international standards in this area;
c) To elaborate of proposals on drafting normative acts on the organisation of the interaction between agencies in the AML/CFT area;
d) To elaborate of proposals for the annual program to combat laundering of proceeds from crime, which is approved by the Cabinet of Ministers together with the National Bank and also long-term programs and strategies of development of the national system of combating laundering of criminal proceeds and analysis of its implementation;
e) To promote information exchange between the state agencies involved in the AML/CFT area and to co-ordinate the agencies' actions in ensuring the operation of the Unified Information System;
f) To inform quarterly the Cabinet of Ministers on the results of its work

900. The SCFM is responsible for the organisation of the IWG and the meetings. Meetings of the IWG are held once a month under the chairmanship of the First Deputy of the SCFM. Decisions are taken at a simple majority of votes of members present and executive agencies are obliged to consider them. By July 2008, 50 such meetings were held.

901. The IWG meetings enable all represented agencies to get an overview of results of action undertaken as a result of case referrals, to discuss the quarterly work plan, discuss draft proposed texts, specific issues such as co-operation and access to official databases by banks, supervisory issues over gambling entities, etc. Working Group agendas received by the team indicate that the length of such meetings are on average about 2 hours.

902. The representatives met by the evaluation team expressed their satisfaction about the work undertaken under the IWG and the analysis provided by the SCFM on issues for consideration, proposals for improvements, typologies, etc. Some expressed the wish to receive more feedback on results of operational co-operation.

903. Furthermore, various interagency agreements have been signed between the FIU, law enforcement authorities, supervisory bodies and other agencies involved in the AML/CFT area, with the aim to improve co-operation and exchange of information. A complete list has not been provided but some examples have been mentioned.

904. For instance, operational exchange of information is undertaken in accordance with Agreement No. 5 of 11 July 2006 on interagency and information co-operation and Protocol No.1 . This agreement enables the SCFM to be provided on a permanent basis and under request and shall refer to registration data on tax payers, information on their banking accounts covered by tax registration, information on profits and taxes paid. Such information is provided through the Unified State Information System, which was established in 2003, started operating in 2004 and reached its maximal operationability as of 14 March 2007.

905. Co-operation between the SCFM and law enforcement agencies is covered through Joint Order of SCFM, State Tax Administration, Ministry of Interior and Security Service of 28 November 2006 (No. 240/718/1158/755) which sets out the Procedure for submission and consideration of case referrals.

906. The SCFM has also concluded several agreements with the Ministry of Interior, which cover also co-operation at regional level:

- Agreement on general principles of co-operation between the SCFM and the Ministry of Interior (No. 4/5949 of 30 May 2003)
- Agreement on information exchange (of 5 September 2003 No. 19/9390)
- Agreement with the National Bureau of Interpol (26 September 2003 No. 21/15418)

907. Since establishing its territorial subdivisions, the FIU has also signed 416 agreements with territorial units of law enforcement authorities and of supervisory bodies on co-operation and information exchange. For instance, co-operation at regional level between the SCSSM and the SCFM is undertaken on the basis of a 2006 Protocol on the procedure for information exchange, which envisages consultative and methodical assistance in the area of legislation on securities market between regional units of the SCSSM and the SCFM.

908. The SCFM also provides assistance to various agencies on a daily basis through a 'hot line'. Consultation between the FIU and other agencies also takes place through various meetings held for this purpose, as well as training seminars.

909. Co-operation and co-ordination between regulatory agencies is undertaken in accordance with article 22 of the Law on financial services and state regulation of financial services market which provides that the NBU, the SCSSM and the SCFSMR have a duty to inform each other of any maters which are necessary in the performance of their duties, grants each of them the right to access information databases and sets an obligation to hold joint meetings at least on a quarterly basis or more frequently at the request of the Head of any of these agencies. The evaluators were not able to assess whether there was sufficient co-ordination in practice on supervision and sanctioning.

910. The authorities advised that they have experience with inter-agency investigation carried out by the law enforcement authorities, and they provided an example of one case (2006). The overall co-operation between the police bodies is understood to be ensured by the GPO.

911. Each of the law enforcement authorities expressed its positive appreciation on the co-operation it had with the other law enforcement authorities and with the SCFM. They did not raise any particular issues of concern, apart from an example of delays in receiving information in the context of cases involving co-operation between agencies of different regions. The minutes of a meeting of the IWG which the evaluation team received reported concerns of the State Tax Administration about information sharing and an insufficient level of co-operation of the National Bank. The evaluators could not see in the following meeting of the IWG any reporting back or feedback on this matter from relevant institutions on measures taken since the previous meeting to address the issue raised. However, the evaluation team was informed that the issue of improving co-operation between law-enforcement agencies and state regulators (including the NBU) is a matter of constant concern of the IWG.

912. In May 2008, the STA and the NBU signed a protocol on testing/exploitation of software on the exchange of information.

<u>Additional elements</u>

913. Between 2003 to 2007, the SCFM has signed 10 memoranda of co-operation with the following self-regulatory organisations: Association of Ukrainian banks, League of insurance organizations of Ukraine, Professional Association of Registrars and Depositaries, All-Ukrainian Association of Pawnshops, National Association of Credit Unions, Ukrainian Association of Gambling Business Participants, Federation of Insurance Intermediaries, National Association of Non-governmental Pension Funds of Ukraine, All-Ukrainian Association of Credit Unions, Ukrainian Association of Investment Business.

914. In November 2008 the SCFM signed a memorandum of co-operation with the Association of Managers of Financial Companies (real estate market). Also, the SCFM employees daily perform

methodical consultations trough a ‘hot line’, including consultation of specialists of solicitor associations and unions, notaries and real estate agents.

915. Furthermore, a working group on consideration of problematic issues of initial financial monitoring entities – non banking entities has been established on 11 August 2006 which consists of representatives of the law enforcement agencies, the FIU, supervisory bodies and of self regulatory organisations. Representatives of self regulatory organisations reported close dialogue with the SCFM. Territorial working groups have also been established in the regions of Lviv, Zaporiska, Sumska and Chenigivska.

Review of the effectiveness of the AML/CFT system (Recommendation 32.1)

916. Ukraine appears to have mechanisms in place to review the effectiveness of the AML/CFT system. The authorities advised that 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. Information used for this purpose includes statistics on (i) received STRs, number of investigations, prosecutions and convictions for money laundering and terrorist financing (ii) frozen, arrested and confiscated property (iii) mutual legal assistance or other international requests for co-operation (iv) results of supervisory activity of state regulators. However, the action plan provides that each of the central authorities are responsible to inform on a monthly basis the Cabinet of Ministers on the implementation of the Action Plan and does not appear to entrust the review of its implementation to a specific mechanism, which would review implementation of the system as a whole.

917. As a result of the work undertaken by the IWG, the following policy and legal proposals were developed:

- List of indicators on the efficiency of the national system for counteraction of the legalisation of the proceeds from crime and terrorist financing (2008)
- Conception of the development of a system of prevention and counteraction of legalisation of the proceeds from crime and terrorist financing in the years 2005-2010 (Directive No. 315-R of the Government dated 3 August, 2005).
- Program of prevention and counteraction of the legalisation of the proceeds from crime for 2004 (Resolution No. 45 dated on January 16, 2004).
- Annual national Action Plan for the prevention and counteraction of the legalization of the proceeds from crime and terrorist financing for 2005, 2006, 2007, 2008, 2009.
- By-law On introduction of amendments into the Law of Ukraine on prevention and counteraction to the legalization of the proceeds from crime and proposals towards the introduction of relevant amendments to the Criminal Code of Ukraine

Policy makers - Resources, professional standards and training (Recommendation 30)

918. The Ukrainian authorities provided general detailed data on human resources of various authorities dealing with AML/CFT issues which is summarised.

919. Beyond the general data provided on resource allocation which has been included in the report, the Ukrainian authorities did not provide any specific detail on the allocation of other resources used to set up and maintain the AML/CFT system on the policy level, apart from those on AML/CFT training for policy staff of the NBU and the SCFSMR. Information on the training of policy makers was provided by the NBU, the SCFSMR and the SCSSM. The evaluation team was informed that policy makers receive training through the MOLI-UA project and also through joint interagency workshops. Professional standard requirements are set out in the Constitution, the laws on public service, on state secrecy, on information, and in internal normative acts and statutes on professional standards.

6.1.2 Recommendations and comments

920. The Ukrainian authorities have put in place mechanisms which point in the right direction to ensure that policy makers, the FIU, law enforcement and supervisors can co-operate and co-ordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing.

921. These efforts should be pursued and current mechanisms should be further enhanced by considering the following improvements:

- developing further the strategic and collective review of the performance of the AML/CFT system as a whole and providing explicitly for a mechanism which is responsible for following up the implementation of the annual action plan;
- considering that the IWG appears to be a high-level policy mechanism, it would assist to put in place a mid-management expert level working group which could meet on a regular basis so as to discuss more in-depth specific policy issues before they are taken up and agreed upon at a higher level by the IWG;
- ensuring that the IWG meetings enhances its feedback/reporting mechanism which would enable that there is a regular follow up at following meetings on the issues of concern which have been raised previously by an agency and on the solutions which have been found at bilateral/inter-agency level to address these issues in order to enhance accountability;

922. More emphasis also needs to be given to consultation and feedback to the financial sector and involving other reporting entities.

6.1.3 Compliance with Recommendation 31 & 32.1

	Rating	Summary of factors relevant to s.6.1 underlying overall rating
R.31	**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

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.1)

6.2.1 Description and analysis

923. Ukraine signed the Vienna Convention on 16 March 1989 and ratified it on 28 August 1991. The Palermo Convention was signed on 12 December 2000 and ratified on 21 May 2004[102], with reservations and declarations to article 13(6), article 2(b)[103], paragraph of Article 16 (5) a, Article 18 (13), Article 18 (14), Article 26 (3). The main problems, which have been identified in relation to implementation of the noted conventions concern the issues of criminalization of money laundering offence, the liability of legal persons, as well as due application of confiscation and provisional measures in money laundering cases, which are described in sections 2.1. and 2.3.

924. Ukraine signed the TF Convention on 8 June 2000 and ratified it on 6 September 2002. Substantial issues raised in respect of implementation of this convention relate to criminalisation of the terrorist

[102] Law on the ratification of the UN Convention against Transnational Organised Crime and the Protocols thereto (the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air) of 4 February 2004 No. 1433-IV.

[103] The term "serious crime" corresponds to the terms "grave crime" and "especially grave crime" in the Ukrainian criminal law. Grave crime means the crime for which the law provides such type of punishment as imprisonment for at least 5 years and not exceeding 10 years (paragraph 4 of Article 12 of the Criminal Code of Ukraine), and especially grave crime means crime for which the law provides such type of punishment as imprisonment for more than 10 years or life imprisonment (paragraph 5 of Article 12 of the Criminal Code of Ukraine);

financing offence, as well as further development of freezing mechanisms of terrorist funds or other assets, which are detailed in sections 2.2 and 2.4 .

925. Ukraine has not implemented the full range of measures relating to the freezing of TF funds under the UNSCR 1267 and 1373 and successor resolutions. The deficiencies noted in relation to the implementation of SR. III (its 1267 and 1373 component) are equally applicable in the context of SR.I.

Additional elements

926. The 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime was signed by Ukraine on 29 May 1997 and ratified on 26 January 1998 (in force as of 1 May 1998)[104].

6.2.2 Recommendations and comments

927. The same recommendations with regard to certain aspects of criminalisation of the money laundering offence, as well as the application of provisional measures and confiscation. Ukraine should also institute criminal liability of legal persons (see sections 2.1 and 2.3).

928. The same recommendations on criminalisation of terrorist financing offence, as well as on further improvement of freezing mechanisms of terrorist funds are reiterated in this context. Ukraine should take measures to fully implement the provisions of UNSCR 1267, 1373 and successor resolutions (see section 2.4 of this report).

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**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
SR.I	**NC**	• There are a number of gaps in the implementation of the TF Convention and of the • UNSCRs 1267, 1373 and successor resolutions

[104] Law on ratification of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime No. 738/97-VR of 17 December 1997.

6.3 Mutual legal assistance (R. 36-38, SR.V)

6.3.1 Description and analysis

929. Ukraine provides mutual legal assistance (MLA) on the basis of multilateral international treaties and bilateral agreements, and in the absence of an agreement, requests for legal assistance are provided on the basis of the reciprocity principle via diplomatic channels.

MLA treaties

930. Ukraine is a party to several multilateral and bilateral agreements concerning mutual legal assistance in criminal matters (see annex III). Apart from the Conventions referred to in section 6.2, Ukraine has also ratified the following European conventions on MLA:
   - European Convention on extradition (1957), as well as the First (1975) and Second (1978) Additional Protocols to the Convention;
   - European Convention on mutual legal assistance in criminal matters (1959) and the Additional Protocol to the Convention (2001);
   - Convention on the transfer of sentenced persons (1983) and the Additional Protocol to the Convention (1997);
   - European Convention on the transfer of proceedings in criminal matters (1972);
   - European Convention on the international validity of criminal judgments (1970).

931. MLA in relation to CIS countries can also be provided on the basis of the 1993 (CIS) Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters.

932. Ukraine has also signed 18 bilateral agreements on MLA issues[105] and 12 agreements specifically on extradition[106] with foreign states.

933. The General Prosecutor's Office of Ukraine is a party to 86 agreements on mutual legal assistance in criminal matters, including 27 interstate multilateral agreements, 25 interstate bilateral agreements (4 of which are agreements of former USSR), 2 intergovernmental agreements, and 32 interagency agreements.

