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Report on Fourth Assessment Visit

Anti-Money Laundering and Combating the Financing of Terrorism

BOSNIA and HERZEGOVINA

17 September 2015

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LIST OF ACRONYMS USED

AML/CFT	Anti-money laundering/combating the financing of terrorism
AMLS	Anti-Money Laundering System
AFIP	Agency for Financial, Information and Mediation Services
APIF	Agency for Business Operations and Finances
ATM	Automatic teller machine
BAM	Konvertibilna marka (convertible mark – Bosnian currency)
BD	Brčko District
BiH	Bosnia and Herzegovina
BNIs	Bearer negotiable instruments
CARA	Criminal Assets Recovery Act
CC	Criminal Code
CDD	Customer Due Diligence
CEI	Central European Initiative
CEPs	Compliance Enhancing Procedures
CETS	Council of Europe Treaty Series
CFT	Combating the financing of terrorism
CID	Criminal Investigation Department
CIPS	Citizen Identification Protection System
CPC	Criminal Procedural Code
CTR	Cash Transaction Reports
DNFBP	Designated Non-Financial Businesses and Professions
ECDD	Enhanced Customer Due Diligence
EMCDDA	European Monitoring Centre for Drugs and Drug Addition
ESW	Egmont Secure Web
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
EU	European Union
FATF	Financial Action Task Force
FBiH	Federation of Bosnia and Herzegovina
FI	Financial Institution
FID	Financial Intelligence Department
FIU	Financial Intelligence Unit
FT/TF	Financing of terrorism
GDP	Gross domestic product

GRECO	Group of States against Corruption
GRETA	The Group of Experts on Action against Trafficking in Human Beings
HPJC	High Prosecutorial and Judicial Council
ICTY	International Criminal Tribunal for the former Yugoslavia
IDDEA	Agency for identification documents, registers and data exchange
IMF	International Monetary Fund
IPA	Instrument for Pre-Accession Assistance
IRM	International Restrictive Measures
ISIL	Islamic State of Iraq and the Levant
IT	Information Technology
ITA	Indirect Taxation Authority
LC	Largely compliant
LEA	Law enforcement agency
MCO	Micro-Credit Organization
MEQ	Mutual Evaluation Questionnaire
MER	Mutual Evaluation Report
MFA	Ministry of Foreign Affairs
ML	Money laundering
MLA	Mutual Legal Assistance
MoI	Ministry of Interior
MoU	Memorandum of Understanding
MVTSPs	Money and Value Transfer Service Providers
NC	Non-compliant
NPO	Non-profit organisation
OFAC	Office of Foreign Assets Control
PC	Partially compliant
PEP	Politically Exposed Person
RS	Republic of Srpska
SAA	Stabilisation and Association Agreement
SECI	Southeast Europe Co-operation Initiative
SEECP	Southeast Europe Co-operation Process
SIA	Security Intelligence Agency
SIPA	State Investigation and Protection Agency of BiH
SPI	Section for Prevention and Investigation

SR	Special Recommendation
SRO	Self-Regulatory Organisation
STR	Suspicious transaction report
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TCSP	Trust and Company Service Providers
THB	Trafficking in human beings
VAT	Value Added Tax
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
UNR	United Nations report
UNSCC	United Nations Security Council Committee
UNSCR	United Nations Security Council Resolution
WTO	World Trade Organisation

I. PREFACE

1. This is the fourth report in MONEYVAL's fourth round of mutual evaluations, following up the recommendations made in the third round. This evaluation follows the current version of the 2004 AML/CFT Methodology, but does not necessarily cover all the 40+9 FATF Recommendations and Special Recommendations. MONEYVAL concluded that the 4th round should be shorter and more focused and primarily follow up the major recommendations made in the 3rd round. The evaluation team, in line with procedural decisions taken by MONEYVAL, have examined the current effectiveness of implementation of all key and core and some other important FATF recommendations (i.e. Recommendations 1, 3, 4, 5, 10, 13, 17, 23, 26, 29, 30, 31, 32, 35, 36 and 40, and SRI, SRII, SRIII, SRIV and SRV), whatever the rating achieved in the 3rd round.

2. Additionally, the examiners have reassessed the compliance with and effectiveness of implementation of all those other FATF recommendations where the rating was NC or PC in the 3rd round. Furthermore, the report also covers in a separate annex issues related 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 "The Third EU Directive") and Directive 2006/70/EC (the "implementing Directive"). **No ratings have been assigned to the assessment of these issues.**

3. The evaluation was based on the laws, regulations and other materials supplied by BiH, and information obtained by the evaluation team during its on-site visit to BiH from 19 to 29 November 2014, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of relevant government agencies and the private sector in BiH. A list of the bodies met is set out in Annex I to the mutual evaluation report.

4. The evaluation was conducted by an assessment team, which consisted of members of the MONEYVAL Secretariat and MONEYVAL experts in criminal law, law enforcement and regulatory issues and comprised: Ms Catherine RABEY, Law Officers of the Crown, Guernsey, Mr Sorin TANASE, Unit for Crime Prevention and Cooperation with EU Asset Recovery Offices, Ministry of Justice, Romania and Mr Tomáš HUDEČEK, Ministry of Justice, the Czech Republic, who participated as legal evaluators, Ms Veronika METS, Ministry of Finance of Estonia and Mr Nedko KRUMOV, State Agency for National Security, Financial Intelligence Unit, Bulgaria, who participated as financial evaluators, Ms Vanessa FORDE, States of Jersey Police and Mr Amar SALIHODZIC, Financial Intelligence Unit Principality of Liechtenstein, who participated as a law enforcement evaluators and Mr John RINGGUTH, Ms Irina TALIANU and Ms Katerina PSCHEROVA, members of the MONEYVAL Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.

5. The structure of this report broadly follows the structure of MONEYVAL and FATF reports in the 3rd round, and is split into the following sections:

    1. General information
    2. Legal system and related institutional measures
    3. Preventive measures - financial institutions
    4. Preventive measures – designated non-financial businesses and professions
    5. Legal persons and arrangements and non-profit organisations
    6. National and international cooperation
    7. Statistics and resources

Annex (implementation of EU standards)

Appendices (relevant new laws and regulations)

6. This 4th round report should be read in conjunction with the 3rd round adopted mutual evaluation report (as adopted at MONEYVAL's 31st Plenary meeting – December 2010), which is published on MONEYVAL's website[1]. FATF Recommendations that have been considered in this report have been assigned a rating. For those ratings that have not been considered the rating from the 3rd round report continues to apply.

7. Where there have been no material changes from the position as described in the 3rd round report, the text of the 3rd round report remains appropriate and information provided in that assessment has not been repeated in this report. This applies firstly to general and background information. It also applies in respect of the 'description and analysis' section discussing individual FATF Recommendations that are being reassessed in this report and the effectiveness of implementation. Again, only new developments and significant changes are covered by this report. The 'recommendations and comments' in respect of individual Recommendations that have been re-assessed in this report are entirely new and reflect the position of the evaluators on the effectiveness of implementation of the particular Recommendation currently, taking into account all relevant information in respect of the essential and additional criteria which was available to this team of examiners.

8. The ratings that have been reassessed in this report reflect the position as at the on-site visit in 2014 or shortly thereafter.

[1] http://www.coe.int/moneyval

II. EXECUTIVE SUMMARY

1. Background Information

1. This report summarises the major anti-money laundering and counter-terrorist financing measures (AML/CFT) that were in place in Bosnia and Herzegovina (BiH) at the time of the 4th on-site visit (19 to 29 November 2014) and immediately thereafter. It describes and analyses these measures and offers recommendations on how to strengthen certain aspects of the system. The MONEYVAL 4th cycle of assessments is a follow-up round, in which Core and Key (and some other important) Financial Action Task Force (FATF) Recommendations have been re-assessed, as well as all those for which BiH received non-compliant (NC) or partially compliant (PC) ratings in its 3rd round mutual evaluation report (MER). This report is not, therefore, a full assessment against the FATF 40 Recommendations (2003) and 9 Special Recommendations (2001) but is intended to update readers on major issues in the AML/CFT system of BiH.

2. Key findings

2. **Bosnia and Herzegovina has taken several important steps to improve compliance with the FATF Recommendations and has made progress in several areas since the 3rd round evaluation. An action plan to remedy deficiencies was agreed between MONEYVAL and the BiH authorities in 2011** and progress against it is still being monitored by MONEYVAL under the Compliance Enhancing Procedures. Several pieces of legislation were amended and new acts and ordinances were issued to address deficiencies identified in the 3rd round evaluation and to implement the requirements of international legal instruments.

3. **Many indicators suggest that BiH is susceptible to money laundering and terrorist financing, and that it is attractive to organised criminals and tax evaders.** This is due in part to its strategic position on the Balkan route. In terms of criminal activity, drug and human trafficking and corruption account for a substantial amount of the sources of proceeds generated by organised crime in BiH. These predicate offences have also been the subject of ML prosecutions. BiH's economy remains, to a large extent, cash based and the estimated size of the shadow economy remains significant. The financial market in BiH is relatively small. The banking sector accounts for approximately 84% of the financial sector. The securities sector is the second largest. Investment products tend to be based on securities issued in the course of the privatisation process. However, there are indications that the sector is not entirely safe from abuse as one important ML investigation in the FBiH involved a number of securities brokers. Integration of laundered proceeds in real estate is a problem, which is being addressed in some criminal cases through confiscation.

4. The terrorism financing (TF) risk was not assessed by the authorities, although several terrorism cases are under investigation. During the interviews the authorities pointed out that cash in small amounts (€300-€1.000) is regularly brought into the country by BiH nationals living or working abroad. They also indicated that TF funds appear to be accumulated outside BiH and subsequently smurfed, and distributed in the country using money transfer services. The providers of these services have not been given guidance on TF risk and did not demonstrate real awareness of this issue. Given the TF risks of BiH, it is positive that most financial institutions acknowledge that non-profit organisations (NPOs), which hold bank accounts, are high risk and that enhanced measures should be applied to them. However, **overall, the public authorities throughout BiH appear to neglect the risks of terrorist financing through activities of NPOs.**

5. **The mental and physical elements of the money laundering offence in all four criminal codes are largely in line with the Vienna and Palermo Conventions. While there are some technical aspects which still need clarifying it appears that progress has been made in terms of both the number and quality of money laundering cases.** The evaluation team also noted that some parts of the country have been less successful than others in prosecuting money laundering cases.

6. **BiH has improved its ability to freeze, seize and confiscate property, and the introduction of provisions on reversed burden confiscation and their application in practice have undoubtedly reinforced the confiscation regime.** The system has begun to achieve better outcomes. However, effective implementation needs to be enhanced, in particular with regard to the routine application of provisional measures and effective enforcement of confiscation orders.

7. **A number of technical deficiencies remain in place with regard to the TF offence.** These are of a particular concern given the terrorist risks faced by BiH. Initiatives were however reported, which address the threat of terrorism and TF, in particular a new offence of joining foreign paramilitary organisations was introduced and a number of investigations are underway in this respect. **A framework has been established to enable freezing of funds of persons and entities designated under United Nations Security Council Resolution (UNSCR) 1267. It has however not yet been applied in practice. No system has yet been established to implement UNSCR 1373.**

8. The Financial Intelligence Department (FID), the financial intelligence unit (FIU) of BiH, is vested with a broad range of powers and its institutional arrangements ensure its functioning to a satisfactory level. Nevertheless, there were concerns with regard to the effectiveness of its analytical process and the quantity and quality of its output.

9. **The effectiveness of the system for control of the physical cross border transportation of currency raises serious concerns.** A comprehensive legislative framework is in place. Nevertheless, it appears that the competent authorities are not clear as to their powers which leads to inconsistencies of application. There were also concerns about the effectiveness of controls of cross-border transportation of currency and bearer negotiable instruments (BNIs) at the maritime border and land crossings.

10. **The level of compliance of the AML/CFT framework was significantly enhanced by the adoption of the AML/CFT Law** (adopted after the implementation of MONEYVAL's Compliance Enhancing Procedures in June 2014). This Law brought significant improvements to the AML/CFT preventive framework and introduced the concept of risk to be applied by obliged entities. At the time of the on-site visit new by-laws implementing the Law had not yet been issued.[2] The financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs) met on-site showed an uneven understanding as to whether the Law was in force or if they had a period of grace of one year until the by-laws are issued before they have to revise their procedures to bring them into line with the AML/CFT Law.

11. The financial institutions broadly understand and apply the customer due diligence (CDD) measures required under the new AML/CFT Law, but the identification and verification of beneficial ownership is often limited to the first layer of companies that forms a complex legal structure. Further guidance is required for obliged entities for the identification of PEPs and to raise awareness of high-risk jurisdictions. Obliged entities met on-site were aware of the reporting obligation. Nevertheless, the level of reporting remains low, in particular in the non-banking sectors.

12. **There remain concerns about the level of implementation of the AML/CFT supervisory action by the various supervisory authorities and sanctioning for non-compliance with the requirements.** Supervisory powers on AML/CFT should be clarified. Resources of all authorities need to be increased and supervisory action strengthened to ensure that both financial and non-financial institutions are adequately implementing AML/CFT requirements. In particular, expertise on AML/CFT supervision needs to be increased and supervisory planning should be based on AML/CFT risks, and not merely accompany prudential supervision.

[2] Rulebook on the implementation of the AML/CFT Law and Guidance on the manner of reporting were adopted by the Council of Ministers on 23 April 2015.

13. **Further efforts are also required to put in place an effective AML/CFT coordination mechanism on a policy level** and to ensure the risks and vulnerabilities of the system are appropriately identified and addressed by the policies and strategies formulated by the authorities.

3. Legal Systems and Related Institutional Measures

14. ML is criminalised at the state level, as well as in the Criminal Codes (CCs) of the Federation of BiH (FBiH), Republic of Srpska (RS) and Brčko District (BD). The mental and physical elements of the ML offence in all four CCs are harmonized. They are largely in line with the Vienna and Palermo Conventions. While there are some technical issues which still need clarifying, in particular with regard to the transfer of property and the application of the offence to the indirect proceeds of crime[3], it has been demonstrated that the lack of clear or explicit wording was not a bar to convictions in such cases. The ML offence applies an "all-crimes" approach and covers therefore all the designated categories of predicate offences which are criminalised. Market manipulation was not criminalised at the time of the 3rd round assessment in BD. This deficiency has been remedied. Jurisdiction between the various levels in respect of the investigation and prosecution of ML is still not adequately demarcated in legislation or by non-legislative measures. However, the authorities have systems in place to address issues of concurrent jurisdiction that seem to work in practice.

15. The authorities under all four legal systems confirmed that there was no evidential or other bar to taking forward cases of autonomous money laundering, either as a matter of law or practice. Specifically it was confirmed that circumstantial evidence could be relied on for these purposes, although this is not expressly stated in the law. They confirmed that ML can be prosecuted also in cases involving foreign predicate criminality. Case law confirmed this in RS and at state level. Self-laundering is expressly criminalised in the criminal codes of BH and RS. The authorities of FBiH and BD during the on-site visit were of the view that the ML offence would also be applicable to self-laundering under their legal systems, although no supporting case law was provided in this respect. An additional positive development in the implementation of the ML offence is the acceptance of direct application of international conventions by domestic courts. This has been confirmed by case law from RS, where the court expressly relied on provisions of the Palermo and Warsaw Convention. Overall, it appears that progress has been made in terms of both the number and quality of money laundering cases. There have been high value cases, in which the courts have imposed significant penalties, and cases have been taken forward on the basis of a wider range of predicate offences than previously, including drug trafficking, human trafficking, and abuse of office. This corresponds to the type of criminality prevalent in the country as a whole. The evaluation team also noted that some parts of the country have been less successful than others at improving the number and quality of ML cases. It is important that work continues so that improvements of this kind are seen throughout BiH.

16. A number of factors undermined the effectiveness of prosecution of ML, in particular lack of resources and expertise of staff of involved authorities. The prosecutorial and judicial authorities whom the evaluators met under all four legal systems demonstrated a high level of knowledge and commitment. Nevertheless, representatives of all authorities referred to a lack of resources, which appears to be an issue above all in FBiH and BD, and to a lesser extent in RS and at the state level. There are some indications that the situation is beginning to improve. There has been an increase in training across the country, often provided by foreign experts.

17. At a technical level, although the legal framework for the criminalisation of TF addresses many of the requirements of the international standard, it is subject to a number of deficiencies. Some of these deficiencies appear to undermine the effective prosecution of TF, particularly the absence of incrimination of the provision of funds to a terrorist organisation or an individual terrorist other than for the purposes of a terrorist act. These deficiencies were raised at the time of the 3rd round assessment.

[3] The ML offence in the CC of BiH was amended on 27 May 2015.

Even though they have been addressed to a limited extent at the state level, they are still not fully covered. In addition, whilst the generic part of the TF offence as required by the TF Convention is included in corresponding language in all four CCs, some elements of the offences in the annex to the TF Convention are not covered and are not within the ambit of the TF offence in the manner required by the TF Convention.

18. Although the evaluators were informed that there were some on-going investigations into TF, at the time of the on-site visit only one indictment had been issued. Following the current developments and the identified links between some BiH citizens and the situation in the Middle East, it is considered that the TF risks in the country have increased. In addition there have been instances of terrorist acts within the jurisdiction itself, including an attack on the US embassy in Sarajevo. Due to the increasing TF risk in the country, the lack of significant enforcement activity on terrorist financing poses more serious concerns than previously.

19. Nevertheless, there are indications that the authorities are making some efforts to address the threat of terrorism and TF. According to the authorities, the Intelligence and Security Agency of BiH and all police agencies permanently monitor the activities of potentially dangerous groups, either independently or in cooperation with the Anti-terrorism Task Force of BiH. In addition, the CC of BiH was amended in 2014, introducing a new offence of joining foreign paramilitary organisations, and the evaluators were informed that there are investigations under way into TF in this respect.

20. The legal provisions setting the basic framework for confiscation and freezing of proceeds of crime remain largely as they were at the time of the last evaluation. At a technical level, the framework for confiscation, although complex, is broadly in line with international standards. Nevertheless, confiscation of instrumentalities remains subject to imprecise conditions in most cases, as was pointed out in the 3rd round MER[4]. Some changes were, however, introduced since the last evaluation. In particular, the CCs of BiH and FBiH have been amended to introduce the concept of extended confiscation in relation to some offences. In RS extended confiscation was introduced within dedicated asset recovery legislation, in which also an Asset Recovery Office (ARO) was established in 2010.[5]

21. Although there have been some notable successes in the implementation of the legal framework, particularly in RS, serious concerns remain as to the overall level of effectiveness of the confiscation regime. The continued application of high evidential standards by the courts in some parts of the country leads to an overall low number of confiscation orders. This has been partially remedied by the introduction of extended confiscation, which appears to be applied more often by the courts at the state level and in RS than in FBiH. Despite the fact that the confiscation of assets of corresponding value is permitted under all four legal systems, no cases in which this had happened in practice were identified except in the RS. In addition, limited use of provisional measures results in a high proportion of confiscation orders not being enforced. This has been partially remedied in RS by the establishment of the ARO. Nevertheless, at the state level and in FBiH and BD, the failure to apply for provisional measures at an early stage of an investigation poses a major obstacle to the successful recovery of proceeds of crime. The authorities are therefore encouraged to make more timely applications for provisional measures, and routinely instigate parallel financial investigations in major proceeds-generating cases. Finally, the lack of resources identified in the context of Recommendation 1, particularly in respect of expertise and training, would seem to be a relevant factor under this Recommendation as well.

[4] Amendments to the CC of BiH were adopted in this respect in May 2015.

[5] Legislation in this respect was approved also in FBiH. Nevertheless, this legislation entered into force in April 2015 and did not therefore enter in the two months period after the on-site visit and cannot be taken into consideration for the purposes of this assessment. In addition, the changes introduced were not yet operational by the time of the adoption of the MER.

22. At the time of the 3rd round evaluation, the team considered that there was no comprehensive and directly applicable legal framework in place that would provide a legal basis for freezing of terrorist funds. Since the adoption of the 3rd round MER, the authorities have taken a number of steps in this respect. Whilst the general legal basis remains the same, the authorities enacted an Ordinance that sets out concrete procedures which currently form the framework for freezing assets of persons and entities designated under UNSCR 1267. This framework is comprehensive and broadly complies with international requirements. It is to be noted, however, that apart from a few additional minor technical deficiencies, above all there is no mechanism for supervision of compliance by obliged entities. The framework is not, however, applicable for the purposes of UNSCR 1373, both with regard to designating persons on a national level, as well as to responding to requests from foreign countries.

23. In addition, there is no mechanism for relevant authorities to consider persons for potential domestic designation or for proposal of inclusion on the UN List. Considering recent developments described above with regard to terrorism and TF links to BiH, this is considered a significant shortcoming.

24. The UN Consolidated List and guidelines issued by the authorities are publicly available on the website of the Ministry of Security of BiH. Nevertheless, during the on-site visit, the private sector and the majority of the supervisory authorities were not aware of the existence of this framework. No guidance or awareness raising activities were provided by the authorities for obliged entities with regard to their obligations resulting from the Ordinance.

25. The FID is the financial intelligence unit (FIU) of BiH and is established as the national centre for receiving, collecting, recording and analysing data, information and documentation related to the prevention, investigation and detection of ML and TF. It is also responsible for promoting cooperation amongst relevant national authorities, as well as cooperating on an international level. In addition, the FID is empowered to undertake preliminary investigations in the scope of its activities, to temporarily suspend transactions and to issue orders to reporting entities for continuous monitoring of a client relationship. Guidance on the manner and procedures of reporting is in place and reporting forms are available for all the different categories of reporting entities. The FID does not publish any periodic reports on typologies and trends[6].

26. The FID has broad powers to access financial, administrative and law enforcement information and to request additional information from reporting entities if it considers that there are reasonable grounds for a suspicion of ML/FT. It also has direct access to a number of databases at state level, and to some at Entity level. The evaluation team has concerns with regard to the accessibility of some information to the FID and the timeliness of access in practice (in particular with regard to information held at Entity/BD level). Appropriate safeguards are in place to ensure that information held by the FID is securely protected and disseminated.

27. Overall, the evaluation team considered that the FID has adequate operational independence. The budget of the FID in the period under assessment was considered as sufficient for it to properly undertake its functions and the evaluators welcomed the significant increase of staff of the FID over the past five years. The FID staff members met on-site appeared to be of high integrity and motivated.

28. As regards effectiveness of the work of the FID, concerns were raised by the evaluation team due to absence of a feedback mechanism regarding cases referred to entity and cantonal level law enforcement agencies, which undermines effectiveness of dissemination procedure. In addition, the evaluation team considered that the effectiveness of the work of the FID was negatively impacted by the lack of an adequate IT system which would allow for in-depth analyses.

[6] The authorities reported that steps have been taken in this respect and the FID shall start issuing periodic reports; the first report is foreseen to be published in the course of 2015.

29. In order to detect physical cross-border transportation of currency and bearer negotiable instruments (BNIs), BiH implemented a declaration system that requires all persons to declare any assets, cash and BNIs above the threshold of EUR 2,500. The legislative framework is in the Laws on Foreign Currency Exchange of both Entities (the FBiH Law is applicable on the territory of BD). Since the 3rd round assessment, both laws were harmonised, which was a welcome development. Nevertheless, not all BNIs are covered by the declaration obligation and the competent authorities are not vested with any powers to freeze terrorist assets. The principal authorities involved in implementing the framework are the Indirect Taxation Authority (ITA) and the Border Police. Whilst they appear to have a broad range of competencies for the purposes of controlling cross-border transportation of currency and BNIs, it appears that the authorities have an unclear understanding with regard to their power to stop and restrain cash and BNIs. This can cause difficulties in applying confiscation measures in a timely manner to identified currency related to ML/TF. The sanctioning framework for violation of the declaration obligation does not appear to be effective.

30. In practice, the authorities stated that control by ITA is not performed at the maritime border and that they encounter problems to undertake effective control at the land-crossings points. The number of declarations recorded by the authorities appears very low considering the number of border crossing points in BiH. Overall, it appears that in practice the competent authorities do not endeavour to assess the possibility of ML/TF connected with the transportation of cash or BNIs. The training provided to the authorities competent for the undertaking of border control do not contain ML/TF aspects and the authorities confirmed that they lack sufficient expertise in this respect.

4. Preventive Measures – Financial Institutions

31. Since the 3rd round evaluation, BiH has taken steps in order to improve the AML/CFT legal and regulatory framework, as well as the supervisory system. The new AML/CFT Law was adopted on 6 June 2014 and came into force on 25 June 2014. It applies to all FIs, as required by the FATF standards. The revised AML/CFT legislation addressed a number of deficiencies in the preventive measures and introduced a risk-based approach. The new Law foresees the issue of bylaws for its implementation by the Ministry of Security. This, however, was not done by the time of the 4th round on-site visit.[7] The bylaws in force at the time of the 4th round on-site visit (and within the period shortly thereafter which the evaluators can take into account) were issued prior to the adoption of the Law. With regard to preventive measures, it is considered that they were broadly harmonized with the Law. With respect to supervision, however, further harmonization is required.

32. Anonymous accounts are prohibited. There are no financial secrecy laws in place which would inhibit the implementation of the FATF recommendations. A comprehensive set of CDD and enhanced CDD measures is included in the legislation, placing non-face to face relationships under intensified monitoring of clients. The permitted use of simplified CDD mesures is compliant with the standards. Measures in place related to politically exposed persons (PEPs) appear to be broadly in line with the requirements of the FATF standards and apply to both foreign and domestic PEPs. While the new AML/CFT Law adopted in 2014 seems to eliminate the deficiencies identified in 3rd round, the 4th round evaluators are of the opinion that the AML/CFT Law could stipulate more clearly that the obligation to keep records applies regardless of whether the account or business relationship is on-going or has been terminated. Also, the obligation to keep records of business correspondence still has not been introduced in the legislation. From discussions on-site it appeared that, despite the lack of an explicit legal obligation, this is done in practice.

33. FIs are largely aware of their AML/CFT obligations. An uneven understanding was however encountered as to whether the new AML/CFT Law should be applied or whether new by-laws were

[7] Rulebook on the implementation of the AML/CFT Law and Guidance on the manner of reporting were adopted by the Council of Ministers on 23 April 2015.

supposed to be issued first. This impacted seriously on the application of the legislation in practice. Doubts remain about the extent of their understanding of the application of the risk-based approach to CDD measures and the guidance provided by the authorities merely mirrors the provisions of the AML/CFT Law in this respect. Whilst basic requirements to identify and verify the identity of beneficial owners are in place, the private sector confirmed that further instructions in this respect would be needed. Insufficient guidance has also been provided to the private sector with regard to identifying PEPs. Overall, financial institutions interviewed during the 4th round on-site visit demonstrated sufficient awareness of the record keeping requirements and confirmed that records are kept in practice as required by the AML/CFT Law. Records are available to competent authorities in a timely manner. This was confirmed by both the authorities and the private sector.

34. A basic framework has been introduced to govern the operation of correspondent relationships. The requirements are however limited to correspondent relationships with banks or other credit institutions. In addition, there is no positive obligation for the credit institutions to assess the respondent institution‘s AML/CFT controls, and to ascertain that they are adequate and effective. The authorities did not adopt a list of countries which apply internationally recognised standards in terms of preventing and detecting ML and TF activities and further guidance in this matter will be needed for the reporting entities. The deficiencies identified during the 3rd round with respect to misuse of new technology for ML/TF purposes were addressed in the new AML/CFT Law. The 3rd round evaluators also concluded that almost no measures were in place to mitigate the risk posed by reliance on third party introducers, as well as in relation to measures connected with wire transfers; a comprehensive framework has been introduced in this respect. In addition, it was confirmed during the 4th round on-site visit that reliance on third parties is not a common practice in BiH. The requirements related to the internal preventative procedures to be implemented by obliged entities do not cover all the requirements of the FATF Standards.

35. The reporting obligation as set in the AML/CFT Law is broadly compliant with the FATF standards. The by-laws, being a primary source for obligors to effectively implement the provisions from the law, however link the reporting obligation to transactions, rather than funds.

36. The evaluators maintain the concerns from the previous round of evaluations on the overall level of effectiveness of the reporting obligation. The level of reporting by all sectors is still rather low, in particular in the non-banking sectors. In addition, it appears that most STRs are not decisive in triggering an in-depth analysis or dissemination, which could reflect the low quality of the reports. Effectiveness of the reporting regime is also undermined by the lack of feedback provided by the FIU to reporting entities. This has been confirmed by the fact that, despite that the reporting entities met on-site were well aware of their reporting obligation; they did not have a full understanding of the specific sector and national ML/TF risks. There was a complete lack of filed TF related STRs, as the lists of indicators provided to the private sector by the authorities do not contain indicators in relation to terrorist financing. The evaluation team also had concerns regarding over-reliance on CTR reporting and reporting almost exclusively on the basis of the set list of indicators. Pursuant to the issued bylaws, all unusual and complex transactions are to be considered as suspicious, therefore potentially lifting the obligation to further examine the transaction or client.

37. The basic framework for AML/CFT supervision is in the AML/CFT Law. Changes have been introduced, addressing a number of shortcomings identified at the time of the 3rd round evaluation. The legislative framework for AML/CFT supervision has been aligned further with the FATF Standards. Notwithstanding, the by-laws issued prior to the adoption of the AML/CFT Law have not yet been fully harmonised with the Law, which may negatively impact on supervision in practice. The AML/CFT Law is complemented by the sectoral legislation, on the basis of which supervisory authorities are granted specific powers for supervision, including powers with regard to sanctioning. Despite the broad compliance of the legislative framework with international standards and the wide powers that the authorities are given, in some sectors (such as the insurance sector and the securities sector in FBiH), concerns remain about the clarity of the attribution of supervisory powers in the AML/CFT context. In

addition, during the on-site visit, it appeared that in practice the authorities did not have a clear understanding of whether they have the competence to undertake the powers given to them by the AML/CFT Law, as well as whether they can use the powers given to them by the sectoral legislation for the purposes of AML/CFT supervision. This in practice seriously hinders the undertaking of AML/CFT supervision throughout the financial sector.

38. The banking sector continues to be supervised by the respective Banking Agencies of the FBiH and RS, the insurance sector by the Insurance Agencies of the FBiH and RS[8], and the securities market by the Security Commissions of the FBiH, RS and BD. The new AML/CFT Law also gives supervisory responsibilities to the respective FBiH and RS Ministries of Finance and the BD Finance Directorate in relation to money and value transfer service providers. Legal uncertainty remains about the supervisory functions in relation to the brokerage activities of the banks. The Banking Agencies of FBiH and RS established dedicated AML/CFT supervision units and issued specific AML/CFT supervision manuals with regard to the sectors they supervise. They apply a risk-based approach, combining off-site supervision with on-site inspections, complemented by ad-hoc inspections initiated upon a request from other state authorities. Other supervisors have not established a dedicated approach to AML/CFT supervision and this is usually undertaken solely within the scope of prudential supervision activities. Lack of specialised experts and the undertaking of supervision based on prudential risks negatively impacts on its effectiveness in practice. Although, legal and natural persons performing transfer of money or values and companies engaged in electronic funds transfer are now subject to the AML/CFT Law, it has been confirmed that the Post Office and other entities (except for banks) performing transfer of money or values are still not licensed and supervised for AML/CFT compliance.

39. Since the 3rd round of evaluations, the Bosnian authorities have made some significant steps to address the identified shortcomings and to amend the legislation with regard to market entry, in particular to prevent criminals from holding management functions. Some deficiencies however remain; amongst others the measures preventing criminals from controlling FIs do not cover criminal associates, as well as the requirements in place with regard to money and value transfer service providers are not fully comprehensive.

40. The evaluators are of the opinion that the amounts of the applicable fines are dissuasive and they might be applied in a proportionate manner. However, in practice only the minimum level of fines was imposed. Even though some improvements have taken place since the previous assessment, the AML/CFT Law still does not provide sanctions for breaches of all the obligations set by the AML/CFT framework. Sanctions for managers and directors are only available to banks.

5. Preventive Measures – DNFBPs

41. With the adoption of the new AML/CFT Law, the requirement to apply preventive measures has been extended to all categories of designated non-financial businesses and professions (DNFBP) defined by the FATF standard, as well as a number of other businesses and professions. The legislative framework, including the reporting obligation, is identical to that applied to the FIs. The level of awareness and understanding of AML/CFT obligations and their application in practice varies among the different sectors. Overall, DNFBPs informed the evaluation team that they were awaiting sectoral guidance to be adopted in order to start implementing the AML/CFT Law and appeared unaware of the possible ML/TF risks in their respective sectors. The number of STRs filed by the DNFBP sectors is low. Deficiencies remain with regard to preventing criminals and their associates from controlling casinos.

[8] There are no specific legal provisions concerning the banking and insurance sectors in BD and evaluation team was informed during the on-site visit that there are no banks or insurance companies licensed in this entity. The branches operating on its territory are subject to supervision from the respective Banking Agency from RS or the FBiH, depending on the geographical location of the licensed headquarter.

42. The supervisory framework mirrors the one for FIs. The basic provisions, including the sanctioning regime, are in the AML/CFT Law and the specific powers are attributed to supervisors by the respective sectoral legislation. Pursuant to the AML/CFT Law, the designated supervisors of DNFBPs are the competent ministries of Justice, of Finance, the Bar Chambers of the FBiH and RS and the FID. It is to be noted that the sectoral legislation in relation to the DNFBP sectors does not clearly attribute powers for the purpose of undertaking supervision in respect of AML/CFT compliance. At the time of the on-site visit, no supervisory action was taken in practice and no sanctions were imposed on the DNFBP sector. In addition, some supervisory authorities were yet to be appointed and the others were relatively new to the role. In this context, there are additional serious effectiveness concerns in particular due to the complete lack of specific AML/CFT expertise of the supervisors.

6. Legal Persons and Non-Profit Organisations

43. As at the time of the 3rd round on-site visit, registration of legal persons remained regulated by the Laws on Registration of Business Entities of FBiH, RS and BD. In December 2013, a new Law on Registration of Business Entities entered into force in RS. Legal entities established under the legislation of BiH (or one of the Entities) are not allowed to issue bearer shares. It is to be noted in this respect, that foreign legal persons that allow bearer shares may become shareholders in domestically registered legal persons. All legal entities established on the territory of BiH must register at a competent court. The information included in the Registers is publicly available. Nevertheless, while in the FBiH a comprehensive on-line register has been established, in RS each court can only access its own database.[9] There is only one court in BD. The register it maintains is however not yet electronic and available online. From the information provided during the on-site visit, whilst the Registers verify the documents filed for the purposes of the registration, no further controls are undertaken. It therefore appears that the information included in the Registers may not be accurate and fully up-to-date. Furthermore, the complexity of the framework leads to concerns about the availability of all necessary information on ownership issues in a timely manner to state authorities.

44. Whilst the new AML/CFT Law introduced a clear definition of beneficial owner, this is applicable only for the purposes of application of CDD measures, but it is not required that the registers of legal persons contain such information. The only mechanism in BiH which requires information on beneficial ownership of legal persons to be obtained, verified, kept up-to-date and stored for a period of time is therefore found within the CDD requirements set out under the AML/CFT Law. There is no obligation requiring every legal person registered in BiH to establish a business relationship or conduct an occasional transaction with a financial institution or a DNFBP operating in BiH. Additionally, the obliged entities met on-site predominantly use as their source of information the registers held by the courts. Therefore, concerns about the accesibility of beneficial ownership information formulated at the time of the 3rd round assessment remain in place.

45. With regard to shareholding companies which are publicly-traded on an organised market of securities, information on their ownership is held by the Registries of Securities. There are two Registries of Securities in BiH, established under the supervision of the Securities Commissions of FBiH and RS.[10]

[9] Steps have been taken in order to address this issue and the Agency for Intermediary, IT and Financial Services (APIF) should maintain a global electronic register of legal persons registered in RS, the consolidation of up-to-date information is however not yet finalised. The APIF currently serves as the intermediary for purposes of obtaining information, as upon a request, it would gather the relevant information from the individual registries and provide it to the requesting person.

[10] Shareholding companies established in BD are registered in the Registry of Securities of FBiH or RS, depending on whether its shares are to be traded on the Stock Exchange in Sarajevo or Banja Luka.

Both Registries of Securities maintain an on-line database, which contain the names of the ten shareholders with the highest shares in each shareholding company.[11]

46. According to the information provided on-site, more than 21,000 NPOs were registered on the territory of BiH at the time of the on-site visit. The Security Intelligence Agency (SIA) informed the evaluators that the NPO sector was vulnerable to TF abuse, no review had been undertaken in respect of the NPO sector in general, which led to a lack of an understanding of the size, characteristics and activities of the sector. This was raised as a problem at the time of the previous assessment and no developments were made since. The lack of a comprehensive overview and assessment of the valnerabilities of NPO sector appears to be caused by the distribution of competencies with regard to NPOs between various state authorities. The relevant authorities are not familiarised with AML/CFT vulnerabilities and threats connected to NPOs and do not focus on the TF issue when undertaking supervision of NPOs. There is no mechanism in place to facilitate information exchange and cooperation in respect of NPOs between national authorities. Consequently, none of these authorities is in the position or has the responsibility to come to any conclusions about the characteristics, risks and vulnerabilities of the sector from a strategic point of view.

47. The evaluators were not informed about any outreach activity to NPOs to raise awareness on TF risks, and with a view of protecting NPOs from TF abuse.

7. National and International Co-operation

48. As indicated in the previous report, the fragmented political structure of BiH and its complex legal and institutional frameworks mean that effective domestic cooperation and coordination at the policy, strategic and operational level pose considerable challenges. Mechanisms for cooperation and coordination are required not only between policy makers and various competent authorities within each of the four jurisdictions, but also between them and their counterparts in the other three jurisdictions. In some respects the mechanisms in place for cooperation and coordination are the same as at the time of the last evaluation, but certain changes have been introduced.

49. At a policy and strategic level, the main mechanism for ensuring cooperation and coordination amongst the different authorities involved in the prevention of ML and TF across BiH as a whole remains the Working Group of Institutions of BiH for the Prevention of ML and TF. In addition, a number of strategic documents were adopted since the previous assessment. At the time of the on-site visit, it was not demonstrated to what extent strategic analysis or planning takes place with a view to identifying current methods, trends, threats and vulnerabilities in order to accordingly formulate future policies and priorities. The complexities of BiH's internal structure appear to cause fewer difficulties in cooperation and coordination at an operational level. There are gateways in place to share information which appear to be used effectively. The legislative framework and concluded memorandums of understanding (MoUs) set a solid basis in this respect and it was confirmed during the on-site visit that no difficulties have been encountered by the authorities in practice.

50. It is to be noted, that despite the generally positive picture with regard to cooperation amongst law enforcement authorities, it was mentioned on a number of occasions that it was not uncommon for parallel investigations on the same case to be initiated inadvertently by different agencies, since there is no central database for the creation of a single case file, which would alert every authority of any current or past investigation on the same target. The absence of a central database also complicates the information-gathering process, since information, while generally available, is spread across a large number of authorities. This was mentioned in particular with regard to the number of different registries (on property, legal persons, etc.).

[11] It is to be noted that when the securities in question are held on a custodian account, it would be noted as such in this public registry, without stating the name of the actual owner of the security.

51. The authority responsible for processing incoming and outgoing requests is the Ministry of Justice of BiH and the legal framework remains largely unchanged since the 3rd round evaluation, this being the Law on Mutual Assistance in Criminal Matters (MLA Law) together with respective parts of Criminal Procedure Codes (CPCs) of the Entities and BD. The legislation is largely harmonised and maintains subsidiarity of application to international agreements concluded. The legal provisions on entity and BD level are subsidiary to the Law on MLA. Since the 3rd round assessment, BiH concluded additional bilateral agreements on the provision of MLA. The range of MLA that the authorities may provide in criminal matters is broad and covers all the requirements of the international standards, in addition, the authorities were vested with additional powers by the amendments to the MLA Law adopted in 2013. Provision of MLA is not subject to any unreasonable, disproportionate or unduly restrictive conditions and it cannot be denied due to possible involvement of fiscal matters and there are no secrecy or confidentiality laws which would negatively impact in this respect.

52. The evaluation team at the time of the 3rd round assessment concluded that timeliness of the provision of MLA may be negatively affected by the complexity of the institutional framework in place for the execution of MLA requests. Despite the fact that the authorities were confident about the applicable processes and that there was no confusion in this respect, no legal mechanisms are in place to ensure the timeliness of provision of assistance. Feedback provided by other countries pointed to a general satisfaction with the manner and timeliness of provision of MLA by the authorities of BiH.

53. The competencies of the relevant authorities with regard to international cooperation are based on the respective laws regulating their operation. The FID is empowered to exchange information with its counterparts on the basis of the AML/CFT Law, which does not require any further agreements or mechanisms to be put in place for provision of assistance and exchange of information. In addition, the FID may use a large variety of its powers on foreign request. In practice, the FID regularly exchanges information with foreign FIUs, mainly through the Egmont Secure Website. Representatives of the police reported that they exchange information with their counterparts through the Interpol channel. Supevisors are generally empowered to exchange information. In order to apply these powers in practice, a concrete agreement is required to be concluded with the respective counterpart. A number of MoUs were signed in this respect by the various supervisors, the majority with their counterparts in the region.

54. In practice, the authorities met on-site demonstrated high commitment and dedication to international cooperation and informed the evaluation team about the quality of such cooperation. This has been confirmed by the information provided by other jurisdictions, which assessed the provision of assistance by the FID and LEAs as timely and of very high quality. Effectiveness of international cooperation of supervisory authorities has, however, not been demonstrated. The evaluation team was not provided with any statistics in this respect, nor was any information provided during the on-site about actual cases.

8. Resources and statistics

55. It is considered that the FID budget and staffing are sufficient. In addition, the FID, as well as representatives of the State Investigation and Protection Agency (SIPA), participate in a large number of trainings on specific criminal-intelligence activities, analytical activities (application of analytical methods and software), countering financial crime, organised crime and terrorism, as well as on carrying out financial investigations.

56. The representatives of prosecutors' offices and the judiciary reported that problems in the effectiveness of prosecution of ML/TF are caused by a lack of resources at all levels, in particular with regard to insufficient staffing and lack of adequate training. It was confirmed that the lack of resources is more significant in FBiH and BD, with the situation being slightly better at the state level and in RS. Some efforts have been, however, undertaken in order to increase the range of assistance provided to foreign countries: for example the Court of Sarajevo was equipped with video conferencing facilities and the installation of similar facilities is foreseen for other courts as well. The representatives of the Ministry

of Justice of BiH also reported that the department responsible for the receipt and sending of MLA requests needs reinforcing of its human resources. The representatives of the Ministry of Justice participated at a number of trainings with regard to provision of MLA.

57. As concerns supervisory authorities, only the banking agencies have specialised units on AML/CFT supervision and their staff have participated in relevant trainings. As regards the other supervisors of FIs, supervision is focused predominantly on prudential issues. Concerns remain with regard to the level of AML/CFT expertise as of their staff. The AML/CFT supervision of DNFBPs was recently established. It was not possible to assess the adequacy of their resources.

58. Insufficient information was provided with regard to the actual composition of the Working Group of Institutions of BiH for the Prevention of ML and TF. However, it appears that it is comprised of representatives of the relevant institutions, which take part in this forum only as a marginal activity within their overall professional duties. The fact that there is no permanent body responsible for policy making activities could be the cause of the lack of capacity to undertake broader assessments of the situation and identify key areas on which future activities should be focused (including analysis of the statistics and other data maintained by the different stakeholders).

59. The position with regard to maintaining statistics suggests improvements since the last evaluation, when there were concerns as to whether or not any meaningful statistics were collected other than for the purposes of the evaluation itself. However, the improved process for gathering statistics does not appear to have led to any systematic review of the effectiveness of systems in this area, as the different authorities indicated that there was no established practice of analysing the statistics to assess how well the legal framework is being implemented. In addition, the evaluators have some doubts as to the reliability of the statistics that are maintained.

III. MUTUAL EVALUATION REPORT

1 GENERAL

1.1 General Information on Bosnia and Herzegovina

1. Bosnia and Herzegovina is situated on the Balkan Peninsula in South-eastern Europe with an area of 51,197 square kilometres. It is bordered by Croatia to the north, west and south, Montenegro to the south and Serbia to the east. Bosnia and Herzegovina is almost landlocked with the exception of 26 kilometres of Adriatic Sea coastline, centred on the town of Neum. The capital city of BiH is Sarajevo.

2. Following the breakup of the Socialist Federal Republic of Yugoslavia, the Dayton Peace Agreement, signed in December 1995, established Bosnia and Herzegovina as a State comprising two entities: the Federation of Bosnia and Herzegovina (FBiH), which is principally populated with Bosniaks and Croats, and the Republic of Srpska (RS) which is primarily Serb. As the status of the territory of Brčko remained unresolved in the Dayton Agreement, an arbitration agreement was reached in 1999 which established Brčko as a special District under international supervision (the mandate of the Brčko International Supervisor has been suspended since 2012). In addition, the territory of FBiH is composed of 10 administrative territories - cantons.

3. As a result of the above mentioned territorial division, both entities and Brčko District (BD) have their own administration (including governments and parliaments), as well as institutional and legislative frameworks. Whilst certain issues are regulated solely at the entity/BD level or solely at the state level, in other matters mandates are shared between the entity and the level of the state of BiH. This structure is replicated in the institutional framework, where some institutions exist at all levels with differing competencies (such as prosecution offices or Ministries of Justice), whilst others are established solely at one level (such as the financial intelligence unit (FIU) or the Ministry of Security).

4. In 2013, a population census was conducted. It was the first census since 1991, and also the first census since the Bosnian war. The full official results have not yet been released. Nevertheless, the authorities published a number of preliminary conclusions in November 2013 (the final results are expected to be published in July 2016). According to the preliminary conclusions, the total number of inhabitants in Bosnia and Herzegovina is 3,791,622, of which 62.55% live in FBiH, 35% in RS and 2.45% in the Brčko District. The Canton of Sarajevo comprises 438.443 inhabitants. Official results from the 2013 census on the percentages of inhabitants by ethnicity have not yet been published[12]. Official languages are Bosnian, Serbian and Croatian.

5. Bosnia and Herzegovina became a member of the United Nations in 1992 and a member of the Council of Europe in 2002. It also participates in regional co-operation through the Stability Pact, Central-European Initiative (CEI), Southeast Europe Co-operation Initiative (SECI) and the Southeast Europe Co-operation Process (SEECP). It is also a founding member of the Mediterranean Union since its establishment on 13 July 2008.

6. Bosnia and Herzegovina was identified as a potential candidate for EU membership during the Thessaloniki European Council summit in June 2003 and a number of agreements between the EU and Bosnia and Herzegovina have been concluded since then, amongst others a Visa Liberalisation Agreement, which entered into force in 2008 and the Stabilisation and Association Agreement (SAA), which was signed also in 2008 and entered into force on 1 June 2015. In addition, the EU is providing assistance to the authorities of BiH through the Instrument for Pre-Accession Assistance (IPA), under the auspices of which a number of projects have been undertaken also with relevance to

[12] The Central Intelligence Agency of the USA estimates that 48.4% of the population is Bosniak, 32.7% Serb, 14.6% Croat and the remainder have other ethnicities.

the AML/CFT framework (in particular concerning the strengthening of the judiciary and law enforcement).

Economy

7. According to the World Bank, the estimated GDP of BiH was $17.85 billion in 2013. The official currency is konvertibilna marka (convertible mark or BAM), which is pegged to the euro at a fixed exchange rate of EUR 1 = BAM 1.95.

Table 1: Key economic indicators in Bosnia and Herzegovina in the years 2009 to 2013[13]

		2009	2010	2011	2012	2013
1.	GDP in current prices, $ million	17,264	16,847	18,318	16,906	17,851
2.	GDP per capita, $	4,480.4	4,380.6	4,771.3	4,409.6	4,661.8
3.	Real GDP growth, %	-2.9	0.7	1.0	-1.2	2.5
4.	Inflation	0.2	1.6	2.6	1.1	-0.3
5.	Unemployment rate (modelled International Labour Organisation estimate), %	24.1	27.2	27.6	28.1	28.4

8. Bosnia and Herzegovina is a transitional economy, which experienced a strong economic growth prior to the global financial crisis. It started recovering from the crisis in 2013, but this economic progress was jeopardised by the serious floods in 2014. In particular the agricultural sector (which presents more than 6% of the GDP) was seriously affected. Despite the rather quick recovery from the impact of the natural disaster, the public debt rose to 45% of the GDP by the end of 2014[14].

9. As can be observed from the table above, the GDP is growing and inflation remains very low. Nevertheless, high unemployment remains a serious macroeconomic problem, affecting more than 28% of the population. Furthermore, it is considered that youth unemployment is at an even significantly higher level, with estimates up to 60%[15]. As a consequence, the country has developed a large scale shadow economy. In 2010, the state authorities estimated that one third of the persons registered as unemployed were undertaking undeclared labour activities, though the levels of shadow economy may be even higher.

10. In order to reinforce the private sector and enhance foreign investment, Bosnia and Herzegovina initiated after the Dayton Agreements a privatisation process in this respect of state-owned enterprises. This process is still on-going and currently it is managed by the FBiH Privatization Agency and cantonal privatization agencies in the Federation of Bosnia and Herzegovina, and the Republic of Srpska Investment-Development Bank. According to the 2014 EU Progress Report on BiH, despite the adoption of privatisation strategies in 2013 and 2014, the privatisation process continues to suffer setbacks. The EU report emphasised, however, that the share of private sector accounted in 2014 for 60% of the economy.

11. Overall, the development of the private sector remains very basic, with low levels of foreign investment. In the World Bank "Doing Business" Report of 2014, BiH ranked 104th out of 189

[13] World Bank

[14] http://www.imf.org/external/np/ms/2015/051215.htm

[15] http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-bosnia-and-herzegovina-progress-report_en.pdf

economies, with problems being encountered in particular with regard to starting a business, obtaining construction permits and paying taxes. Slow progress of the private sector may also be partially caused by the complexity of the structure of the country. The fragmented economic space could also potentially discourage foreign investors. The IMF[16] also mentioned that credit to the private sector remains low, which is a further factor that may negatively affect the development of small and medium enterprises.

12. Bosnia and Herzegovina became a full member of the Central European Free Trade Agreement in September 2007 and the Interim Agreement on Trade and Trade-Related Issues with the EU in 2008. Bosnia and Herzegovina's top economic priorities are: acceleration of integration into the EU; strengthening the fiscal system; public administration reform; World Trade Organization (WTO) membership; and securing economic growth by fostering a dynamic, competitive private sector.

System of Government

13. Bosnia and Herzegovina has several levels of political structuring under the state government level. BiH is divided into two entities, RS and FBiH. The Brčko District in the north of the country was created in 2000 out of land from both entities. It officially belongs to both, but is governed by neither, and functions under a decentralised system of local government. The third level of Bosnia and Herzegovina's political subdivision is in FBiH which is divided into ten cantons, all of which have their own cantonal government, which operate under the law of the FBiH. The fourth level of political division in Bosnia and Herzegovina is the municipalities. FBiH is divided into 74 municipalities and RS into 63. Municipalities also have their own local government, and are typically based around the most significant city or place in their territory.

14. As a result of the Dayton Accords, the civilian peace implementation is supervised by the High Representative for Bosnia and Herzegovina selected by the Peace Implementation Council. The High Representative has many governmental and legislative powers, including the dismissal of elected and non-elected officials.

15. The representation of the government of Bosnia and Herzegovina is by elites who represent the country's three major groups, with each having a guaranteed share of power. The Chair of the Presidency of Bosnia and Herzegovina rotates among three members (Bosniak, Serb, Croat), each elected as the Chair for an eight-month term within their four-year term as a member. The three members of the Presidency are elected directly by the people. The Chair of the Council of Ministers is nominated by the Presidency and approved by the House of Representatives. He or she is then responsible for appointing a Foreign Minister, Minister of Foreign Trade, and others as appropriate. The Parliamentary Assembly is the law-making body in Bosnia and Herzegovina. It consists of two houses: the House of Peoples and the House of Representatives. The House of Peoples includes 15 delegates, two-thirds of which come from the Federation (5 Croat and 5 Bosniaks) and one-third from the RS (5 Serbs). The House of Representatives is composed of 42 Members, two-thirds elected from the Federation and one-third elected from the RS.

Legal System and Hierarchy of Laws

16. The Court of Bosnia and Herzegovina performs its functions at the state level. It has jurisdiction over the entire territory of Bosnia and Herzegovina and has performed its functions since January 2003. The Court of Bosnia and Herzegovina has three divisions: criminal, administrative and appellate. The Criminal Division of the Court of Bosnia and Herzegovina has three sections: Section I for war crimes, Section II for organised crime, economic crime and corruption, and Section III for all other criminal offences under the jurisdiction of the Court. The Court has jurisdiction over criminal

[16] http://www.imf.org/external/np/ms/2015/051215.htm

offences defined in the Criminal Code of Bosnia and Herzegovina and other laws of Bosnia and Herzegovina.

17. The Constitution of Bosnia and Herzegovina has established a jurisdiction of Prosecutor's Offices at both state and entity level. The BiH Prosecutor's Office is established by the Law on the BiH Prosecutor's Office and it is a sui generis institution that is not hierarchically superior to the prosecutor's offices of the entities. It possesses a specific jurisdiction for the procedures before the Court of BiH against criminal offenses of war crimes, organised crime, economic crime and corruption and other criminal offenses established by the state-level laws from within the jurisdiction of the Court of BiH. The Federal Prosecutor's Office of FBiH is the "supreme" Prosecutor's Office for the area of FBiH, i.e. for the ten Cantonal Prosecutor's Offices from FBiH. The Republic Prosecutor's Office of the RS is a "supreme" Prosecutor's Office for the area of the RS, i.e. for the five District Prosecutor's Offices within the area of the RS. There are three levels of courts in the RS (Primary Court, District Court and Supreme Court).

18. There is also the Constitutional Court of the RS for issues in relation to the entity Constitution. In the RS a process is on-going for the establishment of the District Economy Courts. The five District Courts have both the first instance and the appellate jurisdiction. The Supreme Court of RS is obliged to provide equal application of laws by courts with lesser jurisdiction. In the RS, there are also 19 Primary Courts competent for the areas of municipalities.

19. The Prosecutor's Office of the RS is organised as a two-tier structure. District Prosecutor's Offices cover the area of the courts of the relevant districts, and the Office of the Republic Prosecutor covers the entire territory of the RS. The Prosecutor's Office of the RS is a "supreme" Prosecutor's Office for the area of the RS, i.e. for the five District Prosecutor's Offices from the area of the RS. FBiH consists of ten federal units (cantons), with different levels of responsibility of governments, determined by their Constitutions. Principally the judiciary is based on cantonal jurisdiction, while the third instance jurisdiction is on cantonal level. Obligations and organisation of the courts is determined by the ten cantonal Laws on Courts. In FBiH there are 28 Municipal Courts. In criminal matters, the ten Cantonal Courts have a first instance jurisdiction over criminal matters, for which a prison sentence of over 10 years is provided, except if the law does not provide the jurisdiction of some other court. The Cantonal Courts also have jurisdiction over appeals against decisions of Municipality Courts, as well as regular and extraordinary legal remedies, if so provided by the law. The Supreme Court of FBiH decides, inter alia, on appeals in relation to decisions of the Cantonal Courts that refer to constitutional and legal matters, except for those within the jurisdiction of the Supreme Court of FBiH.

20. The Constitutional Court of FBiH has jurisdiction to decide on disputes between cantons, between FBiH and cantons, between cities and cantons of FBiH to which a city belongs, or between institutions of FBiH. The Supreme Court also determines constitutionality of laws and provisions upon request, and decides on constitutional matters arising within the Courts of FBiH or the Cantonal Courts.

21. The system of Prosecutor's offices of Bosnia and Herzegovina Federation is a two-instance system and centralises the municipal level in the cantonal prosecutor's offices. The Federal Prosecutor's Office of FBiH is the "supreme" Prosecutor's Office for the area of FBiH, i.e. for the ten Cantonal Prosecutor's Offices from FBiH. The cantonal prosecutor's offices are in charge of the criminal prosecution of persons considered to be perpetrators of criminal offences and economic offences as well as other functions defined by the laws of FBiH and the cantons. Money laundering may fall within the jurisdiction of these offices.

22. The Republic of Srpska Prosecutor's Office has a two-stage system i.e. it is made of the Republic Prosecutor's Office and the District Prosecutor's Offices. The District Prosecutor's Offices are established for the area of district courts, whereby the Republic Prosecutor's Office is competent for

the whole territory of the RS. The District Prosecutor's Offices act in district and primary courts, whereas the Republic Prosecutor's Office acts in all courts of the Republic of Srpska, as well as in the Republic of Srpska Constitutional court, only when a matter of constitutionality emerges in one of the legal regulations that are being applied in a certain case. Money laundering is within the area of responsibility of the District Prosecutor's Offices.

23. In Brčko District the Judiciary is defined by the Law on Court of Brčko District and the Law on Prosecutor's office. The Primary Court is competent for first instance decisions on criminal, magistrate, economic, civil and other cases. The jurisdiction of the Appellate Court is to decide upon regular remedies against decisions of the Primary Court as well as special remedies against final decisions of the court. The Prosecutor's Office is in charge of criminal prosecution of perpetrators of criminal offences and directs the Brčko District Police in the course of investigations of criminal offences.

Transparency, good governance, ethics and measures against corruption

24. BiH ratified the UN Convention against Corruption in 2006, the UN Convention against Transnational Organised Crime in 2002 and the Council of Europe's Criminal Law Convention on Corruption and Civil Law Convention on Corruption in 2002. Since the 3rd round mutual evaluation, BiH has ratified the Council of Europe's Additional Protocol to the Criminal Law Convention on Corruption in 2011 and it entered into force in 2012. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions has not yet been signed by BiH.

25. In December 2009, the Anti-Corruption Agency was established by the adoption of the Law on the Anti-Corruption Agency. The management of the Agency was appointed in June 2011, whilst staffing was initiated only in 2013. The Agency is responsible for the creation and monitoring of the Strategy for the Fight against Corruption and the respective Action Plan, receiving notices from whistle-blowers, as well as it is responsible for international cooperation and cooperation with civil society of BiH in the field of corruption. It is to be stressed, however, that the Agency does not have operational powers and therefore does not investigate corruption offences, but should any information in this matter be obtained by the Agency, it would be forwarded to the competent law enforcement agency (LEA).

26. In addition, the Law on the Protection of Whistle-blowers was adopted in December 2013 and entered into force in 2014.

27. In May 2011, GRECO adopted two 3rd round evaluation reports with regard to BiH. The areas which were assessed were "Incriminations" and "Financing of Political Parties". A compliance report following both of the themes was adopted in October 2013 and an interim report in June 2014.

28. The 2011 report welcomed the efforts of BiH to align its criminal legislation with international standards, but noted that the lack of harmonisation between the provisions of the four existing CCs undermines the effectiveness of the system. A number of remaining technical deficiencies were also identified as regards the criminalisation of the various corruption offences. The key challenge according to GRECO is, however, the effective application of the provisions in practice, which was particularly evident from the low number of prosecutions and convictions for this type of offences. GRECO therefore concluded that the authorities should remedy the remaining technical deficiencies and focus on enhancing awareness and pro-active approach of competent authorities. The fragmented nature of the legislative and institutional framework was raised as one of the major concerns also with regard to the assessment of the framework governing the funding of political parties. Recommendations were also made in this respect with the aim of enhancing the transparency of the financial resources of political parties.

29. The compliance report in 2013 stated that with regard to the theme of Incriminations, out of the 13 recommendations formulated in the evaluation report, BiH implemented satisfactorily four,

implemented partly five, and four recommendations were not implemented. Nine recommendations were formulated concerning the theme of Transparency of Party Funding, out of which only one was partly implemented until the adoption of the progress report and the remaining recommendations were not implemented. GRECO therefore expressed its disappointment about the low level of compliance with the formulated recommendations given the time elapsed since the adoption of the evaluation report and requested BiH to report back in an expedited manner.

30. BiH presented to GRECO an interim compliance report in June 2014. Two of the recommendations, which were considered by the first compliance report as not implemented, have now been partly implemented and one as satisfactorily implemented. With regard to the remaining recommendations, it was concluded that no developments were made and emphasis was given to concerns with regard to the lack of political commitment to address in particular the system in place with regard to the transparency of political parties. Overall, GRECO maintained that the level of compliance with the recommendations remained "globally unsatisfactory" and according to the Rules of Procedure sent a letter to the Head of Delegation of BiH drawing his attention to the non-compliance and urging the need for action.

31. Overall, according to the UNODC Report ("Business, corruption and crime in Bosnia and Herzegovina: The impact of bribery and other crime on private enterprise 2013") corruption in BiH penetrates many spheres of the economy and society (both public and private sector) and is reported to have strong connections to organized crime in the country. Nevertheless, the efforts made by BiH in the past years led to it being ranked by Transparency International 80th (out of 175 states) in 2014 on the Corruption Perception Index, compared to its 92nd position (out of 180 states) position at the time of the last evaluation.

1.2 General Situation of Money Laundering and Financing of Terrorism

32. Bosnia and Herzegovina is particularly attractive for criminals due to its strategic geographical position and the Visa Liberalisation Agreement with the EU, which enables easy transit from eastern countries and the Balkan region to countries of Western Europe.[17] This is of particular relevance with regard to organised crime, where BiH serves as a transit country for trafficking in human beings, drug trafficking and arms trafficking.

33. The Organised Crime Threat Assessment of Europol of 2011 identified BiH, together with Serbia, as the main source countries for weapons and ammunition provided to organised criminal groups operating in the EU. This problem is mainly caused by the general occurrence of illicit weapons in households, where an estimated 750,000 illicit arms are still in circulation, many of which are remnants of the conflict in the 1990s[18]. A new Strategy on Control of Small Arms and Light Weapons, covering the period from 2013 to 2016, was adopted by the Bosnia and Herzegovina Council of Ministers.

34. According to the European Monitoring Centre for Drugs and Drug Addition (EMCDDA)[19], drug trafficking is still the most common form of illegal activity among criminal groups in BiH. The country remains mainly a transit country for drugs transported for sale to Western European countries. Cannabis and heroin are amongst the most common drugs passing through BiH, cannabis originating mainly in Albania and heroin coming to the country through Turkey from Afghanistan (both destined for further transfer to the destination countries in Western Europe). The US Department of State Country report also mentions amongst the vulnerabilities of BiH in this area the

[17] http://www.msb.gov.ba/dokumenti/DSAR.SEE.published.pdf;
http://www.state.gov/j/inl/rls/nrcrpt/2013/vol1/204048.htm
[18] http://www.ba.undp.org/content/bosnia_and_herzegovina/en/home.html
[19] http://www.emcdda.europa.eu/publications/country-overviews/ba

fact that it borders Croatia and Montenegro, through which a share of narcotics originating in South America are thought to enter Europe.

35. As concerns trafficking in human beings, Bosnia and Herzegovina is a source, destination, and transit country for men, women, and children, which are subject to forced labour and sexual abuse. As highlighted in the 2013 GRETA report, over the last few years a number of positive measures have been taken by the BiH authorities to combat trafficking in human beings (THB), including the appointment of a national coordinator and the adoption of action plans to prevent THB. In 2013, after the adoption of GRETA's report, a new Strategy to Counter THB in BiH for the period 2013-2015 and a corresponding Action Plan were adopted by the Ministry of Security.

Money laundering

36. The evaluation team in the 3rd round report concluded that the general perception of money laundering did not appear to go beyond the laundering of proceeds of tax evasion. Currently, the situation has been significantly improved at the State and RS level and the authorities presented a number of cases involving organised crime, trafficking in human beings and drug trafficking, as well as abuse of office and loan sharking. Given the overall assessment of criminality in the country, it seems that the prosecution of the money laundering offence is being brought more into line with the real risks in the country with regards to proceeds-generating crime, with tax evasion remaining the predicate offence only in about one third of the money laundering cases brought to court. On the other hand, the cases presented by the FBiH remain solely related to tax evasion predicate offences and there have been no money laundering prosecutions at all in BD within the last four years.

37. With regard to money laundering risks, the situation remains unchanged with regard to previous years. As noted above, BiH is attractive for criminals due to its strategic geographical position, which is relevant not only in the context of predicate criminality, but also for the purposes of concealing and moving funds of illicit origin. The cross-border nature of criminality in BiH is also partially enhanced by the tight historical nexus with the countries in the region. The evaluation team welcomed the fact that the authorities encountered during the on-site visit were fully aware of this situation and of the importance of international cooperation in criminal cases. In addition, this positive approach was substantiated by a number of identified cases which involved joint investigations, as well as prosecution of money laundering involving foreign predicate offences.

38. The money laundering methods identified in the criminal cases of money laundering brought to court generally included the use of real estate property or abuse of legal persons. Overall, the financial market in BiH offers only very basic financial services and products and does not therefore enable the use of sophisticated techniques to cover illicit assets. In this regard, a further factor increasing BiH's vulnerability to ML is the high use of cash for purchases.

39. As is generally known, BiH was placed under MONEYVAL's Compliance Enhancing Procedures in 2010 and has been subject of public statement under Step 3 of the Compliance Enhancing Procedures since June 2014 because of delays in implementing relevant preventive and criminal legislation to address serious and long-standing deficiencies.

Terrorism and Financing of Terrorism

40. Since the time of the 3rd round assessment, two terrorist attacks took place on the territory of BiH. In June 2010, an explosion of the Bugojno police station killed one police officer and injured 6 others. In October 2011, a shooting took place at the US Embassy in Sarajevo. Convictions for terrorism were achieved for both acts, as well as in two other instances, where the terrorist acts were at the stage of preparation. No basis was found for pressing charges for TF in any of these cases.

41. According to the US Department of State, following the current developments in the Middle East with regard to the establishment of the so-called Islamic State, a significant number of Bosnian

Muslims joined the fighters in Syria in the past years. This information was confirmed by the authorities of BiH during the on-site visit. No official statistics on the values are available regarding number of persons who have departed in this way were presented to the evaluation team. The authorities of BiH have, however, reacted promptly to these developments and, in June 2014, amendments to the Criminal Code were adopted introducing a criminal offence of joining foreign paramilitary forces. The evaluation team was informed during the on-site visit that there are on-going investigations in this respect.

42. In addition, the authorities pointed to the potential abuse of the NPO sector, which was demonstrated prior to the 3rd round on-site visit. No investigations were initiated in this respect in the period under review. It is, however, to be stressed that the size of the NPO sector on the territory of BiH is significant (according to the information provided on-site, more than 21,000 NPOs had been registered on the territory of BiH at the time of the on-site visit) and given the technical assistance provided to BiH after the Dayton Agreement, it is considered that a large portion of the activities of this sector are financed by foreign donors. With regard to the concrete size of the sector, its financial significance and foreign share of its activities, there is no specific information available due to the complexity of the registration framework and lack of supervision by the state authorities. It is therefore considered that this sector remains a significant vulnerability to TF in the country, this being in particular enhanced by the lack of understanding by the authorities of related risks. For further information in this respect, the reader is referred to the analysis under SR.VIII.

43. Overall, the authorities were of a joint view that should TF be taking place on the territory of BiH, it would be mainly small scale TF. In practice, this would, for example, include financing of the journey to Syria and would be therefore of a value of few hundred EUR. In this context the authorities also pointed to the risk potentially presented by the Bosnian diaspora, which regularly sends money to BiH. These remittances would usually be undertaken through MVTSPs and are a common practice, and as they are usually not of a significant value, they could therefore enter the system unperceived. It was confirmed during the on-site visit that there is a lack of clear understanding of the activities and characteristics of the diaspora by the authorities of BiH. In conclusion, the BiH authorities reiterated in this respect the difficulty of identification of small-scale TF activities. In conclusion, it is clear that sufficient priority is not given to the identification, prevention and pursuit of such TF activities, as it appears that a *de minimis* approach has been taken. The evaluation team therefore stresses in this respect the need to attribute enhanced importance to this matter by the authorities.

1.3 Overview of the Financial Sector and Designated Non-Financial Businesses and Professions (DNFBP)[20]

Financial Sector

44. The financial market in Bosnia and Herzegovina is composed of credit institutions, leasing companies, microfinance institutions, as well as the capital market (brokerage companies, investment funds, investment fund management companies), the insurance sector, currency exchange bureaus and one company providing money transfer services. The predominant share of the financial sector in the country is represented by the banking sector.

[20] It is to be noted that the statistics provided in this section may slightly differ from the values contained in the FATF Targeted Review. This is due to the use of different sources of information, which are referenced below in the form of a footnote.

Table 2: The total number of the financial institutions registered in the RS and the FBiH

Number at end of year	2009	2010	2011	2012	2013	2014
Republic of Srpska						
Banks	10	10	10	10	10	10
Securities	48	50	49	49	45	45
Insurance	11	11	11	11	12	12
MSBs and exchange offices	N/A	N/A	N/A	N/A	N/A	N/A
MCOs	N/A	N/A	N/A	N/A	6	6
Leasing	N/A	N/A	N/A	N/A	2	1
The FBiH						
Banks	20	19	19	18	17	17
Securities	49	43	42	48	48	48
Insurance	10	9	9	9	8	8
MSBs and exchange offices	N/A	N/A	N/A	N/A	N/A	N/A
MCOs	18	18	16	14	13	12
Leasing	N/A	8	7	7	6	6

Banking sector

45. The banking sector continues to dominate the financial system. In 2013, it accounted for 84.6% of all financial system assets and some 84% of GDP.[21]

46. There were 27 banks operating in Bosnia and Herzegovina at the end of 2014 with 17 having their seat in the FBiH and 10 in Republic of Srpska. No banks have their head office in the District of Brčko, but there are a number of branches operating in the District. Banks operate under the Law on Banks of the respective Entity in which they are registered. Banks do not need separate licences to operate in the FBiH, the RS or Brčko District, but they have to inform the respective Banking Agencies.

47. In 2014, 12 banks had a license for the undertaking of custodial and depository services in FBiH and 10 in RS.

48. As seen from the table below, 17 of the 27 banks registered in Bosnia and Herzegovina are primarily foreign owned. This is mainly due to the fact that a predominant number of banks operating in BiH belong to international holding groups, with several of these groups focusing specifically on South-Eastern Europe. The seat of the holding companies of banks registered in FBiH is predominantly in Austria, Croatia and Germany, whilst for the banks registered in RS it is Austria and the Netherlands.

Table 3: Ownership structure of commercial banks in FBiH and RS

Ownership structure of commercial banks in FBiH						
	2009	**2010**	**2011**	**2012**	**2013**	**2014**
Foreign ownership more than 50%	12	11	11	11	10	10
Foreign ownership less than 50%	6	7	7	6	6	6
Resident Shareholders 100%	2	1	1	1	1	1
Foreign Branches	-	-	-	-	-	-

[21] http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-bosnia-and-herzegovina-progress-report_en.pdf

Total number of banks	20	19	19	18	17	17
Ownership structure of commercial banks in RS						
	2009	**2010**	**2011**	**2012**	**2013**	**2014**
Foreign ownership more than 50%	9	8	8	8	7	7
Foreign ownership less than 50%	1	1	1	1	1	1
Resident Shareholders 100%	-	1	1	1	2	2
Foreign Branches						
Total number of banks	10	10	10	10	10	10

49. As at the time of the 3rd round mutual evaluation, there are separate legal entities in BiH performing money exchange operations. Nevertheless, all persons providing these services are obliged to do so based on a contract with a bank.

Securities sector

50. There are currently two Stock Exchanges and two Central Registries of Securities in Bosnia and Herzegovina – in Sarajevo and Banja Luka. Entities registered in BD would therefore also undertake their activities in one of the two Entities.

51. In 2014, there were 34 investment funds registered in BiH, 18 in FBiH and 16 in RS. According to the Annual Report of the Central Bank of BiH, investment funds represented in 2014 3.1% of the share of the financial sector in the country. In addition, in RS, there were 9 registered brokerage companies and 16 investment funds management companies, whilst 12 fund management companies and 13 brokerage firms were registered in FBiH.

52. The functioning of the securities market in BiH and the operation of its participants is regulated by the Law on the Securities Market, Law on the Securities Commission and Law on the Securities Registry in the FBiH. In RS, the relevant legislation is the Investment Funds Act and the new Law on the Securities Market, adopted in 2013. The Law on Securities of the BD regulates the activities of the participants on the securities market in the BD, this law was last amended in 2012.

53. There are three Securities Commissions established in BiH, in both Entities and in Brčko District. They are responsible for the prudential, as well as AML/CFT supervision of the participants on the capital market.

Insurance sector

54. There were 20 insurance companies registered on the territory of BiH in 2014, 12 in FBiH and 12 in RS. Eleven insurance companies were providing life insurance services, three insurance companies in RS and eight in FBiH. It is to be pointed out that the life insurance market is highly concentrated, with the three largest companies accounting for around 80% of the market share.

55. Overall, the importance of life insurance within the financial market remains rather low. Nevertheless, in the past years it has presented a significant rise within the insurance sector in general. This has been demonstrated by statistical data which show that in 2014, life insurance premiums amounted to 18.93% of all insurance premiums, as compared to 14.55% in 2009.

56. As at the time of the 3rd round evaluation, the undertaking of insurance activities is governed by the Laws on Insurance Companies of the respective Entities, with the Law on Insurance Companies of RS having been last updated in 2012. The Law on Insurance Companies of FBiH has not been changed in the period under evaluation. Insurance companies are supervised by the Insurance Agency of the respective Entity. The Insurance Agency of BiH is responsible for coordination of activities of

the agencies of the entities, drafting of legislation and general oversight with regard to the insurance sector in the territory of BiH. It does not have any direct supervisory powers over the individual insurance companies.

Micro-credit organisations and financial leasing companies

57. In 2014, there were 12 micro-credit organisations (11 micro-credit foundations and one micro-credit company) and 6 financial leasing companies registered in the Federation of BiH. In the Republic of Srpska there are 6 micro-credit organisations (three micro-credit foundations and three micro-credit companies), and 1 financial leasing company.

58. The authorities informed the evaluation team during the on-site visit that the size of the micro-credit and leasing sector on the financial market is insignificant. This is mainly due to the small value of the individual business relationships. With regard to micro-credit, this value is explicitly limited by the Laws on Micro-Credit Organisations of the entities, which both in Articles 4 restrict the provision of micro-credit to BAM 50,000 by a microcredit company or BAM 10,000 by a microcredit foundation. According to the Annual Report of the Central Bank of BiH, micro-credit sector accounted for 2.5% and the leasing sector for 2.1% of the financial market in BiH in 2014.

59. The legislation governing the functioning of the sector has not changed since the time of the 3rd round assessment, this being the Laws on Micro-Credit Companies and Laws on Leasing of both Entities. The Law on Micro-Credit Companies and Law on Leasing of RS were amended in November 2011. Prudential supervision, as well as supervision of compliance with AML/CFT obligations of micro-credit organisations and leasing companies is carried out by the Banking Agencies of the respective entity.

Designated Non-Financial Businesses and Professions (DNFBP)

60. According to Article 4 of the AML/CFT Law, a number of entities, apart from the participants on the financial market, are subject to the AML/CFT obligations. The entities covered by the AML/CFT obligations are the following: casinos, gambling houses and other organisers of games of chance and special lottery games, pawnshops, persons engaged in professional services (public notaries, lawyers, accountants, auditors, persons providing accounting and tax counselling services), real estate agents, persons trading in precious stones and metals, persons trading in works of art, vessels, vehicles and aircrafts and company service providers (as defined in Article 3(m) of the AML/CFT Law).

61. As can be seen from the list above, the range of DNFBPs subject to the requirements of the AML/CFT Law is very extensive; nevertheless, efforts by the evaluators to obtain exact numbers of reporting entities and to assess the size of the individual sectors were not satisfied. In addition, despite the clear designations set in the AML/CFT Law, the evaluators encountered difficulties to identify the authority (or organisational unit) which would undertake in practice supervision of compliance with the AML/CFT requirements.

1.4 Overview of Commercial Laws and Mechanisms Governing Legal Persons and Arrangements

62. A new Law on Registration of Business Entities (Official Gazette of Republic of Srpska no. 67/13) entered into force in RS in December 2013. This Law regulates the registration procedure of legal persons in RS, being the legal basis for the registration of business entities in the Agency for Business Operations and Finances (APIF) Registry. This Registry of legal persons was established in 2013 as a unique central registry of legal persons for the whole territory of RS, which would contain all the data on legal persons in a publicly accessible form on the internet. Nevertheless, from the information provided during the on-site visit, it appears that not all the information is yet uploaded and the registry is therefore not functioning at its full planned capacity.

