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Mutual Evaluation Report – *Executive Summary*

Anti-Money Laundering and Combating the Financing of Terrorism

BOSNIA AND HERZEGOVINA

10 December 2009

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LIST OF ACRONYMS USED

AML/CFT Anti-Money Laundering and combating the financing of terrorism

AML Law Anti-Money Laundering Law

BD Brčko District

BiH Bosnia and Herzegovina

CC-BD Criminal Code of Brčko District

CC-BiH Criminal Code of Bosnia and Herzegovina

CC-FBiH Criminal Code of the Federation of Bosnia and Herzegovina

CC-RS Criminal Code of the Republic of Srpska

CPC-BD Criminal Procedure Code of Brčko District

CPC-BiH Criminal Procedure Code of Bosnia and Herzegovina

CPC-FBiH Criminal Procedure Code of the Federation of Bosnia and Herzegovina

CPC-RS Criminal Procedure Code of the Republic of Srpska

CDD Customer Due Diligence

CETS Council of Europe Treaty Series

CID Criminal Investigation Department of SIPA

CFT Combating the financing of terrorism

CTR Cash Transaction Reports

DNFBP Designated Non-Financial Businesses and Professions

Entities Collectively the Federation of Bosnia and Herzegovina and the Republic of Srpska

ETS European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]

ESDP European Defence and Security Policy

EUPM European Union Police Mission

FATF Financial Action Task Force

FBiH Federation of Bosnia and Herzegovina

FID Financial Intelligence Department of SIPA (the BiH FIU)

FIU Financial Intelligence Unit

IN Interpretative Note

ICITAP International Criminal Investigative Training Assistance Program

IT Information Technology

ITA Indirect Taxation Authority of Bosnia and Herzegovina

KM Konvertibilna marka – National currency of BiH

LEA Law Enforcement Agency

LPML Law on the Prevention of Money Laundering

MEQ	Mutual Evaluation Questionnaire
MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
MLPD	Money Laundering Prevention Directorate
NCCT	Non-cooperative countries and territories
OFAC	Office of Foreign Assets Control (U.S. Treasury)
OSA	Intelligence and Security Agency
PEP	Politically Exposed Persons
ROSC	Report on standards and codes
RS	Republic of Srpska
SBS	State Border Service
SFRY	Socialist Federal Republic of Yugoslavia
SIPA	State Investigation and Protection Agency
SRO	Self-Regulatory Organisation
STRs	Suspicious transaction reports
SWIFT	Society for Worldwide Interbank Financial Telecommunication

EXECUTIVE SUMMARY

1. Background Information

1. This report provides a summary of the AML/CFT measures in place in Bosnia and Herzegovina (BiH) as at the date of the third on-site visit from 24 May to 3 June 2009, 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 BiH's levels of compliance with the FATF 40 plus 9 Recommendations.

2. Following the breakup of the Socialist Federal Republic of Yugoslavia, the Dayton Peace Agreement established BiH as a State comprising two entities: The Federation of BiH (FBiH), and the Republic of Srpska (RS) (the entities). Subsequently, an Arbitration Tribunal established Brčko as a special District which is internationally supervised. As a result of this division both of the entities and Brčko District (BD) have established their own legislative frameworks including Criminal Codes, Laws on Banks, etc.. This legislation is, in some cases (e.g. Criminal Codes), in addition to legislation at the level of the state of BiH. In these circumstances the evaluators have needed to consider relevant legislation at entity and BD level as well as state level legislation.

3. Although certain law enforcement agencies and supervisory bodies operate across the whole of BiH, this legislative framework is largely replicated in law enforcement and supervisory structures. For example the State Protection and Investigation Agency (SIPA), which houses the Financial Intelligence Unit (FID) which is the FIU, has authority to operate across the whole of BiH, whereas each of the entities and BD maintain their own police forces. In these circumstances the evaluators have needed to consider bodies operating both at state level as well as at the level of the entities and BD in order to assess the overall effectiveness of the AML/CFT regime.

4. This is the second mutual evaluation of BiH by MONEYVAL. There have been a number of changes since the first on-site visit in November 2003. An AML/CFT Law was enacted at state level which replaced separate laws for FBiH, RS and BD with one unified AML Law for the whole country. Guidance on application of the new AML/CFT law was provided by the publication of a Book of Rules on Data, Information, Documents, Identification Methods and Minimum Other Indicators Required for Efficient Implementation of Certain Provisions of the Law on the Prevention of Money Laundering (Book of Rules) which clarifies the requirements for obligors. With regard to law enforcement, enactment of the Law on the State Investigation and Protection Agency provided for the formation of SIPA which hosts the FIU for BiH.