Range of MLA

934. The evaluation team was advised that while executing MLA requests the respective Ukrainian authorities act on the basis of the domestic criminal procedure legislation. Therefore, as the Ukrainian legislation provides for a large spectrum of legal measures including those specified in R.36, it was inferred that the competent authorities may execute or order execution of such measures also for MLA purposes which cover:

a) Taking of evidence or statements of suspects, witnesses or accused persons;
b) Disclosure of information by telephone operators (through court order);
c) Service of documents;
d) Providing information concerning legal and physical persons which contain bank secrecy on the basis of articles 14-1 and 66 of the CPC;
e) Identification of natural and legal persons ;
f) Verification of a person's residence and domicile;
g) conducting of expertise, search, selection of different categories of samples for conducting expertise, seizure, identification, demanding of information of medical nature, characterizing data, etc.

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[105] Such agreements were signed with China, Poland, Lithuania, Moldova, Estonia, Georgia, Latvia, Mongolia, Canada, the UK, the USA, Vietnam, Brazil (2 agreements), Hong Kong – China, the Republic of Korea, Iran, Egypt.

[106] Such agreements were signed with Azerbaijan, China (2 agreements), Kazakhstan, Armenia, India, Brazil, Tajikistan, Iran, Egypt, the Republic of Korea, and Turkmenistan.

935. Central agencies authorised to execute communication in the framework of international agreements on MLA are the Ministry of Justice (in respect of MLA in court proceedings) and the General Prosecutor's Office (in respect of MLA in pre-trial proceedings).

936. The Ukrainian authorities advised that procedures of execution of MLA requests are set by internal regulations of each authorised agency, however these were provided only after the visit[107]. They also advised that a new CPC was being drafted which would also comprehensively address the MLA procedures. For the Prosecutor's Office, the procedure is set out in the General Prosecutor's Order No. 8 of 26 December 2005 on Organisation of the Activity of Prosecuting Bodies of Ukraine in International Co-operation and Legal Assistance. The Ministry of Justice has indicated that it has also established internal procedures for executing MLA requests. The evaluation team remained concerned about whether the legal framework in place was addressing in a comprehensive manner all issues related to the processing and execution of MLA requests.

937. Paragraph 3.3 of the General Prosecutor's Order No. 8 provides that upon 10 days from the reception of a foreign MLA request, the Prosecutor's Office should complete the related investigation measures. Nevertheless, it was advised that in practice the timing varied significantly (from a week to several months) dependant on the nature of a request and on whether its execution requires undertaking of time-consuming procedural actions. Feedback from other countries indicates that assistance was provided in a timely manner. It was particularly stressed that the integrity of the responses received from Ukraine on the subject of MLA requests was significantly enhanced the recent years.

938. No other conditions for refusing MLA request, apart those stipulated by international conventions, are legally endorsed or practiced in Ukraine, namely: if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence; if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, public order or other essential interests of the country. Ukraine has also reserved the right not to execute a request if:

a) there are reasonable grounds to consider that a request is intended for prosecution, conviction or punishment on the grounds of features of race, colour of skin, political, religious and other convictions, sex, ethnic and social origin, social status, place of residence, language and other indications,
b) execution of a request contradicts the principle non bis in idem,
c) request is related to the offence according to which investigation or judicial consideration has already been initiated in Ukraine ,

939. Also, the authorities of Ukraine do not refuse execution of MLA requests on the sole ground that an offence underlying the request is considered to involve fiscal matters.

940. In the circumstances when processing of MLA requests necessitates disclosure of banking secrecy, a court decision on obtaining relevant confidential data is needed, pursuant to Articles 59 and 62 of the Law of Ukraine "On banks and banking". Such information is disclosed only through court order or written request from the GPO, the SSU, the MOI with regard to transactions over a specific period of time or in respect of taxation or currency exchange regulations with regard to transactions on accounts of specific legal or natural persons for a specific period of time (art. 62(2) and (3) of the Law on Banks and Banking). The referred law enforcement authorities may directly request and receive information relevant to satisfy MLA from all other financial institutions or DNFBPs.

941. Section 2.6 describes the powers of law enforcement agencies in the context of compliance with R.28, which are also applicable in the context of execution of MLA requests .

[107] Joint Order of the Ministry of Justice Of Ukraine, Prosecutor General Office Of Ukraine, Security Service of Ukraine, Ministry of Internal Affairs of Ukraine, Supreme Court of Ukraine, State Tax Administration of Ukraine, State Penitentiary Department of Ukraine No. 34/5/22/130/512/326/73 of 29 June 1999 on Approval of the Instruction on the Procedure of the Implementation of European Conventions on the Criminal Process.

942. It was assured that Ukraine has built up a positive experience to avoid conflicts of jurisdiction. Compliant with international instruments, Ukrainian authorities conducting MLA are instructed that in each case of assistance they should perform due actions according to the principles of mutual respect of national sovereignty and non-interference into internal affairs of foreign states. The CC (Articles 6-8) stipulates the circumstances to determine criminal liability under the Ukrainian legislation, which should also be considered for deciding the best venue for prosecution, where it could be conducted in more than one country.

943. The Ukrainian authorities stated that they require dual criminality when providing MLA. This requirement is ascertained for any type of request , regardless of its nature. Such a position is substantiated with the necessity of assurance that the response to the MLA request will serve for deterring the same offence, as in Ukraine. On the matter of legal or practical impediments for rendering assistance, it is noteworthy that while ratifying the European Convention On Extradition of 1957, Ukraine has reserved right not to transfer persons, if due to health reasons they cannot be transferred without damage to health. Ukraine has also stipulated that it will transfer only those persons who have committed crimes punished by maximum term of imprisonment of at least for 1 year or more. Additionally, according to Article 25 of the Constitution, Ukraine shall not transfer its citizens (Article 10 of the CC also adds stateless persons permanently residing in Ukraine). Technical differences between the laws in the requesting country and Ukraine do not pose an impediment to the provision of MLA.

944. As it was elaborated in sections 2.3 and 2.4, Ukraine is able to identify, freeze, seize and confiscate relevant property involved in the commission of money laundering offence. Hence, such a legal measure may be used for rendering MLA. The loopholes and inconsistencies mentioned in the above sections in respect of freezing, seizure, or confiscation of property used or intended for us in the commission of ML, FT or other predicate offences are similarly applicable to the ability of using such tools for responding to MLA requests. It is also emphasised that identification, freezing, seizure, or confiscation of property of corresponding value is not possible under the Ukrainian legal framework (see section 2.3), thus it could not be applied for MLA requests .

945. Ukraine has also made efforts to conclude arrangements for co-ordinating seizure and confiscation actions with other countries. In particular, the Ministry of Justice of Ukraine jointly with the SCFM, the Ministry of Economy and the National Bank of Ukraine has worked out an extended list of the countries with which it shall be expedient to consider the issue of concluding agreement on apportionment of the confiscated property or its corresponding value (in particular, this list includes Austria, Antigua and Barbuda, Belgium, United Kingdom, Virgin Islands, Estonia, Canada, Cyprus, China, Colombia, Latvia, Lithuania, Moldova, Germany, Poland, Russia, Singapore, Hungary, Uruguay and the Czech Republic). To this end, the Ministry of Justice of Ukraine, together with the expert group on preparation of the draft international treaties of Ukraine on legal relations and legal assistance in civil and criminal affairs, established by the Decree of the President of Ukraine of 24 April 2004, No 476, has drafted the interstate agreement on apportionment of the confiscated property or its corresponding value. In 2006, by means of diplomatic channels, it was submitted to the competent authorities of Belgium, Lithuania, Singapore, Hungary, Peru, Cyprus and Uruguay which have expressed interest to conclude the above mentioned agreement with Ukraine. In 2008 an arrangement for signing a similar agreement between Antigua and Barbuda and Ukraine has been made. At the time of the on-site visit, no such arrangement had been concluded.

946. According to the criminal procedure legislation and the Cabinet of Ministers Resolution No. 985 on approval of the procedure for disposition of property confiscated as a result of a court decision and transferred to the agencies of state executive service, such property is confiscated by the State executive service and is transferred to the state budget, from where it can be used for other appropriate purposes . The authorities have also indicated that the draft bill which is pending before Parliament contained a specific provision on establishing a special fund.

947. The authorities indicated that sharing of confiscated assets with other countries might be resolved by bilateral agreements on co-ordination of seizure and confiscation actions.

948. Mechanisms for international co-operation on confiscation measures have not yet been tested, as Ukraine has not received any foreign confiscation requests to date.

Additional Elements

949. Non criminal confiscation orders are not recognised in the Ukrainian criminal legislation. Hence, foreign analogues of such orders cannot be enforced in Ukraine.

950. The described analyses and deficiencies identified are similarly applicable in this context and impact on Ukraine's to provide MLA in connection with criminal, civil enforcement and administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organisations.

Statistics

951. The Ministry of Justice of Ukraine as central agency of executive power performs statistical registration of international requests made on the basis of international agreements in criminal justice area. The following statistics of requests/warrants were received before the visit :

Ministry of Justice

Title of international treaty	1998-2000	2001	2002	2003	2004	2005	2006	2007	2008
European Convention on Extradition, 1957, and its two Additional Protocols of 1975 and 1978	8	41	370	351	1055	1871	1710	2895	2686
European Convention on Mutual Assistance in Criminal Matters and its Additional Protocol of 1978	532	152	386	586	960	1669	2054	1430	1566
Convention on the Transfer of Sentenced Persons, 1983, and Bilateral Agreements on the Transfer of Sentenced Person	34	15	36	51	94	563	534	527	661
European Convention on the Transfer of Proceedings in Criminal Matters, 1972	-	5	9	9	21	57	45	51	15
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 1990	-	-	-	2	1	3	1	-	-
European Convention on the International Validity of Criminal Judgments, 1970	-	-	-	-	3	2	2	7	9
European Convention on the Supervision of	-	-	-	-	3	-	3	4	6

Conditionally Sentenced or Conditionally Released Offenders, 1964									
United Nations Convention Against Transnational Organized Crime	-	-	-	-	-	-	2	-	-
Total number of international treaties in the matter of criminal justice, the execution of which is allocated to the Ministry of Justice is: 40 bilateral and 20 multilateral agreements that is total 60	574	213	801	999	2137	4165	4351	4914	4943

952. The following statistics were received after the visit:

Year	**Legal assistance requests received**		**Legal assistance requests forwarded**	
	Russia	**Other countries**	**Russia**	**Other countries**
2004	13	522	5	26
2005	17	661	8	33
2006	60	760	18	38
2007	58	665	10	35
8 months of 2008	52	522	6	17

year	**Confiscation requests received**	**Confiscation requests forwarded**	**State**	**Final result**
2004	0	1	Russia	Refused
2005	0	2	Lithuania Spain	Satisfied Refused
2006	0	1	Russia	Refused
2007	0	0	0	
8 months of 2008	0	0	0	

953. The above figures constitute the received MLA requests with regard to all offences. Unfortunately, the Ukrainian authorities were not in a position of submitting relevant statistics on received, executed or refused MLA requests specifically related to ML/TF.

Statistics from the GPO

Requests for legal assistance in investigation of crimes, related to legalization (laundering) of proceeds from crime as per September 30, 2008	**2004**	**2005**	**2006**	**2007**	**2008**	**Total**
Incoming requests	**2**	**10**	**14**	**7**	**13**	**46**
Outgoing requests	**8**	**15**	**15**	**10**	**24**	**72**

954. The full extent of the international co-operation framework could not be completely ascertained, given that statistics are not kept on all aspects of MLA requests made or received, relating to the predicate offences, ML or TF or on the outcome of such requests.

955. A number of concerns were raised by several countries when providing feedback on international co-operation with Ukraine in this area, namely:

- inconsistency in the use of reference numbers for various files (when sending reminders related to sent requests) or for suspects (use of reference numbers instead of the name of the person) as these numbers may vary through they concern the same case which renders difficult the tracking of requests from Ukraine;
- low quality of sent materials, which appears to be due to low technical equipment of law enforcement agencies;
- materials sent by Ukrainian authorities often lack registration numbers and in numerous cases (mostly in examination of witnesses) are handwritten, thus being difficult to read;
- lack of information on measures undertaken to proceed with requests (article 21(2) of the MLA Convention).

Recommendation 30

956. At the Ministry of Justice, there are 2 separate sections functioning as part of the Department of Private International Law and International Legal Assistance that are responsible for: a) providing mutual legal assistance in criminal matters, b) providing mutual legal assistance in civil cases. The section on implementation of international treaties on criminal justice consists of 7 persons, one of whom is a deputy director of the department. The chief of the section organises the work of the section and is engaged in the matter of enforcement of sentence, including issues relating to confiscation. 2 persons are engaged exclusively in extradition issues, 2 persons are engaged in transfer of sentenced persons, and 2 persons are engaged in issues of provision of mutual legal assistance in criminal matters only. Each person deals with more than 100 requests per month including processing of requests, submitting documents to the court and law enforcement agencies. The Department is headed by the Director. At the regional level, there is a specifically appointed person (in some regions, for example - in Donetsk, there are 2 persons) in every Department of Justice (there are in total 27 Chief Departments of Justice in every region of Ukraine including the cities of Kyiv and Sevastopol), responsible for the provision of MLA. At least twice a year training seminars are conducted for regional staff of justice on the individual issues of international cooperation in criminal matters. Public servants both in the central authority and in regions are sufficiently equipped with computer equipment.

957. At the GPO, the International Department is composed of three different units dealing with extradition (7 operative officers), legal assistance (7 operative officers) and international co-operation (6 officers). The department and each unit are managed by a Head seconded by a Deputy Head. Each regional prosecutor's office has a special assistant prosecutor who deals with international legal issues. The authorities advised that they have adequate resources, the offices are provided with computers, telephones, faxes and electronic communication as well as Internet access. The authorities advised that the staff had participated in 2 trainings in 2006 (on ML/TF, enhancing co-operation in combating organised crime), and 2 trainings in 2007 and 2008 on extradition, MLA and trafficking in human beings.

6.3.2 Recommendations and comments

958. Ukraine is able to provide MLA on the basis of multilateral and bilateral agreements. Legal provisions dealing with international co-operation in criminal matters are found in various parts of the CC and CPC, in an unconsolidated manner while instructions and procedures in place focus exclusively on the implementation of the European conventions in criminal matters. Ukraine should speed up the adoption of the new Criminal Procedure Code, as it is understood that it would provide

for a more comprehensive framework and elaborate further detailed procedures for provision of various types of MLA as well as related guidance for all staff working on these matters. Such procedures should also stipulate timeframes for responses of MLA requests.