63. The authorities informed the evaluation team that it is foreseen to establish a similar registry in FBiH, held by the Agency for Financial, Information and Mediation Services (AFIP). No information was provided, however, on the stage which the development of this registry has reached.

64. As no further major changes took place since the time of the 3rd round assessment, the reader is referred to page 31 and following of the 3rd round mutual evaluation report (paragraphs 56-67) for further detail in this respect.

Non-profit organisations

65. According to the information provided on-site, more than 21,000 NPOs were registered on the territory of BiH at the time of the on-site visit. As noted above, given the quantity of foreign aid and assistance BiH received after the Dayton Agreements, a significant part of the funding of NPOs in BiH is originates from foreign sources. This was confirmed by the survey conducted by Technical Assistance for Civil Society Organizations[22] (funded by the EU), according to which the main and most important source of financing of NPOs that participated in the survey were primarily foreign donations accounting for 74% of their resources.

66. As described in the 3rd round MER, there are 14 different levels[23] at which an NPO may be registered, without any prevention of double-registration. Nevertheless, steps have been taken in order to improve the transparency of the NPO sector, in particular in RS, NPOs are registered in the database of the APIF, which contains information on all legal persons registered in RS and ensures their public availability and accessibility via internet. A similar database is foreseen to be established in the FBiH.

67. The legislation governing the establishment and functioning of NPOs has not changed since the 3rd round assessment; the reader is therefore referred for further information in this respect to paragraph 70 of the 3rd round MER.

68. Pursuant to the AML/CFT Law, all "persons receiving and/or distributing money or property for humanitarian, charitable, religious, educational or social purposes" are defined as reporting entities and the law places on them therefore the same obligations as on the other reporting entities. According to the AML/CFT Law, the authorities competent to supervise NPOs in this respect are the competent Ministries of Justice. From the information obtained during the on-site visit, it does not however appear that this mandate is undertaken in practice and concerns were raised regarding the extent of monitoring in general. For further information in this respect, the reader is referred to the analysis under Special Recommendation VIII.

1.5 Overview of Strategy to Prevent Money Laundering and Terrorist Financing

a. AML/CFT Strategies and Priorities

69. The Ministry of Security of BiH adopted in November 2009 the Strategy and Action Plan against Money Laundering and Financing of Terrorism in BiH for the period 2009 – 2013. No further strategic document was adopted in this respect after the expiry of this period. The authorities of BiH

[22] Annual Financial Reports of Civil Society Organisations in BiH – 2011 (http://tacso.org/doc/Annual_Financial_Report_BiH_2011.pdf)

[23] At the State level, the Ministry of Justice of BiH is responsible for registering the associations and foundations. In FBiH, it is the Federal Ministry of Justice if the statute of association envisages that the association will operate on the territory of two or more cantons, otherwise it is the cantonal ministry. At the same time, the Registry Book of all foundations and foreign non-governmental organisations is kept by the Ministry of Justice of FBiH. In RS, the district courts are responsible for registering associations and foundations on which territory the association or foundation has its seat, the Ministry of Administration and Local Self-Governance of the RS maintains the central registry of associations and foundations and the central registry of foreign and international NPOs. In BD, the Basic court of BD is the responsible body for registration of associations and foundations.

also committed in 2011 under the Compliance Enhancing Procedures at political level to the Action Plan agreed with MONEYVAL to remedy deficiencies identified in the 3rd round report. This Action Plan is still being monitored by MONEYVAL, as at the 46th Plenary a number of issues remained outstanding.

70. The Ministry of Security of BiH issued in 2014 the Strategy for the Fight against Organised Crime in BiH for the years 2014 – 2016. This Strategy sets out goals with regard to the fight against organised criminality in general, such as further improvement of the legal framework and strengthening of the law enforcement and judiciary. In addition, it also formulates specific objectives concerning individual types of offences related to organised crime, including money laundering. The Strategy foresaw the adoption of an Action Plan specifying the concrete activities to be undertaken in order to achieve the envisaged goals, this Action Plan has however not been adopted.

71. In January 2015, the BiH State Investigation and Protection Agency (SIPA), under the auspices of which functions the Bosnian FIU, issued the Strategic Action Plan for 2015-2017, which follows up on the goals foreseen by the SIPA Strategic Action Plan for 2012-2014. This document addresses the current trends, social changes and challenges affecting the work of SIPA, including ML and TF activities.

72. The strategic objectives set by the Strategic Action Plan are the following:

    1. To strengthen institutional, normative and legal capacities in accordance with operational needs;
    2. To improve criminal investigative and criminal intelligence capacities as response to emerging types of crime within SIPA competence;
    3. To strengthen organizational structure of SIPA and ensure adequate human resource potentials;
    4. To strengthen support, cooperation and exchange of information with local and international partners;
    5. To maintain and further improve positive image of SIPA in public.

73. The Ministry of Security of BiH adopted in 2010 the Strategy of BiH for Prevention and Fight against Terrorism for the years 2010 – 2013, which also formulates goals aiming at deterring financing or otherwise supporting terrorism. The authorities have not adopted any consequent strategic documents in this matter which would foresee further objectives after 2013.[24]

74. The priorities presented by the authorities during the on-site reflected the goals formulated in the above mentioned strategic documents, such as enforcing the capacities of competent authorities (in particular with regard to resources and increasing expertise) and harmonization of legislation with international requirements. A further aspect where progress has been achieved and which the authorities endeavour to strengthen, is international cooperation both on operational level amongst law enforcement authorities, as well as in the stage when criminal proceedings have already been initiated. Success in this matter has been demonstrated by several cases, which are presented below in the analysis under Recommendation 1.

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

75. Overall, the institutional framework has not been subject to significant changes since the time of the 3rd round assessment and hence only the most relevant developments are presented below. For general information on the state authorities involved in the AML/CFT framework in BiH, the reader is therefore referred to the 3rd round mutual evaluation report (page 34 and following, paragraphs 76 and following).

[24] A further Strategy on the Fight against Terrorism was issued by the Ministry of Security of BiH in July 2015 for the period 2015 – 2017.

The Ministry of Security

76. As has been stated in the 3rd round MER, the Ministry of Security is established at the state level of Bosnia and Herzegovina and is responsible for the harmonisation of activities in combating organised crime and terrorism. It is under the auspices of the Ministry of Security that the SIPA operates, within which is established the Financial Intelligence Department (FID), the Bosnian Financial Intelligence Unit. The Ministry of Security is also the authority responsible for signing international agreements in matters of police cooperation and endorsing the guidance and decisions prepared by the FID.

77. In 2011, Directorate for Coordination of Police Bodies of BiH was established within the Ministry of Security of BiH, as an administrative unit with operational independence. The Directorate is the main authority in BiH responsible for international and national cooperation amongst police forces and it is within this Directorate that the National Central Bureau of Interpol of BiH is established.

78. Finally, the Ministry of Security is the authority competent for issues related to terrorism. In this respect, it is within its competence to prepare legislation concerning the UN sanctions regime, as well as pursuant to the Ordinance governing the implementation of the UNSCR 1267(1999), it is the authority responsible for publishing the updated version of the consolidated list under UNSCR 1267.

The FID

79. The FID is the FIU of Bosnia and Herzegovina. It operates within the structure of the SIPA, which is established within the Ministry of Security. According to Art. 55 (1) and (2) of the AML/CFT Law, the FID is established as the national centre for receiving, collecting, recording and analysing data, information and documentation related to the prevention, investigation and detection of money laundering and funding of terrorist activities. The FID is further responsible for promoting cooperation between the competent authorities of BiH, the FBiH, RS and the BD in the area of the prevention of money laundering and the funding of terrorist activities, as well as cooperating in this respect on international level.

80. Since the time of the 3rd round on-site visit, the FID has undergone reorganization and is currently composed of three instead of four departments: Analytical Section, Section for Prevention and Investigation of ML and TF and Section for Legal Matters and International Cooperation.

81. Pursuant to the amendments to the AML/CFT Law, the FID is currently also responsible for supervision of compliance with the AML/CFT obligations by persons providing company services.

Asset Recovery Agency

82. The Asset Recovery Agency was established in RS by the Criminal Assets Recovery Act, which entered into force in September 2010. It is an authority dedicated exclusively to the recovery of criminal proceeds and its establishment was highly welcomed by the evaluation team, as it reinforces the effectiveness of the confiscation regime in RS. There is no similar institution in the other parts of the territory; the establishment of an asset recovery office has however been provided for in legislation in the FBiH but it is not yet operational.

Anti-Corruption Agency

83. The Anti-Corruption Agency was established by the adoption of the Law on the Anti-Corruption Agency in December 2009 as an independent agency with competency over the entire territory of BiH. The management of the Agency was appointed in June 2011, whilst staffing was initiated only in 2013. The Agency is responsible for the creation and monitoring of the Strategy for the Fight against Corruption and the respective Action Plan, receiving notices from whistle-blowers, as well as it is responsible for international cooperation and cooperation with civil society of BiH in the field of corruption. The Agency does not have operational powers and therefore does not investigate corruption offences, but should any information in this matter be obtained by the Agency, it would be forwarded to the competent law enforcement agency (LEA).

c. The approach concerning risk

84. Bosnia and Herzegovina did not yet initiate work on its National Risk Assessment. Although no formal risk assessment has been carried out, the threats and vulnerabilities are discussed in more detail above in the section on the general situation with regard to ML and TF.

85. In particular with regard to TF, as has been mentioned above, the authorities (more specifically the Ministry of Security) are monitoring the developments in the country and react accordingly. This was demonstrated by the prompt adoption of the amendments to the CC of BiH as a reaction to the increase of foreign terrorist fighters departing to join the ISIL. Overall, however, the authorities did not seem to have a clear understanding of the vulnerabilities with regard to TF, in particular of the risks associated with the NPO sector.

86. Following the adoption of the new AML/CFT Law, risk-based approach is also required to be applied by the reporting entities, which should, pursuant to Art. 5 of the AML/CFT Law undertake a risk analysis of their clients, business relationships, transactions and products. Paragraph 2 of the same article foresees that reporting entities should undertake such assessment based on guidelines issued by competent authorities. At the time of the on-site visit, the relevant by-laws which would implement the provisions of the new AML/CFT Law were not yet adopted.

87. Given that the by-laws reflecting the new legislation were not yet adopted, the guidance in force at the time of the on-site visit was the Book of Rules on Risk Assessment, Data, Information, Documents, Identification Methods and other Minimum Indicators Required for Efficient Implementation of the Provisions of the AML/CFT Law, adopted by the Ministry of Security in 2009, and the Guidelines for Risk Assessment and Implementation of the AML/CFT Law for Obligors, issued in 2011 by the FID, both aimed at assisting with the implementation of the previous AML/CFT Law and the scope of the requirement to apply a risk-based approach is more limited. These guidelines, amongst other, provide guidance for reporting entities on how to prepare and conduct a risk assessment of their clientele, but they also inter alia specify the various risk categories of customers and the criteria for defining them. A number of sectoral guidelines issued by the various supervisors also provide guidance for reporting entities with regard to the risk assessment of their clients and business relationships. It is, however, to be reiterated that all of the above-mentioned documents were issued before the adoption of the new AML/CFT Law and require therefore to still be harmonised.

d. Progress since the last mutual evaluation

88. At the time of the 3rd round assessment, the evaluation team considered that BiH's compliance with the FATF Standards was weak and, as noted, BiH has been subject to MONEYVAL's Compliance Enhancing Procedures (CEPs) since 2010. As noted, due to continued lack of progress to address the long-standing shortcomings identified in the MER and to implement the recommendations formulated in the Action Plan set out by MONEYVAL in 2011, MONEYVAL issued a public statement in June 2014 (under Step 3 of its CEPs), calling on jurisdictions within the global AML/CFT network to advise their financial institutions to pay special attention to transactions with persons and financial institutions from or in BiH. Notwithstanding the aforementioned, since the 3rd round on-site visit (which took place from 24 May to 3 June 2009), a number of steps have been taken by Bosnia and Herzegovina to strengthen its AML/CFT system.

89. As has been noted above, the National Strategy against Money Laundering and Financing of Terrorism for 2009-2013 was adopted by the Ministry of Security in November 2009, together with an Action Plan for its implementation. Further strategic documents adopted by the authorities are the National Strategy against Organised Crime of BiH for the period 2014-2016, adopted in 2014, and the Strategic Action Plans of the SIPA for 2012-2014 and 2015-2017, adopted by the SIPA in February 2012 and January 2015, respectively.

90. The criminal legislation was amended on the state and entity level several times in the period under review with the view of ensuring higher compliance with international standards. The Criminal Code of BiH was amended in February 2010 and introduced, above all, several changes to the provisions on terrorism, including the terrorism financing offence, in particular by criminalising the organisation and participation in a terrorist organisation, together with the financing of such organisations[25]. In addition, further amendments were adopted to the CC of BiH in June 2014 in order to criminalise joining foreign military forces. Amendments were adopted in May 2012 to the Law on Securities of the BD, introducing the offence of market manipulation at the level of BD.

91. With regard to recovery of proceeds of crime, the above mentioned amendments in 2010 to the Criminal Code of BiH, as well as amendments of the same year to the Criminal Code of FBiH, also introduced the concept of extended confiscation in relation to certain offences. In RS, the Criminal Assets Recovery Act (CARA) was adopted and came into force in September 2010. This Act is a *lex specialis* applicable to certain categories of offences enumerated in Article 2 of the Act and it defines conditions, procedures and institutions to detect, recover and manage the criminal assets originating from the offences defined in the CC of RS. In particular, the CARA introduces extended confiscation into the legislation of RS. Finally, the Act foresees the establishment of the Asset Recovery Agency of RS, regulates its functioning and sets general provisions with regard to the management of seized or confiscated assets.

92. The legal basis for freezing of terrorist funds at the time of the 3rd round assessment was considered to be the Law on Application of Certain Temporary Measures in Support of Effective Implementation of the Mandate of the International Criminal Tribunal for the Former Yugoslavia and Other International Restrictive Measures (Official Gazette of BiH No 25/06; hereafter IRM Law). Based on Article 2 of the IRM Law, the BiH authorities enacted in 2011 the Ordinance on the Implementation of Restrictive Measures Established by Resolutions of the UN Security Council 1267 (1999), 1333 (2000), 1363 (2001), 1373 (2001), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008) and 1904 (2009) against Members of Al-Qaida, Osama Bin Laden, The Taliban and Other Individuals, Groups, Undertakings and Entities Associated with them (Official Gazette of BiH No. 103/11; hereafter "Ordinance"). The Ordinance sets out concrete procedures, which currently form the framework for freezing the assets of persons and entities designated pursuant to UNSCR 1267 (1999).

93. Republic of Srpska adopted a new Law on Registration of Business Entities, which came into force on 1 December 2013. Amongst other, this law should remedy the scattered nature of business registries in RS, which are currently held by a number of different authorities. Pursuant to the new RS Law on Registration of Business Entities, implementation of a new registration procedure was initiated. This shall introduce a "one-stop-shop" system through the Agency for Intermediary, IT and Financial Services (APIF), the purpose of which is an electronic submission of requests for registration of business entities via an on-line application. This development should also result in the establishment of a central computerised register for the entire RS. This system has not yet been put in place, as the IT infrastructure has not yet been developed.

94. The Act on Games of Chance was adopted in the Republic of Srpska in November 2012 and came into force on 7 December 2012. This Act, amongst others, introduces requirements impeding criminals from controlling casinos on the territory of RS.

95. Amendments to the Law on Securities Market of FBiH were introduced in December 2010, also introducing provisions prohibiting persons with a criminal record from controlling securities intermediaries in FBiH.

[25] Further amendments to the Criminal Code of BiH concerning the FT offence entered into force on 24 March 2015 and cannot be therefore taken into consideration for the purposes of this assessment.

96. Law on Foreign Exchange Operations was adopted and published in August 2010. Amongst others, the new Law and the Rules of Procedure, issued by the Ministry of Finance on the basis of this law, have addressed the deficiency identified in the 3rd round MER concerning the opening and retention of bearer saving accounts in foreign currency and have clearly discarded this possibility.

97. Several bylaws and guidance documents was issued by a number of authorities in order to enhance the implementation of the AML/CFT framework:

- Book of Rules on Risk Assessment, Data, Information, Documents, Identification Methods and other Minimum Indicators Required for Efficient Implementation of the Provisions of the AML/CFT Law, issued by the Ministry of Security in 2009;
- Guidelines for Risk Assessment and Implementation of the Law on Prevention of Money Laundering and Financing of Terrorist Activities for Obligors, issued by the FID in October 2010. The FID Guidelines provide general guidance with regard to all the basic AML/CFT obligations that the reporting entities should comply with;
- Rulebook for Risk Assessment and Enforcement of the AML/CFT Law for reporting entities under its supervision, issued by the Insurance Supervisory Agency of FBiH in 2010;
- Guidelines on the Implementation of the AML/CFT Law for reporting entities under its supervision, adopted by the Insurance Supervisory Agency of RS in August 2013;
- Rulebook on Mediation in the Securities Business, issued by FBiH Securities Commission and adopted on 22.04.2009, entered into force the same year;
- Rulebook on Business Brokerage Firms, adopted by the RS Securities Commission on 19.06.2012 and entered into force on 26.07.2012;
- Guidelines for Implementation of the AML/CFT law, adopted by the Securities Commission of RS in June 2010;
- Decision on Minimum Standards of Banks's Activities on AML/CFT, Decision on Minimum Standards of Activities on AML/CFT for Leasing Companies and Decision on Minimum Standards of Activities on AML/CFT for Microcredit Organisations, issued by the Banking Agency of FBiH in May 2012;
- Decision on Minimum Standards of Banks's Activities on AML/CFT, Decision on Minimum Standards of Activities on AML/CFT for Leasing Companies and Decision on Minimum Standards of Activities on AML/CFT for Microcredit Organisations, issued by the Banking Agency of RS in June 2012.

98. Amongst the most significant developments in the period under assessment was the adoption of a new Law on Prevention of Money Laundering and Financing of Terrorist Activities (AML/CFT Law) on 6 June 2014, which came into force on 25 June 2014. The revised AML/CFT Law addressed a number of significant deficiencies identified in the previous assessments with regard to preventive measures and in particular it enhanced the requirement of application of a risk-based approach. Furthermore, it defines certain responsibilities of the customs authorities of Bosnia and Herzegovina in relation to cross-border transportation of currency and bearer negotiable instruments. Due to the extent of changes introduced by the new AML/CFT Law, the above listed bylaws will need to be harmonised with its provisions. At the time of the 4th round on-site visit it was unclear to some reporting entities whether the new AML/CFT Law was in effect or whether it did not take effect until the issue of the by-laws.[26]

[26] Rulebook on the implementation of the AML/CFT Law and Guidance on the manner of reporting were adopted by the Council of Ministers on 23 April 2015.

99. Other laws governing the supervisory, criminal, judicial and law enforcement framework were amended with a view of further enhancing the AML/CFT regime in BiH. Amongst the amended laws were the MLA Law, Law on Police Officers, the Criminal Procedure Codes of all levels, Laws on Banks of FBiH and RS and others. These amendments are analysed in detail below, under the relevant sections of the report.

100. With regard to activity on international fora, since the 3rd round mutual evaluation, BiH has ratified the Council of Europe's Additional Protocol to the Criminal Law Convention on Corruption in 2011 and it entered into force in 2012. In addition, BiH concluded agreements on mutual legal assistance in criminal matters with a several countries, a number of which have already entered into force (Slovenia, Islamic Republic of Iran, China and Republic of Moldova), others have been signed, but have not yet entered into force (India, Algeria, and Morocco).

101. As concerns the institutional framework, Asset Recovery Agency was established in RS in 2010 as mentioned above. Directorate for Coordination of Police Bodies of BiH was established in 2011 as an administrative unit with operational independence within the Ministry of Security. This Directorate is the main authority in BiH responsible for international and national cooperation amongst police forces and the National Central Bureau of Interpol of BiH is established under its auspices. The Anti-Corruption Agency was established in December 2009 and started operating in 2013.

102. Trainings on AML/CFT issues were provided to the staff of a number of relevant institutions, in particular to representatives of the judiciary, prosecution offices, LEAs and supervisory authorities. In particular, several trainings were dedicated to enhance awareness of the requirements of the new AML/CFT Law. Trainings on AML/CFT obligations were also provided to the private sector, amongst which several were focused on AML/CFT risk-based approach (for representatives of the banking, insurance and securities sectors).

103. In addition, various projects were carried out in BiH by international stakeholders, a number of which concerned also topics related to AML/CFT, such as the IPA Project, which focuses on a long-term basis on the strengthening of the judiciary and law enforcement in BiH, as well as the fight against organized crime and other serious criminality. One of the particular projects under the IPA, implemented in 2013, was on the specific topic of "Strengthening the Fight against Money Laundering".

104. Further information on the progress achieved since the 3rd round mutual evaluation is provided under the specific sections of this report.

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 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

105. Recommendation 1 was rated PC in the 3rd round on the basis of the following findings:

- Neither of the money laundering offences, as defined in all four Criminal Codes, was in full accordance with Article 3 of the Vienna Convention and Article 6 of the Palermo Convention as far as material elements of the offence were concerned.
- One of the designated categories of predicate offences (market manipulation) was not covered by the criminal legislation of Brčko District.
- The scope of the competing money laundering offences was not completely demarcated, because of the failure to harmonise the respective thresholds in the state-level and non-state level offences and some ambiguous conditions in the state-level Criminal Code.
- There were serious deficiencies in the effective application of the criminal legislation, including a failure at all levels of the jurisdiction to take forward money laundering cases in relation to predicate offences other than tax crimes, the fact that very few money laundering cases were prosecuted at the level of the Entities and Brčko District, a significant backlog at state-level courts and at the prosecutors' offices due to resource issues, and evidentiary problems in prosecutions.

Legal Framework

106. The legal framework for the criminalisation of money laundering remains largely as it was at the time of the previous evaluation. Money laundering is criminalised both under the state - level (Criminal Code of BiH -"CC BiH") and under the Criminal Codes of: the FBiH; the RS and BD (respectively "CC FBiH", "CC RS" and "CC BD"). The relevant provisions are Article 209 of the CC BiH, Article 272 of the CC FBiH, Article 280 of the CC RS and Article 265 of the CC BD.

107. It also remains the case that the offence of money laundering under Article 209(1) of the CC BiH is subject to some additional conditions. These are that the relevant money or property is of larger value, or the relevant act endangers the common economic space of BiH or has detrimental consequences for the operations or financing of the institutions of BiH. There is no definition or elaboration as to the meaning of these conditions, and in particular there is no definition of *"larger value"*, whether by reference to a specific sum or otherwise.

108. These conditions aside, as indicated in the previous evaluation report, the material elements of the money laundering offences under the different Criminal Codes are harmonised. Therefore, they will be considered collectively and references to the money laundering offences should be read as including the money laundering offence under each Criminal Code unless otherwise stated.

109. The money laundering offences are punishable by terms of imprisonment. This is harmonised to the extent that each Criminal Code contains specific sentencing provisions applicable to more serious cases, and they also all specify that in cases where the perpetrator acted negligently with regard to the criminal origin of the relevant money or property, a sentence of imprisonment cannot exceed three years. However, there are some noticeable differences. The core sentencing provision in the CC BiH and the CC RS is for a term of imprisonment of between one and eight years, with an additional

provision in relation to self –launderers which states that they are subject to a maximum term of ten years. The core sentencing provision in the CC FBiH and the CC BD is for a term of imprisonment of between six months and five years and there is no express provision dealing with self-launderers. At state level, there is a mandatory minimum sentence of three years in cases involving money or property which exceeds BAM 200,000, but this is not the case under the Criminal Codes of the Entities and Brčko District, which instead provide that cases of large value (not defined) are subject to a term of imprisonment of between one and ten years. The evaluators were informed that under case law from 2004, large value for the purposes of ML prosecutions under the CC RS means a value in excess of BAM 50,000, and this has been applied in subsequent ML prosecutions in the Republic of Srpska. In addition, the CC RS provides that cases involving organised criminal groups are subject to a term of imprisonment of between two and twelve years, but there is no equivalent provision in the other three Criminal Codes.

110. BiH has been party to the Vienna Convention since 1993 by succession. It ratified the Palermo Convention and its first two Protocols in 2002, and acceded to the Protocol on illicit firearms in 2008. During the onsite visit, the authorities explained that under the law of BiH, international conventions are legally binding on the domestic courts, which means that the courts must apply legislation in a way that gives effect to a relevant Convention. The point was confirmed in a judgement provided to the evaluation team, namely the Republic of Srpska case of *Ćopić,* in which the court expressly relied on provisions in the Palermo Convention and the Warsaw Convention.

Criminalisation of money laundering (c.1.1 – Physical and material elements of the offence)

111. The Criminal Codes provide that it is an offence to accept, exchange, keep, dispose of, use in commercial or other activity or otherwise conceal or try to conceal money or property in the knowledge that the money or property in question was acquired through the perpetration of a criminal offence. Therefore, the language mirrors the language of the Conventions in relation to the mental element of the offence but there are some differences in relation to the physical elements.

112. The money laundering offences do not refer to converting or transferring property. Nevertheless, as noted in the previous evaluation report, the conversion of property is addressed by the reference to exchanging it and there is case law to confirm this. The previous evaluation report also found that at a technical level, the reference to disposing of property did not sufficiently address transfer, although there had been cases in practice involving transfer.

113. A representative from the prosecutor's office at state level indicated that he interpreted the *"disposition"* of property as wide enough to cover any kind of transaction, including all forms of transfer. He also confirmed that this interpretation had been accepted by the courts in several legally binding judgements and gave examples of this, including a recent conviction for money laundering at first instance where a defendant had transferred to his wife real property which had been purchased with criminal proceeds. This is in line with the view of the other jurisdictions and with the experience of the prosecutor in the Republic of Srpska, who referred to the cases of *Ćopić* and *Vučenović* as examples of money laundering cases that involved the transfer of proceeds. The evaluators were not informed of any cases where the wording of the legislation had caused problems in prosecuting money laundering, for example where the disposition of property had been interpreted as excluding certain forms of transfer. Taking this information together with the fact that it appears that the courts would be bound to resolve any dispute as to the scope of disposition in a way that is compatible with the Conventions, the evaluators were satisfied that in practice, the reference to disposition appears sufficient to enable cases involving transfer to be covered.

114. With regard to concealment or disguise, although the money laundering offences do not specify the characteristics of the money or property such as origin or ownership which are subject to the offence of concealment, and to that extent do not reflect the language of the Conventions, the evaluators were satisfied that the notion of concealment incorporated in the offences by the use of the

term *"otherwise conceal"* is sufficient to cover all such characteristics, particularly when interpreted in a way that is in line with the requirements of the Conventions as indicated above.

115. The requirement for acquisition, possession and use of property to be criminalised is met by comparable language in the money laundering offences, which refer respectively to accepting money or property, keeping it and using it in commercial or other activity.

116. There is no definition of criminal offence for the purposes of the money laundering offences, so they are potentially applicable to all categories of predicate offence. In this respect they go further than the criminalisation of money laundering as required under the Vienna and Palermo Conventions. In addition, there is no purposive element in respect of the transfer or conversion of property, so here too the money laundering offences go further than required under the Conventions.

117. The conditions in Article 209(1) of the CC BiH mean that the money laundering offence at state level is narrower than required under the Conventions. As the conditions do not apply to the offences at the level of the Entities and Brčko District, it would still be possible to prosecute money laundering across the jurisdiction in cases where the conditions were not met. On that basis, the evaluators were satisfied that the conditions at state level do not operate so as to create a failure of technical compliance with the Conventions by BiH as a whole. However, the application of the conditions in practice, and the related question of concurrent jurisdiction under the CC BiH and the other Criminal Codes are relevant to effective implementation, which is looked at below.

The laundered property (c.1.2)

118. As indicated above, the state-level money laundering offence is subject to the threshold of *"larger value"* in cases where neither of the other two conditions is met. Article 209(1) of the CC BiH is therefore not in compliance with the FATF standard in this respect. However, the absence of a value threshold in the other Criminal Codes means that prosecution across the jurisdiction is possible regardless of the value of the property involved.

119. Money is defined in all four Criminal Codes as coins and paper bank notes that are legal tender in BiH or in a foreign country, but *"property"* is not defined (save to the extent that it clearly means something other than money). In addition, as observed in the previous evaluation report, the terms *"property"* and *"property gain"* are used in the legislation on a seemingly random and interchangeable basis. In the absence of a definition of property, it is not clear from the legislation that all categories of property as defined in the FATF standards - such as intangible or incorporeal property and legal documents or instruments, would come within the scope of the offences. The authorities indicated that there was no restriction on the type of property that could form the basis of a money laundering prosecution and referred to examples of cases which had involved non-financial assets such as real property. This interpretation was accepted in the previous evaluation report and the evaluators were not given any indication that the position has changed since then. In addition, this wide interpretation would be consistent with the definition of *"property"* in the Conventions as applied in the domestic courts.

120. Property which indirectly represents the proceeds of crime is not explicitly referred to in the money laundering offences. Although some representatives of the authorities indicated that this was addressed by references to indirect proceeds in the legislative provisions governing confiscation, the evaluators were not persuaded in the absence of supporting case law that such provisions could be relied on to interpret elements of a criminal offence. However, the authorities were also able to provide examples of cases involving indirect proceeds, including the *Ćopić* case and the case referred to above, where a defendant was convicted of money laundering as a result of transferring real property which had been purchased with the proceeds of crime. Again, it seems that the direct application of the Convention definitions could be relied on in the domestic courts to support this interpretation.

Proving property is the proceeds of crime (c.1.2.1)

121. The Criminal Codes do not contain a requirement for a conviction for a predicate offence in order to establish the offence of money laundering.

122. Representatives from both the prosecuting authorities and the judiciary under all four legal systems confirmed that there was no evidential or other bar to taking forward cases of autonomous money laundering, either as a matter of law or practice. Specifically it was confirmed that circumstantial evidence could be relied on for these purposes. No instances of convictions for autonomous money laundering were identified by the authorities of the FBiH or BD, but some such cases were identified by the authorities in the Republic of Srpska and at state level. These included the Republic of Srpska cases of *Ćopić,* which has already been referred to, and *Darko Coric*, in which a money laundering conviction was obtained on the basis of an on-going narcotics investigation in Serbia where the matter had not yet proceeded to a prosecution for the predicate offence. The state-level prosecutor referred to a number of cases involving autonomous money laundering including the *Majorca* case, which involved the construction of a luxury hotel for the purposes of laundering the proceeds of drug trafficking and tax evasion by an organised criminal group in BiH and in other jurisdictions. The authorities in the Republic of Srpska also confirmed that in some cases the Warsaw Convention had been relied on for the purposes of establishing autonomous money laundering. This approach is in line with the earlier state-level court decisions cited in the previous evaluation report.

The scope of the predicate offence (c.1.3)

123. The four Criminal Codes take an *"all crimes"* approach, as there is no definition or other restriction on the meaning of criminal offence for the purpose of the money laundering offences. The authorities confirmed that in the absence of any limitation on what may constitute a criminal offence for these purposes, all offences are covered, irrespective of their nature or severity.

124. At the time of the last evaluation, it was noted that subject to one exception, all of the designated categories of offence under the Glossary to the FATF Methodology were covered, either at state level or at the level of the Entities or Brčko District. The exception was market manipulation, which was not criminalised under the CC BD or at state level and which therefore would not constitute a criminal offence if carried out in Brčko District. Since then, Brčko District has introduced legislation to address this deficiency, by way of an amendment to the Law on Securities. Under new Article 78a, the existing prohibition on market manipulation at Article 76 is now subject to criminal sanction and so comprises a criminal offence for the purpose of the money laundering offences.

Threshold approach for predicate offences (c.1.4)

125. As indicated above, there is an *"all crimes"* approach to predicate offences and this is not subject to any thresholds.

Extraterritorially committed predicate offences (c.1.5)

126. The authorities at all levels confirmed that extraterritorially committed offences could constitute predicate offences for money laundering. Jurisdiction would depend on the facts in any given case, and in particular the precise location at which the criminal proceeds entered legal channels within BiH. Both the *Ćopić* case and the case of *Darko Coric* referred to above concerned predicate offending in another country. The state-level prosecutor was not aware of any final convictions involving foreign predicate offending only under the CC BiH (although some aspects of the predicate offending in the *Majorca* case referred to above had occurred abroad), but confirmed that a major state-level investigation involving predicate offending abroad is currently on-going.

Laundering one's own illicit funds (c.1.6)

127. The core money laundering offences do not distinguish between the laundering of a third party's illicit proceeds and the laundering of a person's own illicit funds. As observed in the last evaluation

report, this does not mean that self –laundering is excluded, and although at that time the state-level authorities had expressed divergent views about whether self-laundering could be prosecuted, there had in fact been case law from the state-level courts which indicated that this was possible.

128. The CC RS clearly covered self –launderers, as there was specific provision for a heavier penalty in the case of a launderer who was an accessory or an accomplice in the predicate offence. That was not then the case in the other Criminal Codes, but since then, the CC BiH has been amended along similar lines and now specifies a heavier penalty in the case of launderers who are perpetrators or accomplices in the perpetration of the predicate offence. The state-level prosecutor confirmed that there had been convictions involving self –launderers since 2010.

129. The CC FBiH and the CC BD have not been amended in the same way. The authorities in the FBiH indicated that they did not consider this necessary in order to prosecute self-launderers, as in their view this was already possible under the general wording of the core money laundering offence in the CC FBiH. However, there was uncertainty about the existence of any cases of self-laundering in practice. Although the FBiH authorities indicated during the onsite visit that there had been prosecutions for self-laundering (involving tax evasion as the predicate offence), this could not be confirmed subsequently when further details were requested.

130. The authorities in BD were not able to point to any cases of self-laundering. Nonetheless, as the core offence in the CC BD is in the same terms as that in the other Criminal Codes, it is likely that it would be interpreted in the same way as the state-level cases referred to in the previous evaluation report and the cases referred to under the CC FBiH during the onsite visit. On that basis prosecution of self-launderers would appear to be possible across BiH as a whole.

Ancillary offences (c.1.7)

131. All four Criminal Codes contain dedicated provisions dealing with ancillary offences, and these provisions are harmonised in most respects. In some cases the ancillary offences only apply in respect of criminal offences punishable by a term of imprisonment of 3 years or more, but this does not affect their application to money laundering because the core money laundering offence under each Criminal Code is punishable with a sentence of imprisonment of 3 years or more. Similarly, the variations in sentence under the four Criminal Codes in specific circumstances each permit a sentence of 3 years' imprisonment, so the threshold is met in all circumstances.

132. There is a specific offence of conspiracy under Article 247 of the CC BiH, Article 338 of the CC FBiH, Article 384 of the CC RS and Article 332 of the CC BD. These Articles are not in identical terms, because although all are subject to the threshold of 3 years' imprisonment referred to above, the offence under the CC RS applies in respect of conspiracy to commit any criminal offence whereas the offence under the other Codes only applies in respect of conspiracy to commit criminal offences under the Criminal Code in question. However, as money laundering is an offence under all four Criminal Codes this difference is not material.

133. In addition, as far as the CC BiH, CC FBiH and CC BD are concerned, there is a widely applicable offence of associating for the purposes of perpetrating criminal offences at Article 249, Article 340 and Article 334 respectively. There is no corresponding general offence under the CC RS (although there are offences of association in respect of specific categories of crime, such as the offence at Article 384 of participating in a group which jointly engages in violent acts against people or property). However, the widely framed conspiracy offence referred to above is sufficient to address the FATF standard so the absence of a generally applicable offence of association under the CC RS does not mean that there is a gap in the framework.

134. Attempts are covered by Article 26 of the CC BiH, Article 28 of the CC FBiH, Article 20 of the CC RS and Article 28 of the CC BD. These Articles are harmonised and provide that whoever intentionally commences execution of a criminal offence, but does not complete such an offence,

shall be punished for the attempted criminal offence when, for the criminal offence in question, the punishment of imprisonment for a term of three years or a more severe punishment may be imposed, and for the attempt of another criminal offences when the law expressly prescribes punishment of the attempt alone. In addition, attempted concealment is a sui generis primary offence under the wording of the substantive core money laundering offences. Therefore attempts to commit money laundering are adequately criminalised.

135. Aiding, abetting and facilitating is covered by the offence in respect of accessories at Article 31 of the BiH CC, Article 33 of the CC FBiH, Article 25 of the CC RS and Article 33 of the CC BD. Again, these Articles are harmonised and provide that whoever intentionally helps another to perpetrate a criminal offence shall be punished as if he himself perpetrated such offence (but the punishment may be reduced). The Articles contain specific examples of the kind of activity which shall be considered as helping in the perpetration of a criminal offence, and these include giving advice or instruction, providing tools and assisting in the concealment of the existence of an offence or its proceeds. Aiding, abetting and facilitating may also come within the scope of the offence of co-perpetration at Article 29 of the BiH CC, Article 31 of the CC FBiH, Article 23 of the CC RS and Article 31 of the CC BD. This provides that where several persons have jointly perpetrated a criminal offence, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution has been made to its perpetration, each shall be punished as prescribed for the criminal offence.

136. Counselling the commission of an offence is covered by the offence of incitement at Article 30 of the CC BiH, Article 32 of the CC FBiH, Article 24 of the CC RS and Article 32 of the CC BD. These Articles are also harmonised, and provide that whoever intentionally incites another to perpetrate a criminal offence shall be punished as if he has perpetrated the offence. In cases where the primary offence was not in fact attempted, a person who has intentionally incited the commission of the primary offence shall be punished as for the attempt of the primary offence if that offence meets the 3 year threshold referred to above. The CC BiH, the CC FBiH and the CC RS also contain a provision setting out specific examples of the kind of activity which shall be considered as incitement, and these include pleading, inducement or persuasion and deceiving a person as to a matter of law or fact. This additional provision is not included in the CC BD.

Additional element – If an act overseas which does not constitute an offence overseas but would be a predicate offence if occurred domestically leads to an offence of ML (c.1.8)

137. The MEQ referred to Article 19 of the CPC BiH, but this is concerned with the procedure for ruling on points of law in another jurisdiction as a preliminary issue. It does not therefore seem to have any bearing on what is meant by a criminal offence in the context of the money laundering offences. As this term is not defined, it is unclear on the face of the legislation whether a criminal offence for these purposes would include an overseas act which was not criminalised where it occurred, but which would have been an offence had it occurred domestically.

138. Some of the representatives of the different authorities met during the onsite visit were unsure whether such an act could constitute a predicate offence. Others indicated that in their view it could, on the basis that the proceeds of such an act would have no lawful origin. However, no examples of cases of this kind were identified, and in the absence of any case law on the point the evaluators were not persuaded that money laundering could be prosecuted in those circumstances under the legislation as it stands.

Recommendation 32 (money laundering investigation/prosecution data)

139. According to the MEQ, the High Judicial and Prosecutorial Council (HJPC) automatically maintains statistics which enable all money laundering or terrorist financing cases under the four legal systems to be tracked, from the point at which an initial report is made to the handing down by

a court of its final decision. The authorities confirmed that every case in the courts and prosecutor's' offices is registered in the Case Management System. The data is recorded in the centralized database maintained by the HJPC. The system enables retrieving data on cases according to codes specified in the four criminal codes used in Bosnia and Herzegovina. Since money laundering and financing of terrorism are defined in the criminal codes it is possible to retrieve data for these specific criminal offences as well. The following statistical information is available:

- The date when a report on a criminal offence is submitted to a prosecutor's office;
- When a prosecutor's office started an investigation or dismissed a case;
- The date of confiscation and the value of confiscated goods;
- When a prosecutor's office submitted an indictment to a court;
- When a court confirmed an indictment;
- When a court issued a judgement which includes a type of sentence in the case of conviction.

140. In summary, it is possible to cheek any single case or produce summary statistics on any group of cases including money laundering and terrorism financing cases. On the other hand, some specific information, such as types of confiscated goods, is not available in the system. This information can be collected from courts which assume that courts have to open physical files and read issued judgements.

141. The maintenance of such statistics, if carried out accurately, is in line with the requirement in the FATF standard to maintain statistics on money laundering and terrorist financing investigations, prosecutions and convictions.

142. The MEQ also referred to Article 72 of the AML/CFT Law, which requires the courts, prosecutors' offices and the law enforcement agencies to submit statistical data in this area to the FID twice a year.

143. Tables setting out the relevant figures, along with additional tables relating to the penalties imposed, were provided to the evaluators as part of the MONEYVAL statistical template. A further table containing an analysis of convictions was also provided. The tables are as follows:

TABLE 4: Investigations, prosecutions and convictions of ML/FT

2009												
	ML/TF Investigations by law enforcement carried out independently without prior STR			**Prosecutions commenced**			**Convictions (first instance)**			**Convictions (final)**		
	Cases	**Natural persons**	**Legal persons**	**Cases**	**Natural persons**	**Legal persons**	**Cases**	**Natural persons**	**Legal persons**	**Cases**	**Natural persons**	**Legal persons**
ML	**2 (TBiH)**	**4 (TBiH)**					1	1	-	1	2	-
FT												
2010												
	ML/TF Investigations by law enforcement carried out independently without prior STR			**Prosecutions commenced**			**Convictions (first instance)**			**Convictions (final)**		

	Cases	Natural persons	Legal persons	Cases	Natural persons	Legal persons	Cases	Natural persons	Legal persons	Cases	Natural persons	Legal persons
ML							3	4	-	3	3	-
FT												
2011												
	ML/TF Investigations by law enforcement carried out independently without prior STR			**Prosecutions commenced**			**Convictions (first instance)**			**Convictions (final)**		
	Cases	**Natural persons**	**Legal persons**	**Cases**	**Natural persons**	**Legal persons**	**Cases**	**Natural persons**	**Legal persons**	**Cases**	**Natural persons**	**Legal persons**
ML	**6 (5 TBiH, 1 Spec. RS)**	**19 (13 TBiH, 6 Spec. RS)**	**2 (TBiH)**	**1 (Spec. RS)**	**3 (Spec. RS)**		3	3	-	4	5	-
FT												
2012												
	ML/TF Investigations by law enforcement carried out independently without prior STR			**Prosecutions commenced**			**Convictions (first instance)**			**Convictions (final)**		
	Cases	**Natural persons**	**Legal persons**	**Cases**	**Natural persons**	**Legal persons**	**Cases**	**Natural persons**	**Legal persons**	**Cases**	**Natural persons**	**Legal persons**
ML	**5 (4 TBiH, 1 Spec. RS)**	**25 (22 TBiH, 3 Spec. RS)**	**8 (TBiH)**				3	4	-	3	4	-
FT												
2013												
	ML/TF Investigations by law enforcement carried out independently without prior STR			**Prosecutions commenced**			**Convictions (first instance)**			**Convictions (final)**		
	Cases	**Natural persons**	**Legal persons**	**Cases**	**Natural persons**	**Legal persons**	**Cases**	**Natural persons**	**Legal persons**	**Cases**	**Natural persons**	**Legal persons**
ML	**4 (1 KT SA, 3 TBiH)**	**29 (2 KT SA, 27 TBiH)**	**10 (TBiH)**				2	3	-	2	3	-
FT												
2014												
	ML/TF Investigations by law enforcement carried out independently without prior			**Prosecutions commenced**			**Convictions (first instance)**			**Convictions (final)**		

	STR											
	Cases	**Natural persons**	**Legal persons**	**Cases**	**Natural persons**	**Legal persons**	**Cases**	**Natural persons**	**Legal persons**	**Cases**	**Natural persons**	**Legal persons**
ML	**3 (1 OTBL, 2 TBiH)**	**5 (1 OTBL, 4 TBiH)**	**1 (TBiH)**	**1 (TBiH)**	**2 (TBiH)**		1	2	-	1	2	-
FT												

TABLE 5: Penalties - ML

Year	Non-custodial sentences			Custodial sentences		
	Fines (average in EUR)	**Other than fines**	**Total number**	**Imposed prison sentence (average in months)**	**Suspended prison sentence (average in months)**	**The measures imposed forfeiture of illegally acquired property**
2009	**60 000**	**-**	**-**	**216**	**-**	**Forfeiture of money**
2010	**20 000**	**-**	**-**	**96**	**20**	**Compensation for damages to the injured party**
2011	**-**	**-**	**-**	**84**	**30**	**Forfeiture of money**
2012	**-**	**-**	**-**	**30**	**12**	**Forfeiture of money**
2013	**2045**	**-**	**-**	**84**	**-**	**Forfeiture - money, real estate, airplane**
2014	**-**	**-**	**-**	**120**	**-**	**-**

Table 6: Range of penalties - highest to lowest

Year	Fines (EUR)		Custodial sentences (months)		Amount of confiscated property (EUR)		Lasting of Suspended prison sentence (months)	
	Highest	**Lowest**	**Highest**	**Lowest**	**Highest**	**Lowest**	**Highest**	**Lowest**
2009	60 000	60 000	216	216	572.880 Euro	572.880 Euro	-	-
2010	20 000	20 000	36	30	343.637,14 Euro (confiscated some real estate and vehicle), but for now, there is no data of the estimated value.	343.637,14 Euro (confiscated some real assets and vehicle), but for now , there is no data of the estimated value)	20	20
2011	-	-	48	36	204.958,48 Euro	204.958,48 Euro	18	12
2012	-	-	18	6	21.690,06 Euro	21.690,06 Euro	12	12

2013	-	-	36	36	10.880.395 Euro	54.801 Euro	-	-
01.01.2014 - 30.06.2014	-	-	120	120	-	-	-	-

TABLE 7: Analysis of AML/CFT convictions

Cases	Total number of ML convictions	Number of convictions for self-laundering	Number of convictions for third party laundering[+]	Number of convictions for laundering proceeds of crime committed abroad	Number of convictions for fiscal predicate offences	Number of convictions for non-fiscal predicate offences
	(a)	**(b)**	**(c)**	**(d)**	**(e)**	**(f)**
2009	1	1	-	-	-	1
2010	3	1	2	-	-	1
2011	4	-	3	-	1	-
2012	3	-	1	1	-	-
2013	2	-	-	1	-	-
2014	1	-	-	-	-	1

144. The position with regard to maintaining statistics suggests that things have improved since the last evaluation, when there were concerns as to whether or not any meaningful statistics were collected other than for the purposes of the evaluation itself. However, the improved process for gathering statistics does not appear to have led to any systematic review of the effectiveness of systems in this area, as the different authorities consistently indicated that there was no established practice of analysing the statistics to assess how well the legal framework is being implemented. In addition, the evaluators have some doubts as to the reliability of the statistics that are maintained.

145. There are discrepancies between the figures in the tables and the information that was provided during the course of meetings. For example, although the state-level prosecutor indicated that there had been a previous indictment for terrorist financing and that there were a number of on-going investigations into terrorist financing, no cases of terrorist financing at all are identified in the statistics tables. Similarly, the evaluators were informed that there are currently some 10 or so on-going money laundering investigations at state level, 11 or so in the Republic of Srpska and 2 in Brčko District. The evaluators were informed that there are nine on-going investigations in the FBiH. The tables should therefore disclose approximately 31 on-going investigations in BiH as a whole. However, for the whole of the period under consideration, only 20 investigations are listed, and given the time frame involved presumably a number of these are no longer on-going. While this may not be a particularly large discrepancy, it is suggestive of a lack of accuracy at some stage in the data

gathering process. A lack of statistical accuracy is also suggested by the uncertainty over self-laundering cases in the FBiH, as mentioned above.

146. In addition, the level of detail contained in the data is questionable. While all of the figures for investigations and prosecutions commenced identify the legal systems involved, this is not the case with the figures for convictions, or for the figures in the additional tables relating to penalties and the analysis of convictions. This suggests that the data is not maintained in a way that permits a complete breakdown as between the four legal systems. Similarly, the table containing the analysis of convictions is incomplete with regard to the number of self-laundering and third party laundering as well as with regard to the numbers of fiscal and non-fiscal predicate offences. This would suggest that the data kept on the nature of the defendants and on predicate offences is incomplete. These deficiencies make it difficult to draw meaningful conclusions from the figures. The authorities confirmed that the case management system does not contain specific information of this kind but the HJPC is continuing to work on improving the system.

147. The evaluators requested additional statistics during the onsite visit to clarify these issues, but they were not provided (except for some additional tables that were not translated into English and therefore not taken into account). This fact also indicates that the systems for collecting data may not be fully effective.

148. Nevertheless, it is possible to draw some conclusions from the information that has been provided. The tables indicate that the 20 investigations to date have led to some 13 convictions, and the number of convictions is broadly in line with the information provided during the onsite visit. This demonstrates that the authorities have continued to make use of the legal framework to pursue money laundering cases, but the overall figures for investigations and convictions are modest, as well as being noticeably lower than the equivalent figures at the time of the last evaluation (42 investigations and 23 convictions). However, the cases that have been taken forward involve a broader range of predicate offences and are generally more complex than the cases that were described in the previous evaluation report. This is looked at in greater detail below.

Effectiveness and efficiency

149. The previous evaluation report expressed serious concern over the lack of demarcation as between the competing money laundering offences, the failure to harmonise the respective thresholds in the state-level and non-state level offences and the ambiguous conditions in the state-level Criminal Code. Amendments to the CC BiH have been drafted which deal (among other things) with jurisdiction for money laundering offences, but the amendments have yet to be enacted so these factors are unchanged at a legislative level.

150. During the onsite inspection it appeared that notwithstanding this, from a practical stand-point, the authorities have managed to find satisfactory solutions to the issue of concurrent jurisdiction. Representatives from the different authorities across BiH as a whole indicated that in practice, jurisdiction for money laundering was not usually determined by reference to the conditions in the state –level offence or the value thresholds in the other Criminal Codes. Instead, it was almost always decided in line with jurisdiction for the predicate offence, which the authorities considered to be clear under the different Criminal Codes. This was on the basis that either there was no concurrent jurisdiction in a particular case (*i.e.* where the predicate offence existed only at state level or at the level of the Entities and Brčko District) or, in cases where a predicate offence existed at both levels, the state-level offence was invariably subject to additional factors such as an international element which enabled jurisdiction to be readily determined on the facts of a given case. The position therefore seems to be different from that reported in the previous evaluation, where it was indicated that the authorities at state level and in the FBiH treated BAM 50,000 as an automatic threshold for state-level jurisdiction.

151. The different authorities were consistent in confirming that any issues of concurrent jurisdiction would be dealt with by agreement, and the *Ćopić* case referred to above was cited as an example of a very significant case where jurisdiction had been agreed as between the state-level authorities and the authorities in the Republic of Srpska. It was also consistently confirmed by the different authorities that there had seldom if ever been any difficulties in agreeing jurisdiction in practice. The few cases of which the evaluators were informed where jurisdiction had been raised as an issue, either as between the authorities or by a defendant, concerned jurisdiction in respect of the predicate offence so did not arise as a result of the wording of the money laundering offences. The authorities further indicated that where such challenges to jurisdiction had been made by defendants, this had been in a small number of high – profile cases where the issue had been raised in order to have the case transferred to a court which the defendants considered more favourable to them (e.g. because of more limited sentencing powers).

152. With regard to the ambiguity in respect of the specific conditions necessary to prosecute money laundering under the BiH CC (described above and also in the previous evaluation report), the evaluation team was not informed of any subsequent case law that had resolved this. The state - level authorities indicated that in practice this had not given rise to any problems to date, and they specifically confirmed that no money laundering prosecution had been dismissed on the basis that the conditions were not met. Neither had there ever been a legal challenge by a defendant on those grounds.

153. It seems therefore that in respect of concurrent jurisdiction under the Criminal Codes and the related issue of ambiguous conditions under the CC BiH, these matters can no longer be said at a practical level to operate as a significant bar to effectiveness and efficiency. Against that background it might be said that the identified difficulties are now more theoretical than real. Nevertheless, the evaluators regard them as a continuing cause for concern, because irrespective of how well the system for determining jurisdiction may be working, it is based on agreement and practice rather than on criteria set out in law. As long as there is a lack of clarity or certainty over jurisdiction for money laundering in the legislation, legal challenges on this ground cannot be ruled out and this has the potential to undermine effective implementation. The direct application of the Conventions does not assist in this respect, as the Conventions address jurisdiction in a State Party as a whole and do not contain any provisions relevant to deciding jurisdictional issues within a State Party itself.

154. The previous evaluation report identified serious deficiencies in effectiveness on a number of other grounds. These included the fact that the general perception of money laundering did not appear to go beyond the laundering of the proceeds of tax evasion, very few cases had been prosecuted at the level of the Entities and Brčko District and there was a significant backlog at the state – level courts and prosecutors' offices due to resource issues and evidentiary problems. It appeared during the onsite visit that at state level and in the Republic of Srpska, there had been improvement in these areas.

155. The evaluators were informed about a number of money laundering cases at state level involving organised crime, trafficking in human beings and drug trafficking, which corresponds to the type of criminality prevalent in the country as a whole. It was estimated that of out of 10 or so final money laundering convictions, approximately one third related to drug trafficking, one third to human trafficking and one third to tax evasion. The same approximate breakdown was given in respect of some 10 money laundering investigations that are currently on-going.

156. The authorities in the Republic of Srpska indicated that there have been 3 money laundering convictions since 2010 and there are currently some 11 on-going investigations. The principal predicate offences involved are drug trafficking, abuse of office, loan sharking and tax evasion.

157. These developments are encouraging, and the evaluators were also pleased to note the commitment of the authorities at state level and in the Republic of Srpska to taking forward large and

complex cases. Examples at state level include the *Majorca* case referred to above which resulted from a highly complex financial investigation requiring multi – jurisdictional cooperation, a recent money laundering conviction at first instance based on VAT fraud in the region of BAM 50 million, where there was a 2 year trial involving 23 defendants, one of whom was a legal person, and an on-going investigation involving the alleged use of an advertising agency to launder large scale criminal proceeds in BiH and Slovenia. Examples from the Republic of Srpska include the *Ćopić* case, which involved complex corporate structures and required multi –jurisdictional cooperation, and an on-going investigation into money laundering involving two brothers where the relevant assets are in the region of BAM 13 million.

158. As indicated above under Criteria 1.2.1 and 1.5 respectively, there have been a number of cases involving autonomous money laundering and foreign predicate offending, which is another very encouraging development. The understanding and commitment of the prosecutors and the judiciary in this respect is to be commended. The evaluators were also impressed by the willingness of the authorities to take cases forward on the basis of the Palermo and Warsaw Conventions if necessary, especially in the Republic of Srpska where this has enabled significant prosecutions.

159. However, the successes at state level and in the Republic of Srpska do not seem to be matched in the FBiH or in BD.

160. Representatives from the prosecutors' offices from various cantonal courts in the FBiH confirmed that there had been three money laundering prosecutions in the cantonal courts since 2010, all of which involved domestic tax evasion. While the number of cases is the same as in the Republic of Srpska, the cases do not appear comparable in terms of their complexity or the predicate offences involved. The cantonal prosecutors also explained that money laundering was primarily prosecuted at state level. This was attributed to the fact that many cases have an international element so are properly a matter for the state-level authorities, and in addition, cases that are generated from STRs are dealt with by the FID at state level. However, lack of the necessary expertise on the part of investigators, prosecutors and judges at cantonal level was also identified as an obstacle to money laundering prosecutions, as was a divergence in view among prosecutors as to whether it was more appropriate to prosecute for a predicate offence or for money laundering.

161. A representative from the prosecutor's office in BD indicated that there had been no money laundering prosecutions in the last four years. However, there had been two cases which were eventually transferred to the state-level courts for prosecution and there are some on-going investigations. One reason given for the absence of money laundering prosecutions was a lack of reports being sent to the prosecutor's office from the law enforcement authorities, possibly attributable to a fall in tax evasion cases as a result of changes to tax policy and the introduction of Value Added Tax. However, it was also suggested that this could be due to the fact that prosecutors focus mainly on predicate offences and neglect to consider possible laundering issues.

162. Therefore some of the deficiencies outlined in the previous evaluation report still appear to apply to the FBiH and BD. However, given that BD constitutes only 1% of the territory in BiH, the extent to which effectiveness issues there can be said to undermine BiH's overall implementation of the legal framework is limited. In addition, the fact that FBiH and BD continue to be primarily reliant on the state –level authorities to deal with any money laundering that may occur in their territories is a less significant problem than at the time of the previous report, in light of the improvements to implementation at state-level that have occurred.

163. Nevertheless, this continuing reliance is a cause for concern. As jurisdiction for money laundering is usually determined in line with jurisdiction for the predicate offence, it will generally fall to the authorities in the Entities or Brčko District, not the state-level authorities, to investigate and prosecute money laundering in cases where they are responsible for the predicate offence. On that

basis, restrictions on their ability or willingness to do so mean that laundering activity in relation to those cases is likely to remain uncovered.

164. This also raises issues of resources. The representatives whom the evaluators met from the prosecutorial and judicial authorities under all four legal systems demonstrated impressive levels of knowledge and commitment. Nevertheless, in addition to the question of insufficient expertise identified in relation to the FBiH, a shortage of resources affecting numbers, expertise and training under all four legal systems in relation to judges and prosecutors was mentioned by representatives from the different judicial and prosecutorial authorities. This clearly has implications for effective implementation.

165. It would appear that shortage of resources is more of a problem for the FBiH and BD, and to a lesser extent the Republic of Srpska, than at state level. According to representatives from the HJPC, while they had some concerns about the calibre and performance of the judiciary at all levels, there is a particular shortage of judges in the courts of the Entities and BD because of budgetary constraints. They also indicated that access by the courts in the FBiH and BD to technical resources such as electronic search engines, together with properly trained support staff to facilitate use of these resources, is much more limited than at state level and in the Special Prosecutor's Office in the Republic of Srpska.

166. There are some indications that the position is beginning to improve. There has been an increase in training across the country, often provided by foreign experts. A representative from the prosecutors' office in BD also spoke of participation in workshops organised by the state-level court to raise awareness of issues such as the liability of legal persons. Representatives of the judiciary in the FBiH indicated that they had detected the beginnings of a more proactive approach among prosecutors. With regard to technology, the IT unit of the HJPC is currently working on equipping several courts with a video conferencing capacity and this is expected to be implemented at cantonal level soon.

167. It is also the case that the resource issues that have been identified have not prevented the authorities at state level and in the Republic of Srpska from investigating and prosecuting a number of cases which have involved resource – intensive factors. These include the use of expert evidence, cross-jurisdictional transactions, foreign predicate offending, complex corporate structures and multiple parties. In addition, although the evaluators were informed that there are still some delays at state level, the backlog at the state –level courts and prosecutors' offices identified in the previous evaluation report has reduced significantly in recent years.

2.1.2 Recommendations and comments

Recommendation 1

168. Overall the legal framework for the criminalisation of money laundering in BiH broadly meets the international standard. However, the fact that it involves four separate legal systems means that it is inevitably rather complex and there would clearly be merit in introducing greater clarity and harmonisation in the interests of effectiveness.[27]

[27] Article 209 CC BiH was amended in May 2015 and these amendments were brought into force on 27 May 2015. The amendments were as follows:
*"**Money Laundering (Article 209)***
Article 209 is hereby changed and it reads:
In article 209, paragraph (1) is changed and it reads:
Whoever accepts, exchanges, keeps, disposes of, uses in commercial or other activity, converts or transfers, otherwise conceals or tries to conceal money or property, their nature, source, location, use of, movement, ownership or any other right knowing was acquired through perpetration of criminal offences, when such actions have been undertaken abroad or on the territory of the entire Bosnia and Herzegovina or on the territory of two

169. In particular, there is a need to reduce the risk of legal challenge on jurisdictional grounds. For this reason the evaluators reiterate the recommendation in the previous evaluation report that the legal framework be amended to address this. It could be done by confining money laundering offences to the jurisdiction of the state-level authorities (who generally speaking are better resourced for these purposes), subject to putting in place additional legislative or other measures to ensure that the authorities in the Entities and Brčko District routinely inform their state-level counterparts about on-going cases in their respective territories involving predicate offences that might give rise to related laundering activities. An alternative solution would be to replace the conditions in the CC BiH and the value thresholds in the other Criminal Codes with more precise and consistent criteria, in order to clarify the scope of jurisdiction as between the state-level courts and the courts of the Entities and Brčko District.

170. Whichever approach is adopted, some further clarifying amendments are recommended in relation to the elements of the money laundering offence on points where the legislation is currently silent or possibly unclear. It is therefore recommended that the language governing the physical elements of the offence be amended so that it more closely mirrors the language of the Conventions, and that explicit reference is made to the indirect proceeds of crime. It is also recommended that a definition of property be introduced to make it clear that the offence of money laundering applies to all forms of property, including incorporeal or intangible property and legal documents or instruments.

171. Furthermore, if the Entities and Brčko District retain jurisdiction for the offence of money laundering, the evaluators recommend that the authorities should examine the inconsistencies between the four Criminal Codes that have been outlined above and consider introducing amendments to achieve further harmonisation as appropriate. This is particularly the case with regard to the absence of any explicit reference to self –launderers in the CC FBiH and the CC BD.

172. With regard to implementation, it is recommended that efforts continue to be made to increase both the number of money laundering investigations and prosecutions and the range of predicate offences involved. This recommendation applies across BiH as a whole. However, it will be especially important for prosecutors in the FBiH and Brčko District to give greater priority than at present to addressing possible laundering activity when dealing with acquisitive predicate offences, should the authorities decide that the Entities and BD will retain jurisdiction for the offence of money laundering.

173. In addition, greater resources should be provided to the judicial and prosecutorial authorities in terms of numbers, expertise, training and technology, in order to facilitate more effective investigation and prosecution of money laundering cases. Here too, while this recommendation is applicable to the country as a whole, it is particularly important that this be addressed in relation to the FBiH and BD in the event that they retain jurisdiction for the investigation and prosecution of money laundering.

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entities or on the territory of one entity and Brčko District of Bosnia and Herzegovina or if such money or proceeds were acquired through perpetration of criminal offences prescribed by criminal legislation of Bosnia and Herzegovina, shall be punished by imprisonment for a term between one and eight years.
In paragraph (2) the word "property" is replaced by the words "proceeds".
Paragraph (5) is hereby changed and it reads: „(5) Money, proceeds and income or other benefits derived from proceeds acquired through a criminal offence from paragraphs (1) to (4) of this article shall be confiscated.
After the paragraph (5) a new paragraph (6) is added and it reads: „(6) Knowledge, intention or purpose as elements of a criminal offence from paragraph (1) of this article shall be inferred from objective factual circumstances."

Recommendation 32

174. The evaluators recommend that the authorities should put in place processes for the regular review and analysis of statistics from all four legal systems. This will assist them in assessing how effectively the legal framework is operating under each system (in the event that the Entities and Brčko District retain jurisdiction for the investigation and prosecution of money laundering) and across the country as a whole.

175. It is further recommended that the existing systems for the collection of statistics are reviewed and amended as necessary to eliminate inaccuracies or gaps in the data, particularly in respect of information to permit comparisons as between the different legal systems.

2.1.3 Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating[28]
R.1	**LC**	• Despite improvements in the quality of convictions, overall numbers are modest and prosecutors in some parts of the country are still not giving sufficient priority to money laundering; • Lack of clarity as to jurisdiction for money laundering increases the risk of legal challenge to prosecutions.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and analysis

Special Recommendation II (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

176. Special Recommendation II was rated PC in the 3rd round on the basis of the following findings:

- The incrimination of terrorist financing in all four Criminal Codes did not appear wide enough to provide clearly for criminal sanctions concerning the collection and provision of funds for a terrorist organisation or an individual terrorist.
- Further clarification was required as to the coverage of *"funds"* in the four Criminal Codes.

Legal framework

177. As noted in the previous evaluation report, BiH ratified the UN International Convention for the Suppressing of the Financing of Terrorism ("TF Convention") in 2003.

178. Terrorist financing is an offence under all four Criminal Codes, the relevant provisions being Article 202 of the CC BiH[29], Article 202 of the CC FBiH, Article 301 of the CC RS and Article 199 of the CC BD. Since the last evaluation, some amendments to the CC BiH have widened the scope of the terrorist financing offence at state level. In addition, new offences of organising a terrorist group at Article 202d, and establishing and joining foreign paramilitary or police formations at Article 162 b, contain elements related to funding.

Criminalisation of financing of terrorism (c.II.1)

179. As indicated in the previous evaluation report, the terrorist financing offences under the CC FBiH, the CC RS and the CC BD are much narrower in scope than the state-level offence, and largely

[28] Note to assessors: for all Recommendations, the description and analysis section should include the analysis of effectiveness and should contain any relevant statistical data.
[29] The TF offence in the CC BiH was amended and these amendments were brought into force on 24 March 2015.

apply only to terrorism within the respective borders of the Entities and Brčko District. Subject to this point, which is looked at further below, the offences under the four Criminal Codes are harmonised, and all cover the direct or indirect provision or collection of funds by any means, with the aim that the funds should be used or knowing that they are to be used in full or in part for the perpetration of certain acts. This language is based on the language of Article 2 of the TF Convention, and in fact goes further than Article 2 as there is no requirement that the provision or collection of funds be done unlawfully and wilfully. The acts covered by the terrorist financing offences fall into two categories, again in line with the structure of the terrorist financing offence at Article 2 of the TF Convention.

180. The first category comprises acts which constitute offences under other specified provisions of the relevant Criminal Code and which in turn implement offences under the various treaties listed in the annex to the TF Convention. The acts in the first category under the CC FBiH, CC RS and the CC BD are the taking of hostages (under Article 200, Article 300 and Article 197 respectively) and terrorism (under Article 201, Article 299 and Article 198 respectively), and the scope of these offences is limited by a purposive element that only applies to authorities in the relevant Entity or to Brčko District. The offence of taking hostages is dependent on the relevant acts being done to compel the authorities of the FBiH, the Republic of Srpska or Brčko District as the case may be, to perform or to abstain from performing any act. The offence of terrorism applies to terrorist acts that are done in order to compel the respective authorities of the Federation of Bosnia and Herzegovina, the Republic of Srpska or Brčko District to perform or to abstain from performing any act, or with the intention of seriously intimidating a population or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of the Federation of Bosnia and Herzegovina, the Republic of Srpska or Brčko District as the case may be.

181. The range of offences in the first category under the CC BiH is much wider and not restricted in scope to activity within the borders of the country. At the time of the last evaluation the offences were as follows: the taking of hostages (Article 191), endangering internationally protected persons (Article 192), illicit procurement and disposal of nuclear material (Article 194), endangering nuclear facilities (Article 194a), piracy (Article 196), hijacking an aircraft or a ship or seizing a fixed platform (Article 197), endangering the safety of air traffic and maritime navigation (Article 198), destruction and removal of signal devices utilised for the safety of air traffic (Article 199), misuse of telecommunication signals (Article 200), and terrorism (Article 201). Further offences have since been introduced to the CC BiH and included in the ambit of the terrorist financing offence as follows: encouraging terrorist activities in public (Article 202a), recruitment for terrorist activities (Article 202b) and training to perform terrorist activities (Article 202c). In addition, the offences at Article 197 and Article 198 have been amended to include acts related to fixed platforms.

182. While these offences cover the majority of acts required to be included in the definition of terrorism in line with the treaties listed in the annex to the TF Convention, there are some omissions.

183. The UN International Convention on the Taking of Hostages referred to in paragraph 4 of the annex to the Convention requires the criminalisation of various acts, subject to a purposive element of aiming to compel certain named categories of persons and entities to do or refrain from doing something. These categories include natural or juridical persons or group of persons, but the offence of hostage taking in Article 191 of the CC BiH is subject to a purposive element that only encompasses BiH, another state or an international organisation. On that basis, the terrorist financing offence at Article 202 would not apply to the provision of funds for the purposes of hostage taking where this was aimed at compelling action or forbearance by legal or natural persons.

184. The Vienna Convention on the Physical Protection of Nuclear Material referred to in paragraph 5 of the annex to the Convention contains a two –part offence involving threats. First, it criminalises threats to use nuclear material to cause death or serious injury to any person or substantial property damage. Second, it criminalises threats to carry out the theft or robbery of nuclear material in order to

compel a legal or natural person, an international organisation or a State to do or refrain from doing something. The offence of illicit procurement and disposal of nuclear material at Article 194 of the CC BiH addresses the first part of the Convention offence to some extent, in that under Article 194 (7) it is an offence to threaten to use nuclear material to cause death, serious injury or substantial property damage in order to compel a legal or natural person international organisation or State to do or refrain from doing something. However, this introduces a purposive element which is not included in the corresponding Convention offence. In addition, the second part of the Convention offence is not covered at all under Article 194.

185. The Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation referred to in paragraph 7 of the annex to the Convention criminalises a number of acts as well as threats to carry out those acts. The same is true of the Rome Convention for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf referred to in paragraph 8 of the annex to the Convention. Although the offence of endangering the safety of air traffic and maritime navigation or fixed platforms at Article 198 criminalises the various acts set out in the two Conventions, it does not cover threats to carry them out.

186. In some circumstances the omissions in relation to hostage taking, nuclear material and fixed platforms could be met for the purposes of the terrorist financing offence by reliance on the offence of terrorism at Article 201. This is because the definition of an act of terrorism for the purposes of Article 201 includes activities in these categories which in some respects are more widely framed than in the dedicated offences outlined above. For example, the definition of act of terrorism covers the act of kidnapping or hostage taking and this is subject to a purposive element that applies to the victim or *"some other person"*, so is wider than the purposive element in Article 191. However, the definition of act of terrorism for all purposes is expressly subject to the condition that the act is one that may cause serious damage to a state or an international organisation. This limitation means that the scope of these acts is necessarily narrower than required under the various Conventions. Again taking hostage taking as an example, it would mean that providing financial support for hostage taking where this was aimed at disrupting the activities of a commercial organisation in ways that would not have any significant effect on a particular country would not constitute a terrorist financing offence under the CC BiH.

187. The second part of the terrorist financing offence at Article 2 of the TF Convention is addressed by the reference in the four Criminal Codes to any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking active part in the hostilities in an armed conflict. This is subject to a purposive element in respect of the intimidation of a population, or compelling the authorities of either BiH, the Federation of Bosnia and Herzegovina, the Republic of Srpska or Brčko District as the case may be to perform or abstain from performing any act, and the purposive element in the CC BiH also extends to any other government or an international organisation. This mirrors the corresponding language in Article 2.

188. As indicated above, the scope of the terrorist financing offences under the CC FBiH, the CC RS and the CC BD is more restricted than that at state level. The evaluators agree with the view expressed in the previous evaluation report that the restricted scope of the terrorist financing offence at the level of the Entities and Brčko District is understandable, on the basis that it is more appropriate for offences of terrorism with international characteristics to be dealt with at state level. Therefore, although most of the offences in the treaties listed in the annex to the Convention do not come within the ambit of the terrorist financing offences under the CC FBiH, the CC RS and the CC BD, this is not in itself a deficiency because terrorist financing in relation to the other offences has been criminalised at state level (subject to the omissions outlined above).

189. However, there is a deficiency in the way that the offence of terrorism has been defined under the three Criminal Codes. An act of terrorism for these purposes is defined by reference to a list of

activities which corresponds to the equivalent list under Article 201 of the CC BiH. Like Article 201 of the CC BiH, the listed activities under the Criminal Codes of the Entities and Brčko District are subject to a requirement that they may cause serious damage to the State or an international organisation. This would suggest that acts with international characteristics are intended to be covered in this context, but this is difficult to reconcile with the fact that the offence of terrorism is subject to an overall purposive element which is expressly confined to the Entities or to Brčko District, as indeed are aspects of the listed activities themselves. This requirement has the potential seriously to restrict the scope of the offence of terrorism under the three Criminal Codes, and therefore of any related terrorist financing offence. As currently worded, the circumstances in which the offence of terrorism is applicable are limited to situations where an act of terrorism which is aimed at destabilising the fundamental political etc. structures of the Entities or Brčko District, or forcing the hand of their governments, may cause serious damage to the state or to an international organisation. It is unclear what is meant by serious damage to the state in this context, and whether it would include serious damage that was confined to the relevant Entity or to Brčko District as the case may be . If not, the effect would be that the provision of funds for the purposes of an act that may cause damage confined in this way would not constitute terrorist financing. If so, such an omission cannot be remedied by relying on the state-level offence of terrorism, as that offence also only applies where an act may cause serious damage to the state or to an international organisation, and in addition the purposive element is limited to destabilising the fundamental political etc. structures of BiH, another state or an international organisation, or forcing the hand of the relevant government or international organisation. Therefore it would not appear to encompass acts solely aimed at the structures or the authorities of the Entities or Brčko District.

190. The evaluators also observe that the new offences at Articles 202a to 202d respectively of the CC BiH (i.e. offences of encouraging terrorist activities in public, recruitment for terrorist activities, training to perform terrorist activities and organising a terrorist group) apply to hostage taking and acts of terrorism, both of which are criminalised by the Entities and Brčko District. To that extent these new offences appear applicable in both an international and a domestic context, and although the international standard does not specifically require the terrorist financing offence to extend to funding for acts of this kind, it is unclear why the new offences were thought necessary at state level but not necessary for the purposes of hostage taking and terrorism under the Criminal Codes of the Entities and Brčko District.

191. The previous evaluation report identified a further deficiency in the legal framework that applied to all four Criminal Codes. This was the fact that other than for the purposes of carrying out terrorist acts, the criminalisation of terrorist funding did not cover the funding of terrorist organisations or individual terrorists as required by the FATF Methodology.

192. This deficiency has since been addressed to a limited extent at state level by some of the amendments to the CC BiH that have been introduced since the last evaluation.

193. Firstly, the terrorist funding offence at Article 202 of the CC BiH now applies to the provision of funds for activities other than the perpetration of acts of terrorism, in that it extends to funding for the purposes of encouraging terrorist activities in public, recruitment for terrorist activities and training to perform terrorist activities as criminalised at Article 202a, Article 202b and Article 202c. However, terrorist activities for these purposes are defined by reference to the same offences as those specified under Article 202, so are subject to the same omissions in relation to some of the treaty offences referred to above. In addition, the provision of funds to terrorist organisations or individual terrorists for purposes unrelated to terrorism, for example administrative costs or living expenses, is still not criminalised.

194. Secondly, the new offence of organising a terrorist group at Article 202d includes a reference to the provision of funding. Under Article 202d (1) it is an offence to organise a terrorist group or

otherwise unite a minimum of three individuals for the purpose of perpetrating certain specified criminal offences. These offences are the same offences as those identified for the purposes of the terrorist financing offence at Article 202. Under Article 202d (2) it is an offence to become a member of or otherwise participate in the activities of such a group, and participation expressly includes providing financial or other assistance. However, in the absence of any jurisprudence it is unclear whether the reference to participation in the activities of the group means that the provision of financial assistance in this context should be interpreted as financial assistance for the purposes of a specific activity, or whether it can be interpreted more widely to cover the provision of funds to the group for any purposes. In any event, even if the offence can be interpreted in this way, its application is limited by the fact that terrorist group is defined for these purposes by reference to the same criminal offences as those specified under Article 202, so the offence at Article 202d is subject to the same omissions with regard to the treaty offences.

195. Thirdly, there is a new offence at Article 162b of unlawfully establishing and joining foreign paramilitary or parapolice formations, which could in some cases involve terrorist organisations. While there is no express reference to financing, the elements of the offence include equipping individuals or groups for the purpose of their joining in any way foreign military, foreign paramilitary or foreign parapolice formations, and rendering operable the means to do so or removing obstacles to doing so. Activity of this kind could conceivably include the provision of funding. However, such funding would only be criminalised to the extent that it was provided for the specific purpose of joining the relevant formation, so the offence does not criminalise the provision of funding to individual terrorists or terrorist groups more generally.

196. The previous evaluation report also noted that in the absence of jurisprudence, it was unclear whether the terrorist financing offences would extend to all aspects of funds as defined in the TF Convention, including funds from both legitimate and illegitimate sources. The legislation is unchanged in this respect, but presumably the definition of funds in the TF Convention would be binding on the domestic courts, following the reasoning in the *Ćopić* case referred to above in the context of money laundering.

197. The terrorist financing offences do not require that the funds were actually used to carry out or attempt a terrorist act, as it is sufficient if funds are provided with the intention that they should be so used. Although the offences are tied to the perpetration of acts of terrorism, it is unclear whether the legislation requires the funds to be linked to the perpetration of a specific terrorist act already in contemplation, or whether the offences are applicable to the provision of funds with a general intention that they be used for the purposes of terrorists acts, even if no specific act of terrorism is in contemplation at the point when the funds are provided. Attempts and the other ancillary offences referred to above under Recommendation 1 apply to the offence of terrorist financing in the same way as to the offence of money laundering. As terrorist financing is punishable by up to ten years' imprisonment, the threshold of potential imprisonment of at least three years that applies to most ancillary offences is met.