5. At the time of the on-site visit the AML/CFT law in place was the Law on the Prevention of Money Laundering which was enacted on 4 May 2004. The evaluators based their questions for the on-site visit and the initial drafts of their report on this law. On 15 June 2009 a new AML/CFT law, the Law on the Prevention of Money Laundering and Financing of Terrorist Activities, was enacted. In accordance with MONEYVAL's Rules of Procedure, as this new law came into force and effect within two months of the conclusion of the on-site visit, this new law has also been taken into account in drafting the mutual evaluation report. Although the old law has been superseded by the new law the evaluators have taken the old law into account as this was in effect during the on-site visit and it was the effectiveness of implementation of this law that was assessed. The new law has, however, also been taken

into account as this law has addressed a number of deficiencies in the old law. To avoid confusion between the two laws the law that was in effect at the time of the on-site visit is described as either the "LPML" or the "old AML Law" and the new law has been described as the "new AML Law". Where both the LPML and the new AML Law are being discussed generically these are merely described as "the AML Law".

6. One of the legacies of the war within BiH was the growth of organised criminal activity which developed out of the general state of lawlessness that prevailed at the time. The authorities have sought to establish a legal and law enforcement framework within BiH. BiH is situated centrally within the Balkans and has open borders with a number of countries which increases the threat of a number of classes of crime as set out below. Furthermore, the fragmented nature of BiH and the multiple levels of law enforcement and financial services (e.g. state, entity, canton, etc.) create opportunities for criminal exploitation. This crime threat does inevitably give rise to a greater threat of money laundering.

2. Legal Systems and Related Institutional Measures

Criminalisation of Money Laundering

7. Money laundering is a criminal offence under both the state-level Criminal Code of BiH and the respective Criminal Codes of the entities and BD – that is, it is one of the offences that are criminalised at all levels of criminal legislation. All the four offences show significant similarities especially as regards the range of physical (material) elements. The physical (material) elements of the offence have not changed at all since the four Criminal Codes came into force back in 2003. All the definitions are largely in accordance with Article 3 of the Vienna Convention and Article 6 of the Palermo Convention yet their scopes still do not cover all the physical (material) elements as required.

8. *Conversion* of property is addressed by the term "exchange" and indeed, this sort of activity has already occurred in case practice. The notion of "transfer of property" appears to go far beyond what can be covered by the conduct described as "disposing of". On the other hand, most of the money laundering cases, either at state level or at that of the entities and BD are based on concealing of proceeds of tax evasion that is, the actual laundering activity is transferring in every such case. This potential loophole in the wording of the money laundering offence has been adequately addressed and remedied by case practice. *Concealment* of property is covered but only in general terms ("otherwise conceals") and not according to the enumerative approach followed by the Vienna and Palermo Conventions. All four Criminal Codes equally provide for the *acquisition* (acceptance) *possession* (keeping) as well as the *use* of proceeds, though the latter term is somewhat restricted in the Criminal Code of RS which only criminalises it when committed in commercial activity (while the others refer to commercial "and other" activities in this respect). Another common characteristic of the four money laundering offences is that no particular purpose or motive is defined as a prerequisite element thereof. As a result, the notion of conversion (or transfer) and concealment (or disguise) of property appears to cover laundering activities committed for the purpose of either concealing or disguising the illicit origin of the proceeds, or assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his action.

9. Money laundering offences in all four Criminal Codes equally extend to "money" and "property" and the notion of "property" does include any type of property that directly or

indirectly represents the proceeds of the predicate crime, and therefore it is flexible enough to encompass an adequately wide range of proceeds, including immovable property as well.

10. The evaluators note that the laundering activities listed in the state-level Criminal Code would establish the offence of money laundering only if committed in relation to money or property of "larger value" while two alternative conditions that need, arguably cumulatively, to be proven, that is, whether the offence endangered the common economic space of BiH or had it detrimental consequences to the operations or financing of its institutions, may also add to this restrictive character. (Value limits are defined by courts of the highest level, both in terms of the State and the entities and BD, which are competent to define the exact amount of money that corresponds to such limits.). Taking into account the respective offences in the other three Codes, that do not contain value limitations, the evaluators are however satisfied that there is no money laundering activity in the territory of BiH which would not be subsumable under either the state-level or the entity/BD level legislation. On the other hand, there is a well-defined subset of money laundering offences that can equally fall under the competence of either the state-level authorities or those at the level of the entities and BD.