959. The Ukrainian authorities should enable rendering MLA in the absence of dual criminality, in particular for less intrusive and non compulsory measures.

960. The legal impediments in rendering extradition related assistance, except those contradicting fundamental principles of domestic law should be eliminated.

961. Ukraine should amend the loopholes and inconsistencies in identifying, freezing, seizing and confiscating relevant property, as reflected in sections 2.3 and 2.4 for enabling such actions to be used in provision of MLA.

962. Ukraine should consider the concerns raised above which stem from the experience of bilateral co-operation and take any measures, as necessary to address these concerns.

963. The authorities should keep annual statistics on all MLA and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offence and FT, including the nature of the request, whether it was granted or refused and the time required to respond.

964. Furthermore, the Ukrainian authorities should conduct an assessment of the staffing levels in authorities responsible for sending/receiving MLA and extradition requests as well as the level of workload and take any measures to ensure that they are adequately funded and staffed in order for them to be able to fully and effectively perform their functions.

965. Also, it is recommended to develop effective training and guidance for staff handling MLA requests, with a view to foster and raise the quality of the execution of MLA requests.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.36	**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
R.37	**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.
R.38	**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.
SR.V	**PC**	• The deficiencies related to R. 36-38 have a negative effect on the rating of this Recommendation.

6.4 Extradition (R.37 and 39, SR.V)

6.4.1 Description and analysis

966. The relevant international legal instruments on the basis of which extradition can be carried out are: the European Convention On Extradition (1957), the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993) for CIS member states, the UN Convention on Transnational Organised Crime (2000) and bilateral treaties which contain extradition provisions (see annex III).

967. Domestic provisions regarding extradition are included in: the Constitution (Article 25), the Law on international treaties of Ukraine (article 19), the Law on ratification of the European Convention On Extradition and the Criminal Code (Articles 7, 8, 9 and 10).

968. Article 1 (3) of the Law of Ukraine on ratification of the European Convention on extradition and additional protocols provides that the Ministry of Justice of Ukraine (in case of requests by courts) and the Prosecutor-General's Office of Ukraine (in case of requests by bodies of pre-trial investigation) are responsible for the execution of extradition requests and for examining the grounds on the basis of which extradition requests are executed or refused.

969. Ukraine has entered a reservation to the European convention on extradition which provides that it shall grant extradition only for offences which are punishable by imprisonment for a maximum period of not less than one year or by a more severe penalty. As the minimum term for the sanction to money laundering is 3 years of imprisonment (Article 209 of the CC), it is inferred that money laundering is an extraditable offence.

970. Extradition for money laundering is conducted according to the same laws and procedures described above. The procedure to be followed to execute requests on the basis of the European Convention on Extradition is set out in the joint order on approval of the instruction on the procedure for the implementation of European Conventions on the criminal process[108]. The decision on execution or refusal of an extradition request is taken by the General Prosecutor's Office or the Ministry of Justice upon examination of the grounds precluding/allowing extradition. The General Prosecutor's Office is responsible for requests concerning pre-trial investigation agencies while the Ministry of Justice is responsible for courts' rogatory letters courts.

971. In accordance with reservations entered by Ukraine when ratifying the European Convention on Extradition, the citizens of Ukraine cannot be extradited to another state based on Article 25 (2) of the Constitution of Ukraine. A person is considered to be a citizen of Ukraine if, in accordance with the laws of Ukraine at the time when the decision to extradite is taken, he/she is a citizen of Ukraine. Ukraine does not extradite stateless persons permanently residing in Ukraine if the person whose extradition is requested cannot, on account of his/her state of health, be extradited without damage to his/her health.

972. Dual criminality is required for extradition. The authorities informed the evaluators that they interpret the dual criminality broadly. The evaluators are reserved about the extent to which an extradition request could be enforced where dual criminality is invoked particularly in respect of ML on the basis of tax offences. The deficiencies noted in the criminalisation of ML and TF may prove to be an obstacle in executing extradition requests.

973. The Ukrainian authorities assured that while it is prohibited to extradite own nationals, whenever they are being requested to do so, they pass the relevant materials to the competent law enforcement authorities for the purpose of prosecuting the offence under criminal legislation of Ukraine. There are no procedures for initiating criminal proceedings in respect of Ukrainian nationals nor of any existing

[108] Joint Order No 34/5/22/103/512/326/73 of the Ministry of Justice, the General Prosecutor's Office, the Security Service of Ukraine, the Ministry of Interior, the Supreme Court, the State Tax Administration of Ukraine and the State Department of Ukraine on execution of judgments of June 29, 1999.

obligation to prosecute in case of non extradition. There was no information available on requests for extradition of nationals for ML and/or subsequent charged brought against non-extradited nationals.

974. The possible cases of extradition are envisaged by Article 10 of the CC, which stipulates that foreign nationals, who have committed criminal offences on the territory of Ukraine and were convicted of these offences under that Code, may be transferred to serve their sentences for the committed offences in the state, whose nationals they are. Foreign nationals or stateless persons not residing permanently in Ukraine, who have committed crimes outside Ukraine and stay on the territory of Ukraine, may be extradited to a foreign state for criminal prosecution and committal for trial, or transferred to serve their sentence, where such extradition or transfer is provided for. The noted cases of extradition are conditioned with a reference to the availability posed by international treaties of Ukraine.

975. The Ukrainian authorities stated that Ukraine co-operates extensively with other countries on the aspects of possible extraditions in the scope of multilateral and bilateral agreements. In respect of required timing for rendering extradition requests, the evaluators were assured that requests for extradition are considered without unreasonable delays. The joint Order No 34/5/22/103/512/326/73 stipulates that the term of considering requests for extradition shall not exceed 45 days. But, it was advised that in practice such term can be longer in case of existence of obstacles for transfer of an offender (for example when a person requests a refugee status).

Additional elements

976. There are no simplified procedures for extradition of offenders in Ukraine, and persons cannot be exempted from formal procedures if consenting to extradition.

977. The described analyses are similarly applied for extradition matters with regard to terrorist financing.

Statistics

978. The following statistics were received after the visit and cover ML cases:

Statistics from the Ministry of Justice

year	Incoming extradition requests	Outgoing extradition requests
2004	59	165
2005	89	257
2006	85	237
2007	110	179
8 months of 2008	94	123

year	Requests on extradition of convicted persons received	Requests on extradition of convicted persons forwarded
2004	47	57
2005	28	104
2006	43	19
2007	55	76
8 months of 2008	52	82

Statistics from the GPO

Year	Number of received requests				
	No.	No. of granted requests	No. of refused requests	No. of extradited persons	Average No. of days for response
2004	-	-	-	-	-
2005	3	1	-	1	30
2006	-	-	-	-	-
2007	4	4	-	4	7-30
2008 (for 9 months)	3	3	-	3	30

979. Extradition requests were received from Russia (4 – 1 in 2005, 2 in 2007, 1 in 2008), Georgia (2 in 2007), Belarus (2 – 1 in 2005, 1 in 2008), Azerbaijan (1 in 2005) and Kazakhstan (1 in 2008).

980. Ukraine has also sent requests for transfers of offenders who committed ML crimes to Russia (4 – 2 in 2006, 2 in 2007), Spain (1 - 2005), Norway (1 - 2006), Cyprus (1 - 2008) and Germany (1 - 2008).

Year	Number of submitted requests				
	No.	No. of granted requests	No. of refused requests	No. of extradited persons	Average No. of days for response
2004	1	1	-	1	60
2005	1	1	-	1	365
2006	3	1	1	1	180-365
2007	2	2	-	2	180
2008 (for 9 months)	2	-	-	-	-

981. The above-mentioned statistics demonstrate that the extradition system is functioning rather effectively, however, more detailed information on the various aspects of the extradition process were not provided, which did not enable to make a complete assessment of effectiveness.

6.4.2 Recommendations and comments

982. Ukraine should eliminate the legal impediments posed in rendering extradition, except those contradicting fundamental principles of domestic law.

983. Ukraine should address the missing elements of the ML/TF offences to ensure that dual criminality requirements do not represent an obstacle for extradition in such cases (see also sections 2.1 and 2.2).

984. It is also advised to further develop further guidance for practitioners working at central level and in the regions on procedural and evidentiary aspects.

985. As recommended earlier, the Ukrainian authorities should also conduct an assessment of the staffing levels in authorities responsible for sending/receiving extradition requests as well as the level of workload and take any measures to ensure that they are adequately funded and staffed in order for them to be able to fully and effectively perform their functions.

986. Ukraine should also maintain comprehensive statistics in relation to ML/TF and predicate offences which should cover all details of the extradition process.

6.4.3 Compliance with Recommendation 37 & 39 and Special Recommendation V

	Rating	Summary of factors relevant to Section 6.4 underlying overall rating
R.37	**LC**	• Gaps in the incrimination of ML/TF offences and predicate offences
R.39	**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
SR.V	**PC**	• Reservations about the possibility of extradition for all offences related to terrorist financing • Deficiencies related to R. 36-39 impact have a negative effect on the rating of this Recommendation.

6.5 Other forms of international co-operation (40 and SR.V)

6.5.1 Description and analysis

SCFM

987. The Basic Law (article 16) provides that the SCFM shall co-operate internationally with relevant agencies of foreign states in the area of exchange of experience and information related to ML/TF on the basis of international agreements in force or on a reciprocity basis. Its Statute sets out that it has the right to conclude international interagency agreements with competent authorities of foreign states concerning AML/CFT co-operation and conduct information exchange with them.

988. The SCFM has signed 40 MOUs on co-operation with foreign FIUs and over 10 MOUs have been still under negotiation. Information exchange with counterpart FIUs is mainly conducted through the Egmont Group and the FIU.NET to secure networks. The authorities advised that they can exchange information spontaneously, though Article 16 of the Basic Law does not provide explicitly for such possibility and have provided figures on instances of such exchanges (2006- 26, 2007 – 66, 2007 – 40).

989. Pursuant to Article 13 of the Basic Law, the SCFM is authorised to transfer information from its data base (inclusive of the Unified Information System) and information on STRs upon requests filed from foreign FIUs. The SCFM has also signed interagency MOUs with competent authorities, which also can be allocated to request information due to international requests[109]. The evaluators were advised that as of the on-site dates the SCFM didn't reject any request received from foreign FIUs.

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[109] - Agreement On General Provisions of Co-operation between FIU of Ukraine and State Commission for Financial Services Markets Regulation of Ukraine dated September 05, 2003.

- Agreement No. 63 On General Provisions of Co-operation between FIU of Ukraine and Antimonopoly Committee of Ukraine dated November 10, 2004.
- Agreement No. 60 On General Provisions of Co-operation between FIU of Ukraine and National Depositary of Ukraine dated August 30, 2004.
- Agreement No. 59 On General Provisions of Co-operation between FIU of Ukraine and Pension Fund of Ukraine dated August 21, 2004.
- Agreement No. 36 On General Provisions of Co-operation between State Committee for Entrepreneurship and Regulatory Policy of Ukraine and FIU of Ukraine dated May 21, 2004.
- Agreement No. 25 On Interaction between National Bank of Ukraine and FIU of Ukraine on informational exchange issues dated January 30, 2004.

990. The data received by the FIU cannot be used or transmitted to foreign agencies for investigation without a specific request. The FIU can disclose information with restricted access to foreign agencies on the condition that the latter guarantees that information is protected at the same level than national standards and that such information is used exclusively for ML/TF cases.

991. A requests of a foreign state which involves fiscal matters is not rejected if it is also related to other crimes. The FIU advised that they have not rejected so far any single case related to fiscal matters, but information is provided only for investigation of cases related to ML or TF.

992. Analysis of the relevance of secrecy or confidentiality requirements in provision of international exchange of information is provided in Section 3.4 of the Report.

993. The statistics on the SCFM's co-operation with foreign counterparts are provided below.

	Period	Number of request	Number of cooperating FIUs
Requests for information submitted	2nd half of 2003 – 2008	2157	more than 90
	1st half of 2008	366	around 50
Requests for information received	2nd half of 2003 – 2008	610[110]	around 60
	1st half of 2008	70[111]	around 50

994. The evaluation team was advised that the average time for responding to foreign requests is about 20 days. Feedback received from other countries reported that assistance was provided in a rapid and effective manner and that the quality of responses was very good.

995. Various law enforcement authorities (the National Bureau of Interpol, the Security Service, the State Tax Administration) are also authorised to cooperate with their foreign counterparts, inclusive for ML/TF purposes. Law enforcement agencies are authorised to conduct investigations on behalf of foreign counterparts on the basis of international conventions. The General Prosecutor's Office is responsible for any procedural actions related to investigation of criminal cases upon request from

- Agreement No. 920 On General Provisions of Co-operation between FIU of Ukraine and Fund of State Property of Ukraine dated December 18, 2003.
- Agreement No. 21 On General Provisions of Co-operation between FIU of Ukraine and National Central Bureau of Interpol of Ukraine dated September 26, 2003.
- Agreement No. 20 between FIU of Ukraine and State Commission for Financial Services Markets Regulations of Ukraine dated September 05, 2003.
- Agreement No. 19 між FIU of Ukraine and Ministry of Internal Affairs of Ukraine dated September 05, 2003.
- Agreement No. 17 On General Provisions of Co-operation between FIU of Ukraine and State Committee of Statistics of Ukraine in the Sphere of Prevention and Counteraction to the Legalization (Laundering) of the Proceeds from Crime and Terrorist Financing dated August 29, 2003.
- Agreement No. 15493/16вн/13 On Interaction between State Customs Service of Ukraine and FIU of Ukraine dated August 08, 2003.
- Agreement No. 4/14 On Interaction between FIU of Ukraine and Main Control and Revision Office of Ukraine dated August 08, 2003.
- Agreement No. 4 On General Provisions of Co-operation between FIU of Ukraine and Ministry of Internal Affairs of Ukraine dated May 30, 2003.
- Agreement No. 1 On General Provisions of Co-operation between FIU of Ukraine and State Committee for Security of State Border of Ukraine dated May 22, 2003.