Predicate offence for money laundering (c.II.2)

198. As the money laundering offences under all four Criminal Codes are based on an "*all crimes*" approach, terrorist financing is a predicate offence for money laundering.

Jurisdiction for Terrorist financing offence (c.II.3)

199. The scope of the various offences listed under Article 202 of the CC BiH is not confined to activity in BiH, and the purposive elements of these offences extend to foreign governments and international organisations. The same is true of the relevant activity and purposive element under the second part of the Article 202 offence itself. In addition, there are provisions governing extra-

territorial jurisdiction at Article 9 of the CC BiH which may be relied on, particularly Article 9 (1)(c) which relates to offences governed by international law and treaties.

200. The terrorist financing offence and the underlying listed offences under the other three Criminal Codes are also not confined to activity within the respective borders of the Entities and Brčko District, and as indicated above there is a reference to causing damage to the state and international organisations in connection with the offence of terrorism. The scope of the terrorism financing offence and the underlying offences is more limited than at state level, in that the purposive elements are only applicable in respect of the authorities within the Entities and Brčko District as the case may be. Therefore, as noted in the previous evaluation report, cases where the purposive element applies to other governments or an international organisation fall within the exclusive competence of the state-level Criminal Code.

The mental element of the FT (applying c.2.2 in R.2)

201. The previous evaluation report indicated that the possibility for intention to be inferred from objective factual circumstances had been put beyond doubt by judicial practice. This was consistent with the view expressed by several prosecutors and judges that the courts are willing to accept circumstantial evidence and would also be supported by the fact that the courts are bound to apply the provisions of the Warsaw Convention as indicated above. On that basis the evaluators have no reason to depart from the previous findings on this issue.

Liability of legal persons (applying c.2.3 & c.2.4 in R.2)

202. The liability of legal persons is provided for under Chapter XIV of each of the Criminal Codes. This expressly provides that legal persons may be held accountable for any of the offences under the Criminal Code in question, which would therefore apply to the terrorist financing offences under all four legal systems. The legislation does not preclude parallel proceedings.

Sanctions for FT (applying c.2.5 in R.2)

203. The state-level terrorist financing offence is punishable by a term of imprisonment of a minimum of 3 years. The same penalty is applicable to the provision of financial assistance to a terrorist group under Article 202d of the CC BiH and to the offence of unlawfully establishing and joining foreign paramilitary or parapolice formations under Article 162b. The terrorist financing offences under the other three Criminal Codes are punishable by a term of imprisonment of between one and ten years. These sanctions are the only available penalties applicable to natural persons, although as indicated in the previous evaluation report, legal persons may be subject to additional penalties including fines, seizure of property and dissolution. The range of available penalties is in line with those available for other serious offences and would appear to be proportionate and sufficiently dissuasive.

Recommendation 32 (terrorist financing investigation/prosecution data)

204. The points made under Recommendation 1 with regard to the process for collecting statistics and the review of the effectiveness of the system for investigating and prosecuting money laundering apply equally to terrorist financing.

205. As indicated above under Recommendation 1, there was no data in respect of terrorist financing cases, despite reference to one indictment and some on-going investigations having been made by the authorities during the onsite visit. This indicates that the existing systems for collecting and maintaining statistics in relation to terrorist financing are not effective.

Effectiveness and efficiency

206. As was the case at the time of the previous evaluation report, the number of terrorist financing cases is low. Although the evaluators were informed that there are some on-going investigations into terrorist financing, to date only one indictment has been issued (which related to 3 individuals but

which on the facts was ultimately considered to be more appropriately dealt with as an offence of terrorism rather than terrorist financing). The previous evaluators did not regard the lack of concrete cases as a cause for concern, presumably on the basis that terrorist financing was assessed as presenting a low risk to the jurisdiction at that time.

207. However, since then the level of risk appears to have increased considerably, primarily because of links between some citizens of BiH and Islamic terrorist groups currently operating in the Middle East. During the onsite visit, the evaluators were informed of a number of recent examples of citizens of BiH who were known to have travelled to Syria in support of the terrorist group known as the Islamic State of Iraq and the Levant (ISIL). The authorities also indicated that there is evidence of funds related to terrorism being accumulated outside BiH before being brought into the country in small amounts, or *"smurfed"*, and then distributed within the country using money transfer services. In addition there have been instances of terrorist acts within the jurisdiction itself, including an attack on the US embassy in Sarajevo.

208. According to the MEQ, the Intelligence and Security Agency of BiH and all police agencies permanently monitor the activities of potentially dangerous groups, either independently or in cooperation with the Anti-terrorism Task Force of BiH. This includes possible forms of terrorist funding and will lead to the involvement of SIPA in appropriate cases. Nevertheless, given the background outlined above, the absence of any convictions for terrorist financing offences raises questions as to the effective implementation of the legal framework.

209. The issue of resources identified in the context of money laundering is likely to be a factor. Another factor appears to be the deficiencies in the legal framework referred to above. This is particularly the case with regard to the need to prove that funds are provided for the purposes of a terrorist act, which the state –level prosecutor identified as an obstacle to prosecuting terrorist financing. This view was supported by the experience of the authorities in the case of the attack on the US embassy, where an investigation had disclosed the use of the financial system for the purpose of transferring funds to the perpetrator from a third party in another jurisdiction, but as it had not been possible to link those funds to the terrorist act in question no prosecution for terrorist funding could be taken forward.

210. There also seems to be a lack of clarity and understanding as to the effect and application of the legal framework. The prosecutors in the FBiH were of the view that terrorist financing could only be dealt with at state level, despite the fact that the CC FBiH criminalises terrorist financing. In addition, the difficulty referred to above in reconciling the international characteristics in the offence of terrorism for the purposes of the Entities and Brčko District with an overall purposive element which is expressly confined to the Entities or to Brčko District may make it difficult to take forward any cases other than at state level.

211. Finally, the issue identified in the previous evaluation report of *"double definition"* leading to differences in the definition of terrorist financing as between the Criminal Codes on the one hand and the (then) new AML Law on the other remains an issue in respect of the latest AML Law. This may have an impact on effective implementation.

2.2.2 Recommendations and comments

Special Recommendation II

212. At a technical level, although the legal framework for the criminalisation of terrorist financing addresses many of the requirements of the international standard, it is subject to a number of deficiencies. Some of these deficiencies appear to be actively undermining the effective prosecution of terrorist financing, particularly the absence of criminal sanction for the provision of funds to a terrorist organisation or an individual terrorist other than for the purposes of a terrorist act. The

evaluators therefore reiterate the recommendation made in the previous evaluation that the legislation be amended to address this issue, and this should be done urgently.[30]

213. The legal framework also requires amendment to ensure that all of the elements of the treaty offences come within the ambit of terrorist financing at state level. While this recommendation applies to all of the omissions identified above, it is particularly important that the purposive element in respect of the offence of hostage taking is widened to include any legal or natural person or group of persons as soon as possible, given the current situation with regard to support for ISIL from within BiH.

214. It is also recommended that a definition of funds be included in the legislation in line with the definition in the TF Convention, to put the issue beyond doubt.

215. In addition, the evaluators reiterate the recommendation in the previous evaluation report that the authorities should consider confining jurisdiction for all terrorist financing offences to the state-level courts. This would bring the legal framework in line with practice and also with what appears to be the understanding of the position by some of the authorities. It would also mean that the omissions and inconsistencies in the legal framework at the level of the Entities and Brčko District would no longer apply.

216. If however the Entities and Brčko District retain jurisdiction for terrorist financing, their Criminal Codes will require amendment to address some technical deficiencies. An amendment is necessary to cover criminal sanction for the provision of funds to a terrorist organisation or an individual terrorist other than for the purposes of a specific terrorist act in the same way as the state-level Criminal Code. In addition, a definition of funds should be included for the same reasons as indicated above in relation to the state-level of funds. The definition of terrorist act for the purposes of the offence of terrorism should be amended, to specify that it includes acts that may cause damage which is confined to the Entities and Brčko District themselves.

217. The evaluators further recommend in the interests of consistency that as well as addressing these deficiencies, the legislation should be amended so that the offences at Articles 202a to 202d of the CC BiH are introduced under the three Criminal Codes for the purposes of the offences of hostage taking and terrorism.

218. At an effectiveness level, the authorities are strongly advised to make greater efforts to investigate and prosecute terrorist financing. In this respect, the recommendations made above in the context of money laundering as to the provision of greater resources to the judicial and prosecutorial authorities apply equally in the context of terrorist financing.

219. Finally, the evaluators repeat the recommendation in the previous evaluation report that the authorities should consider abolishing the use of *"double definitions"* of terrorist financing as this may be negatively affecting implementation.

[30] The terrorist financing offence was amended and the revised version came into force on 24 March 2015 Article 202 (2) now reads as follows:
"Financing of terrorist activities (Article 202)
…
(2) Whoever by any means, directly or indirectly, gives or collects or in other way provides funds aiming that they, in full or in part:
a) be used for any aim by the terrorist organisations or individual terrorists or
b) knowing that they shall be used for perpetration of criminal offences from paragraph 1 by terrorist organisations or individual terrorists.
shall be punished by the punishment from paragraph 1 of this article."

Recommendation 32

220. The recommendations above in relation to Recommendation 32 for the purposes of money laundering apply equally to terrorist financing.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**PC**	• The terrorist financing offences in the four Criminal Codes are not wide enough to encompass the provision of funds to terrorist organisations or individual terrorists other than for the purposes of a terrorist act; • Some elements of the treaty offences in the annex to the TF Convention are not covered by the CC BiH and so are not within the ambit of the terrorist financing offence; • The legislation is insufficiently clear as to whether the offence of terrorism in the CC FBH, CC RS and CC BD, and therefore the offence of terrorist financing, applies in relation to acts that may cause damage solely to the Entities and Brčko District themselves. **Effectiveness** • The absence of any significant enforcement activity to date in the context of the known risks of terrorist financing, and lack of clarity in some quarters as to the legal framework, raise serious concerns as to effective implementation.

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

2.3.1 Description and analysis

Recommendation 3 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

221. Recommendation 3 was rated PC in the 3rd round on the basis of the following findings:

- High evidential standards applied by trial courts, the structure of the confiscation regime and an insufficient proportion of confiscations and provisional measures being taken with regularity all gave rise to concerns over effectiveness.
- Mandatory confiscation of instrumentalities was subject to imprecise conditions in most cases, while in RS the application of such a measure was discretionary. The specific confiscation regime for money laundering cases did not allow for value confiscation
- Confiscation of proceeds commingled with legitimate assets or that of income or benefits derived from proceeds of crime was not provided for by RS criminal legislation.
- There were no 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.

Legal framework

222. The legal provisions with regard to the confiscation, freezing and seizing of the proceeds of crime remain largely as they were at the time of the last evaluation and are broadly harmonised

across the four legal systems. The framework is set out in the four Criminal Codes and under the Criminal Procedure Codes of each legal system, which will be respectively referred to as the CPC BiH, the CPC FBiH, the CPC RS and the CPC BD.

223. However, there have been some changes since the last evaluation. The CC BiH and the CC FBiH have been amended to introduce the concept of extended confiscation in relation to some offences, that is, a requirement for the defendant to prove the lawful source of assets in certain circumstances.

224. This concept has also been introduced in the Republic of Srpska in the new dedicated asset recovery legislation, namely the Criminal Assets Recovery Act (CARA). This Act, which covers a range of matters including the establishment of an Asset Recovery Agency, came into force in September 2010 and is a *lex specialis* applicable to certain categories of offences that are listed in Article 2. These are as follows:

- Crimes against sexual integrity;
- Crimes against public health (including the production and trafficking of drugs);
- Crimes against the economy and payment system;
- Crimes against authority (including offences of corruption, embezzlement and fraud);
- Organised crime;
- Crimes against public order;
- Crimes against humanity and against values protected by international law;
- Other crimes under the CC RS where the value of items that have been used, aimed at or result from the offence exceed BAM 50.000.

225. The evaluators were also informed that dedicated asset recovery legislation for the FBiH has been approved. However, it is not scheduled to be operational before the expiry of the two month period following the onsite visit and therefore has not been taken into account for present purposes.[31]

226. Various terms are used under the different legal systems to refer to provisional and final measures. In the interests of consistency, the approach taken in the previous report of referring to provisional measures as seizures and final measures as confiscation will be followed for present purposes.

Confiscation of property (c.3.1)

227. The regime for the confiscation of the proceeds of crime is set out in a dedicated chapter under each Criminal Code (Chapter Twelve under the CC BiH, CC FBiH and CC BD, and Chapter Seven under the CC RS).

228. Article 110 of the CC BiH, Article 114 of the CC FBiH, Article 94 of the CC RS and Article 114 of the CC BD provide that no one shall be allowed to retain material gain acquired by the perpetration of a criminal offence, and material gain shall be confiscated by the court decision that established the perpetration of a criminal offence. Under Article 140 of the CC BiH, Article 144 of the CC FBiH, Article 143 of the CC RS and Article 144 of the CC BD, the confiscation provisions apply to legal persons in the same way as to natural persons. In addition, as pointed out in the previous evaluation report, corporate criminal liability is also subject to a specific sanction of property seizure under all four Criminal Codes.

[31] The new law on asset forfeiture in the FBiH was brought into force in April 2015 but has not yet been operationalized.

229. There is nothing to limit the reference to a criminal offence in any way, so the general rules outlined above apply to money laundering, terrorist financing and all predicate offences. There is also nothing in the legislation to define or otherwise restrict the type of property or material gain that may be confiscated. The finding in the previous evaluation report was that any increase or prevention of decrease in all forms of property, including objects, rights, moveable and immoveable assets and documents evidencing title, is covered. The evaluators were given no information to contradict this finding, and it is consistent with the examples of confiscation orders in relation to a wide range of property that were provided during the onsite visit.

230. Under Article 111 of the CC BiH, Article 115 of the CC FBiH and Article 115 of the CC BD, income or other benefits derived from the proceeds of a criminal offence, from property into which proceeds of crime have been converted, or from property with which the proceeds of crime have been intermingled is subject to the same confiscation regime as applies to the proceeds of the criminal offence.

231. In RS, in the case of assets related to offences that come within the categories listed in Article 2 of the CARA, confiscation of direct or indirect proceeds of crime and converted or intermingled assets is specifically provided for by Article 3(a). As identified in the previous evaluation report, there is no equivalent provision in the CC RS for the purposes of offences that are not covered by CARA. However, the authorities in the Republic of Srpska indicated that confiscation of indirect or intermingled assets was possible under the CC RS and the CPC RS and that this had been confirmed in practice by verdicts in a number of cases. This approach is consistent with the fact that the courts are bound by the provisions of the Palermo and the Warsaw Conventions, when applying the legal framework, as confirmed above in relation to the criminalisation of money laundering.

232. The confiscation of property of corresponding value is expressly provided for under all four Criminal Codes. Article 111 of the CC BiH, Article 115 of the CC FBiH, Article 95 of the CC RS and Article 115 of the CC BD provide that all money, valuable objects and every other material gain acquired by the perpetration of a criminal offence shall be confiscated from the perpetrator, and if the confiscation is not feasible the perpetrator shall be obliged to pay an amount that corresponds to the acquired material gain.

233. The four Criminal Codes also provide for the confiscation of property in third party hands. Article 111 of the CC BiH, Article 115 of the CC FBiH, Article 95 of the CC RS and Article 115 of the CC BD provide that material gain acquired by the perpetration of a criminal offence may be confiscated from parties to whom it has been transferred. This is subject to two conditions, first that the transfer was made without compensation or at an undervalue, and secondly that the person to whom the material gain was transferred knew or ought to have known that the material gain was acquired by the perpetration of criminal offence.

234. In addition to these generally applicable provisions, there is specific provision for confiscation in relation to the money laundering offence under each Criminal Code. Under Article 209 (5) of the CC BiH, Article 272 (4) of the CC FBiH, Article 280 (6) of the CC RS and Article 265 (4) of the CC BD, the money and property gain that is the subject of the offence *i.e.* the laundered property, shall be confiscated. The previous evaluation report indicated that the purpose and scope of this provision was unclear, as although it could clearly be relied on to confiscate the laundered proceeds of a predicate offence, it was doubtful whether on a strict reading, the wording of the legislation permitted the confiscation of proceeds derived from a money laundering offence itself. However, on the basis of court judgements where this had happened, the previous evaluation report accepted that it could be done. This interpretation would appear to be confirmed by the judgement in *Ćopić,* where the court relied on Article 280 (6) of the CC RS and not on the confiscation provisions in Chapter Seven of the CC RS to confiscate property in the hands of the defendant which comprised the rewards from his laundering activities. The RS Ministry of Justice confirmed this interpretation.

235. The confiscation provisions specific to the money laundering offences do not make any reference to matters such as assets in third party hands or confiscation of assets of corresponding value which are addressed in relation to the general power of confiscation in the different Criminal Codes. According to the previous evaluation report, the authorities had indicated that the confiscation of property of corresponding value was not possible in cases where the specific confiscation provision in the money laundering offences was relied on. However, the evaluators note that although the confiscation order in the *Ćopić* case was made on the basis of Article 280 (6) of the CC RS, in other words in reliance on the confiscation provisions specific to money laundering rather than on the generally applicable provisions, the order extended to assets in third party hands. This would suggest that the court considered that the power to do this was implicit in Article 280 (6), perhaps by reference to the power to confiscate third –party assets in Article 95 of the CC RS. This would suggest in turn that other provisions of Article 95 such as the power to confiscate property of corresponding value would also be applicable to confiscation under the money laundering offences. If so, this reasoning would presumably apply to all of the Criminal Codes. The RS Ministry of Justice also confirmed this interpretation.

236. Turning to the confiscation of instrumentalities, this is dealt with under Article 74 of the CC BiH, Article 78 of the CC FBiH, Article 62 of the CC RS and Article 78 of the CC BD. Although these provisions are broadly harmonised, there are some differences between them.

237. Article 74(1) of the CC BiH provides that objects used or destined for use in the perpetration of a criminal offence, or objects that resulted from the perpetration of a criminal offence shall be confiscated where the relevant objects are owned by the perpetrator, providing that at least one or other of two conditions are met. The first condition is that there is a danger that the objects will be used again for the perpetration of a criminal offence, and the second is that confiscation seems necessary for the purpose of protecting the public safety or moral reasons. At the time of the last evaluation the second condition referred to absolute necessity but a subsequent amendment removed the word *"absolutely"*. Article 78(1) of the CC FBiH and Article 78(1) of the CC BD are in the same terms, save that they still refer to *"absolute"* necessity.

238. Under Article 74(2) of the CC BiH, Article 78(2) of the CC FBiH and Article 78(2) of the CC BD, objects that are not owned by the perpetrator that are used or destined for use in the perpetration of a criminal offence, or objects that resulted from the perpetration of a criminal offence, may be confiscated when consideration of public safety or moral reasons so require, but this does not affect the right of third parties to obtain damage compensation from the perpetrator.

239. The effect of these provisions is that there is a mandatory confiscation regime for instrumentalities owned by the perpetrator and a discretionary confiscation regime for instrumentalities owned by third parties. In both cases this is dependent on the specified conditions being met.

240. The power to order confiscation of instrumentalities under Article 62 of the CC RS, while broadly similar, is discretionary rather than mandatory in respect of both perpetrators and third parties, and confiscation from the perpetrator is not subject to any conditions.

241. All four Criminal Codes contain an additional provision relating to mandatory forfeiture. Article 74(3) of the CC BiH, Article 78(3) of the CC FBiH and Article 62 of the CC RS state that the law may provide for mandatory forfeiture. Article 78(3) of the CC BD provides that the law may provide for mandatory forfeiture from third parties consideration of public safety or moral reasons so require, again without prejudice to the right to claim damages from the perpetrator. Examples where mandatory forfeiture has been provided for under all four Criminal Codes, such as in cases involving drugs, are set out in the previous evaluation report.

242. The process for confiscation is dealt with in the Criminal Procedure Codes, which provide as a starting point that after a guilty verdict, the court shall decide on security measures and forfeiture of property gain. The relevant provisions are Article A285 (1) (e) of the CPC BiH, Article A300 (1) (e) of the CPC FBiH, Article A291 (1) (e) of the CPC RS and Article A285 (1) (e) of the CPC BD.

243. The Criminal Procedure Codes further provide that the Court shall establish property gain ex officio. This is done either on basis of evidence gathered by the prosecutor, who has a duty under the legislation to gather evidence and examine the circumstances that are important for the establishment of the property gain, or through free assessment in the event of disproportionate difficulties or significant delay. As explained in the previous evaluation report, free assessment most commonly occurs in circumstances where it is difficult to confiscate assets or ascertain their value because they have been destroyed or have disappeared. The relevant provisions are Articles 392 to 394 of the CPC BiH, Articles 413 to 415 of the CPC FBiH, Articles 403 to 405 of the CPC RS and Articles 392 to 394 of the CPC BD.

244. In addition to these core provisions, a different procedure for extended confiscation has been introduced in respect of certain offences under the CC BiH, the CC FBiH and the CC RS. This is looked at below.

Provisional measures to prevent any dealing, transfer or disposal of property subject to confiscation (c.3.2)

245. Provisional measures are dealt with under the four Criminal Procedure Codes in the same way as at the time of the last evaluation.

246. Article 65 of the CPC BiH, Article 79 of the CPC FBiH, Article 129 of the CPC RS and Article 65 of the CPC BD provide that objects that are the subject of confiscation pursuant to the relevant Criminal Code or that may be used as evidence in criminal proceedings shall be seized and their custody shall be secured pursuant to a court decision. In cases where there is a risk of delay, the relevant items may be seized without a court order and if an affected party explicitly opposes this, the prosecutor must apply to the court for subsequent approval within 72 hours.

247. As noted in the previous evaluation report, the use of the term *"objects"* and the distinction drawn between *"objects"* and property in the heading of the relevant section suggests that this provision is aimed not at the proceeds of crime in general but at instrumentalities and physical items resulting from the perpetration of a criminal offence.

248. The temporary seizure of the proceeds of crime more generally is addressed by Article 73 of the CPC BiH, Article 87 of the CPC FBiH, Article 137 of the CPC RS and Article 73 of the CPC BD. These provide that at any time during the proceedings, the court may upon the motion of the prosecutor issue a temporary measure of property seizure under the relevant Criminal Code, arrest in property or take other necessary temporary measures to prevent any use, transfer or disposal of such property. The authorities confirmed that this power applies from the outset of an investigation.

249. In cases where there is a risk of delay, the property may be seized or made the subject of an arrest in property or other necessary temporary measure by an authorised official in order to prevent its use, transfer or disposal without a court order. In those circumstances the authorised official must inform the prosecutor immediately and an application to the court for subsequent approval must be made within 72 hours. Property is not defined or otherwise restricted in scope and the evaluators were given no reason to depart from the view expressed in the previous evaluation report that these provisions appear to be applicable to all forms of property, including intangible property.

250. Similar provisional measures are also available under the CARA. In the case of assets linked to the offences listed in Article 2 of the CARA, under Article 21 the prosecutor may submit a proposal for the temporary seizure of assets if there is a risk that the subsequent confiscation of the proceeds of

crime would be difficult or impossible. Under Article 22, if there is a risk of dissipation before the court makes a decision, the prosecutor may issue a restraining order which will remain in place until the court reaches a decision.

251. The investigative procedures under the Criminal Procedure Codes are also relevant in the context of provisional measures, namely Articles 217, 218 and 223 of the CPC BiH, Articles 232, 233 and 238 of the CPC FBiH, Articles 217, 218 and 223 of the CPC RS and Articles 217, 218 and 223 of the CPC BD. These provisions deal with the protection and preservation of clues and evidence for the purposes of a suspected criminal offence, therefore, their scope is limited to corporeal property that is potentially relevant to the predicate offence.

252. There are some specific additional provisions in relation to the seizure of financial assets at Article 72 of the CPC BiH, Article 86 of the CPC FBiH, Article 136 of the CPC RS and Article 72 of the CPC BD. Under these provisions, the court may order the temporary suspension of a financial transaction that is suspected to constitute, to be intended for or to disguise the commission of a criminal offence, or to disguise a gain obtained from a criminal offence. In those circumstances, the court may also order that the financial resources designated for the transaction and cash in domestic or foreign currency be temporarily seized and kept in a special account until the end of the proceedings or until the conditions for their return are met. In practice, the exercise of this power will often follow the exercise by the FID of its power under Article 58 of the AML Law and precursor legislation to order the suspension of transactions for up to 5 working days, in the event of suspicion of a correlation between money laundering or terrorist financing activities and a certain transaction, account or person. This power may be exercised at the request of a prosecutor and the making of a temporary suspension order at the end of the 5 day period is expressly contemplated at Article 58(4).

253. The view expressed in the previous evaluation report was that the court's powers in these circumstances appeared to be limited in scope, because they could only be used in relation to a specific transaction. Nonetheless, experience had shown that in practice, the courts were willing to interpret the relevant powers more generally. Although the evaluators share the view expressed in the previous evaluation report as to the apparent limitation of the scope of the court's powers, they were given no indication that the interpretation of the courts had changed.

Initial application of provisional measures ex-parte or without prior notice (c.3.3)

254. Except in the case of the power to issue provisional measures in advance of a court order when there is a risk of delay or dissipation, as outlined above, the provisions relating to temporary seizure do not make explicit reference to ex parte procedures or the absence of prior notice. However, the authorities confirmed that in practice, initial orders for provisional measures were obtained in the absence of the affected parties and without giving them prior notice.

Adequate powers to identify and trace property that is or may become subject to confiscation (c.3.4)

255. There is a wide range of investigatory powers which may be used by the law enforcement authorities and the courts to identify and trace property, as described in the previous evaluation report. The relevant provisions, which are at Chapter VIII of each Criminal Procedure Code, cover investigatory techniques such as obtaining entry search and seizure orders and orders requiring a bank or other legal person involved in financial operations to make available information concerning the bank deposits, financial transactions and affairs of a given person. In addition, special investigative actions (e.g. surveillance and recording of telecommunications, access to computer data and the use of undercover investigators) are available under Chapter IX of the CPC BiH, CPC FBiH and CPC BD respectively, and under Chapter XIX of the CPC RS. These actions are available if evidence cannot be obtained in another way or if obtaining it would be disproportionately difficult. These provisions are supported by guidance on conduct and cooperation between authorised officials and prosecutors in the actions aimed at obtaining evidence during an investigation.

256. There are further measures in the AML/CFT Law that may be used by the FID to identify and monitor the proceeds of crime. These include the power to obtain information from reporting entities or other agencies at Article 56 and Article 61, as well as the power to order continuous monitoring of a client's business operations at Article 60.

257. In addition, the CARA contains specific provisions relating to financial investigations at Articles 18, 19 and 20 which govern searches of premises or individuals, access to information held by the various authorities or other public bodies in the Republic of Srpska and access to banking or other financial information respectively.

258. Representatives from the different law enforcement agencies confirmed that in their experience, all necessary legal powers to identify and trace property that might be linked to crime were available.

Protection of bona fide third parties (c.3.5)

259. As indicated above, the confiscation of property in third party hands is subject to some safeguards. Looking first at criminal proceeds, under Article 111 of the CC BiH, Article 115 of the CC FBiH, Article 95 of the CC RS and Article 115 of the CC BD, confiscation in respect of third parties is discretionary rather than mandatory, and may only be ordered if two conditions are satisfied. These are first that the transfer was made without compensation or at an undervalue, and second that the person to whom the material gain was transferred knew or ought to have known that the material gain was acquired by the perpetration of criminal offence. The effect of this is that the rights of bona fide third parties are protected in line with the Palermo Convention.

260. There is further protection at Article 112 of the CC BiH, Article 116 of the CC FBiH, Article 96 of the CC RS and Article 116 of the CC BD. Under these provisions, an injured party is entitled to be reimbursed from confiscated assets, subject to certain time limits.

261. The confiscation of instrumentalities belonging to third parties under Article 74(2) of the CC BiH, Article 78(2) of the CC FBiH, Article 62 of the CC RS and Article 78(2) of the CC BD, is also discretionary rather than mandatory (unless there is specific provision otherwise in relation to particular offences), as well as being on condition that it is required for consideration of public safety or moral reasons. In addition there is a specific provision to the effect that confiscation does not affect the right of third parties to obtain damage compensation from the perpetrator.

262. From a procedural perspective, Article 393 of the CPC BiH, Article 414 of the CPC FBiH, Article 404 of the CPC RS and Article 393 of the CPC BD require a third party to whom property was transferred (and representatives of legal entities) to be summoned to attend the main trial and to be given the opportunity to present evidence and to question witnesses. There is a similar provision at Article 31 of the CARA, which entitles a legal successor or third party to produce evidence either to challenge an assertion by the prosecutor that property has been transferred without compensation or at an undervalue, or to demonstrate that the relevant assets have been legally acquired.

Power to void actions (c.3.6)

263. The previous evaluation report indicated that there were no legal provisions or practical solutions that would enable contracts or other actions to be prevented or voided in circumstances where the parties knew or should have known that the result would be to prejudice the ability of the authorities to recover property subject to confiscation. However, the evaluators were made aware of provisions in the Law on Obligations under which such contracts would be null and void.

264. Article 47 provides that when the object of an obligation is impossible, illicit, undetermined or indeterminable, the contract is null and void. Similarly, Article 52 provides that an obligation without a permissible basis is null and void. An illicit object or impermissible basis for these purposes is defined at Article 49 and Article 51 respectively as including an object or basis that is in contradiction with coercive provisions or law and order. In addition, under Article 103, a contract

which is contrary to coercive regulations, public order or good business practices is null and void, unless the objective of the violated regulation is related to some other penalty or other legal regulations.

Additional elements (c.3.7)

265. The evaluators were not informed of any specific provisions relating to the confiscation of property of organisations that are primarily criminal in nature. However, as indicated above, the confiscation regime applies to legal and natural persons and therefore would be applicable to property held by an organised group, in the event that the court was satisfied that such property was the proceeds of crime or was an instrumentality of crime.

266. As indicated in the previous evaluation report, Article 391 of the CPC BiH, Article 412 of the CPC FBiH, Article 402 of the CPC RS and Article 391 of the CPC BD provide that objects subject to confiscation under the relevant Criminal Code may be confiscated notwithstanding the absence of a guilty verdict if so required by the interests of general security and ethics, although these terms are not defined or otherwise explained in the legislation. Therefore the confiscation of instrumentalities under all four Criminal Codes does not require a criminal conviction in order to be effective. Otherwise there would appear to be no provision in the legislation for confiscation without a criminal conviction, and this was confirmed by the different authorities. The evaluators initially considered that Article 114(3) of the CC BD might be interpreted as permitting *in rem* confiscation of the proceeds of crime, because it provides that the court may confiscate material gain in a separate proceeding from the standard confiscation hearing envisaged at Article 114(1), if there is probable cause to believe that the gain derives from a criminal offence and the owner or possessor is not able to give evidence that the gain was acquired legally. However, the authorities in Brčko District expressed the view that *in rem* confiscation was not in fact possible under their legal framework.

267. Article 110a of the CC BiH provides for extended confiscation, *i.e.* confiscation where the owner of property is required to demonstrate its lawful origin, in relation to certain named categories of offence under the CC BiH. These are crimes against humanity and values protected by international law, crimes against the economy, market integrity and in the area of customs, offences of corruption and other offences against official duty or other responsible duty, offences of copyright violation, crimes against the armed forces of BiH, and offences of conspiracy, preparation, associating and organised crime. Article 110a provides that where criminal proceedings involve an offence in these categories, the court may confiscate the property gain for which the prosecutor provided sufficient evidence to reasonably believe that such property gain was acquired by the perpetration of the relevant offence, while the perpetrator failed to prove that the gain was acquired in a lawful manner.

268. Article 114a of the CC FBiH is in identical terms, save that the categories of offences to which it applies are confined to crimes against economy, trade or security of payment systems, crimes against the judiciary and bribery or offences against official or other responsible duty. However, although the categories are different many of the offences that they cover are the same.

269. Articles 28 to 32 of the CARA provide for an extended confiscation regime which is applicable to all offences within the scope of the CARA as outlined above. Under Article 31, in support of a confiscation request the prosecutor shall provide evidence of assets in the possession of the defendant that were acquired before the initiation of criminal proceedings, together with evidence of circumstances pointing out an obvious discrepancy between the defendants' assets and income. The defendant or his legal representative shall then provide evidence indicating that the prosecutor's request is unfounded or that the assets have been acquired legally. As indicated above, provision is also made under Article 31 for the confiscation of assets held by a third party or a defendant's legal successor, whereby the prosecutor shall provide evidence that property has been transferred without compensation or at an undervalue in order to hinder the execution of the confiscation process. The

legal successor or third party or a legal representative may then produce evidence either to prove that the prosecutor's request is unfounded or to demonstrate that the assets have been acquired legally. These provisions should be read in the context of the definition of criminal assets in Article 3, namely assets of an offender or property owner that are in obvious discrepancy with his reported income. Reported income is all the available financial resources of the property owner that may provide its legal background.

270. As the confiscation regime under the CARA refers to third parties as well as to defendants, it appears to be wider than the extended confiscation provisions in the CC BiH or the CC FBiH which seem to be confined to assets held by a defendant. That aside, the effect of all three regimes appears to be that if the prosecutor raises a prima facie case that the assets are criminal in origin, it is for the defendant to disprove this. This interpretation was confirmed by the authorities during the onsite visit.

Recommendation 32 (statistics)

271. The evaluators were informed that the automatic collection of statistics by the HJPC referred to above in the context of Recommendation 1 also applies to statistics on confiscations and provisional measures. However, the authorities confirmed this does not include statistics on the value of assets subject to confiscation or provisional measures. Instead, this information is collected manually by means of standardised tables completed by the courts and the prosecutors.

272. The following tables were provided in the MONEYVAL statistical template.

TABLE 8: Property frozen, seized and confiscated

2009								
	Property frozen		Property seized		Property confiscated		Property recovered following conviction	
	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)
ML – Conviction-based								572.880
ML-non-conviction-based			1	17.157,99 + 377,74 USD + shares of unknown value				
Underlying predicate offences where applicable			Art 195 CC BiH			Art 186 CC BiH		
ML Total				17.157,99 + 377,74 USD + shares of unknown value				572.880
FT								

2010								
	Property frozen		Property seized		Property confiscated		Property recovered following conviction	
	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)
ML – Conviction-based				6.419.222,96 + some more real estate and movable property of unknown value				(Confiscated immovable also)
ML-non-conviction-based								
ML Total			Art. 195 CC BiH,	6.419.222,96 + some more			Art 189 CC BiH	(Confiscated immovable also)

			211 BIH	real estate and movable property of unknown value				
Underlying predicate offences where applicable								
FT								

2011

	Property frozen		**Property seized**		**Property confiscated**		**Property recovered following conviction**	
	Cases	**Amount (EUR)**	**Cases**	**Amount (EUR)**	**Cases**	**Amount (EUR)**	**Cases**	**Amount (EUR)**
ML – Conviction-based								204.958,48 Euro
ML-non-conviction-based						168.815,16 + some movable and immovable property unknown value.		
ML Total								204.958,48 Euro
Underlying predicate offences where applicable				Art 210 and art. CC BiH,		168.815,16 + some movable and immovable property unknown value	Art 210 CC BiH	
FT								

2012

	Property frozen		**Property seized**		**Property confiscated**		**Property recovered following conviction**	
	Cases	**Amount (EUR)**	**Cases**	**Amount (EUR)**	**Cases**	**Amount (EUR)**	**Cases**	**Amount (EUR)**
ML – Conviction-based								
ML-non-conviction-based	1	1.442.632,44	2	130.000,00 + 1.071.428,57 HRK			1	21.690,06 Euro
ML Total	1	1.442.632,44	2	130.000,00 + 1.071.428,57 HRK			1	21.690,06 Euro
Underlying predicate offences where applicable								
FT								

2013

	Property frozen		**Property seized**		**Property confiscated**		**Property recovered following conviction**	
	Cases	**Amount (EUR)**	**Cases**	**Amount (EUR)**	**Cases**	**Amount (EUR)**	**Cases**	**Amount (EUR)**
ML – Conviction-based					1	54.801 Euro		
ML-non-conviction-based	1	1.000.000	195. CC BiH	Real estate and movable property				

				unknown value				
ML Total	1	1.000.000	195. CC BiH	Real estate and movable property unknown value		1) 54.801 Euro, 2) Shares 10.880.395 of "Fabrika secera bijeljina" 3) Amount of money of 1.366.474,93 EUR		
Underlying predicate offences where applicable								
FT								

2014

	Property frozen		**Property seized**		**Property confiscated**		**Property recovered following conviction**	
	Cases	**Amount (EUR)**	**Cases**	**Amount (EUR)**	**Cases**	**Amount (EUR)**	**Cases**	**Amount (EUR)**
ML – Conviction-based								
ML-non-conviction-based								
ML Total								
Underlying predicate offences where applicable								
FT								

273. The tables indicate that there have been three confiscation orders and six instances of the application of provisional measures since 2009. The table of penalties under Recommendation 1 suggests that there have in fact been four confiscation orders in the relevant period. Even allowing for some minor discrepancies of this kind, the level of implementation of the legal framework demonstrated by the statistics is extremely low, particularly when taken alongside the number of acquisitive offences for the same period in the table of reported offences in the country as a whole that was provided as part of the MONEYVAL statistical template. To use the figures from one year as an example, in 2012 there seems to have been three instances of the application of provisional measures against the background of over a thousand reported cases of crimes against the economy, nearly two thousand reported cases of corruption-related offences and many other reported offences that might also be expected to have generated proceeds.

274. However, the statistics on confiscation orders and provisional measures do not accord with the information provided during the onsite visit. The Agency for the Management of Seized and Confiscated Assets in the Republic of Srpska referred to having managed assets of BAM 23 million on the basis of 43 court orders since its establishment in 2010, and prosecutors and members of the judiciary in the Republic of Srpska indicated that orders for seizure and confiscation were made routinely. Similarly, the state - level authorities indicated that confiscation orders were regularly made. This inconsistency with the statistics that have been provided calls into question the effectiveness of the systems in place for collecting data on confiscations and provisional measures, as does the apparent inability to ascribe value to some confiscated assets, identify predicate offences or specify which legal system is applicable with regard to some of the cases in the table. The same may be said of the fact that further statistics requested during the onsite visit to clarify issues around confiscation were not provided, save by the Agency for the Management of Seized and Confiscated

Assets in the Republic of Srpska which produced statistics confirming the information that it had provided during the onsite visit.

275. In addition, the lack of any process for analysing statistics in order to review effectiveness applies to confiscations in the same way as to the criminalisation of money laundering and terrorist financing.

Effectiveness and efficiency

276. The evaluators were faced with the same difficulty in assessing the effectiveness and efficiency of the confiscation regime as that noted in previous evaluations. Clearly some significant confiscation orders have been made, notably in the *Copic* case (where a high value confiscation order made against natural and legal persons covered a wide range of assets, including an aeroplane and a factory) and in a case referred to by the state-level prosecutor where a confiscation order of BAM 6 million was made. Nevertheless, without proper statistics it is difficult to determine whether these cases are unusual or whether they are indicative of a general trend towards greater effectiveness. However, it is clear from the information provided during the onsite visit that although some of the previously identified shortcomings have been addressed, others are unchanged. The resource issues identified in the context of Recommendation 1, particularly in respect of expertise and training would seem to be a relevant factor here.

277. The introduction of extended confiscation provisions appears to have led to a greater willingness on the part of the courts at state level and in the RS to make confiscation orders solely on the basis of a discrepancy between the assets held by a person and known sources of income. This was confirmed by prosecutors and members of the judiciary under both legal systems, who gave examples where this had happened in practice, and the evaluators were impressed with their approach. However, the authorities in the FBiH indicated that the extended confiscation provisions which have been introduced are not being applied in practice and that therefore the evidential problems referred to in the previous evaluation report remain. This was mentioned as a particular problem in respect of intermingled assets. Members of the judiciary indicated that the courts took a very conservative approach and often seemed to be looking for reasons not to make a confiscation order. The position appeared to be similar in Brčko District, where extended confiscation has not been introduced.

278. The ineffective use of provisional measures was also raised as a serious concern. In the RS, the authorities indicated that the introduction of the Agency for the Management of Seized and Confiscated Assets had removed problems that had previously followed the application of provisional measures such as deterioration in the value of assets, and both prosecutors and judges confirmed that applications for provisional measures were now made routinely.

279. However, prosecutors and members of the judiciary of the other legal systems identified the failure to apply for provisional measures at an early stage of an investigation as a major obstacle to the successful recovery of the proceeds of crime, particularly in the FBiH and in Brčko District, where it was said that as a result, enforcement of confiscation orders was virtually impossible. Members of the judiciary at state level indicated that approximately 50% of confiscation orders were not enforced for that reason, and this was consistent with the view expressed by the state –level prosecutors who referred to frequent problems at the enforcement stage because of an earlier transfer of property by the defendant (a notable exception is the *Majorca* case referred to above, where for the first time during an investigation the court issued an order that prevented any sale or other legal action that could transfer the ownership of specified real property, namely one of the most luxurious hotels in BiH). Even in cases where provisional measures were applied, this was generally limited to the assets specifically linked to an offence referred to in an indictment, rather than including other assets discovered in the course of the case.

280. Failings were also apparent in relation to value based confiscation. Despite the fact that the confiscation of assets of corresponding value is permitted under all four legal systems, no cases in which this had happened in practice were identified except in the RS. The President of the Supreme Court of the FBiH indicated that he had never seen a reference to equivalent value in a judgement, and that in addition, the widespread failure to apply provisional measures effectively would undermine enforcement of value based confiscation even were it to be sought. The evaluators were also concerned about the apparent inability of the authorities to state the value of some confiscated assets identified in the tables above, which calls into question their ability to pursue value based confiscation.

281. The extent to which the confiscation of assets in third party hands is being pursued to address the problem of transferred assets is unclear. Although some examples were provided by the authorities, the evaluators were not convinced that this is routinely considered in cases where it is not possible to enforce a confiscation order against the perpetrator. Equally, parallel financial investigations to trace assets do not seem to be routinely instigated, although this seemed less of an issue for the Republic of Srpska, where there is specific provision for financial investigations under the CARA.

282. A further issue raised in the previous evaluation report which remains unresolved is the inability to confiscate proceeds because the defendant has died or absconded. The evaluators were informed that although trial in absentia had previously been possible under the legal framework that was no longer the case.

283. This is not an issue with regard to instrumentalities as *in rem* confiscation is possible, and the confiscation of instrumentalities generally was reported to be easier than the confiscation of criminal property. The authorities under all four legal systems indicated that there were no difficulties in persuading the courts to order the confiscation of instrumentalities and several examples were given, including weapons, narcotics and equipment to manufacture narcotics or counterfeit products. The authorities also confirmed that in practice, the conditions attached to the confiscation of instrumentalities as outlined above had not given rise to any problems to date. Nevertheless, the evaluators agree with the view expressed in the previous evaluation report that the conditions have the potential to restrict unduly the power of confiscation. This is particularly so given that there is no definition or other explanation as to the kind of factors that should be taken into account when determining whether conditions relating to security or moral reasons are met.

284. As in the previous evaluation report, the absence of an agency responsible for asset recovery was identified as a major deficiency in the confiscation regime (except for the Republic of Srpska where such an agency has been established under the CARA). The authorities indicated that this was undermining the ability to recover assets that are the subject of a confiscation order. Members of the judiciary expressed serious concern over this, particularly in the FBiH. Attempts to resolve this at state level and in the Federation of Bosnia and Herzegovina by trying to use existing agencies such as the Public Attorney's Office had proved unsuccessful because of difficulties over jurisdiction. The evaluators were informed that legislation to address these problems is under consideration at state level and in Brčko District, and the dedicated asset recovery legislation for the Federation of Bosnia and Herzegovina referred to above will address this once it is operational. However, at present the process for enforcement under the three legal systems is unchanged from that in 2009.

2.3.2 Recommendations and comments

285. At a technical level, the framework for confiscation, although complex, is broadly in line with international standards. The deficiency identified in the previous evaluation report with regard to the power to void actions in certain circumstances appears in fact to have been addressed by the Law on Obligations. The CARA permits the confiscation of derived and intermingled assets and the absence of an explicit reference in the CC RS to derived and intermingled assets would not seem to constitute

a gap in the legal framework, on the basis that the domestic courts are bound to interpret legislation in a way that is consistent with the provisions of the Warsaw Convention (as confirmed in the case of Ćopić). Nevertheless, the evaluators recommend in the interests of clarity that the CC RS be amended, in order to make this explicit on the face of the legislation and to bring the CC RS in line with the other Criminal Codes on this point. The evaluators also reiterate the recommendation from the previous evaluation report that the authorities review the overly vague conditions attached to the confiscation of instrumentalities as well as to *in rem* confiscation of instrumentalities and other objects, with a view to clarifying them or removing them.

286. Consideration should also be given to introducing legislation to permit *in rem* confiscation of criminal proceeds to be used in situations where a criminal conviction is not possible.

287. Although there have been some notable successes in the implementation of the legal framework, particularly in the Republic of Srpska, serious concerns remain as to the overall level of effectiveness. The evaluators reiterate the recommendation in the previous report that the authorities review the effectiveness of the confiscation regime, which should involve the collection and analysis of comprehensive statistics.

288. The failure to apply provisional measures is a particularly pressing problem and their wider use is strongly urged, as is the routine instigation of parallel financial investigations and the use of value based confiscation in appropriate cases.

289. Greater use of the extended confiscation provisions in order to improve the rate of confiscation orders is recommended, particularly in the FBiH. The authorities in Brčko District are advised to consider introducing a similar extended confiscation regime. In addition, the authorities at state level and in the FBiH should consider amending their extended confiscation provisions to ensure that they may be applied in relation to assets in third party hands.

290. These different measures should be accompanied by further training for prosecutors and judges.

291. The creation and effective implementation of an asset recovery office in the RS is a welcome improvement. The forthcoming implementation of recent dedicated asset recovery legislation and the related establishment of an asset recovery agency in the Federation of Bosnia and Herzegovina will be very positive developments. The authorities are strongly encouraged to take all necessary steps to ensure that implementation is effective. It is recommended that the authorities at state level and in Brčko District take similar action.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**PC**	• The confiscation of instrumentalities is subject to imprecise conditions in most cases. **Effectiveness** • The continued application of high evidential standards by the courts in some parts of the country means that the number of confiscation orders remains low overall; • Limited use of provisional measures means that a high proportion of confiscation orders cannot be enforced; • Value based confiscation is not being applied sufficiently.

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

2.4.1 Description and analysis

Special Recommendation III (rated NC in the 3rd round report)

Summary of 2009 factors underlying the rating

292. BiH was rated NC with respect to SR.III in the 3rd round MER due to the fact that a comprehensive system, which would implement the requirements of UNSCRs 1267 and 1373 (including publicly known procedures for de-listing, etc.), was not in place. The legal framework in place at the time of the 3rd round on-site visit consisted of two parallel and partially overlapping regimes. The established framework was considered by the evaluators to be insufficient, partially due to the lack of clarity caused by the conflicting provisions, but also due to the limitations of their applicability. In particular, neither framework provided for a comprehensive set of procedural rules for the purposes of UNSCR 1267 and 1373.

Legal framework

293. Since the adoption of the 3rd round MER, the authorities of BiH have taken steps to introduce a more comprehensive and directly applicable legal framework that would provide a legal basis for freezing terrorist funds.

294. The legal basis for the freezing of terrorist funds is found in the Law on Application of Certain Temporary Measures in Support of Effective Implementation of the Mandate of the International Criminal Tribunal for the Former Yugoslavia and Other International Restrictive Measures (*Official Gazette of BiH No 25/06*; hereafter IRM Law). It is to be recalled that in the 3rd round MER, the evaluators concluded that the scope of applicability of the IRM Law was broad enough to apply to international restrictive measures (in particular those under UNSCRs 1267, 1373 and following), albeit the IRM Law did not set out any clear procedures for the freezing of funds. For detailed analysis of the IRM Law, the reader is referred to paragraphs 330-350 of the 3rd round MER.

295. Pursuant to Article 2 of the IRM Law, in 2011 the BiH authorities enacted the Ordinance on the Implementation of Restrictive Measures Established by Resolutions of the UN Security Council 1267 (1999), 1333 (2000), 1363 (2001), 1373 (2001), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008) and 1904 (2009) against Members of Al-Qaida, Osama Bin Laden, The Taliban and Other Individuals, Groups, Undertakings and Entities Associated with them (*Official Gazette of BiH No. 103/11*; hereafter "Ordinance"). The Ordinance sets out concrete procedures, which currently form the framework for freezing without delay the assets of designated persons and entities.

Freezing assets under S/Res/1267 (c.III.1)

296. The freezing of funds and assets of persons designated under UNSCR 1267 (1999) is fully governed by the Ordinance, which under Article 5 stipulates that all funds and economic resources of all persons, groups, undertakings and organizations included in the Consolidated List shall be frozen without delay and without prior notice.

297. This measure shall apply to economic assets and funds derived from property owned by persons included on the Consolidated List or under their direct or indirect control, or under the control of persons acting on their behalf or according to their instructions; or acting as their successors. Furthermore, it should be ensured that any assets owned by other persons are not, directly or indirectly, made available for use by persons in the Consolidated List.

298. The Ministry of Security of BiH is the competent authority responsible for maintaining and publishing on its website the Consolidated List (Article 4 of the Ordinance), as adopted by the UNSC

Committee, and for keeping up to date the published Consolidated List. There is, however, no provision requiring the publication of the list without delay.

299. The actual application of the freezing measures is to be undertaken by "the authorities of BiH" pursuant to Articles 4 and 5 of the Ordinance. The authorities, who shall implement the freezing measures, are those listed in Article 12 of the IRM Law (this provision includes financial institutions, but also other competent institutions, which have information on property of designated persons). According to Article 4(4) of the Ordinance, the "responsible authorities" shall regularly monitor the changes to the Consolidated List as published on the website and Article 5 requires them to freeze the assets and funds of the persons in question without delay after the publication of the List.

300. From the wording of this provision it appears that obligated entities shall freeze assets on the basis of the version of the list published on the website of the Ministry of Security and therefore all possible delays would affect the timeliness of the application of such measures. Based on Article 11 of the Ordinance, the Ministry of Security of BiH is also the authority competent to initiate the procedure for proposing the listing of a person on the Consolidated List; this subject to a prior proposal made by a competent law enforcement authority. The final decision to propose a listing to the UNSC Sanctions Committee is to be taken by the Council of Ministers with the consent of the Presidency of BiH. Since the adoption of the Ordinance, no such proposals have been made.

301. With regard to the procedure for updating the Consolidated List in practice, the representatives of the Ministry of Security reported that the delegation of BiH with the UN would forward the list revised by the UNSC Committee to the Ministry of Foreign Affairs of BiH, which would then send it to the Counterterrorism Unit of the Ministry of Security, which is in charge of publishing the list on its website.

Freezing assets under S/Res/1373 (c.III.2)

302. Pursuant to Article 2 of the Ordinance, the Ordinance shall also determine the manner of implementation of UNSCR 1373. Nevertheless, the application of all the restrictive measures foreseen by the Ordinance is limited merely to the persons listed on the Consolidated List; this being the Consolidated List issued by the UNSC Committee established pursuant to resolutions 1267 (1999) (Article 4(2) of the Ordinance even explicitly states that the list should be published in the wording as adopted by the UNSC Committee). There is, therefore, no space for any additions made by the country (for example in order to issue it as an overall list) and it cannot be considered that these provisions could cover the implementation of UNSCR 1373. Nevertheless, assets can be also frozen with regard to persons associated with the listed persons, as described above, which slightly increases the scope of the freezing measures.

303. In addition, the above mentioned Article 11 of the Ordinance gives Bosnian authorities the power to propose a person to be listed, this is however again a procedure under UNSCR 1267, as the proposal has to be justified on the basis of Article 10 (therefore establishing a link between the proposed person and a person already included on the Consolidated List). Paragraph 3 of Article 11 then clearly refers to submitting the listing application to the UNSC Committee, which confirms that this procedure is designed for the implementation of UNSC 1267 and is not applicable for the establishment of a national list under UNSCR 1373.

304. A direct application of the IRM Law would also be possible. However, this would only apply with regard to persons indicted by the ICTY and persons suspected to have assisted such persons in the evasion of availability to the ICTY. For further information on the measures available in such cases, the reader is referred to the analysis in the 3rd round MER.

305. The representatives from the Ministry of Security confirmed that there is no domestic list of persons connected to terrorism issued under UNSCR 1373. The Ministry of Security, competent LEAs and the FIU have "watch lists", which contain the names of persons, which are suspected of

being related to terrorism. For these purposes LEAs and the FIU consult available EU and US lists with a view to placing names on "watch lists". No automatic application of restrictive measures is, however, foreseen in connection to this list and freezing measures could therefore be applied only if an investigation or judicial proceedings were initiated, or in case a connection was established with a person included on the Consolidated List.

306. On a positive note, given the power of the FID under Article 58 of the AML/CFT Law to temporarily suspend a transaction, when a suspicion of ML or TF has been established, funds related to terrorism could be initially frozen in this way and further provisional measures could be applied within a criminal procedure, if conditions for the initiation thereof would be in place. The watch list established by the FIU of persons potentially connected to terrorism mentioned in the previous paragraph could serve as a basis for this. With regard to the timeliness of the application of this measure, the FID is authorised to give the order for a temporary suspension of a transaction in urgent cases also verbally. The reporting entities, on the basis of Article 39 of the AML/CFT Law are supposed to file STRs to the FID before undertaking the transaction in question, unless it is otherwise justified.

307. In practice, the competent authorities do not take into consideration lists issued by the EU, the US or other foreign countries and in general no particular effort was demonstrated to establish a national list.

Freezing actions taken by other countries (c.III.3)

308. The Ordinance does not cover situations where a request for freezing has been initiated by a foreign country. The Ordinance could be applied in such cases only when the person object of the request would be identified as connected with the persons listed on the Consolidated List, as set out in Article 10 of the Ordinance.

309. The authorities reported that in order to give effect to freezing actions initiated by other countries, the request would have to be sent through official diplomatic channels to the Ministry of Security, which would consider the request together with LEAs and in case the request would be considered as substantiated, a proposal of measures to be adopted would be made to the Council of Ministers. The authorities stated that the legal basis for this action would be Article 2(2) of the IRM Law. The evaluators raised concerns in this respect due to the fact that the above mentioned provision is very general: "Bosnia and Herzegovina applies international restrictive measures due to implementation of decisions of the UN, which are binding under the international law, or when it joins the restrictive measures of the European Union or in other cases in accordance with international law." There are therefore no concrete procedures in place for the examination of such requests made by foreign countries. Furthermore, it is not clear from the legislation in place, which national authority would be competent for the receipt of foreign requests, which, accordingly, does not provide sufficient clarity for the foreign authorities as to whom they should address in this respect.

310. The evaluators were informed that no requests to designate under UNSCR 1373 (2001) had been made to BiH by other jurisdictions since the adoption of the Ordinance. Previously, there has been a case, where assets were frozen on the basis of a foreign request, in 2010. The freezing measures in that case were applied on the basis of the provisions of the Law on Banking Agency, which enabled the Banking Agencies (both in FBiH and Republic Srpska) to apply certain measures in accordance with the UNSCRs (amongst others). These provisions are no longer in place.

311. The administrative procedure for the suspension of transactions by the FIU could be applied also in case of a request by a foreign FIU or a foreign LEA, as Article 58 of the AML/CFT Law applies also in these circumstances.

Extension of c.III.1-c.III.3 to funds or assets controlled by designated persons (c.III.4)

312. Under the current regime the freezing actions are to be directly applied to the following:

- All funds and economic resources of all persons, groups, undertakings and organizations included in the Consolidated List;
- Economic resources and funds derived from property owned by a person included on the Consolidated List or under their direct and indirect supervision;
- Economic resources and funds derived from property under the supervision of a person acting on their (of the persons listed on the Consolidated List) behalf or under their direction, or person acting in his capacity as successor (of a listed person).

313. It is not clear, whether the first bullet would extend to funds and assets "wholly and jointly, directly and indirectly" owned or controlled by the designated persons. Furthermore, the third bullet point seems to refer merely to funds and assets controlled by the associated persons, not to assets owned by them.

314. Above all, the measures are applicable only in relation to persons included on the Consolidated list, and therefore do not cover assets related to a "terrorist, those who finance terrorism and terrorist organisations", as required by c.III.4. Given the lack of procedures to apply restrictive measures to other persons than the ones designated by the UNSC Committee (as described above under c.III.2 and c.III.3), c.III.4 is not covered in relation to UNSCR 1373.

Communication to the financial sector (c.III.5)

315. Pursuant to the procedures described above, the freezing measures apply automatically to every person included on the Consolidated List, as published on the website of the Ministry of Security. It is therefore not necessary for the authorities to issue specific orders for the application of freezing measures in each individual case, which would then have to be communicated to the FIs. The information, which should be communicated to the financial sector, is hence the Consolidated List.

316. As stated above, Article 4(4) of the Ordinance imposes a general obligation for the relevant authorities in BiH to monitor the Consolidated List as published on the official website of the Ministry of Security of BiH on a regular basis and upon notice of a new listing to proceed in accordance with the provisions of the Ordinance and the Law on IRM.

317. The representatives of the Ministry of Security informed the evaluation team that they disseminate the up-dated list to the authorities responsible for the supervision of the financial sector through official channels in a written and electronic form and that they do not consider it necessary to inform of the changes directly the obliged entities, as the list is publicly available on the website. This procedure appears to be functioning adequately with respect to the Banking Agencies, which receive the list regularly and further disseminate it to the entities subject to its supervision. Nevertheless, the other supervisory authorities met during the on-site visit were not aware of the existence of such lists. Furthermore, even with respect to the entities subject to supervision by the Banking Agency, these were not clear about the purpose of this list.

Guidance to financial institutions and other persons or entities (c. III.6)

318. No information was provided about any relevant guidance for financial institutions and other persons or entities with regard to their obligations resulting from the above described framework for the implementation of freezing measures under the UNSCRs.

319. The evaluators were informed during the on-site visit that the Counterterrorism Unit of the Ministry of Security is responsible for providing guidance and recommendations with regard to terrorism and TF. Even though the UN list under UNSCR 1267 and Guidelines on Implementation of

the Ordinance are publicly available on the web site of the Ministry of Security of Bosnia and Herzegovina some of the supervisory authorities and representatives of the private sector encountered during the on-site visit were not aware of the existence of the UN lists and all of them stated that they have not received any guidance with regard to the purpose of the lists and the obligations emanating thereof. No concrete information was therefore provided about any trainings or awareness-raising activities.

De-listing requests and unfreezing funds of de-listed persons (c.III.7)

320. Article 13 of the Ordinance provides for the procedure for requesting de-listing. On the basis of paragraph 1, citizens of BiH, persons residing legally in BiH and responsible persons of legal entities registered in BiH, who are included on the Consolidated List, may file a request for de-listing with the Ministry of Security. After having consulted other relevant authorities and obtained sufficient information for the consideration of the request, the Ministry shall forward the file to the Council of Ministers. The Council of Ministers shall take a decision in the matter and consult this decision with the Presidency before sending it to the UN Ombudsperson and the UNSC Committee. Apart from this procedure, paragraph 2 also provides for the general procedure of filing a request for de-listing directly through the UN Ombudsperson or the relevant Committee. This provision is not limited in scope and other persons, not nationals, residents or registered in BiH may use it.

321. Termination of restrictive measures upon notice of the UNSC Committee on de-listing of a person is addressed by Article 14 of the Ordinance. The proposal to revoke freezing actions taken against the person in question is to be sent by the Ministry of Security of BiH to the Council of Ministers for adoption upon receiving notification of the UNSC Committee about a deletion of specific person from the Consolidated List. Following the decision taken by the Council of Ministers, the Ministry of Security of BiH is obliged to: inform in writing the respective person; inform in writing the relevant authorities in BiH for further actions within their jurisdiction; and to update the information on the official website of the Ministry of Security of BiH.

322. Given that freezing measures are to be applied by the responsible authorities automatically to all persons included on the Consolidated List published by the Ministry of Security (as discussed above) and pursuant to Article 4(2), which clearly authorises the Ministry of Security to update the Consolidated List following a change done by the UNSC Committee, it is not clear what exactly is meant by the fact that the Council of Ministers is supposed to adopt the "revocation of the measures in place" or why this additional action is required for deletion, when it is not in place for inclusion on the Consolidated List. Furthermore, the Ministry is supposed to up-date this information on the website only once the Council of Ministers has taken the above described measures.

Unfreezing procedures of funds of persons inadvertently affected by freezing mechanisms (c.III.8)

323. The Ordinance in its Article 12(1) imposes a general obligation for all relevant authorities of BiH to take due care of third parties rights while executing the measures foreseen by the Ordinance. Should the rights of a third party be adversely affected by the freezing measures imposed on the basis of the Ordinance, Article 12(2) grants them the possibility to challenge the measures imposed to them. Such a complaint has to be addressed to the Ministry of Security BiH, which shall consider the matter within 30 days.

324. In addition, the freezing measure applied by the authorities may be challenged before the Court of BiH according to Article 5(4) of the Ordinance, which states that a challenge before the Court of BiH may be brought against the legal act issued under Article 5(1). The legal act under Article 5(1) is a legal act, which is to be issued by "competent authority" (in the context of the Ordinance "competent authority" signifies the entity applying the freezing measures, such as a financial institution) following the application of the freezing measure. It is, nevertheless, not specified what

type of legal act this would be, in particular when the authority concerned would be a private entity (such as a FI).

325. It has not been demonstrated whether the above described procedures would comply with the requirement for the un-freezing to be undertaken "in a timely manner".

Access to frozen funds for expenses and other purposes (c.III.9)

326. Procedures for authorising access to frozen funds or other assets for life expenses and other purposes are addressed in Article 9 of the Ordinance by reference to the provisions of Article 8 and 9 of the IRM Law. According to the IRM Law, the Court of BiH shall authorise the release of certain frozen funds or economic resources if it considers that these are necessary for basic expenses; these are listed in Article 8(1) and 8(2(a) and (b)) of the IRM Law, mirroring Article 1(a) of UNSCR 1452(2002). Furthermore, Article 8(c) allows for the authorisation to release funds necessary for extraordinary expenses and Article 9 authorises the Court to further release certain frozen funds "*that became objects of an obligation under a judicial, administrative or arbitral decision prior to the beginning of implementation of the decision on application of measures against a particular person*", when a further set of conditions, set under the same paragraph, are fulfilled.

327. Irrespective of the paragraph above, the Ordinance in Article 9 states that the provisions of the IRM Law shall apply in this respect, but that the application for access to frozen funds is to be addressed to the Ministry of Security, which the Ministry shall consequently submit to the Committee with a justification of the measures it foresees to implement in this regard. Paragraph 3 of the same article then states that the decision of the Committee has a mandatory character in this respect. When analysed together, the provisions of Article 9 of the Ordinance would seem to establish a procedure different from the one in the IRM Law (as described above), transferring the adoption of the final decision to the UNSC Committee. In this case, the requirements of UNSCR 1452(2002) would be in line for the granting of access to extraordinary expenses, however, with respect to access to basic expenses, the UNSC Committee would not issue a specific decision in every case, which could lead to a situation, where the BiH authorities could not grant access to the funds in question due to lack of legal ground.

328. In addition, it is not clear, which of the provisions would be applied and consequently, which procedure would be followed. Also possibly, after receiving the application on the basis of Article 9 of the Ordinance, the Ministry of Security would then forward this application to the Court of BiH and the procedure under the IRM Law would then be followed, but then it remains unclear, whether the UNSC Committee is merely notified or whether a decision is awaited, as described above. Nevertheless, concerns remain about the compliance with UNSCR 1452 with regard to both options. It is difficult to conclude, which of the procedures would be actually applied, as this situation has never occurred in practice.

329. Furthermore, the exemptions for certain obligations, as allowed under Article 9 of the IRM Law (as described above) are not compatible with the requirements of UNSCR 1452(2002).

330. With regard to the procedure set out by Article 9 of the Ordinance, it is to be noted that the application under this article may only be filed to the Ministry of Security by a person included on the Consolidated List, who is *"a national of BiH or is legally residing in BiH or by a legal representative thereof"*. This limits the access to frozen funds by persons, who do not fall under any of these categories, but whose funds are nevertheless subject to restrictive measures on the territory of BiH.

Review of freezing decisions (c.III.10)

331. As has been presented under c.III.8, pursuant to Article 5(4) of the Ordinance, legal acts taken by "competent authorities" to freeze funds and assets on the basis of Article 5(1) of the Ordinance can

be challenged before the Court of BiH. The same concerns apply, as discussed above, regarding the legal value or status of such decisions, in particular when issued by a private entity.

Freezing, seizing and confiscation in other circumstances (applying c.3.1-3.4 and 3.6 in R.3, c.III.11)

332. The provisions of the CPCs and the CCs apply to the freezing, seizure, confiscation, and forfeiture of assets used for purposes of terrorist financing or other terrorist related funds. The framework for the application of provisional measures and confiscation is however subject to the shortcomings presented in the analysis under Recommendation 3.

Protection of rights of third parties (c.III.12)

333. The same provisions would apply, as have already been discussed under c.III.8. The reader is therefore referred to that section.

Enforcing obligations under SR.III (c.III.13)

334. The Ordinance does not establish any measures to monitor compliance with its requirements. The IRM Law does contain provisions regulating cases of violation of its provisions, none of these breaches is however relevant in the context of the Ordinance and the framework under SR.III in general.

335. As far as general administrative sanctions are concerned, it is unclear what sanctions would be applicable for violations of the provisions of the Ordinance, whether sanctions for general misdemeanours, sanctions foreseen by the AML/CFT Law or by the sectoral legislation. Of further concern is that, even if general misdemeanour sanctions were applicable in this context, it is doubtful which authority would be competent to monitor the implementation of the requirements of the Ordinance and who would therefore identify that a breach took place.

336. In practice, none of the supervisory authorities met on-site referred to the IRM Law or the Ordinance as a piece of legislation the compliance with which they would assess or on the basis of which sanctions would be imposed. This confirms the conclusion that this legislation does not provide for a mechanism to monitor compliance with it.

337. Nevertheless, the evaluation team was informed that one of the issues monitored by the Banking Agency of FBiH, when undertaking inspections, is whether the institution established a system of monitoring lists of persons suspected of terrorism financing or related to such persons. This results from the Manual for Examination of Compliance of Operations of Leasing Companies with AML/CFT Standards issued in December 2012 and the similar manual for the supervision of banks and micro-credit organisations, also from December 2012, which were provided to the evaluators. The manuals for supervision of banks, leasing companies and micro-credit organisations, issued by the Banking Agency of RS in December 2013, also contain identical provisions requesting the control of whether the FI in question has a system in place for monitoring possible matches with the terrorist lists, as well as a system to ensure that such lists are up-dated. It remains unclear though, on which legislative basis the Banking Agencies undertake this control.

338. The control of these aspects in practice has been confirmed by the fact that breaches of this requirement were identified during the inspections of the Banking Agency of FBiH both in banks and leasing companies and sanctions were applied. One bank and two leasing companies were sanctioned in 2013 and three banks in 2014 in this respect. It is to be noted, however, that the sanctions applied for these breaches cannot be considered as dissuasive, as they were in each case BAM 1.000 (approximately €500), which seems as a rather insignificant amount for a credit institution. No statistics were provided in this respect by the Banking Agency of RS.

339. It has not been demonstrated that other supervisory authorities include monitoring of the application of the requirements of SR.III, when undertaking supervision. In addition, this does not

seem likely, as the other supervisory authorities encountered on-site were not aware of the existence of the Consolidated List and the UN sanctioning regime.

Additional element – Implementation of measures in Best Practices Paper for SR.III (c.III.14)

340. The evaluators were not made aware of any actions taken so far to implement measures contained in Best Practices Paper for SR.III.

Implementation of procedures to access frozen funds (c.III.15)

341. The possibility to request access to frozen funds is regulated by Article 9 of the Ordinance. This provision however does not extend to the requirements of c.III.15, given that pursuant to paragraph 4 of the same article, only persons included on the Consolidated List may file an application in this respect. Furthermore, no framework is in place in general for the purposes of implementation of UNSCR 1373 and funds cannot be frozen in the context of this resolution in the first place. For more details on this matter, please refer to the analysis under c.III.2.

Recommendation 32 (terrorist financing freezing data)

342. No comprehensive statistics were provided to the evaluators with regard to freezing measures relating to terrorist funds.

343. Anecdotal data was presented by the authorities during the interviews. It appears that on one occasion in 2010, funds were frozen on the basis of a foreign request by the application of the provisions of the Law on Banking Agency in force at that time, which enabled such freezing. No further details were provided in this respect.

Effectiveness and efficiency

344. Since the adoption of the 3rd round report in 2009 until 2011, the legal framework remained unchanged; this being the IRM Law and the parallel provisions under the Laws on Banking Agencies. The concerns raised about the concurrent provisions and parallel systems, together with a number of lacunas, without doubt also negatively affected effectiveness. There has been a case of funds frozen in 2010. The authorities reported in this matter that it was the Law on Banking Agency, which was applied in that case.

345. The Ordinance, adopted in 2011, established comprehensive and directly applicable legal framework that provides sufficient legal basis for freezing funds and assets of persons designated on the basis of UNSCR 1267. Nevertheless, practical questions following implementation of the respective UNSC Resolutions remain unanswered due to lack of practice.

346. As has been stated above, the version of the Consolidated List relevant for the application of freezing measures on the basis of the domestic legislation is the version published on the website of the Ministry of Security. On several occasions, when the evaluation team verified the version published on this website, the delay in publishing the up-dated List was more than a month from the changes made by the UNSC Sanctions Committee. It cannot be therefore considered that freezing measures would be put in place without delay.

347. The authorities reported that they have not been taking steps in order to identify persons, who would be relevant for a possible proposal to the UNSC Sanctions Committee for designation or persons relevant for the inclusion on a national list. This was in response to the fact that BiH has initiated a number of investigations of persons for joining the ISIL, but the authorities reported that they have not considered this aspect of the investigations. Furthermore, the authorities have information about other persons joining the ISIL and returning to BiH, towards which criminal proceedings were not initiated, nevertheless, a potential freezing of their assets was also not considered.

348. The awareness of the representatives of the private sector encountered on-site about the existence of the lists of terrorists and the corresponding obligations was rather uneven. In general, the FIs subject to supervision of the Banking Agencies reported that they received the notice about the changes to the UN list from the Banking Agency. The representatives of these FIs remained, however, unclear about their obligations in this respect and the purpose of these lists. The evaluation team was informed that in case of a "hit" they would simply file an STR or they will not accept the transaction and re-direct the money back to the sender; no freezing measures were mentioned in this respect.

349. Furthermore, in the cases when an STR was filed in the case of a match with one of the UN lists, the FIs reported that they did not receive any feedback. It does not seem that this clear misunderstanding of their obligations by the reporting institutions would lead to any consideration by the authorities for further action, for example to initiate awareness raising activities.

350. Apart from the notices from the Banking Agencies, a number of FIs referred to the OFAC and EU lists. This would be the case of FIs, which are part of an international group and which would have databases with such lists integrated into their system. In the majority of cases, such persons would be merely treated as high risk clients, and consequently business could be refused and/or an STR filed.

351. In general, even though the Ministry of Security publishes the lists of persons under the various UNSCRs on its official website, it was confirmed throughout the interviews that the FIs and DNFBP rather rely on commercial databases than the official source of information.

352. In addition, a number of representatives of the private sector were not aware of the existence of such lists at all and did not have them at their disposal, nor were they informed about their obligations in this respect. This would be, amongst others, the capital market participants, casinos and exchange offices. It can be therefore concluded that the awareness raising and guidance, both in respect of the existence of the lists, as well as regarding the obligations emanating from them, still remain to be improved.

353. A significant number of the supervisory authorities met on-site stated that they did not have any lists of terrorists at their disposal and, on several occasions, they were either not aware of the existence of such lists at all, or they were not familiar with the purpose and the requirement of the corresponding framework. Firstly, this negatively impacts on the provision of guidance and awareness raising for the reporting entities from the side of their direct supervisors. Furthermore, it leads to the conclusion that these direct supervisors do not monitor the compliance with this framework during the undertaking of their supervisory activities, nor would they be in the position to alert a different competent authority in case irregularities would be encountered. This conclusion was confirmed during the on-site visit as the supervisory authorities met on-site (with the exception of the Banking Agencies of FBiH and RS, as described above under c.III.13) do not monitor compliance of the reporting entities with the obligations related to the sanctioning regime.

2.4.2 Recommendations and comments

Special Recommendation III

354. The evaluators welcome the enactment of the Ordinance in 2011 and the introduction of comprehensive and directly applicable legal framework that provides for freezing funds and assets under UNSCR 1267. It is recommended to the authorities to pursue their efforts in order to establish a corresponding framework for the freezing of funds also under UNSCR 1373.

355. The authorities should adopt a pro-active approach with regard to considering persons, who should be proposed for designation to the UNSC Committee, or who should be included on a national

list. This should take place both in the context of the local happenings, but consideration should also be given to designations made by other countries.

356. A comprehensive and clear framework for supervision of compliance with the requirements under the UNSCRs, as well as an adequate and dissuasive sanctioning regime should be put in place. The authorities competent for supervision should understand fully the purpose and requirements of the framework.

357. It is recommended that the authorities significantly enhance outreach to the private sector as a matter of urgency with regard to all the aspects of the framework.

358. The conditions for accessing frozen funds should be brought in line with the requirements of UNSCR 1452.

359. The authorities are invited to review the procedures for the application of the freezing measures in order to ensure that these are applied without delay. This would in particular concern increasing the timeliness of the publication of the Consolidated List by the Ministry of Security.

Recommendation 32

360. Comprehensive statistics should be maintained.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**PC**	• No prescribed procedure to create a national list of terrorists under UNSCR 1373 or to make or to respond to third country requests that meet the criteria set out in UNSCR 1373; • Lack of a clear framework for supervision of compliance with the obligations under the current mechanism to freeze funds and assets used for TF and the sanctioning of its potential violations; • The Consolidated list is not published without delay; • Insufficient outreach to the private sector and other key stakeholders; • Conditions for accessing frozen funds are not fully in line with the requirements of UNSCR 1452. **Effectiveness** • Lack of awareness of the existence of the Consolidated List and the related obligations.

Authorities

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

2.5.1 Description and analysis

Recommendation 26 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

361. BiH was rated PC in the 3rd round MER. The deficiencies underlying the rating were the following: the FID appeared to operate in isolation from other law enforcement agencies and the financial intelligence at FID was not requested by or disseminated to other law enforcement agencies at the level of the entities and Brčko District when investigating predicate offences or money laundering; at the time of the on-site visit there was no effective dissemination of information to domestic authorities and the power of the FID to disseminate information to domestic authorities was still limited; no guidance was provided to the non-banking sector by the FID regarding the manner of reporting; the manual review of large cash transaction reports called into question the effectiveness of the computerised database and overall effectiveness of analysis of STRs and CTRs undertaken by FID.

362. The previous evaluators also concluded that national cooperation and the use of the FID`s intelligence should be further improved and encouraged in order to prevent the FID`s operational isolation concerning nation-wide investigations.

Legal framework

- New Law on Prevention of Money Laundering and Financing of Terrorist Activities („Official Gazette of BiH" No. 47/2014);
- Law on the State Investigation and Protection Agency („Official Gazette of BiH", No. 27/04, 63/04, 35/05, 49/09 and 40/12);
- Guidelines for Risk Assessment and Implementation of Law on Prevention of Money Laundering and Financing of Terrorist Activities for Obligors, (FIU-Guidance , No. 16-03-02-1014-1/11, adopted 22 February 2011)[32];
- Law on Police Officials BiH („Official Gazette of BiH "No. 27/04, 63/04, 05/06, 33/06, 58/06, 15/08, 63/08, 35/09, 07/12);
- Law on Civil Service in the institutions of Bosnia and Herzegovina („Official Gazette of BiH" No. 19/02, 35/03, 04/04, 17/04, 26/04, 37/04, 48/05, 02/06, 32/07, 43/09, 08/10 and 40/12);
- Law on the Protection of Classified Information ("Official Gazette of BiH", No. 54/05 and 12/09);
- Criminal Codes of BiH, FBiH, RS and BD;
- Law on Independent and Supervisory Bodies of Police Structure of BiH ("Official Gazette of BiH", No. 36/08).