11. The criminalisation of money laundering is based at both levels on a very extensive "all crimes approach" as the scope of predicate offences explicitly cover all criminal offences. The evaluation team found that all the designated categories of offences are covered except for market manipulation for which there are no criminal sanctions in BD. No conviction for the predicate offence is necessary to establish that the laundered assets are proceeds of the predicate offence and to convict a person for the criminal offence of money laundering. Though some case practice exists, none of the four money laundering offences cover explicitly the case where the proceeds laundered on the territory of BiH stem from a predicate offence committed abroad.

12. Money laundering offences do not explicitly include or exclude those who have committed both the laundering and the predicate offence. It is noted, however, that there is some divergence of opinion about whether self-laundering would constitute a crime on its own and there are no cases to support this. Most ancillary offences are provided by the General Part of the respective Criminal Codes with a potential applicability to any criminal offence defined in the Special Part, including money laundering. All four Criminal Codes provide for *sui generis* criminalisation of such an attempted act which may therefore establish a completed offence on its own. General criminal principles on attempt apply to all the other ways money laundering can be committed and further ancillary offences are similarly sanctioned on the base of intention.

13. The respective criminal offences provide for the actual knowledge standard in respect of those who engage in money laundering activity. The mental element of the money laundering offence requires knowledge of acquisition through perpetration of criminal offences.

14. Corporate criminal liability is incorporated into the respective Criminal Codes and all legal persons (both domestic and foreign) have criminal responsibility. Liability of legal persons does not exclude criminal liability of physical persons responsible for the criminal offence.

15. Natural and legal persons, once convicted of money laundering, are subject to effective and dissuasive sanctions under all of the respective Criminal Codes, taking into account the sanctions for other crimes and according to the economical situation.

Criminalisation of Terrorist Financing

16. BiH ratified the International Convention for the Suppression of the Financing of Terrorism (hereafter "Terrorist Financing Convention") on 10th June 2003 and it has since been binding on the country. At the state level, the Criminal Code of BiH defines the criminal offence of Funding of Terrorist Activities and at the level of the entities and BD, a similar offence can be found in all three Criminal Codes. All four terrorist financing offences follow the language and concept of Article 2 of the 1999 UN International Convention for the Suppression of the Financing of Terrorism yet they fall short of providing full compliance with its requirements. The criminalisation achieved in BiH is deficient as it does not cover the funding of terrorist organisations or individual terrorists. Furthermore, in the absence of jurisprudence, it is also unclear whether the offence(s) would cover the full definition of "funds". As the money laundering offence follows an all crimes approach, the respective terrorist financing offences, as far as they extend in coverage, are predicate crimes for money laundering.

17. The Criminal Code provides for the possibility of prosecuting the offence of terrorist financing irrespective of whether the terrorist offence for which the funds were gathered is committed abroad or domestically.

18. Funding of terrorist activities is not among the criminal offences frequently being investigated and prosecuted in BiH with only one case mentioned as having occurred in the time period under examination.

Confiscation, freezing and seizing of proceeds of crime

19. The current legal framework applicable to confiscation and provisional measures seems rather complicated. There are parallel regimes both in terms of criminal substantive and procedural law; a different set of rules has to be applied for instrumentalities, another one for the proceeds of crime and, as far as the criminal offence of money laundering is concerned, there is still a *sui generis* offence-specific confiscation rule regarding property that has been laundered. In addition, criminal and administrative provisions can sometimes be applied at the same time. On the other hand, there is still need for a clear understanding of the respective provisions especially in terms of their scope of application

20. The confiscation and provisional measures regimes are practically identical at all levels of jurisdiction. As a general rule, the confiscation regime is conviction based. The language of the Criminal Code leaves no doubt that confiscation of proceeds is compulsory and makes it the most robust part of the confiscation regime. However, high evidential standards as applied by trial courts, the structure of the confiscation regime and the small number of confiscations (particularly at non-State level) and provisional measures not being taken with the desirable regularity all give rise to concerns over effectiveness. Furthermore, provisional measures (seizure or freezing of assets) are seldom if ever applied in the preliminary stage of criminal proceedings, an apparent consequence of which is that there are hardly any convictions followed by actual confiscation of proceeds of crime.