[110] All requests have been duly responded.

[111] 38 requests have been responded and the remaining requests are pending.

foreign authorities. The authorities advised that they do not refuse requests for co-operation on the grounds of laws that impose secrecy or confidentiality requirements or on the grounds that they do not have access to certain information and two examples where such co-operation was provided were given in respect of Belgium and the United States of America.

Security Service

996. The Security Service of Ukraine has also undertaken international co- operation with foreign security agencies on the matter of AML/CFT. The statistics of such co-operation is the following:

	Year	Number
MLA requests received	2005	28
	2006	56
	2007	88
	2008 (first 6 months)	155
MLA requests submitted	2005	31
	2006	61
	2007	73
	2008 (first 6 months)	90

Ministry of Interior

997. Co-operation between police services has been organised through the National Central Bureau of Interpol. The Statute of the National Central Bureau of Interpol, adopted by the corresponding Decree of the Government, defines that the Bureau co-ordinates activities of national law-enforcement agencies in the sphere of the combat of transnational crime and assists them in co-operation with Interpol and corresponding state services. Such co-operation is provided by Ukrainian legislation which regulates matters connected with the use of Interpol channels by Ukrainian law-enforcement agencies during prevention, disclosure and investigation of crimes. Apart from that, a Division of Proceeding International Legal Commissions is acting in the Main Investigation Department of MIA, which counts 6 employees. The division is competent in provision of complete and efficient MLA in criminal cases.

998. The following statistics were received after the visit:

	2004		**2005**		**2006**		**2007**		**10 months of 2008**	
	Received requests	Submitted requests	Received requests	Submitted requests	Received requests	Submitted requests	Received requests	Submitted requests	Received requests	Submitted requests
ML	354	494	525	454	435	442	431	389	309	254
Terrorism	248	261	272	183	129	145	123	160	110	81
Other economic crimes	4322	4726	3834	4094	4229	4687	2492	2492	2553	1480

999. The authorities advised that in the course of 8 months in 2008, the interaction between the Interpol Bureau and law enforcement agencies of foreign states resulted in 484 documents (requests, orders, reports) on facts related to laundering of proceeds from crime. The major part of the information was processed in co-operation with law enforcement agencies of Ukraine (232), Germany (37), Belgium (26), Cyprus (15), USA (14), France (13), Czech Republic and Austria (11).

1000. There are 21 liaison officers from foreign states[112] based in Ukraine and Ukraine has 8 liaison officers in Germany, Poland, Romania, Hungary, Turkey, Israel, Russia and 1 in Interpol.

The State Tax Administration

1001. The State Tax Administration also carries out effective co-operation with the foreign counterparts. The AML department of the Administration has initiated submission of the following number of requests to the foreign tax agencies, as well as to the trade-economic missions under Ukrainian diplomatic institutions abroad: in 2004 – 267, in 2005 – 257, in 2006 – 861, in 2007 – 590, 1st half of 2008 – 135.

1002. The Basic Law, Article 16, Part 5 requires that "Entities of state financial monitoring (excepted the Authorized Agency) shall on the grounds of international agreements of Ukraine conduct international co-operation with relevant agencies of foreign states concerning exchange of experience and information on regulation and supervision over the activity of financial institutions in the area of prevention and counteraction to the legalization (laundering) of the proceeds and terrorist financing". In addition, Part 6 provides for the SCFM, NBU, State Commission on Securities and Stock Market, and the State Commission on Regulation of Financial Services Markets to co-operate with the Financial Action Task Force (FATF), the Egmont Group and other international organizations in the area of AML/CFT.

National Bank of Ukraine

1003. According to the Law on Banks and Banking, Article 62, Part 7, "In accordance with an international treaty of Ukraine or under the principle of reciprocity, the National Bank of Ukraine shall have the right to provide the information received as a result of its banking supervision activity to the banking supervision authority of other country if there are guarantees that the information obtained will be used exclusively for the banking supervision purposes or for prevention of legalization (laundering) of receipts from crime or terrorism financing." The international treaty condition seems to be rather demanding.

1004. The NBU provided the following statistics on the number of requests received and the average turnaround time:

	2005	**2006**	**2007**	**2008**
Number of requests received	2	9	7	7
Number of requests where information was provided	2	9	7	7
Average number of days taken to respond to requests	30	30	30	30
Number of requests refused	0	0	0	0

1005. The NBU has also never provided international counterparts with information on their own initiative.

1006. The NBU has signed MOUs with supervisory agencies in Armenia, Belarus, China, Latvia, Poland, Lithuania.

State Commission on Regulation of Financial Services Markets

1007. The Law of Ukraine on Financial Services and State Regulation of Financial Markets, Article 32, provides the State Commission on Regulation of Financial Services Markets with the power to cooperate with international organizations, state agencies and non-government organizations of other countries on issues attributed to their competence. The Commission may provide and obtain

[112] Austria, Belgium, Belarus, United Kingdom, Greece, Georgia, Denmark, Israel, Germany, Poland, Portugal, USA, Czech Republic, Slovak Republic, Hungary, Romania, Sweden, Azerbaijan, Lithuania.

information on supervision of financial markets and financial institutions which neither constitute a state secret nor lead to disclosure of professional secret. It may also provide information on activities of individual financial institutions in cases and according to the procedure specified by international agreements in which Ukraine participates.

1008. The State Commission on Regulation of Financial Services Markets is a member of the IAIS which enables it to join the Multilateral Memorandum of Co-operation and information exchange developed by the IAIS.

1009. The evaluation team was informed that the Commission has sent proposals to 26 foreign financial regulators on the issue of signing MOUs. Financial regulators of Austria, Egypt, Germany, Russian Federation and Kazakhstan agreed on such proposal, whereas negotiations and domestic procedures on signing the MOUs are still ongoing.

1010. The State Commission on Regulation of Financial Services Markets has received 11 requests for information from international counterparts between 2005-2008 which took on average 30 days to respond. The authorities advised that none of these requests contained references on AML/CFT matters. No requests have been refused.

State Commission on Securities and Stock Market

1011. The Law of Ukraine on State Regulation of the Securities Market, Article 7, Part 16 allows the State Commission on Securities and Stock Market to co-operate with public authorities and non-government organization of foreign states and international organizations on matters relating to its competence.

1012. The State Commission on Securities and Stock Market has signed MOUs with the State Commission on the Securities Market of Moldova (1997), the China Commission on Regulation of the Securities (1997), Securities Department under the Ministry of Finance of the Republic of Belarus (2004), the State Agency for financial surveillance and accounting of Kyrgyz Republic (2004), the National Securities Commission of Georgia (2005) and the State Securities Commission of the Azerbaijan Republic (2008) and work in on-going to sign MOUs with 8 additional countries. The Commission is also a member of IOSCO.

1013. The State Commission on Securities and Stock Market advised that it has not received any requests for assistance in relation to AML/CFT from international counterparts.

1014. The NBU, State Commission on Securities and Stock Market and the State Commission on Regulation of Financial Services Markets do not have the power to conduct inquiries on behalf of foreign counterparts.

1015. Finally, the analysis made in previous parts are similarly applied for the implementation of R.40 in relation to obligations under SR.V.

6.5.2 Recommendations and comments

1016. In order to provide the widest possible range of international co-operation to their foreign counterparts, the Ukrainian authorities should review the current legal framework and make necessary amendments so that competent authorities are authorised to exchange spontaneously information.

6.5.3 Compliance with Recommendations 40 and SR.V

	Rating	Summary of factors relevant to Section 6.5 underlying overall rating
R.40	**LC**	• Gaps in the legal framework to enable exchanges of information spontaneously
SR.V	**LC**	• Deficiencies related to R. 40 impact have a negative effect on the rating of this Recommendation.

7 OTHER ISSUES

7.1 Resources and Statistics

1017. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report (i.e. all of section 2, parts of sections 3 and 4, and in section 6). There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report contains the boxes showing the rating and the factors underlying the rating.

	Rating	Summary of factors underlying rating
R.30	**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

R.32	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

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system
Table 3: Authorities' Response to the Evaluation

Table 1. Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating[113]
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 absence of

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

		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.

Table 2: Recommended Action Plan to improve the AML/CFT system

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	• Amend article 209 of the CC to include explicitly the actions of conversion or transfer of property in the physical elements of the ML offence. • Ensure 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. • Criminalise market manipulation and insider trading and ensure that the range of offences set out in the CC which are predicate offences to ML include all required categories of offences in all the relevant forms. • Review the current threshold for predicate offences to bring it in line with the requirements under FATF Recommendation 1. • Place additional focus on autonomous investigation and prosecution of money laundering offences, which should entail the ability to issue a ML conviction without prior or simultaneous conviction for a predicate offence proving that the property is the proceeds of crime. In this context, authorities should address the issue of the evidence required to establish the predicate criminality in autonomous money laundering cases by testing the extent to which inferences of underlying predicate criminality can be made by courts from objective facts, with a view to obtaining authoritative court rulings. The examiners advise that, as in some other jurisdictions, it may be helpful to put beyond doubt in legislation that a conviction for money laundering can be achieved in the absence of a judicial finding of guilt for the underlying predicate criminality. Further guidance and perhaps consideration of further legislative provision to clarify some of these issues will be necessary. • Review the current approach concerning criminal liability of legal persons, and consider the possibility of amending the Criminal Code to make legal persons criminally liable, in particular for money laundering offences. • Review the legal framework in place and measures taken so far so as to ensure that legal persons are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for ML. • Improve and implement adequate training programmes in order to enhance the capacity of prosecutors to investigate and prosecute ML cases and of judges to effectively apply article 209 , in particular on the types and levels of evidence which the courts might consider acceptable to prove the physical and mental elements of the offence.
2.2 Criminalisation of Terrorist Financing (SR.II)	• To ensure that the definition of terrorism fully covers all the terrorist acts set out in article 2(1) of the Terrorist Financing Convention; • Amend the Criminal Code and introduce an autonomous terrorist financing offence fully in line with the requirements set out in the

	article 2 of the Terrorist Financing Convention and with the characteristics set out in Special Recommendation II; • Ensure that the terrorist financing offences are predicate offences for money laundering; • Ensure that the TF offences would apply, regardless of whether the person alleged to have committed the offence(s) is in the same country or in a different country from the one in which the terrorist/ terrorist organisation is located or the terrorist act(s) occurred/will occur; • Provide that the law would permit the intentional element of the offence of TF to be inferred from objective factual circumstances; • Review the current approach concerning criminal liability of legal persons, and consider the possibility of amending the Criminal Code to make legal persons criminally liable for TF, or otherwise subject legal persons to civil or administrative liability for TF; • Take measures as necessary to ensure that criminal, civil or administrative sanctions for TF applicable to natural and legal persons are effective, proportionate and dissuasive.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	The Ukrainian authorities should ensure that: • the legal framework explicitly provides for confiscation of instrumentalities, confiscation of property of corresponding value, as well as confiscation of income, profits or other benefits from the proceeds of crime, in the context of a ML offence; • all the predicate offences to money laundering provide for possibility of confiscation of an offender's property, in line with the FATF requirements; • confiscation for the property used in or intended for use in terrorist financing cases is provided for; • comprehensive statistics are kept on an annual basis on the number of cases and the amounts of property frozen, seized and confiscated relating to ML, FT and criminal proceeds.
2.4 Freezing of funds used for terrorist financing (SR.III)	• The Basic Law Law should envisage the power for executing initial suspension (freezing) of financial transactions not only for the designated financial and non-financial entities, but also for authorized state agencies (the SCFM or other). • Ukraine should prescribe in an evident manner that suspension (freezing) of terrorist funds extends to the cases where no national court decision or appropriate foreign decision are existent, but the funds are disclosed to be owned or controlled by persons who commit, or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts. • Freezing mechanisms of other jurisdictions are undertaken through the Security Service of Ukraine, which provides to the SCFM the submitted court decisions and other decision of foreign competent authorities. It is recommended to enable prompt determination and suspension (freezing) of terrorist funds also on the basis of appropriate foreign requests, received by the SCFM or other competent authorities. • The AML/CFT legal framework of Ukraine should enable suspension (freezing) of funds or other assets not connected with financial transactions. • Ukraine should review and complete the existing procedures for

	considering de-listing requests, develop procedures for unfreezing the funds or other assets of delisted persons or entities in a timely manner and take necessary measures to ensure that such procedures are effective and publicly known. • Ukraine should establish procedure for authorising access to funds or other assets that were frozen and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses. • It is recommended to review existing provisions to enable confiscation of terrorist related funds in the course of criminal proceedings on terrorist related offences (specified under Articles 258, 258.1-258.4 of the CC).
2.5 The Financial Intelligence Unit and its functions (R.26)	• The SCFM meets Recommendation 26. The evaluation team nevertheless recommends that the SCFM should continue their efforts in increasing the quality of case referrals submitted to all law enforcement authorities, with special attention to the issue of timeliness of such referrals, and in reviewing the dissemination process to ensure that case referrals are submitted to the appropriate law enforcement agency.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	• Ukraine should review the current situation in the light of the specific concerns raised by the law enforcement agencies, evaluate the existing practical implementation problems related to the procedures applicable to ML/TF investigations and take necessary measures in order to address these concerns and prevent risks of duplication of efforts. • The procedures for obtaining documents and information to be used in investigations should be carefully examined and modified. • Also, relevant training should be provided to the personnel of authorities in the regions which will enable them to obtain this information more easily. • Despite existing policy efforts to eliminate corruption, it is recommended to pursue current efforts in this area to ensure that they do not impede law enforcement authorities' action. • Furthermore, given that the evaluation team was not in a position to review the relevant framework covering requirements of professional standards and ethics of conduct, the authorities are recommended to review the current situation and take all necessary measures to ensure that staff of law enforcement authorities are required to maintain high professional and ethic standards. • The authorities should also pursue training efforts and provide guidance so as to increase the level of expertise on ML/TF and financial crimes more generally. • The law enforcement and judicial authorities' competencies in AML/CFT should definitely be strengthened, particularly in the regions, in particular through training developed and/or continued, placing an emphasis on the systematic recourse to financial investigations, the use of existing tools and investigative techniques, analysis and use of computer techniques, and by providing relevant guidance.
2.7 Cross Border Declaration & Disclosure (SR.IX)	• Ukraine should should make the necessary amendments in order that the resolution of the NBU and the explanatory form provided with the declaration form of the SCS also refer to all bearer negotiable instruments and not only to traveller's cheques.