Establishment of an FIU as national centre (c.26.1)

363. The FID is the Financial Intelligence Unit of BiH established within the State Investigation and Protection Agency (SIPA) and operating under its supervision. The SIPA is an administrative unit within the Ministry of Security of BiH with operational autonomy, established for the purpose of performing police tasks, headed by a director and financed from the *"Budget of the Institutions of*

[32] http://sipa.gov.ba/en/documents/secondary-legislation

Bosnia and Herzegovina and International Obligations of Bosnia and Herzegovina". SIPA has its headquarters situated in Istocno Sarajevo.

364. According to Art. 55 (1) and (2) of the AML/CFT Law, the FID is established as the national centre for receiving, collecting, recording and analysing data, information and documentation related to the prevention, investigation and detection of money laundering and funding of terrorist activities. The FID is further responsible for promoting cooperation between the competent authorities of BiH, the FBiH, RS and the BD in the area of the prevention of money laundering and the funding of terrorist activities, as well as cooperating in this respect on an international level. Similar provisions are contained in Art. 13 of the SIPA Law, which in addition also states that the FID should provide the prosecutors with expert support in financial investigations.

365. Paragraph 3 of Art. 55 of the AML/CFT Law gives the FID powers to investigate and forward the results of the analytical/investigative process (data, information and documentation) to competent prosecutors' offices, authorities investigating ML/TF activities, and/or to other competent authorities pursuant to provisions of the AML/CFT Law.

366. In addition to the FIU's core functions, the FID is empowered by Articles 58 and 60 of the AML/CFT Law to temporarily suspend transactions and issue orders to reporting entities for continuous monitoring of a client relationship. Furthermore, pursuant to Article 80 of the AML/CFT Law, the FID is responsible for supervision of trust and company service providers (TCSPs).

367. FID staff comprises 12 police officers and 20 civil servants, including four administrative staff members. Whilst the police officers are governed by the Law on Police Officers in relation to their employment, for civil servants the Law on Civil Servants applies. The organizational and structural framework of the FID is described further under the relevant sections of Recommendation 30.

Guidance to financial institutions and other reporting parties on reporting STRs (c.26.2)

368. The reporting obligation is contained in Articles 38 and 39 of the AML/CFT Law, which defines the FID as the receiver of the STRs (and CTRs) and sets the scope of reporting (any attempted or completed suspicious transaction and any suspicious client or person, cash transaction the value of which amounts to or exceeds BAM 30,000[33], connected cash transactions the overall value of which amounts to or exceeds BAM 30,000). The reporting entities, as enumerated in Article 4 of the AML/CFT Law, shall deliver to the FID the information, data and documentation immediately after a suspicion arises and prior to carrying out a transaction, specifying the period within which the transaction is expected to be carried out. When it is not possible to report prior to carrying out the transaction for justified reasons, pursuant to Article 39(2), this may be done as soon as possible.

369. Article 39 also specifies the basic conditions for the manner of reporting, which requires the obligated entities to file reports by one of the following channels: through the application software for electronic transaction reporting (hereinafter: "the AMLS"), through the post or through a person authorised for documentation delivery – a courier. STRs may be also delivered by fax, with a copy subsequently delivered either by post or by using the electronic system Information on STRs may also be provided by telephone; however the FID should be informed in writing subsequently, at the latest by the following working day.

370. In 2005, the Ministry of Security issued Instructions on Electronic Reporting for Banks for both CTRs and STRs. These Instructions provide a detailed explanation of the entry of data into the AMLS, specifying the type of information required for every different business activity or other action undertaken by the bank and the underlying reason for submitting the report. The explanations are accompanied by comprehensive graphic guidance. In 2011, the Ministry of Security also issued a further Instruction on the Filling of Forms and Electronic Reporting by other Reporting Entities.

[33] Approximately €15,000

Whilst in this case the guidance for the use of the electronic system is more basic, the Instruction also contains a template for the purposes of filing STRs in paper form. This arrangement reflects the fact that the banks almost exclusively use the electronic method of reporting, whilst the channels used for reporting vary amongst the other reporting entities.

371. Some guidance on the manner of reporting is also found within *"Guidelines for Risk Assessment and Implementation of the Law on Prevention of Money Laundering and Financing of Terrorist Activities for Obligors"* (FID Guidelines). The FID Guidelines provide general guidance on all the basic AML/CFT obligations which the reporting entities should comply. With regard to the reporting obligation, Article 37 of the FID Guidelines requires reporting entities to establish internal procedures for reporting suspicious transactions. The internal procedures in this respect should contain, inter alia, the preferred method of reporting (with regard to the options proposed by the AML/CFT Law), method of cooperation in this respect amongst the operational units and subsequent actions following the filing of a STR.

Access to information on timely basis by the FIU (c.26.3)

372. Art. 61 of the AML/CFT Law stipulates that the FID can request all state authorities and institutions of BiH, the FBiH, RS and the BD and other public bodies to provide information, data and documentation needed to discharge its duties.

373. According to Para. 2 of the same Article, the requested information shall be submitted to the FID promptly. During the on-site visit, the FID explained that in practice information would usually be submitted within half a day to two days, but in urgent cases in even less than a few hours.

374. Para. 3 of Art. 61 empowers the FID to inspect any documentation at the premises of the respective authority in cases where extensive documentation is required or for other justified reasons. According to the FID, this power has only rarely been applied in practice. Generally, this provision would only be used in very urgent cases, including postponed transactions and some cases in which the FID is asked to request data and information on behalf of a court or prosecutor.

375. In addition, the FID has direct access to several closed and publicly-available databases. The main database the FID uses in its daily work is the AMLS, which serves as its case management database. The Central Bank's database and the Citizen Identification Protection System (CIPS) databases are searchable through AMLS. The following table lists the databases the FID has direct access to in accordance with Article 61 (4) of the AML/CFT Law. To other databases and sources of information, mostly held at an entity level, indirect access is granted on a request-reply basis.

Table 9: List of databases to which the FID is granted direct access

No.	Characterization	Holder	Content	Access since	Note
1	**AMLS Database**	FID	Information on STRs and CTRs submitted by reporting entities Information gathered during the analysis	2/2006	
2	**Archived Cases Database**	FID	Information on cases before the AMLS was fully functional	1/2005	Held in excel spread sheets prior to AMLS. At the time of the on-site the data was in the process of being transferred to AMLS Database. This has been concluded in 01/2015.

3	**DNFBP Database**	FID	Information on STRs and CTRs submitted by DNFBPs	From 2005-2011	Since 2011, information on STRs and CTRs submitted by DNFBPs is included in the AMLS Database
4	**Citizen Identification Protection System (CIPS) Database**	Agency for identification documents, registers and data exchange (IDDEA)	Personal Identification Information on all BiH Citizens, including vehicle licence plates, passports and driver`s licences	1/2005	Two staff members have direct access from their PCs
5	**Central Registry of Legal Entities` Accounts**	Central Bank	Account information of legal entities restricted to the status, the number of accounts and date of opening	Since 2006	Two staff members have direct access from their PCs
6	**Registry for indirect taxation**	Indirect Taxation Authority (ITA)	VAT registration of legal entities	Shortly after the creation of the ITA Since mid-2006	Publicly available at http://www.uino.gov.ba/h/Porezi/PDV_obveznici//
7	**CIDA Database**	SIPA	Criminal Investigation Records held by SIPA (State level) and with operational information („crime-stoppers“, etc.)	2013 Prior to establishing direct access, information was obtained through written requests	Three staff members of the Analytical Section have direct access from their PCs
8	**Company Registry**	Ministry of Justice FBiH / Commission BD	Information on registered companies in FBiH	2013	Publicly available at http://bizreg.pravosudje.ba/pls/apex/f?p=183:20:1939564070893422
9.	**APIF Registry**	Agency for Business Operations and Finances of RS (APIF)	Information on registered companies in RS	2013 Information partially available.[34]	Publicly available at www.apif.net
10.	**Central Bank BiH Registry of Blocked Accounts of**	Central Bank BiH	Information and data on blocked accounts in the Central Bank BiH Registry of Transaction Accounts	04/10/2012	Publicly available at http://www.cbbh.ba/?id=1&lang=hr

[34] The APIF registry has been fully functional and making available all necessary information since 02/2015.

	legal persons				

376. The databases to which the FID has direct access are all held at the state level except for the company registry of the FBiH which is held at entity level. For all other information held exclusively at entity level, e.g. criminal records, investigation records, real estate registry, direct taxation information etc., the FID is required to obtain information indirectly, making case-by-case requests pursuant to Article 61 AML/CFT Law.

377. It is to be noted that certain registries mentioned in the previous paragraph (such as registries of legal persons in RS, registries of NPOs, registries of criminal records, etc.) are held by a number of different authorities with similar competencies without the information being contained within a unified database. Additionally, some of these registries are not fully digitalised. Without concrete and detailed information, the FID would have to send requests to all the possible competent authorities. Concerns therefore remain with regard to the burden posed on the FID to obtain information, and timeliness of the provision of this information. The following table presents the number of requests made by the FID to other authorities and agencies on all different levels.

Table 10: Number of requests made by the FID to other national authorities

Number of requests sent by the FID to:	**2010**	**2011**	**2012**	**2013**	**2014 (Jan-Sep)**
Court and Prosecutor's Office BiH	n/a	27	47	83	41
Court and Prosecutor's Office of Entities	n/a	7	11	9	17
Court and Prosecutor`s Office in FBiH / Cantonal Court and Prosecutor`s Office	n/a	5	6	6	13
Court and Prosecutor`s Office in RS	n/a	2	5	3	4
Police agencies at BiH state level	n/a	13	25	17	17
Entity MoIs (Police Agencies) :	n/a	12	48	54	64
– MoI FBiH	n/a	8	26	39	46
– MoI RS	n/a	4	22	15	18
BD Police	n/a	7	8	17	11
Cantonal MoIs FBiH (Police agencies)	n/a	26	28	31	31
ITA and Central Bank BiH	n/a	27	28	27	12
Ministries of BiH	n/a	5	7	4	0
Tax Administrations (levels unknown)	n/a	32	89	51	71
Total amount	n/a	**167**	**344**	**310**	**287**

378. The numbers of requests sent by the FID during the reporting period are inconclusive. The authorities were not in a position to explain why the number of some requests made to certain agencies and authorities varies over the past four years. Overall, the data provided suggests that a significantly lower number of requests have been sent to RS authorities (149 vs. 73) during this period. In relation to this, the authorities explained to the evaluation team that the aforementioned difference in numbers of requests to various authorities of the two respective entities is in line with the country`s demographic and distribution of financial market shares amongst those. The evaluation team satisfies itself with the explanations given by the authorities.

379. Lastly, during the on-site visit, one state level agency confirmed that due to the country's political and administrative division, state agencies (such as SIPA and therefore also the FID), encounter difficulties receiving all the information they request from entity or cantonal level agencies. The FID has denied these findings to the case from a practical perspective. However, given

the country`s specifics and related findings stipulated in the 3rd round MER the evaluation team would like to reiterate the concerns expressed in the previous round of evaluations.

Additional information from reporting parties (c.26.4)

380. Article 56 of the AML/CFT Law empowers the FID to request additional information from reporting entities regardless of whether an STR has been filed. On the basis of this provision, when the FID suspects money laundering or terrorist financing activities, it may send a written request to a reporting entity and ask for information from the records kept by this entity on the CDD measures applied (as defined in Article 54 of the AML/CFT Law), information on account ownership and bank transactions of the person, as well as other information, data and documentation, necessary for carrying out the tasks of the FID according to the AML/CFT Law. Reporting entities are required to respond within eight working days. In urgent cases, the FID may request information, data and documentation verbally or may inspect documentation in the premises of a reporting entity; however, in such cases the FID shall submit a written request to the reporting entity on the following working day at the latest. This power also covers circumstances in which the FID receives requests for information from other domestic authorities (Art. 62) or foreign counterparts (Articles 66 and 67).

381. According to the FID no issues were encountered in practice when requesting additional information from reporting entities. This was also confirmed during all private sector meetings by representatives of all different sectors.

382. The table below shows the number of requests sent to the reporting entities and information provided in the past five years:

Table 11: Number of requests for information sent by the FID to reporting entities in the period under evaluation

Type	No. of requests/ replies during specific year					Total No.
	2010	2011	2012	2013	2014	
Requests	**188**	**186**	**173**	**700**	**1102**	**1886**
Analytics Section			173	696	1083	
Investigation Section			0	4	19	
Sent information/ Replies	**1487**	**1776**	**1179**	**1580**	**1266**	**6695**
Analytics Section			1168	1556	1246	
Investigation Section			11	24	20	

383. The number of requests and replies has increased significantly in the past two years although the number of STRs as well the number of exchanges of information with foreign counterparts has remained fairly stable. The authorities explained that the significant increase in requests and replies was caused by an alteration of the system of counting the volume of requests in 2013. Up until then, identical requests that had been sent to a variety of reporting entities had only been counted as one request, whereas thereafter these requests had been held in the FID`s records as multiple requests although related to the same issue.

384. Furthermore, the FID explained that to some degree the increase in volume also results from an increasing amount of requests for information by law enforcement agencies, prosecutors' offices and courts in 2013-2014. The authorities were not in a position to explain why these types of requests were submitted to the FID more frequently in this period.

Dissemination of information (c.26.5)

385. According to Art. 57 AML/CFT law, when the FID establishes that there are grounds to suspect that money laundering or financing terrorist activities have been committed, it shall *ex officio* submit

a report to the competent prosecutor's office. The report should contain relevant data, information and documentation.

386. Paragraph 6 of the same article prohibits the FID to include the names of the reporting entities' employees, unless the competent prosecutor assesses there are reasons to suspect that the said reporting entity or its employee has committed a criminal offence or if the information would be required for establishing facts during criminal proceedings.

387. The representatives of the FID explained during the on-site visit that the reference to *"competent public prosecutor"* is understood as the prosecutor who has competence in the particular case in question. The FID, prior to filing a notification, would therefore first consider the circumstances of each individual case (such as the related predicate offence) and determine the competence on the basis of the relevant provisions of the CPCs. The authorities clarified that should the FID have any doubts on the competence, the notification would be made to the State Prosecutor, who would then determine whether the case should be dealt with at State level or whether it should be transferred to the appropriate authority at Entity or BD level. In practice, notifications are sent to the State Prosecutor in the majority of cases. The authorities stated during the on-site visit that this procedure, although somewhat complex, functions effectively.

Table 12: Cases resulting from STRs

Year	**Total STRs received**	**Number of cases opened by FIU**	**Cases disseminated to the Public Prosecutor`s Office**	**Dissemination to other units of SIPA, police agencies and institutions on an entity level[35]**	**Conversion rate of cases into disseminations**	**Prosecution (ML)**		**Conviction (ML)**	
						Cases	Persons	Cases	Persons
2011	**184**	**151**	**14**	**36**	**33.1 %**	**6**	**14**	**2**	**2**
Analytics Section		136	5	36				-	-
Investigation Section		15	9	0				-	-
2012	**93**	**89**	**17**	**46**	**70.87 %**	**6**	**48**	-	-
Analytics Section		77	9	46				-	-
Investigation Section		12	8	0				-	-
2013	**193**	**180**	**11**	**61**	**40.0 %**	**7**	**46**	1	1
Analytics		163	3	61				-	-

[35] Up until the amendment and entrance into force of the new AML/CFT Law (6/2014) there was no obligation for these law enforcement agencies to inform the FID on the outcome of these disseminations. Therefore, there are no statistics available regarding the timeframe under review. Hence, the evaluation team was not in a position to fully draw conclusions on the effectiveness of the FID`s dissemination practice.

Section									
Investigation Section		17	8	0				-	-
2014	**166**	**166**	**22**	**80**	**61.4%**	**6**	**36**	-	-
Analytics Section		142	12	80				-	-
Investigation Section		24	10	0				-	-

388. The table above shows that in the period under assessment on average 12% of all incoming STRs generate disseminations to the competent prosecutors' offices for investigation. Statistics on the number of disseminations which actually resulted in criminal investigations were not available.

389. The authorities were not in a position to explain why the proportion between incoming STRs/cases under analysis by the FIU and disseminations was rather low. It could not be finally assessed whether this is in practice due to a lack of quality of STRs, a lack of capability of the FID to fully perform its functions and to perform in-depth analysis or the high burden of proof required by competent investigative bodies and the judiciary.

390. As regards TF, there have been no prosecutions or convictions in the period under review, and no STRs containing suspicions of TF submitted by reporting entities. However, the FID informed the evaluation team that it closely cooperates with SIPA in TF related investigations in the period under assessment without providing details of these cases.

Operational independence and autonomy (c.26.6)

391. As indicated in the analysis of c.26.1, the FID operates at the State level under the supervision of SIPA, which is established within the Ministry of Security. There is no explicit legal provision which guarantees the operational independence of the departments of SIPA, including the FID.

392. The representatives of the FID are of the opinion that SIPA supervision does not have any influence at operational level. However, all official reports emanating from the bodies within SIPA, including FID notifications, may only be issued, released or disseminated under the authorisation of the Director of SIPA. The authorities explained that in the last years there has never been a case in which authorisation has been withheld from dissemination to the competent public prosecutor. While there may, arguably, be the potential for SIPA to involve itself operationally to the detriment of the FID's independence, practice shows that the oversight of SIPA is formalistic and does not pose any obstacles in practice to the effective undertaking of the work of the FID.

393. According to Article 7, Paragraph 3 of the SIPA Law, the Director of SIPA is appointed by the Council of Ministers, upon a proposal made by the Minister of Security, and selected from a list of candidates proposed by an independent committee[36]. Dismissal procedures follow a similar procedure under the conditions set out by the independent committee.

[36] Further details on the functioning of this committee can be found at https://www.parlament.ba/sadrzaj/komisije/nezavisni_odbor/default.aspx?id=46288&mid=2&langTag=en-US&pril=b

394. The Law on Independent and Supervisory Bodies of Police Structures specifies in Article 4 that the independent committee shall be comprised of 9 members, of which three are to be Bosniaks, Serbs and Croats each. The members of the committee shall:

- be representatives of judicial institutions, retired police officials, retired and active civil servants, prominent experts from other fields of public life, such as law, criminology and police affairs;
- hold of a university degree;
- not be members of political parties or having been convicted of a criminal offence (excluding criminal offences against traffic safety).

395. The Director of FID is appointed on the basis of the Law on Police Officials. Concrete information was however not provided with regard to the specific provisions applicable.

396. During the on-site visit it was confirmed that there SIPA officials have been charged with abuse of office[37] but, according to the authorities, none of these cases involve FID officials and therefore have not had any negative influence on the operational independence of the FID.

397. The FID does not have its own budget, but is resourced from SIPA's budget. The Director of the FID makes a proposal to the Head of SIPA, who determines the portion of the budget which is to be allocated to FID on an annual basis. According to the FID, the budget is adequate in terms of funding and resources.

398. The authorities have not provided any statistics on how many times such order has been issued to the FID in the period under review.

Protection of information held by the FIU (c.26.7)

399. All police officers employed by the FID are bound by official secrecy pursuant to Article 37 of the Law on Police Officers, which states that a police officer shall hold as a secret all material of a confidential nature which he comes across, except while performing his duties or when other legal provisions require otherwise.

400. Disciplinary actions are prescribed in Articles 103, which can result in termination of employment (Articles 119).

401. According to the provisions of the Law on Protection of Classified Information (Official Gazette of BiH No. 197/05) and the subsequent internal rules of the SIPA, all budgeted positions in the FID are subject to security clearance and issuance of permits for access to classified data. The last SIPA Decision on List of Work Positions, for which the issuance of permits for access to classified data is obligatory, was issued on 13 November 2014. This List is reviewed and updated from time to time.

402. According to the above mentioned list, all employees are subject to different levels of security clearance, as follows:

- **Top secret –** Head of FID;
- **Secret –** Technical secretary, Heads of the all the three sections, all officials of the Analytical section, all officials of the Investigative section and all civil servants in the Section for Legal Affairs, International Cooperation and Support;
- **Confidential –** Driver and all other employees (except civil servants) in the Section for Legal Affairs, International Cooperation and Support;

[37] One former head of SIPA was convicted of abuse of power. One inspector has been indicted and is awaiting the trial.

403. Permissions for access to classified data are issued by the Sector for Protection of Classified Information of the Ministry of Security. The security clearance is undertaken by SIPA's Department for Internal Control and by the Intelligence Security Agency in a way adequate to the level of permission required.

404. Disciplinary actions are prescribed under Articles 78 and 79 of the Law on Protection of Classified Information according to which the responsible official in a body, agency, institute, service, organization and institution of BiH, entities or at other levels of state organization of BiH may be fined in the amount ranging from BAM 1000 to 5000 (€500 to 2,500) in case of a breach of the confidentiality obligation.

405. Article 73 of the AML/CFT Law prescribes that FID shall use data, information and documentation obtained in accordance with the law, only for the purposes defined by the law. Article 74 (3) of the AML/CFT Law provides that the FID, other authorised person or prosecutor may not give information, data and documentation collected in accordance with this Law to the person it is related to. However, it appears that there is no provision in the AML/CFT Law limiting the disclosure of information to other persons than the one subject to FID's information/analysis. There is no sanction provided for failure to observe the above provisions.

406. The authorities informed the evaluation team that revealing official secrets by FID staff would be considered a criminal offence on the basis of Article 164 of the CC of BiH, read in conjunction with Article 1(22) of the CC and Articles 14 (2) and 17 of the Law on Protection of Confidential Information. While the scope of application of this provision appears to be broad enough to be taken as legal basis for the protection of official secrecy, it only applies to certain limited information considered as secret. The authorities referred in this respect to Articles 14 (2) and 17 of the Law on Protection of Confidential Information, which give the Director of SIPA a discretionary power to designate which information is to be categorised as secret. This decision of the Director of the SIPA is kept in a confidential internal guideline and was shared with the evaluation team after the on-site. The evaluation team concluded that this provision of the CC does apply to the protection of confidentiality of information held by the FID.

407. According to Article 79 of the AML/CFT Law, the FID can store their data for a maximum of ten years. After that period has expired, the FID is obliged to delete the data from its IT systems and archives.

408. SIPA's headquarters are well secured with two security checkpoints, one at the gates, as well as one at the main entrance. The area in which the FID is situated can only be accessed with programmed badges.

409. The data and information held by the FID is stored with the FID servers that are situated in SIPA's server storage room to which only SIPA's IT specialists have access. The evaluation team was not allowed to enter the server room due to security restrictions. However, the authorities assured the evaluators that their servers are not connected to any other servers in that room and access to them must first be granted by the FID. Any breach would be considered an offence.

410. The FID has, in line with the Egmont Group`s standard on exchange of information through the ESW one computer with a stand-alone connection that is used for communication through the Egmont Secure Web (ESW) to which the staff member in charge has access. All the analysts have personal computers which are connected to FID's internal and external databases. However, those computers are not connected to the internet. The analysts use two separate computers that are exclusively connected to the internet for open source searches.

Publication of periodic reports (c.26.8)

411. Article 64 d) of the AML/CFT Law obliges the FID to publish, at least once a year, statistics on ML and TF. Additionally, Article 63 Paragraph 2 of the same Law requires the FID to inform reporting entities on current techniques, methods and trends of ML/TF.

412. In practice, the FID confirmed that so far it has not published reports containing statistics or information on trends and typologies. It has only reported back to SIPA and the Ministry of Security on their activities and those reports have not been published. However, the FID also informed the authorities after the onsite visit that it organises an annual training event covering all sectors of reporting entities in cooperation with a private sector partner. All presentations made at this event are regularly made available through the private sector partner`s website. According to the authorities these presentations do contain information on trends and typologies. However, the evaluation team remains with their opinion that these presentations would not cover the requirements sufficiently stipulated under c.26.8.

413. The FID informed the evaluation team that it plans to publish annual reports from 2015 onwards and those will contain statistics, trends, typologies as well as information on their annual activities.[38]

414. Criterion 26.8 is therefore not met.

Membership of Egmont Group & Egmont Principles of Exchange of Information among FIUs (c.26.9 & 26.10)

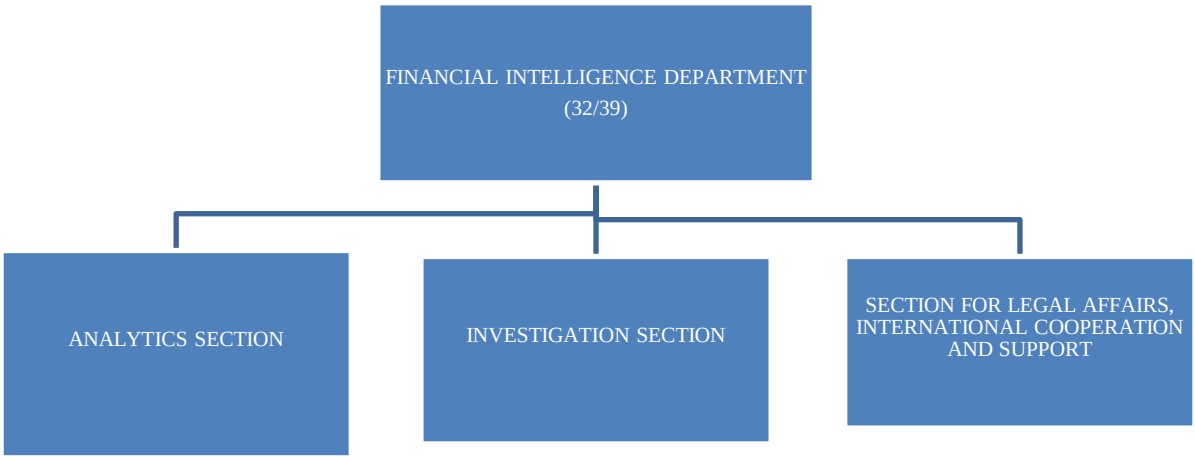
415. The FID has been an Egmont Group member since 2005. It has never been subject to any kind of compliance enhancing procedures in respect of its membership or non-observance of the Egmont Principles of Exchange of Information.

416. As mentioned above, the FID fully understands the Egmont Secure Web (ESW) standards and applies the procedure properly when communicating with its foreign counterparts.

417. In order to foster international cooperation with its counterparts the FID has concluded MoUs with a number of FIUs worldwide (see annex).

418. A more detailed analysis of FIU-to-FIU information exchange is discussed in the analysis of Recommendation 40.

Recommendation 30 (FIU)



[38] This semi-annual report is planned to be published by the end of July 2015.

Adequacy of resources to FIU (c.30.1)

419. Under its current organisational structure, the FID comprises three departments:

- **The Analytics Section**: there are ten employees (civil servants) who are in charge of the pre-analysis of CTRs, STRs and other relevant incoming data and information before a decision is made whether or not to forward the case to the investigative section. This Section previously lacked three employees, but is now up to strength. The Analytics Section is responsible for receiving, requesting, collecting and analysing information, data and documentation for the purpose of determining whether there are grounds for suspicion of the perpetration of the ML and/or TF criminal offence. It is responsible for forwarding a proposal for a temporary suspension of transactions and termination of such suspensions to the Head of Section, submission of reports on assessment of financial intelligence to the Head of Department with a proposal/explanation in case the report needs to be submitted to the competent Prosecutor's Office, foreign FIUs, Investigation Section and/or other competent authorities, performs analytical processing of information upon a request from a law enforcement agency when legal requirements are met.
- **The Investigation Section**: according to the new systematisation of job positions, this section has eleven police officers who are responsible for further analysing the cases which the Analytical Section deems to be suspicious or generally worth further investigating. The section collaborates closely with other investigative departments of SIPA in performing their duties, such as the Criminal Investigation Department (CID) of SIPA. Currently there are sixteen job positions available to the section, with five of them not filled. Further tasks of the Investigation Section are:
    - leading the investigation falling within their competence such as predicate offences under the BiH CC;
    - acting upon suspicious transactions directly or upon receipt of analytical processing of suspicious transactions by the Analytics Section;
    - collects additional information through operational field work with the aim of determining elements of a money laundering offence, as well as predicate offence from which this money originates;
    - temporary suspension of suspicious transactions of up to 5 work days, if there is suspicion of money laundering or financing of terrorist activities;
    - acts upon orders by courts and prosecutor's offices at state and entity level (seizure of documentation, searches, arrests of suspects, taking statements from witnesses or reported persons and other police work);
    - carries out complex financial investigations upon request by a prosecutor's office or for the needs of other organisational units of SIPA;
    - performs checks for other agencies;
    - exchanges data and information with other FIU-s and Interpol.
- **Section for Legal Matters and International Cooperation**: This section has ten employees (civil servants) who are responsible for all legal matters as well as the exchange of information in the international context. Additionally, this section has received three new staff members, two of which are solely responsible for inputting data and information not received electronically into the AMLS database. One recently added member of this section is in charge of prevention, supervision and training of reporting entities.

420. The total of FID staff is 32 staff members out of 39 planned positions, including the Head of FID. This constitutes a significant increase of around 20% in comparison with the previous assessment. In addition to its permanent staff, the FID receives administrative and IT support from SIPA. These job positions are independent of FID's budget and are therefore not attributed to FID's establishment level.

421. While the evaluators very much welcome the significant increase of staff of the FID over the past five years, there are still concerns about the distribution of jobs and the adequacy of the resourcing of the key and core functions of the FID. Of particular concern is the current status of the Section for Prevention and Investigation, as this Section is still lacking 30% of their planned positions. As the Section for Prevention and Investigation is actually responsible for of in-depth analysis of incoming reports, more consideration should be given to the adequacy of its resourcing.

422. The table below provides detailed budgetary overviews of the SIPA (figures in BAM) for the period under review, together with the budget share allocated to the FID. The evaluators consider that the current as well as recent budgets have been reasonable and high enough for the FID to properly undertake its functions.

Table 13: SIPA budget

	2010		2011		2012		2013		2014	
	SIPA	FID	SIPA	FID	SIPA	FID	SIPA	FID	SIPA	FID
TOTAL BUDGET	**60.008.000**	**956.544**	**29.795.693**	**1.039.190**	**29.231.000**	**1.027.456**	**30.052.500**	**1.145.171**	**27.811.000**	**1.068.481**
CURRENT EXPENDITURES	**55.958.000**	**883.571**	**28.529.949**	**992.503**	**27.731.000**	**984.842**	**27.382.000**	**1.032.691**	**27.251.000**	**1.043.453**
Gross salaries and compensations of staff	39.983.000	692.222	19.912.170	748.385	19.519.000	755.372	19.170.000	787.392	19.613.000	800.158
Reimbursement of expenses of staff	8.975.000	114.700	3.470.222	121.300	3.250.000	105.550	3.205.000	120.330	3.285.000	126.200
Travel expenses	1.491.000	26.865	750.977	27.700	511.000	21.776	444.000	18.701	430.000	19.218
Number of staff in SIPA/FID	1443	26	732	27	704	30	736	31	716	32

Integrity of FIU authorities (c.30.2)

423. All police officers employed by the FID are bound by official secrecy pursuant to Article 37 of the Law on Police Officers. In addition, according to the provisions of the Law on Protection of Classified Information and the internal rules of the SIPA, all budgeted positions in the FID are subject to security clearance and issuance of permits for access to classified data. Disciplinary actions are prescribed in Articles 103 ff., which can result in termination of employment (Articles 119 ff) and Articles 78 and 79 of the Law on Protection of Classified Information, which foresee imposing a fine in the amount ranging from BAM 1000 to 5000 (€2,500). For further information on the confidentiality obligation, the reader is referred to the analysis under c.26.7.

424. The staff of the FID is also subject to provisions of the Code of Ethics of Civil Servants in the Institutions of BiH and Code of Ethics of the Police Officers of SIPA[39], depending on the status of their employment. Both Codes contain provisions on the behaviour and integrity (including provisions on impartiality and conflict of interest), as well as provisions governing disciplinary and

[39] http://www.sipa.gov.ba/assets/files/secondary-legislation/eticki-kodeks-en.pdf

misdemeanour proceedings in case of violation. The SIPA also issued in 2014 a SIPA Integrity Plan which sets out objectives, measures and recommendations for the improvement of the Agency.

425. The FID staff members met on-site appeared to be of high integrity and showed motivation for their respective duties and responsibilities.

Training of FIU staff (c.30.3)

426. The authorities have provided an exhaustive list of training activities that have been organized and/or attended by the FID and SIPA staff on specific criminal-intelligence activities, analytical activities (application of analytical methods and software), countering financial crime, organised crime and terrorism, carrying out financial investigations and others (a full list of the trainings is included in Annex XXVIII). The list shows the commitment of the FID and SIPA not only to increase their expertise and skills, but also to enhance the knowledge of AML/CFT issues of the private sector and the effectiveness of implementation of AML/CFT measures by the private sector.

427. Despite the high number of training events and workshops held, the evaluation team would invite the FID and SIPA to ensure that a larger portion of the staff members attend and benefit from these events. The figures on the number of attendees can be seen in the table below.

Table 13: The number of trainings attended by FID employees

Name of the Training	Date	Number of trainees from FID (FIU)
Prevention and Investigation of ML/TF Activities	2013	24
Financial Investigations	2009-2013	6
Financial Investigations and Money Laundering	2010-2011	18
Integrated Financial Investigation	2011	5
Financing of terrorism and Money Laundering	2010	2
Financial Investigations aimed to confiscation illegally acquired property	2011	2
Financial Investigation and freezing illegally acquired property	2012	1
Financial Investigations and confiscation proceeds of crime	2012	2
The best practice of EU in the field of the Financial Investigations	2012	4
Financial Investigations of bank transactions and stock market businesses	2012	2
The best practice of EU in the field of the financial investigations with specially accent at the suspicious transactions in the cases which are connected with terrorism - study cases	2013	3
Money laundering and financial investigations	2014	2
Financing of terrorism	2014	5
Capacity building of financial investigations	2014	3
Collecting and prosecuting data of criminal financial investigations	2011	10
Investigative techniques of financial crimes	2011	1

Recommendation 32 (FIU)

428. In practice, the FID collects data on, *inter alia*, CTRs and STRs filed by reporting entities and domestic authorities, cases opened by the FID, disseminated cases and requests sent and received from foreign FIUs.

429. An assessment on the effectiveness of the analytical function of the FID based on statistical data has not been carried out, given that a limited number of investigations, prosecutions, and convictions have been achieved based on FIU disseminations.

Effectiveness and efficiency

Analysis Procedure

430. Most sectors report electronically to the FID, using the encrypted AMLS software. The evaluators were informed that some financial sectors, such as insurance and leasing, still submit reports manually in paper format.

431. The Analytical Section of the FID monitors incoming reports through its 9 analysts and the Head of Section. At the time of the on-site, the nine analysts were divided into teams of three, in accordance with their level of experience: three junior experts, three experts and three senior experts. The distribution of STRs is done by the Head of Section, in accordance with the level of experience.

432. The Analytical Section is responsible for of the pre-analysis to be referred to the SPI (Section for Prevention and Investigation) or a full analysis where no investigative actions are required.[40]

433. As soon as an STR is filed, it is given a unique case number (except for STRs that are connected to other STRs) and assigned to an analyst. The first step in the preliminary analysis is to check the AMLS database and all other relevant and accessible databases to establish whether the case in question has already been dealt with or raises suspicions and to decide (together with the Head of the Analytical Section) whether additional information is to be requested from the reporting entity. The evaluators were informed that this happens very often in practice, since the AMLS software (which is 10 years old) does not permit reporting entities to include any attachments when filing an STR. Requests for additional information would also be made at this stage to other reporting entities, in case further information was needed about the person in question. Usually, the Analytical Section would make requests for additional information and generally performs the same activities as the SPI. The decision as to which section each case (STR) should be allocated is made on a case-by-case basis.

434. After analysing all information connected to the case, the Head of the FID in consultation with the Head of the Analytical Section decides whether:

a) the analysis must be taken forward by the SPI;

b) the case contains enough elements of ML/TF to be disseminated;

c) the suspicion is not confirmed and therefore the case can be archived.

435. If there are grounds to conclude that a suspicion of ML/TF remains but further investigation is required, a short dissemination report is written, signed off by the Head of Analytical Section and sent to the Section of Prevention and Investigation for further analysis.

436. The evaluation team was informed that if there is no need for additional information, the process of preliminary analysis takes between 30 minutes and 2 hours for each STR. If additional information is required, the reporting entities have 8 days to respond. According to the authorities, this timeframe is observed in practice and only in complex cases – with the FID's prior approval – the reply is delayed. It is understood that this only happens on an exceptional basis. If further information is needed from foreign counterparts the analysis procedure can take longer. The authorities reported that in cases in which so-called "off-shore jurisdictions" are involved, the analysis can take up to three months.

437. If there are no reasons to continue the analysis on the case (as the suspicion was not confirmed) the case is archived and the most important data is inputted in the AMLS. The case can be re-opened

[40] The Head of Section informed the evaluators that according to the new systematization that will enter into force in 2015, only three analysts will be in charge of STRs.

if additional information is received subsequently (from a CTR for example). The decision to archive the case is taken by the Head of Analytical section at the proposal of the analyst. The final decision is taken by the FID Head.

438. If the case is disseminated to the Section for Prevention and Investigation (SPI), an in-depth investigation is carried out. The SPI also addresses the written requests to the reporting entities but in addition, it can go on-site to check the information needed. The evaluators were informed that this is a rather exceptional procedure.

439. The cases investigated by the SPI are finalised as a *"criminal report"* which contains sufficient evidence to initiate a criminal investigation.

440. Reports on the grounds for suspicion of perpetrated criminal offences and reports on undertaken measures and actions are submitted by the SPI to the State Prosecutor's Office of BiH. However, depending on the predicate offence, reports on money laundering may be also submitted to competent Entity Prosecutor's Offices or they are being handed over by the State Prosecutor's Office of BiH to an Entity Prosecutor's Office for further procedure if it declares a lack of competency in the case in question.

441. Where it is necessary, the Section for Prevention and Investigation would decide as promptly as possible whether to suspend the transaction temporarily for a maximum of five days in accordance with Article 58 of the AML/CFT Law. According to the investigative analysts this five day period is generally not sufficient to conduct a full analysis. Pursuant to Article 58 Paragraph (4), after the period of five days expires, a financial transaction may be temporarily suspended only by a decision of the competent court pursuant to the respective Criminal Procedure Code of BiH, FBiH, RS and the BD. Consequently, the FID regularly approaches the competent public prosecutor to apply for a court-mandated attachment order under Article 72 (4) of the Criminal Code of BiH. The suspect is always notified of an attachment order in accordance with the law.

442. The last step of the analysis procedure is the final decision whether to disseminate the case to the competent public prosecutor. This decision is taken by Head of the FID following proposals by the analysts or Heads of Department, as the case may be. After the Head of FID signs off the report, it is forwarded to the Head of SIPA. After the approval of the Head of SIPA, the report is disseminated to the competent prosecutor's office.

443. The major concern about the analysis which has been voiced on several occasions during the on-site visit was the lack of adequate IT solutions. On the one hand, not all the incoming data and information has been merged into one single electronic case management database and therefore it takes more time in order to obtain certain matches when such data and information is to be analysed. This results in a situation in which the analysts have to transfer the relevant information from the case management system into the network analysis tool by hand, which leaves room for human error and is time consuming. Secondly, as the AMLS does not allow for attachments to be sent electronically, these attachments are submitted in paper form and then inputted manually into the database.

444. According to the FID, the 2013 IPA Project (Twinning Project) is in the course of being approved by the sponsor countries and international organisations. This will permit the FID to obtain new IT hardware and dedicated software with the view to significantly increasing effectiveness of the analytical process of the FID.

445. In addition to STRs, CTRs are also considered and some are extracted for further analysis where there is a link to existing information in the AMLS. Sufficient information was not provided in respect of the analysis of CTRs undertaken by the FID, in particular with regard to concrete statistics on analysed CTRs and the outcomes of the analysis. As a result, the evaluation team was not able to formulate any conclusions concerning the number of CTRs the FID manages to examine per year, as

well as with regard to the number of CTRs that are subject to further analysis after a preliminary analysis is conducted by the Analytical Section.

446. Given the high number of cash transactions in Bosnia and Herzegovina, the evaluators have serious doubts as to the quantity of CTRs on which the FID can actually manage to undertake a further analysis.

Resources and other effectiveness issues

447. As indicated under Recommendation 30, the evaluators consider that the allocation of human resources within the FID is fairly adequate. However, the Section for Prevention and Investigation is still lacking five investigative analysts which equals approximately 30% of all planned job positions in that section and 17% of all job positions in total. Although this resourcing shortcoming does not seem to impact on the FID's effectiveness in performing its core-functions according to the authorities, the evaluation team would encourage the authorities to fill in all job positions as planned in the systematization of job positions.

448. Concerns were raised by the evaluation team with regard to the low share of CFT issues in the work of the FID and the low level of priority of these issues. The evaluation team was informed after the on-site visit that the FID participated at meetings of the Anti-Terrorism Task Force at state level and successfully contributed to a number of on-going investigations related to terrorism and TF. However, the authorities were not in a position to specify the roles, duties and tasks, as well as the nature of cases with which this Task Force deals. As a result, the evaluation team was not in a position to make an assessment of the effectiveness of involvement of the FID in these CFT matters. Especially in light of the country`s potential for terrorism and the TF risks, the countering of terrorist financing should be seen as a priority in the daily work of the FID. The evaluation team was not convinced that this is the case after meetings with several authorities on all levels during the on-site.

449. Whilst according to the FID there are no difficulties in receiving all the information needed in order to perform their tasks from the entities and BD; other state level law enforcement authorities mentioned that due to the administrative structure of the country, state level authorities do encounter difficulties when requesting specific information from the entities. As this has been a point of criticism during the last round, given the specific circumstances of BiH, and still seems to be the case for other state level law enforcement authorities (even if not on a daily basis), the evaluators have doubts as to whether the FID is in practice being provided with all the information it needs from entity and cantonal level authorities to properly undertake its functions. [41]

450. Furthermore, the FID does not obtain nor receive any qualitative feedback on the outcomes of its disseminations from the prosecutors' offices, nor from the competent LEAs. The FID also does not request such feedback from the respective authorities. This impedes the possibility for the FID to assess the effectiveness of its work and apply the findings of such an assessment to further improve its outputs. Without knowledge of the outcome of these cases the evaluation team was not in a position to make a conclusion on the effectiveness of the FID`s dissemination process nor its overall effectiveness regarding its analytical output.

2.5.2 Recommendations and comments

Recommendation 26

451. The authorities should review the framework of registries and other databases held by authorities at entity, BD and cantonal level in order ensure that all administrative, financial and law enforcement information that the FID (and other competent authorities) needs in order to undertake its functions

[41] The authorities claimed after the on-site visit that access to such information will more strongly manifest itself with the amendments to the Criminal Code in May 2015, as competencies of the FID and other competent bodies is more clearly set out in the amended version of the law.

are readily accessible. In this regard, particular focus should be given to the obtaining of this information in a timely manner, and ensuring that the information is up-to-date and accurate.

452. The FID should publish annual reports containing trends, typologies and anonymised case examples for reporting entities as well as for wider public.

453. The FID should consider putting in place, in addition to the quantitative feedback already embedded into the new AML/CFT law, mechanisms to obtain regular qualitative feedback on all the disseminations forwarded to competent authorities. Furthermore, the information obtained should be used in order to assess and further enhance the effectiveness of its work.

454. Although the FID has been equipped with network analysis tools and a number of analysts have received training in conducting such analysis, the FID still lacks a bridge between the case management system and the network analysis tool. The authorities are invited to install as soon as possible a new IT system that would enable the effective undertaking of the analysis process (in particular that would allow for case management data to be transferred into network analysis tools).

455. The evaluators invite the authorities to renew the AMLS electronic reporting tool and allow for the possibility to attach information and data to the STRs with the view of speeding up the analysis process.

Recommendation 30

456. The authorities should ensure that a higher number of staff of the FID and SIPA participate at specialised trainings related to their duties.

457. The authorities are encouraged to increase the number of staff to the full number of positions foreseen in the systematisation.

Recommendation 32

458. The authorities should undertake efforts to make sure that all necessary statistical data is held and easily retrievable in an adequate manner.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**PC**	• The FIU does not publicly release periodic reports including trends and typologies; Effectiveness: • Dissemination procedure regarding cases referred to entity and cantonal level law enforcement agencies could not be assessed; • Doubts whether in practice the FID has timely access to all necessary administrative, financial and law enforcement information and data held on an entity level; • Lack of adequate IT system to allow in-depth analysis; • Lack of explanations in relation to statistics undermines assessment of effectiveness

2.6 Cross Border Declaration or Disclosure (SR.IX)

2.6.1 Description and analysis

Special Recommendation IX (rated NC in the 3rd round report)

Summary of 2009 factors underlying the rating

459. At the time of the 3rd round of evaluations, major shortcomings were identified in the implementation of the measures related to cross-border transportation of currency and bearer negotiable instruments:

- No obligation at the state level for reporting cash and negotiable instruments. Limited and varying reporting obligations exist at the entity level; but not for Bosnian currency (in the Federation and BD) and not for negotiable instruments;
- The Indirect Taxation Authority (ITA) has no authority to obtain further information from the carrier upon discovery of a false declaration (SR IX.2);
- The ITA has no authority to restrain currency where there is suspicion of ML/FT or where there is a false declaration (SR IX.3);
- The ITA does not retain the information required by SR IX.4 and is therefore not able to make such information available to SIPA in accordance with SR IX.5;
- No or ineffective cooperation at the domestic level (SR.IX.6);
- No power to apply sanctions or seize funds by ITA (SR.IX.8) (SR.IX.9) (SR.IX.10) (SR.IX.11);
- Uncertainty on whether, upon a discovery of an unusual movement of gold or other precious metal, the ITA would cooperate with the authorities of the originating/destination countries;
- Lack of effectiveness.

Legal framework

460. Since the last evaluation in 2009, the new AML/CFT Law was adopted in June 2014, which defines certain responsibilities of the customs authorities of Bosnia and Herzegovina with regard to cross-border transportation of currency and bearer negotiable instruments. The principal measures related to cross-border transportation of currency and bearer negotiable instruments are set out in the Law on Foreign Exchange Operations of RS (Official Gazette of RS no. 96/2003) and the Law on Foreign Exchange Operations of FBiH (Official Gazette of FBiH no. 47/2010) (the latter has been amended since the 3rd round on-site visit and entered into force on 5 August 2010), the Law on ITA (Official Gazette of BiH no. 89/2005 and 100/2013) and the Instruction on Customs Procedure within Passenger Traffic issued by Indirect Taxation Authority on 1 November 2006. The Law on the Foreign Exchange Operations of the FBiH applies also on the territory of Brčko District on the basis of an order issued by the Brčko District Supervisor, dated 4 August 2006.

461. Concerning the institutional framework, the principal authority responsible for the implementation of the measures in respect of cross-border transportation of currency and bearer negotiable instruments is the ITA. The operation of the ITA is regulated by the aforementioned Law on ITA, which defines and attributes it its powers and responsibilities. Apart from the ITA, control of border crossings is undertaken by the Border Police. The competences, organisation and management of the Border Police is regulated by the Law on the State Border Service (Official Gazette of Bosnia and Herzegovina No. 50/04, 27/07 and 59/09), which is *lex specialis* to the Law on Police Officials of

BiH; the Law on Police Officials would therefore apply in situations not covered by the former. In addition, the activities of the Border Police are also governed by the Law on Border Control (Official Gazette No. 53/09, 54/10 and 47/14) and the Rulebook on the Manner of Conducting Border Checks and Data Entry in a Travel Document (Official Gazette No. 103/14). The State Border Police does not have explicit competences with regard to the control of cross-border transport of currency and bearer negotiable instruments. Nevertheless, the Law on the State Border Police stipulates that should the Border Police obtain information connected to offences or misdemeanours, which are outside the scope of its competencies, it shall inform the competent authority. In addition, the State Border Police and ITA have signed an Agreement on Mutual Cooperation in 2006, which foresees, amongst others, provision of assistance between the agencies, exchange of information and undertaking of joint actions.

Mechanisms to monitor cross-border physical transportation of currency (c.IX.1)

462. As has been the case at the time of the 3rd round evaluation, BiH applies a declaration system in order to detect physical cross-border transportation of currency and bearer negotiable instruments. The declaration system in RS continues to be regulated by Article 41 of the Law on Foreign Exchange Operations of Republic of Srpska. In FBiH, a new Law on Foreign Exchange Operations was adopted in 2010; the declaration system is currently set in Article 45 thereof. As stated above, the Law of FBiH is also applicable in BD. The provisions of both laws state that persons "*crossing the state border shall declare any amount of foreign currency cash, convertible marks and securities taken in or out of the country in excess of the amounts determined by the respective government*". The relevant amounts for declarations are determined by the Decision on Taking out of Foreign Currency Cash and Cheques (Official Gazette of the Federation of BiH No. 58/10) and the Regulation on Bringing In and Taking Out the Effective Foreign Currency, Convertible Marks, Cheques and Securities („Official Gazette of Republic of Srpska" No. 16/05 and 15/07). The threshold for declaration in both FBiH and RS is €2,500 or its equivalent amount of BAM (about 5,000 BAM).

463. In addition, the value of €2,500 is also the threshold up to which cash and bearer negotiable instruments may actually be taken out of BiH. Notwithstanding, the Decision of FBiH and the Regulation of RS foresee a number of further situations in which this limit is increased (for example a foreign citizen may carry out in addition to cash in the value of €2,500 also the value of cash declared when entering the country). These exceptions do not, however, impact on the declaration obligation, where the threshold remains at the value of €2,500.

464. As has been identified in the 3rd round MER, the declaration obligation is limited with regard to bearer negotiable instruments. The Laws of FBiH and RS require declaration to be made solely to securities and the Decision of FBiH and the Regulation of RS only require declaration of cheques. Whilst this discrepancy may be a result of a translation issue, it is clear that not all bearer negotiable instruments are covered and this deficiency identified at the time of the 3rd round evaluation has therefore not been remedied.

465. The Indirect Taxation Administration(ITA[42] is responsible for performing foreign exchange currency control in international passenger and border traffic with foreign countries according to Articles 7 and 22 of the Law on Indirect Taxation Administration Law („Official Gazette BiH", no.:89/05 and 100/2013). The competencies of the ITA in this respect are further developed in the Instruction on Customs Procedure within Passenger Traffic, issued by the ITA in 2006. Controls at border crossings are also undertaken by members of the Border Police, which has however limited competencies with regard to the control of trans-border transportation of currency and bearer

[42] The Indirect Tax Administration (ITA) is an independent body responsible for the collection of customs duties, excise duties and taxes. It has 5 departments, 4 regional centres (Tuzla, Sarajevo, Banja Luka, and Mostar) and the headquarters (in Sarajevo).

negotiable instruments, as described above.

466. The evaluation team was informed that there are declaration forms to be filled out in the customs offices at the border crossings, which are considered by the ITA and information included therein is inserted into the ITA database.

467. It is to be noted that the harmonisation of both laws that occurred since the 3rd round assessment was welcomed as a positive development and remedied some of the deficiencies identified in the previous MER with regard to the framework of FBiH (and its application in BD) in this respect. As has been described above, there remain only minor technical deficiencies with regard to the declaration obligations. Notwithstanding, the evaluation team formulated serious concerns with regard to the implementation of the framework in practice, the reader is referred in this respect to the section on effectiveness.

468. The requirement to declare cross-border transportation of currency and BNIs does not seem to apply to shipment of currency through containerised cargo.

Request information on origin and use of currency (c.IX.2)

469. As described above, the ITA is responsible for the control of cross-border transportation of currency and bearer negotiable instruments. The concrete competencies of the ITA are set in the Law on ITA. The power to request additional information with regard to its duties is stipulated in particular in Article 29 of the Law on ITA, which in paragraph 1(b) authorises the official persons of ITA within their powers laid down by laws of BiH to "request from persons capable of providing assistance in collating necessary information to testify or provide information, make available or cede documentation, enable its copying, provide also other evidence they possess or are under their control and to request that the mentioned actions are carried out by other authorised authorities". It is considered that this provision, read together with Articles 7 and 22 (which attribute to the ITA the general competency in respect of control of cross-border transportation of cash and bearer negotiable instruments), gives the ITA sufficient powers to request any information necessary for the undertaking of its duties.

470. Furthermore, Article 54 and Article 50 of the Laws on Foreign Currency Exchange Operations of FBiH and RS, respectively, oblige persons subject to foreign exchange supervision to allow the authorities unhindered inspection and shall make available to them all necessary documentation and provide all required information.

471. In addition, pursuant to Article 5 of the Law on State Border Service, representatives of the Border Police shall apply police powers as granted by the Law on Police Officials. These powers include identification of individuals, items, interviewing, search of persons and items and others. The Border Police may use these powers within the scope of their competency, which is set in Article 7 of the Law on State Border Service and is mainly related to the prevention, detection and investigation of criminal offences. Should the Border Police therefore have a suspicion of a criminal offence, it could request any information from the person in question. Should the information obtained be relevant for the duties of the ITA, the Border Police would submit the information to it.

Power to stop or restrain currency or bearer negotiable instruments (c.IX.3)

472. Pursuant to Article 53 and Article 48 of the Laws on Foreign Currency Exchange Operations of FBiH and RS, respectively, the customs authorities (the ITA) may restrain at a border crossing "an amount of convertible marks, effective foreign currency, cheques and securities exceeding the amounts determined by the Government". On the basis of this provision, the ITA therefore has the power to temporarily seize all the cash and the aforementioned types of bearer negotiable instruments, which exceed the threshold of a value of €2,500, as stipulated by the Decision of FBiH and the Regulation of RS (as described above), irrespective of whether a declaration was made and

whether the declaration was correct. In addition, the authorities claimed after the on-site visit that the Border Police is also empowered to seize and confiscate assets in case of identified breaches of the declaration obligation pursuant to Article 7 of the Law on State Border Police. It remains unclear how the division of competency would work in practice between the ITA and the Border Police.

473. Concerning the ability to restrain assets under the value of €2,500 in cases of suspicion of ML/TF, the Border Police shall undertake "any measures, which must be undertaken without delay in order to prevent concealing of and tampering with information and materials related to criminal offences and minor offences" pursuant to Article 9 of the Law on State Border Service. It can be therefore considered that this provision, together with the application of general police powers on the basis of the Law on Police Officials, gives the Border Police sufficient powers to restrain cash and bearer negotiable instruments in cases of suspicion of ML/TF. This statement has, however, also not been corroborated by any practical examples. As concerns the division of powers between the two authorities, the authorities informed the evaluation team that it is to be stressed that in practice controls are undertaken jointly by representatives of both authorities, cooperation on a practical level is therefore automatic.

474. In this respect, it is to be stressed that the reference to the legislative provisions described above was provided to the evaluation team after the on-site visit. During the on-site visit, representatives of the ITA maintained a position identical to the one sustained in the 3rd round MER; that is that the ITA does not have powers to restrain assets within the control of trans-border transportation and in case of an identified breach of the violation of the declaration obligation or a ML/TF suspicion, officers of the ITA would not be able to undertake any measures with regard to the assets in question. This conclusion was based predominantly on the fact that ITA is an authority established at the State level and cannot be attributed powers on the bases of legislation issued at the level of Entities. Consequently, the authorities presented to the evaluation team cases of misdemeanour proceedings for violation of the declaration obligation, in a number of which the assets were seized directly by the ITA and in others by the SIPA. The representatives of the Border Police stated clearly that they do not have competencies with regard control of the declaration obligation nor in respect of ML and TF and in case of a suspicion; the case would be referred to a competent authority.

475. As can be observed from the description above, it can be concluded that the ITA is given the necessary powers to stop and restrain currency or bearer negotiable instruments when undertaking control of cross-border transportation of currency and bearer negotiable instruments (BNIs). Nevertheless, in practice this power is not applied due to the fact that ITA's staff is not fully aware of this competency.

Maintaining collected information (c.IX.4)

476. The ITA manages a database which contains information gathered in the course of control of cross-border transportation of currency and bearer negotiable instruments. The authorities informed the evaluation team that this database contains the value of the transportation, as well as all the information that the authorities collect pursuant to Article 30 of the Instruction on Customs Procedure within Passenger Traffic:

a) the name, surname, the date of birth and the place of residence of the person transferring cash and securities via the state border;

b) the name and the headquarters of the legal person or name, surname and residence of natural person on whose behalf the transfer of cash or securities is carried out via the state border;

c) the information on whether this transfer has been declared to the customs authorities.

477. It is to be noted that the database only includes information on cases when a declaration was made or when a declaration was not made and was supposed to be made – information is therefore

contained only on identified transportations of currency or bearer negotiable instruments above the threshold of €2,500. In case of a suspicion of ML or TF connected to a transport of a value below the threshold, a record would not be kept in this respect.

478. Given that the Border Police does not have direct competencies with regard to the control of cross-border transportation of currency and bearer negotiable instruments, it does not maintain a specific database, which would contain data in this regard.

Disclosure of information to the FIU (c.IX.5)

479. Article 71 of the new AML/CFT Law obliges the Indirect Taxation Authority of BiH to inform the FID on every transfer of cash, cheques, securities to the bearer and precious metals and stones across the state border in the amount of BAM 10,000 (€5,000) or more, no later than three days from the date of transfer.

480. The information provided to the FID in each case is all the data contained in the ITA database, as listed above. There is no electronic system for the submission of these reports; the ITA reported the reports are filed by post.

Coordination between the competent authorities (c.IX.6)

481. Article 8 of the Law on ITA and Article 18 of the Law on State Border Service require both agencies to cooperate with other national authorities within the scope of the competencies. This provision is further developed by the following Memoranda of Understanding signed between the relevant authorities:

- Memorandum of Understanding and Memorandum on Exchange of Information on Crimes between the Ministry of Security of Bosnia and Herzegovina, Ministry of Interior of the Federation of BiH, Ministry of Interior of Republic of Srpska, Cantonal ministries of interior and Brčko District Ministry of Interior, State Border Service of BiH, State Investigation and Protection Agency of BiH, Intelligence-Security Agency of BiH, Interpol BIH, Brčko District Police, Indirect Taxation Authority, Financial Police of the Federation of BiH, Tax Administration of the Federation of BiH, Tax Administration of Republic of Srpska, and Tax Administration of Brčko District, signed on 30 March 2005;
- Agreement on Mutual Cooperation between the State Border Service of BiH and Indirect Taxation Authority of BiH, signed on 25 January 2006;
- Agreement on Mutual Cooperation between the Indirect Taxation Authority of BiH and NCB Interpol Sarajevo, signed on 28 December 2006;
- Agreement on Mutual Cooperation between the institutions involved in the integrated border management process in Bosnia and Herzegovina between the Ministry of Security of BiH, State Border Police of BiH; Indirect Taxation Authority, Service for Foreigners' Affairs, Veterinary Office, Administration for Plant Health Protection, Federation Administration for Inspection Affairs, Administration for Inspection Activities of Republic of Srpska, and Mayor of Brčko District BiH, signed on 23 September 2009.

482. As has been stated above, the cooperation and coordination of the activities of the ITA and the Border Police is highly developed on a number of levels. Regular joint meetings take place between the directors of the authorities, on regional, as well as on local levels, with the view of sharing information and experience. On operational level, the undertaking of controls on state borders takes place jointly by representatives of both authorities. The authorities confirmed that, in practice, the cooperation is fully functional.

483. The evaluation team was also informed that good cooperation takes place between the Border Police, ITA and the SIPA. According to SIPA statistics, there were 12 instances of inter-institutional

co-operation with the Border Police and 21 instances with the ITA in 2014. The ITA and the Border Police, however, stated that they do not receive feedback on the cases forwarded to SIPA, as well as they are seldom advised about cases of interest, where particular attention should be paid.

484. With the view of institutionalising coordination amongst national authorities on a policy level, the Ministry of Finance of BiH endeavoured to initiate the establishment of a Working Group with the task to assess compliance and effectiveness of the regime of cross border cash declaration regime and to formulate proposals for improvement and harmonisation of legislation. The Ministry sent to the Council of Ministers of BiH for adoption a draft Decision on the establishment of the Working Group on 13 August 2014. It was however reported by the authorities that no further developments took place in this regard.

485. In this respect, it is clear that the functioning of cooperation at operational level is satisfactory, in particular between the three key agencies. Nevertheless, the ITA and the Border Police do not have any strategic documents or internal guidelines with regard to treating ML/TF risks and identifying suspicions, which would reflect the priorities formulated by other state authorities. As a result of the lack of cooperation and coordination at strategic and policy level, the agencies undertaking in practice the control of border crossings are not informed about the current trends, methods and typologies, as well as they are not aware of the ML/TF risks imminent to their duties.

Cooperation and mutual legal assistance at international level (c.IX.7)

486. The legislation also foresees cooperation of the competent authorities with their foreign counterparts, this based on Article7 of the ITA Law and Article 20 of the Law on State Border Service. The ITA cooperates with the customs authorities in other countries through the Communication and International Cooperation Section, which was established within the Office of the Director of the ITA.

487. The authorities reported that a number of MoUs were signed with foreign authorities, nevertheless, a full list was however not provided for the purposes of this evaluation.

488. The table below shows statistics on assistance provided between ITA and its foreign counterparts:

Table 14: Number of requests sent and received by the ITA in the period under assessment:

	In-coming requests				Out-going requests		
	Total number of requests	Number of executed requests	Number of refused requests	Average time for the execution of a request (days)	Total number of requests	Number of executed requests	Number of refused requests
2009	642	642	0	90	1462	1268	53
2010	584	584	0	90	5000	3473	663
2011	240	240	0	90	4179	3532	5
2012	135	135	0	90	4878	4432	13
2013	214	214	0	90	4957	4404	34
2014	305	304	1	90	3391	3104	2

489. It is to be noted that the statistics present overall levels of cooperation between ITA and its foreign counterparts and are therefore also related to the other duties of ITA and not only to its responsibilities connected to the control of cross-border transportation of currency and bearer negotiable instruments. The reason for refusal of the out-going requests was mainly due to the lack of a signed agreement with the country in question or discrepancy between the out-standing debts and costs of investigation.

490. For information on international cooperation of other law enforcement authorities and the FIU,

the reader is referred to the analysis under Recommendation 40.

Sanctions in case of false declaration (c.IX.8)

491. Article 62(1)u of the Law on Foreign Exchange Operations of FBiH and Article 60a(1)24 of the Law on Foreign Exchange Operations of RS designate non-compliance with the declaration obligation as a misdemeanour. Both Laws foresee pecuniary fines in the range between BAM 2,500 and 10,000 (between about €1,250 and 5,000).

492. In practice, the ITA or the Border Police do not have the power to apply sanctions. In case a breach of the declaration obligation is identified at a border crossing point in the territory of RS, the ITA would notify the Foreign Exchange Inspectorate of RS, which would consequently file a request to initiate a misdemeanour proceeding at the competent court. Should a breach be identified at a border crossing point in FBiH, the ITA would directly lodge a request to the competent court for the initiation of misdemeanour proceedings.

493. A number of cases were presented to the evaluation team, which demonstrate that breaches of the declaration obligation are brought to court and sanctioned. Despite the legislative framework in place, concerns are however raised with regard to the effectiveness of the sanctioning regime, in particular with regard to the dissuasiveness and proportionality of the sanctions applied. For further information in this regard, the reader is referred to the section on effectiveness.

Sanctions in case of physical transportation of currency or bearer negotiable instruments in connection with terrorism financing or money laundering operation (c.IX.9)

494. There are no sanctions provided for by the legislation in case of physical transportation of currency or bearer negotiable instruments in connection with terrorism financing or money laundering operation.

Confiscation of currency related to ML/FT (applying c.3.1-3.6, c.IX.10) and pursuant to UNSCRs (applying c.III.1-III.10, c.IX.11)

495. As has been described above, there remain concerns whether the powers of the ITA and the Border Police to restrain currency or bearer negotiable instruments are understood by the authorities and effectively applied in practice. The evaluation team was informed that should a suspicion of ML or TF be formulated, the ITA and the Border Police are obliged to inform competent authorities thereof. As a result, irrespective of whether the ITA or the Border Police would restrain the assets, all the measures applicable in a criminal investigation or proceedings could be applied by the competent law enforcement authority or the court, should the suspicion be considered as substantiated for the initiation of such proceedings. For further information in this regard, the reader is referred to the analysis under Recommendation 3.

496. Given the doubts about the power to apply provisional measures by the authorities performing the controls at the borders, however, concerns remain as to the timeliness of the application of the foreseen measures.

497. The ITA and the Border Police do not have any powers with regard to the requirements of SR.III. In addition, the agencies are not familiarised with the Consolidated List or the purpose and content of the UN targeted sanctions regime.

Unusual cross-border transportation of gold, precious metals or precious stones (c.IX.12)

498. The evaluation team was informed that ITA cooperates extensively with its foreign counterparts also on a spontaneous basis, in particular with countries in the region. The authorities confirmed that if unusual movement of any goods would be identified by the customs officer, they would consider sharing this information with their foreign counterpart. This would also apply for cases of unusual cross border movement of gold, precious metals or precious stones. No concrete information was

however provided to substantiate this statement (such as statistics on spontaneous exchange of information or internal instructions and policies setting this as a priority).

Guidelines to the use of data (c.IX.13)

499. The employees of ITA are subject to the confidentiality principle set in Article 37 of the ITA Law and the ITA Code of Conduct for Employees, which prohibit the employees of ITA to reveal confidential information to which they have access. In addition, Article 6 of the Law on ITA requires ITA to protect the confidentiality of personal information in accordance with the Law on Protection of Personal Information and other laws.

500. Pursuant to Article 58 of the Law on ITA, revealing of confidential information by an employee of the ITA is considered a severe breach of official duty for which a number of disciplinary sanctions are available.

501. Finally, according to Article 73 of the AML/CFT Law, the FIU may only use the information it received under the provisions of Law for the purposes stipulated therein. This would therefore also apply for the information included in the declarations on trans-border transportation of currency and bearer negotiable instruments forwarded to the FIU by the ITA.

Training, data collection, enforcement and targeting programmes (c. IX.14)

502. The evaluation team was not familiarised with any training, data collection, enforcement and targeting programmes which would be developed by the authorities in BiH.

503. With regard to the trainings provided to the staff of the ITA, the reader is referred below to Recommendation 30.

Access to additional information at a supra-national approach (c.IX.15)

504. N/A

Additional element – implementation of the Best Practice Paper for SR.IX (c.IX.16)

505. No information was provided in this regard.

Additional element – access to a computerised data base for AML/CFT purposes (c.IX.17)

506. As discussed in the analysis under c.IX.5, all declarations above the threshold of BAM 10,000 are reported within three days to the FID pursuant to the AML/CFT Law. The evaluators were informed that the declarations collected by the ITA customs sections are contained in an electronic database; there is however no electronic system in place for the submission of the declarations to the FID and these are therefore forwarded physically by post. The FID or other LEAs do not have direct access to the ITA database.

Recommendation 30 (Customs authorities)

507. It appears that the structure of the ITA has not changed since the previous evaluation round. The ITA is an independent body responsible for the collection of customs duties, excise duties and taxes. It has 5 departments and 4 regional centres. The Customs Department deals exclusively with customs. The field activities are run by four regional centres in: Sarajevo, Banja Luka, Mostar and Tuzla, 30 customs sub-offices and 59 customs posts, out of which 40 are passenger border crossings, 4 airports, 8 railway border crossings, 3 overseas mail offices and 4 free zones. The total number of staff in 2013 was 2444 employees, out of which 1320 were employed in the Customs Department. The number of staff has been stable in the period under assessment (2437 in 2011 and 2424 in 2012).

508. During the on-site visit, the authorities reported that the ITA does not exercise its duties at the maritime border of BiH, which was reasoned by the fact that the ITA lacks resources.

509. The staff of ITA regularly participates at trainings on issues connected to its field of

responsibility. The authorities provided a list with significant number of trainings, which were attended by the employees of ITA in the period under assessment. The list did not, however, contain the number of employees attending each training and given the size of ITA as an organisation, it is therefore not possible to formulate any conclusions about the expertise of the staff based on this information. Furthermore, the majority of the trainings were related to the general undertaking of border controls, as well as other issues connected with the collection of indirect taxes and tax related offences. Overall, there was only one training connected to the issues of ML and TF in the period under assessment and, as stated above, it is not clear how many ITA employees attended this training. During the on-site visit, the evaluation team was informed by the representatives of the ITA and the Border Police that they lack sufficient expertise with regard to ML/TF matters and that the trainings provided in this respect are insufficient.

510. From the information provided, it is not possible to fully assess the adequacy of resources of the customs authorities. It can be, however, concluded that the level of expertise of the staff with regard to ML/TF issues is not sufficient, as well as financial and human resources should be increased in order to enable a full control of all the borders of the country.

Recommendation 32

511. The authorities maintain statistics on the number of cross-border transportations of currency above threshold and the value of the currency transported. The statistics also contain breakdowns which differ between whether a declaration was made and when a false declaration/non-declaration was identified. The statistics provided by the authorities for the purposes of this assessment however show certain inconsistencies, as can be observed below. In addition, please note that it is supposed that the reason that several different figures are mentioned for some years is due to the fact that the information was collected from the four regional centres of the ITA.

Table 15: Statistics on in-coming transportations in the period under assessment

	Total number of declarations		Total number of checks undertaken	Number of false declarations	Number of identified non-declarations	Number of cases of suspicion of ML/TF
	Number of declarations	Value of assets				
2009						
2010	7	311.000 EUR 16.000 ATS				
2011	2	65.900 EUR				
2012	1	20.000 EUR				
2013	4 7	97.500 EUR 101.500,00EUR 30.600,00USD	 7			
2014	1 1 5	67.000 EUR 19.400 EUR 109.200 EUR	 5			

Table 16: Statistics on out-going transportations in the period under assessment

	Total number of checks undertaken	Total number of declarations		Number of false declarations	Number of identified non-declarations		Number of cases of suspicion of ML/TF
		Number of declarations	Value of assets		Number of transportations	Value of assets involved	

2009		95	82 136 05 HRK[43] 182802 EUR				
2010		8	5 908.505 HRK 16 049,50 EUR				
2011		44	1 117.600 HRK 3 916.500 EUR		2	€49.200 58.750 BAM	
2012	 1	31 78	5 323.970 EUR 18.368.000EUR 1.523.070 CHF 2.369.070 SEK 98.370,00 AUD 107.515 CAD 2.080.300 DKK 32.125 GPB 23.180 NOK 566.200 USD 51.000 EUR 12.690.905 BAM		 1	 21.399 EUR	
2013	 2	3 52 1	1 863.000 EUR 639.430 HRK 32.850 AUD 268.000 CHF 83.635.029 BAM 50.000 EUR		 1	 17.550 EUR	
2014		1 28 1	964.000 HRK 44.536.376 BAM 30.000 EUR		2	10.000 EUR	

Table 17: Statistics on the breaches of the declaration obligation identified by the ITA in the period under assessment

	Number of breaches of the declaration obligation (false declarations/non-declarations) identified by the ITA	Value of assets involved	Assets seized	Number of misdemeanour/criminal proceedings initiated by the court for breaches of the declaration obligation	Number of sanctions applied	Type/value of sanction	Assets confiscated
2009							
2010							
2011	2	49 200 EUR 58.750 BAM	NO	1	1	1.500 BAM	NO
2012	1 1	9.456 EUR 2.600 BAM 21.399 EUR	8.230 EUR 21.399 EUR				
2013	1	17.550 EUR	17.550 EUR				

[43] Croatian currency, 1 EUR = 7.535872 HRK (kn).

2014	9	81.650 EUR 25.000 USD 140.000 JPY	7.950 EUR 29.500 EUR		6	5.250 BAM	
	2	10.000 EUR	4.900 EUR		2	1.000 BAM	

512. In addition, the ITA maintains statistics on its cooperation with foreign counterparts, as presented above under c.IX.7

Effectiveness and efficiency

513. Firstly, given the overall ML/TF risks of BiH (as described in the General Section of this report) together with the prevailing use of cash in the economy, cross-border transportation of currency and bearer negotiable instruments is considered as a significant ML/TF threat in the country. In this context, the evaluation team noted that there is no strategic approach adopted in this respect by state authorities. Accordingly, it was confirmed that there is a lack of coordination amongst relevant authorities on policy level. In practice, the authorities responsible for undertaking control of border crossing points were not sufficiently aware of the risks posed by cash couriers and reported that they do not have sufficient expertise with regard to AML/CFT issues. In practice, it appears that customs authorities focus solely on compliance with the declaration obligation, but do not endeavour to assess the possibility of ML/TF connected with the transportation of cash or bearer negotiable instruments. This conclusion is confirmed by the fact that the evaluation team was not presented with any cases, where the customs authorities would have formulated ML/TF suspicions.

514. Bosnia and Herzegovina has the same declaration system as described in the 3rd round MER with regard to cross-border transportation of currency and bearer negotiable instruments, with some changes in the framework applicable in FBiH and BD due to the harmonisation of the legislation of the two Entities. Despite the legislative framework in place, nevertheless, serious effectiveness concerns remain about its implementation in practice.

515. As can be observed from the tables above, the number of declarations recorded by the authorities appears very low considering the number of border crossing points in BiH. Due to the inconsistencies in the statistics, it is difficult to assess the reason behind these low numbers, it appears though that a possible cause could be insufficient controls in cases a declaration is not made. This statement was partially confirmed by the authorities during the on-site visit, as they reported that in particular at land crossing points, technical conditions of the crossing points do not allow for systematic checks of a large number of passengers, as this would cause significant obstruction of the circulation. As a result, there remain concerns about the volume of undeclared cash and bearer negotiable instruments, which have been transported across the borders without being detected.

516. A number of authorities encountered on-site also confirmed that transfers or transports of funds related to TF would usually consist of small amounts in the context of BiH. Given that the ITA database only contains information on transportations of cash above the threshold of €2,500, the authorities would not be able to establish patterns of individuals transporting regularly cash below the set threshold. Notwithstanding that keeping such records is not a requirement under the FATF Standards, it would be recommended in the context of BiH for the competent authorities to consider keeping such information.

517. Furthermore, a part of the borders of BiH comprise also a short coastline of the Adriatic Sea. It is to be emphasised in this respect that the system in place to control the crossing of borders, as described in the analysis above, is not applied at the maritime border. The authorities reported that the Border Police does conduct control of the maritime border, nevertheless, as stated above, the

Border Police does not have the competency to control the cross-border transportation of currency and bearer negotiable instruments. The evaluation team was informed that the ITA foresees to establish a border crossing point in order to undertake its duties at this border as well, this has however not yet been put in place in practice. For the time being, this part of the border of BiH remains uncontrolled for the purposes of compliance with SR.IX.

518. As has been stated above, it appears that there is a legal basis for ITA to stop and restrain currency and BNIs, which has been confirmed by cases presented to the evaluation team. Nevertheless, the legislative provisions have not changed since the previous evaluation round, where it was firmly stated by the authorities that the ITA had no such power. The same information was provided to the evaluation team of the present evaluation round during the on-site visit by the representatives of the ITA. Furthermore, in some of the cases submitted for the purposes of this evaluation, assets were seized by other state authorities. Furthermore, there remains a lack of clarity whether the Border Police also has powers in this respect, based on the general character of the wording of the respective provision, together with the lack of awareness of the representatives of this authority about such powers encountered on-site. Irrespective of the technical aspects of the issue, it appears that there is an inconsistent interpretation of the legislative provisions by the authorities, which negatively impacts on the effectiveness of their implementation.

519. From the information provided and the interviews conducted during the on-site visit, it can be concluded that cooperation with other national authorities and foreign counterparts on operational level is satisfactory. The evaluation team formulated doubts in respect to policy coordination on national level, as discussed above.

520. Concerns remain with regard to the effectiveness of the sanctioning regime for breaches of the declaration obligation. Firstly, the statistics above show that the number of initiated proceedings is very low. In addition, the assets involved are not confiscated and the sanctions applied are generally on the minimal level of applicable fines. In practice, therefore, irrespective of the value of assets involved and whether or not provisional measures were applied, the person in question is released after the payment of a small pecuniary fine and recovers all the seized assets. This leads to a conclusion that the enforcement system in place is not dissuasive enough to ensure the prevention of violations of the declaration obligation.

521. Finally, the staff of the relevant authorities is not provided with sufficient training on ML/TF trends and typologies, as well as on the application of AML/CFT measures

2.6.2 Recommendations and comments

522. The authorities are invited to pursue the initiated efforts to establish a forum for coordination and policy development with regard to cross-border transportation of currency and bearer negotiable instruments. In addition, efforts should be undertaken to adequately assess connected risks and identify recurrent methods and typologies. Finally, the authorities should ensure that the employees of the relevant agencies are aware of the outcomes of these assessments, as well as the policies formulated and have sufficient expertise to reflect them in practice.

523. Steps should be taken to ensure that control of cross border transportation of cash and bearer negotiable instruments is implemented effectively at all borders, including sea and land.