21. With regard to the confiscation of material gain, the language of the respective Criminal and Criminal Procedure Codes appear to be wide enough to cover any sorts of property. Material gain is considered to include all property acquired through or resulting from the perpetration of a criminal offence, including objects or rights, moveable or immoveable assets as well as

acts or documents proving a title or right to such property. The confiscation regime also covers substitute assets and other indirect proceeds of crime.

22. The Criminal Code provides for the confiscation ("forfeiture") of instrumentalities as well as objects resulting from the commission of a criminal offence and also appears to provide for obligatory confiscation of assets intended to finance terrorism. It is noted that value confiscation is not applicable in case of instrumentalities and other objects confiscatable. The specific confiscation regime for money laundering cases does not allow for value confiscation**.**

23. Confiscation from third parties is possible under the law of BiH. Rights of *bona fide* third parties are also protected by criminal procedural law. However, confiscation of proceeds commingled with legitimate assets or that of income or benefits derived from proceeds of crime is not provided for by RS criminal legislation.

24. There do not appear to be any provisions in place to prevent or void actions where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.

Freezing of funds used for terrorist financing

25. A comprehensive system for freezing without delay by all financial institutions of assets of designated persons and entities, including publicly known procedures for de-listing etc. is not yet in place. The existing legal framework consists of parallel and overlapping regimes which either are incomplete particularly when it comes to procedural rules or are designed for other purposes.

The Financial Intelligence Unit and its functions

26. The FID has been established, with operational independence within SIPA, as the BiH Financial Investigation Unit (FIU) cooperating internationally as a member of the Egmont Group and shares information internationally with its counterpart FIUs.

27. The FID serves as the national centre for receiving analysing and disseminating disclosures of STRs and other relevant information concerning suspected ML or TF activities. Nevertheless, in practice, the law enforcement agencies in the entities and BD do not submit requests to FID and instead gain access to STR information through Court orders and not directly from the FID. Overall the FID appeared to the evaluators to be isolated from the general law enforcement effort due to restrictive interpretation of existing laws, and other organisational issues. During the on-site visit law enforcement agencies in the entities and BD clearly stated that they were not willing to freely cooperate with the FID. Furthermore, the power of FID to disseminate financial information to domestic authorities is limited by law.

28. It is noted that the FID has only limited access to the full range of administrative, financial, and law enforcement databases required to perform proper analysis. Such information is not always accessible on a timely basis. Cash transactions reported to the FID are not utilised as no alert system is in place to detect transactions connected to criminal or suspected persons.

29. At the time of the on-site visit the FID was significantly below its budgeted complement of staff and, in the opinion of the evaluators, Staffing of the Investigation Department at FID is

not in proportion to the commonly understood expectations of other law enforcement agencies regarding FID's role in initiating ML investigations in BiH.

Law enforcement, prosecution and other competent authorities

30. BiH has designated law enforcement authorities on all levels (state, entity, and cantonal) that have responsibility for ensuring that ML and FT offences are investigated. The evaluators are concerned that the investigation of ML and FT offences are not seen as a priority for law enforcement. It is noted that there is a backlog of cases related to serious economic crimes which is affecting not only the effectiveness of the judicial process but also the investigative capacity of law enforcement agencies in BiH.

31. Furthermore, in the view of the evaluators, the low level of trust between governmental agencies on all levels (vertically and horizontally) and between the public and private sector as well as the perception of corruption compromises the ability to conduct effective AML investigations.

Cross Border Declaration or Disclosure

32. BiH has not implemented a comprehensive system with reporting obligations for incoming and outgoing cross-border transportations of currency or bearer negotiable instruments that could be related to money laundering or terrorist financing. Furthermore, there are significant limitations on those powers of the authorities that are in place with regard to cross border movements of cash.

3. Preventive Measures – financial institutions

Risk of money laundering / financing of terrorism

33. No formal national assessment of the risks to the country for money laundering and the financing of terrorism has been carried out although a strategy document is in the process of being developed[1].