	• The SCS should have the authority to restrain currency or bearer negotiable instruments when there is a suspicion of ML or FT. • The authorities should review the current and ensure that it covers fully either all suspicious cross-border transportation incidents or enables the FIU to have direct information on all declarations made according to the declaration system. Information contained in customs declarations is not retained by the SCS. A system should be developed for storing this information. • The administrative penalties for false or non declarations should be raised considerably. • The authorities are recommended to undertake a review of the human and financial capacities of the SCS to ensure that it can adequately take necessary measures to detect and prevent cross border movements of currency and bearer negotiable instruments. • Furthermore, additional efforts should be made to cover through relevant guidance and training issues related to cross border cash and bearer negotiable instruments movements and related ML methods involving the movement of cash to and from Ukraine and raise awareness of customs bodies on ML issues. • Efforts to prevent and sanction corruption within the Customs Service should be pursued.
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• All types of financial institutions as defined in the FATF Glossary are covered by AML/CFT obligations through a combination of the Basic Law, the Law on Financial Services and State Regulation of Financial Markets and the Law of Ukraine on Securities and Stock Market. However, Ukraine would benefit from setting out clearly the definitions in the Basic Law to ensure there is a consistency in terminology. • Ukraine has a number of legislative and regulatory requirements setting out AML/CFT obligations, many of which duplicate each other and can lead to some inconsistencies in the requirements on financial institutions. Some of the financial institutions interviewed by the evaluation team felt that it would we helpful if the authorities consolidated the requirements into fewer documents which would help simplify things for them. • Given that many of the FATF standards are intended to apply equally to all institutions, Ukraine is encouraged to rationalise its legislative and "other enforceable means" requirements to remove the duplication. In particular, Ukraine should consider bringing the asterisk FATF criteria within the Basic Law. ***Recommendation 5*** • In relation to Recommendation 5, Ukraine should ensure that the following requirements are clearly covered by law or regulation: − Banks should be required to undertake CDD when carrying out occasional transactions above the applicable designated threshold (ie. should not be limited to cash

	transactions only) – Identify customers carrying out occasional transactions that are wire transfers – Banks should be required to undertake due diligence when there is suspicion of money laundering or terrorist financing, regardless of any thresholds – Undertake CDD when there are doubts about the veracity or adequacy of previously obtained customer identification data. In particular the current requirements could be strengthened by making the requirement more explicit, ensure it refers to undertaking CDD and covers the full scope of CDD – The definition of beneficial ownership should cover all elements of the FATF Glossary i.e. natural persons requiring financial institutions to determine who are the natural persons that ultimately own or control the customer – conduct ongoing due diligence on the business relationship applicable to all financial institutions. • In addition, the following should be set out in law, regulation or other enforceable means: – Securities institutions should be required to identify the beneficial owner and understand the ownership and control structure of the customer in all situations and not just high risk situations – Securities institutions should be required to obtain information on the purpose and nature of the business relationship in all situations. – For non-bank financial institutions there should be a requirement 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. – Requirement to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions. – Requirement to apply CDD to existing customers which applies to non bank financial institutions. • Ukraine has some recognition of the risk-based approach within the various requirements. However, Ukraine should consider the explicit recognition of the risk-based approach within the law and other enforceable means. This would help Ukraine to make more use of the some of the requirements in the FATF standards which are not currently implemented in Ukraine including simplified and enhanced due diligence. • The Ukrainian authorities should ensure that financial institutions have greater and simpler access to the information from the State register and the State Tax Administration • The discrepancy regarding SCFM Orders which are applicable to banks but where the NBU is unable to impose sanctions for any

	breaches should be addressed. Although the NBU advised that most of the requirements in the SCFM Order are within NBU Resolution 189, the authorities should consider to harmoinise these requirements in a consolidated manner . • The Basic Law should include a cross-reference to the definition of terrorist financing in the Criminal Code of Ukraine. ***Recommendation 6*** • As regards Recommendation 6, the Ukrainian authorities should implement the FATF requirements for PEPs as soon as possible. This should include: - a clear and explicit definition for PEPs consistent with the FATF Glossary; - requirements 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; - a requirement to obtain senior management approval for establishing business relationships with PEPs. This should also include where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP; and - a requirement to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs - A requirement to conduct enhanced ongoing monitoring on a business relationship with the PEP. • In addition, given the concerns the authorities have regarding corruption, Ukraine should consider explicitly extending the provisions to include domestic PEPs. ***Recommendation 7*** • Ukraine would benefit by making requirements on correspondent relationships more explicit in NBU Resolution No. 189 rather than just relying on the information that is required in the questionnaire. In particular this should include explicit requirements on the following: - 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; - to ascertain that the respondent institutions AML/CFT systems are adequate and effective; and - to obtain approval from senior management before establishing new correspondent relationships. ***Recommendation 8*** • Ukraine should ensure that there is an 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. This is particularly important as Ukraine's financial sector grows and channels such as non-face-to-

	face business are begun to be used more by financial institutions.
3.3 Third parties and introduced business (R.9)	• Recommendation 9 does not appear to apply to the Ukrainian system. Considering nevertheless that the law does not explicitly prohibit the use of third parties, it is recommended that the relevant legislation be amended to provide clearly that financial institutions are not permitted to rely on third party verification of identity or introduction of business.
3.4 Financial institution secrecy or confidentiality (R.4)	• Ukraine should review the current limitations which appear to inhibit the ability of law enforcement to access information in a timely manner from some of the sectors and take necessary measures to address the lack of knowledge of relevant procedures applicable in this area. • The Ukrainian authorities should streamline and simplify existing procedures and provide relevant training to law enforcement authorities so that they fully understand the requirements and how to comply with them in order to obtain court orders. This should include training on the procedures available to law enforcement.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	***Recommendation 10*** • As regards Recommendation 10, Ukraine would benefit by setting out the requirements on record keeping more clearly in law or regulation. These include: - Ensure record keeping requirements refers to "all necessary records on transactions" and not just documents. - Requiring non-bank financial institutions to maintain records of identification data for at least five years following the termination of the account or business relationship. - transaction records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activities. ***Special Recommendation VII*** • Ukraine should implement the detailed criteria required by FATF Special Recommendation VII: - Apply the exemptions that exist - Ensure the requirements in Order No. 211 are consistent with those under NBU Resolution No. 348 and FATF SR. VII; - Requirement to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. • The Ukrainian authorities should as a matter of urgency effectively supervise non-banking financial institutions and Ukrposhta 's compliance with the rules and regulations relating to SR.VII. • Ukraine should introduce mechanisms for the enforcement of specific breaches for non-banking financial institutions and Ukrposhta by competent authorities and ensure that sanctions are adequate, proportionate and effective for specific breaches under NBU Resolution no. 348. • Ukraine should put in places measures to ensure that Ukrposhta is effectively monitored for AML/CFT purposes.

3.6 Monitoring of transactions and relationships (R.11 & 21)	• Ukraine's legislation should explicitly require financial institutions to examine the background and purpose of all the unusual financial transactions • Authorities should compel more efforts to ensure that non-banking financial institutions are aware of existing requirements and that there is a consistent implementation of the prescribed scope of data included in the register of financial transactions subject of financial monitoring for the different sectors. • The financial institutions should be explicitly required to give special attention to business relationship and transactions with persons from or in countries which do not or insufficiently apply FATF recommendations. • The Ukrainian authorities should amend laws and regulations to provide for a clear obligation for examining, as far as possible, the purpose and background of financial transactions with persons from or in countries that do not implement or insufficiently implement FATF recommendations, if they have no apparent economic or visible lawful purpose. • Authorities should make sure that there is an appropriate legal basis which enables to apply appropriate counter measures, for all financial institutions and in all cases where transactions, businesses or other relationships involve countries that continue not to apply or insufficiently apply the FATF Recommendations.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	***Recommendation 13*** • Authorities should consider the possibility for revising the relevant provisions and make them more suspicious based and in conformity with the nature and complexity of different types of obliged entities. • Ukraine should criminalise insider trading and market manipulation, so as to enable FIs to report STRs based on the suspicion that a transaction might involve funds generated by the required range of criminal offences. • The law or regulation should provide for a definition of the financing of terrorism, as well as for suspicious indicators in relation to financing of terrorism. • Although the Basic Law provides for coverage of certain forms of attempted transactions, there needs to be an explicit legal requirement that will require reporting of all types of attempted transactions, not just the one that have been refused by the obliged entities. • Authorities should reconsider harmonising the existing regulatory framework to ensure uniform implementation of the reporting regime, especially regarding the period for submitting reports to the SCFM. • The predominance of STRs from compulsory financial monitoring indicates a lack of risk-based approach to monitoring and reporting of suspicious transactions to the SCFM and raises concerns as to effective implementation. The system could benefit from a higher awareness of the AML/CFT regime outside the banking sector, which could be raised through an enhanced training programme. ***Special Recommendation IV*** • In the light of the information received during the visit, it appears that 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 TF STRs. • The comments expressed for Recommendation 13.3 – 13.4, are also applicable for SR IV. There needs to be an explicit legal requirement

	that attempted transactions are subject of STRs. ***Recommendation 14*** • Authorities should reconsider the wording of Article 8 of the Basic Law, so that it provides for a "good faith" prerequisite associated with the reporting requirement as well as protection of entities, even if they did not know what underlying criminal activity was, and regardless of whether illegal activity occurred. • There should be a clear tipping off provisions in relation with financial institutions, not just directors and other employees of the financial institutions. . ***Recommendation 25*** • The SCFM should be required to provide case by case feedback to obliged entities on information on the decision or result if a case is closed or completed, whether because of a concluded prosecution, because the report was found to relate to a legitimate transaction or for other reasons, and if the information is available. • SCFM should consider the possibility of making the reports submitted to the supervisory authorities public, with more general analysis, for ex. by type of entities (without stating the names of the institutions). • SCFSRM and SCSSM should enhance their feedback activities, especially with providing the private sector with best practice techniques, methods and trends, as well as more comprehensive statistics. This could positively influence the reporting behaviour of the non-banking sector.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	***Recommendation 15*** • Clear provision should be made for compliance officer of the non-banking financial institutions to be designated at management level. • Authorities should alter the existing legislation, requiring financial institutions (except for banks) to maintain an adequately resourced and independent audit function to test compliance with AML/CFT rules. Authorities, especially SCFSRM and SCSSM, should place more efforts in raising the institutions' perception on the role and the importance of the internal audit function. • Requirements for financial institutions to put in place screening procedures to ensure high standards when hiring staff (apart from the requirements for the compliance officer and certain senior management positions)) should be implemented, through an explicit legal requirement, or through the internal acts or procedures of the financial institutions. In practice, only banks have shown to have internal screening procedures. ***Recommendation 22*** • Apart from the special situation for 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 and this should be addressed. • There is no requirement for all financial institutions to ensure implementation of the higher AML/CFT standard by their foreign subsidiaries and branches, to the extent that local laws and regulations permit. Authorities should take appropriate steps to alter the language of the Basic Law, accordingly.
3.9 Shell banks (R.18)	• The established safety measures for preventing correspondent relationship with shell banks could benefit from a specific provision

	that will explicitly prohibit financial institutions from entering into or continuing correspondent banking relationship with shell banks. • There should also be an explicit obligation placed on financial institutions to satisfy themselves that respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	***Recommendation 17*** • The authorities should review the sanctions with a view to establishing effective, proportionate and dissuasive sanctions to deal with natural or 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. • The scope of articles 73 and 74 of the Law on Banks and Banking regarding the possibility to impose fines on bank officials and managers should be harmonised. In addition, this Law should be adequately amended so that the withdrawal of a bank license does not only cover cases when the violations induced "a significant loss of assets or income". • There is no evidence for appropriate sanctioning regime and practice over the foreign exchange offices and money transfer providers. The authorities should review the situation and take necessary measures in this respect. ***Recommendation 23*** • The SCFSMR should start conducting AML/CFT on-site supervision of the Ukrposhta and enhance off-site supervision. • Authorities are advised to provide for a clear definition of the term "irreproachable business reputation", that will be apparent to all banks' stakeholders. • The legal provisions for non-banking financial instructions (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 in a securities firm. • The "fit and proper" criteria 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. • Supervisory procedures of the SCSSM and the SCFSMR should cover risk-based analysis and supervision on consolidated basis • Regardless of the possible low risk associated with the foreign exchange offices, there has to be an adequate AML/CFT framework in place that will enable AML/CFT supervision and resources allocated for this purpose. • The SCSSM is encouraged to continue its action aimed at decreasing the number of fictitious companies. ***Recommendation 25*** • The SCFSMR and SCSSM should develop further guidance to cover more adequately the various sectors supervised by them. ***Recommendation 29*** • Apart from the NBU, the extent to which sample testing is included as part of the on-site supervisory actions of SCFSMR and the SCSSM is not clear. The supervisory authorities should ensure that sample testing is included as part of their on-site supervisory action. • There are no explicit provisions that specify the scope of the