524. The authorities should revise the declaration obligation set by the legislation and the bylaws with regard to bearer negotiable instruments, in order to harmonise them and above all to ensure that all types of bearer negotiable instruments are covered. The declaration obligation should be broadened in order to cover shipment of currency through containerised cargo.

525. The authorities should review the legislation in order to ensure that the competent authorities are attributed a clear power to stop and restrain currency and bearer negotiable instruments in all the

cases foreseen by SR.IX. Trainings should be provided for the staff of the authorities in order to ensure a consistent interpretation and application of the attributed powers.

526. The authorities should take measures to implement the obligations resulting from UNSCRs 1267 and 1373 in respect of persons who carry out physical cross-border transportation of currency or bearer negotiable instruments that are related to terrorist financing.

527. Adequate training on AML/CFT issues should be provided to staff of authorities competent in respect of control of cross-border transportation of cash and bearer negotiable instruments.

528. Statistics should be kept also on all cases where a suspicion of ML/TF was identified. The authorities are further invited to consider keeping records also on cross-border transportations of currency and bearer negotiable instruments below the set threshold with the view of using this data for the purpose of establishing trends on a strategic level, but also for monitoring possible regular transportations of amounts below the threshold.

2.6.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant underlying overall rating
SR.IX	**PC**	• Not all bearer negotiable instruments are covered by the declaration obligation; • The declaration obligation does not seem to apply to shipment of currency through containerised cargo; • Customs authorities do not have any powers with regard to the implementation of the regime under SR.III; • Insufficient mechanisms to ensure coordination of competent authorities at policy level; • Statistics are not maintained on cases when a suspicion of ML/TF is identified, but the assets involved are below the threshold for declaration. Effectiveness: • Lack of clarity with regard to the power to stop and restrain cash and bearer negotiable instruments; • The system of control of cross-border transportation of cash and bearer negotiable instruments is not implemented at the maritime border and is not effective at the land crossing points; • Concerns about the dissuasiveness of the sanctioning regime; • Lack of AML/CFT expertise of the staff of competent authorities; • The statistics maintained show minor inconsistencies.

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Legal framework and developments since the third evaluation

529. Since the 3rd round evaluation, BiH has taken steps in order to improve the AML/CFT legal and regulatory framework, as well as the supervisory system. The AML/CFT Law was adopted on 6 June 2014 and entered into force on 25 June 2014. The revised AML/CFT Law has addressed a number of deficiencies in the preventive measures. The new AML legislation has also introduced a risk-based approach. Other relevant laws have also been amended in order to eliminate technical deficiencies identified in 3rd round. Nevertheless there is still no national risk assessment introduced in the system and relevant by-laws and regulations have not been entirely harmonized with the revised AML/CFT Law.

Law, regulations and other enforceable means

530. The AML/CFT preventive measures applicable to the financial sector are set out in the AML/CFT Law and relevant by-laws as referred in Article 85 of the AML/CFT Law. According to the Article 86 of the AML/CFT Law matters not regulated by this Law shall be governed by relevant provisions of other regulations and all other regulations governing this subject matter shall be harmonised with this Law within one year from the date of entry into force of this Law.

531. Article 85 of the AML/CFT Law empowers the Council of Ministers of BiH, upon a proposal by the Ministry of Security of BiH, with previous consultations with the FID, prescribe through a by-law the terms and conditions under which a liable person shall not be required to deliver to the FID the information about the cash transactions of a certain client in the amounts either equal or higher than BAM 30,000. Council of Ministers of BiH has also responsibility, upon a proposal by the Ministry of Security of BiH, with previous consultations with the FID, to issue rulebooks, decisions and instructions on various other matters, such as for example specifying providing the list on countries applying internationally recognised standards in terms of preventing and detecting money laundering and financing terrorist activities.

532. The Ministry of Security has issued Book of Rules on Risk Assessment, Data, Information, Documents, Identification Methods and other minimum indicators required for efficient implementation of the provisions of the AML/CFT Law (hereinafter *Book of Rules on Minimum Standards*), adopted in 2009. The Book of Rules on Minimum Standards is issued on state level and applies therefore in FBiH, RS and District of Brčko. It regulates criteria for the development of the guidelines for the assessment of risks, information, data and documents required for identification of clients and transactions, and information, data and documents to be forwarded to the FID, and it defines the indicators for suspicious transactions, defines in detail the meaning of related transactions, and stipulates the requirements and procedures for exemptions from reporting on large and related monetary transactions to FID, and the manner and deadlines for reporting to FID.

533. Insurance Supervisory Agency of FBiH has issued the Rulebook for Risk Assessment and Enforcement of the AML/CFT Law for obligors within the jurisdiction of the Insurance Supervision Agency of FBiH (hereinafter *Rulebook for Insurance Sector in FBiH*). It was adopted in 2010 by the Board of the Insurance Agency of BiH, Expert Council of the Insurance Supervisory Agency of FBiH.[44] The Rulebook is on state level and it regulates in detail the application of the provisions of the AML/CFT Law and other laws and regulations in the field of prevention and detection of ML/TF activities.

[44] Expert Council of FBiH Insurance Supervisory Agency on 3 March, 2015 adopted the Guidelines for risk assessment and implementation of the AML/CFT Law in the insurance sector.

534. Insurance Agency of RS has issued Guidelines on the Implementation of the AML/CFT Law for obligors in responsibilities of Insurance Agency of RS (hereinafter *Guidelines for Insurance Sector in RS*), adopted on 23 August 2013 and entered into force 1 January 2014. The Guidelines were adopted for the implementation of provisions of the AML/CFT Law in the insurance sector of RS and throughout all BiH, and on the basis of regulations passed by it in the insurance companies and insurance intermediaries who have a license to conduct a life insurance (hereinafter referred to as Obligors)[45].

535. The new AML/CFT Law requires the Council of Ministers of BiH (upon a proposal by the Ministry of Security of BiH, with previous consultations with the FID) to issue relevant by-laws within 3 months from the date of enforcement of the new law. At the time of 4th round on-site visit the relevant by-laws were not published. Evaluators are in opinion that the sections of the Book of Rules on Minimum Standards (adopted 2009) and Rulebook for Insurance Sector (adopted 2010), could be treated as "other enforceable means" although they have not yet been entirely harmonized with the AML/CFT Law adopted on 2014.

536. The next level of regulation within BiH is comprised of the Decisions on Minimum Standards issued by the respective Banking Agencies at the level of the FBiH and the RS (hereinafter *Decisions on minimum standards for banks in RS and FBiH*). In opinion of evaluators these Decisions issued by the respective Banking Agencies can be considered as "other enforceable means" even though these Decisions have also not been entirely harmonized with the AML/CFT Law.

537. The Decisions on minimum standards for banks in FBiH (adopted by Banking Agency of FBiH in 15.05.2012, entered into force on 09.06.2012) prescribes in more details minimum scope, form and content of activities of banks on prevention of money laundering and terrorism financing and applies to banks licensed in FBiH. The decision gives additional guidance for implementation of preventative measures, including client acceptance and customer identification policy and stipulates the application of additional measures for specific customers and activities.

538. Banking Agency of FBiH have also issued the Decision on Minimum Standards for Leasing Companies' Activities in Prevention of ML/TF (adopted on 15.05.2012 and entered into force on 09.06.2012) and the Decision on Minimum Standards for Micro Credit Organizations' Activities in Prevention of ML/TF (adopted on 15.05.2012 and entered into force on 09.06.2012). These decisions give similar guidance as the Decisions on Banks Activities mentioned afore.

539. Banking Agency of RS has issued on June 26, 2012 (entered into force on 27.07.2012), the Decision on Minimum Standards of Bank Activities on AML/CFT; the Decision on Minimum Standards for Leasing Provider Activities in on AML/CFT and the Decision on Minimum Standards of Microcredit Organization Activities on AML/CFT. These decisions are with similar content as relevant decisions issued by the Banking Agency of FBiH.

540. The Securities Commission of RS has issued Guidelines for implementation of the AML/CFT law (hereinafter *Guidelines by Securities Commission*), adopted 10 June 2010 and entered into force 10.06.2010. These guidelines were adopted with a view to ensuring uniform implementation of the provisions of the Law by: investment fund management companies; broker-dealer companies and banks authorized to conduct activities related to the purchase and sale of securities and other financial instruments; custodian banks that are authorized to perform activities of handling securities account for the account of a client and to act upon the order of a client, as well to perform other activities in accordance with the Law on Securities Market and the Central Registry of Securities.

[45] On 30th January 2015 the Insurance Agency of BiH issued Guidelines for Risk Assessment and Enforcement of the AML/CFT Law for Insurance Supervisory Agencies in Bosnia and Herzegovina

Scope

541. The AML/CFT Law was adopted on 6 June 2014 and came into force on 25 June 2014 and applies to all service providers in BiH which engage in any one of the financial activities listed in the Glossary of definitions to the FATF Methodology. All activities and operations referred to in the definition of financial institutions in the Methodology are provided in BiH.

542. There is no definition of a "financial institution" in the AML/CFT Law. Financial activities listed in the Glossary of definitions to the FATF Methodology are covered in following way:

Acceptance of deposits and other repayable funds from the public

543. Acceptance of deposits and other repayable funds from the public is covered with the AML/CFT Law (Article 4) according to which banks are liable persons under the AML/CFT Law. The Law on Banks of RS (adopted on 30.04.2003 and entered into force on 30.05.2003), regulates the establishment, business operation, governance, supervision and termination of operation of legal persons who engage in the business of receiving money deposits and extending credits, as well as other operations. According to Article 2 of the Law on Banks of RS "*no one shall engage in the business of receiving money deposits or other repayable funds from the public and extending credits for its own account in RS without a banking license issued by the Banking Agency of RS (hereinafter: Agency) pursuant to this Law".*

544. The Law on Banks of FBiH (adopted 28.08.2013, entered into force on 05.09.2013) has exactly the same provisions as described above in the Law on Banks of RS. Article 2 of Law on Banks of FBiH states that "*no one shall engage in the business of receiving money deposits and extending credits for its own account in the Federation without a banking license issued by the Banking Agency of the FBiH pursuant to this Law".*

545. There is no law which would regulate acceptance of deposits and other repayable fund from the public or other activities of banks in BD or prohibition to provide such services without the license. No banks have Head Office in the BD, but there are a number of branches operating in the District and authorities have confirmed that banks operate under the Law on Banks.

Lending

546. According to FATF Methodology term "lending" includes inter alia: consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfaiting).

547. According to Article 4 n) 3), 4) and 8) of the AML/CFT law legal and natural persons performing activities in factoring, forfeiting and giving loans, crediting, offering and brokering in the negotiations of loans, must take measures for detecting and preventing ML/TF activities. Even though the AML/CFT Law does not refer to "finance of commercial transactions" it can be assumed that article 4 n) 8) would cover it as well.

Financial leasing

548. According to Article 4 c) of the AML/CFT Law leasing companies are considered as liable persons who are obliged to take measures for detecting and preventing money laundering and financing terrorist activities. The definitions of leasing company and leasing operations are covered by the respective Law on Leasing of FBiH (adopted 26.12.2008 and entered into force 05.01.2009) and Law on Leasing of RS, adopted on 17.07.2007, entered into force 16.08.2007. Taken into consideration the provisions of these laws it must be concluded that financial leasing is technically in line with the FATF standards.

The transfer of money value

549. According to Article 4 n) 2) of the AML/CFT Law legal and natural persons performing activities in the *transfer of money value*, are obliged to take measures for detecting and preventing ML/TF activities under AML/CFT Law. Therefore *"the transfer of money value"* within the meaning of FATF Methodology is covered.

Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money).

550. According to Article 4 n) 2) of the AML/CFT Law legal and natural persons performing activities in *issuing, managing and performing operations with debit and credit cards and other means of payment*, are obliged to take measures for detecting and preventing ML/TF activities under the AML/CFT Law. This definition is broad enough to cover also other means of payment brought as examples in FATF Methodology *(e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)*. Therefore it can be concluded that "*Issuing and managing means of payment"* within the meaning of FATF Methodology is covered.

Financial guarantees and commitments

551. According to Article 4 n) 2) of the AML/CFT Law legal and natural persons performing activities *issuing financial guarantees and other warranties and liabilities*, are obliged to take measures for detecting and preventing ML/TF activities under the AML/CFT Law. Even though the AML/CFT law uses slightly different wording the terms "warranties and liabilities" seem to be broad enough to be in line with the term "*financial guarantees and commitments"* within the meaning of the FATF Methodology.

Trading in: (a) money market instruments (cheques, bills, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading.

552. According to Article 4 e) of the AML/CFT Law authorised agents trading in financial instruments, foreign currencies, exchange, interest rates and index instruments, transferable securities and commodity futures, are obliged to take measures for detecting and preventing ML/TF activities under AML/CFT Law. Therefore it can be concluded that the law is in line with the FATF standards in this respect.

Participation in securities issues and the provision of financial services related to such issues

553. Participation in securities issues and the provision of financial services related to such issues is covered with Article 4 e) according to which *authorised agents trading in financial instruments, foreign currencies, exchange, interest rates and index instruments, transferable securities and commodity futures* are obliged to take measures for detecting and preventing ML/TF activities under the AML/CFT Law.

Safekeeping and administration of cash or liquid securities on behalf of other persons

554. According to Article 4 n) 5) of the AML/CFT Law legal and natural persons performing activities in *safekeeping, investing, administering, managing or advising in the management of property of third persons*, are obliged to take measures for detecting and preventing ML/TF activities. This provision is broad enough to cover *"individual and collective portfolio management" and "safekeeping and administration of cash or liquid securities on behalf of other persons"* as it is referred in the FATF Methodology.

Otherwise investing, administering or managing funds or money on behalf of other persons

555. According to Article 4 g) of AML/CFT Law legal and natural persons performing activities in *Investment and pension companies and funds, regardless of their legal form*, are obliged to take measures for detecting and preventing money laundering and financing terrorist activities under

AML/CFT Law. This provision is broad enough to cover *"otherwise investing, administering or managing funds or money on behalf of other persons"* as it is referred in the FATF Methodology.

Underwriting and placement of life insurance and other investment related insurance

556. According to article 4 c) of the AML/CFT Law Insurance companies, insurance brokers, licensed to deal with life insurance affairs, are obliged to take measures for detecting and preventing ML/TF activities under the AML/CFT Law. The legal provisions on insurance activities are covered by the respective Law on Insurance Companies in Private Insurance in FBiH (FBiH Official Gazette No. 24/05) was adopted in April 2005 and the Law on Insurance Companies of RS, adopted in January 2005. In addition, the amendments to the Law on insurance companies in private insurance were adopted by the Parliament of FBiH in 2010 (the Law is published in the Official Gazette of Federation of BiH, no. 8/10 as of 24 February, 2010). In RS, the Law on Amendments and Supplements to the Law on Insurance Companies ("Official Gazette of the Republic of Srpska", No. 74/10) was also adopted by the National Assembly of RS on 22.07.2010.

557. Taken into consideration the abovementioned provisions it must be concluded that "*underwriting and placement of life insurance and other investment related insurance"* is technically covered in the AML/CFT Law as it is required in the FATF Methodology.

Money and currency changing

558. According to Article 4 e) of the AML/CFT Law *authorized agents trading in financial instruments, foreign currencies, exchange, interest rates and index instruments, transferable securities and commodity futures* are obliged to take measures for detecting and preventing ML/TF activities under the AML/CFT Law. Therefore it can be concluded that "*money and currency changing"* as referred in the FATF Methodology is covered.

Summary of overview of the scope of coverage of AML/CFT preventive measures as they apply to the financial sector

559. Financial institutions as defined in the FATF Methodology seem to be broadly covered in BiH.

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering or terrorist financing

Financial activity carried out on an occasional or very limited basis

560. BiH has not exercised the option provided by the FATF Recommendations not to apply some or all of the AML/CFT measures to certain natural or legal persons carrying out a financial activity on an occasional or very limited basis (according to quantitative and absolute criteria). Thus there is little risk of money laundering or financing of terrorism.

Modulation of preventive measures according to risk

561. There is still no national risk assessment introduced in the system and authorities did not provide any explanations or evidence which would prove applying risked based approach to combat ML/TF issues on national level. However, the AML/CFT Law has been technically modified according to identified deficiencies in 3rd round and issued Decisions and Rulebooks by relevant institutions demonstrate at some level risk-based approach (please refer to Articles 5, 23 of the AML/CFT Law).

562. Financial institutions however need assistance in their determination of countries which apply internationally recognised standards in terms of preventing and detecting money laundering and financing terrorist activities. This was confirmed by financial institutions during on-site visit interviews. The AML /CFT Law article 85 (4) states that in accordance with data released by relevant international organisations, the Council of Ministers of BiH, upon a proposal by the Ministry of

Security of BiH, with previous consultations with the FID, shall make a list of countries applying internationally recognised standards in terms of preventing and detecting money laundering and financing terrorist activities. Such list has not yet been adopted.

563. According to Decisions on minimum standards for banks in RS and FBiH, enhanced identification measures must be applied in the cases when the business relation is established with banks or similar credit institutions with the head office abroad, politically exposed individuals and clients who are not present in person during the establishment of the business relation, or the implementation of the identification measures. According the Decision banks must also implement enhanced identification and monitoring measures in other cases when through the review of risk they determine that it is a question of a client who for the bank carries a high level of risk from money laundering and terrorism financing.

564. According to Decisions on minimum standards for Leasing Companies in RS and FBiH the leasing companies must implement the measures of enhanced client identification and monitoring in the cases when it estimates that, due to the business relation, manner the transaction was performed, type of transaction, type of a client and client's ownership structure, other circumstances related to the client or transaction – there exists or could exist a high degree of risk from ML/TF activities. Establishment of business relations with clients of high risk would be approved by the leasing company management.

565. The same obligations are stated in Decisions on minimum standards for Micro Credit Organizations in RS and FBiH issued by Banking Agency of FBiH and Banking Agency of RS.

566. According to the AML/CFT Law and relevant decisions financial institutions must apply enhanced measures with regards to politically exposed persons and in case of verifying and establishing the identity without client's presence. Application of simplified CDD is regulated in the Article 29 of the AML/CFT Law.

Record keeping

567. The Article 77 of the AML/CFT Law prescribes the obligation to keep the records for at least 10 years after the termination of a business relation, completion of a transaction, client identification in a casino, premises for games of chance or the client's access to a safe. Chapter VII Article 54 of the AML/CFT Law also stipulates the details of record keeping obligation. The issue of record keeping is also reflected in the Articles 56 of the AML/CFT Law with regard to requests sent to liable persons to forward data on suspicious transactions or persons.

568. Financial institutions interviewed during the on-site visit to BiH demonstrated awareness of the relevant record keeping requirements and confirmed that in practice the requirements are applied as it is stated in the AML/CFT Law, including the relevant records are made available to FID within at least 8 days from relevant request.

569. At the same time in opinion of evaluators the AML/CFT Law could stipulate more clearly that obligation to keep records applies regardless of whether the account or business relationship is on-going or has been terminated. Also while obligation to keep identification data and account files as requested by FATF standards (criteria 10.2) seems to be covered with Articles 54 and 56, the obligation to keep records of business correspondence seems to be technically uncovered.

570. According to the Article 54 paragraph (3) the Council of Ministers of BiH shall also issue the guidelines with regard to the manner in which the identification and monitoring of clients and transactions minimum information (referred to in the Article 54 paragraph (1) of the AML/CFT Law) are included in the records of the conducted identification of clients and transactions. These guidelines need to be issued as soon as possible.

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

3.2.1 Description and analysis

Recommendation 5 (rated NC in the 3rd round report)

Summary of 2009 factors underlying the rating

571. As described in the 3rd round report, BiH was rated "Non-Compliant" for Recommendation 5. Major deficiencies were identified in legal framework. There was no legal obligation to apply CDD measures in all instances as required by Recommendation 5, also no mandatory obligation to apply CDD measures to all existing accounts and no timing for the verification of identification information.

572. During 3rd round assessors identified also the need to revise Decisions on minimum standards for banks in RS and FBiH accordingly, lack of awareness on the concept and applicability of a comprehensive coverage of the beneficial owner, including identification procedures and absence of overall obligation to establish and identify the 'mind and management' of a legal person.

573. The requirements for financial institutions to conduct on-going due diligence on the business relationship were not clear (e.g. no requirement for obliged entities to consider filing a suspicious report where the identification process cannot be completed, no obligation to consider the termination of business where a business relationship is established but the identification process cannot be completed, lack of guidance on the application of the introduced risk based approach and other new obligations under the law as the Book of Rules were not amended at that moment). Assessors were also unable to measure the effectiveness of implementation of the AML Law in force during 3rd round.

Anonymous accounts and accounts in fictitious names (c.5.1)

574. The prohibition of anonymous accounts and accounts in fictitious names is implemented through a combination of provisions in the AML/CFT Law. Article 8 (1) and Article 7 (1) of the Law provide that a liable person may not establish a business relationship or carry out a transaction or shall discontinue already established business relationship if it was impossible to implement identification and monitoring measures. According to the Article 8 (2) of the AML/CFT Law if the liable person failed to implement afore mentioned measures, shall inform the FID on declining or discontinuing a business relationship and on the refusal to make a transaction, and shall submit to the FID all the previously collected data on the client or according to Articles 38 and 39 of the AML/CFT Law.

575. In addition, Article 14 of the Law on Internal Payment Transactions, adopted in RS on 17.05.2012 and entered into force on 15.06.2012 bans the authorised organisations to open the hidden accounts for the participants and to issue them the savings booklets or to offer other services which could enable, directly or indirectly, concealment of the business entities.

576. Provisions of Article 35 of the AML/CFT Law provide that an obligor shall not open issue or have hidden accounts, savings books or bearer savings books or other products that allow, directly or indirectly to hide the client's identity.

577. In addition to these provisions of the AML/CFT Law, the prohibition of opening and maintaining anonymous accounts or accounts with fictitious names is also prescribed by the provisions of Decisions on minimum standards for banks in RS and FBiH (Article 11, Paragraph 5) stating the following: "*Banks may not open an account or conduct business with a client who insists on his anonymity, or who uses a false name during identification, presenting false identification information and forged papers. In such cases, banks may refuse to open an account, or establishing a business relationship with clients without obligation to give reasons. In these cases it is necessary to make a*

record of the business contact with client and inform the Financial Intelligence Unit, hereinafter referred to as the FIU".

578. The representatives of financial institutions (banks) interviewed during the on-site confirmed that they are aware that it is prohibited to have anonymous accounts and that banks do not have such accounts.

579. The provisions of Article 11, paragraph 3 of the Decision on leasing companies provide that leasing companies may not establish business relationship with a client who insists on his anonymity or who presents a false name. Leasing companies may refuse to establish business relationship with clients without obligation to give reasons. The provisions of Article 11, paragraph 3 of the Decision micro-credit organizations impose the same obligations on micro-credit organizations.

580. The Law on the Securities Market of FBiH, Article 6 (para. 6) stipulates following: s*ecurities are registered to the name*. The Law on Securities Market of RS Article 2 (para.1, item 3) stipulates that "*securities are transmitted documents in non-material form - electronic record, issued in the series on the basis that the owners exercise their rights towards the issuer in accordance with the law and the decision about the issue"*. Article 3 (para. 2) stipulates that securities are registered to the name.

Customer due diligence

When CDD is required (c.5.2)*

581. According to Article 6 (para. 1) of the AML/CFT Law a liable person shall undertake measures of identification and tracking of clients when:

- establishing a business relationship with the client;
- complete a transaction in the amount of BAM 30,000 (€15,000) or more, regardless of whether the transaction is completed in a single operation or in several obviously related transactions;
- there is doubt as to the authenticity or adequacy of previously obtained client information or the beneficial owner and/or;
- there is a suspicion of money laundering or the financing of terrorist activities in respect of the transaction or the client regardless of the transaction amount.

582. Article 6 (para. 2) of the AML/CFT Law specifies that when the transaction in the amount of BAM 30,000 (€15,000) or more is performed based on previously established business relationship with the obligor, the obligor shall, within CDD measures, only verify the identity of the client or the person who performed the transaction and collect data which are missing.

583. In addition to the AML/CFT Law, the Decisions on minimum standards for banks in RS and FBiH (Articles 6, 7, 9) issued in FBiH and RS stipulate that client's due diligence and verification of the identity of the client is done at the beginning of establishing a business relationship, and that regular inspections of existing documents is done based on which is performed verification of client's identity.

584. Furthermore, Article 3 (para.1) of the Rulebook for Risk Assessment and Enforcement of the Law on Prevention of ML/TF Activities for Obligors within the Jurisdiction of the Insurance Supervision Agency of FBiH, issued by Insurance Supervisory Agency of BiH (hereinafter *Rulebook*) stipulates additionally that liable persons in accordance with Article 6 of the AML/CFT Law, when establishing business relations or conducting transactions over a certain amount stipulated by the Law or in other cases that are defined in Law, shall take the necessary measures for identification and monitoring of the client.

585. Provisions of Article 9 of the Decisions on minimum standards for Leasing Companies and Micro-Credit Organizations for FBiH and RS provide that the policy on the identification and monitoring of a client activity of leasing companies or micro credit organizations should be the main element of the principle of "*Know Your Client*". For the purposes of the decisions the term *"client"* is defined in the same way as in the Decisions on minimum standards for banks in RS and FBiH.

Identification measures and verification sources (c.5.3)*

586. Provisions of Article 7 of the AML/CFT Law provides that due diligence and monitoring measures include:

1. determining the identity of the client and verifying his identity on the basis of documents, data or information obtained from a reliable and independent source;
2. due diligence of the beneficial owner;
3. obtaining information on the purpose and intended nature of the business relationship or transaction, as well as other information prescribed by this Law;
4. carrying out continuous monitoring of business relationships including control transactions during the business relationship to ensure that transactions are carried out in accordance with the findings of obligors on the client, the business and risk profile and, where necessary, the source of funds and ensuring relevant documentation, information and data are up-to date.

587. According to Article 7 (para. 2) of the AML/CFT Law liable person is obliged to define in its internal procedures the procedures for implementation of those measures. Article 11 of the AML/CFT Law states the requirement how to establish and verify identity of legal person.

588. Identification and monitoring measures are also prescribed by the provisions of Article 10 of the Decisions on minimum standards for banks in RS and FBiH, which require establishing detailed and comprehensive procedures for the identification of new clients and carrying out verification of the client's identity using reliable, independent source of documents, data or information (identification data).

589. The provisions of Article 10 of the Decisions on Leasing Companies and Micro-Credit Organizations in FBiH and RS stipulate that "*leasing companies shall define detailed and comprehensive procedures for identifying new clients and may not establish business relations with them until the identity of new clients is not determined by them in a completely satisfactory manner".*

590. The requirement for identification measures and verification sources is implemented through a combination of provisions in the secondary legislation with regard to securities market. In particular, the requirements to clearly establish the identity of a natural or legal person (customer) and verify that customer's identity using reliable, independent source documents, data or information are set out in:

1. Article 5 (par. 3) of the Rulebook on Mediation in the Securities Business (hereinafter *Rulebook on Mediation in The Securities Business*) issued by FBiH Securities Commission, adopted 22.04.2009 (No.01-02-1472/09) and entered into force in 2009;
2. Guidelines for the prevention of ML/TF Activities, issued by the Securities Commission of RS (hereinafter *Guidelines by Securities Commission*), adopted 10.06.2010, entered into force 10.06.2010;
3. Article 61 of the Rulebook on Business Brokerage Firms (hereinafter *Rulebook on Business Brokerage Firms*), issued by RS Securities Commission, adopted on 19.06.2012 and entered into force on 26.07.2012;

4. Guidelines on the implementation of the AML/CFT Law for obligors in responsibilities of Insurance Agency of RS**,** adopted by Insurance Agency of RS 23.08.2013, entry into force 01.01.2014;

5. Rulebook on Registration and Transfer of Securities of the Brčko District of BiH issued by Securities Commission of the Brčko District in 2013 and entered into force on 31.07.2013.

591. In addition the Rulebook for Risk Assessment and Enforcement of the AML/CFT Law for obligors within the jurisdiction of the Insurance Supervision Agency of FBiH sets also some additional measures and guidance for identification and verification of the clients of insurance companies in FBiH.

Identification of legal persons or other arrangements (c.5.4)

592. The requirement to establish and verify identity of legal person and legal arrangements are implemented through a combination of provisions in the AML/CFT Law. In particular this requirement is covered by Article 11 which states the obligation how to establish and verify identity of legal person, Article 12 which regulates establishing and verifying identity of legal person's representative, Article 13 that regulates establishing and verifying identity of authorised person for legal person and Article 14 which regulates establishing and verifying identity of other legal persons (associations, foundations and other legal persons).

593. In addition to requirements in the AML/CFT Law the Article 16 paragraph (2) of the Decisions on minimum standards for banks in RS and FBiH stipulate within the standard identification measures the banks are also obliged to verify the collected data and information about the client (individuals or legal entities) through reviewing and gathering documentation in information about the client, including certificates, licenses, founding documentation, personal identification documents and copy of the signature of the individuals authorized to present and represent, financial reports about the performance and other documents.

594. There are also some other basic requirements for verification of legal persons indicated in the secondary legislation such as: the Decisions on Leasing Companies and MCOs in FBiH and RS; the Rulebook for risk assessment and enforcement of the AML/CFT Law for obligors within the jurisdiction of the Insurance Supervision Agency of FBiH; Guidelines for the Prevention of ML/TF Activities (issued by the Securities Commission of RS); the Book of Rules (on state level) on Risk Assessment, Data, Information, Documents, Identification Methods and Other Minimum Indicators Required for Efficient Implementation of the Provisions of the AML/CFT Law (issued by the Minister of Security).

595. At the same time these guidelines unfortunately give very little guidance's how to verify the legal persons or legal arrangements. At the same time liable persons confirmed during on-site visit interviews that they are waiting for relevant guidance's to be updated in order to bring their procedures fully in line with the new AML/CFT Law and had difficulties to demonstrate how for example legal arrangements are being verified. It seems that financial institutions and other liable persons perform in practice only very basic activities in relation to clients' identification and verification.

Identification and verification of the identity of the beneficial owner (c.5.5, c.5.5.1 and c.5.5.2)

596. Beneficial owner is defined in the Article 3 n) of the AML/CFT Law. The Law contains a detailed definition of "real owner", which equates to beneficial owner and this definition appears to cover the "mind and management" of a legal person. The definition has been extended in the new AML Law to include foreign legal persons. Articles 6 and 7 of AML/CFT Law set general requirement for identification of beneficial owner. Article 16 sets out an obligation to verify and establish the identity of the "real owner".

597. Some other basic requirements for identification and verification of beneficial owners can also be found in the secondary legislation such as: the Decisions on Leasing Companies and Micro-Credit Organizations in FBiH and RS; the Rulebook for risk assessment and enforcement of the AML/CFT Law for obligors within the jurisdiction of the Insurance Supervision Agency of FBiH; Guidelines for the Prevention of ML/TF Activities (issued by the Securities Commission of RS); the Book of Rules (on state level) on Risk Assessment, Data, Information, Documents, Identification Methods and Other Minimum Indicators Required for Efficient Implementation of the Provisions of the AML/CFT Law (issued by the Minister of Security).

598. At the same time these guidelines unfortunately don't give guidance how to identify and verify beneficial owners when legal entity has complex ownership and control structure. The representatives of financial institutions interviewed during on-site visit were able to demonstrate their ability to identify and verify beneficial owners only in cases were legal entity has simple ownership and control structure or in more complicated cases only at first layer and confirmed that they are waiting for relevant guidance's to be specified in order to bring their procedures fully in line with the new AML/CFT Law. The evaluators are of the opinion that financial institutions mostly made efforts to understand the ownership structure but not always the control structure of the customer.

Information on purpose and nature of business relationship (c.5.6)

599. Article 7 of the AML/CFT Law prescribes the elements of identification and tracking in relation to a client and it includes also the obligation to obtain the data on the purpose and intention of the nature of a business relationship or transaction, as well as other data prescribed by this Law.

600. In addition, the provisions of Article 14 (para.1, item 3) of the Decisions on minimum standards for banks in RS and FBiH stipulate that banks within the simplified CDD measures shall collect the information, data and documentation on the purpose and use of the business relationship and the source of funds.

601. The obligation of collecting data on the purpose and nature of the business relationship with regard to leasing companies and micro-credit organizations is regulated by the provisions of Article 14 (para.1, item 6) and Article 16 (para. 1, item 3) of the Decisions on LCs and MCOs.

602. The Rulebook for risk assessment and enforcement of the AML/CFT Law for obligors within the jurisdiction of the Insurance Supervision Agency of FBiH prescribes client identification and monitoring obligations which include also obligation to acquire information about the purpose and the supposed nature of the business relationship including information about a client (Article 30 paragraph 1).

On-going due diligence on business relationship (c.5.7, 5.7.1 & 5.7.2)*

603. Article 21 of the AML/CFT Law establishes obligation for regular monitoring of client's business activities, including also the origin of means used in business operations.

604. The provisions of Article 10 (para. 2) of the Decisions on minimum standards for banks in RS and FBiH stipulate that the identification process is carried out at the beginning of the establishment of business relations. However, to ensure that the documents are still valid and relevant, banks shall carry out regular reviews of existing documents. Also, banks shall carry out such examinations in all cases when carrying out significant transactions, when the significant changes show in the way the client uses account for the transactions and the bank can significantly change the standards for documenting the identity of the client or transaction.

605. In accordance with the provisions of Article 27 of Decisions on minimum standards for banks in RS and FBiH shall carry out continuous monitoring of accounts and transactions as an essential aspect of effective procedures to meet its client. For this reason, banks shall first obtain and define answers to one of the most important question: What is the nature of normal and reasonable or

normal or usual activities for the accounts of their clients. When this is accomplished they shall provide the means or instruments, methods or procedures to detect transactions that cannot fit into this nature of the conduct and that with these procedures effectively control and minimize their risk in dealing with clients. The extent to which banks develop their monitoring behaviours of account of its clients must be adapted to the needs adequate to sensitivity of the risk. For all accounts bank shall establish such a system that will allow the detection of unusual, abnormal and suspicious kind of activity.

606. Article 10, paragraph 3 of the Decision on Leasing Companies stipulate that the identification procedure is implemented at the beginning of the establishment of a business relation. In order to secure that the documents are still valid and relevant, the leasing companies are obliged to implement and update the existing documentation. The leasing companies are, as well, obliged to implement such reviews in all the cases when a significant transaction is being performed, when significant changes occur in the manner the client is using the leasing subject and when the leasing company significantly changes the standards for documenting the client's identity or the transaction.

607. Similar obligation is indicated in Article 10, paragraph 3 of Decision on MCOs.

608. Requirements to monitor clients on regular bases are prescribed also in Rulebook for risk assessment and enforcement of the AML/CFT Law for obligors within the jurisdiction of the Insurance Supervision Agency of FBiH.[46]

Risk – enhanced due diligence for higher risk customers (c.5.8)

609. The obligation to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction is provided in Article 23 of the AML/CFT Law which set out requirements for enhanced CDD measures.

610. In addition to the AML/CFT Law the provisions of Article 17 of the FBiH and RS Decisions for Banks stipulate that the enhanced identification measures are applied by banks in cases where business relation is established with:

- banks or similar credit institutions headquartered abroad;
- politically exposed persons;
- clients who are not personally present when establishing a business relationship or carry out the measures of identification.

611. Enhanced identification and monitoring measures will be implemented by banks in other cases where the risk assessment confirms that the client represents a high level of risk of ML/TF activities.

612. Enhanced identification and monitoring measures for clients of leasing companies are prescribed by the provisions of Article 17 of the Decisions on Leasing Companies for FBiH and RS. Similar enhanced measures of identification and tracking of clients for microcredit organizations are prescribed by the provisions of Article 17 of the FBiH and RS Decisions on MCOs.

613. Articles 17 and 18 of the Rulebook for risk assessment and enforcement of the AML/CFT Law for obligors within the jurisdiction of the Insurance Supervision Agency of FBiH, describe criteria for higher risk, types, business profile and structure of the client and criteria of geographic location of the client.

[46] Requirements to monitor clients on regular bases are prescribed also in Guidelines for risk assessment and implementation of the Law on prevention of money laundering and financing terrorist activities in the sector of insurance no. 1.0.-021-269-3/15, adopted by Expert Council of FBiH Insurance Supervisory Agency on 03.03.2015 and entered into force on 03.03.2015.

614. Article 4 of the Book of Rules (valid on state level) on Risk Assessment, Data, Information, Documents, Identification Methods and other Minimum Indicators Required for Efficient Implementation of the Provisions of AML/CFT Law, issued by the Minister of Security, prescribes the list of indicators of major risk factors and establishes obligation to apply intensified identification and monitoring activities of such client activities.

615. Taking into consideration afore mentioned provisions it can be concluded that relevant criteria is technically met. However, interviewed financial institutions were able to demonstrate only general awareness to apply enhanced CDD measures - when there is high risk form ML/TF. Many financial institutions (including banks) were unable to describe the concrete cases where they must apply enhanced CDD measures. Evaluators are in opinion that additional guidance and training is needed to raise awareness in this field. The relevant issued guidance should give more detailed specifications (guidance) to financial sector.

Risk – application of simplified/reduced CDD measures when appropriate (c.5.9)

616. The possibility to perform simplified/reduced CDD measures is stipulated by the provisions of Articles 29 and 30 of the AML/CFT Law.

617. In addition to AML/CFT Law relevant guidelines give guidance in applying the simplified CDD measures. For example, the provisions of Article 12 of the Decision on Minimum Standards for Banks Activities in Prevention of ML/TF issued by Banking Agency of FBiH, stipulate the application of simplified CDD measures by banks in FBiH.

618. In addition, the possibility to perform simplified CDD measures is also provided in Articles 15 and 16 of the Decisions on Leasing Companies and the Decisions on MCOs for FBiH and RS; Article 34 of Rulebook for Risk Assessment and Enforcement of the AML/CFT Law for obligors within the Jurisdiction of the Insurance Supervision Agency of FBiH.

619. Taking into consideration afore mentioned provisions it can be concluded that relevant criteria is technically met. At the same time it must be noted that financial institutions confirmed during the interviews that they rarely apply simplified CDD measures or do not apply them at all. It seemed that there is lack of awareness how to apply simplified CDD.

Risk – simplification/ reduction of CDD measures relating to overseas residents (c.5.10)

620. The possibility to perform simplified/reduced CDD measures is stipulated by the provisions of Articles 29 of the AML/CFT Law as was mentioned above.

621. Provisions of Article 13 of the Decisions on minimum standards for banks in RS and FBiH stipulate that a low level of risk of ML/TF activities may be carried by clients who come from European Union member states or other countries which, according to the FIU, meet internationally accepted standards to prevent ML/TF activity.

622. The requirement on application of simplification/ reduction of CDD measures relating to overseas residents based on risk is also referred in Article 15 of the Decisions on Leasing Companies for FBiH and RS, by imposing some limitations with respect to certain countries.

623. Annex to the Book of Rules on Risk Assessment, Data, Information, Documents, Identification Methods and other Minimum Indicators Required for Efficient Implementation of the Provisions of the AML/CFT Law lists the member countries of the EU, the countries of the EEA, and the members of the FATF to be considered as the countries which have accepted international standards for prevention and detection of ML/TF, which are identical to or stringer than those applicable in BiH. At the same time it must be noted that this list cannot probably be updated on timely manner if necessary.

Risk – simplified / reduced CDD measures not to apply when suspicions of ML/FT or other risk scenarios exist (c.5.11)

624. The possibility to perform simplified/reduced CDD measures is stipulated by the provisions of Articles 29 as was mentioned above.

625. Provisions of Article 23 (para. 2) of the AML/CFT Law provides that the obligor may apply intensified identification and supervision measures in some other cases when, due to the nature of a business relationship or the manner of transaction, the client's business profile or other circumstances related to the client, on the basis of the risk assessment referred to in Article 5 of the AML/CFT Law, there is or there may be a great risk of ML/TF.

626. Provisions of Article 17 of the Decisions on minimum standards for banks in RS and FBiH stipulate that the bank will implement enhanced CDD measures in all cases where the risk assessment confirms that the client represents a high level of risk of ML/TF.

627. Provisions of Article 20 of the Decisions on Leasing Companies for FBiH and RS stipulate that leasing companies will implement enhanced CDD measures in other cases where the risk assessment confirms that the client represents a high level of risk of ML/TF. Provisions of Article 20 of the Decisions on MCO FBiH and RS provide similar requirements.

628. Articles 17 and 18 of the Rulebook for risk assessment and enforcement of the AML/CFT Law for obligors within the jurisdiction of the Insurance Supervision Agency of FBiH describe criteria for higher risk, types, business profile and structure of the client and criteria of geographic location of the client. The Rulebook does not allow apply simplified CDD measures whenever there is suspicion of ML/TF or specific higher risk scenarios apply. The Rulebook requires in cases where there is a greater risk to act accordingly.

629. For example, if after reviewing the submitted documentation and implementation of procedures for client identification and monitoring, it is determined that it is a suspicious transaction, an employee of the obligor responsible for the sale of life insurance has to notify the manager responsible for the business of life insurance, by presenting the application with documentation, which in case of doubt to ML/TF activity, contact the authorized person referred to in Article 32 of the Law. Authorized person shall comply with part VI of the Rulebook to specify a further method of treatment and immediately notify the FIU and supervisory agency.

630. Taking into consideration afore mentioned provisions it can be concluded that relevant criteria is technically met. All financial institutions confirmed during on-site visit interviews their obligation not to apply simplified measures in case there is suspicion of ML/TF or specific higher risk scenarios.

Risk Based application of CDD to be consistent with guidelines (c.5.12)

631. Provisions of Article 5 of the AML/CFT Law provides that obligors shall make a risk assessment to determine the risk level of groups of clients or a single client, business relationship, transaction or product regarding possible abuse for the purposes of ML/TF activities according to the risk assessment guidelines established by the FIU and competent supervisory bodies, pursuant to adopted by-laws which prescribe more detailed criteria for the development of guidelines (type of liable persons, scope and type of works, type of clients, products, etc.), as well as the types of transactions which are risk free regarding ML/TF activities, and therefore require simplified client identification procedure for the purposes of this Law.

632. The requirement on risk based application of CDD to be consistent with guidelines is also covered by the provisions of Article 12 (para. 4) of the Decisions on minimum standards for banks in RS and FBiH, Article 7 of FBiH and RS Decisions on Leasing Companies and MCOs, Article 5 of the Rulebook for Risk Assessment and Enforcement of the AML/CFT Law for Obligors within the Jurisdiction of the Insurance Supervision Agency of FBiH.

633. Article 5 of the AML/CFT Law seems to cover technically criteria 5.12. However relevant rulebooks need to be specified or renewed to make relevant obligation effective in practice.

Timing of verification of identity – general rule (c.5.13)

634. The requirement to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers is set out in the Articles 6 and 7 of the AML/CFT Law. The obliged entity shall by its internal by-laws define procedures for implementing the measures required under those articles.

635. The provisions of Article 11 (para. 3) of the AML/CFT Law provides also that the obligor may establish and check the identity of legal person by collecting data referred to in Article 7 of the AML/CFT Law directly from the court registry or another public registry. On the excerpt from the relevant registry, the liable person shall note down the date and time and the name of the person checking the registry. The registry excerpt shall be kept pursuant to the provisions of this Law referring to data protection and storing.

636. The provisions of Article 10 (para. 3) of the Decision for Banks for FBiH and RS stipulate that when establishing business relationships with new clients, as well as in the cases referred to in paragraph 2 of this Article, banks shall carry out verification of the client's identity using reliable, independent source documents, data or information (identification data). Verification of the identity of the client must be completed before the end of establishing a business relationship, or during the banking day on which the business relationship is established. Exceptionally, the verification can be performed after establishing business relations with the proviso that in the case of the transactions it has carried out prior to the completion of a transaction or approving a client's account or payment of funds in case of occasional transactions which represent inflows (receiving money or loro remittances). If the business relationship established without verification performed, then in the case of transactions that represent outflows (sending money or remittances nostro) verification is completed prior to the commencement of the transaction.

637. The provisions of Article 11, paragraph 2 of the Decisions on Leasing Companies and MCOs for FBiH and RS stipulate that "*leasing companies and micro-credit organizations shall, prior to the signing of the lease, perform verification of the identity of the client using reliable, independent source documents, data or information. Leasing companies if they are not able to perform the verification of the identity of the client shall consider the suspension of business cooperation with clients and deliver reports to competent institutions*".

638. In addition, the requirement on timing of verification of identity is covered by Article 3 of the Rulebook for Risk Assessment and Enforcement of the AML/CFT Law for obligors within the Jurisdiction of the Insurance Supervision Agency of FBiH.

Timing of verification of identity – treatment of exceptional circumstances (c.5.14 & 5.14.1)

639. The AML/CFT Law does not prescribe explicitly any exceptional circumstances for timing of verification of identity as it is possible under criteria 5.14 or 5.14.1. At the same time Article 10 of the Decision for Banks for FBiH and RS, provide some exceptions to general rule as was described above under criterion 5.13.

640. According to the BiH authorities there is a Rulebook for intermediation in the securities business (Article 16) which regulates the way of giving orders for securities trading in the absence of a client (phone or email) as well as the identification of a client. If a client wants to trade in this manner he or she must first enter into a contract with a broker by way of personal appearance or by proxy. In this case the identification of the client is performed. The same requirements are said to be set out in a Rulebook on brokerage firms issued by RS Securities Commission (Articles 62-63). In addition, the requirement on timing of verification of identity in exceptional circumstances is covered

by Guidelines for the prevention of ML/TF activities issued by the Securities Commission of the RS (Chapter III, item 2); Rulebook for Risk Assessment and Enforcement of the AML/CFT Law for obligors within the Jurisdiction of the Insurance Supervision Agency of FBiH.

641. However, it must be noted that interviewed financial institutions, including insurance companies, confirmed that they never establish business relationship without the physical presence of the client.

Failure to satisfactorily complete CDD before commencing the business relationship (c.5.15) and after commencing the business relationship (c.5.16)

642. Provisions of the Article 8 of the AML/CFT Law provides that a liable person unable to implement measures referred to in Article 1 paragraph (1) points a), b) and c) hereof shall not establish a business relationship or make a transaction, or shall discontinue a business relationship already established. In case of such situation, the liable person shall inform the FIU on declining or discontinuing a business relationship and on the refusal to make a transaction, and shall submit to the FIU all the previously collected data on the client or transaction under Articles 38 and 39 of the AML/CFT Law.

643. Provisions of Article 10 of the Decisions on minimum standards for banks in RS and FBiH provide that in cases where verification cannot be performed within the time limits set out in paragraph (3) of Article 10 of the Decisions, commenced business relationship shall be terminated and shall be reported to the competent authority.

644. Article 10, paragraph 1 of the FBiH and RS Decisions on Leasing Companies stipulates that leasing companies shall define detailed and comprehensive procedures for identifying new clients and cannot establish business relations with them before the identity of new clients are established in a completely satisfactory manner. Microcredit organizations have same requirement according to Article 10, paragraph 1 of the Decisions on MCOs for FBiH and RS.

645. The Rulebook for Risk Assessment and Enforcement of the AML/CFT Law for obligors within the Jurisdiction of the Insurance Supervision Agency of FBiH stipulates that establishing a business relationship without the presence of the client is not permitted, except in the case of application of the measures that the first payment in a commercial activity is done through an account opened on behalf of a client with other credit institutions.

Application of CDD requirements to existing customers – (c.5.17)

646. It is not entirely clear weather Articles 6 and 8 of the AML/CFT Law read in conjunction cover the requirement under criteria 5.17 and there is no specific requirement to apply CDD requirements to existing customers as at the date of the entry into force of the AML/CFT Law.

647. The provisions of Article 10 of the Decisions on minimum standards for banks in RS and FBiH stipulate that the identification process is carried out at the beginning of the establishment of business relations. However, to ensure that the documents are still valid and relevant, banks shall carry out regular reviews of existing documents. Also, banks shall carry out such examinations in all cases when carrying out significant transactions, when the significant changes show in the way the client uses account the transactions and the bank can significantly change the standards for documenting the identity of the client or transaction.

648. The obligation to perform CDD measures on existing customers is also covered by Article 10 of the FBiH and RS Decisions on Leasing Companies and MCOs.

Performance of CDD measures on existing customers (c.5.18)

649. The measures applicable to existing anonymous accounts and accounts in fictitious names are explained in more detail under Criterion 5.1.

Effectiveness and efficiency

650. Since the last MER, the AML/CFT Decisions were adopted by the respective financial supervisors in the FBiH and in the RS. They prescribe minimum level of requirements for the financial institutions in respect of the risk assessment, client acceptance policies, implementing of CDD measures, monitoring and reporting procedures. However, they are not on sufficient level of detail and should give more guidance. Therefore financial institutions are still waiting for the adoption of more specified *by-laws* by the respective authorities.

651. The financial institutions broadly understand and apply the customer due diligence measures required under the new AML/CFT Law, but the identification and verification of the beneficial ownership appears to be limited to the first layer of companies that form the legal structure. It was generally confirmed that in case of failure to apply CDD measures the financial institutions would not establish or would terminate the business relationship and would report the matter to the FIU. Interviewed banks confirmed that they do not allow anonymous accounts or accounts on fictions names and all interviewed financial institutions were convincing that they do keep the records at a satisfactory level. Interviewed financial institutions including insurance companies, also confirmed that they never establish business relationship without the physical presence of the client.

652. However, many financial institutions (including banks) were unable to describe the concrete cases where they must apply enhanced CDD measures or simplified measures or demonstrated inconsistent implementation of such measures. For example some FI were not entirely clear on the distinction between CDD and ECDD while there was little recognition of reduced or simplified due diligence. Evaluators are in opinion that additional guidance and training is needed to raise awareness in this field. The relevant issued guidance should give more detailed specifications (guidance) to financial sector.

Recommendation 6 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

653. During the 3rd round evaluators identified several deficiencies in BiH compliance with respect FATF Recommendation 6:

- the treatment of beneficial owners that are PEPs was not clearly defined in the law;
- the definition lend itself to different interpretations;
- there was lack of awareness of the industry in identifying PEP;
- the effectiveness of the system could not be measured;

Risk management systems (c.6.1)

654. The requirements set out in Recommendation 6 are adopted and regulated by the provisions of Article 27 of the AML/CFT Law. In addition they are met with relevant provisions of FBiH and RS Decisions and Rulebooks for FIs as provided below.

655. The definitions of political or public figure, foreign political figure and domestic political or public figure are stipulated in Article 3 paragraphs t), u) and v) of the AML/CFT Law and they seem to be in line with definition of *"Politically Exposed Persons"* (PEPs) as defined in FATF Methodology Glossary notes.

656. According to the Article 27 of AML/CFT Law, a liable person shall establish appropriate procedure to determine whether a client/client's real owner is a political or public figure. The liable persons shall define internal procedures on PEPs following both the guidelines issued by the FID and by competent supervisory bodies referred to in Article 80 of AML/CFT Law.

657. In addition to the AML/CFT Law, the sectorial Laws provide additional clarifications on the FI's obligations related to PEPs.

658. Article 19 of Decisions on minimum standards for banks in RS and FBiH reads as follows: *"when establishing business relations or conducting transactions, in cases where lasting business relationship are not established, banks shall implement procedures that will allow the determination of whether the client is politically exposed person".* A PEP definition is further provided including the explanation that persons with function on middle and lower class are not considered politically exposed persons.

659. According to the same article, the banks shall collect data and information on PEPs directly from the client and/or accessible to the public registers and databases.

660. The banks shall also have adequate procedures based on risk in order to determine whether the client is a politically exposed person.

661. According to the Article 19 of Decisions on minimum standards for banks in RS and FBiH the same measures of identification and tracking, banks shall apply in cases where the PEPs are founders, beneficial owners, persons authorized to represent the client and/or access the funds of a legal entity.

662. Articles 19 of Decisions on the AML/CFT minimum Standards for Leasing Companies (both for FBiH and RS), stipulates that "*leasing companies shall define appropriate risk-based procedures to determine whether the client is, the user or the beneficial owner, a politically exposed person"*. Articles 19 paragraph 2 of same Decisions states that "*foreign or domestic politically exposed persons are persons entrusted with prominent public functions high profile at home and abroad, including family members and close associates. Politically exposed persons are persons who were entrusted with this duty, provided that a period of one year has not passed from the termination of the appointment*."

663. Similar requirements for micro-credit organizations in the respective AML/CFT Decisions for FBiH and RS.

664. The Guidelines on the Implementation of the AML/CFT Law for the insurance companies in RS and FBiH (2013) stipulate similar provisions on PEPs and their identification.

Senior management approval (c.6.2)

665. Art. 27 paragraph 2 sub-paragraph b) of the AML/CFT Law prescribes the obligation to obtain senior management approval for establishing business relationship with a PEP.

666. Further on, paragraph 3 stipulates that "*if the obligor determines that the client or the beneficial owner of the client became politically exposed person in the course of a business relationship applied 'actions and measures referred to in paragraph (2) of Article 27, and for the continuation of the business relationship with that person shall obtain the written approval of the top management"*.

Requirement to determine source of wealth and funds (c.6.3)

667. The obligation to determine source of wealth and funds of politically exposed persons are established by Art. 27 (2) a) of the AML/CFT law which provides that for PEPs (defined as above), the liable person shall *"collect information on the source of funds and property that is or will be a subject of business relationship or transaction from documents and from other documents submitted by the client/client's real owner".* When the above data may not be obtained in the mentioned way, the liable person shall obtain them directly from a written statement of the client. Assessors are in opinion that the term "source of funds and property" covers the term "sources of wealth and funds" because "*funds*" refers to funds held in money and "*property*" refers to the material things owned by the person (e.g. immovable property, securities etc.) which in opinion of assessors is equivalent to

"wealth". BiH authorities have not provided any information or laws which would stipulate otherwise.

668. Requirements on the identification of source of funds of PEPs are included in the sectorial Laws, but they do not bring anything additional to the AML/CFT Law.

On-going monitoring (c.6.4)

669. Article 27 paragraph 2 subparagraph c of AML/CFT Law stipulates: after commencement of the business relationship, the liable person shall trace transactions and other business activities of the political or public figure undertaken through the liable person, applying the identification and tracking procedure. The same shall apply in case of clients or client's real owner who become PEP during the business relation.

Additional element – domestic PEP-s requirements

670. All requests from the R.6 refer both to the foreign and toward domestic PEP persons who perform public functions, as specified under criterion 6.1.

Additional element – ratification of the Merida Convention

671. Evaluators have not been provided with information on ratification of the Merida Convention.

Effectiveness and efficiency

672. The banks are generally aware of the obligations to identify domestic and international PEPs. Financial institutions appear to be applying this through their customer risk policies.

673. In the identification process, FI use declaration forms and (for those part of international groups), commercial databases. Once the person is identified as PEP, the approval of the management for establishing the business relationship is needed and declarations on the origin of funds are required.

674. However, deficiencies remain in relation to the detection of the source of wealth and persons related to PEPs. The effective application of the AML/CFT requirements in relation to PEPs by the non-banking financial institutions is an area for improvement as they do not appear to fully acknowledge and address the requirements related to this category of clients.

Recommendation 7 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

675. During the 3rd round MER the factors underlying the rating were the following:

- No requirement for banks to document the AML/CFT responsibilities of respondent banks;
- No specific obligations regarding 'payable through account';
- Measurement of effectiveness.

Require to obtain information on respondent institution (c.7.1)

676. Article 3, letter k) of the new AML/CFT law is defining the term *"correspondent relations"* as "*a relationship between a home bank or credit institution and a foreign bank or credit institution or another institution, established once a foreign credit institution opens an account with a home bank or credit institution, as well as once a home bank or credit institution opens an account with a foreign credit institution"*.

677. Subsequently, Art. 24, is providing with the major requirements in the AML/CFT area when correspondent relations are established. According to para. 1, when establishing correspondence business relations with a bank or similar credit institution based in a foreign country, which is not on the list referred to in Article 85 paragraph (4), the liable person shall apply the identification

requirements prescribed in Art. 7 (identification) and shall obtain the following data, information and documents:

"a) Data on issuing and the validity period of an authorization for offering banking services, the name and seat of the competent body issuing the authorization;

b) A description of the implementation of internal procedures relating to detecting and preventing money laundering and financing terrorist activities, especially the procedures for identification and client tracking, the procedures determining the real owner, for data relating to reports on suspicious transactions sent to competent bodies, for keeping reports, internal control and other procedures adopted by the bank or similar credit institution meant for detection and prevention of money laundering or financing terrorist activities;

c) A description of relevant legislation on detection and prevention on money laundering and financing terrorist activities applied in countries where the bank or other similar credit institution was founded or registered;

f) A written statement that a bank or other similar credit institution is liable to administrative supervision in the country of origin or registration and is obliged, pursuant to the relevant legislation of the given country, to act in accordance with the laws and provisions relating to detection and prevention of money laundering and financing terrorist activities."

678. Moreover, the liable persons shall collect all the data referred above by inspecting public or other available records or inspecting documents and business reports enclosed by the bank or other similar credit institution based in a foreign country. Nevertheless, there is no direct legal requirement to determine whether the correspondent institution has been subject to a money laundering or terrorist financing investigation or regulatory action as required by the criterion 7.1.

679. The liable persons in BiH are prohibited to enter into or continue relationship with the correspondence bank or other similar credit institution, if the required data has not been previously collected.

680. Art. 85 (4) which is cross-referenced in relation to Art. 24 refers to the list of countries applying internationally recognised standards for AML/CFT purposes which must be adopted by the Council of Ministers of BiH, upon a proposal by the Ministry of Security of BiH. Therefore, the scope of the requirements related to the respondent financial institutions is limited to *"other countries"* than the ones on the Art. 85 (4) list, which is not in line with the FATF standard.

681. During the on-sit interviews no such list was provided to the evaluators[47].

682. Another difficulty arises from the fact that the obligations of the liable persons of BiH to fulfil the requirements of art. 24 of the AML/CFT law are limited to respondent relationships with banks or other credit institutions and not with all financial institutions as it is prescribed in recommendation 7.

683. Apart from the AML/CFT Law, legal requirements in relation to the respondent banking relations are prescribed under the Decisions on minimum standards for banks in RS and FBiH issued by the Banking agencies of the FBiH and RS. However, these requirements are given only for banks and not for all financial institutions.

684. According to Article 18 of the two Decisions on minimum standards for banks in RS and FBiH, when the operations of the international payment system are performed through a network of other banks or similar credit institutions with a head office abroad, with which the bank has some relations (respondent relations), and when the bank is performing these operations in the country for banks or similar credit institutions, it is obliged to implement enhanced measures for identification and

[47] The new Rulebook on implementation of the Law on Prevention of Money Laundering and Financing of Terrorist Activities was adopted by the Council of Ministers on 23.04.2015 and entered into force on 01.06.2015.

monitoring of the business relation in order to avoid situations where it is exposed to risks of holding the money and/or transfers of money which is tied to ML/TF activities.

685. Respectively, under these two Decisions the banks are required to gather some data, namely about:

- The location (country) of correspondent bank;
- Management of correspondent bank;
- Main business activities of correspondent bank;
- Efforts in the area of money laundering and terrorism financing prevention, as well as adequate customer acceptance policies and *"know your customer"* policies;
- Purpose, i.e. intended nature of establishing a business relationship;
- Identification of third persons to be using correspondent banking services;
- Condition of bank regulations and supervision function in the correspondent bank's country, etc.

686. Although the scope of the Decisions on minimum standards for banks in RS and FBiH cover all countries for corresponding banking relations, the AML/CFT Law prevails so the technical shortcoming described above cannot be ignored.

Assessment of AML/CFT controls in Respondent institutions (c.7.2)

687. There is no positive obligation for the credit institutions to assess the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective. Therefore, the assessment of the equivalence of the AML/CFT requirements of the foreign counterpart is not legally prescribed under the establishment of the correspondent relations.

688. However, there is a strict prohibition for entering or continuing correspondent relationships if the bank or other similar credit institution based in a foreign country does not apply the system for detection and prevention of money laundering and financing terrorist activities or is not, under the relevant legislation of the given country, obliged to apply the laws and other relevant provisions relating to detection and prevention of money laundering and financing terrorist activities.

689. Moreover, according to Article 18 of the two Decisions, the banks are allowed to establish correspondent relationships only with those banks that are located in countries where authorized institutions perform efficient bank supervision and the banks are required to prevent the risk of correspondent accounts being used, directly or indirectly, by third parties to perform activities on their own behalf.

Approval of establishing correspondent relationships (c.7.3)

690. According to Article 24, para. 2 of the AML/CFT Law, an employee of the liable person who establishes a relationship with the correspondence bank and implements the intensified identification and supervision procedure, shall collect all written approvals of the highest-ranking management of the liable person before entering into such relationship and, in the relationship is already established, it shall not be maintained without a written approval of the highest-ranking management of the liable person.

691. Moreover, according to the same Article 24, para. 2 of the AML/CFT Law the credit institutions in BiH are prohibited to enter into or continue relationship with the correspondence bank or other similar credit institution if the highest-ranking management has not been given.

Documentation of AML/CFT responsibilities for each institution (c.7.4)

692. According to Article 24, para. 5 of the AML/CFT Law, a liable person shall, in the contract of establishing a correspondent relationship, identify and document the obligations of each party to the contract with regard to the detection and prevention of money laundering and financing terrorist activities.

Payable through Accounts (c.7.5)

693. According to Article 24, para. 6 of the AML/CFT Law, a liable person shall not *"establish a correspondent relationship with a foreign bank or other similar credit institution which the said institution may use as a basis for having an account with the liable person and thus enabling its clients to directly use the aforementioned account"*.

694. According to Article 18 of the two Decisions on minimum standards for banks in RS and FBiH, the banks shall pay special attention the to *"payable-through accounts"* which are held for foreign banks, in order to avoid the possibility of direct access of such banks customers (sub-holders of accounts) to those accounts with an aim to perform transactions such as issuing checks, withdrawing and payments of cash, etc., provided that those customers were not subject to identification procedures and monitoring during account opening, i.e. business relationship establishment, where the respondent bank is obliged to provide relevant data about the identification and monitoring of the account sub-holder at the request of the account holder bank.

Effectiveness and efficiency

695. Since the new AML/CFT law entered into force in July 2014 (namely 4 months prior to the on-site visit), the evaluation team could not fully assess the effectiveness of the correspondent relationship regime. However, the bank compliance officers met during the on-site visit proved a good understanding of the correspondent banking requirements. Senior management approval is required before establishing a correspondent relationship.

696. There is a peculiar effectiveness situation related to the technical deficiencies described in the analytical part on the limited geographical scope of correspondent banking and other similar relations requirements. Although in the AML/CFT Law there is a limitation of application of Recommendation 7 requirements (to *"other countries"* than the ones included in the Council of Ministers' Decision as applying internationally recognised AML/CFT standards), at the time of the on-site visit the Council of Ministers did not adopt any such list. Therefore, having no list, no exemptions for the application of corresponding banking relations exist in practice.

697. Nevertheless, the Decisions on minimum standards for banks in RS and FBiH and the old AML/CFT Law, which were used as legal basis for the effective implementation of the correspondent requirements before the new law enter into force, are not creating standard high-enough to cover the requirements of the FATF Recommendation 7.

698. The absence of a positive obligation for the credit institutions to assess the respondent institution's AML/CFT controls negatively impacts effectiveness. During the on-site interviews it appeared that the FI would rather make sure that there is no particular AML/CFT concern in relation to the respondent institution rather than making an actual assessment of the AML/CFT systems in place. The data on respondent institutions which is gathered is just stored to be available for the supervisors rather than to be used for an actual analysis.

Recommendation 8 (rated NC in the 3rd round report)

Summary of 2009 factors underlying the rating

699. Evaluators identified during 3rd round that there were no provisions for obliged persons to examine and assess threats to money laundering or terrorist financing arising out of new or

developing technology. DNFBPs met by the evaluators showed no concern on this matter as, according to them, this is a matter that does not concern the way they operate. Indeed, the evaluators opine that the DNFBPs that they met did not appear to be fully aware of, or conversant with the issue of the implications of new technology in their activities.

Misuse of new technology for ML/FT (c.8.1)

700. The AML/CFT Law adopted in 2014 addresses the deficiencies identified during 3rd round with respect to misuse of new technology for ML/TF (criteria 8.1).

701. Art. 25 of the AML/CFT Law provides that particular attention to the risk of ML and TF activities resulting from the application of new technological advances enabling client anonymity (e.g. electronic banking, cash machines, phone banking, etc.) should be given.

702. The liable persons shall introduce procedures and undertake additional measures for eliminating the risks of and preventing abuse of new technological advances for the purpose of money laundering and financing terrorist activities.

703. Additionally by the provisions of Article 21 of the Decisions on minimum standards for banks in RS and FBiH are obliged to adopt policies and procedures and take measures which are needed for preventing the misuse of the technological development for the purpose of ML/TF activities. By means of such policies and procedures, banks shall define specific risks relating to the establishment of business relationships for transaction electronically, via internet and other interactive computer system, telephone, ATMs (automatic teller machine), via the use of electronic cards linked to customers' accounts (debit and credit) for cash payments and withdrawals. FBiH and RS Decisions for Leasing Companies and MCO's and Rulebooks for Insurance sector do not give any guidance on this issue

Risk of non-face-to-face business relationships (c.8.2)

704. The AML/CFT Law recognizes non-face-to-face business as one of the sectors under 'intensified identification and monitoring of clients'. Although legal provisions are in place, the evaluation team had concerns related to the awareness of the private sector on the matter, which negatively impacts effectiveness (especially in the DNFBP sector).

Effectiveness and efficiency

705. Financial sector met on-site demonstrated little preoccupation on the risks emanating from the non-face-to-face business and the risks posed by new technologies. This is partially explained by the limited development of new technologies on the FIs in BiH. However, better awareness from the private sector's side will increase effective application of the legal provisions, even in the context of a rather traditional market from the new technologies perspective.

3.2.2 Recommendations and comments

Recommendation 5

706. Although the deficiencies identified in 3rd round have been addressed with the new AML/CFT Law the relevant by-laws (e.g. Decisions and Rulebooks) on application of AML/CFT measures should give more guidance.

707. The authorities should conduct a national ML/TF risk assessment in order to have better understanding of relevant risks on the national level.

708. It is also recommended to provide additional guidance and trainings to private sector on the application of risk based approach.

709. It is also recommended to raise awareness on the concept and applicability of a comprehensive coverage of the beneficial owner including identification procedures.

Recommendation 6

710. Although the concept of PEPs is addressed through legal provisions in practice the FIs have difficulties in identifying the PEPs which are beneficial owners of legal structures and the source of health of identified PEPs.

711. The authorities should take measures to organise awareness rising and training campaigns throughout the financial sector improve the understanding the detection of the source of wealth and persons related to PEPs throughout the financial sector.

712. Guidance need to be issued/renewed on the issue of PEP (e.g. for insurance sector).

713. It is highly recommended for BiH to sign and ratify the Merida Convention.

Recommendation 7

714. The authorities should introduce positive obligation for non-banking financial institutions to assess the respondent institution's AML/CFT controls.

715. According to the authorities in BiH there are no other correspondent relations outside the banking sector.

716. The legal provisions concerning the obligations deriving from Art. 24 of the AML/CFT Law should be extended to the correspondent relationships with all financial institutions from all foreign countries and jurisdictions.

Recommendation 8

717. Although the financial institutions met by the evaluators reported that they do not undertake non-face-to-face business the enhanced obligations under the new AML/CFT Law call for more awareness of the procedures to be applied in such circumstances throughout the whole financial sector.

3.2.3 Compliance with Recommendations 5, 6, 7 and 8

	Rating	Summary of factors underlying rating
R.5	**PC**	• No mandatory explicit obligation to apply CDD measures to all existing clients. **Effectiveness** • Relevant by-laws (e.g. Decisions and Rulebooks) on application of AML/CFT measures should give more detailed specifications (guidance) to financial sector. Shortcomings in the implementation of beneficial ownership requirements; • Lack of guidance and trainings on the application of risk-based approach (simplified and enhanced CDD); • Inconsistent implementation of measures to be taken in case of enhanced due diligence (some FI were not entirely clear on the distinction between CDD and ECDD while there was little recognition of reduced or simplified due diligence); • Unable to fully measure the effectiveness of implementation of the newly introduced AML/CFT Law.

R.6	**LC**	**Effectiveness** • Relevant by-laws (e.g. Decisions and Rulebooks) on application of AML/CFT measures regarding PEP's are not fully harmonized with the AML/CFT Law; • Low awareness on the detection of the source of wealth and persons related to PEPs; • Low awareness of application of the AML/CFT requirements in relation to PEPs by the non-banking financial institutions.
R.7	**LC**	• The correspondent relationship requirements are limited to correspondent relationships with banks or other credit institutions and not with all financial institutions as it is prescribed in Recommendation 7; • The special measures apply only to countries that are outside the scope of Art. 85 of the AML/CFT law; • No explicit requirement for assessment of the collected correspondent information.
R.8	**LC**	**Effectiveness** • Lack of guidance concerning (or low awareness of the procedures to be applied in) circumstances of non-face-to-face business and on how CDD measures should operate in non-face to face transactions; • Lack of awareness of risks regarding misuse of new technologies and effective compliance is not demonstrated.

3.3 Third parties and introduced business (R.9)

3.3.1 Description and analysis

Recommendation 9 (rated NC in the 3rd round report)

Summary of 2009 factors underlying the rating

718. BiH was rated NC during the 3 round MER based on the following factors;

- No requirement to immediately obtain the necessary information from the third party;
- No requirement to ensure that identification data is available on request from the third party;
- There are no specific provisions to ensure that the country base of the third party applies adequate AML/CFT measures;
- There are no requirements to ensure that the third party is a regulated entity;
- There are no provisions on introduced business;
- Lack of effectiveness.

Requirement to immediately obtain certain CDD elements from third parties (c.9.1)

719. Article 17, para. 1 of the new AML/CFT Law is providing with definition of *"third person"*, which includes institutions referred to in Article 4 Items a), b), c), d), e) and l) Line 4), namely banks;

insurance companies, insurance brokers, licensed to deal with life insurance affairs; leasing companies; microcredit organisations; authorised agents trading in financial instruments, foreign currencies, exchange, interest rates and index instruments, transferable securities and commodity futures and auditors.

720. Paragraph 3 of the same Article clarifies that the term *"third person"* shall not include outsourced service providers and agents.

721. The following Article 18, para. 1 is providing the general ability of a liable persons to rely on third person with establishing and verifying the client's identity, establishing the identity of the real owner of a client and collecting data about the purpose and planned nature of a business relationship or transaction, under conditions set forth in this Law and other regulations passed in accordance with this Law.

722. According to Art. 19, para. 2 of the AML/CFT Law "*upon a request by the liable person, the third person shall, without delay, submit copies of identification and other documents on the basis of which the third persons identified and monitored the client and obtained the required data on the client. The liable person shall keep the copies of identification and other documents in accordance with this Law."*

723. Thus, there is a clear requirement that the liable persons should have the ability to obtain the required certified copies proving the CDD information promptly and without delay as required by criterion 9.1.

Availability of identification data from third parties (c.9.2)

724. As set out above, upon a request by the liable person, the third person shall, without delay, submit copies of documents gathered in relation to the identification and monitoring process.

725. Article 20 of the AML/CFT Law is prohibiting the third party reliance if the third person failed to submit copies of identification and other documents about the client.

726. Similar legal requirements are included in the Articles 22 of the two Decisions on minimum standards for banks in RS and FBiH, both from FBiH and RS, as well as in Articles 21 of the two Decisions on Minimum Standards of the Leasing Providers Activities on AML/CTF and the two Decisions on Minimum Standards of the MCOs Activities on AML/CTF of the FBiH and RS.

Regulation and supervision of third party (c.9.3)

727. Pursuant to Article 18, para. 2 of the AML/CFT Law, a liable person shall establish beforehand if the third person who will be entrusted with carrying out measures of identification and monitoring of a client, meets the conditions prescribed by this Law.

728. Moreover, para. 5 stipulates that the third person shall be responsible for fulfilling the obligations under this Law, including the responsibility for data and documentation safekeeping.

729. Additionally, Article 20 is provides the prohibition for third party reliance in instances such: if the third person verified the identity of a client in their absence; failed to submit data for the client, required for the liable person to be able to establish a business relationship under AML/CFT Law; the liable person doubts the credibility of the undertaken measures and activities of client identification and monitoring or the truthfulness of the obtained client data, without having received the required statement from the third person.

730. According to Articles 22, para. 2 of the two Decisions on Minimum Standards of Bank Activities on AML/CTF of the FBiH and RS, the third party shall present all the parties in implementing the measures of the prevention of ML/TF activities defined by the AML/CFT Law which are regulated and supervised by special regulatory bodies. There are no similar legal texts defining the activities of the other financial institutions.

731. However, based on the fact that the main AML/CFT supervisory requirements of the Bosnian system are prescribed in the special legislation, the evaluation team is of the opinion that the financial institutions are not clearly required to satisfy themselves that the third party is regulated and supervised in accordance with Recommendation 23, 24 and 29.

Adequacy of application of FATF Recommendations (c.9.4)

732. The AML/CFT Law in its Article 17, para. 2 is prescribing that the Council of Ministers of BiH, upon a proposal by the Ministry of Security of BiH, with previous consultations with the FID may approve in a rulebook that the institutions registered in a country on the list of countries defined in Article 85 paragraph (4) perform affairs of a third person.[48]

733. However, there is no other direct requirement for the competent authorities, in determining in which countries the third party that meets the conditions can be based, to take into account the information available on whether those countries adequately apply the FATF Recommendations.

734. According to Articles 22, para. 2 of the two Decisions on Minimum Standards of Bank Activities on AML/CTF of the FBiH and RS, the third party can be an equivalent institution form a foreign country, for which the bank must provide evidence that it meets the defined conditions, and it can use the international institutions reports with authorities in prevention of money laundering and terrorism financing activities (FATF, MONEYVAL, Council of Europe, World Bank; IMF, etc.). No such requirements exist for the non-banking financial institutions.

735. Despite the above-mentioned, the responsibility of taking into account the available information on whether the countries where the third parties are based, adequately apply the FATF Recommendations, shall be to the competent domestic authorities and not to the banks.

Ultimate responsibility (c.9.5)

736. By entrusting a third person with undertaking certain measures and activities of client identification and monitoring, the liable person shall not waive the responsibility for correct implementation of measures and activities of client identification and monitoring under the AML/CFT Law (Art.18(4)). The liable person shall still have the final responsibility for implementing the measures and activities of client identification and monitoring.

737. The same legal requirements are introduced in Articles 22, para. 1 of the two Decisions on Minimum Standards of Bank Activities on AML/CTF of the FBiH and RS, as well as in Articles 21 of the two Decisions on Minimum Standards of the Leasing Providers Activities on AML/CFT and the two Decisions on Minimum Standards of the MCOs Activities on AML/CTF of the FBiH and RS.

738. According to the AML/CFT Law, if the liable person doubts the credibility of the undertaken measures and activities of client identification and monitoring or the credibility of documentation or the truthfulness of the obtained client data, the above person shall request the third person to submit a written statement on the credibility of the undertaken measures and activities of client identification and monitoring and truthfulness of the obtained client data.

739. According to Article 21 of the AML/CFT Law, para. 4, activities of regular monitoring may not be delegated to a third person.

[48] The new Rulebook on implementation of the Law on Prevention of Money Laundering and Financing of Terrorist Activities was adopted by the Council of Ministers on 23.04.2015 and entered into force on 01.06.2015.

Effectiveness and efficiency

740. During the on-site interviews the representatives of the financial institutions confirmed that they exceptionally rely on previously established identification done by third party and only on a group level.

741. Moreover, the supervisory authorities confirmed the afore-mentioned and added that they encourage the financial institutions to use the third party reliance only in very limited instances.

742. The evaluators were informed that the third party CDD documentation in some cases is used in the custodian operations, which are widely recognized by the authorities as high-risky ones. However, as already stated, these are highly exceptional cases.

3.3.2 Recommendations and comments

743. The authorities are recommended to include in the legislation a clear requirement for the non-banking financial institutions to satisfy themselves that the third party is regulated and supervised in accordance with Recommendation 23, 24 and 29.

744. A direct requirement for the competent authorities, in determining in which countries the third parties can be based, to take into account the information available on whether those countries adequately apply the FATF Recommendations, should be also introduced in the legislation.