Customer due diligence

34. In general a customer identification procedure (not full CDD measures) is in place. The evaluators note that the situation for the banking sector is better and more effective than that for the rest of the financial sector. Indeed brokerage houses hold that since their customers have to open a bank account, they do not believe it is their responsibility to identify a customer as this should be done by the bank; even though they are providing a financial service to that customer. Furthermore, the evaluators found a number of shortcomings in relation to certain essential criteria for Recommendation 5, including where key elements are required to be provided for through legislation. A number of these findings have now been addressed by the new AML Law but it was not possible to assess the effectiveness of these new provisions.

35. Although there is a broad awareness amongst the industry as regards customer identification legal obligations, this does not appear to be the case in practice. The concept of the beneficial

[1] Both the Strategy and the Action Plan were adopted by the Council of Ministers of Bosnia and Herzegovina on September 30, 2009.

owner and the resultant identification requirements, although now better identified under the new AML Law, still need to be addressed and implemented more effectively. Indeed, the lack of legal obligations in some instances appeared to impact on the effectiveness of the system.

36. Weaknesses identified relating to CDD requirements included the possibility of allowing the opening and retention of bearer savings accounts in foreign currency under particular circumstances, no obligation to apply CDD measures in all instances, no timing specified for the verification of identification information, no mandatory obligation to apply CDD measures to all existing accounts for all areas within the financial sector, no overall obligation to establish and identify the 'mind and management' of a legal person, the treatment of beneficial owners that are PEPs is not clearly defined in the law, no requirement for banks to document the AML/CFT responsibilities of respondent banks and no provisions for financial institutions to take measures to prevent the misuse of technological developments.

Third Parties and introduced business.

37. Although the old LPML does not specifically prohibit or allow third party reliance or introduced business, likewise it does not specifically allow it. However, there are provisions that appear to indirectly allow such procedures. Notwithstanding the fact that the new AML Law has now clarified this matter, in that it specifically allows 'persons' under obligation' to rely on third parties, yet the new provisions do not fully cover the FATF criteria for Recommendation 9.

Financial institution secrecy or confidentiality

38. Confidentiality obligations under the respective laws are strict, often not providing gateways particularly when disclosing information specifically related to AML/CFT. However the provisions in the AML Law, override confidentiality clauses in the respective laws.

Record keeping and wire transfer rules

39. Although both the AML Law requires the retention of all documentation and information obtained on the basis of these laws, yet this falls short of meeting all the essential elements of Recommendation 10. In particular, there is no distinction between identification and transaction information; and there are no clear provisions for the initiation of the 10 year retention period. The availability of identification information and transactions data to the authorities is indirectly addressed with the only reference on obliged entities being that of delivering the data "without delay or within 8 days" to the FID upon its request.

40. Although wire transfers are covered by the Law on Payment Transactions of the entities and BD most of the criteria for SR VII are not met as the law only covers the technical operational aspects. The new AML Law now addresses some of the missing aspects identified at the on-site visit but does not differentiate between domestic and cross-border payments and hence it is difficult to identify compliance with the respective criteria.

Monitoring of transactions and relationships

41. It appears that the objective of Recommendation 11 is not totally understood or even recognised. In the course of the evaluation the evaluators were constantly informed by the industry that all transactions are examined for the purposes of the old LPML and that written findings are retained in the form of the reports filed. The evaluators are not of the view that

this fulfils Recommendation 11 effectively. The situation remains the same under the new AML Law.

42. With regard to Recommendation 21, there is no specific obligation to terminate or to decline business relationships or to undertake a transaction with legal/natural persons from countries not sufficiently applying AML/CFT measures. Furthermore, there is no specific obligation to monitor and examine such transactions in the banking and insurance sectors, or to keep a written statement of findings and to make these statements available to the authorities.

Suspicious transaction reports

43. Financial institutions are required by law to file suspicious transaction reports (including suspicions of financing of terrorism) regardless of the amount. The reporting requirement includes both attempted and performed transactions. The evaluators are however, concerned about the low level of transactions reported, particularly as all STRs received are from banks with none received from the insurance and securities sectors. It was noted that there was a high level of misunderstanding together with a lack of awareness within financial institutions concerning the reporting obligations.

44. There appear to be conflicting reporting requirements between the requirements of the AML Law and the Law on Banks in RS and FBiH.

45. With regard to safe harbour provisions and tipping off provisions the evaluators considered that most of the criteria had been met. There are, however, concerns that protection from criminal and civil liability not extended to directors, and officers of obliged entities and that there are loopholes in the law where information can be disclosed without breach of the legislation.