	AML/CFT supervision and the power of enforcement of foreign exchange offices. • All sectoral laws, apart from the specific situation for banks, do not enable removal of directors and senior managers as a result of non-compliance with legislation. This issue should be revisited as recommended in the report. • According to the Law on Banks and Banking, NBU can impose sanctions if it detects violation of the banking legislation. There is no clear reference that the Basic Law is considered as part of the banking legislation, which could constrain its efficient implementation. This issue should be adequately addressed by the authorities. In addition, the authorities are advised to reconsider the provisions of the Law on Banks and Banking with regard to the possibility to remove managers from office. • The sanctioning regime implemented with the existing AML/CFT legislation allow for imposing different sanctions, depending on the type of non-compliance (with the Basic Law or with the sectoral laws). Since this situation could create uncertainty, the system could benefit from clearer provisions in terms of the sanctions that should be imposed. ***Recommendation 30*** • The number of supervisory staff in all three supervisory authorities should be increased in order to provide for efficient AML/CFT supervision over the obliged financial institutions. • 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. The authorities should take necessary measures to address these concerns. • According to the Law on Civil servants the training should be made at least once per every 5 years. This period seems too long and should be adequately altered. • SCSSM and SCFSMR should continue their efforts for providing its supervisors with adequate AML/ CFT trainings.
3.11 Money value transfer services (SR.VI)	• MVT service operators (whether they are registered to transfer national or foreign currency) should be required to maintain a current list of agents which they use • In relation to MVT services, Ukraine should implement requirements in relation Recommendations 5, 6, 7, 9, 10, 13, 15, and 22, as discussed earlier in section 3 of this report.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• Ukraine should review as soon as possible the AML/CFT regime to ensure that all DNFBPs are adequately brought under the AML/CFT regime and that these measures are effectively implemented. • Ukraine should impose specific customer identification and record keeping requirements consistent with Recommendations 5 and 10 to real estate agents, dealers in previous metals and stones, lawyers, notaries, other independent legal professionals, company service providers and accountants as soon as possible. • Therefore, Ukraine should review the existing framework in respect of casinos to cover all of the relevant criteria and introduce measures to remedy this situation as soon as possible. • Specific AML/CFT requirements relating to Recommendations 6, 8, 9

	and 11 should be extended to all DNFBP sectors. • Ukraine should also take steps to examine ways of to ensure the effectiveness of compliance with these AML/CFT requirements in these sectors.
4.2 Suspicious transaction reporting (R.16)	• The scope of the Basic law needs to be enhanced so as to bring all types of DNFBP under the STR regime. In the context of Recommendation 13, the reporting of DNFBP should be additionally altered by elevating the existing constrain of Article 8 of the Basic Law, which relates the suspicious reporting only with execution of financial transactions. • More outreach to this sector is necessary, particularly by providing training and guidance. • Apart from the requirement to implement internal rules for financial monitoring, the other requirements of Recommendation 15 are not applied by the DNFBP. Ukraine should adopt the necessary measures to implement Recommendation 15 in relation to DNFBP. • DNFBPs should be required to give special attention to business relationships or transactions with persons from countries which do not or insufficiently apply the FATF Recommendations.
4.3 Regulation, supervision and monitoring (R.24-25)	• The existing licensing regime of gambling institutions seems to draw a number of inconsistencies, which sets a risk for different implementation, misuse and unequal treatment of the members of this market. These inconsistencies should be eliminated and all necessary criteria regarding the owners and managers of gambling institutions should be introduced. • Ukraine is urged to review the current regulatory and supervisory regime applicable to gambling institutions and take legislative and other measures as relevant in order to ensure that casinos are subject to and effectively implementing the AML/CFT measures required under the FATF recommendations. • Despite the positive trend in the last 2 years, the sanctioning regime over gambling institutions cannot be regarded as proportionate and dissuasive. This situation should be addressed through relevant changes to the legal framework. • Ukraine should also develop plans to deal efficiently with unlicensed gambling. It should also take measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in or being an operator of a casino. • As regards the other categories of DNFBP, once the relevant AML/CFT requirements are introduced, Ukraine should also ensure that DNFBP are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements in line with Recommendation 24. • There is a need for the competent authorities to consider taking additional measures to assist DNFBPs to implement andf comply with their respective AML/CFT requirements, such as developing sector specific guidance explaining and supplementing those requirements (on issues other than transaction reporting) and putting resources towards communication and outreach with DNFBP in order to eliminate the existing low level of awareness of this sector regarding AML/CFT issues and provide guidance related to the specific professions' needs and circumstances. • The resources of the Ministry of Finance should be reviewed in order to enable it to cope with its now competencies in terms of AML/CFT supervision over gambling institutions, and measures should be made

	to ensure that the staff undertaking such supervision are adequately trained.
4.4 Other non-financial businesses and professions (R.20)	• Ukrainian authorities should consider undertaking a risk assessment to review the current non financial businesses and professions which are subject to AML/CFT obligations.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	• Ukraine should make the necessary legislative changes to set up a system which ensures adequate transparency of legal persons concerning their beneficial ownership and control either through registration procedures or other means. Competent authorities should be able to obtain or have timely access to such information. • Ukraine should strengthen preventative measures for deterring from the practice of setting up fictitious companies. • The authorities should also consider measures to facilitate access to the data contained in the USR, in particular to the private sector.
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	No recommendations
5.3 Non-profit organisations (SR.VIII)	• Considering the concerns expressed by certain authorities about the risks for misuse of such entities, the evaluators urge the authorities to undertake a comprehensive review of the system aiming at reviewing the adequacy of the legal framework, identifying the activities, size and other relevant features of the sector and assessing possible vulnerabilities related to its misuse for terrorist financing. • An extensive and proactive outreach to the NPO sector should be carried out for the purpose of protecting the sector from the terrorist financing abuse. • Legal requirements should also 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. • The authorities should also consider reviewing the effectiveness of measures in place to sanction violations of oversight measures or rules. • The Ukrainian authorities should ensure that there are 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 spend 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	
6.1 National co-operation and coordination (R.31)	• These efforts should be pursued and current mechanisms should be further enhanced by considering the following improvements: - developing further the strategic and collective review of the performance of the AML/CFT system as a whole and providing explicitly for a mechanism which is responsible for following up the implementation of the annual action plan;

	– considering that the IWG appears to be a high-level policy mechanism, it would assist to put in place a mid-management expert level working group which could meet on a regular basis so as to discuss more in-depth specific policy issues before they are taken up and agreed upon at a higher level by the IWG; – ensuring that the IWG meetings enhances its feedback/reporting mechanism which would enable that there is a regular follow up at following meetings on the issues of concern which have been raised previously by an agency and on the solutions which have been found at bilateral/inter-agency level to address these issues in order to enhance accountability; • More emphasis also needs to be given to consultation and feedback to the financial sector and involving other reporting entities.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• The same recommendations with regard to certain aspects of criminalisation of the money laundering offence, as well as the application of provisional measures and confiscation. Ukraine should also institute criminal liability of legal persons (see sections 2.1 and 2.3). • The same recommendations on criminalisation of terrorist financing offence, as well as on further improvement of freezing mechanisms of terrorist funds are reiterated in this context. Ukraine should take measures to fully implement the provisions of UNSCR 1267, 1373 and successor resolutions (see section 2.4 of this report).
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	• Ukraine should speed up the adoption of the new Criminal Procedure Code, as it is understood that it would provide for a more comprehensive framework and elaborate further detailed procedures for provision of various types of MLA as well as related guidance for all staff working on these matters. Such procedures should also stipulate timeframes for responses of MLA requests. • The Ukrainian authorities should enable rendering MLA in the absence of dual criminality, in particular for less intrusive and non compulsory measures. • The legal impediments in rendering extradition related assistance, except those contradicting fundamental principles of domestic law should be eliminated. • Ukraine should amend the loopholes and inconsistencies in identifying, freezing, seizing and confiscating relevant property, as reflected in sections 2.3 and 2.4 for enabling such actions to be used in provision of MLA. • Ukraine should consider the concerns raised above which stem from the experience of bilateral co- operation and take any measures, as necessary to address these concerns. • The authorities should keep annual statistics on all MLA and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offence and FT, including the nature of the request, whether it was granted or refused and the time required to respond. • Furthermore, the Ukrainian authorities should conduct an assessment of the staffing levels in authorities responsible for sending/receiving MLA and extradition requests as well as the level of workload and take any measures to ensure that they are adequately funded and staffed in order for them to be able to fully and effectively perform their functions. • Also, it is recommended to develop effective training and guidance for staff handling MLA requests, with a view to foster and raise the

	quality of the execution of MLA requests.
6.4 Extradition (R.39, 37 & SR.V)	• Ukraine should eliminate the legal impediments posed in rendering extradition, except those contradicting fundamental principles of domestic law. • Ukraine should address the missing elements of the ML/TF offences to ensure that dual criminality requirements do not represent an obstacle for extradition in such cases (see also sections 2.1 and 2.2). • It is also advised to further develop further guidance for practitioners working at central level and in the regions on procedural and evidentiary aspects. • As recommended earlier, the Ukrainian authorities should also conduct an assessment of the staffing levels in authorities responsible for sending/receiving extradition requests as well as the level of workload and take any measures to ensure that they are adequately funded and staffed in order for them to be able to fully and effectively perform their functions. • Ukraine should also maintain comprehensive statistics in relation to ML/TF and predicate offences which should cover all details of the extradition process.
6.5 Other Forms of Co-operation (R.40 & SR.V)	• In order to provide the widest possible range of international co-operation to their foreign counterparts, the Ukrainian authorities should review the current legal framework and make necessary amendments so that competent authorities are authorised to exchange spontaneously information.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	• See the recommendations relating to the other recommendations
7.2 Other relevant AML/CFT measures or issues	• No recommendations
7.3 General framework – structural issues	• No recommendations

Table 3: Authorities' Response to the Evaluation (if necessary)

Relevant Sections and Paragraphs	Country Comments

V. COMPLIANCE WITH THE EU AML/CFT DIRECTIVE

Ukraine is not a member country of the European Union and therefore not directly obliged to implement 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: "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.

The following sections describe the major differences between the Directive and the relevant FATF 40 Recommendations plus 9 Special Recommendations. Following an analysis of the findings of the evaluation and conclusions on compliance and effectiveness, recommendations and comments are made as appropriate.

1.	**Self Laundering**
Directive	Self laundering is not explicitly addressed by the Directive but is not excluded from its scope.
FATF R. 1	Countries may provide that the offence of money laundering does not apply to persons who committed the predicate offence, where this is required by fundamental principles of their domestic law.
Key elements	Is self laundering provided for in legislation?
Description and Analysis	Self laundering is not explicitly provided for in the money laundering offence (article 209 of the Criminal Code). Nevertheless, The Ukrainian law enforcement authorities and judges confirmed that self laundering can be prosecuted in Ukraine.
Conclusion	The Ukrainian legal framework enables to prosecute self laundering.
Recommendations and Comments	-

2.	**Corporate Liability**
Art. 39 of the Directive	Member States shall ensure that natural and legal persons covered by the Directive can be held liable for infringements of the national provisions adopted pursuant to this Directive.
FATF R. 2 and 17	Criminal liability for money laundering should extend to legal persons. Where that is not possible (i.e. due to fundamental principles of domestic law), civil or administrative liability should apply.
Key elements	The Directive provides no exception for corporate liability and extends it beyond the ML offence even to infringements which are based on national provisions adopted pursuant to the Directive.
Description and Analysis	Natural persons can be held liable for ML and penalties set out in the legislation appear to be proportionate and dissuasive. According to the Ukrainian legal framework, only natural persons can be held criminally liable, including in the case of liability arising from the money laundering offence (article 18 of the Criminal Code). It seems that there is no fundamental principle of domestic law which prevents Ukraine from establishing criminal liability for legal persons. Civil and administrative liability of legal persons is set out in articles 49 and 470 of the Civil Code (deprivation of assets or income in cases where an agreement is against the interest of the state and society and the

	agreement was voided by a court ruling), articles 166-297 of the Code of Administrative Offences (sanction of specific infringements of the AML legislation). As described in the mutual evaluation report, the provisions setting out the civil and administrative liability of legal persons do not enable to adequately held legal persons liable for money laundering. As regards liability of natural and legal persons for infringements of the national AML/CFT provisions, these are provided for in the above-mentioned provisions of the Code of Administrative Offences, in several sectoral laws (Law on Banks and Banking, Law on State Regulation of Securities Market, Law on Financial Services and State Regulation on Financial Services Market) and in article 17 of the Basic Law (criminal, administrative, disciplinary and civil liability arising from breaches of the Basic Law). The latter provides the following: "The persons guilty of violation of provisions of this Law shall be subject to criminal, administrative, disciplinary and civil liability pursuant to the law. They may be deprived of the right to conduct certain kinds of activity pursuant to the laws. The legal entities that conducted financial transactions for legalization (laundering) of the proceeds or financed terrorism may be liquidated by a court ruling. A fine up to one thousand untaxed minimal incomes may be imposed on any entity of initial financial monitoring for its failure to comply with the requirements set by this Law. Provided no agreement on payment of fine has been reached, the decision on imposition of fine or denial of such imposition shall be made by court at the request of the authority that regulates the activity of a subject of initial financial monitoring and issues licenses or other kinds of special permits. Repeated violation of this Law by entities of initial financial monitoring shall result, by court ruling, in restriction, suspension or termination of a license or any other special permit for certain kinds of activity in the manner prescribed by the laws." The analysis of the above-mentioned provisions, which is further detailed in the mutual evaluation report, concluded that the sanctions set out are not effective, proportionate and dissuasive to deal with natural or legal persons which fail to comply with AML/CFT requirements and that the range of sanctions do not appear to be sufficiently broad and proportionate to the severity of the situation.
Conclusion	The current legal framework does not address adequately the requirements set out in Article 39 of the Directive.
Recommendations and Comments	In order to address the above-mentioned deficiencies, Ukraine should: • Review the current approach concerning criminal liability of legal persons and consider introducing relevant provisions to make legal persons criminally liable for ML offences; • Review the legal framework in place and measures taken so far to ensure that legal persons are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for ML; • Make necessary legal amendments to ensure that criminal, administrative and civil penalties for infringements of the AML/CFT legislation applicable to natural and legal persons are effective, proportionate and dissuasive.