745. The authorities should include the custodian operations in their risk assessment especially in relation to third party reliance.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**LC**	• No clear requirement for the non-banking financial institutions to satisfy themselves that the third party is regulated and supervised in accordance with Recommendation 23, 24 and 29; • No direct requirement for the competent authorities, in determining in which countries the third parties can be based, to take into account the information available on whether those countries adequately apply the FATF Recommendations.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and analysis

Recommendation 4 (rated C in the 3rd round report)

746. There are no changes in the Laws on Banks of FBiH and RS, imposing secrecy obligations on all officers and employees of banks and gateways for disclosure. The same provisions described in the 3rd round MER are contained in the Law on Securities Markets of RS and FBiH. No changes in the Law on Insurance Companies of FBiH and RS were reported for Recommendation 4 purposes. Therefore for the sectorial Laws the reader is referred to paragraphs 353 to 357 of the previous report.

747. In addition to the above, Art. 75 of the current AML/CFT Law lifts the confidentiality requirements of all obliged entities and persons, authorities of BiH, FBiH, RS and BD, and to organisations with public authorisation, prosecutors, courts and their personnel, when such information is disclosed to the FID.

748. Confidentiality obligations under the respective laws are strict. However, Article 75 of the current AML/CFT Law has overarching implications being a law at State level and hence the provisions of this Article override confidentiality clauses in the respective laws.

Ability of competent authorities to access information they require to properly perform their functions in combating ML or FT

749. All the competent authorities, primarily the FID, have legal authority to request and access necessary information to perform their function in combatting ML or FT effectively (see analysis under Recommendation 26).

Sharing of information between competent authorities, either domestically or internationally

750. In line with Article 61 of the AML/CFT Law the FID is authorised to request authorities and institutions of BiH, the FBiH, RS and the BD and other bodies with public authorizations to provide information, data and documentation needed to perform its AML/CFT duties.

751. There are also no obstacles for the information gathered to be shared with foreign bodies for AML/CFT purposes, in line with the provisions of Articles 65 to 69 of the AML/CFT Law.

Sharing of information between financial institutions where this is required by R.7, R.9 or SR. VII

752. Neither legal nor practical obstacles have been identified that could hinder the sharing of information related to Recommendation 7, 9 or SR VII.

753. As far as correspondent banking is related, there is no restriction in the AML/CFT Law that prevents the financial entity acting as correspondent bank from transferring information regarding AML to the entity on behalf which it is operating and vice versa (Art. 24 of the AML/CFT Law).

754. Regarding third parties, this possibility to exchange information with third parties is set out in Art. 19 (corroborated with Art. 17 and 18). The circumstances under which the transfer of the information related to the CDD procedure can be carried out by the third party are set out in detail in the referred act.

755. In the case of the information related to the wire transfer payer that has to accompany through the payment chain, it is completely provided in the AML/CFT law, Article 32. The sanctioning regime for failure to comply is stated in Article 83 of the AML/CFT Law.

Effectiveness and efficiency

756. The industry and the authorities have confirmed that the system is effective and that in their opinion the necessary protection under the law is adequate.

3.4.2 Recommendations and comments

757. N/A

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**C**	

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

3.5.1 Description and analysis

Recommendation 10 (rated LC in the 3rd round report)

Summary of 2009 factors underlying the rating

758. In 3rd round BiH received LC due to the following deficiencies.

- No differentiation between identification information and transaction data;
- No clear indication of the initiation of the 10 year retention period for identification information and transaction data.

Record keeping & Reconstruction of Transaction Records (c.10.1 and 10.1.1)

759. Article 77 of AML/CFT Law prescribes the obligation to keep the information, data and documentation on clients, established business relations with clients and transactions made, for at least 10 years after: the termination of a business relation; completion of a transaction; client identification in casino/premises for games of chance; or the client's access to a safe.

760. The liable persons shall keep the information and relevant documentation on persons ordering electronic transfers (Art. 32 of the AML/CFT Law), the professional training of employees and conducted internal controls for at least 4 years after the date of appointment of authorised persons, completion of professional training and conducting internal control.

761. Article 54 in Chapter VII of AML/CFT Law stipulates the details of record keeping obligations which shall include *(i.e.)*:

- the name, seat and identification number of a legal entity or on behalf of which a permanent business relationship is to be established or on behalf of which a transaction is to be carried out;
- name, address, date and place of birth, personal identification number of the authorized person;
- name, address, date and place of birth, personal identification number of natural persons (clients of persons carrying out transactions);
- Reasons for establishing of a business relationship or execution of transaction and information about the client's occupation;
- Date, time and amount the business relationship or transaction;

762. The liable persons must maintain copies of the documents based on which the identification of the client was made, confirming that an inspection of original document was made.

763. Records on cross border declarations of cash and other assets at the state border shall be also kept.

764. All data, information and documentation from the record on identification of a client shall be delivered to the FID without any fee.

765. There is no specific obligation that the records should be sufficient to permit the reconstruction of individual transactions so as to provide if necessary evidence for prosecution of criminal activity. However, analysing Art. 54, the evaluators conclude that the record keeping requirements in AML/CFT Law contain a satisfactory level of details of transaction to permit the reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.

766. The requirement to keep relevant records for at least 10 years after the termination of business relation and completion of transaction goes beyond the five-year term established by the FATF standards.

767. A difficulty might arise from the absence of provisions requiring the record-keeping to be prolonged at the request of competent authorities. However, seeing the length of the record-keeping obligations, the evaluators are of the opinion that Art. 54 of the AML/CFT Law is sufficient as far as essential criterion 10.1 is concerned.

768. While the new AML/CFT Law adopted in 2014 seems to eliminate the deficiencies identified in 3rd round, the evaluators of the present round are of the opinion that the AML/CFT Law could stipulate more clearly that obligation to keep records applies regardless of whether the account or business relationship is on-going or has been terminated. At the moment this obligation can only be assumed from relevant provisions.

Record keeping of identification data, files and correspondence (c.10.2)

769. Article 54 in Chapter VII of AML/CFT Law stipulates the details of record keeping obligation which cover identification data and files.

770. The obligation to keep records of business correspondence appears to be still missing and interviewed financial institutions did not demonstrate awareness of relevant obligation. Article 43 of the Law on Internal Payment Transactions of RS stipulates that the authorised organisations shall be obliged, based on orders and other payment transaction documents, to keep records on the performed payment transactions, pursuant to this Law and other regulations. Also, the authorised organisations shall be obliged to keep payment orders and other documents on open accounts and the completed payment transactions for as long as defined by the regulations on the archive activities and the regulations on prevention of money laundering and financing of terrorist activities. Nevertheless there is still uncertainty whether these requirements also cover the obligation to keep business correspondence.

Availability of Records to competent authorities in a timely manner (c.10.3)

771. According to Article 56 of the AML/CFT Law liable person has obligation to forward the relevant information (including information on ownership and bank transactions of the person), data and documentation to the FID without a delay, or within 8 working days from the day the FID received the request.

Effectiveness and efficiency

772. The financial institutions interviewed during on-site visit to BiH demonstrated sufficient awareness of the relevant record keeping requirements and confirmed that records are kept in practice as required by the AML/CFT Law.

773. Although not specifically regulated, the on-site discussions revealed that the business correspondence seem to be kept, at least by banking sector, both in FBiH and RS.

774. The relevant records are made available to FID within at least 8 days from the date of the request. The private sector confirmed that they would forward any information as requested by FID within 8 days.

775. Competent authorities (e.g. FID) did not make negative indications during on-site interviews in connection to possibility to request information and records from liable persons and its availability. Therefore it can be assumed also based on FID practice that the relevant requirements are followed by obligated persons although the effectiveness cannot be fully assessed due to the recent adoption of the AML/CFT Law.

Special Recommendation VII (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

776. Most of the wire transfer requirements were not met at the time of the previous round report:

- No obligation for full originator information to accompany cross-border transfers;
- No indication what information is to accompany an internal wire transfer and no obligation for financial institutions to do so;
- No monitoring of the activities of the Post Office;
- The application of sanctions for non-compliance not clear.

Obtain Originator Information for Wire Transfers (c.VII.1)

777. Articles 31 (Electronic transfer of money), 32 (Data on person ordering electronic transfer) and 33 (Establishing and verifying identity of person ordering electronic transfer) of AML/CFT Law cover to obligation related to the originator of the wire transfers.

778. Article 31 of AML/CFT Law stipulates the obligation for credit and financial institutions, including companies providing the services of electronic funds transfer (hereinafter *providers of payment services*) to obtain accurate and complete information on the payee and include them into a template or message that tracks electronic transfer of funds, sent or received in any currency. Such information shall trace a transfer throughout the payment process.

779. Providers of payment are obliged according to Article 32 paragraph 1 of AML/CFT Law obtain accurate and complete data on the person ordering a transfer and shall include them into a template or message that tracks electronic transfer of funds, sent or received in any currency. Such information shall trace a transfer throughout the payment process, regardless of whether there are intermediaries in the process and regardless of their number.

780. Article 32 paragraph 1 of AML/CFT Law paragraph 2 specifies the detailed list of the identification elements that shall be obtained by providers of payment which include full name, address and account number of the person ordering the electronic transfer. If it is not possible to obtain the data on the address of the person ordering the electronic transfer, the provider of payment services shall, instead obtain personal identification number or other single identification number or place and date of birth of the person ordering the electronic transfer.

781. Article 34 sets exceptions from duty to collect data on person ordering electronic transfer:

"a) When a transfer is made from an account opened with the provider of payment services and when the measures of identifying and tracking the client have already been undertaken pursuant to this Law;

b) When using credit and debit cards in certain cases;

c) Both the person ordering the transfer and the beneficiary of electronic transfer and providers of payment services act on their own behalf and of their own account."

782. In addition, Article 33 of AML/CFT Law establishes requirements with respect to establishing and verifying identity of person ordering electronic transfer.

Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2)

Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3)

783. Criterion SR.VII.2 (cross-border wire transfers) and Criterion SR.VII.3 (domestic wire transfers) provide for what elements of the 'full originator data' are to accompany the payment instruction for the wire transfer.

784. Article 31 of AML/CFT Law stipulates obligation for credit and financial institutions, including providers of payment services to obtain accurate and complete information on the payee and include them into a template or message that tracks electronic transfer of funds, sent or received in any currency. Such information shall trace a transfer throughout the payment process. According to Article 32 paragraph 6 of AML/CFT Law provisions of Article 32 apply regardless of whether an electronic transfer is made within the country of with a foreign country, and regardless of whether it is made by domestic or foreign providers of payment services.

Maintenance of Originator Information (c.VII.4)

785. The obligation for each intermediary and beneficiary financial institution in the payment chain to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer maintain is included in Article 32 of AML/CFT Law as described above.

786. Evaluators are in opinion that the criterion VII.4.1 is not covered by BiH laws.

Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5)

787. There are no requirements under the AML/CFT Law for the beneficiary financial institutions to adopt effective risk based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.

Monitoring of Implementation (c. VII.6)

788. Countries should have measures in place to effectively monitor the compliance of financial institutions with rules and regulations implementing SR.VII. The interviewed financial institutions confirmed that they have not been monitored on wire transfers issues specifically.

Application of Sanctions (c. VII.7: applying c.17.1 – 17.4)

789. Article 83 paragraph 1 subparagraphs c) and bb) stipulate that a legal person referred to in Article 4 of AML/CFT law shall be fined for a minor offence in the amount of BAM 20,000 to 200,000 if the said person fails to obtain data on persons ordering electronic transfers in accordance with Article 32 of AML/CFT Law and/or fails to establish and verify the identity of a person ordering electronic transfer in accordance with Article 33 paragraphs (1) and (2) of the AML/CFT Law.

Additional elements – Elimination of thresholds (c. VII.8 and c. VII.9)

790. There are no thresholds provided by the AML/CFT Law in relation to the wire transfers.

Effectiveness and efficiency

791. Financial institutions met during on-site visit demonstrated a sufficient level of awareness about the wire transfers requirements which seems to be implemented in practice by all FI.

792. The postal offices mostly operate with domestic transactions and follow the identification of the originator of the wire transfer and record keeping requirements. The interviewed officials confirmed that there are procedures in place and workers are trained.

793. However, as described under Recommendation 23, the post offices are not subject to AML/CFT supervision and no sanctions have been applied in practice for non-compliance.

3.5.2 Recommendation and comments

Recommendation 10

794. There should be an obligation to keep records longer if requested by a competent authority in specific cases as required in FATF standards. However, it has to be mentioned that in practice, the minimum of 10 years set by Art. 77 of the AML/CFT Law seem to provide sufficient time frame for the competent authorities to obtain the necessary data in case of an investigation. No instances when this was an impediment were identified during the on-site interviews.

795. AML/CFT Law could stipulate more clearly that obligation to keep records applies regardless of whether the account or business relationship is on-going or has been terminated (criteria 10.1).

796. The BiH authorities are recommended to include in legislation the obligation to keep records of business correspondence.

797. The Council of Ministers of BiH should as soon as possible issue guidelines with regard to the manner in which the identification and monitoring of clients and transactions minimum information (referred to in Article 54 paragraph (1) of AML/CFT LAW) are included in the records of the conducted identification of clients and transactions.

Special Recommendation VII

798. Beneficiary financial institutions should be required to adopt effective risk based procedures for identifying and handling wire transfers that are not accompanied by complete originator information (C. VII.5)

799. The authorities should take measures to ensure that the Post Office is efficiently monitored/supervised on its compliance with the wire transfer requirements (and AML/CFT obligations in general).

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	• Absence of explicit obligation for liable persons to keep records of business correspondence (criteria 10.2) and low awareness of such obligation.
SR.VII	**LC**	• No monitoring of the activities of the Post Office; • No obligation for beneficiary financial institutions to adopt effective risk based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.

Unusual and Suspicious transactions

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

3.6.1 Description and analysis[49]

Recommendation 11 (rated NC in the 3rd round report)

Summary of 2009 factors underlying the rating

800. Recommendation 11 was previously rated Non-Compliant as the following shortcomings were identified:

- No specific obligation to monitor and examine large, unusual or complex transactions for the rest of the sectors beyond the banking and insurance sectors;
- No obligation to examine the background and purpose and to keep a written statement of findings;
- No obligation to make such statements available to competent authorities;
- Lack of awareness and understanding of the obligations.

Special attention to complex, unusual large transactions (c.11.1)

801. The relevant provisions in the new AML/CFT Law can be found in Article 26 which obliges reporting entities to pay particular attention to transactions including complex and unusually high ones as well as those that have no economic or legal grounds and purpose and those that are disproportionate to the client`s profile and usual account operations.

802. According to the FID`s Guidelines in Article 37 Paragraph 1 basically all these transactions under the circumstances mentioned above are also to be considered suspicious transactions and therefore also fall under the reporting requirement of Articles 3, 4 and 38 AML/CFT Law.

803. While other by-laws issued by the entities` bodies supervising financial institutions also cover the topic of unusual and complex transactions the width of further guidance given in this area is rather limited.

Examination of complex and unusual transactions (c.11.2)

804. According to Article 26 Paragraph 2 of the AML/CFT Law, the reporting entity shall examine and keep reports in written form on all unusual and complex transactions (as referred to in the analysis of criterion 11.1) in case these transactions are not considered as suspicious and therefore not reported to the FID.

Record-keeping of finding of examination (c.11.3)

805. The reports on all unusual and complex transactions shall be kept in written form for ten years in cases (in accordance with Article 26 Paragraph 2 AML/CFT law). These reports are at the disposal of the authorities. The same goes for any CDD documents attached to the unusual transaction report.

Recommendation 21 (rated NC in the 3rd round report)

Summary of 2009 factors underlying the rating

806. The rating of the previous round was based on the following findings:

- No specific obligation to terminate or to decline business relationship or to undertake a transaction with legal/natural persons from countries not sufficiently applying AML/CFT measures;

[49] The description of the system for reporting suspicious transactions in s.3.7 is integrally linked with the description of the FIU in s.2.5, and the two texts need to be complementary and not duplicative.

- No specific obligation to monitor and examine such transactions further to the banking and insurance sectors, or to keep a written statement of findings and to make these statements available to the authorities for the whole sectors.

Special attention to countries not sufficiently applying FATF Recommendations (c. 21.1 & 21.1.1)

807. The evaluators were not made aware of any positive legal provision requiring FIs to pay special attention to countries not sufficiently applying FATF Recommendations.

808. Article 9 (3) of AML/CFT Law which stipulate that if the regulations of a foreign country do not allow the implementation of measures and activities on the prevention of ML and TF activities in the scope defined by this Law, the liable person shall immediately inform the FIU accordingly and adopt relevant measures to eliminate the risk of ML/TF activities.

809. For banks it is further provided in Article 6 of the FBiH and RS Decisions for Banks, "*that in the client acceptance policy the banks shall define factors as the country of origin for the client, country of origin of the majority owner, which is the beneficial owner of the client, country of origin of the client, country of origin of the majority owner or the beneficial owner of the client, whether or not the country is on the list of the non-cooperative states and territories issued by the international body for control and prevention of money laundering, on the list of countries listed as offshore zone or non-cooperative countries which are developed and updated by the FID or on the list of countries which the bank considers risky based on its own assessment".* At the same time it must be noted that during the on-sit interviews no such list was provided to the evaluators.

810. For leasing companies this requirement is part of the Article 5 of FBiH and RS Decisions for Leasing Companies stating that the leasing company, in determining the eligibility of a client, has to pay special attention to the client's country of origin. This request for microcredit organizations is part of Article 5 of FBiH and RS Decisions for MCOs. Again at the same time it must be noted that during the on-sit interviews no information or lists were provided to the evaluators which would indicate the countries which do not or insufficiently apply the FATF Recommendations.

811. Guidelines FBiH Insurance Supervisory Agency and Guidelines RS Insurance Agency stipulate that when applying enhanced or simplified identification and monitoring of activities, the obligors will take into account that the Member States of the EU, European Economic Area (EEA) or the FATF, are referred to as the countries that have adopted international standards for the prevention and detection of money laundering and financing of terrorist activities and which are equivalent or more stringent than those applied in BiH. The countries in the previous paragraph shall be considered the countries listed in the Annex to the Rulebook.

812. Rather than provided indications on the countries that do not apply the FATF standards, Art. 85 (4) of the AML/CFT Law stipulates that the Council of Ministers of BiH, upon a proposal by the Ministry of Security of BiH, with previous consultations with the FIU, shall make a list of countries which do apply internationally accepted standards regarding the ML/TF prevention. According to the Article 6 of the Rulebook on the Implementation of the Law on Prevention of Money Laundering and Financing of Terrorist Activities, the list of such countries is stated in the annex of the Rulebook on the Implementation of the Law on Prevention of Money Laundering and Financing of Terrorist Activities.

813. The interviewed financial institutions demonstrated low awareness of on weaknesses in the AML/CFT systems of other countries. Only some banks were able to describe the FATF website as the appropriate source for such information.

Examination of transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FATF Recommendations (c 21.2)

814. There is no information on any obligation for the FI to examine the transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FATF Recommendations.

Ability to apply counter measures with regard to countries not sufficiently applying FATF Recommendations (c 21.3)

815. There is no information on the ability of FI to apply counter measures with regard to countries not sufficiently applying FATF Recommendations.

Effectiveness and efficiency

Recommendation 11

816. The evaluation team was informed on-site by the financial institutions met that there were systems in place able to detect unusual or rather complex transactions. Some financial institutions relied on their own solutions, others relied on systems they have been placed at their disposal by their foreign parent financial institution.

817. However, some of the banks met on-site, showed some lack of awareness when explaining what their respective system would be able to catch. The evaluators were not convinced that some of the systems would indeed be able to catch all unusual and complex transactions that could potentially occur in accordance with the AML/CFT law as well as the by-laws.

818. The fact that the FIU Guidance deems all unusual and complex transactions to be suspicious may have a detrimental effect in that it leaves the financial institutions to be inclined to simply file an STR and refrain from further examining its client or transaction, leaving the FID to actually do their job and possibly filing a lowly substantiated STR.

Recommendation 21

819. In the absence of an enforceable requirement for non-banking financial institutions to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations, the awareness of the non-banking financial sector on the high-risk countries is very limited.

820. The only reference made in relation to high risk countries is related to enhanced due diligence but it is only an indirect requirement which marginally impacts on the meaning of Recommendation 21.

3.6.2 Recommendations and comments

Recommendation 11

821. The authorities should:

- Further explain circumstances and scenarios for unusual and complex transactions in their guidelines and by-laws.
- Consider clarifying Article 38 Paragraph 1of the FIU Guidelines in order to have a clear distinction between unusual and suspicious transactions and to further clarify the grounds of reporting.

Recommendation 21

822. There should be effective measures in place to ensure that financial institutions are advised of concerns about weakness in the AML/CFT systems of other countries.

823. The BiH legal framework should include a general provision concerning the obligation of non-banking financial institutions to pay special attention to business relationships and transactions with persons from or in countries that fail or insufficiently apply FATF Recommendations. The BiH AML/CFT legal framework should include a provision concerning the obligation for entities to examine as far as possible those transactions that have no apparent economic or visible lawful purpose and to make written findings available to assist competent authorities (e.g. supervisors, law enforcement agencies and the FIU) and auditors.

824. The authorities should be legally empowered to apply counter-measures within the meaning of Recommendation 21.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	**LC**	• FID Guidelines declare all unusual and complex transactions to be suspicious, obliging the financial institution to file an STR and therefore potentially lifting the obligation to further examine the transaction or client. **Effectiveness** • Uneven understanding of internal detection mechanisms.
R.21	**PC**	• No enforceable requirement for non-banking financial institutions to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations; • No effective measures in place to ensure that non-banking financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries; • No mechanisms in place that would enable the authorities to apply counter-measures to countries that do not apply or insufficiently apply FATF recommendations; • No requirement to examine, as far as possible, the background and purpose when transactions have no apparent economic or visible lawful purpose, and to make available written findings to assist competent authorities and auditors.

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

3.7.1 Description and analysis[50]

Recommendation 13 (rated LC in the 3rd round report) & Special Recommendation IV (rated LC in the 3rd round report)

Summary of 2009 factors underlying the rating

825. BiH was rated LC in the previous round as the following deficiencies (both technical and effectiveness) were identified:

[50] The description of the system for reporting suspicious transactions in s.3.7 is integrally linked with the description of the FIU in s.2.5, and the two texts need to be complementary and not duplicative.

- Low level of STRs and no STRs were received from non-banking financial institutions (effectiveness issue);
- Conflicting STR reporting requirements could have an impact on the effectiveness of the system of reporting.

Requirement to Make STRs on ML to FIU (c.13.1)

826. Article 4 of the AML/CFT Law defines the categories of reporting entities to which the reporting requirement applies, covering all possible reporting entities in line with the FATF standard.

827. The reporting requirement is mainly provided in Articles 3 and 38 as well as to a certain extent in Art. 53 of the AML/CFT Law. While Article 3 is defining the terms *"transaction"* and *"suspicious transaction"*, Article 38 specifies what shall be reported in a very broad sense. The reports shall include at the minimum all the necessary data and information according to Article 54 Para 1 of the new AML/CFT Law, basically covering all the information the reporting entity is required to hold in order to fulfil CDD requirements stipulated by the law.

828. Article 38 of the same law stipulates the kind of reports that reporting entities are required to submit the FID:

- any attempted or completed suspicious transaction and any suspicious client or person;
- a cash transaction exceeding the equivalent of BAM 30,000;
- connected cash transactions exceeding BAM 30,000.

829. The evaluation team was informed on-site that banks are required to send their number of executed CTRs as well as the total amount, without attaching further details, to the relevant banking supervisory agency every month.

830. In addition, when reporting STRs to the FID reporting entities are required to state the reasons for doing so as well as attach the indicators referring to the suspicion. Reporting entities are required by Article 53 of the AML/CFT Law to keep their own list of indicators they can refer to when reporting in-house. When drafting such a list reporting entities may seek guidance in the sector-specific guidelines that include such lists of possible indicators.

831. Article 39 of law further specifies the deadlines that have to be kept when reporting to the FID. As a rule, in case of suspicious transactions reporting entities are to report immediately after a suspicion arises and prior to carrying out a transaction. Paragraph 2 stipulates certain exceptions for omitting to follow the requirement under Article 38 Para 1 letter a) referring to suspicious transaction in cases when:

- due to the nature of the transaction;
- due to the transaction not being completed;
- or due to other justified reasons.

a liable person is unable to act in accordance with the law it shall inform the FID as soon as possible about these circumstances. Although the three categories of reasons are not very precise, the authorities explained that in some instances where the risk of tipping-off the client would be too large this provision could apply.

832. Interestingly, Paragraph 3 of Article 39 stipulates that CTRs and connected CTRs must be delivered to FID immediately upon completion but no later than three days after carrying it out. In case of STRs however, the obligors are not bound to inform the FID on suspicions in terms of transactions, funds or clients *afterwards* as well. Although Article 39 Paragraph 1 speaks of *"immediately after the suspicion arises"* which itself could in fact cover for instance the obligation to

send STRs where the suspicion has risen after the execution of a transaction. However, reading further on it becomes clear that the moment of suspicion only refers to *"prior to carrying out the transaction"*. Hence, it is not covering instances where a suspicion arises only after entering a client relationship or executing a transaction which in practice usually plays a much more important role from a compliance perspective. On the other hand, the FIU Guidance refers to this issue in its Article 38 Paragraph 1 by clearly including *"any attempted or executed transactions"*. Article 38 Paragraph 1 of the AML/CFT Law also includes "completed suspicious transactions". This ambiguity feeds the issue of potential misunderstanding of the reporting requirement but the evaluators satisfy themselves with the fact that this is covered in the by-laws.

833. According to Article 3 letter a) a *transaction* means *"any type of receiving, giving, keeping, exchanging, transferring, using or other way of handling money or property by liable persons, including cash transactions"*. Hence, Article 3 defines *transactions* very broadly, which can be understood as covering *funds* in the absence of transactions as well.

834. Furthermore, in letter b) of the same Article *suspicious transactions* are defined as *"each transaction for which a liable person or a competent authority assesses that, with regard to the transaction or a person conducting the transaction, there are grounds for suspicion that criminal offences of money laundering or financing terrorist activities have been committed, or that the transaction involves funds derived from illegal activities".* In addition to that in letters c), d), e) and g) cash transactions, connected transactions, property (as in the definition in letter a)) as well as cash are defined respectively. What is more, this definition that effectively provides the basis for the reporting requirement covers a subjective ("…for which a liable person…") as well as an objective test ("…a competent authority assesses…") of suspicion. The evaluators conclude that this mix of tests also contributes to some confusion and misunderstanding among the private sector. This will be analysed in more depth in the effectiveness analysis of Recommendation 13 and Special Recommendation IV.

835. Bearing that in mind, it is of utmost important that the by-laws and guidelines further specify the reporting requirement including specifications on what is covered by Article 4 of the new AML/CFT. This becomes even more important due to the fact – as already mentioned numerous times in other sections of the report – many reporting entities met on-site do not consider the new AML/CFT law to be applicable until the by-laws have been amended accordingly.

836. In that sense, the FIU Guidance that has been issued as well as any other relevant by-laws that have been issued by state and entity level supervisory bodies (i.e. banking agency, insurance agency, the securities commission) do not pay enough attention in terms of clarifying the reporting requirement and that way prevent any possible and unnecessary misunderstanding. As in the 3rd round assessment report, this remains a severe issue. In particular, it remains unclear which by-laws are the primary source of guidance when the reporting requirement is concerned a significant number of reporting entities mentioned that sector specific by-laws would be their guidance document of choice rather than the FIU Guidance.

837. For instance, in the current FIU Guidelines for the Implementation of the AML/CFT requirements Section Six (Article 36 onwards) covers *"other duties of obligors"*. The section starts by the requirement to report cash transactions above the threshold (Article 36) before moving on to the requirement to report suspicious transactions (Article 37) as well as reporting to the FIU (Article 38). Besides Article 37 of the FIU Guidance may also cause some confusion among obligors. In its first paragraph the Article clearly speaks of "transactions" and "execution of transactions" as well as "complex and unusually transactions" in the same context. Hence, following this Article and bearing in mind the importance of the guidelines as by-laws in practice reporting entities would only be required to report transactions. This would again contradict the official standpoint taken by the authorities that *funds* rather than simply *transactions* are covered by the reporting requirement.

838. Additionally, the evaluators are not convinced that the reporting requirement would also cover instances in which a client relationship has not been established yet from a contractual standpoint. For instance, if a potential client entered a bank in order to open a bank account and the bank suspected the potential client of being involved in criminal activity (i.e. ML/TF) there would be no obligation in the AML/CFT law to report to the FID. This is also an indicator that from a reporting requirement perspective only transactions are covered rather than funds.

839. There is an obligation in Article 8 AML/CFT law that covers circumstances in which the reporting entity is obliged to report to the FID if it declines entering a business relationship or executing a transaction for an existing client. However, only the lack of concluding CDD procedures (identity of client, identification of ultimate beneficial owner etc.) would trigger that reporting obligation. Suspicions of criminal activity, funds being proceeds of crime or involvement in ML/TF would not trigger an STR.

840. This standpoint has been confirmed by the authorities after the on-site when cases were presented to the evaluators which led supervisory authorities to order the reporting entities being subjects of regular or irregular on-site visits to file an STR in the aftermath of the supervisory agency`s findings. All these cases that were mentioned involved transactions as such. Hence, the authorities could not manage to convince the evaluation team that the reporting requirement as stipulated in the various by-laws would require reporting entities to file an STR when *funds* rather than simply *transactions* were involved.

Requirement to Make STRs on FT to FIU (c.13.2 & IV.1)

841. The reporting requirement in both the new AML/CFT Law as well as the FIU Guidance both cover reporting of STRs in cases of terrorist financing suspicions or suspicions that funds be linked, related or used for terrorism, terrorist acts or by terrorist organisations. However, in the light of the analysis to criterion 13.1 the evaluation team concludes that not funds but transactions are covered in the by-laws. The by-laws, being a primary source for obligors to effectively implement the provisions from the law are in terms of STR reporting very transaction driven and therefore not in line with criterion 13.2 either. Furthermore, the lists of indicators provided to the private sector by the authorities do not contain indicators in relation to terrorist financing.

No Reporting Threshold for STRs (c. 13.3, c. SR.IV.2)

842. Neither the law nor the by-laws foresee any provisions that would put a threshold on STR reporting. Furthermore, as analysed under criterion 13.1 Article 38 of the AML/CFT Law as well as Article 38 of the FIU Guidance include attempted transactions regardless of their amount.

843. Criterion 13.3 is therefore met.

Making of ML/FT STRs regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2)

844. As tax offences constitute a crime in BiH and the country follows an all-crime approach there are no limits in terms of predicate offences for ML and TF. Therefore, possible involvement of tax matters in STRs does not pose an obstacle for reporting as tax crimes are a predicate offence in the context of Recommendation 13 and SR. IV.

Additional Elements – Reporting of All Criminal Acts (c.13.5)

845. Similar to the outcome of criteria 13.1 the reporting requirement as such does not cover funds but rather transactions. Criterion 13.5 is not met.

Effectiveness and efficiency R.13

846. As indicated in the analysis to Recommendation 13, 16 and Special Recommendation IV the level of reporting by all sectors is still rather low. The representatives of the FID believe that the level of awareness should be higher in comparison to the previous evaluation. However, they also

identified certain observations themselves. First of all, the quality of reports sent by the banking sector has been the highest in the past five years, as they do send relevant information and documentation underlying the potential suspicion. On the other hand, the quality of reporting made by other sector has been identified as rather low and thus their reports often less relevant. It was also explained that some reporting entities have a pattern of defensive reporting. The observation was made that in times when law enforcement authorities would investigate certain sectors or market participants of a specific sector the number of STRs received by that sector in that particular year would skyrocket. This is, according to the FID, also the explanation for the constant jump in STR numbers as can be seen in the statistics.

847. Looking at the mere numbers, the fact that in certain years the number of STRs that have been filed in the aftermath of supervisory action is significantly high further attributes to concerns raised by the evaluation team regarding the overall effectiveness of the reporting system.

Table 18: Number of Suspicious Transaction Reports

Year	2011[51]	2012[52]	2013[53]	2014[54]
Reporting entity	**TOTAL[55] STRs**	**TOTAL STRs**	**TOTAL STRs**	**TOTAL STRs**
Banks	152	69	114	58
Insurance sector				1
Securities sector	7		5	1
Investment firms				
Currency exchange				
Leasing	8	1	44	21
Post offices	11	23	16	6
Micro Credit	6		1	12
Casinos				
Real estate agents				
Dealers in precious metals/stones			8	
Lawyers				
Notaries			5	15
Accountants				
Auditors				
TCSPS				

[51] In 2011, 47 reports (app. 25%) of all STRs have been reported due to supervisory actions taken against these entities. In this year, all 47 reports were enforced by the respective Banking Agency. Therefore, 47 out of 152 reports by banks were filed due to supervisory actions (app. 31%).

[52] In 2012, 21 reports (app. 23%) of all STRs have been reported due to supervisory actions taken against these entities. In this year, all 21 reports were enforced by the respective Banking Agency. Therefore, 21 out of 69 reports by banks were filed due to supervisory actions (app. 30%).

[53] In 2013, 66 reports (app. 34%) of all STRs have been reported due to supervisory actions taken against these entities. In this year, 51 reports were enforced by the respective Banking Agency. Therefore, 51 out of 114 reports by banks were filed due to supervisory actions (app. 45%). The remaining 15 STRs were enforced by the same agencies in relation to leasing companies. Therefore, 15 out 44 STRs from leasing companies were filed due to supervisory actions (app. 34%).

[54] In 2014, 12 reports (app. 10%) of all STRs have been reported due to supervisory actions taken against these entities. In this year, all 12 reports were enforced by the respective supervisory agency in charge for micro credit institutions. Therefore, all 12 STRs by micro credit institutions were filed due to supervisory actions (100%).

[55] The total no. of STRs has always related to ML cases exclusively. No attempted transactions have been reported in the period under review.

Authorities				1
TOTAL	**184**	**93**	**193**	**115**

Table 19: Number of Currency Transaction Reports

Reporting entity	2010			2011			2012			2013			2014 / I – IX		
	TOTAL CTRs	Domestic currency	Foreign currency	TOTAL CTRs	Domestic currency	Foreign currency	TOTAL CTRs	Domestic currency	Foreign currency	TOTAL CTRs	Domestic currency	Foreign currency	TOTAL CTRs	Domestic currency	Foreign currency
FINANCIAL INSTITUTIONS															
Banks	292, 234	13.6 billion		307.2 04	11 billion		314.5 65	14.8 billion		346. 995	15 billion		278.1 24	11.7 billion	
Insurance sector	7	310.140,63		1	31.703,50		0	0		0	0		5	247.852,36	
Securities sector	1381	108.2 million		1424	3.4 billion		6.193	533 million		1.49 0	598 million		1.571	702 million	
Post office	250	8.5 million		242	8.2 million		233	8.9 million		115	4.7 million		112	4.4 million	
Currency exchange	0	0		0	0		0	0		0	0		2	73.974,91	
Microcredit organization	3	1.028,00		0	0		0	0		0	0		41	1.3 million	
Leasing company	0	0		0	0		0	0		0	0		17	231.534,79	
Fast money transfer (Western Union)	604	1.2 million		97	713.999,74		117	912.081,03		157	742.597,17		1.038	540.898,43	
DNFBPs															
Casinos and lottery games	80	1.1 million		57	1.051 million		46	588.673,04		127	3.5 million		30	347.443,39	
Trading with vehicles	36	1.6 million		44	2.8 million		60	3.2 million		74	3.7 million		40	2.3 million	
Notaries	3158	383.3 million		2.745	312.2 million		3,758	468.5 million		3.34 2	438 million		2.479	373 million	
Accountants	1	35.431,50		0	0		0	0		0	0		0	0	
Privatization Agencies	8	5.4 million		5	1.3 million		2	361.000,00		33	1 million		8	2.1 million	
TOTAL	297, 762	14.1 million		311,8 19	14.7 million		324,9 74	15.9 million		352. 333	16.1 million		283.4 67	12.8 million	

848. Overall, the FID concluded that most STRs as such are not decisive in triggering in-depth analysis or even dissemination.

849. Furthermore, the FID explained that in a lot of situations the reporting entities would not really differentiate between simply unusual transactions and suspicious ones. This might also be related to the lack of differentiation between the two in the FID Guidance document, as indicated in the analysis of Recommendation 13 and Special Recommendation IV.

850. In addition, the authorities raised concerns about the stance of compliance staff within banks. In their opinion the compliance officers in charge of reporting do not have a strong role within the institutions and therefore lack appreciation for their endeavours. In the view of the authorities a

greater understanding and appreciation of the role of the compliance departments in financial institutions would most definitely lead to an increase in STR reporting.

851. One major effectiveness issue is the severe lack of feedback provided by the FID to the private sector. This has been an issue the reporting entities met on-site have raised throughout all the meetings. Although the FID organises one training event per year on average for all sectors, which reporting entities are free to attend, anonymised real-life cases, trends or typologies are not discussed there, according to the reporting entities met on-site. More importantly, when reporting entities report a STR to the FID they do not hear back from them in order to understand whether or not their STR has been useful or even disseminated to the prosecutorial authorities. Subsequently, the absence of efforts made by the FID in order to inform reporting entities on the quality of their reports actually contributes to their lack of awareness when it comes to STR reporting.

852. The evaluation team met with a large number of financial institutions as well as DNFBPs during the on-site and discussed reporting related issues with all private sector interviewees.

853. Generally and most importantly, the evaluators concluded that STR reporting seriously lacks quantity and quality due to several reasons. First of all, there is a clear over-reliance on CTR reporting which may contribute to the underreporting of STRs overall. CTRs, although required to be submitted to the FID within three days after their execution and BiH being a predominantly cash-based economy, are not perceived as a burden by the private sector.[56]

854. Although the majority of reporting entities met on-site were fully aware of their reporting requirements the evaluators were not fully convinced that the STR regime is followed effectively. This might be due to the fact that the reporting entities met on-site were not fully aware of specific ML/TF sector risks.

855. Despite the majority of reporting entities confirming on-site that they have continuously received training on AML/CTF by the FID, as well as by supervisory bodies, the evaluators were not convinced that these trainings have had a major effect overall with regard to STR reporting.

856. As discussed in more detail in Recommendation 26, the CTR reporting requirement as such would not be problematic as long as the FIU had the human and technical capacity to analyse a substantial amount of CTRs and be able to detect suspicious CTRs in the process. However, given that and combined with low STR reporting the preventative system appears rather ineffective.

857. The absolute reliance on the list of indicators that are provided by authorities might lead to a lower number of STRs submitted by reporting entities than one would anticipate. This becomes even more relevant due to the mix between subjective and objective tests for suspicion. Reporting under the premise of a subjective test is barely ever the case as usually when reports are filed the entity only points to the indicators that they see matching the case. The FID also confirmed on-site that most of the reports simply include some indicators which, after looked at by the FIU`s analysts actually would not raise any suspicion for ML or TF. Hence, in most cases the reports filed to the FID are of low quality.

858. The evaluation team was also informed on-site that there would be periods in which some sectors would suddenly file more STRs. The representative met on-site explained that this might actually be a result of defensive reporting.

859. There is a serious concern with regard to STR reporting on suspicion of TF. The by-laws issued by the supervisory authorities do not contain any TF related indicators although the country does face TF risks.

[56] Only one financial institution complained about that and suggested that the deadline be prolonged to consolidated CTR reporting once a week or once a month

860. Finally, as mentioned in the technical analysis to this Recommendation, the reference to transactions as such, rather than to funds in the by-laws, which are of vital significance in implementing the AML/CFT Law, constitute a significant deficiency in the overall system. This was clearly demonstrated in the private sector meeting with the financial institutions on-site. All of them confirmed that they would not submit an STR to the FID if no transactions were involved. Several scenarios were discussed with the interviewees and none of the representatives of financial institutions felt obliged by the law to submit an STR in the absence of a transaction, i.e. when a financial institution learns that one of their clients might be involved in criminal activities without him seeking to execute a transaction.

861. The *Copic case* serves as an example here. In this case, the perpetrator, who was later convicted for money laundering and other offences, had personal bank accounts in BiH and held shares with companies formed in BiH. Even when it was widely known that law enforcement authorities were investigating this person the banks with which assets were held never felt obliged to file an STR with the FID. Overall, no STRs have been made in relation to the *Copic case.*

862. Combining these factors, the evaluators have reached the conclusion that not enough effort has been made to improve the reporting regime and the effectiveness of Recommendation 13 and Special Recommendation IV since the 3rd round.

Recommendation 25 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

863. BiH was rated PC in the last evaluation report as the following shortcomings were identified:

- There was no mandatory obligation to provide general feedback;
- Lack of provision of meaningful feedback;
- 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;
- Not all sectors developed indicators for suspicious transactions;
- No specific guidance issued to all FIs sectors and DNFBPs other than the implementing guidance under the Book of Rules;
- No general and specific feedback to DNFBPs;
- Impact of the above on the effectiveness of the system.

Feedback to financial institutions on STRs (c.25.2)

864. Although the requirements under Rec. 25 are covered by Article 63 of the new AML Law this provision has not been implemented in practice.

865. Feedback remains an issue in that the obligors reported a low level of feedback from SIPA on STRs submitted.

866. Evaluators were advised that trends and typologies were included as part of the training provided by SIPA. Statistics are provided by SIPA as part of the training every year to reporting entities.

867. It appears that SIPA had not yet begun to fully implement Article 63 of the AML/CFT Law.

3.7.2 Recommendations and comments

Recommendation 13 and Special Recommendation IV

868. The authorities should:

- Amend the by-laws as soon as possible and clearly make reference to funds instead of transactions.
- Organize training seminars for all sectors and raise awareness in relation to the newly amended by-laws.
- Publish targeted trends & typology reports that demonstrate how the different financial sectors can be misused for ML/TF in practice.
- Update the list of sector-specific indicators in cooperation with the private sector by organizing workshops and training events that would cover possible trends, typologies and common practices in ML/TF concerning their particular sector
- Amend the general list of indicators by adding indicators for TF and pay particular attention to raising awareness in this field.
- Provide the private sector with periodic and continuous feedback on the quality and usefulness of STRs and consider implementing targeted sectoral training drawing on examples from the FIU's experience of STRs of insufficient quality.
- Look into cases in which STRs have only been filed in the aftermath of supervisory action and should have been filed earlier. Subsequently, address the issue of late reporting with the concerned sectors and monitor future reporting behaviour.

Recommendation 25/c.25.2 [Financial institutions and DNFBPs]

869. SIPA has regular contact with reporting entities and could consider offering feedback in an informal way in order to enhance the level of reporting as well as providing statistics.

870. Statistics should be used to identify areas of vulnerability, trends and typologies which could then be fed back to industry.

3.7.3 Compliance with Recommendations 13, 14, 19, 25 and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**PC**	• By-laws do not cover funds but rather transactions. **Effectiveness** • Large amount of STRs are only reported in the aftermath of supervisory action; • Defensive reporting undermines the quality of STRs and reduces their actual number even further; • Overreliance on CTR reporting in practice leads to disregard of STR reporting. • Subjective test of suspicion is rarely applied in practice, leading to overreliance on list of indicators provided by the authorities.
R.25	**PC**	• Provisions of the new AML/CFT Law have not been fully

		implemented in practice by the financial and DNFBP sectors.
SR.IV	**PC**	• By-laws do not cover funds but rather transactions. **Effectiveness** • Lack of STR reporting in relation to TF although high risk of terrorism in the context of BiH; • Lack of specific indicators in by-laws contributes to lack of awareness in terms of TF issues among private sector, despite high vulnerability to terrorism.

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 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

871. BiH was rated PC during the 3rd MER based on the following reasons:

- Exemptions to small obliged entities (and possibly natural persons) from appointing a compliance officer and applying internal controls.
- Lack of industry training.
- No adequate procedures for screening at recruitment stage.
- Effectiveness reasons.

Internal AML/CFT procedures, policies and controls (c.15.1)

872. Pursuant to Article 7, para. 2 of the New AML/CFT Law, the liable persons shall define the procedures for implementing measures for identification and tracking of their clients through internal regulations.

873. Subsequently, the main legal basis related to the AML/CFT procedures, policies and controls is given in Chapter V of the AML/CFT Law.

874. Article 40 is defining that the liable persons shall appoint authorised person with main responsibilities to deliver the information to the FID as well as in order to carry out other duties in accordance with the provisions of the AML/CFT Law. It is specifically mentioned that in case of a liable persons with four or less employees, if no authorised person is appointed, the authorised person shall be a legal representative or another person managing the liable person's affairs, or the responsible person of the legal person under relevant legislation. However, for entities with more than four employees there is no direct requirement for the authorised person to be at managerial position which is the requirement of criterion 15.1.1.

875. According to the secondary legislation namely Articles 36 of the Decisions on Minimum Standards for Banking Activities in prevention of ML and TF and in Articles 28 of the Decisions on MCOs and Leasing companies of RS and FBiH, there are specific requirements for the authorized persons to be part of the management of the respective institutions. However, those requirements do not cover the rest of the financial sector.

876. In article 42, the AML/CFT Law obliges the authorized persons to take part in the preparation of internal provisions pertaining to prevention and detection of ML/TF, and to take part in drafting of the guidelines to implement the control referring to prevention of the afore-mentioned activities.

877. Additional obligations are provided, in the same article, to the authorized person:

- In coordination of the activities of the liable person in the area of detection and prevention of ML/TF;
- To take part in the establishment and development of the information support relating to the activities of the liable person pertaining to detection and prevention of ML/TF;
- To make proposals for the management or other administrative bodies of the liable person in the aim to improve the system of the liable person for detection and prevention of ML/TF.

878. Subsequently, Article 47 of the AML/CFT Law is creating an obligation for the liable persons in cooperation with the FID and other supervising bodies, to draft a list of indicators for identification of clients and transactions in relation to which there are grounds for suspicion of money laundering and funding terrorist activities, and to deliver it to the FID within three months from the date of this Law entering into force.

879. Other requirements are given in the Decisions on Banks, Leasing Companies and MCOs of the FBiH and RS.

880. Articles 31 of the two Decisions on Banks are obliging the banks in the FBiH and RS to have policies on ML/TF risk management. These policies should include the development and implementation of clear and precise procedures for reporting to the authorized institutions about suspicious transactions of the clients.

881. During the on-site interviews the evaluators were informed by representatives of the banks that there is no need to change their internal programs after the adoption of the new AML/CFT Law as they are already in compliance with its' requirements and it doesn't change much the basics of the AML/CFT regime.

882. Numbers of additional requirements are given to the banks in the following Articles 32-35 of the Decisions.

883. The onus for the adoption of effective program lays to the Supervisory Board of the bank. It also shall ensure that bank is implementing adequate control procedures and that the policies and procedures, as well as their composite part, shall be fully implemented in practice.

884. The purpose is the bank's policies and procedures to be effective and to include regular procedures for adequate and successful supervision by the management board, internal control system, internal audit, and delegation of duties, adequate training of employees.

885. Similar legal provisions are given with Articles 25-27 of the Decisions of Leasing Companies in the FBiH and RS and of the Decisions of MCOs in the FBiH and RS.

886. Secondary legislation regulating the activities of the legal entities in the securities market and insurance sector is also providing with requirements in relation to the internal procedures, policies and controls.

887. Article 4 of Chapter II of the Guidelines on the Implementation of the Law on Prevention of ML/TF Activities for Obligors in Responsibilities of Insurance Supervisory Agency of the FBiH (approved in 2013) and the same Guidelines for RS (also adopted in 2013) requires the obligors to adopt effective internal programs that will determine the actions of checking the client, risk assessment, recognition of clients and transactions for which there are reasons to suspicion on ML/TF activities.

888. The policies and procedures prescribed by internal program in respect of risk management shall include: admission procedures and practices with the client, preparation of risk assessment procedures, procedures for recognizing and reporting on suspicious transactions, employee responsibility for the implementation of measures to detect and prevent ML/TF activities.

889. According to Article 4 of Chapter III of the Guidelines of the Law on Prevention of ML/TF Activity for Customers under the jurisdiction of Securities Commission of FBiH (adopted in 2010) and the same document for RS (also adopted in 2010), all customers shall make an analysis of the risk of ML/TF activities.

Compliance Management Arrangements (c.15.2)

890. Pursuant to Article 43, para. 1 of the new AML/CFT Law, the liable person shall provide the authorised person with:

- Unlimited access to data, information and documents required to perform the latter's duties;
- Adequate staffing, material, IT and other working conditions;
- Adequate spatial and technical capacities ensuring an adequate degree of protection of confidential data the authorise person has access to;
- Substitute during a leave of absence;
- Protection in terms of the prohibition of disclosing information on the above person to unauthorised persons, as well as protection from other actions that may interfere with smooth performance of the above person's duties.

Independent Audit Function (c.15.2)

891. According to Article 46 of the new AML/CFT Law, all liable persons shall ensure a regular internal control and auditing of the duties conducted in prevention and detection of money laundering and funding of terrorist activities.

892. This auditing activity shall include an evaluation of adequacy of the policies and procedures of the liable person and training of the authorised and responsible persons from the standpoint of the standards defining the prevention of money laundering and funding of terrorist activities.

893. However, the law does not require this auditing process to be performed independently, neither to include sample testing, as described in criterion 15.2.

894. Articles 37-40 of the two Decisions on Banks of the FBiH and RS are additionally defining some responsibilities for the internal and external audit, including requirement for the internal audit to review independently the AML/CFT compliance of the banking operations. In these activities the internal audit shall use compliance tests to check if there is an adequate sample of customers, accounts and transactions, as well as to test the correctness of reporting of irregular, uncommon and suspicious transactions defined in the Law and other regulations.

895. Moreover, the internal audit function in banks should represent a full independent evaluation of risk management and performance of internal control systems in the banks. Internal audit is required to periodically report the Audit Board and/or Supervisory Board of the bank on its findings and evaluations based on the law.

896. Independent external firms should be also appointed to perform audit of the financial statements of the banks, as well as to evaluate the implementation of the program, policies and procedures, internal control systems and performance of internal audit in the banks and whether bank's operations are in compliance with requirements related to prevention of money laundering and terrorism financing, by using testing techniques.

897. Similar requirements are introduced for the leasing services providers in Articles 29-33 of the Decisions on leasing services providers of the FBiH and RS, as well as in the same Articles of the Decisions related to MCOs.

898. The secondary AML/CFT legislation in relation to the securities sector (in Chapter X, Article 2) in the FBiH and RS is also requiring the establishment of internal control and audit, which shall include assessment of the adequacy of policies and procedures of the reporting entity and training of authorized and responsible persons in terms of standards which defined the prevention of money laundering and financing of terrorist activities. Nonetheless, there are no requirements for independence of this audit as well as for usage of sample testing in its activities.

899. The requirements for the insurance sector introduced by the secondary AML/CFT legislation of the FBiH and RS are similar as those described above (for the securities market). In addition (in Article 8 for RS and in Chapter III for the FBiH), there is legally prescribed obligation for the audit and internal control to be independent, but not to use sample testing in its activities.

900. There was no information provided on the situation in BD of BiH.

Employee Training (c.15.3)

901. One of the obligations of the authorised persons pursuant to Article 42, para 2 of the AML/CFT Law is to take part in preparation of a professional education and training program for the employees in relation to prevention and detection of ML/TF.

902. Moreover, all liable persons are obliged under Article 43 of the AML/CFT Law to provide the authorised person with continuous professional training. This is how the authorised persons shall achieve high-level of professional standards.

903. According to the Decisions on Banks of the FBiH and RS (in Article 38 of the two documents), important part of the internal auditing reports is the evaluation of adequacy of bank staff training in the AML/CFT area. This is another legal precondition for the presence of highly trained employees.

904. Similar texts are introduced in the secondary legislation governing the AML/CFT activities of the legal entities in the securities and insurance sectors, as well as for leasing companies and MCOs.

905. In the AML/CFT Guidelines for the securities sector (in all Entities) it is prescribed as especially important that all employees are familiar with the internal procedures, to deal with them and use them in their daily activities. Internal procedures should be also subject to regular professional education, training and development of employees.

Employee screening (c.15.4)

906. Article 44 of the new AML/CFT Law stipulates that all liable persons shall define a procedure ensuring that, while concluding an employment contract for a position to which provisions of this Law and regulations arising therefrom apply, ensuring that a candidate for such a position is checked in terms of sentences for criminal offences resulting in proceeds from crime or criminal offences related to terrorism. However, the evaluation team is of the opinion that this does not fully cover the requirements of criterion 15.4 as no ethical and professional expertise is included.

907. In addition, the two Decisions on Banks in the FBiH and RS (Article 2), prescribe that the banks are required to ensure that high ethical and professional standards exist with their employees and to provide for efficient prevention of any possibilities for the bank to be, consciously or unconsciously, misused by any criminal elements, which includes prevention, detection and reporting of authorities on criminal actions and frauds, that is reporting the suspicious information and activities.

908. The Decisions on Leasing Companies and the Decisions on MCOs of the FBiH and RS (in their Article 2) stipulates that the leasing companies and MCOs shall ensure high-ethical and professional standards and integrity of all responsible employees in implementing the AML/CFT requirements

and efficient prevention of possibilities for a leasing company/MCO to be misused by means of criminal elements which implies the prevention, detection and reporting of authorized institutions on criminal activities or frauds, i.e. prescribed or suspicious information and activities.

909. Furthermore, the secondary AML/CFT legislation for the insurance sector in its Chapter II for the FBiH and Article 7 for RS, stipulates that the recruitment of new employees which will be performing work on the prevention and detection of money laundering and financing of terrorist activities, the obligor should, having regard to the recommendation 15 of the FATF, apply *"screening procedures"* of observation, to ensure high standards for new hiring.

910. No such requirements for the securities sector.

911. No information on the situation in BD of BiH was provided to the evaluation team.

Additional element (c.15.5)

912. Article 43, para. 2 of the new AML/CFT Law prescribe that the internal organisational units, including the highest-ranking management of the liable person, shall provide the authorised person with assistance and support in performing their duties and shall regularly inform the above person on facts that are or may be related to money laundering or financing terrorist activities. The liable person shall define the manner of cooperation between the authorised person and other organisational units.

913. According to the interviewed financial institutions the authorised persons are able to communicate on practice directly with the highest-ranking management.

Effectiveness and efficiency

914. All the interviewed financial institutions met on-site confirmed that they have internal procedures and policies. Some of them were established based on the group-level standards. According to the interviewed persons, if there are differences between the parent company standards and the local ones, the local ones should prevail but no opinion was expressed should be the higher standard.

915. Other financial institutions were of the opinion that if they are part of an international group, the internal procedures shall be formed as following: the theoretical part should be taken by the local legal system and the practical from the parent company.

916. The evaluators were also informed that in every on-site AML/CFT inspection, the internal procedures are required and analysed. However, according to the representatives from the Banking Agency of RS, usually those programs are not in-line with the law and other AML/CFT provisions.

917. One major problem identified in relation of the effectiveness of the internal procedures is that lack of feedback from the FID on the identification of suspicious transactions/clients, which leaves the reporting entities unclear if their reporting is well targeted or not.

918. It was confirmed on-site that the auditors do have access to all databases and premises used by the liable person and can prescribe actions to be taken in the audit report, which should be fulfilled by any department within the structure of the financial institution. Moreover, the practical completion of the prescribed activities should be monitored by the Supervisory board.

919. The evaluators were also informed that one of the main functions of the internal audit is to monitor the implementation of the written warnings given after the on-site inspections of the supervisory authorities.

920. Representatives of one of the interviewed banks mentioned that comprehensive internal audit (with AML/CFT element) is performed once a year and every four months some specific checks are made some may also be related to AML/CFT issues. All results are presented to and approved by the Supervisory board.

921. However, the authorities mentioned that during their supervisory activities, especially related to the banking sector, one of the main irregularities found is related to the internal and external audit, in the sense that they usually do not perform sufficient assessment and do not establish all the irregularities during their auditing activities.

922. In relation to trainings of their own employees, most of the financial institutions mention that they are having specialized AML/CFT trainings at least once a year. No specific approach is established in relation to the new employees.

Recommendation 22 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

923. BiH was rated PC during the 3rd MER due to the following reasons:

- The requirement for parts of the financial sector other than banks to apply AML/CFT measures to their establishments abroad introduced recently and hence effectiveness cannot be measured.
- No requirement to apply the higher standard where standards differ.
- No obligation for financial institutions to inform home supervisor when a foreign branch or subsidiary is unable to apply standards.

Consistency of the AML/CFT measures with home country requirements and the FATF recommendations (c.22.1)

924. Article 9 of the new AML/CFT Law prescribes the main legal requirements in relation to the foreign branches and subsidiaries of the financial institutions of BiH. According to it, all liable persons shall fully apply the provisions of the AML/CFT Law in their subsidiaries consistent with home country requirements, to the extent possible under the relevant laws and regulation of the given country.

925. Pursuant to para. 2 of the same Article, in case there is a difference in the minimum AML/CFT requirements defined by the AML/CFT Law of BiH and by the legislation of the host country, the branch office, subsidiary or other organisational unit of the liable person shall apply either the Law of BiH or the laws and regulations of the host country. It shall depend on which set of rules ensures the higher AML/CFT standards to the extent possible under the laws and regulations of the given country.

926. Subsequently, the Law requires that all liable persons "*shall implement intensified measures of identification and tracking in subsidiaries and other organizational units abroad, particularly in countries which do not apply internationally accepted standards in the area of prevention of ML/TF activities, or which apply the standards to an insufficient extent, as much as allowed by the respective country legislation*."

927. In addition, the secondary legislation is also regulating the matter. Some of the provisions of the secondary legislation are duplicating the Law (Article 2 of the Decisions on Banks, the Decisions on Leasing Companies and on MCOs of the FBiH and RS; Article 5 of the Guidance for the Insurance sector in RS and Chapter 5 of the Guidance for the Insurance Sector in FBiH).

Requirement to inform the home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures (c.22.2)

928. Similarly to the described above, the AML/CFT Law is giving the main legal basis for this criterion. Article 9, para. 3 of the AML/CFT Law requires that if the regulations of a foreign country do not allow the implementation of AML/CFT measures and activities as defined by AML/CFT Law of BiH, the liable person shall immediately inform the FID accordingly and adopt relevant measures to eliminate the respective risks.

929. The above mentioned articles of the secondary legislation are also applicable for Criterion 22.2.

Additional element (c.22.3)

930. There is no clear provision that financial groups should apply consistent CDD measures at the group level.

Effectiveness and efficiency

931. The evaluators were informed that the financial institutions of BiH do not have their branch offices, subsidiaries or other organisational units abroad.

3.8.2 Recommendation and comments

Recommendation 15

932. The authorities shall introduce specific legal requirement that the AML/CFT authorised person of financial institutions (different than banks, MCOs and leasing companies) with more than four employees should be appointed at management position.

933. The legislation on securities should provide that the internal auditing should be independent.

934. The authorities are recommended to introduce sample testing abilities in the work of the audit of the securities and insurance companies.

935. It is also strongly recommended that all the requirements of criterions 15.2 and 15.4 to be introduced for BD of BiH.

Recommendation 22

936. A requirement should be introduced that financial institutions branches and subsidiaries in host countries should be required to notify the Banking Agencies of FBiH and RS as competent supervisory authorities if the regulations of a foreign country do not allow the implementation of AML/CFT measures.

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**PC**	• No requirement for an authorised person of financial institution (different than banks, MCOs and leasing companies) with more than four employees to be appointed at management position; • No independence requirements for the internal auditing of the securities companies; • No sample testing abilities in the work of the audit of the securities and insurance companies; • No information on the application of criterions 15.2 and 15.4 for financial institutions registered in BD of BiH; • No employees screening procedures in the securities sector. **Effectiveness** • Concerns related to the effectiveness of the internal and external audit; • Concerns related to the internal procedures quality.

R.22	**LC**	• There is no requirement to notify the Banking Agencies of FBiH and RS as primary supervisory authorities if the regulations of a foreign country do not allow the implementation of AML/CFT measures.

Regulation, supervision, guidance, monitoring and sanctions

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

3.9.1 Description and analysis

Authorities/SROs roles and duties & Structure and resources

937. No substantial changes in the supervisory system of the main financial institutions occurred since the 3rd round of evaluations. The banking sector continues to be supervised by the respective Banking Agencies of the FBiH and RS, the insurance sector – by the Insurance Agencies of the FBiH and RS, and the securities market – by the Security Commissions of the FBiH, RS and BD.

938. Chapter IX of the AML/CFT Law is specifically addressing the supervisory activities in relation to AML/CFT issues.

939. There are no specific legal provisions concerning the banking and insurance sectors in BD and evaluation team was informed during the on-site visit that there are no banks or insurance companies licensed in this entity. The branches operating on its territory are subject to supervision from the respective Banking Agency from RS or the FBiH, depending on the geographical location of the licensed headquarter. The securities activities in the District are subject to supervision by the independent Security Commission of BD.

940. The same principle of the geographical location of headquarter is valid for the supervisory activities over the territory of BiH. The financial institution licenced on the territory of one of the Entities is subject to supervision by the competent authority of the entity of registration, including the branches opened on the territory of the other entity.

941. As a novelty, the new AML/CFT Law gives supervisory responsibilities to the respective FBiH and RS Ministries of Finance and the BD Finance Directorate, in relation to the money and value transfers. If not undertaken by banks, the same bodies are responsible for the supervision of: issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money); financial guarantees and commitments; individual and collective portfolio management; safekeeping and administration of cash or liquid securities on behalf of other persons; and otherwise investing, administering or managing funds or money on behalf of other persons.

942. The bodies with vested responsibility for supervising AML/CFT compliance in the financial sector are defined in Art. 80, para. 1 of the AML/CFT Law by cross-referring Art. 4 and attributing the specific supervisors to specific FI.

943. Art. 1, letter c) of above-mentioned law is giving the general legal framework for the supervisory activities over the reporting entities.

944. The division of the supervisory responsibilities in relation to the financial activities in BiH is emphasised in the table below.

TABLE 20: Supervision over the FIs

Financial Institutions		
Type of business	**Supervisor**	**No. of Registered Institutions**
1. Acceptance of deposits and other repayable funds from the public	FBIH Banking Agency RS Banking Agency	10 in RS and 17 in FBiH
2. Lending	FBIH Banking Agency RS Banking Agency	N/A
3. Financial leasing	FBIH Banking Agency RS Banking Agency	1 in RS and 6 in FBiH
4. The transfer of money or value	The competent entity Ministries of Finance, or the BD Finance Directorate	N/A
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	The competent entity Ministries of Finance, or the BD Finance Directorate	N/A
6. Financial guarantees and commitments	The competent entity Ministries of Finance, or the BD Finance Directorate	N/A
7. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities (e) commodity futures trading	FBiH Securities Commission RS Securities Commission BD Securities Commission	1 in RS and 1 in FBiH
8. Participation in securities issues and the provision of financial services related to such issues	FBiH Securities Commission RS Securities Commission BD Securities Commission	6 in RS
9. Individual and collective portfolio management	The competent entity Ministries of Finance, or the BD Finance Directorate	N/A

10. Safekeeping and administration of cash or liquid securities on behalf of other persons	The competent entity Ministries of Finance, or the BD Finance Directorate	N/A
11. Otherwise investing, administering or managing funds or money on behalf of other persons	The competent entity Ministries of Finance, or the BD Finance Directorate	N/A
12. Underwriting and placement of life insurance and other investment related insurance	FBiH Insurance Supervisory Agency RS Insurance Supervisory Agency	3 in RS and 8 in the FBiH
13. Money and currency changing	FBIH Banking Agency RS Banking Agency	N/A

Recommendation 23 (23.1, 23.2) (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

945. BiH was rated PC in the 3rd round MER as the following shortcomings have been identified:

- No prohibition for criminals and their associates from holding a significant or controlling share in securities market intermediaries in FBiH and in BD;
- No requirement for a clean criminal record of the managers of market intermediaries in BD;
- No requirements for professional qualifications and expertise of directors and senior management of investment funds;
- Lack of licensing/registration procedures for 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;
- No effective monitoring of the activities of the persons engaged in the provision of money transfer and exchange services;
- Lack of efficient, sufficiently frequent, risk-based supervision of financial institutions.

Regulation and Supervision of Financial Institutions (c. 23.1)

Banking, MCO, leasing and currency exchanging

946. Art. 4 of the Law on the Banking Agency of the FBiH is prescribing that the Banking Agency of FBiH shall supervise and evaluate the compliance of banks, micro-credit organizations and leasing companies with the legal requirements, including for AML/CFT purposes.

947. According to art. 69 of the Law on Banks in the FBiH, the Regulations adopted by the Banking Agency pursuant to the Law and the implementation of its legally prescribed authorities shall be based on the basic principles for effective bank supervision issued by the Basel Committee for Bank Supervision.

948. Arts. 67-70 of the Law on Leasing in the FBiH are prescribing the general supervisory obligations of the Banking Agency.

949. The supervisory functions of the Banking Agency of RS are prescribed in the Law on the Banking Agency of RS. The Agency shall supervise and undertake necessary activities regarding anti-money laundering and terrorism financing related to banks, microcredit organizations, saving-credit organizations and other financial organizations, all in cooperation with the competent institutions and in accordance with regulations governing this field. Letter j) of Art. 5 is stipulating that the Agency shall adopt acts and undertake actions in order to supervise the implementation of regulations governing AML/CFT field and undertake other activities and adequate measures within the scope of its authority.

950. Art. 105a of the Law on Banks in RS is also prescribing the general on-site and off-site supervisory powers of the Banking Agency of RS.

Securities

951. There are no other major changes in the responsibilities of the Securities Commissions (of FBiH, RS and BD) since the 3rd round of evaluations. Their main competences are legally established in Article 12 of the Law on Securities Commission of FBiH and Article 260 of the Law on Securities Market of RS. The Commissions supervise the application of the laws and other regulations on the issuance and trading of securities and are entitled to request information and documents from all legal and natural persons that based on its judgment are necessary for the carrying out of supervision. According to Art. 48 of the Law on Securities in BD the Commission shall determine the rules and procedures for the supervision of business performance of authorized individuals, for the issuance and revocation of licenses and authorizations, as well as undertaking of other necessary steps for the protection of investors and routine operation of the securities market and shall give consent to the appointment of directors of legal persons. Moreover, according to the following Article the Commission shall, at least twice a year, carry out supervision over the business operations of legal and natural persons referred to in Article 48 of this Law.

952. Art. 2 of the Law of Securities Market of the FBiH and of the Law of the Securities Market of RS are legally defining the main terms related to securities and their official trade.

Insurances

953. The main supervisory activities in relation to insurance companies are regulated in Art.(s) 5-16 of the Law on Insurance of FBiH and Art.(s) 5-7 of the Law on Insurance Companies of RS. The Agencies have regulatory and supervisory functions and should protect the interests of the insured persons as well as the welfare of the insurance market. One of the regulatory objectives is to supervise the application of the Law and bylaws in insurance, voluntary capitalized pension insurance, and other regulations.

Postal financial services

954. No information has been provided by the authorities.

Designation of Competent Authority (c. 23.2)

Banking, MCO, leasing and currency exchanging

955. According to Art. 80 of the AML/CFT Law, the two banking agencies (the FBiH Banking Agency and RS Banking Agency) are responsible for the supervision of all banks (credit institution) that are engaged in the business of receiving money deposits and extending credits, as well as other operations in accordance with the banking laws, which are acting in the territory of the FBiH and RS.

956. The Agencies are also legally obliged to perform AML/CFT supervision over the micro-credit organisations, leasing companies and currency exchange offices.

957. According to art. 4 of the AML Law, the banks are also subject of supervision performed by the Banking Agencies if they are acting as intermediaries in or providers of:

- transfer of money or values;
- factoring;
- forfeiting;
- 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;
- issuing financial guarantees and other warranties and liabilities;
- Giving loans, crediting, offering and brokering in the negotiation of loans.

958. If not undertaken by a bank, the above-mentioned services shall be subject of supervision performed by the competent Ministries of Finance from FBiH and RS and the BD Finance Directorate.

959. The AML Law does not define any responsibilities over the banks, MCOs and leasing companies registered in the BD. The currency exchange offices which are supervised by the Foreign Exchange Inspectorate of the BD. According to the authorities, there are no licenced banking, leasing or micro-credit organizations in the District. The supervisory responsibilities (including licencing and general supervision) remain unclear in the event of a future licensing requirement submitted by a FI willing to operate in BD.

960. The Central Bank of BiH is obliged to gather statistical data for the banking activities and to observe the cooperation between the entities agencies. It has no major supervisory functions and the new AML/CFT legislation is not providing it with such.

Securities

961. According to Art. 80 letter h) of the AML/CFT Law, the FBiH Securities Commission, RS Securities Commission and BD Securities Commission shall perform supervision over the work of liable persons referred to in Art. 4, letters e) and g), namely the authorised agents trading in financial instruments, foreign currencies, exchange, interest rates and index instruments, transferable securities and commodity futures and investment and pension companies and funds, regardless of their legal form.

962. During the on-site visit the evaluators were informed by the representative of the Security Commission in BD that being a very small geographic area with a very small market, the authority is mainly responsible for issuing of approvals of shares and bonds. There is no BD stock exchange and the securities market in BD relies on the markets in the Federation and RS.

963. There are no brokerages licensed by the Securities Commission of BD, however there are few brokerage departments under the headquarters in RS or the Federation, acting as intermediaries between the District and the headquarters.

Insurances

964. According to art. 80, para. 1 of the AML/CFT Law the Insurance Agencies of the FBiH and RS shall perform supervision over the work of liable persons referred to in Art. 4 Item b), namely the insurance companies, insurance brokers, licensed to deal with life insurance affairs. The supervision over the work of organisations for managing voluntary pension funds referred to in Article 4 Item g) shall be performed by the RS Insurance Agency in the territory of RS.

965. Similarly to the situation described above in relation to the banking sector, the AML/CFT Law does not define any supervisory responsibilities over the insurance companies registered in BD. At the time of the on-site visit there were no insurance companies registered in BD and according to the authorities, the prospective FI willing to register in the district shall choose to be supervised and licensed by one of the two supervisors from the entities.

Postal financial services

966. The post offices in BiH are providing limited financial services, mainly as intermediaries between the natural persons and banks.

967. The supervision over the postal services is vaguely given in Art. 80, para. 1, item i) of the AML/CFT Law as being performed by the *"competent entity ministries or authorities"*.

968. According to the authorities in BiH, a special Agency for Supervision of the Post Office Operation (which includes payment transfers) has been established in 2012. However, this agency is not named and recognised under Art. 80 of the AML/CFT Law as supervisor and did not performed any supervisory activity on AML/CFT matters in practice since its creation. During the on-site visit, the evaluators were informed that the supervisory activities in relation to AML/CFT issues should start as soon as the new rulebook on the AML/CFT Law will be adopted.

The FID

969. According to art. 80, para. 3 of the AML/CFT Law, FID shall indirectly supervise the application of provisions of this Law of all the liable persons referred in Article 4 (all subjects of the AML/CFT regime), by gathering and verifying information, data and documentation submitted in accordance with its provisions.

970. According to the authorities, the afore-mentioned legal text is defining the possibility for the FIU, while performing its analytical activity, to carry out indirect control over the reporting entities, to verify if the submitted data is correct and the obligatory documentation or the required data is provided. This does not give any powers to the FIU, to exercise control over the work of the other supervisory authorities.

971. Unlike the previous AML/CFT Law which was in force till June 2014, the new Law is not giving any additional responsibilities to the FID in relation to supervision. However, art. 82 stipulates that the FIU shall inform the supervisory bodies on the measures undertaken on the basis of information and documentation submitted by the reporting entities relating to suspicion of money laundering and financing terrorist activities, pursuant to provisions of Article 81 and inform the supervisory bodies on measures undertaken with regard to a liable person, irrespective of the supervision performed by the above bodies.

Recommendation 30 (all supervisory authorities)

972. At the time of the on-site visit, the only supervisory authorities having dedicated AML/CFT units are the Banking Agencies in the FBiH and RS. The lack of specialized experts on AML/CFT area, able to perform on-site and off-site supervision is one of the major shortcomings throughout all supervisory bodies, which may negatively impact their capacity to supervise and ensure adequate implementation of the national AML/CFT framework.

Adequacy of Resources (c. 30.1)

973. The Banking Agency of the FBiH has established a special supervisory unit for the AML/CFT compliance. This unit is a separate from the prudential supervision and from licencing departments.

974. The number of the employees of the AML/CFT Unit increased since the last evaluation and counts now six persons and a head of the unit. Three out of these six employees are senior inspectors.

975. Similarly, the Banking Agency of RS has a special AML/CFT supervisory unit established in 2003. At the time of the on-site visit there were three employees working in this unit, which is separate from the prudential supervision and from licencing.

Professional Standards and Integrity (c. 30.2)

976. According to art. 6, para. 3 of the Law on the Banking Agency of RS, the supervision and examination of the banks shall be performed by examiners that have passed the professional expertise exam. Para. 4 of the same Article is stipulating that the Management Board of the Agency shall pass an act stipulating terms and manner of passing the professional expertise exam.

977. Similar requirements are prescribed in art. 5, para. 3 of the Law on the Banking Agency of the FBiH.

978. Both the management and the staff of the Banking Agencies are subject to the confidentiality requirements set out by Article 19 of the Laws on Banking Agencies of FBiH and of RS.

979. Art. 17 of RS and the FBiH Laws on Securities Commissions and Art. 62 of the Law on Securities of BD prescribe the obligation for the President, Deputy President and members of the Commission, as well as employees of the Commission to ensure protection of confidential information in accordance with the law, other regulations and acts of the Commission.

980. Art. 18 of the Laws on Insurance Commissions (of FBiH and RS) give detailed and specific confidentiality principle for all personal, currently employed or that has ever been employed by the Agency as well as auditors and experts hired by the Agencies.

981. Art. 74 of the AML/CFT Law provides the legal requirement for data protection and confidentiality, including in relation to the supervisors. The supervisors who have access to protected data must not reveal to the client or third persons the fact that the information, data or documentation about the client or transaction were forwarded to FID nor that the FID, in accordance, has temporarily suspended transaction or instructed the liable person to take an action. Nonetheless, this is not covering in its entirety the requirement of criterion 30.2 and the information gathered during the supervisory activities of the competent authorities but not forwarded to the FID is not subject to confidentiality.

Adequate Training (c. 30.3)

982. Since 2009 the experts of the Banking Agencies in the FBiH and RS participated in number of trainings related to AML/CFT issues. The international element of most of the trainings is a guarantee for professional standards achieved.

Table 21. Number of AML/CFT trainings for the Banking Agency of the FBiH.

Period	Number of employees trained	Training institution - topic
25-29.05.2009	1	IMF/ Joint Vienna Institute - AML/CFT for Supervisors
23-27.08.2009	1	USAID - Off-site supervision
07-08.05.2009	2	POTECON - Money laundry and terrorism financing risk assessment
28.-29.01.2010	2	The Central Bank of Cyprus and the Central Bank of the Netherlands - Anti-Money Laundering & Countering the Financing of Terrorism (AML/CFT) Current Issues and Integrity Supervision
07.-09.06.2010	1	The Central Bank of Italy - Prevention of money laundering, financing of terrorism and abuse of payment system, international cooperation and national perspectives
28.-29.06.2010	2	Zagreb School of Economy - International conference on prevention of money laundering
08.-10.12.2010	1	Ministry of Security BiH and OSCE - Public-private partnership in

		fighting terrorism
24.-25.02.2011	4	Revicon Ltd. - Prevention of money laundering and financing of terrorist activities
14.-17.03.2011	3	SIPA-NICO project - Prevention of money laundering and financing of terrorist activities
04.-05.04.2011	2	SIPA-NICO project - Prevention of money laundering and financing of terrorist activities
09.-11.11.2011	1	Ministry of Security of BiH - Cyber Security
22.-23.03.2012	4	Revicon Ltd. - Prevention of money laundering and financing of terrorist activities
09-13.04.2012	1	IMF/ Joint Vienna Institute - Revision to the International AML/CFT Standard
16.-17.10.2012	1	European Commission - The best EU practices in area of financial investigations
26.-27.03.2013	6	Revicon Ltd. - Prevention of money laundering and financing of terrorist activities
07.-09.10.2013	1	The Bank Association BiH/ATTF Luxemburg - Prevention of money laundering
09.-10.12.2013	2	Institute of Banking Educations NBS and Banking Association for Central and Eastern Europe - International Anti-Money Laundering Compliance Conference
April 2014	2	TAIEX - Cooperation between the responsible bodies in anti-money laundering and financing of terrorist activities
06.-08.05.2014	1	The Bank Association BiH/ATTF Luxemburg - Prevention of money laundering
22.05.2014	2	POTECON - Money laundering and financing of terrorist activities risk assessment

983. The above-mentioned statistics are showing that between 2009 and 2014 the number of trainings for the representatives of the Banking Agency of the FBiH is on the satisfactory level.