46. With respect to Recommendation 19 the evaluators consider that the cash reporting regime is effective, although manually reviewing of large cash transaction reports at FID brings into question the effectiveness of the computerised database.

47. At the time of the on-site visit there was a lack of provision of meaningful feedback. With regard to the provision of feedback the new AML Law has introduced a mandatory obligation to provide feedback. The evaluators are not, however, in a position to assess the effectiveness of this new provision.

Internal controls, compliance, audit and foreign branches

48. Some of the obligations arising out of the provisions of Recommendation 15 are addressed either at the new AML Law or, at least for the banking sector, through the relevant Decisions on Minimum Standards at Entity level. Some shortcomings however remain, including exemptions to small obliged entities from appointing a compliance officer and applying internal controls and the lack of adequate procedures for screening at recruitment stage.

49. The respective Laws on Banks include provisions that require banks to fully implement the provisions of internal controls and procedures at their branches and subsidiaries abroad. There are not, however, similar provisions for the insurance and securities sectors. There is no requirement to apply the higher standard where standards differ and no obligation for financial institutions to inform the home supervisor when a foreign branch or subsidiary is unable to apply standards.

Shell banks

50. Overall the cumulative effect of the requirements for establishment of a bank seems to imply the need for a physical presence. However, the definition of "shell bank" is not fully compliant with the FATF Recommendations.

The supervisory and oversight system

51. Prudential regulation and supervision of financial institutions is implemented at entity level based on laws, rules, and regulations, which are mainly identical in FBiH and in RS. The banking sector is supervised by the respective Banking Agencies, the insurance sector – by the Insurance Agencies, and the securities market – by the Security Commissions.

52. Overall the banking and securities supervisors appeared to possess adequate powers to monitor and ensure compliance with AML/CFT requirements within their respective sectors. However, there is a lack of adequate powers for supervisors in the insurance market, including a lack of legislatively provided sanctioning powers. Furthermore, there is a lack of clearly defined supervisory powers of the FID and no mechanisms in place for the enforcement of its decisions regarding removal of irregularities in the operations of obligors.

53. With regard to sanctions, there appeared to be divergences in the penalties that can be applied as well as duplication and overlap in the state level AML Law and the entity level Laws on Banks of FBiH and of RS. Furthermore there appeared to be a lack of proportionate and comparable sanctions throughout the applicable legislation.

54. Sectoral laws and regulations contain provisions regulating market entry by means of becoming the holder or beneficial owner of a significant or controlling interest and there are procedures covering the appointment to management positions in financial institutions and for "fit and proper" tests of management members. There is, however, no prohibition for criminals and their associates from holding a significant or controlling share in securities market intermediaries in FBiH and in BD.

55. There is a lack of licensing/registration procedures for and monitoring of persons involved in money transfer and exchange services, as well as for the persons exercising professional activities of sale and purchase of claims; safekeeping, investing, administering, managing or advising in the management of property of third persons; issuing, managing and performing operations with debit and credit cards and other means of payment, crediting, offering and brokering in negotiation of loans.

56. Many of the obligors (especially the representatives of non-bank financial institutions) fail to have a proper understanding of their obligations under the AML/CFT framework and not all sectors have developed indicators for suspicious transactions. As a result of this many of the obligors (especially the representatives of non-bank financial institutions) fail to have a proper understanding of their obligations under the AML/CFT framework.

Money or value transfer services

57. Money or value transfer operations are exclusively provided by banks most of whom have contractual agreements with Tenfore Ltd (Cyprus). In BiH, Tenfore d.o.o is not a licensed or supervised entity. Money or value transfer services are also provided by the Post Office which, however, does not appear to be supervised entity for AML purposes.

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

58. The scope of coverage of preventive measures under both the old and the new AML Law has been extended to other businesses and professions beyond the FATF definition of DNFBPs. Unfortunately monitoring of the implementation of requirements and compliance thereto is almost inexistent and hence the evaluators express concerns on the effectiveness of this extension when there are no effective monitoring mechanisms in place to assess implementation.

Customer due diligence and record-keeping

59. The concerns expressed and weaknesses identified regarding Recommendation 5 for the financial sector also apply for DNFBPs. There are however additional weaknesses and shortcomings identified for DNFBPs. The legal, notary and accountancy professions are more guided by their governing laws as opposed to the AML Law. When meeting the representatives of the legal profession, including public notaries, for both FBiH and RS it became clear that both professions are strongly opposed to being subjected to the provisions of the AML Law.