3.	**Anonymous accounts**
Art. 6 of the Directive	Member States shall prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks.
FATF R. 5	Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.
Key elements	Both prohibit anonymous accounts but allow numbered accounts. The

	Directive allows accounts or passbooks on fictitious names but always subject to full CDD measures.
Description and Analysis	Anonymous or bearer passbooks cannot be issued in Ukraine. Financial institutions are explicitly prohibited from opening and maintaining anonymous or numbered accounts (Law on Banks and Banking, Article 64, Part 1 and Law of Ukraine on Financial Services and State Regulation of Financial Services Markets, Article 18, Part 1). . In addition, the requirement in the Basic Law, Article 6, Part 1, effectively ensures that anonymous, numbered and fictitious named accounts are not allowed to exist in the Ukraine by requiring that "an entity of initial financial monitoring shall, on the basis of submitted original documents or their duly certified copies, identify the persons engaged in financial transactions subject to financial monitoring pursuant to this law." The financial institutions interviewed by the evaluation team stated that they did not open or maintain anonymous, numbered or fictitious named accounts.
Conclusion	The requirements set out in article 6 of the Directive are covered by the Ukrainian legislation.
Recommendations and Comments	-

4.	**Threshold (CDD)**
Art. 7 b) of the Directive	The institutions and persons covered by the Directive shall apply CDD measures when carrying out occasional transactions <u>amounting</u> to EUR 15 000 or more.
FATF R. 5	Financial institutions should undertake CDD measures when carrying out occasional transactions <u>above</u> the applicable designated threshold.
Key elements	Are transactions of EUR 15 000 covered?
Description and Analysis	*Banks* Banks are required to identify "customers performing cash transactions without opening an account in the amounts exceeding equivalent of UAH 50 000.00" (equivalent to approximately just under €7,000) under the Law on Banks and Banking (Article 64, Part 3, 3rd indent). *Non-bank financial institutions* Ukraine does not apply any threshold requirements in relation to non-bank financial institutions. The Law of Ukraine on Financial Services and State Regulation of Financial Services Markets, Article 18, Part 3, requires non-bank financial institutions to identify "clients that open accounts […] and/or conclude the contracts on rendering financial services." Therefore, they will identify the customers regardless of any threshold. The authorities advised that in practice identification would also involve verification.
Conclusion	The requirement set out in Article 7 of the Directive is covered for banks in the Law on Banks and Banking. For non-bank financial institutions the threshold is not applied in Ukraine.
Recommendations and Comments	The current requirements would benefit from a more explicit reference to CDD rather than just identification.

5.	**Beneficial Owner**
Art. 3(6) of the Directive	The definition of 'Beneficial Owner' establishes minimum criteria where a natural person is to be considered as beneficial owner both in the case of legal persons and in the case of legal arrangements
FATF R. 5 (Glossary)	'Beneficial Owner' refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is

	being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or legal arrangement.
Key elements	The country follows which approach in its definition of "beneficial owner"?
Description and Analysis	The definition of beneficial ownership is set out in the: • Law on Banks and Banking, Article 64, Part 6 "In order to identify a customer who is a legal entity the bank shall identify the individuals who own, control, either directly or indirectly, or benefit from the activity of such a legal entity; and • Law of Ukraine on Financial Services and State Regulation of Financial Services Markets, Article 18, Part 8: "In order to identify the client who is a legal entity, the financial institution shall identify natural persons who are owners of this legal entity, have direct or intermediate influence on it and get an economic benefit from its activity" However, both these requirements do not cover all elements of the definition of beneficial ownership as defined in the Directive. The requirements only refer to a legal entity but there is no reference to the natural person who ultimately owns or controls a customer and/or person (i.e. natural person) on whose behalf a transaction is being conducted.
Conclusion	Ukraine's approach to the definition of beneficial owner does not cover all criteria set out in Article 3(6) of the Directive, as a result of which the requirement to identify the beneficial owner does not cover all situations expected under the Directive.
Recommendations and Comments	Ukraine should amend existing provisions to ensure that the definition of beneficial ownership covers at a minimum the criteria set out in Article 3(6) of the Directive.

6.	**Financial activity on occasional or very limited basis**
Art. 2 (2) of the Directive	Member States may decide that legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or financing of terrorism occurring do not fall within the scope of Article 3(1) or (2) of the Directive. Article 4 of Commission Directive 2006/70/EC further defines this provision.
FATF R. concerning financial institutions	When a financial activity is carried out by a person or entity on an occasional or very limited basis (having regard to quantitative and absolute criteria) such that there is little risk of money laundering activity occurring, a country may decide that the application of anti-money laundering measures is not necessary, either fully or partially. (Methodology para 20; Glossary to the FATF 40 plus 9 Rec.)
Key elements	Does the country implement Article 4 of Commission Directive 2006/70/EC?
Description and Analysis	Ukraine has not considered introducing this derogation.
Conclusion	Ukraine has not considered introducing this derogation.
Recommendations and Comments	The authorities should consider whether the option provided for in article 2(2) is relevant for the Ukrainian system.

7.	**Simplified CDD**
Art. 11 of the Directive	By way of derogation from the relevant Article the Directive establishes instances where institutions and persons may not apply CDD measures. However the obligation to gather sufficient CDD information remains.
FATF R. 5	Although the general rule is that customers be subject to the full range of CDD measures yet, there are instances where reduced or simplified measures can be applied.
Key elements	Establish the implementation and application of Article 3 of Commission Directive 2006/70/EC which goes beyond criterion 5.9.

Description and Analysis	There are no provisions in Ukraine's legislation which allow the derogation foreseen in Article 11 of the Directive to apply reduced or simplified CDD measures.
Conclusion	Ukraine does not apply the derogation set out in Article 11 of the Directive.
Recommendations and Comments	This issue is not considered to be relevant for the Ukrainian system at present.

8.	**PEPs**
Art. 3 (8), 13 (4) of the Directive	The Directive defines PEPs broadly in line with FATF 40 (Article 3(8)). It applies enhanced CDD to PEPs residing in another Member State or third country (Article 13(4)). Directive 2006/70/EC provides a wider definition of PEPs (Article 2) and removal of PEPs after one year of ceasing to be entrusted with prominent public function (Article 2(4)).
FATF R. 6 and Glossary	Definition similar to Directive but applies to individuals entrusted with prominent public function in a foreign country.
Key elements	Did the country implement Article 2 of Commission Directive 2006/70/EC, in particular Article 2(4), and does it apply Article 13(4) of the Directive?
Description and Analysis	There is no clear definition of PEPs in the Ukrainian legislation, nor any enforceable requirements for financial institutions to conduct additional CDD measures regarding PEPs. References to elements which can clarify the definition of PEPs are found in various legal instruments: - the SCFM Order No. 40, Appendix 1, refers to a list of risk criteria that financial institutions should take account of including customers who occupy (occupied) the position in which they have been given a wide range powers. The Ukrainian authorities contend that this would include senior officials of central and local agencies of executive powers, self-regulating bodies and representatives of political parties. However, this is not defined anywhere. - for banks, NBU Resolution No. 189, Appendix 7 provides a list of risk criteria for money laundering which includes "A client is a person holding (who held) a position with large powers (with central bodies and local bodies of government, local governments, political parties), or is a member of the family of such person." - the SCSSM Decision No. 538 stipulates an approximate list of criteria for higher money laundering risk which includes if the customer is a " […] political activist and, for instance, occupies a leading position in a political party."
Conclusion	Requirements set out in Article 2 of Commission Directive 2006/70/EC, and Article 13(4) of the Directive are not currently implemented in Ukraine.
Recommendations and Comments	The Ukrainian authorities should amend the current provisions in order to introduce a clear and consistent definition of PEPs, which is in line with the Directive and article 2 of the Commission Directive 2006/70/EC. Furthermore, it should also introduce the requirements set out in article 13(4) of the Directive in respect of transactions or business relationships with PEPs in other countries and consider also whether persons who have ceased to be entrusted with a prominent public function for a period of at least one year, should be considered as PEPs, in line with article 2(4) of the Commission Directive 2006/70/EC.

9.	**Correspondent banking**
Art. 13 (3) of the Directive	Concerning correspondent banking, Article 13(3) limits the application of Enhanced Customer Due Diligence (ECDD) to correspondent banking relationships with institutions from non-EU member countries.
FATF R. 7	Recommendation 7 includes all jurisdictions.

Key elements	Does the country apply Art. 13(3) of the Directive?
Description and Analysis	Ukraine's requirements on correspondent banking apply to institutions from EU and non-EU member countries. The existing requirements indirectly address some of the requirements, including the gathering of sufficient information about a respondent institution to understand fully the nature of the respondent's business and the reputation of the institution; the assessment of the respondent institution's action to prevent legalisation of proceeds from crime and controls, and to document the respective responsibilities of each institutions. There is no direct requirement to obtain approval from senior management before establishing new correspondent banking relationships. There are no specific requirements regarding payable through accounts, as they do not exist in Ukraine.
Conclusion	Article 13(3)'s requirements are only partly addressed and should be set out explicitly for credit institutions.
Recommendations and Comments	Ukraine should review the existing provisions and introduce more explicitly the requirements set out in Article 13(3).

10.	**Enhanced Customer Due Diligence (ECDD) and anonymity**
Art. 13 (6) of the Directive	The Directive requires ECDD in case of ML or TF threats that may arise from <u>products</u> or <u>transactions</u> that might favour anonymity.
FATF R. 8	Financial institutions should pay special attention to any money laundering threats that may arise from new or developing <u>technologies</u> that might favour anonymity [...].
Key elements	The scope of Article 13(6) of the Directive is broader than that of FATF R. 8, because the Directive focuses on products or transactions regardless of the use of technology.
Description and Analysis	Financial institutions are required under SCFM Order No. 40, paragraph 3.5, to have policies in place to prevent the misuse of technological developments in money laundering or terrorist financing. However, there is no reference to <u>products or transactions</u> regardless of the use of technology.
Conclusion	There is no explicit requirement which requires financial institutions to have policies and procedures in place to address any specific risks associated with products or transactions, regardless of the use of technology.
Recommendations and Comments	Ukraine should ensure there is an explicit requirement for financial institutions to pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity. In particular, this should include a focus on products or transactions regardless of the use of technology.

11.	**Third Party Reliance**
Art. 15 of the Directive	The Directive allows to rely for CDD performance on third parties from EU Member States or third countries under certain conditions and categorised by profession and qualified.
FATF R. 9	Allows reliance for CDD performance by third parties but does not categorise obliged entities and professions.
Key elements	What are the rules for procedures for reliance on third parties? Are their special conditions, categories etc.?
Description and Analysis	Ukraine has not implemented provisions on third party reliance. All financial institutions are obliged to identify their customers under the Basic Law. The Ukrainian authorities advised that financial institutions are not permitted to rely on intermediaries or other third parties to perform some of the elements of the CDD process. Intermediaries operate in the insurance and securities sectors. Each entity within the process will have separate obligations to comply with the identification requirements. There are no outsourcing arrangements provided for.

Conclusion	N/A
Recommendations and Comments	

12.	**Auditors, accountants and tax advisors**
Art. 2 (1)(3)(a) of the Directive	CDD and record keeping obligations are applicable to auditors, external accountants and tax advisors acting in the exercise of their professional activities.
FATF R. 12	CDD and record keeping obligations 1. do not apply concerning auditors and tax advisors; 2. apply for accountants when they prepare for or carry out transactions for their client concerning the following activities: • buying and selling of real estate; • managing of client money, securities or other assets; • management of bank, savings or securities accounts; • organisation of contributions for the creation, operation or management of companies; • creation, operation or management of legal persons or arrangements, and buying and selling of business entities (criterion 12.1 d).
Key elements	The scope of the Directive is wider than that of the FATF standards but does not necessarily cover all the activities of accountants as described by criterion 12.1d).
Description and Analysis	Ukraine has not extended the AML/CFT obligations to auditors, accountants and tax advisors acting in the exercise of their professional activities.
Conclusion	
Recommendations and Comments	Ukraine should extend the AML/CFT obligations to auditors, accountants and tax advisors acting in the exercise of their professional activities and subject them to the relevant CDD and record keeping obligations in this context.

13.	**High Value Deals**
Art. 2(1)(3)e) of the Directive	The Directive applies to natural and legal persons trading in goods where payments are made in cash in an amount of EUR 15 000 or more.
FATF R. 12	The application is limited to dealing in precious metals and precious stones.
Key elements	The scope of the Directive is broader.
Description and Analysis	Ukraine has not extended the AML/CFT obligations to high value dealers.
Conclusion	
Recommendations and Comments	Ukraine should extend the AML/CFT requirements to natural or legal persons trading in goods where payments are made in cash in an amount of EUR 15 000 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked.

14.	**Casinos**
Art. 10 of the Directive	Member States shall require that all casino customers be identified and their identity verified if they purchase or exchange gambling chips with a value of EUR 2 000 or more. This is not required if they are identified at entry.
FATF R. 16	The identity of customer has to be established and verified when they engage in financial transactions equal to or above EUR 3 000.
Key elements	In which situations customers of casinos have to be identified? The Directive transaction threshold is lower.

Description and Analysis	A record of the identification would only be taken if the amount paid out was equal to or over UAH 80 000 (approximately €7 749.81). This would be done in order to comply with the compulsory monitoring requirement under the Basic Law. However, this does not meet the Directive requirement which requires casinos to undertake CDD when their customers engage in financial transactions equal to or above €2 000.
Conclusion	There is no explicit requirement on casinos to verify the identity of customers if they purchase or exchange gambling chips with a value of EUR 2000 or more.
Recommendations and Comments	Ukraine should introduce the requirements set out in article 10 of the Directive.