Table 22: Number of AML/CFT trainings with participation the Banking Agency of RS.

Period	Number of employees trained	Training institution - topic
2009	1	Regional Seminar on Combatting Terrorism, Money Laundering and the Financing of Terrorism
2009	1	Sub-regional Workshop on the Domestic Legal Implications of United Nations Security Council Resolutions and Financial Sanctions against Terrorism for Central and South-East Europe
2010	2	Protection and transfer of money in BiH
2010	1	Prevention of Money Laundering and combating the financing of terrorism
2010	2	The use of electronic signatures in closed systems in BiH with an emphasis on electronic banking
2011	1	Financial crimes and investigations
2011	3	Data collection and processing
2011	1	Credit card abuse
2012	1	Investigations, seizure and management of illegally acquired property
2012	1	Prevention of money laundering and the fight against terrorism financing
2012	1	EU best practice in the field of financial investigations, with a special focus on advanced analysis techniques for bank accounts, offshore movements, bank accounts, VAT frauds, case studies
2013	1	Workshop – Fight against the Counterfeiting of Euro Bills

2013	1	FIU, law enforcement agency and financial institutions: Cooperation in prevention of money laundering
2013	1	Multi Country Workshop on the Fight against the Counterfeiting of Euro Bills
2013	2	International AML Conference

984. Representatives from the Insurance Commission of FBiH participated in 15 seminars between 2011 and 2014 (including: employees responsible for supervision over the implementation of the regulations on money laundering and financing of terrorist activities, participated in 7 seminars on prevention of money laundering and financing of terrorist activities also in 8 seminars and workshops on the topic - Prevention of money laundering and financing of terrorist activities, one of which was organized by the Insurance Supervisory Agency of the Federation of BiH in cooperation with FID).

985. The Insurance Commission of RS provided the following data in relation to AML/CFT trainings:

Period	Number of employees trained	Training institution - topic
31.08.2012	1	Working Group related to fulfilment of the MONEVAL recommendations
26.03.2013	1	In organization Revicon Sarajevo, 5-th forum on the prevention of money laundering and financing of terrorist activities
26.03.2014	1	In organization Revicon Sarajevo, 6-th forum on the prevention of money laundering and financing of terrorist activities
	3	Organized by the Insurance Supervision Agency of FBiH, seminar - Prevention of money laundering and terrorist financing
26.03.2015	2	In organization Revicon Sarajevo, 7 forum on the prevention of money laundering and financing of terrorist activities
	1	In organization Centre for Corporate Governance: Topics current problems in the prevention of money laundering

986. No data on trainings has been provided by the Securities Commissions from FBiH, RS and BD.

Authorities' powers and sanctions

Recommendation 29 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

987. During the 3rd round of assessments Bosnia and Herzegovina was rated partially compliant based on the following reasons:

- 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.
- Lack of adequate powers of supervisors in the insurance market to monitor and ensure compliance with AML/CFT requirements and to take enforcement measures and sanction both the institutions/businesses and their directors/senior management for incompliance with AML/CFT requirements.

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1)

988. The provisions of Article 80 of the AML/CFT Law stipulates that supervision over the work of the obligors in connection with the application of the provisions of this Law and other laws prescribing obligations to implement measures to combat money laundering and financing of terrorist activities, are carried out by special agencies and bodies. The correspondence between the supervised FI and the responsible authority is prescribed in the AML/CFT Law and in special laws regulating the work of liable persons and authorised agencies and bodies.

Banks, leasing and MCO

989. Art. 4 of the Law on the Banking Agency of the FBiH provides the general supervisory powers of the Banking Agency of the Federation over the banks, micro-credit and leasing organisations, as following:

- Letter b) – to supervise the banking, micro-credit and leasing operations, and undertake appropriate measures in accordance with law;
- Letter e) – to declare sub-legal acts regulating the work over the above-mentioned organizations;
- Letter g) – to supervise and evaluate compliance of banks, micro-credit organizations and leasing companies to the anti-money laundering and terrorism financing standard;

990. The provisions of art. 5, para. 1 of the Banking Agency of RS, among others are giving mandate of the Banking Agency to:

- Letter g) – supervise and undertake necessary activities regarding anti-money laundering and terrorism financing related to banks, microcredit organizations, saving-credit organizations and other financial organizations, all in cooperation with the competent institutions and in accordance with regulations governing this field.
- Letter i) – adopt adequate acts in the field of anti-money laundering and terrorism financing, and cooperate with the competent authorities and institutions within this field.

991. Pursuant to art. 6, para. 1 of the Law on the Banking Agency of RS, the Agency shall perform examinations and supervision of work and legality of banks' operation and of other financial organizations within the banking system; order and undertake measures to eliminate illegalities and irregularities in accordance with this Law and other laws.

992. Articles 51 of the Law on Banks of the FBiH and 106 of the respective law of RS establish obligations for the banks and its branches (if located in the BD, FBiH or RS), to be subject to all supervisory activities by the relevant Banking Agency, in accordance with the Agency's regulations.

993. The two articles mentioned above are also requiring the banks to admit and cooperate fully with the controllers of the respective Agency and the auditors appointed by this Agency.

994. Moreover, article 69 of the Law on Banks of the FBiH and art. 128 of the respective law of RS stipulate that, regulations adopted by the respective Agency and the implementation of its legally prescribed authorities shall be done according to on the basic principles for effective bank supervision issued by the Basel Committee for Bank Supervision.

Securities

995. Pursuant to art. 251, para. 1 of the Law on Securities Market of the FBiH, the Securities Commission shall supervise the participants in the securities market and other parties in accordance with the provisions of this and special laws.

996. Article 2 of the same legal document is prescribing in details all the supervisory powers of the Commission in relation to the prudential supervision. In addition, according to Art. 251, para. 5 of the Law on Securities Market of the FBiH, the participants in the securities market are obliged to comply with the AML/CFT Law. The Supervisory Commission of the FBiH shall supervise the application of laws and, within the supervision of the securities market, if not otherwise determined. Although there are no legal provisions providing the Commission with direct powers in relation to the AML/CFT supervision, the evaluators are of the opinion that the afore-mentioned is covering the requirements of criterion 29.1.

997. Art. 12 of the Law on Securities Commission of the FBiH is also defining the supervisory powers of the Commission. Among them is the ability to request information and documents from all legal and natural persons that based on its judgment are necessary for the carrying out of supervision.

998. Moreover, articles 14a and 14b of the Law on Securities Commission of the FBiH are prescribing the ability of the Commission to supervise securities issuers, legal and other persons certified to perform securities operations and to inspect persons related to the purpose of supervision, if necessary to obtain full insight into the business operations of the subject of supervision certified by the Commission. The inspections shall include:

- Control and analysis of information, reports, and papers delivered by the subject of supervision;
- Control of business operations and core business activities within the premises of the subject of supervision;
- Other activities as authorized by law and other regulation;

999. Article 260 of the Law on Securities Market in RS is defining the supervisory responsibilities of the Securities Commission, including for AML/CFT matters. Among others, mostly related to prudential issues, is the ability to:

- Carry out supervision and take necessary measures in connection with the prevention of money laundering and financing terrorist activities over persons whom it issue licenses to perform activities;
- Within its competence shall cooperate with other competent authorities in connection with enforcement of laws and other regulations which regulate obligations to implement measures relating to prevention of money laundering and financing terrorist activities.

Insurance

1000. As described during the 3rd round of assessments the legislation regulating the insurance market, does not contain provisions empowering Insurance Agencies to monitor and ensure compliance of insurance companies with the AML/CFT requirements. As described above, the only legal basis in this respect are given with the AML/CFT Law[57].

Post office

1001. The AML/CFT supervision over the Post Offices if not mentioned in any other legal act apart the AML/CFT Law.

Authority to Conduct AML/CFT Inspections by Supervisors (c. 29.2)

1002. According to art. 81, para.1 of the new AML/CFT Law, "*the supervisory bodies shall, pursuant to provisions of this Law and laws governing operations of individual liable persons and supervisory bodies, regularly supervise the harmonisation of operations of liable persons on-site*."

[57] On 30 January 2015 the Administrative Board of the Insurance Agency of Bosnia and Herzegovina adopted Guidelines for risk assessment and enforcement of the law on money laundering and financing of terrorist activities for insurance supervisory agencies in BiH. The document provides further clarification in the allocation AML/CFT supervisory powers to the Insurance Agency of FBiH. According to Article 6 the Agency shall monitor the implementation of the AML Law, of the regulations adopted in accordance with the Law, of these Guidelines and of the other regulations prescribing the duties of implementation of measures to prevent and detect money laundering and financing of terrorist activities of the obligor set forth in Article 2 of these Guidelines. The Guidelines were not adopted in the 2 month timeframe provided by the Rules of Procedures therefore they cannot be included in the report for rating purposes.

1003. All other legal texts prescribing the supervisory powers of the institutions in relation to AML/CFT requirements are given in the special legislation of the Entities.

Banks, leasing, MCO and exchange offices

1004. According to art. 26, para 1 of the Law on Banking Agency of the FBiH, the Agency is authorized to perform examinations, to supervise and obtain copies of business books, documents, and bills. The authority to conduct inspections is further detailed in the Decision on Bank Supervision as described in para. 760 of the previous MER.

1005. The provisions of art. 5, para. 1, letter b) of the Law on the Banking Agency of RS, is providing similar powers to supervise the soundness and legality of banks' operations – through off-site and on-site examination of banks, and undertake appropriate supervisory measures.

1006. The provisions of art. 105a of the Law on Banks of RS are giving mandate to the Banking Agency to perform two types of examinations:

- indirect – by means of examination of reports and other documentation communicated to the Agency by a bank in accordance with this Law, as well as other data on bank operations available to the Agency, and
- direct – by means of examination of business books and documentation of the bank.

1007. Moreover, the same article is giving the right of the Banking Agency to examine business books and other documentation of legal entities related by ownership, management and business relations to the bank subject to examinations and to request other data to be submitted by such entities. If the supervision is under the jurisdiction of another authority, the Agency shall, in cooperation with that authority, have the right to examine business books and other documentation and carry out their analysis.

1008. The Banking Agencies of the FBiH and RS are in their supervisory activities are relying also to Manuals for Examination of Compliance of Banks' Business Operations as described under R23.

Securities

1009. Article 14 of the Law on the Securities Commission of FBiH and Article 261 of the Law on Securities Market of RS defines that the natural persons and legal entities are required to provide information and documents requested by the respective Commission in the exercise of its authorities and responsibilities in the method and in the period determined by the Commission.

1010. Pursuant to art. 14a of the Law on the Securities Commission of FBiH, the Commission while performing its supervisory activity may also inspect persons related to the purpose of supervision, if necessary to obtain full insight into the business operations of the subject of supervision certified.

1011. Article 263 of the Law on Securities Market of RS additionally empowers the Commission of RS to perform supervision by analysis and inspection of financial and other reports, business documentation, and other data and records which supervised entities are obliged to keep or submit to the Commission, as well as by taking statements or declarations from responsible persons and other employees or other natural persons who have information that is of interest for the supervision. The supervision might be conducted in the premises of the supervised person.

1012. The Laws on Securities Market have different approaches on AML/CFT supervision and sanctions in RS and in the FBiH: while the legislation of RS does include the AML/CFT requirements, the legislation in FBiH does not. There was no explanation provided to the evaluation team as to why this approach was adopted.

1013. Article 65 of the Law on Securities (Official Gazette of the Brčko District, Nos. 15/03, 27/04, 42/04, 28/07 and 4/12) provides the Securities Commission in BD with some supervisory powers. However, no specific AML/CFT requirements are included in the afore-mentioned legislation.

Insurance

1014. The general supervisory powers of the Insurance Agencies (FBiH and RS) remain the same as at the time of the 4rd round MER, therefore the reader is referred to paragraphs 766-769. No changes occurred since the 3rd round of assessment.

1015. No express powers to conduct AML/CFT inspections are provided for AML/CFT purposes or by the AML/CFT Law[58].

Post offices

1016. No information was provided to the evaluation team.

Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1)

Banks, leasing, MCO and exchange offices

1017. According to art. 26, para 2 of the Law on Banking Agency of the FBiH, the banks, micro-credit organizations and leasing companies are obliged to provide the Agency with the access to the complete documentation so that the activities in the Agency's authority can be performed.

1018. The provisions of Art. 6 of the Law on Banking Agency of RS stipulates that the Agency is authorized to exercise control and supervision of the legality of operations of banks and other financial organizations of the banking system, and that it has the right to inspect the books and other documents of the financial organization of the banking system, as well as legal entities with financial organization that is subject to controls related to property, management or business relationships to perform work within the jurisdiction of the Agency.

Securities

1019. No changes have occurred since the last evaluation round when it was concluded that the power of Securities Commissions (FBiH, RS and BD) to compel production of records therefore, the reader is referred to paragraphs 770-771 of the 3rd round MER. As stated above, no AML/CFT powers are provided for the Securities Commissions of FBiH and BD.

Insurances

1020. The general supervisory powers of the Insurance Agencies (FBiH and RS) remain the same as at the time of the 4rd round MER, therefore the reader is referred to paragraphs 766-769.

1021. No express powers to compel production of records are provided for AML/CFT purposes or by the AML/CFT Law[59].

Post office

1022. No information was provided to the evaluation team.

[58] On 30 January 2015 the Administrative Board of the Insurance Agency of Bosnia and Herzegovina adopted Guidelines for risk assessment and enforcement of the law on money laundering and financing of terrorist activities for insurance supervisory agencies in BiH.
[59] As above.

Powers of Enforcement & Sanction (c. 29.4)

1023. The sanctions for non-compliance with the AML/CFT requirements are prescribed in Art.(s) 83 and 84 of the AML/CFT Law. The said provisions include *"legal persons"* and *"responsible persons"*.

1024. As described under R23 and R29.1 above, the allocation of the supervisory responsibilities is given in Art. 80 in conjunction with Art. 4 of the AML/CFT Law. There is no specific provision concerning the ability/obligation of each body to apply sanctions, but the authorities explained that the inclusion of sanctions in the new AML/CFT Law was made as a result of the findings of the 3rd round report (concerning the lack of proportionate and comparable sanctions throughout the applicable legislation). Also, the authorities mentioned that the sanctioning powers should be seen as part of the supervisory activity and therefore, providing the AML/CFT sanctions in the AML/CFT Law demonstrates the obligation of the responsible body to apply the respective sanction.

1025. The evaluators accept this explanation on the technical powers and ability to enforce the AML/CFT sanctions. However, the team has serious effectiveness concerns which are further described under R17.

1026. Apart from the AML/CFT Law there are some sectorial laws re-enforcing the sanctioning provisions for the some FI: banks and the securities intermediaries (only for RS).

Banks

1027. Pursuant to Articles 67 of the Laws on Banks of FBiH and 125 of the Law on Banks of RS, the Banking Agencies shall take one of the following measures with regard to a bank or to the members of its supervisory board or management, employees, persons that have significant ownership interest, or to any related entity:

- Issue written warnings;
- Issue written orders:

  (a) Requiring the bank to cease and desist from such violations of this Law and regulations of the Agency, or to undertake remedial action;
- Issue written orders imposing monetary fines, in accordance to this Law;
- Issue written orders suspending temporarily members of bank's Supervisory Board, Management or employees from duties in the bank;
- Issue written orders prohibiting that one or more persons with Significant Ownership Interest in the bank from exercising voting rights, or requiring them to sell or otherwise dispose of all or any part of their ownership rights in the bank in accordance with the Law and within a period specified in the order;
- Issue written orders attaching conditions to the banking license of the bank to the extent required to remedy such commercial infraction;
- Revoke the banking license of a bank;

1028. As described in the 3rd round of evaluations, the sanctions for non-compliance with Article 47 of the Law on Banks of FBiH, which prohibit banks from being involved in ML/FT activities and require them to implement AML/CFT measures, are defined by Article 65.23. This article provides for fines imposed on responsible officials and on the persons who actually committed the violation in the bank.

1029. However, the Law on Banks of RS does not specifically prescribe sanctions for violation of art. 101, except for violation of the obligation to inform relevant authorities and deliver data in accordance with provisions governing prevention of money laundering and terrorism financing. Sanctions for these breaches are given in Art. 123a.29.

Securities

1030. As described above, the Law on Securities Market of the FBiH does not specifically provide the Securities Commission of the FBiH with any power to sanction violation for AML/CFT breaches.

1031. According to Articles 264 and 265 of the Law on Securities Market of RS, the Commission shall prescribe supervisory measures and the deadlines for elimination of the established illegalities and irregularities. In case illegalities or irregularities are found, the Commission shall issue a decision ordering what actions should be taken to contribute to establishing compliance with the law and harmonization of work with laws and other regulations, or impose adequate measure prescribed by this or other laws.

1032. Moreover, art. 267 stipulates that in cases of violations of this or other laws and regulations, the Commission may implement the following measures:

- Prohibition of performance of individual activities arising from this and other laws for which the Commission issue a license;
- Revocation of approval for appointment of director, members of management and of the body that carries out supervision and issuance of orders for appointment of new persons;
- Revocation of the license to perform activities with securities.

Effectiveness and efficiency (R. 23 [c. 23.1, c. 23.2]; R. 29, and R. 30 (all supervisors))

1033. The AML/CFT Law is a basic legal framework which sets out the main principles aimed to cover the FATF Recommendations to a large degree. The amendments to the AML/CFT Law are a welcome improvement compared with the 3rd round evaluation.

1034. Yet, the relevant by-laws and regulations with regard to supervision have not been entirely harmonized with the revised AML/CFT Law. In this context, the effectiveness of the supervisory system might be limited due to different level of minimum supervision requirements among different sectors.

Banking, MCO, leasing and currency exchanging

1035. Both Banking Agencies (from FBiH and RS) have Manuals for control of compliance of banks with the standards against money laundering and financing of terrorist activities; Manuals for control of compliance with the standards against money laundering and financing of terrorist activities for leasing providers and Manuals of control of compliance with the standards to prevent money laundering and financing of terrorist activities for microcredit organizations. The Manuals have been updated in 2013 replacing the 2004 versions.

1036. The Manuals comprise the concepts and procedures for examination of banks, leasing companies and MCOs in order to: standardize the examination procedure; maintain and improve quality and efficiency of examination; guide the examiner to conduct professional and good-quality examination; draw attention of examiners to the areas in the banks' business operations which require special attention; ensure information for examiners and management that are required for planning and coordination of examinations, follow-up and repeated examination of banks, and train the examiners.

1037. The Manuals for AML/CFT compliance have been prepared based on past experience gained in so far implemented controls of banks, as well as the experience gained by performing control of other financial institutions in the area of prevention of money laundering and financing of terrorist activities.

1038. In order to effectively target the on-site inspections, the Banking Agencies are prioritising the process based on the risk. The individual risk assessments (based on historical data from the monitoring exercises), is helping the authorities to rank all the institutions. However, according to the information

provided to the evaluators, all the banks are subject to annual supervision therefore the list-based approach is also applicable.

1039. The off-site supervision consist in the review and analysis of available documentation to understand the bank situation:

- Previous examination reports;
- Correspondence between the supervisor and the bank;
- Regulatory reports submitted by the bank;
- Organizational chart and job-classification at the bank level;
- Documents appointing persons responsible for anti-money laundering and counter-terrorism financing;
- Programs, policies and procedures on anti-money laundering and combating terrorism financing etc.

1040. There are two types of on-site inspections in relation to the banking/leasing and MCO activity: planned inspections constructed on the factors and methods described above and the *ad hoc* supervision triggered by the requests from the LEAs or the FIU.

1041. The authorities provided the on-site visit plan for 2015 adopted after the application of the risk overview for each category of supervised entity. The planned inspections begin with a notification which is given to the respective financial institution 20 days prior the visit. Seven days before the on-site, the obliged entity is informed about the specific type of documents it should provide during the inspection. These documents include specific clients and transactions. If after the on-site, some documents are still missing they can be required additionally.

1042. In every on-site the internal AML/CFT procedures adopted by the obliged entity are checked. The assessment is done against the minimum requirements prescribed in the Decisions on the Minimum Standards for Bank's Activities in Prevention of ML and TF which were issued by the Banking Agencies of the FBiH and RS for each category of supervised entities (banks, MCO and leasing).

1043. After each on-site inspection, a special report should be prepared where the established irregularities are described and a specific time frame for their removal is given. The remedial actions are subject to subsequent control.

1044. According to the authorities all their requirements have been addressed in practice. However, the evaluators were informed by the representatives of one of the banks that in relation to some of the prescribed measures no actions have been taken in the last two years.

1045. There is a legal uncertainty in relation to the application of the AML/CFT Law and the entities banking laws in relation to the brokerage activities undertaken by the banks. According to the AML/CFT Law it is clear that the supervisory activities over these services should be carried out by the Securities Commissions (from FBiH, RS and BD). However, in the Banking Agencies Laws, the general supervision over the banks (with all services provided included) should be performed by the two Agencies. During the on-site interviews this legal uncertainty was confirmed by the both the representatives of the banks and some of the authorities.

Securities and Insurances

1046. The other supervisory authorities have not performed any specific AML/CFT on-site inspections. Their main focus is related to the prudential supervision[60]. The evaluators were told that the AML/CFT aspects are covered during some of the general supervision. Some statistics on the on-site inspections were provided by the authorities; however, the observations prescribed in the 3rd round of evaluations are still applicable based on the incomparable data and the luck of specific AML/CFT focus.

Postal financial services

1047. While the evaluators did not note any significant shortcomings in relation to the application of the AML/CFT by the post offices (see relevant Recommendations under the compliance part), it has to be said that at the time of the on-site visit, no supervisory action was taken in respect of these institutions.

The FID

1048. As it was mentioned before, the FID does not have direct supervisory functions over the financial institutions. According to art. 72, para. 2, letter b of the new AML/CFT law, the competent courts shall, twice a year, submit to the FID information the offences under provisions of Article 83 (fines imposed to legal persons and responsible persons of legal persons for minor offences) of the same law.

Recommendation 17 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

1049. Bosnia and Herzegovina during the 3rd round of evaluations was rated PC based on the following factors:

- Duplication and overlap in the state level AML Law and the entity level Laws on Banks of FBiH and of RS;
- Lack of proportionate and comparable sanctions throughout the applicable legislation;
- Lack of legislatively provided sanctioning powers of the respective supervisory bodies in the insurance market;
- Not all requirements of the AML Law are enforceable;
- Lack of administrative sanctions applicable to the participants of the insurance markets.

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1); Range of Sanctions—Scope and Proportionality (c. 17.4)

1050. The 3rd round MER identified some uncertainty in relation to the sanctioning regime prescribed by the banking laws of the two entities and by the AML Law (enacted by that time). Following the adoption of the report in 2009, a number of legal changes occurred. Nevertheless, the ambiguity and uncertainty still remain in relation to the sanctioning regime for AML/CFT violations as described below.

1051. The main sanctioning regime for the AML/CFT violations is set in article 83 of the new AML/CFT Law. The reporting entities shall be sanctioned for a minor offence in amounts between BAM 1,000 and BAM 200,000 (€500 to €102,000), if they conduct one of the violations listed. No other type of sanctions is available.

1052. In addition to the AML/CFT Law, other sectorial laws provide for sanctions in case of AML/CFT breaches, as described below.

[60] On 30 January, the Insurance Agency of BiH adopted Manuals for conducting supervision by Insurance Supervisory Agencies of FBiH and RS regarding the implementation of the Law on Prevention of Money Laundering and Financing Terrorist Activities. The Manuals were not adopted in the 2 month timeframe provided by the Rules of Procedures therefore they cannot be included in the report for rating purposes.

Banks, leasing and MCO

1053. Pursuant to article 67 of the Law on Banks of the FBiH and article 125 of the Law on Banks of RS, range of sanctions for infringements of those two laws are available for the authorities:

- Written warnings;
- Written orders:
  - requiring the bank to cease and desist from such violations of the law and regulations of the respective agency, or to undertake remedial action;
- Written orders imposing monetary fines in accordance to the respective law;
- Issue written orders suspending temporarily members of bank's supervisory board, management or employees from duties in the bank where:
  - the Agencies determine that such persons have committed one of the violations set forth in Article 65 or respectively art. 123 of the two laws; or
  - such persons do not meet the requirements of qualifications, experience, or other conditions established by regulation issued by one of the agencies.
- Issue written orders prohibiting that one or more persons with significant ownership interest in the bank from exercising voting rights, or requiring them to sell or otherwise dispose of all or any part of their ownership rights in the bank in accordance with the law and within a period specified in the order, where:
  - the Banking Agencies determine that such persons have intentionally or recklessly committed one of the violations set forth in Article 65 or respectively art. 123 of the two Laws;
  - the Banking Agencies learn of facts that would warrant refusal of an authorization to acquire or increase the Significant Ownership Interest; or
  - the significant ownership interest was acquired or increased without the prior authorization of one of the Agencies;
- Revoke the banking license of a bank.

1054. In relation to the banking activities in the FBiH, Art. 65 of the Law on Banks of FBiH establishes fines in amounts from BAM 3,000 to BAM 15,000 for a list of violations, among which failure to observe the general AML/CFT obligations of the banks (Art. 47).

1055. The Law on Banks of RS has a different approach. While Art. 101 defines the AML/CFT legal requirements, Art. 123a only provides sanctions for a very limited number of violations, namely related to the obligation to inform the relevant authorities and deliver data in accordance with provisions governing the prevention of money laundering and terrorism financing, and accordingly submit to the Agency monthly statistical reports (Para 8 of Art. 101).

1056. The Law on Microcredit Organizations of the FBiH does not stipulate any obligations for the micro-credit organizations to apply the standards for prevention of money laundering and financing of terrorist activities, thereby penalty provisions of this Law are not applicable for the AML/CFT violations.

1057. Article 18a of the Law on Microcredit Organizations of RS is defining AML/CFT obligations to the microcredit organisations. Therefore, in the penal provisions of the law there are fines in the amount of BAM 3,000 to 30,000 for AML/CFT breaches. However, those can be imposed only if a microcredit organization fails to inform the authorized bodies and communicate data in accordance with the

regulations governing the field of anti-money laundering and terrorism financing or to submit to the Agency a monthly report on the abovementioned, in the form as prescribed by the Banking Agency.

1058. In relation to the leasing activities, the Law on Leasing of the FBiH is creating the same ambiguity. The penal provisions listed in article 91 of the law are also including fines for AML/CFT breaches. The fines are on the amount between BAM 1,000 and 15,000.

1059. In case of the leasing companies in RS the penal provisions provided by Art. 69 of the Law on leasing prescribe fines only if a lessor does not inform authorized bodies and communicate data in accordance with the regulations governing the field of anti-money laundering and terrorism financing, or to submit to the Agency a monthly report on the above-mentioned, in the form prescribed by the Banking Agency.

Securities

1060. Limited AML/CFT sanctions are provided by the Law on Securities Market in RS. According to article 119 of this law, a stock exchange intermediary may refuse an order if it assesses that the transaction is effected for the purpose of ML/TF activities. According to article 296.56 for a stock exchange intermediary can be sanctioned with fine of BAM 10,000 to 50,000 in case of violation of article 119.

1061. Nonetheless, no AML/CFT sanctions are provided in the Law on Securities Market in the FBiH and BD.

1062. According to the authorities in the BD based on the fact that there are no professional agents registered in the Brčko District to deal with transactions in securities issued in the District, and placed on the Sarajevo and Banja Luka stock exchange, professional agents – brokers , members of the Registry of Securities of the Federation of BiH and the Central Registry of Securities of RS hold responsibility thereof, as regulated by the contracts on dealing with the registration, keeping and maintaining of data on securities, signed with these Registries in November 2004, the brokers are obliged to apply the RS and FBiH regulations on transactions in securities.

1063. The evaluators are of the opinion that despite the afore-mentioned the AML/CFT legislation in BD should be in place in order to guarantee full sanctioning powers for the competent authorities.

Insurance

1064. The Laws on Insurance companies of the FBiH and RS do not provide any AML/CFT requirements and therefore the sanctions stipulated there are not applicable for such violations.

1065. Although there are AML/CFT sanctions provided by some sectorial Laws (while incomplete as scope of application as described above), it appeared that the AML/CFT Law would prevail and the sanctions shall be applied according to the new Law (adopted in June 2014, namely 4 months before the on-site visit).

1066. The analysis of the sanctions provided by the list-based approach in the AML/CFT Law reveals that the scope of application does not cover all potential AML/CFT breaches. Some important legal requirements are not subject to sanctioning ability pursuant to article 83. For example, sanctions can be imposed only for identified irregularities of article 6, para. 1, letters a) and b) of the AML/CFT Law and not the following letters c) and d) of the same article (the identification requirements when doubting the authenticity or adequacy of previously received information about the client or the real owner and suspecting money laundering or financing terrorist activities relating to the transaction or client, regardless of the amount of transaction). The AML/CFT obligations for which sanctions are not provided are listed in the table below.

TABLE 23: AML/CFT requirements for which sanctions are not provided

Legal text	Description
1. Article 6, para. 1, letter c)	The identification requirements when doubting the authenticity or adequacy of previously received information about the client or the real owner
2. Article 6, para. 1, letter d)	The identification requirements when suspecting money laundering or financing terrorist activities relating to the transaction or client, regardless of the amount of transaction occur;
3. Article 8	Declining a business relationship and a transaction;
4. Article 19	Obtaining data and documentation from third person
5. Article 20	Prohibition of establishing a business relationship with third person;
6. Article 23	Intensified identification and monitoring of client;

1067. The evaluators are of the opinion that the amounts of the possible fines are dissuasive for the financial sector and they might be applied in a proportionate manner *"proportionate"*. However, in practice only the minimum level of fines was imposed. No criminal sanctions are available in BiH for the AML/CFT violations.

Designation of Authority to Impose Sanctions (c. 17.2)

1068. As mentioned above, article 80 of the new AML/CFT Law defines the specific supervisory agencies responsible for AML/CFT supervision. Subsequently, Art. (s) 83 and 84 prescribe the sanctions to be imposed in case of AML/CFT breaches. However, the law does not define any authority competent to impose these sanctions.

1069. During the on-site interviews, the evaluation team was explained that the AML/CFT Law was amended following the 3rd MER recommendations (to reconsider the sanctioning regime and change the legislation in order to remove the established ambiguity between the AML/CFT Law and the other special legislation) and thus, the intention of the legislator was to assign to all supervisory authorities mentioned under Article 80 all the sanctioning powers, including the one provided by in Art. 83.

1070. However, as evidenced by the statistics, the majority of the sanctions imposed for AML/CFT violations are under the form of written warnings. Moreover, the authorities confirmed during the on-site interviews that the (few) fines imposed are based on the special legislation not on the AML/CFT Law, which means that in spite the amendments of the AML/CFT Law, the ambiguity identified at the time of the 3rd round MER subsists in practice.

1071. The supervisory authorities (other that the two Banking Agencies) were not convincing in that they are fully aware of their sanctioning and supervisory powers provided by the AML/CFT Law. The Insurance Commissions, Securities Agencies, the Ministries of Finance and the BD Finance Directorate were still of the opinion that sanctions for AML/CFT breaches should be imposed only by FID-SIPA.

1072. During the on-site interviews, the evaluators were informed by the representatives of the banking supervision that breaches of the AML/CFT Law cannot be sanctioned in practice and even if the

supervisory authority send the act for establishment of the violation to FID, according to the Law on misdemeanours, the FIU cannot impose fine because this should be done by the establishing institution.

Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3)

1073. Article 83 of the AML/CFT Law is defining that the range of fines can be imposed to natural persons and the responsible person of a legal person. However, there is no clear provision that this *"responsible person"* can be a director or representative of a senior management.

1074. Nonetheless, as mentioned above, the special legislation of the FBiH which is defining the activities of the banks is providing with such possibility (Article 67, para. 2 of the Law on Banks of the FBiH). The respective legislation of RS is also providing with possibility to sanction persons who actually committed the violation in a bank (according to article 123a of the Law on Banks of RS) but in relation to AML/CFT breaches this is applicable only to failure in submission of monthly reports to the Banking Agency (as this is the only AML/CFT violation which can be sanctioned according to the Law on Banks of RS).

Market entry

Recommendation 23 (c. 23.3, c. 23.3.1, c. 23.5, c. 23.7, licensing/registration elements only)

1075. Since the 3rd round of evaluation, the Bosnian authorities have made some significant steps to address the identified shortcomings and to amend the legislation, mainly to prevent criminals from being the beneficial owners of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils, etc. in a financial institution.

Prevention of Criminals from Controlling Institutions, Fit and Proper Criteria (c. 23.3 & 23.3.1)

Banks

1076. Art. 2 of the Law on Banks of the FBiH and RS define the necessity for licencing the activity of the banks. It is prohibited to engage in the business of receiving money deposits and extending credits for its own account without a banking license issued by the Banking Agencies. Moreover, no one is allowed to use the word *"bank"* or derivatives of the word *"bank"* in respect of a business, product or service without a banking license or authorization issued by the Agency.

1077. Art. 7 of the Law on Banks in the FBiH and art. 8 of the Law on Banks in RS require that the application for license shall be accompanied by documents demonstrating the qualifications and experience of the Supervisory Board and Management of the proposed bank.

1078. Art. 9 and respectively art. 10 of the Laws on Banks (of FBiH and RS) stipulate that license should be granted if, and only if, the qualifications and experience of the Supervisory Board and Management of the bank will be appropriate for the banking activities that the bank will be licensed to engage. If the applicant is a legal entity, the above criteria shall also apply to any Management official and persons with significant ownership interest.

1079. The revoking of a license of a bank registered in the territory of the FBiH is legally defined in art. 17 of the Law on Banks. The relevant article in the Law on Banks of RS is Article 19. One of the grounds for removal of licence is false or fraudulent statements when obtaining the authorisation, and as of a bank registered in the Federation – other material irregularities that occurred in connection with the license application.

1080. According to art. 31a of the Banking Law of the FBiH and art. 54 of the respective law of RS, persons convicted for crime or economic offense within the economic and financial crime scope cannot be members or Chairmen of a Supervisory Board in a bank. According to art. 107 of the Instructions for Licensing and Other Approvals of the FBiH, issued in December 2013, the same restriction applies for the Directors and the Management Board. According to article 21, para. 1, letter I of the Decision on licensing and other consents by the RS Banking Agency, adopted on

20.05.2014 and entered into force on 06.06.2014, the Directors and the Management Board members shall present evidence from the record of competent authorities of whether a punishment, measure or sanction for the actions stated in Article 15 and 16 of the Questionnaire was imposed on a candidate in the period of 5 years from the date of final verdict but excluding the time spent serving the prison sentence, as well as the evidence of whether a candidate is under a court proceeding (criminal or misdemeanour offence proceedings under Article 15 and 16 of the Questionnaire). The evidence shall not be older than 3 months. Article 22, para. 1, letter f of the Decision stipulates similar requirements for the Supervisory Board members.

1081. However, Article 15 and 16 of the Questionnaire requires from the candidate to submit only statements. Therefore, it is unclear if those statements have to be officially issued by competent authority or just documents written by the candidate himself/herself. Moreover, the scope of the offences mentioned in these two articles is limited to fraud and fiscal crimes.

1082. Art. 14 of the Instructions for Licensing and Other Approvals of the FBiH requires additionally that when submitting an application for receiving banking license, the applicants should present list of the founders with evidence of their good standing. The following art. 20 – 21 are giving additional requirements on the information related to the qualifications and experience of candidates for members of the bank's supervisory and management board.

1083. Similar requirements are prescribed in Articles, 2, 5, 21 and 22 of the Decision on licensing and other consents by the Banking Agency of RS.

1084. According to art. 34a of the Banking Law of the FBiH and art. 82 of the Banking Law of RS, additional information should be submitted by the Supervisory Board, Management and members of their immediate family who are living in the same household, or have joint investments. This information shall describe all assets, including information on all of the investments, any loans or credits of over BAM 20,000 and information on legal entities for which 5% or more of shares or equities with voting rights, as well as any other information required by the respective Banking Agency. Each person, who is required to file a disclosure statement, must also file an annual update of it.

1085. Art. 21 of the Law on Banks in the FBiH and art. 23 of the respective law of RS introduce thresholds for the acquisition of capital or voting shares in a bank. According to this legal provision, "*no physical or legal person, directly or indirectly (through an indirect owner), alone or acting in concert with one or more other persons, may acquire significant voting rights in a bank, or increase the amount of his ownership of the bank's voting shares or capital in such a way that the thresholds of 10%, 33%, 50% and 66.7% are reached or exceeded, without obtaining the approval from the Agency"*.

1086. In addition the Instructions for Licensing and Other Approvals of the FBiH is requesting:

- for the legal entities: "*to provide evidence from competent authorities that no punishment, measure or offence sanction was imposed over the applicant in the period of 5 years from validity of the court ruling, as well as an evidence that no criminal or offence proceedings are pending against him/her. The evidence must not be older than 3 months"*; and
- for the natural persons: "*to provide with certificate of non-conviction, that is an evidence from the records of the relevant authorities as to whether the applicant was under any punishment, measure or offence sanction in the period of 5 years from the date of the court ruling validity, excluding time of sentence as well as an evidence of whether a criminal or offence proceedings are started against him. The evidence must not be older than 3 months*."

1087. Article 8 of the Decision on licensing and other consents by the RS Banking Agency, provides with the following:

- for the natural persons: "*certificate issued by a competent body confirming that such person has not been convicted of any offences in the area of economic and financial crime, as well as that no criminal act/offence proceeding in the area of economic and financial crime has been instituted against him/her;"*
- for the legal entities: *"evidence on registration, financial statements (balance sheet and income statement) for the last three fiscal years or for each fiscal year following the legal person establishment if such period is less than three years, certified by an independent external auditor, as well as the financial statement for the end of the last reporting period prior to submitting the application, together with the name of each owner holding a significant ownership in such legal persons and percentage amounts of their ownership;"*

1088. Art. 23 of the Law on Banks of the FBiH is defining the conditions under which the Agency may refuse authorization to acquire or increase an Ownership Interest in a bank *(i.e.)*:

- *lack of competence, experience, or trustworthiness of any of the applicants;*
- *if the applicant submitted unreliable information or information not complying with regulations of the Agency* and
- *if the applicant has not submitted proof of the origin of the money*.

1089. The same requirements as the above-mentioned are given in art. 25 of the Law on Banks of RS, except for a proof of the origin of the money.

1090. The authorities informed the evaluation team that in case the beneficial owner of an applicant cannot be established, the application is going to be refused.

1091. The laws on banks (of the FBiH and RS) provide that if the applicant is a legal entity, the same shall be apply for every Supervisory Board and Management official or holder of Significant Ownership Interest in this legal entity. The Law on Banks of the FBiH expand this by including the indirect ownership.

1092. The on-going monitoring and control over the prevention of criminals to participate in management or the ownership of a bank is stipulated in art. 67 of the Law on Banks of the FBiH and in art. 125 of the Law on Banks in RS. According to this texts, if a person among the Supervisory Board or management members, employees, persons that have significant ownership interest, or any related entity, is charged with any criminal offense within the financial and economic scope of crime, the Banking Agency may issue a written order and temporarily suspending such person from his or her position in the bank, and, if applicable, suspending the exercise of voting rights in the bank by such person, pending the determination of the legal case.

1093. If the one of the above-mentioned persons is convicted by legally valid verdict, the Banking Agency may issue a written order removing such person from his or her position in the bank, and, if applicable, prohibiting the exercise of his or her voting rights in the bank and requiring him or her to dispose of all or any part of his or her ownership interest in the bank.

1094. The applicant should submit documents for absence of criminal registrations. The evaluators were informed that the Banking Agency does not have direct access to the criminal or law enforcement databases and hence the verification of the declarations is difficult to be made. Nonetheless, the authorities informed that their checks on criminal records are addresses based on the territorial principle because such are kept in accordance with place of birth of the individual. Data for on-going investigations is gathered from the courts according to the place of residence.

1095. The leasing activities are also subject to a licensing regime, prescribed in the Law on Leasing of the FBiH and RS. This legislation is defining some fit and proper pre-conditions, such as specific

professional qualifications, capability and experience necessary for managing the business and the approval of the Banking Agencies for increase of the shares above some certain threshold. However, the major requirements of criterion 23.3 in relation to the market entry procedures which shall prevent the criminals or their associates from holding or being the beneficial owners of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils, etc. are not met.

1096. The main legal documents regulating the activities of the MCOs in the FBiH are the Law on Microcredit Organizations (Official Gazette of the FBiH, No. 59/06) and the Decrees (No. 1, 2 and 3) of the Banking Agency of the FBiH from 2007.

1097. Articles 2 and 3 of the Law are defying the microcredit organizations as non-depositary financial organization whose core activity is provision of microcredit. A microcredit organization is a legal entity which may be founded and may operate as a microcredit company or as a microcredit foundation. It is unclear for the evaluators if the level of the AML/CFT risks in the microcredit foundations is subject to further assessment from the authorities.

1098. According to article 5 of the Law, "*activities of disbursing microcredit may be carried out as an activity only by microcredit organizations that had obtained a permit for the provision of those activities from the Agency and carried out the entry into the court registry or the registry of foundations"*. The permit shall be issued for undefined period of time and is not transferable.

1099. The specific fit and proper requirements for the directors and management members of the MCOs are provided by the afore-mentioned Decrees. Pursuant to Article 3 of Decree No.2 related to Issuing and Revoking the Operating Permit and other Approvals Granted to Microcredit Organizations, an evidence on education (Bachelor degree diploma), professional qualifications and work experience (at least 3 (three) years on these or similar tasks) for the director and executive directors, as well as excerpts from the criminal record for these persons, shall be submitted to the Banking Agency of the Federation. Similar requirements are given for the Supervisory/Management board members. However, no other requirements are in place to prevent criminals and their associates from owning of significant or controlling interest in MCO.

1100. Pursuant to 2 of Decree No. 3 on the Requirements and the Procedure for Issuing the Operating Permit and Approvals for Acquiring the Ownership Shares by Investing and Transferring the Microcredit Foundations 'Assets, statements of the founders on the origin of monetary funds – payment sources, with the indication that those funds are not provided based on Article 26, Paragraph 4 of the Law on Microcredit Organization shall be submitted prior to the establishment of the MCO. The fit and proper requirements as of the one related to the activity of the MCO are stipulated for the directors and Supervisory/Management board members. In addition, in case if, in accordance with provisions of this Decree, a domestic and foreign natural person together with the MCF establishes a new MCC in which it will acquire significant ownership interest of more than 10% of capital, or in case if it acquires significant ownership interest of more than 10% of existing MCO capital, an evidence on its professional qualifications (diploma) and work experience, as well as the excerpts from the criminal record shall be submitted. However, the evaluation team is of the opinion that the requirement for submission of excerpts from criminal records is not high enough to cover the requirements of criterion 23.3.

1101. The main legal documents regulating the activities of the MCOs in RS are the Law on Microcredit Organizations adopted in June 2006 and the Decision on the Requirements and Procedures for Issuing Microcredit Operating Permission to Microcredit Organizations, Organizational Units of Microcredit Organizations from the FBiH, BD, and from Microcredit Organizations in RS, which was adopted 29.12.2006. No information was provided in relation to MCOs in BD.

1102. The requirements of the Law are similar as of those provided in the Law of MCOs of the FBiH. Pursuant to Article 3 of the Decision, evidence on professional qualifications, work experience, and financial condition for members of the managing bodies, as well as excerpts from the criminal record stating that these persons were not sentenced for criminal acts for which unconditional imprisonment is prescribed shall be submitted prior to the licencing of the MCO. However, this does not cover the requirements of criterion 23.3.

1103. No information has been provided for the MCOs registered in BD.

Securities

1104. Amendments to the Law on Securities Market of the FBiH were brought in December 2010 introducing relevant clauses in relation to market entry and fit and propriety.

1105. According to its art. 68, securities operations may be performed only by brokers, investment managers and investment advisers who are employees of professional intermediaries and banks conducting operations with securities, licensed by the Securities Commission of the FBiH. Art. 69 is defining the securities activities carried out by the banks and its licensing.

1106. According to Article 90 of the law, "*a professional intermediary is required to provide evidence against the founders and board members are founders of the security measures imposed ban on carrying out operations with securities that are still in force or not performed or do not take the legal consequences of a conviction relating to the cessation or prohibition to conduct business in securities transactions with securities".*

1107. According to art. 104 of the Law on Securities Market of the FBiH, license for conducting brokerage, investment management and investment advisers activities shall be given if the applicant:

a) have passed the exam for brokers, investment managers and investment advisers;

b) against him was not confirmed an indictment or verdict was pronounced guilty verdict in Bosnia and Herzegovina or in another state for crimes against the economy, business and security payments, property, justice, legal transactions, bribery and official and other responsible duties, criminal works, and the crimes for which the minimum penalty of imprisonment of one year;

c) that he had not received a final conviction for the crimes referred to in point b) of this paragraph, that does not take the legal consequences of conviction for these crimes;

d) against him is received security measures in connection with the tasks of the securities or that does not take the legal consequences of conviction for these crimes;

1108. The Commission may refuse issuing a license or suspend the activity of already licensed broker, investment manager and investment adviser if some of the conditions mentioned above are not met.

1109. The measures described above implement prohibition of persons with a criminal record from either shareholders or being board members of securities intermediaries in the FBiH. However, it should be noted that a criminal liability is limited by conviction that should be related specifically to the cessation or prohibition to conduct business with securities and does not extend to any other criminal liability. There is no prohibition related to criminal associates.

1110. According to art. 94 of the Law on Securities of RS, the person who submits an application for the issuance of a broker, investment advisor or investment manager license, shall accompany the application with certificate of a competent authority that he/she has not been convicted of a criminal act against economy and payment operation, against his/her official duty or of a criminal act prescribed by the same Law and that no measure has been imposed against him/her banning him/her to perform the same or similar activities in connection with securities; in the case of a foreign applicant; or certified translation of such a certificate issued by the competent authority of the country of which he/she is citizen.

1111. Moreover, art. 99 is giving the ability of the Securities Commission of RS to revoke an operating license to conduct transactions with securities issued to a broker, investment advisor or investment manager if he/she has been convicted by final judgement of a criminal act against economy and payment operation, against his/her official duty or of a criminal act prescribed by the same Law or a measure has been imposed against him/her or is in effect banning him/her to perform activities with securities and he/she has been convicted with legal effect for an offence referred to in Article 299 of the Law on Securities of RS. As in the case of FBiH, the prohibition to conduct business with securities does not extend to any criminal liability and there is no prohibition related to criminal associates.

1112. Similar requirements are applicable for the directors of the Stock Exchange, according to art. 159 of the Law on Securities of RS and art. 143 of the Law on Securities Market of the FBiH.

1113. No changes have occurred in relation to the Laws on Investments Funds of the FBiH, RS and BD of BiH, therefore the analysis made in the 3-rd round of assessments remains valid (the reader is referred to paragraph 798 of the previous MER). The deficiency related to the lack of requirement for professional qualifications and expertise of the directors and senior management remains.

1114. The same is applicable for art. Articles 67 and 203 of the Law on Securities of RS.

1115. In respect of the BD Article 36a states that a "*person from the management or supervisory boards of the securities companies may not hold this position without appropriate qualifications and relevant experience in doing business with the securities"*.

1116. Article 36a of the Law on Securities of BD of BiH states the majority owner and board member of the supervisory board in companies doing business with securities may not be a person:

- against whom an indictment was raised in Bosnia or in another state and that there was a final conviction in another state or BH:
- for offenses against the economy, business and safety of payment;
- crimes against property;
- offenses against justice;
- crimes against the violation of official and other responsible duties;
- criminal offenses under this Law;
- against whom the security measure of ban on performing activities with securities has been imposed.

1117. The requirement stated in this Article does not fully correspond to Recommendation 23, since this Article only speaks about a board member of the supervisory board in companies and does not cover a full range of senior management positions. It is also should be noted that the Article is silent on criminal associates.

1118. There is no relevant by-law which would regulate the conditions for the appropriate qualifications and relevant experience in doing business with securities in BD.

Insurances

1119. No changes occurred in the licencing system since the 3rd round MER. Articles 26-29 of the Laws on Insurance Companies of FBiH and the similar law of the RS describe the licensing requirements in relation to the insurance sector. The reader is referred to paragraphs 792-794 of the previous report.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5)

1120. The value transfer services and currency exchange offices are entities obliged under the AML/CFT Law and are supervised by the Banking Agencies of each entity when carried out as one of the bank's activities.

1121. According to art. 39 of the Law on Banks of the FBiH and art. 87 of the Law on Banks of RS, providing a payment system, money transfer service and buying and selling foreign currencies is part of the banking activity, and thus subject to the same licencing regime.

1122. The authorities advised that value transfer operations can be implemented only by banks, the Post Office and by the company Tenfore (which operates in BiH as an agent of Western Union) on the bases of relevant contracts. Thus, the legislation in force does not provide for any licensing or registration requirements in respect of persons involved in the provision of money or value transfer outside the banking system.

1123. As at the time of the previous round, there is no prohibition or restriction for any legal or natural person to be involved in currency exchange and/or money transfer services, which means that any person may engage in the above-mentioned activities without being duly licensed and registered.

Licensing of other Financial Institutions (c. 23.7)

1124. Article 4 Paragraph n (2-8) of the new AML Law defines certain legal and natural persons as liable subjects when performing the following (financial) activities:

- Receiving and/or distributing money or property for humanitarian, charitable, religious, educational or social purposes;
- Transfer of money or values;
- Factoring;
- Forfeiting;
- 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;
- Issuing financial guarantees and other warranties and liabilities;
- Giving loans, crediting, offering and brokering in the negotiation of loans.

1125. The evaluators were told that the activities listed above can be performed only by the financial institutions covered by the Core Principles, which are dully licensed and supervised.

1126. However, under the current legislation, there is no prohibition or restriction on any legal or natural person being involved in the activities listed above and the evaluators of the present round share the concerns expressed in the previous report, that the ban on carrying out certain occupations (Art. 73 of the CC of BiH) does not ensure that the types of activities specified above are adequately subject to licensing as required by the criterion.

On-going supervision and monitoring

Recommendation 23 & 32 (c. 23.4, c. 23.6, c. 23.7, supervision/oversight elements only & c. 32.2d)

Application of Prudential Regulations to AML/CFT (c. 23.4)

1127. The Banking Agencies are the main prudential supervisory authorities in BiH and in their organisational framework cover the activities to assure compliance of most of the financial sector and the application of the AML/CFT regulations as well as other applicable rules.

1128. The regulatory and supervisory measures in relation to those institutions subject to Core Principles are applied consistently for prudential and AML/CFT purposes, including the assessment of risk and vulnerability patterns, assessment of management information systems, mechanisms of transaction monitoring and consolidated supervision. The risk based approach is applied in supervision.

1129. The competent supervisory authorities exchange information in relation to prudential issues. In this respect in relation to the banking activities, major role has the National Bank of BiH. The National Bank possesses information on all the entities operating in the country as well as in relation to the general reports prepared. In operational terms the Central Bank has no role in the AML activities, it has an umbrella role as it should make sure that the laws adopted at the entity level are harmonised.

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6)

1130. As described above, the new AML/CFT Law is dividing the supervisory responsibilities over the reporting entities.

1131. According to art. 80, para. 1, the money exchange services performed by the banks are under the supervision of the Banking Agencies of RS and the FBiH. There are no special rules or legal requirements that should apply only for the money exchanging activities, and they are considered as part of the regular AML monitoring process as described above.

1132. The transfers of money and values are under the supervision of the competent entity Ministries of Finance in the Federation and RS, or the BD Finance Directorate. At the time of the on-site visit no AML/CFT supervision/monitoring had been carried out in practice.

Supervision of other Financial Institutions (c. 23.7)

1133. According to Art. 80 (1) c), the supervision over the work of liable persons referred to in Article 4 Item n) Lines 2), 3), 4), 5), 6), 7) and 8), unless performed by a bank within its activity, shall be performed by the competent entity ministries of finance, or the BD Finance Directorate.

Statistics on On-Site Examinations (c. 32.2(d), all supervisors)

1134. According to art. 80, para. 3 of the new AML/CFT Law the FID and supervisory bodies, within their respective competencies, shall cooperate in the supervision of application of provisions of this Law. The subsequent art. 81, para. 2 is requiring that the supervisory bodies, with regard to their supervision over the harmonisation of operations of liable persons, shall submit the following to the FID:

- Records on supervision performed;
- Decisions on issued orders for eliminating the lack of harmonisation (irregular and illegal activities) identified through supervision;
- Report on warrants issued or procedures instituted, containing the data about the records of measures undertaken with regard to a liable person (including: The number and date of the warrant issued or an order to institute proceedings, and the name of the court it was submitted to; Full name, date of birth and place of residence of a natural person, or the name and seat of a legal person suspected of having committed an offence; Place, time and manner of committing an activity having elements of offence; Data on sanctions issued).

- Records on the supervision of implementation of measures ordered by a decision.

1135. However, the effective application of this new regime cannot be assessed due to the lack of data at the moment of the on-site visit, on the practical use of the gathered information. The evaluation encourages the authorities to use the statistics for strategic analysis and other guidance use for prioritization of cases and allocation of the resources.

1136. The communication between the supervisory authorities and FID is subject to legal definition in art. 81 and 82 of the new AML/CFT Law. These two texts describe the means and methods for exchanging of statistical data between the FID and the supervisors.

Banks, leasing, MCO, money and currency exchange

1137. As described above, special AML/CFT units conducting on-site and off-site supervision have established only in the two Banking Agencies. The number of inspectors carrying this control is 6 for the Banking Agency of the FBiH (17 is the total number of banks licensed on the territory of the Federation) and 3 for the Banking Agency of RS (10 is the total number of banks licensed on the territory of RS).

Table 24: AML/CFT supervisory activities carried-out in banks by the Banking Agency of the FBiH.

Year	Total number of entities	Total number of on-site visits conducted	Number of AML/CFT specific on-site visits conducted
	1	2	3
2009	20	50	20
2010	19	57	20
2011	19	49	18
2012	18	47	8
2013	17	68	18
2014* (data refers to 30/06/2014)	17	40	10

1138. The statistics are showing that the number of the on-site inspections is directly related the number of the licensed banks in the FBiH. With the exception of 2012, this principle has been followed in the activity of the supervisor. In 2012 the Banking Agency of the Federation was performing with priority on-site inspections to the micro-credit and leasing organisations.

Table 25: AML/CFT supervisory activities carried-out in banks by the Banking Agency in RS.

Year	Total number of entities	Total number of on-site visits conducted	Number of AML/CFT specific on-site visits conducted
	1	2	3
2009	10	32	8
2010	10	32	9
2011	10	36	9
2012	10	35	9
2013	10	38	5
2014* (data refers to 30/06/2014)	10	13	2

1139. The statistic is clearly showing that during the last two years the number of the on-site inspections of the banks licensed in RS is decreasing. According to the authorities this is related to the targeted

supervisory activities focused on leasing and micro-credit organisations. The lack of resources was a reason for the low number of the on-site activities of the Banking Agency of RS.

Table 26: Supervisory activities in relation to MCOs in the FBiH.

Year	Total number of entities	Total number of on-site visits conducted	Number of AML/CFT specific on-site visits conducted	Number of AML/CFT combined with general supervision on-site visit carried out
	1	2	3	4
2009	18	2	1	2
2010	18	5	1	5
2011	16	6	0	6
2012	14	24	16	16
2013	13	20	13	13
2014* (data refers to 30/06/2014)	13	8	4	4

1140. The data in the table are showing significant increase of the number of AML/CFT inspections in 2012 and 2013.

Table 27: Supervisory activities in relation to MCOs in RS.

Year	Total number of entities	Total number of on-site visits conducted	Number of AML/CFT specific on-site visits conducted	Number of AML/CFT combined with general supervision on-site visit carried out
	1	2	3	4
2009	7	12	0	0
2010	7	11	0	0
2011	8	9	0	0
2012	8	10	0	0
2013	6	16	7	0
2014* (data refers to 30/06/2014)	6	9	4	0

1141. The statistics are showing that before 2013 the MCOs have not been subject to any AML/CFT supervision in RS.

Table 28: The supervisory activities in relation to leasing companies in the FBiH.

Year	Total number of entities	Total number of on-site visits conducted	Number of AML/CFT specific on-site visits conducted	Number of AML/CFT combined with general supervision on-site visit carried out
	1	2	3	4
2009	-	-	-	-
2010	2	3	1	1
2011	7	14	6	6
2012	7	14	7	7
2013	6	14	7	7
2014* (data refers to 30/06/2014)	6	9	6	6

Table 29: The supervisory activities in relation to leasing companies in the RS.

Year	Total number of entities	Total number of on-site visits conducted	Number of AML/CFT specific on-site visits conducted	Number of AML/CFT combined with general supervision on-site visit carried out
	1	2	3	4
2009	1	1	0	-
2010	1	0	0	0
2011	2	0	0	0
2012	2	1	0	-
2013	2	2	1	-
2014* (data refers to 30/06/2014)	1	2	1	-

1142. The statistics are clearly showing that before 2013 the leasing companies have not being subject to any AML/CFT supervision.

1143. The MSBs and currency exchange activities are included in the banking supervisory statistics.

Securities

1144. As mentioned above, the Securities Commissions of the three entities do not have specialised AML/CFT units. These supervisory activities are included in the prudential supervision.

Table 30: The supervisory activities in relation to the securities market in the FBiH.

Year	Total number of entities	Total number of on-site visits conducted	Number of AML/CFT specific on-site visits conducted	Number of AML/CFT combined with general supervision on-site visit carried out
	1	2	3	4
2009	49	55	0	55
2010	43	48	1	49
2011	42	47	3	50
2012	48	48	0	48
2013	48	46	1	49
2014* (data refers to 30/06/2014)	48	14	0	14

Table 31: The supervisory activities in relation to the securities market in the RS.

Year	Total number of entities	Total number of on-site visits conducted	Number of AML/CFT specific on-site visits conducted	Number of AML/CFT combined with general supervision on-site visit carried out
	1	2	3	4
2009	48	8	0	8
2010	50	18	0	18
2011	49	25	0	25

2012	**49**	**18**	**0**	**18**
2013	**45**	**50**	**0**	**50**
2014* (data refers to 30/06/2014)	**45**	**8**	**0**	**8**

1145. The information is showing that there are no or very limited number of specific on-site inspections in the securities sector. According to the authorities, the majority of them have been conducted on an *ad hoc* basis in relation to requests from the LEAs or the FIU.

1146. There are no data available for the supervisory activity of the Securities Commission in the BD.

Insurances

1147. The Insurance Commissions in the FBiH and RS are performing the AML/CFT supervisory activities together with the prudential supervision. The tables below are providing with information on the supervisory activity of the Insurance Commission of RS and the FBiH.

1148. The statistics provided by the authorities are showing that the AML/CFT focus is limited and cannot guarantee effective supervision.

Table 32: The supervisory activities in relation to the insurance market in RS.

Obliged entity	**Internal risk assessment act**	**List of indicators for identification of suspicious transactions and clients**	**Annual technical training, qualification upgrading and education of staff**	**Decision on appointment of an authorised person for cooperation with the FIU and the Agency**
Jahorina osiguranje“ a.d. Pale	yes	no	no	no
„Grawe osiguranje“ a.d. Banja Luka	yes	no	no	no
„Dunav osiguranje“ a.d. Banja Luka	no	no	no	no
„Safe life“ d.o.o. Banja Luka	yes	no	no	no
„WVP“d.o.o. Banja Luka	yes	no	no	yes
Prvi broker d.o.o. Banja Luka	no	no	no	no
„Hypo Alpe-Adria-Bank a.d. Banja Luka	yes	yes	yes	yes

Table 33: The supervisory activities in relation to the insurance market in the FBiH.

Year	Total number of entities	Total number of on-site visits conducted	Number of AML/CFT specific on-site visits conducted	Number of AML/CFT combined with general supervision on-site visit carried out
	1	2	3	4
2009	9	7	0	0
2010	9	9	0	2
2011	8	7	0	1
2012	9	9	0	0
2013	8	11	0	2
2014* (data refers to 30/06/2014)	8	4	0	1

1149. No data have been provided for the supervisory activity over the postal services.

Statistics on Formal Requests for Assistance (c. 32.2(d), all supervisors)

1150. No statistics have been provided to evaluators in relation to formal requests for assistance.

Effectiveness and efficiency (market entry [c. 23.3, c. 23.3.1, c. 23.5, c. 23.7]; on-going supervision and monitoring [c. 23.4, c. 23.6, c. 23.7], c. 32.2d], sanctions [c. 17.1-17.3])

1151. On-going supervision and monitoring of activities of the activities of the banks, MCOs and leasing companies are related to the use of different supervisory tools such as off-site surveillance and on-site inspections, supervision methodologies, risk-based supervision and some planning of supervisory actions. However, the results of supervision, particularly the statistics on irregularities are showing that in relation to the AML/CFT the monitoring tools are insufficient to achieve required the effectiveness of the regime. Similar conclusion was also given in the 3rd round MER.

1152. As for the non-banking financial institutions, the evaluation team is of the opinion that the prudential supervisory tools have not been used for AML/CFT purposes and therefore the effectiveness of the on-going supervision and the monitoring process have not been demonstrated.

1153. Since the 3rd round of evaluations steps have been taken in order to address the technical deficiencies and to increase the effectiveness of the regime relation to the market entry and fit and propriety requirements. The evaluators welcome the efforts made in this respect in the banking sector, where the effectiveness of the regime was demonstrated in practice during the on-site visit.

1154. The licensing and fit and propriety procedures in the FBiH are carried out by special departments in the Banking Agencies in accordance with specific regulation. In its activity they can be supported by the AML/CFT or any other unit.

1155. The representatives of the Banking Agency of the FBiH showed proactive approach and high level of understanding of the requirements of criterion 23.3. The evaluators were informed that the Banking Agency check the on criminal records of the licence applicants based on the territorial principle as they are kept according with place of birth of individuals. Data for on-going investigations is gathered from the courts according to the place of residence of the applicants. The Agencies do not have direct access to the criminal or law enforcement databases and hence the verification of the declarations is sometimes time consuming.

1156. During the on-site visit the efficiency of the threshold regime in relation to acquiring significant or voting rights in a bank was explained. According to the authorities, in practice, even if the threshold is not met, every increase in the ownership is subject to subsequent control. The evaluation

team was informed about two previous cases when shareholders, with less than 10% of the capital or the voting shares, were subject to control, caused by the establishment of links between them and other shareholders. Hence after performing this control, the threshold was exceeded and approval from the Agency was needed. However, the evaluation team is of the opinion that this legal text may result in unregulated capital increase, deliberately with a purpose to avoid fulfilment of the requirements set in the legislation in relation to these thresholds.

1157. The same threshold approach is introduced in the securities market legislation.

1158. The licencing departments in the supervisory authorities do not have lists with terrorists and the evaluators advised that in this case the FIU or the AML/CFT departments should be addressed. However, the effectiveness and the practical application of such regime is under question mark.

1159. The transfers of money and values operating outside the banking sector are under the supervision of the competent entity Ministries of Finance in the Federation and RS, or the BD Finance Directorate. At the time of the on-site visit those authorities were performing only prudential supervision activities.

1160. Only the Banking Agencies of FBiH and RS have imposed AML/CFT related sanctions as emphasised in the tables below.

Table 34. Sanctions imposed to banks by the Banking Agency of the FBiH.

Year	Total number of inspections carried out	Number of inspections having identified AML/CFT infringements	Written warnings	Withdrawal of license	Fines	
					Number	Amount (EUR)
	1	2	3	4	5	6
2009	19	8	-	-	-	-
2010	19	10	-	-	6	40.800
2011	18	8	-	-	9	55.200
2012	8	-	-	-	3	92.500
2013	18	18	-	-	12	76.100
2014* (data refers to 30/06/2014)	9	-	2	-	3	49.000

Table 35. Sanctions imposed to banks by the Banking Agency of RS.

Year	Total number of inspections carried out	Number of inspections having identified AML/CFT infringements	Written warnings	Withdrawal of license	Fines	
					Number	Amount (EUR)
	1	2	3	4	5	6
2009	8	8	8	-	-	-

2010	**9**	**9**	**9**	**-**	**-**	**-**
2011	**9**	**9**	**9**	**-**	**-**	**-**
2012	**9**	**9**	**9**	**-**	**-**	**-**
2013	**5**	**5**	**5**	**-**	**-**	**-**
2014* (data refers to 30/06/2014)	**2**	**2**	**2**	**-**	**-**	**-**

Table 36. Sanctions imposed to leasing companies by the Banking Agency of the FBiH.

Year	**Total number of inspections carried out**	**Number of inspections having identified AML/CFT infringements**	**Written warnings**	**Withdrawal of license**	**Fines**	
					Number	**Amount (EUR)**
	1	**2**	**3**	**4**	**5**	**6**
2009	**-**	**-**	**-**	**-**	**-**	**-**
2010	**1**	**1**	**-**	**-**	**-**	**-**
2011	**6**	**6**	**-**	**-**	**-**	**-**
2012	**7**	**-**	**-**	**-**	**-**	**-**
2013	**7**	**7**	**-**	**1**	**5**	**50.000**
2014* */the authorities to provide the date till these numbers are actual/*	**6**	**-**	**-**	**-**	**-**	**-**

Table 37. Sanctions imposed to leasing companies by the Banking Agency of RS.

Year	**Total number of inspections carried out**	**Number of inspections having identified AML/CFT infringements**	**Written warnings**	**Withdrawal of license**	**Fines**	
					Number	**Amount (EUR)**
	1	**2**	**3**	**4**	**5**	**6**
2009	**-**	**-**	**-**	**-**	**-**	**-**

2010	-	-	-	-	-	-
2011	-	-	-	-	-	-
2012	-	-	-	-	-	-
2013	**1**	**1**	**1**	-	-	-
2014* (data refers to 30/06/2014)	**1**	-	-	-	-	-

Table 38. Sanctions imposed to MCOs by the Banking Agency of the FBiH.

Year	Total number of inspections carried out	Number of inspections having identified AML/CFT infringements	Written warnings	Withdrawal of license	Fines	
					Number	Amount (EUR)
	1	2	3	4	5	6
2009	**1**	**1**	-	-	-	-
2010	**1**	**1**	-	-	-	-
2011	-	-	-	-	-	-
2012	**16**	**16**	-	-	-	-
2013	**13**	-	-	-	-	-
2014* (data refers to 30/06/2014)	**4**	**4**	-	-	-	-

Table 39. Sanctions imposed to MCOs by the Banking Agency of RS.

Year	Total number of inspections carried out	Number of inspections having identified AML/CFT infringements	Written warnings	Withdrawal of license	Fines	
					Number	Amount (EUR)
	1	2	3	4	5	6
2009	-	-	-	-	-	-
2010	-	-	-	-	-	-
2011	-	-	-	-	-	-
2012	-	-	-	-	-	-
2013	**7**	**7**	**7**	-	-	-
2014* (data refers to 30/06/2014)	**4**	**2**	**2**	-	-	-

1161. Although adopted to bring clarity to the AML/CFT sanctioning regime, at the time of the on-site visit, the provisions of the new AML/CFT Law did not contribute to the increase the effectiveness of the system. During the on-site interviews it was confirmed by the authorities that they were still not clear whether to sanction according to the AML Law, sectorial (banking, leasing, securities etc…) legislation, or according to the Law on Misdemeanours. Some authorities considered themselves empowered to sanction directly for AML/CFT breaches (the Banking Agencies), but the others were not sure if they should send the acts for establishing violations to FID, recognized as the only authority empowered to sanction for AML/CFT breaches.

1162. The effectiveness of the sanctioning regime in BiH is limited mainly to the activities of the Banking Agencies of RS and the FBiH. Moreover, the statistics provided by the authorities indicate that the fines imposed are at the minimum level. This was also confirmed by the Bosnian institutions during the on-site interviews.

1163. The statistics are confirming that no pecuniary fines were imposed to senior managers and directors of FI. The only individual sanction given to a natural person was the removal from the occupied position but the reasons for such measures were not provided by the authorities.

1164. According to the statistics, some 35 inspections on MCOs have been done by the Banking Agency of the FBiH but as described above, no sanctions have been imposed for AML/CFT violations although AML/CFT breaches were established by the authorities. Therefore, the evaluation team is perturbed by the fact that the established AML/CFT violations by have not been sanctioned at all.

1165. The majority of the other sanctions for AML/CFT breaches are imposed under the form of written warnings, including the one imposed by the Banking Agency and Insurance Commission of RS. Moreover, the last mentioned authority performed this activity only in 2014.

1166. No effectiveness was demonstrated by the Securities Commissions of the FBiH, RS and BD; by the Insurance Commission of the FBiH; and by the authority responsible for the supervision of the Post Offices as no sanctions have been imposed.

1167. The only exception is the removal of manager/compliance officer by the Securities Commission of RS in 2011. The authorities informed that this sanction was related to one of the major ML cases in the country.

1168. In relation to the afore-mentioned a conclusion can be made that the sanctions available in BiH for AML/CFT breaches might be considered as proportionate and dissuasive but they are not effectively used by the competent authorities. Moreover, the luck of other possible sanctions apart from fines and written warnings (such as withdrawal or suspension of license, removal from management or other position of a person, etc.) is considered by the evaluators as a deficiency of the sanctioning system.

Guidelines

Recommendation 25 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

1169. BiH was rated PC in the last evaluation report as the following shortcomings were identified:

- There was no mandatory obligation to provide general feedback;
- Lack of provision of meaningful feedback;
- 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;
- Not all sectors developed indicators for suspicious transactions;

- No specific guidance issued to all FIs sectors and DNFBPs other than the implementing guidance under the Book of Rules;
- No general and specific feedback to DNFBPs;
- Impact of the above on the effectiveness of the system.

Guidance for financial institutions other than feedback on STRs (c.25.1)

1170. Although supervisory bodies have Guidelines and Rulebooks in place, some institutions have stated that they have changed some internal practices to reflect the new Law while others await the adoption of by-laws.

1171. Generally the financial institutions have suitable guidelines and rulebooks from supervisory bodies but it is clear that some institutions are still adhering to guidelines based on the old law and some new guidelines have yet to be issued which could lead to deficiencies[61].

1172. Training is carried out by SIPA who also liaise with reporting entities on a regular basis and this regular contact often includes individual guidance on the quality of the STR and/or information therein.

Effectiveness and efficiency (R. 25)

1173. There is a generally held belief that sectors have a period of grace before the new AML/CFT Law must be applied.

1174. Due to the lack of full supervision in relation to DNFBP'S and the varied awareness of ML/TF issues the submission of STR's is unsurprisingly low which indicates a lack of effectiveness.

3.9.2 Recommendations and comments

Recommendation 23

1175. The authorities should take action to clarify the legal uncertainty about the supervisory functions in relation to the brokerage activities of the banks as described under the analytical part of Rec. 23.2.

1176. Steps should be taken in order to introduce the risk-based supervision for the non-banking financial institutions. Please see para 735 above.

1177. The entity level legislation should be harmonized with the AML/CFT Law and prescribe equal standard for supervision among all competent authorities.

1178. The number of AML/CFT on-site and off-site inspections in the insurance and the securities sector should be increased.

1179. The amendments were brought to the legislation implementing the prohibition for persons with criminal records from either being shareholders or being board members of securities intermediaries in the FBiH. However, it should be noted that criminal liability is limited by conviction that should be related specifically to the cessation or prohibition to conduct business with securities and does not extend to any other criminal liability.

1180. The authorities should take further steps to prohibit criminal associates from holding a significant or controlling share in FI and to extend the scope of the criminal conviction requirements to all

[61] Based on Article 5 and 80 of the new AML/CFT Law and the new Rulebook on the implementation of the law ("Official Gazette of BiH, No. 41/15 – hereinafter: Rulebook), the Insurance Agency of RS has prepared new Guidelines for risk assessment and implementation of afore-mentioned legislation in the insurance sector. The guidelines were adopted on 30.08.2015, by the Management board of the Agency.
Similar Guidelines were also adopted by the Securities Commission of RS on 10.06.2010 and entered into force on 10.06.2010.

crimes. A clean criminal record of the senior managers of market intermediaries in BD should be required.

1181. The Agency for Supervision of the Post Office Operation needs to be recognised as an AML/CFT supervisor under Article 80 of the AML/CFT Law and AML/CFT supervision and monitoring should start.

1182. The authorities in RS are encouraged to adopt legislation to require a proof of the origin of the money for the FI shareholders to increase effectiveness of the licencing regime.

1183. There should be licencing and regulation provisions for the FI listed in Article 4 Para. n letters (2-8) of the AML/CFT Law, when carried out outside the FI subject to Core Principles.

1184. Amendments in the legislation related to the licensing regime of the MCOs are needed in order to fully cover the requirements of criterion 23.3.

Recommendation 17

1185. The authorities should take the necessary regulatory measures to clarify the powers and competences in applying the AML/CFT sanctioning regime. Amendments are also necessary to clearly provide for the possibility to sanction senior management and directors of the financial institutions.

1186. The authorities are recommended to take the legislative measures to ensure the full scope of AML/CFT breaches (see the missing elements in the table included in the analytical part of Recommendation 17.1).

1187. The authorities should invest more efforts to increase effectiveness of the supervisory and sanctioning regime of the insurance and securities sector as well as for the postal financial services.

1188. The overreliance of the written warnings and the imposition of the minimum level sanctions should be also reconsidered in order for the sanctions to have the required by the FATF standard effectiveness, dissuasiveness and proportionality.

1189. The authorities should consider the possible benefit for the sanctioning regime of introducing criminal sanctions for AML/CFT violations.

Recommendation 25 (c.25.1 [Financial institutions])

1190. Additional training in relation to the new rule book, guidelines and AML law would raise awareness and offer a more harmonised approach.

Recommendation 29

1191. The authorities should take measures to clarify the allocation of AML/CFT powers and responsibilities amongst supervisory bodies.

1192. The ability of supervisors to sanction directors/senior management for AML/CFT breaches should be clearly stipulated.

Recommendation 30 (all supervisory authorities)

1193. The authorities should consider increasing the level of staff dedicated or with knowledge/skills on AML/CFT supervision across the FI supervisory authorities.

1194. The regime would highly benefit if from AML/CFT departments in the Insurance and Securities Commissions or from specialised personnel in the general supervision departments. The entities Ministers of Finance and in Brčko District Financial Directorate should have AML/CFT trained employees.

Recommendation 32

1195. The authorities are strongly recommended to maintain with comprehensive statistics in relation to the supervisory and sanctioning regime. These statistics shall be used also as part of the risk-based supervisory process and might be used as an initial basis for strategic analysis.

3.9.3 Compliance with Recommendations 23, 29, 17 & 25

	Rating	Summary of factors relevant to s.3.10. underlying overall rating
R.17	**PC**	• The sanctioning regime under the AML/CFT Law does not cover all the possible breaches; • There is no clear possibility for sanctioning the directors and senior management; **Effectiveness** • The effectiveness of the sanctioning regime provided by the new AML/CFT Law not demonstrated; confusion among the authorities on sanctioning competences and on applicable law for sanctions; • Overreliance of the written warnings in the banking sector of RS which are not effective, proportionate and dissuasive enough; • The imposed sanctions for the banking sector of the FBiH are at the minimum level and therefore are not effective, proportionate and dissuasive enough; • No AML/CFT sanctions imposed to non-banking financial institutions.
R.23	**PC**	• Legal uncertainty about the supervisory functions in relation to the brokerage activities of the banks; • Failure to include criminal associates into the scope of the measures aimed at prevention of criminals from holding a controlling interest or management function in financial institutions; • The requirements of criterion 23.3 in relation to the leasing activities are not met; • No clear requirements for clean criminal records in relation to the Directors and the Management Board of a banks registered in RS; • The measures to prohibit persons with a criminal record from being shareholders or board members of securities intermediaries does not extend to all criminal liabilities; • Lack of requirement for professional qualifications and expertise of the directors and senior managers for investment funds; • No licencing or registration requirements the FI referred to

		in EC 23.7. **Effectiveness** • Lack of effective on-going supervision and monitoring in the non-banking financial institutions; • Effectiveness concerns in relation to the threshold approach in licensing in the banking and securities sector.
R.25	**PC**	• The guidelines and the Rulebook had not been up-dated at the time of the on-site evaluation; • Deficiencies with regard to case by case feedback to FIs.
R.29	**PC**	• Lack of adequate supervisory powers in the insurance market to monitor and ensure compliance with AML/CFT requirements and to take enforcement measures and sanction both the institutions/businesses and their directors/senior management for with AML/CFT breaches; **Effectiveness** • Effectiveness of supervisory powers in the non-banking sector not demonstrated.