60. Although the concept of PEPs under intensified identification procedures is addressed through legal provisions and hence also for DNFBPs, in practice it is not addressed by DNFBPs as there is a complete lack of awareness of the risks involved.

61. There is a need for increased awareness of threats from new or developing technologies among DNFBPs. There is also a need for the DNFBPs to be made more aware of the threats to money laundering and the financing of terrorism arising out of large complex transactions that may not have economic reasons.

Suspicious transaction reporting

62. DNFBPs are in principle subject to the same reporting obligations and the maintenance of internal controls as for the financial sector. However, the application of the relevant FATF Recommendations to DNFBPs appears to be even lower than in the financial sector. There are concerns that some of the main sectors, in particular the legal and notary professions, closely followed by the accountancy profession, appear to be reluctant to totally accept their obligations under the AML Law, in protection of the relevant laws governing their respective professions.

Regulation, supervision and monitoring

63. Some of the DNFBPs are subject to supervision by designated supervisors (e.g. notaries, lawyers, auditors and accountants). Even in these circumstances, the Chambers of Lawyers, the Chambers of Notaries, and the Associations of Accountants and Auditors at entity level do not have legislatively provided powers for supervising implementation of the obligations set forth in the new AML Law, and no systems and mechanisms are established for them to ensure compliance of the obligors with the national AML/CFT framework. Where there is no designated supervisory body, by default, FID is the relevant agency to supervise these entities for AML/CFT compliance. However, FID does not have any mechanisms and tools available for monitoring and ensuring compliance of the said persons with national requirements to combat money laundering and terrorist financing.

64. Whereas the contents of the Book of Rules appears to be comprehensive in order to assist obligors to implement and comply with their AML/CFT obligations, the meetings with the representatives of DNFBPs, indicated that many of them lack a proper understanding of the provisions and practical implementation of the Book of Rules. Moreover not all sectors have completed their list of indicators for suspicious transactions as is required under the Law. Specific feedback is not provided although the new AML Law now makes it mandatory on the FID to provide such feedback to the person under obligation who would have filed the report.

Modern secure transaction techniques

65. Notwithstanding the measures taken and being taken by the Central Bank, there is a need to intensify the drive to reduce the use of cash and develop further the use of more modern and secure electronic means of settlement. The evaluators welcome the measures taken under the new AML Law limiting cash payments to persons and entities other than those specified to €15,000. However, the evaluators do not consider this to be an overarching policy for setting up the strategy for reducing the use of cash.

5. Legal Persons and Arrangements and Non-Profit Organisations

Legal persons

66. Registration of legal persons is done at the competent Registration Courts at entity and BD level and it is obligatory. The legal framework regulating the registration of business entities establishes a clear mechanism ensuring a uniform procedure of registration of business entities on the territory of BiH. Laws do not specify the existence of a single electronic register. It appears that such a register started to be implemented only recently and consequently, there is a risk that this has led to a weak exchange of information between registration courts, double registration of business entities and a low level of access to information by the relevant competent authorities.

67. The registration courts are responsible for the validity of data that they enter into the Register. Despite the verification powers in place it appears that the control carried out by courts is limited to a formal check to ensure that the required documents are submitted. This approach can facilitate the practice of setting up fictitious companies. Although the new AML Law gives a definition of the "real owner of a legal entity" and "real owner of a foreign legal entity", there is no express requirement for the courts to carry out the identification of the beneficial owners.

68. It remains unclear whether the shareholding information for all legal persons is updated in a timely manner at the Main Book of Registration at the Courts. It appears that there is no recourse by obligors to the Registry of Securities for shareholding companies, obliged entities may, therefore, not be able to complete the identification process satisfactorily for legal persons.

69. BiH prohibits the issue of bearer shares by corporate bodies. There are, however, no prohibitions for other legal entities being shareholders in a company. The evaluators were not given satisfactory replies as to whether a foreign company with bearer shares can be a shareholder in a legal person registered in BiH.

Legal Arrangement

70. The concept of trusts is not recognised in legislation. BiH is not a signatory to the Hague Convention.

Non-profit organisations

71. No review of the adequacy of the relevant laws and no outreach has been undertaken by the authorities in order to identify the risks and prevent the misuse of NPOs for terrorism financing purposes.