15.	**Reporting of accountants, auditors, tax advisors, notaries and other independent legal professionals via a self-regulatory body to the FIU**
Art. 23 (1) of the Directive	Option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body that shall forward STRs to the FIU promptly and unfiltered.
FATF Recommendations	The FATF Recommendations do not provide for such an option.
Key elements	Does the country make use of the option as provided for by Art. 23 (1) of the Directive?
Description and Analysis	Ukraine has not extended the AML/CFT obligations to accountants, auditors and tax advisors, notaries and other independent legal professionals. This issue is addressed in a draft law pending before Parliament.
Conclusion	The draft introducing changes to the Basic Law does not envisage the option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body that shall forward STRs to the FIU.
Recommendations and Comments	This issue was not considered relevant for the Ukrainian system at present.

16.	**Reporting obligations**
Art. 22 and 24 of the Directive	The Directive requires reporting where an institution knows, suspects, or has reasonable grounds to suspect money laundering or terrorist financing (Article 22). Obliged persons should refrain from carrying out a transaction knowing or suspecting it to be related to money laundering or terrorist financing and to report to FIU who can stop transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report to FIU (Article 24).
FATF R. 13	Imposes reporting obligation where there is suspicion that funds are the proceeds of a criminal activity or related to terrorist financing.
Key elements	What triggers a reporting obligation? Is there a legal framework addressing Article 24 of the Directive?
Description and Analysis	The reporting regime of Ukraine includes two types of financial monitoring: compulsory and internal. All transactions that fall under the compulsory financial monitoring (Article 11 of the Basic law), have to be reported to the SCFM (within 3 days). The transactions that are defined in Article 12 of the Basic Law are considered as part of the internal financial monitoring. For these transactions, obliged entities should, based on their own analysis, and decides whether they are suspicious and whether they should be reported to the SCFM. In addition, obliged entities are required to inform SCFM on all financial transaction when they have any reasonable doubts that a certain financial transaction is carried out to legalise (launder) the proceeds (Article 8 of the Basic Law). There is no evident cross-reference between the reporting obligation specified in Article 8, and the two-tier financial

	monitoring established with Articles 11 and 12 of the Basic Law. This makes the reporting regime established in Ukraine quite specific and may be considered as complex. Obliged entities are also required by law (Article 5 of the Basic Law) to provide the SCFM with all additional information on the financial transactions that have become an object of financial monitoring (including information that is classified as banking or commercial secret), not later than 3 working days. According to Article 7 of the Basic Law obliged entities have a right to refuse financial transaction if they find that the financial transaction is subject to financial monitoring, they should identify the persons engaged in the financial transaction and should notify the SCFM. The Law contains even stricter provisions for transactions that are suspected to be related with financing of terrorism. Entities are obliged to suspend the execution of these financial transactions and to report them to the SCFM (on the same day). The Law does not specify the actions that should be undertaken by the obliged entities if suspension is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering or terrorist financing operation, the institutions and persons concerned shall inform the FIU immediately afterwards.
Conclusion	As described in the mutual evaluation report, the reporting system is complex. As such, it does not cover all requirements set out in Articles 22 and 24 of the Directive
Recommendations and Comments	Authorities should consider completing the reporting system to introduce the missing requirements set out in Articles 22 and 24.

17.	**Tipping off (1)**
Art. 27 of the Directive	Art. 27 provides for an obligation for Member States to protect employees of reporting institutions from being exposed to threats or hostile actions.
FATF R. 14	No corresponding requirement (directors, officers and employees shall be protected by legal provisions from criminal and civil liability for "tipping off" which is the pendant to Art. 26 of the Directive)
Key elements	Is Art. 27 of the Directive implemented?
Description and Analysis	Article 8 of the Basic Law specifies that "the entities of initial financial monitoring, their officials and other personnel shall not be disciplinary, administratively and criminally liable or subject to civil penalties for submission of information about a financial transaction to the Authorized Agency, if they acted pursuant to this Law, even if such actions caused damage to legal entities or individuals, as well as for other actions related to implementation of this Law". This provision covers protection of employees who reported suspicious transactions to the FIU (SCFM), but it does not cover the internal reporting.
Conclusion	Ukrainian legislation covers part of the requirements in Article 27 of the Directive
Recommendations and Comments	Ukraine should take all appropriate measures in order to protect employees of reporting entities who report suspicions of money laundering or terrorist financing internally from being exposed to threats or hostile action.

18.	**Tipping off (2)**
Art. 28 of the Directive	Prohibition on tipping off is extended to where a money laundering or terrorist financing investigation is being or may be carried out. The Directive lays down instances where prohibition is lifted.
FATF R. 14	The obligation under R. 14 covers the fact that an STR or related information is reported or provided to the FIU.
Key elements	Under which circumstances apply tipping off obligations? Are there exceptions?

Description and Analysis	The Basic Law provides that employees of reporting entities are prohibited to disclose to the persons engaged in financial transactions or any other third person the fact that information on any financial transaction subject to financial monitoring is reported to the FIU. The prohibition does not cover on-going ML or TF investigations. The prohibition applies only to employees of the obliged entity who have submitted the STRs to the FIU, and not to other employees that during the conduct of their duties became aware of the fact that a STR was submitted, nor does it apply to financial institutions. This prohibition does not apply to information submitted to the SCFM, supervisory authorities and the law enforcement agencies. Being a country which is not an EU member, the requirements laid down in paragraphs 3, 4, 5, 6 and 7 of Article 27 are not explicitly covered by the Ukrainian legislation. The legislation provides for certain forms of co-operation with foreign FIU's or supervisory bodies, but not in a same manner as it is required with Article 27 of the EU Directive.
Conclusion	The prohibition on tipping off set out in the Basic Law covers certain aspects set out in article 28 of the Directive.
Recommendations and Comments	In order to comply with the requirements set out in article 28 of the Directive, Ukraine should amend the tipping off provisions to ensure that it applies to institutions and persons covered by the reporting requirements and their directors and persons and should cover as well the fact that a money laundering of terrorist financing investigation is being or may be carried out. In addition, there should be clear provisions that define the possibility to disclose information to relevant foreign institutions (from member countries and third countries that meet the obligations of this Directive).

19.	**Branches and subsidiaries (1)**
Art. 34 (2) of the Directive	The Directive requires credit and financial institutions to communicate the relevant internal policies and procedures on CDD, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication to branches and majority owned subsidiaries in third (non EU) countries.
FATF R. 15 and 22	The obligations under the FATF 40 require a broader and higher standard but do not provide for the obligations contemplated by Article 34(2) of the EU Directive.
Key elements	Is there an obligation as provided for by Art. 34 (2) of the Directive?
Description and Analysis	According to the scope of the Basic Law of Ukraine, its provisions apply to the obliged legal entities, including their branches, offices and other separate units in Ukraine and abroad. In addition to this broad provision, the SCFM Order No. 40 defines that the internal rules for financial monitoring of the obliged entity should contain measures that should be undertaken by the entity, including its separate subdivisions. These provisions (of the Basic Law and the Order) do not cover all requirements of Article 34(2) of the Directive, since there is no requirement to communicate relevant policies and procedures where applicable to branches and majority owned subsidiaries in third countries.
Conclusion	Even though the activities of Ukrainian financial institutions abroad are limited (only banks have branches and subsidiaries in other countries), the current legal framework does not cover all of the requirements of Article 34 (2).
Recommendations and Comments	Authorities should consider addressing this issue in more details, and require credit and financial institutions communicate relevant policies and procedures to branches and majority-owned subsidiaries in third countries.

20.	Branches and subsidiaries (2)
Art. 31(3) of the Directive	The Directive requires that where legislation of a third country does not permit the application of equivalent AML/CFT measures, credit and financial institutions take additional measures to effectively handle the risk of money laundering and terrorist financing.
FATF R. 22 and 21	Requires financial institutions to inform their competent authorities in such circumstances.
Key elements	What are financial institutions obliged to do in such circumstances?
Description and Analysis	According to SCFM Order No.40, financial institutions are required to inform "the entity of state agency, which according to the legislation executes functions of regulation and supervision over them, in case of failure of its branches and other separated subdivisions, which are situated abroad, to take measures for counteraction to legalization (laundering) of proceeds from crime and terrorist financing, defining reasons of failure to execute them". Apart from this requirement that is in accordance with Article 31 first subparagraph of paragraph 1, there is no other requirement applicable to all financial institutions, that could be regarded to be in line with Article 31 (3) of the Directive. The only additional measures to effectively handle the risk of money laundering or terrorist financing in these cases, could be found in the legislation covering the banks' operation. The NBU grants a permit for establishment of subsidiary, branch and representative office in the territory of other countries. When issuing the permit (Regulation No. 143 on Establishment of Subsidiary, Branch and Representative Office of Ukrainian Bank in the Territory of Other States), NBU considers the host country of the subsidiary or branch, whether it has "joined international agreements on prevention and counteraction to the legalization of proceeds from crime and terrorism financing, and financial sector whereof has no negative record in the conclusions of international organizations conducting valuation of states and/or their financial sectors compliance with the key international standards in this area". The NBU may decide to limit, stop or terminate bank's transactions performed by a branch, if it determines that "the branch is not able to fulfil the provisions of the Laws of Ukraine as a result of contradictions with the Laws of the host country". Additionally, NBU performs on-site supervision of foreign branches and subsidiaries.
Conclusion	Excluding banks (to certain extent), there is no other requirement applicable to all financial institutions that could be regarded to be in line with Article 31 (3) of the Directive.
Recommendations and Comments	Authorities should take appropriate steps to alter the language of the Basic Law, in order to enable an adequate measures to effectively handle the risk of money laundering or terrorist financing inherent to branches/subsidiaries in countries where legislation does not permit the application of equivalent AML/CFT measures.

21.	Supervisory Bodies
Art. 25 (1) of the Directive	The Directive imposes obligation on supervisory bodies to inform FIU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.
FATF R.	No corresponding obligation.
Key elements	Is Art. 25(1) of the Directive implemented?
Description and Analysis	Article 10 of the Basic Law requires the supervisory authorities of Ukraine to inform the SCFM on detected cases of violation of relevant AML/CFT legislation and to submit to the SCFM all information and documents essential for fulfilment of its duties.
Conclusion	Article 10 of the Basic Law could be regarded as an appropriate manner to address the requirements of Article 25(1) of the Directive

Recommendations and Comments	Authorities should clarify Article 10 in order to ensure that information reported covers not only detected violations of the AML/CFT legislation but also facts which could be related to ML or TF and that such information should be promptly brought to the attention of the SCFM.

22.	**Systems to respond to competent authorities**
Art. 32 of the Directive	The Directive requires credit and financial institutions to have systems in place that enable them to respond fully and promptly to enquires from the FIU or other authorities as to whether they maintain, or whether during the previous five years they have maintained, a business relationship with a specified natural or legal person.
FATF R.	There is no explicit corresponding requirement but such circumstances can be broadly inferred from Recommendations 23 and 26 – 32.
Key elements	Are credit and financial institutions required to have such systems in place and effectively applied?
Description and Analysis	Article 5 of the Basic Law specifies the obligations of the financial institution, which, *inter alia*, include: a. to help the SCFM and the supervisory authorities in analysing financial transactions, which are subject to financial monitoring; b. to keep documents concerning identification of persons, which conducted financial transaction, which in accordance with this Law are subject to financial monitoring, and all documentation on conducting financial transaction during five years after conducting of such financial transaction; c. to provide in accordance with legislation additional information at request of SCFM, related to financial transactions, which became object of financial monitoring, including information, constituting banking and commercial secret. Furthermore, banks can disclose information to the Office of the Public Prosecutor, the Security Service, the Ministry of Internal Affairs, the Tax Administration concerning transactions on accounts of a particular legal or natural person upon their written order or in general upon a written order of the court of by the court decision (Law on Banks and Banking).
Conclusion	Even though there is no explicit requirement for the financial institutions to have systems in place that will enable them to respond fully and promptly to enquire from the FIU or other authorities, the above-mentioned provisions constitute a basis enabling the FIU and other authorities to obtain information on businesses relationships with natural or legal persons.
Recommendations and Comments	Authorities should nevertheless consider providing for a clearer requirement for credit and financial institutions to have effective systems in place which would enable them to respond fully and rapidly to inquiries from the FIU or other relevant authorities as provided for in Article 32.

23.	**Extension to other professions and undertakings**
Art. 4 of the Directive	The Directive imposes a *mandatory* obligation on Member States to ensure extension of its provisions to other professionals and undertakings whose activities are likely to be used for money laundering or terrorist financing.
FATF R. 20	Requires countries only to consider such extensions.
Key elements	Has the country effectively implemented Art. 4 of the Directive? Is this based on a risk assessment?
Description and Analysis	The list of institutions and professionals to which AML/CFT requirements are extended is set out in Article 4 of the Basic Law. This list does not include all institutions and persons covered by Article 2(1) of the Directive. Ukraine has extended AML/CFT requirements to other non-financial

	businesses and as a result has designated non-life insurance, reinsurance, pawnshops, cash lotteries and commodity exchanges (auctioneers). The Ukraine authorities were unable to provide any evidence or risk assessment which explains why the scope of the AML/CFT obligations extends to these sectors. However, the evaluation team was advised that the sectors were included in scope as a result of international practice.
Conclusion	Given that Ukraine has not made a risk assessment to identify which professionals and undertakings are likely to have their activities used for money laundering or terrorist financing, the requirement set out in article 4 of the Directive has not been effectively implemented.
Recommendations and Comments	Ukraine should conduct a risk assessment to establish which other institutions and persons engage in activities which are likely to be used for ML and TF purposes, other than the ones referred to in article 2(1) of Directive, and amend the Basic Law so as to extend to them in whole or part the AML/CFT requirements, as appropriate.

24.	**Specific provisions concerning equivalent third countries?**
Art. 11, 16(1)(b), 28(4),(5) of the Directive	The Directive provides specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive (e.g. simplified CDD).
FATF R.	There is no explicit corresponding provision in the FATF 40 plus 9 Recommendations.
Key elements	How does the country address the issue of equivalent third countries?
Description and Analysis	There are no such provisions.
Conclusion	
Recommendations and Comments	This issue is not considered to be relevant for the Ukrainian system at present.