72. While at each level a mechanism for registering the NPOs is in place, there is no legal impediment for an NPO to be registered at the same time at two or three levels, i.e. in two or three registers. The statistics on the number of the existing NPOs in BiH are not accurate enough, considering the lack of a clear mechanism on the reciprocal recognition of associations and foundation and the possibility that certain NPOs are registered, for example, at the entity and state level and counted twice. There is no single Register of non-profit organisations, although there is for churches and religious communities,.

73. Other deficiencies include the lack of an express legal provisions requiring that the business records of the NPOs are kept for at least five years, a lack of a mechanism for national cooperation and information exchange between all agencies involved in the investigation of predicate offences and lack of outreach to the NPO sector.

6. National and International Co-operation

National Cooperation

74. Because of the fragmented political structure of BiH, national cooperation is not to be taken for granted. Although the legal basis for national cooperation and information exchange between competent authorities in BiH is in place there are significant concerns about its effective operation and, in practice, the actual cooperation and exchange of information is limited.

75. The main mechanism in BiH for enhancing cooperation between Policy makers, the FIU, law enforcement and supervisors and other competent authorities has been the establishment of the "Working Group of Institutions of Bosnia and Herzegovina for Prevention of Money Laundering and Financing of Terrorism", as a inter-ministerial and professional body of Council of Ministers of BiH.

76. The evaluators have not been given any meaningful information that the systems in place for preventing money laundering and terrorist financing are reviewed periodically to assess effectiveness and, to date, the Working Group's main focus has been the drafting of the new AML Law.

The Conventions and United Nations Special Resolutions

77. BiH has been a party to the Vienna Convention since 1993 by succession, as it was originally ratified by Yugoslavia in 1990. BiH ratified the Palermo Convention and it's first two Protocols in 2002 and acceded to its Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition in 2008. The 1999 UN

International Convention for the Suppression of Financing of Terrorism was ratified by BiH and became effective in 2003. Also, BiH is party to all 9 conventions mentioned in the Annex of the TF Convention.

Mutual legal assistance

78. BiH has ratified the European Convention on Mutual Assistance in Criminal Matters and its second Additional Protocol although, BiH is not a party to the first Additional Protocol of the Convention. BiH has ratified the European Convention on the transfer of proceedings in criminal matters and the European Convention on transfer of convicted persons. BiH has also recently passed a new Law on Mutual Assistance in Criminal Matters (MLA Law). Overall, the possibility for BiH to provide mutual legal assistance appears quite broad.

79. Although dual criminality is required for rendering mutual legal assistance, including extradition cases MLA Law on MLA only requires dual criminality in case of extradition requests although it contains no such explicit provisions as regards MLA issues. BiH does not have a special fund for confiscated assets and a competent authority for keeping and managing seized or confiscated assets.

Extradition

80. All rules relating to BiH's ability to extradite equally apply to cases involving money laundering and financing of terrorism. Extradition issues are also governed by the European Convention on Extradition and its Additional Protocols.

81. BiH does not extradite its own citizens. Extradition of persons with dual citizenship continues to be a problem.

Other Forms of International Co-operation

82. Competent authorities, including financial supervisors and FID are authorised by law to provide international cooperation to their foreign counterparts in a rapid, constructive and effective manner.

83. Overall, The identified legal deficiencies in the criminalisation of ML and TF may have a negative impact on providing MLA in an effective manner.

7. Resources and Statistics

84. FID does not appear to have sufficient staff resources available to fully perform its functions[2] and FID's IT system does not provide sufficient operational scope or capacity to effectively support FID's operations. It did, however appear that FID had the requisite powers and that there are adequate security controls in place.

85. Some representatives of law enforcement bodies that the evaluation team met with expressed dissatisfaction with their working condition, means and the resources available. The evaluators learnt that the understaffed prosecution and judiciary wrestles with a significant backlog of cases related to serious economic crimes because of the pressure of workload and lack of specific expertise.

[2] The FID is, however, involved in an ongoing recruitment process.

86. Lack of training is a major problem throughout all supervisory bodies, with some relative "advantage" of the Banking Agencies, which seem to be in a better position in terms of the frequency and coverage of training events attended by the staff.

87. Apart from the FID who did produce statistics to support their annual report, there are very few meaningful statistics available. Furthermore the evaluators are of the view that, apart from FID, those statistics that were produced for the evaluators had merely been produced at the request of the evaluators and that no use was being made of statistics to review the effectiveness of their systems for combating money laundering and terrorist financing on a regular basis.