3.10 Money or value transfer services (SR. VI)

3.10.1 Description and analysis

Special Recommendation VI (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

1196. The evaluators of the 3rd round evaluation identified the following deficiencies with respect to SR.VI:

- Money transfer services provided by Post Office needs to be supervised by the relevant authorities;
- Need to re-assess position of Tenfore, d.o.o vis-à-vis it relationship with the FID and the new AML/CFT Law;
- Need to clarify position on sanctions for banks in the light of the new AML/CFT Law and the Laws on Banks.

Designation of registration or licensing authority (c. VI.1), adequacy of resources – MVT registration, licensing and supervisory authority (R. 30)

1197. No significant changes have been reported in respect of SR.VI since the last evaluation report. Therefore, the general framework in which money or value transfer services are organised in BiH, remains as described in paragraphs 850-853 of the 3rd round MER.

1198. As it was indicated in the 3rd round MER the new AML/CFT Law included respectively "Legal and natural persons performing transfer of money or values" and "companies engaged in electronic

funds transfer", as liable persons under Article 4 n) 2) and Article 4 f). This is considered by the BiH authorities to include Tenfore d.o.o.[62]

1199. Although, legal and natural persons performing transfer of money or values and companies engaged in electronic funds transfer are now subject to the AML/CFT Law it can be concluded that the Post Office or any other entities (except for banks) performing transfer of money or values are still not licensed and supervised for AML compliance.

Application of the FATF 40+9 Recommendations (applying R. 4 – 11, 13 – 15 & 21 – 23 and SR IX (c. VI.2))

1200. Since Article 4 n) 2) and Article 4 f) of the new AML/CFT Law includes respectively "Legal and natural persons performing transfer of money or values" and "companies engaged in electronic funds transfer", as liable persons, then it can be concluded that they are subject to the applicable relevant FATF 40 + 9 Recommendations. Please also refer to paragraph 854 of the 3rd round MER.

Monitoring MVT services operators (c. VI.3)

1201. Article 80 (1) c) & d) appoints the competent entity ministries of finance and the Brčko District BiH Finance Directorate as AML/CFT supervisors of companies engaged in transfer of money or values and electronic funds transfer (other than banks).

1202. The evaluation team has not been made aware of any monitoring activities over the MVT operators (other than banks) in practice. There do not appear to be any systems in place to monitor the Post Office.

1203. For the supervision of the MVT activities carried out by banks the conclusions expressed under Recommendation 23 and 17 are applicable.

Lists of agents (c. VI.4)

1204. BiH authorities have not provided any information on this point. Please refer to paragraph 856 of the 3rd round MER.

Sanctions (applying c.17 – 1 – 17.4 & R. 17 (c. VI.5))

1205. Money or value transfer operators should be subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions in accordance with criterion SR VI.5. As obliged entities under the new AML/CFT Law, banks (in providing money or value transfer services), the Post Office and any legal or natural person performing transfers of money or value are subject to sanctions as provided by the AML/CFT Law under Articles 83 and 84. In the case of banks, however, these are subject to further sanctions in terms of the Law on Banks of the FBiH and RS – refer to Recommendation 17, paragraph 670.

Additional element – applying Best Practices paper for SR. VI (c. VI.6)

1206. There was no information provided in respect of the application of best practices paper for SR.VI.

Effectiveness and efficiency

1207. The on-site interviews confirmed that the MVT operators are generally aware of their AML/CFT obligations.

[62] Tenfore d.o.o in Bosnia and Herzegovina is the Customer Service Centre for Tenfore Ltd (Cyprus). Tenfore Ltd (Cyprus) represents the same major international money transfer service provider.

1208. Tenfore d.o.o. representatives demonstrated sufficient level of knowledge of relevant requirements and presented their internal up-dated AML/CFT manual which provides regulations aimed to ensure a reliable and safe money transfer service.

1209. The authorities however were not able to provide any information on the application of SRVI.1, SVI.3, SRVI.4, SR.VI.5 and SR.VI.6.

3.10.2 Recommendations and comments

1210. The authorities should take measures to introduce registration or licensing of all MVTs (not only those operating through banks).

1211. Monitoring measures and systems for MVTs should be implemented.

1212. Licensed or registered MVT service operator should have the clear obligation to maintain a current list of its agents which must be made available for the designated competent authorities.

1213. Sanctions for failure to comply with the SRVI requirements should be introduced.

3.10.3 Compliance with Special Recommendation VI

	Rating	Summary of factors relevant
SR. VI	**PC**	• No registration or licensing requirements for all MVTs (except for those operating through banks); • Absence of monitoring measures for MVTs; • No obligation to maintain a current list of its agents which must be made available for the designated competent authorities; • Sanctions for failure to comply with the SRVI requirements should be introduced.

4 PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

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

Generally

1214. Article 4 under the new AML/CFT establishes the range of obliged entities and persons that are subject to the obligations under the Law. According to the AML/CFT Law, apart from the financial sector the following (Table X) are subject to the Law as 'designated non-financial businesses and professions' (DNFBPs).

1215. As indicated in Table X below, with one minor exception (no clear provision to include internet casino) DNFBPs as defined in the Glossary to the FATF Methodology are broadly covered by Article 4 of the new AML/CFT Law.

Table 40 – Comparative FATF/AML/CFT Law Designated Non-Financial Businesses and Professions

FATF Methodology (Glossary)	BiH AML/CFT Law – Art. 4
Casinos (which also includes internet casinos)	Casinos, gambling houses and other organizers of games of chance and special lottery games, particularly betting, slot machines, internet games of chance and games on other telecommunication means
Real Estate Agents	Real Estate Agencies
Dealers in precious metals Dealers in precious stones	Trade in precious metals and stones and products made of these materials
Lawyers, notaries, other independent legal professionals and accountants • buying and selling of real estate; • managing of client money, securities or other assets; • management of bank, savings or securities accounts; • creation, operation or management of companies; • creation, operation or management of legal persons or arrangements and buying and selling of business entities.	Persons engaged in professional services: 1) Public notaries, 2) Lawyers, 3) Accountants, 4) Auditors, 5) Legal or natural persons performing accounting services and tax counselling services. 1) A purchase or sale of a real-estate or a share, i.e. stocks of an economic society; 2) Management of financial means, financial instruments or other assets owned by a client; 3) Opening and managing the bank accounts, savings deposits or the accounts for dealings with financial instruments; 4) Gathering the means necessary for foundation, functioning and management of an economic society; 5) Foundation, functioning and management of an institution, fund, economic society or other similar legal and organisational form.

Trust and company service providers provide any of the following services to third parties: • acting as a formation agent of legal persons • acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons; • providing a registered office • acting as (or arranging for another person to act as) a trustee of an express trust; • acting as (or arranging for another person to act as a nominee shareholder for another person.	Persons providing entrepreneurial services (trust) whose activity is to provide third parties with the following services: • establishment of legal person • to perform board management duties or enable other person to perform such duties; • to provide legal person with registered seat or rental business mailing address; • to perform duties or enable another person to perform duties of manager; • to use, or enable another person to use shares which belong to another in order to exercise right of suffrage.
	Other DNFBPS in Article 4
	• Pawnshops • Privatization Agencies • Legal and natural persons distributing money or property for humanitarian, charitable, religious, educational or social purposes • Organizing and executing auctions; • Trading with works of art, boats, vehicles and aircraft.

1216. As it is also indicated in Table X, Article 4 of the AML/CFT Law extends the scope of coverage of the AML/CFT preventive measures to other businesses and profession.

4.1.1 Description and analysis

Recommendation 12 (rated NC in the 3rd round report)

Summary of 2009 factors underlying the rating

1217. Recommendation 12 was rated as non-compliant and provided following deficiencies as reasoning for NC rating:

- Weaknesses identified for the financial sector under Rec. 5 apply.
- Lack of awareness on and understanding of customer identification obligations under Recommendation 5;
- Scope of AML/CFT measures for the accountancy profession does not cover situations contemplated by the FATF Recommendations;
- Strong resistance of legal profession, including public notaries, to accept obligations under the AML Law and comply therewith – effectiveness issue;
- Lack of awareness with most of the DNFBPs sector in relation to the concept of PEPs and the higher risks posed;

- Lack of mandatory provisions to monitor threats arising from technological developments;
- Need to clarify record keeping obligations as explained for the financial sector under Recommendation 10;
- Same weaknesses as identified for financial sector for Recommendation 11 (large complex transactions) apply;
- General lack of awareness of obligations under the AML Law and hence lack of effectiveness.

Applying Recommendation 5 (c. 12.1)

1218. The AML/CFT Law provisions are equally applied to the DNFBP sector. Article 4 of the new AML/CFT Law provides the list of DNFBPs as subjects to the AML/CFT Law.

1219. In general the analysis of Recommendation 5 including the findings and comments apply to DNFBPs. Some exceptions or differences, which will be examined in the following paragraphs, however exist.

Casinos (Internet casinos / Land based casinos)

1220. Casinos, gambling houses and other organizers of games of chance and special lottery games, particularly betting, slot machines, internet games of chance and games on other telecommunication means are according to Article 4 i) of AML/CFT Law liable persons within the meaning of AML/CFT Law and shall therefore apply measures for detecting and preventing money laundering and financing terrorist activities under the AML/CFT Law.

1221. Article 15 of the AML/CFT Law (Specific cases related to verifying and establishing client's identity) paragraphs 7 and 8 stipulate specific provisions regarding casinos: casinos shall establish and verify identity of each participant in the game who carries out transactions in amount of BAM 4,000 or more and casinos shall identify clients immediately upon their entry, regardless of the amount of chips they buy. Since casinos, gambling houses and other organizers of games of chance and special lottery games, particularly betting, slot machines, internet games of chance and games on other telecommunication means are liable persons according to Article 4 i) of AML/CFT Law, then they must apply also CDD measures in Article 6 of AML/CFT Law including carrying out measures of identification and tracking of clients when making a transaction of BAM 30,000 or more, regardless of the number of operations, either one or a set of several obviously connected transactions.

Real estate agents

1222. Real estate agencies are according to Article 4 i) of AML/CFT Law liable persons within the meaning of AML/CFT Law and shall therefore apply measures for detecting and preventing money laundering and financing terrorist activities under the AML/CFT Law. Therefore it can be concluded that real estate agents are covered by AML/CFT Law.

1223. Interviewed real estate agents were able to demonstrate some basic level of knowledge of AML and CFT measures. At the same time interviewed representatives of real estate agencies explained that relevant measures are taken by notaries because real estate transaction purchase must be approved by notary to be valid and notaries must apply CDD measures.

Dealers in precious metals and dealers in precious stones

1224. Legal and natural persons performing trade in precious metals and stones and products made of these materials are according to Article 4 paragraph n) subparagraph 10) of AML/CFT Law liable persons within the meaning of AML/CFT Law and shall therefore apply measures for detecting and preventing money laundering and financing terrorist activities under the AML/CFT Law.

1225. Article 15 paragraph 10 of AML/CFT Law stipulates that legal and natural persons engaged in operations with precious metals and stones and products made of these materials shall identify the seller at each purchase. Therefore it can be concluded that AML/CFT Law requirements regarding the Dealers in precious metals and dealers in precious stones are in line or even broader that FATF relevant requirements because legal and natural persons engaged in operations with precious metals and stones and products made of these materials shall identify the seller at each purchase.

Lawyers, notaries and other independent legal professionals and accountants

1226. Persons engaged in professional services as public notaries, lawyers, accountants, auditors, legal or natural persons performing accounting services and tax counselling services are according to Article 4 paragraph l) of AML/CFT Law liable persons within the meaning of AML/CFT Law and shall therefore apply measures for detecting and preventing money laundering and financing terrorist activities under the AML/CFT Law.

1227. Chapter IV of AML/CFT Law regulates duties and tasks of lawyers, lawyers' associations, notaries, auditors' associations and independent auditors, legal and natural persons providing accounting services and tax advisory services.

1228. Article 48 of AML/CFT Law prescribes following: "*A lawyer, lawyers' association, notary as well as auditors' association and independent auditor, legal and natural persons providing accounting services and tax advisory services, while carrying out the duties falling under their respective domains of activity, as described in other laws, shall carry out the measures of prevention and detection of money laundering as well as funding of terrorist activities and act according to the provisions of this Law and the regulations arising on the basis of this Law, which regulate the tasks and obligations of other liable persons, unless stipulated otherwise in this Law."*

1229. Article 49 of AML/CFT Law stipulates the obligation for persons conducting professional activities to act in accordance with Article 6 when:

"a) They assist in planning or carrying out the transactions for a client in relation to:

1) A purchase or sale of a real-estate or a share, i.e. stocks of an economic society;

2) Management of financial means, financial instruments or other assets owned by a client;

3) Opening and managing the bank accounts, savings deposits or the accounts for dealings with financial instruments;

4) Gathering the means necessary for foundation, functioning and management of an economic society;

5) Foundation, functioning and management of an institution, fund, economic society or other similar legal and organisational form.

b) They carry out on behalf and for the account of a client a financial transaction or transactions relating to the real-estate."

1230. Articles 50 - 53 of AML/CFT Law specify the procedure of identification and monitoring of a client, obligation of persons performing professional activities to inform the FID, list of indicators for recognizing suspicious clients and transactions and exceptions from notification.

Trust and company service providers

1231. Articles 4 paragraph n) and subparagraph 12 and Article 3 paragraph m) according to which the *Person providing entrepreneurial services (trust)* are *liable persons* within the meaning of AML/CFT Law and shall therefore apply measures for detecting and preventing money laundering and financing terrorist activities under the AML/CFT Law.

1232. Article 3 paragraph m) defines *Person providing entrepreneurial services (trust)* as any legal or natural person whose business activity is to provide third parties with services:

1) Establishment of a legal person;

2) Perform the duties of the president or a member of the management, or enabling other person to perform the duties of the president or a member of the management, manager or a partner, but without actually performing the managerial function, or without taking the business risk in relation to the capital investment within the legal person whose member or partner the above person formally is;

3) Providing a legal person with a registered seat for the legal person, or renting a business mailing address or administrative address including other related services;

4) Performing duties or enabling another person to perform duties of the manager of an institution, fund or another similar foreign legal person receiving, managing or distributing property assets for certain purposes, excluding companies that manage investment or pension funds;

5) Using or enabling another person to use other person's shares in order to exercise the voting right, except if it concerns a company whose financial instruments are subject to trade in stock markets or other regulated public market, to which, in accordance with the relevant international standards, requests for data publishing apply.

Other

1233. Other types of DNFBPs as indicated in the Table are also *liable persons* according to Article 4 paragraph of the AML/CFT Law and shall therefore apply measures for detecting and preventing money laundering and financing terrorist activities. At the same time it must be noted that authorities of BiH were not able to demonstrate that relevant persons are being supervised or trained and did not provide opportunity for evaluators to interview them. Therefore evaluators were unable to assess their awareness of their obligations under AML/CFT Law.

Applying Recommendation 6 (c. 12.2)

1234. The same obligations on PEPs as described under Recommendation 6 apply for the DNFBP sector.

Applying Recommendation 8 (c. 12.2)

1235. Same provisions apply for DNFBPs therefore the reader is referred to the analysis under Recommendation 8.

Applying Recommendation 9 (c. 12.2)

1236. Articles 17-19 of the AML/CFT Law which cover requirements on third party reliance also apply to the DNFBP sector (for further details see Recommendation 9 above).

Applying Recommendation 10 (c. 12.2)

1237. Article 54 of the AML/CFT Law, which sets out the requirement for the content of records and Articles 73 to 77, which set out requirements for data protection and storage of data and records apply to the DNFBP sector (for further details see Recommendation 10 above).

Applying Recommendation 11 (c. 12.2)

1238. Analogously to the analysis under Recommendation 11, DNFBPs are equally obliged to pay particular attention to transactions including complex and unusually high ones as well as those that have no economic or legal grounds and purpose and those that are disproportionate to the client`s profile and usual account operations.

1239. According to the FID`s Guidelines in Article 37 Paragraph 1 basically all these transactions under the circumstances mentioned above are also to be considered suspicious transactions and therefore also fall under the reporting requirement of Articles 3, 4 and 38 AML/CFT Law.

1240. While other by-laws issued by the entities` bodies supervising financial institutions also cover the topic of unusual and complex transactions the width of further guidance given in this area is rather restricted. DNFBPs do not receive further guidance in this area by their supervisors.

Effectiveness and efficiency

1241. With the adoption of the new AML/CFT Law the preventive measures have been extended to all categories of DNFBPs defined by the FATF standard. It remains unclear if there are casinos operating in BD.

1242. Interviewed casino representative confirmed that they establish client identity immediately upon their entry, regardless of the amount of chips they buy and always notify FID about suspicious transactions if necessary.

1243. For the rest of the DNFBPs, the level of understanding of the AML/CFT obligations varies among the different sectors. The notaries, accountants and the auditors broadly apply the client identification and record keeping requirements but under the professional regulations, principles and standards rather than under the AML/CFT Law. Interviewed lawyers rely strongly to their professional privilege and do not consider the AML/CFT requirements as applicable to their profession.

1244. The measures taken to determine the beneficial owner and the source of funds were deficient throughout the DNFBP sector. There is also poor implementation of on-going due diligence.

1245. Interviewed representatives demonstrated a low awareness of the risks regarding new technologies (e.g. *non face to face business*) and enhanced identification and control measures which have to be applied in such cases. However, this was not of a particular concern for the evaluation team as the on-site interviews lead to the conclusion that the DNFBPs in BiH do not utilise the new technologies or the non-face-to-face business relations.

1246. The DNFBPs are waiting for the sectorial guidance to be adopted. The evaluators are of the view that further training and guidance should be provided to all DNFBPs.

1247. Generally, the number of STRs received by the FID from the sector is modest and the reports are mostly in relation to large amounts of cash or to transactions which exceed certain threshold.

1248. Technically, the DNFBPs are subject to supervision by designated authorities, namely the competent ministries of justice, of finances, the bar chambers of the FBiH and RS and the FID. At the time of the on-site visit, no supervisory action was taken in practice and no sanctions were imposed on the DNFBP sector which negatively impacts the compliance standards. The skills necessary to supervise this sector should not be underestimated and additional efforts will be required in this area.

1249. It appeared during on-site that there might be casinos operating in BiH without relevant licence (see analysis under Recommendation 24). Authorities are not aware of size of relevant casino market/market participants and they are not supervised or trained which negatively impacts effectiveness.

1250. Evaluators did not interview representatives of trust service as the authorities stated that such do not exist in BiH in practice.

1251. Although the concept of PEPs is addressed through legal provisions, in practice there is a lack of effective application especially from the DNFBPs as there is a high lack of awareness of the risks involved. It is therefore again recommended to introduce an awareness and understanding training

campaign accordingly throughout the whole sector of DNFBPs as is also required for some elements of the financial sector.

4.1.2 Recommendations and comments

Applying Recommendation 5

1252. The recommendations formulate on the technical part of Recommendation 5 are applicable for the DNFBPs.

1253. The authorities are recommended to continue raising awareness throughout the DNFBP sector particularly with regard to the treatment of PEPs, identifying beneficial owners and record keeping.

1254. Relevant guidance to DNFBP sector should be published.

1255. Supervisory action of DNFBPs must be taken and sanctions imposed when necessary. The skills necessary to supervise this sector should not be underestimated and additional efforts will be required in this area.

Recommendation 6

1256. It is recommended to continue with raising awareness and trainings throughout the whole DNFBP sector particularly with regard to the treatment of PEPs their awareness on the detection of the source of wealth and persons related to PEPs.

1257. Guidance need to be issued or harmonized with new AML/CFT Law on issues with PEP's.

Recommendation 8

1258. Lack of guidance concerning (or low awareness of the procedures to be applied in) circumstances of non-face-to-face business and on how CDD measures should operate in non-face to face transactions.

1259. Lack of awareness of risks regarding misuse of new technologies and effective compliance is not demonstrated.

Recommendation 9

Although most DNFBPs undertake business on a one-to-one basis and they identify their clients directly, yet there is a need to clarify the position on third party reliance and introduced business for customer due diligence particularly since the new AML/CFT Law now specifically provides for third party reliance for certain parts of the identification process applied.

Recommendation 10

1260. The recommendations formulated on the technical part of Recommendation 10 apply for the DNFBPs.

1261. According to Article 54 paragraph (3) the Council of Ministers of BiH shall also issue the guidelines with regard to the manner in which the identification and monitoring of clients and transactions minimum information (referred to in Article 54 paragraph (1) of AML/CFT Law) are included in the records of the conducted identification of clients and transactions. These guidelines need to be issued as soon as possible.

Recommendation 11

1262. In practice, most DNFPBs met on-site claimed that they do not have client relationships as such, which would contribute to re-occurring clients and transactions and therefore the possibility of encountering unusual or complex transactions. However, the evaluators are not sure whether this explanation suffices as the market for some professions, such as dealers in precious metals and goods is

rather small and includes purchases and sales to a very small group of market participants, hence establishing long-term client relationships.

1263. Only casinos have such an in-house monitoring system in place, which is however programed differently and considering much lower thresholds.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12[63]	**PC**	***Applying Recommendation 5*** • No mandatory explicit obligation to apply CDD measures to all existing clients; • Poor implementation of beneficial ownership requirements; • Poor implementation of on-going due diligence; • Lack of guidance and trainings on the application of risk based approach; • Inconsistent implementation of measures to be taken when enhanced due diligence; • Unable to measure the effectiveness of implementation of the newly introduced AML/CFT Law. ***Applying Recommendation 6*** • No guidance on the application of PEP's related obligations; • Low awareness on the detection of PEP's and their source of wealth and persons related to PEPs. ***Applying Recommendation 8*** • Lack of guidance concerning (or low awareness of the procedures to be applied in) circumstances of non-face-to-face business and on how CDD measures should operate in non-face to face transactions; • Lack of awareness of risks regarding misuse of new technologies and effective compliance is not demonstrated. ***Applying Recommendation 9*** • No clear requirement for the DNFBPs to satisfy themselves that the third party is regulated and supervised in accordance with Recommendation 23, 24 and 29; • No direct requirement for the competent authorities, in determining in which countries the third parties can be based, to take into account the information available on whether those countries adequately apply the FATF

[63] The review of Recommendation 12 has taken into account those Recommendations that are rated in this report.

		Recommendations. ***Applying Recommendation 10*** • Absence of explicit obligation for liable persons to keep records of business correspondence (criteria 10.2); • Absence of explicit obligation for liable persons to keep records regardless of whether the account or business relationship is on-going or has been terminated (criteria 10.1). ***Applying Recommendation 11*** • Low level of and uneven awareness about unusual and complex transactions.

4.2 Suspicious transaction reporting (R. 16)

(Applying R.13 to 15 and 21)

General introduction

1264. On a general note, all DNFBPs as defined in the under the FATF standard and operating in BiH are covered by the relevant provisions of the AML/CFT Law regarding the reporting obligation. However, it should also be noted that Article 51 AML/CFT Law that covers the reporting obligation for notaries, lawyers, accountants, auditors as well as legal or natural persons performing accounting services and tax counselling services is not as broad as Article 38, in that only suspicions of ML/TF and not of "criminal activity" are covered.

4.2.1 Description and analysis

Recommendation 16 (rated NC in the 3rd round report)

Summary of 2009 factors underlying the rating

1265. In the 3rd round MER, BiH was rated NC on Recommendation 16 due to the following factors;

- Overall lack of awareness of AML/CFT obligations in general throughout most DNFBPs with some resistance in certain areas;
- Concern over the exclusion of applicability of certain provisions of the Law to small firms of DNFBPs and possibly natural persons;
- Lack of training;
- No adequate procedures for screening at recruitment stage;
- No specific obligation to terminate or decline business relationships with legal and natural persons from countries that do not apply adequate AML/CFT measures;
- No specific obligation to monitor, examine and record findings for large, unusual, complex transactions and to make such findings available to the authorities;
- Need to clarify position regarding 'trust' service providers;
- Lack of effectiveness.

Applying Recommendations 13-15 and 21

Requirement to Make STRs on ML/FT to FIU (c. 16.1; applying c. 13.1 & c.13.2 and SR. IV to DNFBPs)

Casinos

1266. Article 4 i) of the AML/CFT Law obliges casinos as well as any gambling houses, organizers of games of chance, special lottery games, betting, slot machines, internet games of chance and games on other telecommunication means to the same reporting requirements as in the case of FI.

1267. The provisions in the law do not foresee any difference in relation to the reporting requirement between financial institutions and the DNFBP sector. Hence, the same reporting obligations as stipulated in Articles 3 and 38 ff. apply generally to all sectors. Therefore, casinos are also obliged to report STRs regardless of their amount as well as CTRs as well as connected CTRs above the threshold of BAM 30,000.

1268. The evaluation team was informed on-site by representatives of one casino that operates in the FBiH that they, on a voluntarily basis, send CTRs exceeding the threshold of only BAM 2,000 to the FID. This was confirmed by the FID on-site and statistics were presented. However, other casinos, such as the one operating in the RS does not send such reports on a voluntarily basis according to the FID. It remained unclear if casinos do exist in BD.

Real estate agents

1269. Similarly, real estate agents are also covered by the same reporting obligations as explained above, stipulated in Article 4 m).

1270. However, this reporting obligation is broad and generalised, meaning that it is not restricted to engaging in cash transactions but also covers instances where suspicions arise even in the absence of any engagement in any kinds of cash transactions, be it receiving or forwarding cash for the purposes of intermediating real estate sells and purchases. Hence, real estate agents are also obliged to file STRs, which is in line with the standard.

Dealers in precious metals and dealers in precious stones

1271. Dealers in precious metals and stones are covered by Article 4 n) 10) AML/CFT Law and are also obliged to follow full reporting obligations in accordance with Article 38.

1272. Representatives from the sector met on-site told the evaluation team that the market in BiH for their services is very small in terms of volume but also market participants and that this particular sector is highly unlikely to pose a threat for ML/TF abuse.

Lawyers, notaries and other independent legal professionals and accountants

1273. Similarly to the explanations above, lawyers, notaries, accountants and auditors are equally obliged to report STRs as well as CTR and connected CTRs above the threshold of BAM 30,000 and are covered by Article 4 as well as Articles 51 and 52 AML/CFT Law, with the only difference that CTRs are to be reported by notaries (real estate purchase agreements) no later than eight days after their execution, instead of three days as valid for financial institutions.

1274. Article 51 Paragraph 2 stipulates the applicability of the full reporting for these professions, even for situations in which persons performing these professions are requested by their client to advice on ML/TF relevant matters.

1275. Furthermore, Article 52 AML/CFT Law stipulates exceptions from the reporting obligation according to which lawyers while acting as their client`s public defender are in no obligation to report to the FID on suspicions of ML/FT.

1276. However, the evaluation team was informed on-site that the legal professions do not deal with cash or financial transactions on behalf of their clients, their activity being limited to representing the clients in Courts.

Trust and company service providers

1277. The Bosnian legislation foresees and defines in Article 3 m) AML/CFT Law *"persons providing entrepreneurial services (trusts)"* which widely covers any type of TCSPs. Furthermore, Article 80 j) of the same law even determines these entities to be supervised by the FID. However, the authorities were informed prior as well as during the on-site that up to date no such entities have been licenced in BiH and therefore TCSPs do not exist at the moment.

1278. The evaluation team content themselves with the explanation provided by the authorities.

Legal Privilege

R.16 – applying R.13 & SR.IV

No Reporting Threshold for STRs (c. 16.1; applying c. 13.3 to DNFBPs)

1279. The provisions elaborated upon in the analysis of criterion 13.3 apply equally to DNFBPs. Therefore, there is no reporting threshold for STRs.

Making of ML/FT STRs regardless of possible involvement of tax matters (c. 16.1; applying c. 13.4 to DNFBPs)

1280. Analogously to the analysis of criterion 13.4, DNFPBs` reporting obligation is not restricted when tax matters are involved, as tax crimes are a predicate offence for ML/TF in BiH and the country follows an all-crime approach.

Reporting through Self-Regulatory Organisations (c.16.2)

1281. N/A

Establish and Maintain Internal Controls to Prevent ML/FT (c. 16.3; applying c. 15.1, 15.1.1 & 15.1.2 to DNFBPS); Independent Audit of Internal Controls to Prevent ML/FT (c. 16.3; applying c. 15.2 to DNFBPs); On-going Employee Training on AML/CFT Matters (c. 16.3; applying c. 15.3 to DNFBPs); Employee Screening Procedures (c. 16.3; applying c. 15.4 to DNFBPs); Additional Element—Independence of Compliance Officer (c. 16.3; applying c. 15.5 to DNFBPs)

1282. The same provisions of the AML/CFT law apply to the DNFBPs sector as for the FI.

Applying Recommendation 21

Special attention to persons from countries not sufficiently applying FATF Recommendations (c. 16.3; applying c. 21.1 & 21.1.1 to DNFBPS);

1283. The same provisions of the AML/CFT law apply to the DNFBPs sector as for the FI.

Ability to apply counter measures with regard to countries not sufficiently applying FATF Recommendations (c. 16.3; applying c. 21.3 to DNFBPS)

1284. The same provisions of the AML/CFT law apply to the DNFBPs sector as for the FI.

Additional Elements – Reporting Requirement Extended to Auditors (c. 16.5)

1285. Accountants, auditors as well as legal or natural persons performing accounting services and tax counselling services are fully covered by the reporting requirement under Article 4 l) AML/CFT law. However, as explained in the analysis of criterion 16.1, the obligation that is defined in Article 51 is less broad and only covers suspicions with regard to a transaction or client in relation to ML/FT but not criminal activity in general.

Additional Elements – Reporting of All Criminal Acts (c. 16.5)

1286. As described in the analysis to criteria 16.1 as well as 16.4 not all DNFBPs are covered by Article 38 AML/CFT law. Accountants, auditors as well as legal or natural persons performing accounting services and tax counselling services which are covered by Article 51 are not obliged to report with regard to suspicions of *"criminal activity"* but rather only to suspicions of ML & TF.

Effectiveness and efficiency

Applying Recommendation 13

1287. The evaluators met only one casino which operated exclusively in the FBiH. The representatives met showed great awareness of their reporting obligation as well as how their business might potentially be misused for ML/TF purposes. They also stressed that the turnover is very small in BiH. Therefore, their assessment was that the potential risk of ML/TF misuse of their own business is in fact very marginal.

1288. At the same time, the evaluation team would like to stress that it has only met with the one casino mentioned above and hence are not in a position to make a judgement on all other business offering for instance slot machines in general, internet games of chance, and lotteries of any kind as well as betting. Furthermore, the evaluators are concerned about the fact that there seem to be several casinos operating on the territory of the Brčko District which the authorities were unaware of completely.

1289. The evaluators were not fully convinced whether real estate agents are aware of potential ML/TF risks in their sectors as the representative met on-site assessed the risk for ML/TF in their sector to be very low. This is of particular concern as many current as well as concluded investigations against persons suspected to have laundered proceeds from criminal activity involved purchases of real estate in BiH.

1290. The FID informed the evaluation team on-site that the notaries themselves sent the numbers of the overall value of these contracts to them regularly on a voluntary basis. The notaries themselves seemed knowledgeable of their reporting obligations. However, they reiterated like all sectors met on-site that the ML/TF risk in their sector is very low. When asked about those aforementioned cases they seemed unaware.

1291. As for the dealers of precious metals and stones the evaluators concluded that indeed the market is very small in BiH and although everything seems to be paid in cash the value of these payments are below the threshold provided by the FATF standards. However, the evaluators were also concerned on the lack of awareness of the reporting obligation in this sector.

1292. Lastly, the lawyers met on-site seemed aware of their reporting obligation. However, they openly admitted that they would not follow it should it be against the interest of their client. One lawyer stated that he could imagine reporting a client only in a case of national security, i.e. if it turned out that his client might be a terrorist who is planning a lethal attack on civilians.

1293. The notaries and the dealers in precious metals and stones are the only DNFBP representatives that reported STRs in practice. (Notaries 20 in 2013 and 2014; dealers 5 in 2013)

Applying Recommendation 15

1294. The comments related to the effectiveness on the application of recommendation 15 by the FI are also applicable for the DNFBP sector. However, as the sector was not subject to any AML/CFT supervisory activities since the 3rd MER, the internal programs, procedures and audit have not been assessed by the authorities and therefore, their compliance with the legal requirements is under question mark.

1295. Despite the afore-mentioned and the lack of information on the compliance of the internal programs and procedures with the legislation, the evaluators are of the opinion that their adequacy

shall be subject of improvement. This conclusion is based on the fact that there is low level of reporting from the DNFBP sector which might be based namely to the above-mentioned.

Applying Recommendation 21

1296. In the absence of an enforceable requirement for DNFBPs to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations, the awareness of the financial sector on the high-risk countries is very limited.

1297. The only reference made in relation to high risk countries is related to enhanced due diligence but it is only an indirect requirement which marginally impacts on the meaning of Recommendation 21.

4.2.2 Recommendations and comments

Applying Recommendation 13

1298. The authorities should:

- Raise awareness in the DNFBP sector by introducing targeted training programs and awareness raising events with all the different sectors over a longer period of time
- Publish targeted trends & typology reports that showcase how the different DNFBP sectors can be misused for ML/TF in practice

Applying Recommendation 15

1299. All the recommendations made for the FI are applicable for the DNFBP sector as well.

1300. The authorities should also make efforts to assess the adequacy of the internal AML/CFT procedures and programs.

Applying Recommendation 21

1301. There should be effective measures in place to ensure that DNFBPs are advised of concerns about weakness in the AML/CFT systems of other countries.

1302. The BiH legal framework should include a general provision concerning the obligation of DNFBPs to pay special attention to business relationships and transactions with persons from or in countries that fail or insufficiently apply FATF Recommendations.

1303. The AML/CFT legal framework should include a provision concerning the obligation for entities to examine as far as possible those transactions that have no apparent economic or visible lawful purpose and to make written findings available to assist competent authorities (e.g. supervisors, law enforcement agencies and the FIU) and auditors.

1304. The authorities should be legally empowered to apply counter-measures within the meaning of Recommendation 21.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16[64]	**PC**	***Applying Recommendation 13*** **Effectiveness:** • Varying awareness of reporting obligation throughout the DNFBP sector; • Client interest overrules reporting obligations in the case of lawyers; • Overall continuous low reporting by DNFBPs. ***Applying Recommendation 15*** • No requirement for the authorised person of DNFBP with more than four employees to be appointed at management position. ***Effectiveness:*** • Concerns related to the effectiveness of the internal and external audit; • Concerns related to the quality of the internal programs and procedures. ***Applying Recommendation 21*** • No enforceable requirement for DNFBPs to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations; • No effective measures in place to ensure that DNFBPs are advised of concerns about weaknesses in the AML/CFT systems of other countries; • No mechanisms in place that would enable the authorities to apply counter-measures to countries that do not apply or insufficiently apply FATF recommendations; • No requirement to examine, as far as possible, the background and purpose when transactions have no apparent economic or visible lawful purpose, and to make available written findings to assist competent authorities and auditors.

[64] The review of Recommendation 16 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendation 14.

4.3 Regulation, supervision and monitoring (R. 24-25)

4.3.1 Description and analysis

Recommendation 24 (rated NC in the 3rd round report)

Summary of 2009 factors underlying the rating

1305. The rating of the 3rd round of evaluations was determined based on the following shortcomings:

- Lack of legislatively defined basis for entity level Ministries of Finance and for the Tax Administration of BD to supervise implementation of AML/CFT requirements by casinos
- Sanctions defined with regard casinos for non-compliance with the requirements of the AML Law cannot be effectively applied. (Applying Recommendation 17)
- No prohibition for individuals with criminal background to acquire or become the beneficial owner of a significant or controlling interest, hold a management function in or be an operator of a casino.
- Lack of legislatively provided powers for the Chambers of Lawyers, the Chambers of Notaries, and the Associations of Accountants and Auditors at entity level to supervise implementation of the obligations set forth in the AML/CFT Law; no systems and mechanisms for them to ensure compliance of the respective obligors with the national AML/CFT requirements.

1306. At the time of the on-site visit the supervisory responsibilities over the DNFBPs were as describe in the table below.

Table 41. Designated supervisory powers according to the AML/CFT Law over the DNFBP sector.

DNFBPs		
Type of business	**Supervisor**	**No. of Registered Institutions**
1. Casinos, gambling houses and other organizers of games of chance and special lottery games, particularly betting, slot machines, internet games of chance and games on other telecommunication means	The competent entity Ministries of Finance, or the BD Finance Directorate	16
2. Real estate agents	The competent entity Ministries of Finance, or the BD Finance Directorate	6
3. Dealers in precious metals and precious stones	The competent entity Ministries of Finance, or the BD Finance Directorate	25
4. Lawyers	The Bar Chambers of the FBiH and RS	
5. Notaries	The competent ministries of justice	58
6. Other independent legal professionals and accountants – this refers to:	The competent entity Ministries of Finance, or the BD Finance Directorate	43

• sole practitioners, • partners or employed professionals within professional firms. • It is not meant to refer to internal professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering		
7. Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere	FID - SIPA	N/A
9. Pawnshops	The competent entity Ministries of Finance, or the BD Finance Directorate	N/A

Regulation and Supervision of Casinos (c. 24.1, c.24.1.1, 24.1.2 & 24.1.3)

1307. According to Art. 4, letter i) of the new AML/CFT Law, casinos, gambling houses and other organizers of games of chance and special lottery games, particularly betting, slot machines, internet games of chance and games on other telecommunication means are introduced as liable persons.

1308. Art. 80, letter d) of the same legal document specifies that the authorities responsible for the supervision over the casinos, gambling houses and other organizers of games of chance and special lottery games are the competent Ministries of finance of the FBiH and RS, or the BD Finance Directorate.

1309. As described under recommendation 23 above, there are no other supervisory powers prescribed in the AML/CFT Law, except for the sanctioning regime. Therefore, Article 81, para. 1 is the only legal text providing with any supervisory powers, namely for the authorities to conduct on-site inspections.

1310. The Law on Games of Chance of RS, adopted on 29.11.2012 was the only legal document provided by the authorities in relation to the licensing and other relevant procedures established for casinos. Therefore, the conclusion of the previous report (that there are no provisions banning individuals with criminal backgrounds from acquiring or becoming the beneficial owner of a significant or controlling interest, holding a management function in, or being/becoming an operator of a casino) remains with the exception of RS.

1311. Pursuant to Article 12 of the Law on Games of Chance in RS, the organizers of the games of chance are required in their business to comply with the regulations governing the prevention of money laundering and financing of terrorism. The law however does not specify where those requirements are prescribed or their scope.

1312. According to art. 15, para 1 of the Law, "*Organization of the games of chance may be conducted by legal entities with the head office in the territory of the Republic, whose founders i.e. person in charge have not been convicted for criminal offence, except from the domain of traffic if they meet the conditions provided by the law."*

1313. Article 56 is specifically providing with requirements is relation to the activities of casinos, namely the legal entity applying for license shall submit "*proof that no criminal proceedings against them are in process against authorized persons* and *statement by the organizer that he has not been taken away the approval in the country or abroad, and that he has not been convicted of a criminal offence of tax evasion."* However the exact scope of the persons that shall fall in these two legal requirements is unclear. It is also unclear for the evaluators if the criminal associates are covered by the afore-mentioned texts.

1314. The Law on Games of Chance does not provide with definition of authorized persons. Therefore, the evaluators are unclear if this shall be the persons mentioned in the AML/CFT Law or any other person related to the management of the casinos and entities organizing games of chance. It is also unclear if the afore-mentioned requirements cover the beneficial owners of the casinos. There are also no fit and proper requirements for the managers and directors of the casinos.

Monitoring and Enforcement Systems for Other DNFBPS-s (c. 24.2 & 24.2.1)

1315. All the DNFBPs as defined by the FATF standard are subject to the AML/CFT supervisory regime as emphasised in the table above. Art. 4 of the AML/CFT Law introduces the obligations for the liable persons and Art. 80 defines the relevant supervisory authority.

1316. The indirect supervisory competences of FID, as described under the financial institutions supervision are also applicable for the DNFBPs.

1317. The sanctions for failure to comply with the AML/CFT requirements provided in Art. 83 as described under Recommendations 29 and 17 above apply to all DNFBPs.

Recommendation 25 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

1318. The rating given for the previous round was based on the following findings:

- Many of the obligors (especially the representatives of DNFBPs) fail to have a proper understanding of their obligations under the AML/CFT framework;
- Not all sectors have developed indicators for suspicious transactions;
- No specific guidance issued to all sectors of the industry other than the implementing guidance under the Book of Rules;
- No general and specific feedback to DNFBPs;
- Impact of the above on the effectiveness of the system.

Guidance for DNFBPs other than feedback on STRs (c. 25.1)

1319. DNFBPs are now included within the AML/CFT Law but did not seem fully aware of AML/CTF issues across all sectors, particularly beneficial owners, PEPs and high risk countries.

1320. Lawyers rely heavily on legal privilege whilst notaries, accountants and auditors report in low numbers.

Feedback (applying c. 25.2)

1321. There was no information provided to the evaluation team on feedback given to the DNFBPs, therefore the conclusions and the deficiencies identified in the third round report remain valid (see para. 950 of the 3rd MER).

1322. DNFBPs report low feedback from the FIU in relation to submissions.

Adequacy of resources supervisory authorities for DNFBPs (R. 30)

1323. Since some supervisory authorities have yet to be appointed and the ones that are in place for the DNFBPs are relatively new to the role, it is not yet possible to fully assess deficiencies.

1324. At the time of the on-site visit, the only supervisory authorities having dedicated AML/CFT units are the Banking Agencies in the FBiH and RS. The lack of specialized experts on AML/CFT area may negatively impact their capacity to supervise and ensure adequate implementation of the national AML/CFT framework.

Effectiveness and efficiency (R. 24-25)

1325. According to the authorities, on the territory of BiH there are only two licensed casinos, one in the FBiH and one in RS. However, during the on-site visit, the evaluators received information from publically available sources (Internet), according to which there are casinos operating on the territory of BD. This is endorsing information already existing in the third round report (the reader is referred to foot-note 81, page 201). On this, the authorities from BD stated on-site that there are facilities having pool tables which only use the name "Casino" on their signboards but in reality no casino activity is carried out inside. However, the evaluators maintain doubts about the awareness of the supervisors on this particular issue.

1326. The information provided by the authorities and the on-site interviews with the representatives of the DNFBP sector confirmed that no on-site or off-site AML/CFT supervisory activities were conducted in BiH since the 3rd round MER.

1327. It was also confirmed that none of the designated authorities is having the training and capacity to perform AML/CFT supervision.

1328. The evaluators were told that some of the supervisory activities on casinos covered a limited part of the AML/CFT obligations (CDD checks), but they were conducted in the context of prudential supervision. No AML/CFT findings were included in the supervisory reports.

1329. Most of the awareness in the casino sector is based on the group level trainings and requirements (including the application of the CDD measures, reporting requirements, record keeping, etc.). For notaries professional associations have limited activities related to AML/CFT issues. The rest of the DNFBP sector did not report any AML/CFT trainings.

1330. Most of the supervisory authorities met on-site, have mentioned that they plan to adjust their activity in accordance with the new AML/CFT Law after the adoption of the respective by-law in 2015 (after the transition period of one year).

1331. It is unlikely that DNFBPs will be able to submit quality STRs without proper guidance from the supervisory authorities and feedback from the FIU and the low level of submissions is likely to be an indicator that the sector is generally in need of co-ordinated training.

1332. There is a deficiency in guidance for DNFBPs mainly due to a lack of supervisory authority. Some supervisory authorities have yet to be appointed and those newly appointed authorities themselves require guidance in relation to their role.

4.3.2 Recommendations and comments

Recommendation 24

1333. The situation of casinos in BD should be clarified.

1334. The competent supervisory authorities should have the proper AML/CFT supervisory powers (see analysis under R29).

1335. The competent authorities in the FBiH and BD should take the necessary legal or regulatory 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.

1336. The competent authorities of RS should take the necessary legal or regulatory measures to ensure that all beneficial owners with significant and controlling interest of a casino are not criminals or their associates.

1337. Clear definition of the term authorized person should be introduced in the legislation of RS in order to clearly cover the persons holding management function in a casino.

1338. Effective on-site and off-site AML/CFT control over the DNFBP sector should be performed by the competent authorities.

1339. The authorities should increase the level of training and expertise of the DNFBP supervisors to properly undertake AML/CFT on-site and off-site control.

Recommendation 25 (c.25.1 [DNFBPs])

1340. Co-ordinated trainings of DNFBPs and their supervisory authorities in relation to AML and TF issues are recommended.

1341. It is important that the FIU engage with DNFBPs regularly and provide feedback on the STRs received in order to encourage further reporting.

1342. Submissions to SIPA from DNFBPs are low so feedback from the FIU is the key issue to encourage further reporting. It is also suggested that further training to this sector may assist with better identifying risk and implementing additional measures to mitigate.

4.3.3 Compliance with Recommendations 24 and 25 (Criteria 25.1, DNFBPS)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**NC**	• No adequate powers of the authorities to perform its functions, including powers to monitor and sanction; • No evidence for the existence of legal obligations or regulatory measures in the FBiH and BD 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; • No clear requirements for the casinos registered in RS to ensure that all beneficial owners with significant and controlling interest are not criminals or their associates; • No clarity if the term *authorised persons* covers the persons holding management function in a casino. **Effectiveness** • No AML/CFT on-site and off-site inspections have been performed over the activity of the DNFBP sector; • The authorities do not have sufficient level of training in order to perform their AML/CFT obligations;

		• Uncertainty over the existence of unlicensed casinos in BD.
R.25	**PC**	• Lack of guidance from supervisory authorities; • Low level awareness amongst supervisory authorities of competencies and obligations; • Low level of training.

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

Recommendation 33 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

1343. BiH was rated PC in the 3rd round MER due to:

- Concerns over the viability of the Main Book of Registration at the Courts and the information contained in it and hence the adequate transparency concerning the beneficial ownership and control of legal persons;
- No timely update of the Books of Registration at competent registration courts for all types of legal persons;
- The position of foreign legal persons that allow bearer shares becoming shareholders in domestically registered legal persons needs to be clarified.

Legal framework

1344. As at the time of the 3rd round on-site visit, the registration of legal persons remains regulated by the Laws on Registration of Business Entities of FBiH, RS and BD. In December 2013, a new Law on Registration of Business Entities entered into force in RS.

1345. Under Article 3(n) of the new AML/CFT Law, which entered into force in 2014, a clear definition of a "*real owner*", which is the equivalent of "beneficial owner", was introduced. This definition is applicable for the purposes of the AML/CFT Law and the reporting entities are obliged to identify the beneficial owner of a legal person as part of their customer due diligence requirements. This definition is not applicable within the general framework for the registration of legal entities. Registrars are not required to identify beneficial owners of legal persons and ensure that their details are contained in the registers.

1346. In all entities, if the founder of a joint-stock company is a foreign legal entity or if a foreign legal entity acquired the stocks of the issuer (legal entity), on the occasion of subscription (registration of stocks) in the Central Registry of Securities, on the owner's account, such foreign legal entity is obliged to provide evidence on its founders, namely the capital owners. In the case of companies with limited liability, on the occasion of registration into the Court Register of Founders or change of founders, that is, owners of shares, if the founder/owner of the share is a legal entity, domestic or foreign, a document on registration with the relevant authority in the country in which the legal entity is registered, shall be attached. This document also contains information on the actual owners of the share and, in case of the foreign legal entity a certified translation of the registration document shall be attached.

Measures to prevent unlawful use of legal persons (c. 33.1), Timely access to adequate, accurate and current information on beneficial owners of legal persons (c. 33.2)

1347. There are four types of legal entities which may be established under the legislation of BiH: limited liability companies, shareholder companies, partnerships and limited partnerships. On the basis of the Laws on Registration of Business Entities, all legal entities established on the territory of BiH shall be registered in order to be able to commence their economic activities. Legal entities are registered at the competent Registration Courts. Information on registration of the business entity is contained within a database held by the Registration Court in paper format and, in some cases, also in

electronic form. The database is known as the Compendium of Documents. Information in electronic format is also entered into the Main Book of Register, which is publicly accessible without any restrictions. In order to access the data contained in the Compendium of Documents, legal interest must be proven.

1348. It appears that the Main Book of Register, though publicly available, remains fragmented and held separately by the individual Registration Courts. The evaluation team was advised that in FBiH, these individual electronic databases are interconnected and it is therefore possible to request at any court in FBiH information about any legal entity registered in FBiH. On-line access to the Court Register is available free of charge. Fees are collected only when an official certificate issued by the Court is needed.

1349. In RS, however, each court can only access information within its own database. Additionally, the register is not accessible on the internet. The RS authorities informed the evaluation team that, pursuant to the new RS Law on Registration of Business Entities, implementation of a new registration procedure was initiated. This shall introduce a "one-stop-shop" system through the Agency for Intermediary, IT and Financial Services (APIF), the purpose of which is the establishment of an electronic submission of requests for registration of business entities via an on-line application. This development should also result in the establishment of a central computerised register for the entire RS.

1350. At the time of the on-site visit, the APIF was gathering the information for the single register. Nevertheless, it was explained that this information is not up-to-date and complete. The evaluation team was advised that when information on a legal entity in RS would be needed (for example by LEAs), the APIF would be contacted, which would immediately forward the request to the competent registration court. The court would then provide the required information within 2 working days. It was not clarified whether this procedure would also be used for example by obliged entities when undertaking their CDD duties.

1351. The situation in Brčko District is somewhat similar to that in RS, although legal entities are registered with only one court. In BD, the process of amending the law and establishing an electronic register had not yet been initiated. The purpose of the process is to digitalise information and provide a connection to registers within the other Entities.

1352. At the time of the 3rd round on-site visit, the evaluation team was advised that work had been initiated in order to establish a single electronic database, which would be joint for the entire territory of BiH and where information would be would be accessible with regard to all the business entities established on the territory of BiH, regardless of the seat of the business entity and the place of registration. No information was provided during the 4th round evaluation about developments in this respect. The registers of the two Entities and BD were not connected at the time of the visit. There was no clear view when the process would be undertaken.

1353. Upon finalising the registration, information on the legal entity would be published in the Official Gazette. The Registration Court also notifies a number of state authorities, such as the tax authority.

1354. The information which is to be included in the Main Book of Register is listed in paragraph 970 of the 3rd round report. With regard to the accessibility of information on the ownership of legal entities, the following information is contained in the databases:

- the title and address of main office/names and addresses of all founders/members;
- the name and position of the authorised representative of the company;
- percentage share in cash, property rights and assets of capital for each individual founder.

1355. In order to ascertain the validity of the data entered into the register, the Registration Courts would require the presentation of ID documents or with respect to a legal person, excerpts from the relevant public registry. It was confirmed during the on-site visit that this would be the case also with foreign legal entities, where in addition a translation into one of the official languages of BiH would be requested.

1356. The Registration Courts of the Entities and BD register all the changes of the information contained in the Register following an application by a responsible person. The evaluation team was advised that the registration of changes is mandatory and must be undertaken within 30 days of its occurrence. Nevertheless, the Registration Court does not check ex-officio, whether any changes have occurred and there are no sanctions which apply in case of non-reporting of the changes.

1357. The accessibility of the information on legal persons is also hindered by the dispersed structure of the numerous registers, unavailability of some of the Registers in an electronic form and impossibility of a comprehensive search throughout the territory of BiH. There are doubts as to whether the data in the Registers is at all times accurate and up-to-date.

1358. With regard to shareholding companies, which are publicly-traded on an organised market of securities, information on their ownership is held by the Registries of Securities. There are two Registries of Securities in BiH, established under the supervision of the Securities Commissions of FBiH and RS. Shareholding companies established in BD are registered in the Registry of Securities of FBiH or RS, depending on whether its shares are to be traded on the Stock Exchange in Sarajevo or Banja Luka.

1359. Pursuant to the Laws on Securities Markets of FBiH and RS, the Registries of Securities shall make publicly available a list of shareholders of the issuers traded on the stock exchanges. Both Registries of Securities therefore maintain an on-line database, which contains the names of the ten shareholders with the highest shares in each shareholding company. It is to be noted that when the securities in question are held on a custodian account, it would be stated as such in this public registry, without stating the name of the actual owner of the security. To access the full information included in the Registries, legal interest must be proven. It is therefore considered that this could apply for LEAs or supervisors, when undertaking their tasks.

1360. The Registries of Securities should contain up-to-date information. Firstly, pursuant to Articles 9 of the Laws on Securities Markets of FBiH and RS, all changes in property rights take place only at the time of the registration of the change in the competent Registry. Furthermore, all transfers of property rights that take place at the regulated markets are inserted in the Registry automatically.

1361. The Securities Registries increases the transparency of the ownership of shareholding companies. This however applies only to shareholding companies traded on the regulated market. The information contained in the publicly available database provides further information on the ownership structure of the entity. It is however difficult to conclude that it is sufficient to clearly establish the beneficial owner. The full information included in the Registries should be useful for the work of law enforcement authorities; this has been confirmed by representatives of SIPA, who informed the evaluation team that they would first resort to these Registries for information.

1362. The law enforcement agencies and prosecutors met on-site were asked to explain how they determine the beneficial ownership of a legal person. It was indicated that they generally obtain information on the ownership structure of a legal entity from the Court Register. However, as mentioned previously, the Court Registries only hold information on legal, not beneficial, ownership of legal persons (except where the shareholder is a natural person, in which case, generally, both the legal and beneficial ownership are vested in that natural person). Therefore, it appears that law enforcement agencies and prosecutors may not always be in a position to determine who the beneficial owner of a legal person is.

1363. The only mechanism in BiH which requires information on beneficial ownership of legal persons to be obtained, verified, kept up-to-date and stored for a period of time is found within the CDD requirements set out under the AML/CFT Law. Under this law, financial institutions and DNFBPs are required to identify and verify the identity of beneficial owners of all legal persons (whether established in BiH or in a foreign jurisdiction) with whom they have established a business relationship or conducted an occasional transaction and keep such information updated whenever changes occur. For further information on the applicable legal provisions, reference may be made to Section 3.2.1 of this report under Criterion 5.5. Nevertheless, two issues have a negative impact on this mechanism. There is no obligation requiring every legal person registered in BiH to establish a business relationship or conduct an occasional transaction with a financial institution or a DNFBP operating in BiH. Therefore, there may be legal persons in BiH in relation to whom no CDD measures have been applied and, as a result, no information on beneficial ownership is available. Additionally, the financial institutions met on-site, explained that beneficial ownership of legal persons is determined by obtaining information from the Court Register, which, as explained above, does not always hold such information and where such information is available, it is not always up-to-date. Therefore, information maintained by financial institutions and DNFBPs is not always accurate and current.

Prevention of misuse of bearer shares (c. 33.3)

1364. Legal entities established under the legislation of BiH (or one of the Entities) are not allowed to issue bearer shares. This results from the Laws on Securities Market of RS (Article 5) and Law on Securities of FBiH (Article 8), where it is stipulated that one of the compulsory elements of a security, which should be contained in the Registrar, is data about the owner/purchaser of the security.

1365. As has been already pointed out in the 3rd round MER, however, it remains possible for a shareholder or owner of a legal entity established on the territory of BiH to be a foreign legal person, which does issue bearer shares. Adequate measures still haven't been taken in order to mitigate the risks connected with this possibility.

Additional element - Access to information on beneficial owners of legal persons by financial institutions (c. 33.4)

1366. As has been pointed out above, the term beneficial owner is now defined in the Article 3 n) of the new AML/CFT Law, whilst Articles 6 and 7 of AML/CFT Law set general requirements for identification of beneficial owner. Some other basic requirements for identification and verification of beneficial owners can also be found in the secondary legislation. The reporting entities are therefore obliged to identify and verify the identity of the beneficial owner.

1367. As regards the accessibility of this information for the obligated entities, the description of the registration system applies accordingly, with the exception that it is not clear whether the full information contained in the Registries of Securities would be available to the obligated entities, when performing their CDD duties (as legal interest has to be demonstrated). On the other side, the difficulties to search for information caused by the complexity of the system are less relevant in the context of undertaking CDD measures, as it would usually be the client, who would provide the reporting entity with the relevant certificate issued by the Register.

1368. It is to be noted that the compliance of the legislative requirements with regard to the identification of the beneficial owner was increased and the guidelines issued by the authorities also handle this issue. Despite the awareness of the obliged entities about this matter, they generally continue to rely purely on the information contained in the Court Registries.

5.1.2 Recommendations and comments

1369. Given that no relevant developments took place since the time of the 3rd round evaluation, the evaluation team maintains the recommendations formulated already then:

- The authorities should ensure that any gaps within the existing mechanism providing for transparency of legal persons are adequately covered. Alternatively, the authorities should consider either requiring legal persons registered in BiH to obtain and hold adequate, accurate and current information on their beneficial ownership and ensure that such information can be accessed in a timely manner by competent authorities and obliged entities or extend the requirement to identify and verify the beneficial owner of the legal entity to the authority registering legal entities. This information should be included in the Register and should be made available to the competent authorities and obliged persons.
- It is strongly recommended to the authorities to keep all the databases of registered legal entities in an electronic form, these databases should be interconnected and should enable a comprehensive search.
- The authorities should put in place a mechanism to ensure that all the information included in the registers is accurate and up-to-date.
- The authorities should review to which extent bearer instruments may figure in BiH (either in the form of bearer bonds or as foreign shareholders, which issue bearer shares) and whether all the necessary precautions were taken in order to mitigate the risks associated with such instruments.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• The mechanism in place to ensure adequate transparency concerning the beneficial ownership and control of legal persons is not sufficiently comprehensive; • Concerns about the extent and accuracy of the information included in the Court Registries; • Limited accessibility and possibility for search for information in the various databases, mainly due to the fact that some are still maintained only in a paper form and they are overall not interconnected.

5.2 Non-profit organisations (SR.VIII)

5.2.1 Description and analysis

Special Recommendation VIII (rated NC in the 3rd round report)

Summary of 2009 factors underlying the rating

1370. The factors underlying the 3rd round rating were:

- No review of the adequacy of the relevant laws in order to identify the risks and prevent the misuse of NPOs for terrorism financing purposes;
- Lack of outreach to the NPO sector;
- Deficiencies of the registration mechanism;

- Deficiencies of the supervisory activities and inspections;
- No explicit legal requirement for the NPOs to maintain business records for a period of at least five years;
- Lack of sufficient national cooperation and information exchange between the national agencies which investigate ML/FT cases;
- No particular mechanism established for responding to international requests regarding NPOs.

Legal framework

1371. The establishment and activity of NPOs is regulated at state, entity and BD level by the following laws: the Law on Associations and Foundations of BiH (*Official Gazette of BiH No. 32 of 28 December 2001, as amended)*, the Law on Associations and Foundations of FBiH (*Official Gazette of FBiH No. 45/02*), the Law on Associations and Foundations of RS (*Official Gazette of the RS No. 52 of October 17, 2001, as amended*) and the Law on Associations and Foundations of BD (*Official Gazette of BD No. 12/02*).

1372. All above mentioned laws are largely harmonised and contain similar provisions on registration requirements for associations and foundations, their establishment, bodies, property, voluntary and involuntary dissolution, sanctions, etc.

1373. Religious communities are registered only at the State level, pursuant to the Law on Religious Freedom and the Legal Status of Churches and Religious Communities in BiH (*Official Gazette of BiH No 5/04*).

1374. Furthermore, Article 3, letter o) of the AML Law defines non-profit organisations (NPOs) as *"associations, institutions, bureaus and religious communities, founded in accordance with the law, and whose main activity is not to make profit"*.

1375. As no significant legislative changes took place since the adoption of the last MER, the reader is referred for detailed information on the legislative framework governing the operation of NPOs in BiH therein (in particular to paragraphs 986 to 1001).

Review of adequacy of laws and regulations (c.VIII.1)

1376. All the above mentioned laws on NPOs remain the same as at the time of the previous evaluation. No information was provided about any undertaken review of the adequacy of these laws with the view of identifying the risks and preventing the misuse of NPOs with regard to terrorism financing.

1377. During the on-site visit, it was established that the authorities do not have sufficient information about the composition of the NPO sector, the size of the individual NPOs, their international activities and in general their importance within the sector.[65] In this respect, it is to be noted that according to the information provided on-site, more than 21,000 NPOs were registered on the territory of BiH at the time of the on-site visit. This number is rather significant given the size of the country.

1378. The Security Intelligence Agency (SIA) informed the evaluators that the NPO sector was considered vulnerable for abuse of TF, taking into consideration that such abuse was already identified in the past (the reader is referred in this context to the 3rd round MER). Nevertheless, the representatives of SIA did not demonstrate a full understanding of the composition of the NPO sector

[65] A review of the NGO sector was undertaken in 2009 by a private consulting firm based on a tender funded by the EU. Given that the number of NPOs nearly doubled since then, its conclusions are no longer relevant. The authorities reported that a tender for a similar project, also funded by the EU, is in the course of preparation.

active on the territory of BiH, nor any patterns or types of NPOs, which would point to concrete vulnerabilities or on which they would be focusing their monitoring.

1379. The above mentioned lack of a comprehensive overview and assessment of the NPO sector appears to be caused predominantly by the distribution of competencies with regard to NPOs between various state authorities. Due to this fact, none of these authorities is in the position or has the responsibility to come to any conclusions about the characteristics, risks and vulnerabilities of the sector from a strategic point of view. The role of the state authorities in respect to the NPO sector is discussed in further detail under c.VIII.3.

Outreach to the NPO Sector to protect it from Terrorist Financing Abuse (c.VIII.2)

1380. The authorities have not reported any outreach activities with regard to the NPO sector, which would be undertaken with a view to protecting it from TF abuse.

Supervision or monitoring of NPO-s that account for significant share of the sector's resources or international activities (c.VIII.3)

1381. Firstly, it is to be stressed that given the lack of a comprehensive overview of the sector, the authorities are not in the position to establish which NPOs account for a significant share of the sector's resources or international activities.

1382. As described in the 3rd round MER, there are 14 different levels at which an NPO may be registered, without any prevention of double-registration. The authorities responsible for the registration of NPOs[66] however do not verify the veracity of the information provided, they do not inspect whether this information is up-to-date and do not consider themselves as responsible for the control of the activities of NPOs. Overall, they do not have any information about the NPOs after the registration is concluded.

1383. The Laws on Associations and Foundations set a number of obligations, which the NPOs established on their basis shall comply with. The first set of obligations relates to the provisions regulating the undertaking of profit-generating activities by NPOs. In this respect, under the general obligation for legal entities on the basis of Laws on Accounting and Audit of RS, FBIH and BD, also non-profit organisations are required to submit an annual financial report to the Agency for Financial, Information and Mediation Services in FBIH (AFIP Sarajevo or FIP Mostar) and the Agency for Financial, Information and Mediation Services in RS (APIF). Activities of NPOs are monitored and controlled in this respect for tax purposes by the Tax Administrations in FBiH and RS and the BD Inspection Directorate.

1384. The Tax Administrations of both Entities reported that they solely consider whether the NPOs undertake any undeclared profit-generating activities. In addition, given that NPOs are not central to the interest of these authorities, inspections would mainly be initiated upon an external motion (LEAs, citizens, media) and are not undertaken often, or regularly. This conclusion is further substantiated by the fact that the Tax Administration of RS performed 70 on-site inspections of NPOs registered in RS in the period 2011-2015. These numbers appear proportionate to the total number of NPOs registered in the Entity. No similar information was provided concerning the inspections undertaken by the Tax Administration of FBiH. In this respect, it is to be noted that there is no competent entity for financial control of NPOs at the state level and therefore financial control of

[66] At the State level, the Ministry of Justice of BiH is responsible for registering the associations and foundations. In FBiH, it is the Federal Ministry of Justice if the statute of association envisages that the association will operate on the territory of two or more cantons, otherwise it is the respective cantonal ministry. In RS, district courts are responsible for registering associations and foundations on which territory the association or foundation has its seat, the Ministry of Administration and Local Self-Governance of the RS maintains the central registry of associations and foundations and the central registry of foreign and international NPOs. In BD, the Basic court of BD is the responsible body for registration of associations and foundations.

NPOs registered at state level would have to be divided between the Tax Administrations of the Entities.

1385. Overall, the authorities informed the evaluation team that the responsibility for oversight and coordination of the activities of the NPO sector lies with the Ministry of Administration and Local Self-Governance in RS. There is no such designated authority in FBiH, where the competency in this respect is divided amongst the different ministries according to their field of activity. The authorities stated that the level of cooperation between the authorities is satisfactory.

1386. Violations of other obligations, for example conduct of activities non-compliant with the foreseen goals and purpose of the organisation or failure to up-date data in the registries are subject to sanctions on the basis of the Laws on Associations and Foundations. The Law on the State level (BiH) establishes the Ministry of Justice of BiH as the authority responsible for applying these sanctions and it can be therefore supposed that the Ministry would also be responsible for monitoring, whether the breaches have occurred. The organisational unit responsible in this respect is the Sector for Legal Aid and Development of Civil Society within the Ministry of Justice of BiH. The representatives of the Ministry of Justice encountered on-site, however, informed the evaluation team that they are in charge only of the registration of NPOs and control of public funds received by the NPOs, which receive such contributions.

1387. The other entity laws do not explicitly attribute this power to any institution and merely state that *"the supervision of the legality of the work of an association or foundation shall be carried out by the administrative body, whose competence encompasses monitoring the area of activities, in which the association or foundation is engaged"*. The authorities informed the evaluation team that the responsibility for oversight and coordination of the activities of the NPO sector in RS lies with the Ministry of Administration and Local Self-Governance. There is no such designated authority in FBiH, where competency in this respect is divided amongst the different ministries according to their field of activity. Notwithstanding the aforementioned, it was not demonstrated during the on-site visit that supervision of NPOs is actually undertaken in practice, as none of the authorities met by the evaluation team considered itself to be competent in this matter and was not able to designate a different competent body. Furthermore, it is not clear, whether "*supervision of the legality of the work*" would also comprise for example the requirement to update the data included in the registry of NPOs. Overall, it appears that there is a lack of jurisdiction to supervise compliance with the requirements of the Laws on Associations and Foundations on Entity levels.

1388. Further supervision of NPOs is also undertaken in cases, when the NPO receives funding from the state, as mentioned above. This is with the aim to monitor whether the funds were used in line with the purpose of the donation. Information of the extent and occurrence of such inspections was not provided for the purposes of this evaluation.

1389. In conclusion, supervision of NPOs remains to be undertaken merely for the purpose to ensure that the NPO in question is not undertaking any profit-generating activity (for the purposes of tax avoidance or evasion) by the Tax Administrations of the Entities or to see whether state contributions or grants are being used in line with the purpose for their attribution (respective Ministries of Justice or Finance).

1390. In addition, given that the seldom supervision of the NPO sector which does take place is not undertaken systematically and has no relation with the AML/CFT preventative framework, the inspectors are not familiarised with the AML/CFT vulnerabilities and threats in this respect and they do not take part in trainings, which would enhance their expertise in detecting possible suspicions.

Information maintained by NPO-s and availability to the public thereof (c.VIII.3.1)

1391. Under the Laws on Associations and Foundations of FBiH, RS and BD, every association shall be established by a founding act and foundation by a memorandum of incorporation. Furthermore,

the founding assembly of the association and the founder of a foundation shall enact a statute of the organisation. These documents must contain a number of set information; of particular relevance to c.VIII.3 is the information on the founders, possible beneficiaries of foundations and the goal and activities of the organisation. The assembly of an association (which consists of all its members) or the founder of a foundation shall appoint the members of the management board or another managerial body or person(s) authorised to represent the association. There is however no requirement in the laws, which would oblige the organisations to keep records on these decisions establishing the persons in charge of controlling or decision-making in respect of the NPO.

1392. Regarding public availability of this information, there is no provision, which would require NPOs to enable access to the public of the information they hold. The Laws on Associations and Foundations do, however, foresee free public access to information held by the registers of associations and foundations. Upon registration, the organisations are obliged to provide the authority responsible for registration with the memorandum of incorporation (or founding act in the case of an association), the statute, the list of members of managing bodies and a list of persons authorised to represent the organisation. No further requirement is included to specify what kind of information shall be included in respect of all such persons to ensure the possibility to fully identify such persons. Furthermore, it is doubtful whether this requirement comprises all the possible "persons, who own, control or direct the activities of the organisation, including senior officers, board members and trustees", as required under c.VIII.3.1.

1393. In addition, despite the public availability of the records held by the registries, the laws contain an exemption, which states that an authorised representative of an association or a foundation may request the registry to prohibit disclosure of certain data entered into the registry, if the disclosure of such data could undermine the personal integrity of the founders or members of the association or foundation. It is not clear in what cases the registries would accord this exemption and to which extent it negatively impacts the transparency of NPOs.

1394. The laws further foresee sanctions for organisations, which fail to update changes to the data entered in the registry within 30 days of the occurrence of such a change. As has been discussed above, there is no authority clearly designated to supervise compliance with this requirement and overall there is a lack of supervision of whether the changes are being registered. It is hence questionable whether the data in the registries are actually up-to-date. Further concerns are in place due to the shortcomings of the registration obligation, which are described below under c.VIII.3.3.

Measures in place to sanction violations of oversight rules by NPO-s (c.VIII.3.2)

1395. The Laws on Associations and Foundations set out a sanctioning regime for violations of the requirements included therein. Under this framework, sanctions are applicable both to the organisations and to the responsible persons. However, as discussed above, concerns remain regarding the clarity in practice of which authority is designated for the purposes of undertaking supervision and applying such sanctions. For further details on the sanctions applicable under the Laws on Associations and Foundations, the reader is referred to paragraphs 1008-1012 of the 3rd round MER.

1396. The evaluators were not made aware of any inspections undertaken and sanctions imposed in practice since the last evaluation with regard to the requirements of the Laws on Associations and Foundations. In the 3rd round MER, the evaluators were advised about cases, where criminal proceedings against NPOs were commenced following an identification of violations of tax requirements by the Tax Administrations of RS and BD. Nevertheless, there is no information about the occurrence of any such cases in the period under the current assessment.

Licensing or Registration of NPO-s and availability of this information (c.VIII.3.3)

1397. No changes in the registration of NPOs were reported by the authorities since the last evaluation round. It is important to remind that the Laws on Associations and Foundations foresee a very complex framework for registration of NPOs (as described in a footnote above), which does not put in place measures to avoid duplication of registrations and does not foresee communication between the different authorities. There are currently 14 different entities, which hold the registry books and it appears that only the register of NPOs registered at state level is available in a digitalised form. Consequently, apart from contacting directly the concrete competent authority, there is no system in place for obtaining information on a registered NPO. In addition, this also impedes the possibility to search for information in a comprehensive way, for example by LEAs.

1398. With regard to the registry of NPOs at the State level, this is available on the website of the Ministry of Justice of BiH[67] and includes the following information: serial number, registration number, full name of association, abbreviated name, date of entry and number of decision by the Ministry, address of the main office of the association, list of persons for the representation of the association and column for notes. The remaining information on the individual NPOs held by the Ministry of Justice and not included in the on-line registry may be requested directly from the Ministry of Justice, given the public character of the Registry of NPOs.

1399. Finally, it is to be noted that associations and foundations are not required to register by the legislation and it is therefore possible for NPOs to operate on the territory of BiH without being registered. Nevertheless, it has been concluded by the evaluation team in this respect that this fact is not sensed to have a real impact in practice, in particular with regard to the TF risks associated with the NPO sector, as notwithstanding the fact that registration is not obligatory for NPOs in BiH, it is upon registration that NPOs obtain legal personality. As a consequence, the scope of activities, which an NPO could undertake without being registered, is considered as highly limited. The introduction of a clear obligation for NPOs to register would, however, be considered as beneficial for the transparency of the NPO sector.

1400. For further detailed information, the reader is referred to the 3rd round MER (paragraphs 992-1006).

Maintenance of records by NPO-s, and availability to appropriate authorities (c.VIII.3.4)

1401. Under the Laws on Associations and Foundations of BiH and RS, organisations established pursuant to these laws are obliged to issue annual reports on their activities and financial reports. No similar provision concerning annual reports is required by the Law of FBiH. All of the respective Laws of all the three entities oblige NPOs to keep records on domestic and international transactions by an indirect reference to laws governing accounting and auditing requirements applicable for all legal entities[68]. The aforementioned Laws on Accounting and Auditing prescribe the following periods for keeping transaction records for NPOs registered under the laws of respective entities: in RS 5 years or more if special regulations demands so[69]; in FBiH 5 years for transaction records and 11 years for annual financial reports[70]; in BD at least for six years or longer if required by tax laws[71]. As stipulated by the respective laws, records of domestic and international transactions obligatory

[67] www.mpr.gov.ba

[68] See Article 47 of the Law on Associations and Foundations of BiH (Official Gazette of BiH No. 32/2001, Article 40 of the Law on Associations and Foundations of FBiH (Official Gazette of FBiH No. 45/2002), Article 37 of the Law on Associations and Foundations of RS (Official Gazette of the RS No. 52/2001) and Article 33 of the Law on Associations and Foundations of BD (Official Gazette of BD No. 12/02)

[69] Article 9(3) of the Law on Accounting and Auditing of the RS (Official Gazette of RS No. 36/2009)

[70] Article 32 of the Law on Accounting and Auditing of the FBiH (Official Gazette of FBiH No. 83/2009)

[71] Article 11 of the Law on Accounting and Auditing of the BD (Official Gazette of BD No. 6/2006)

kept by NPOs would be sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation.

Measures to ensure effective investigation and gathering of information (c.VIII.4)

1402. No specific measures to ensure effective investigation and gathering of information with regard to NPOs were reported by the authorities.

Domestic co-operation, coordination and information sharing on NPO-s (c.VIII.4.1)

1403. The state authorities can cooperate and share information with regard to NPOs on the basis of their standard competencies. Nevertheless, no specific mechanisms are in place with the view of sharing information concerning particularly NPOs. Given the number of different authorities involved in the registration and supervision of NPOs, there are concerns of whether spontaneous information sharing on potential suspicions would take place under the current framework.

Access to information on administration and management of NPO-s during investigations (c.VIII.4.2)

1404. In the course of investigation and criminal proceedings, law enforcement authorities have access to the information held by NPOs through standard investigative tools and techniques as prescribed by respective laws.

1405. With regard to NPOs, the availability of the necessary information may be hindered by the lack of a single digitalised database for the entire territory of BiH impedes an effective and timely search. The use of registries for the purposes to obtain information is also affected by the other shortcomings described above.

Sharing of information, preventative actions and investigative expertise and capability, with respect to NPO-s suspected of being exploited for terrorist financing purposes (c.VIII.4.3)

1406. As stated above, there is no specific forum, which would enhance information sharing with regard to NPOs on a spontaneous basis. Furthermore, the lack of a strategic overview of the characteristics of the sector, lack of clarity regarding the distribution of competencies with regard to the oversight of NPOs, as well as the fact that supervision is not being undertaken in practice, does not allow the conclusion that this issue is considered as priority.

1407. Nevertheless, during the on-site visit, representatives of the financial sector confirmed that NPOs are treated as high risk clients as far as ML and TF issues are concerned. Potential suspicious activities could be therefore detected by the reporting entities and come to the attention of law enforcement authorities through the channel of STRs filed to the FIU.

1408. As concerns the applicability of investigative measures, NPOs, which are legal persons (registered NPOs), would be treated as such for the purposes of application of the provisions of the criminal legislation and could be held liable for the criminal offences included therein. With regard to NPOs, which are not registered, actions would have to be taken individually in respect of the individual members.

Responding to international requests regarding NPO-s – points of contacts and procedures (c.VIII.5)

1409. No particular mechanism is established for responding to international requests for provision of information regarding NPOs. Cooperation channels of the FIU or standard MLA requests would have to be used for this purpose.

Effectiveness and efficiency

1410. The regulatory framework of the NPO sector does not appear to enable the authorities to have a clear overview of the sector and its risks on the different levels and much less throughout the entire territory. This was confirmed during the on-site visit, where the evaluators were not presented with an authority, which would have an oversight of the different pieces of the legislative framework, the

size and characteristics of the sector, and which would as well be able to implement it within the context of TF threats and vulnerabilities.

1411. The complexity and shortcomings of the registration requirements and availability of information are a serious obstacle to the effectiveness of information gathering with regard to activities of NPOs and investigations thereof.

1412. The authorities advised the evaluation team during the on-site visit that efforts are being made in order to establish a centralised digital register, which would be unified for the entire territory and available to the public. It remains unclear in which stage this process is currently.

1413. Supervision of NPOs undertaken in practice is very limited and does not contain any AML/CTF related aspects. The authorities undertaking the inspections do not have the competencies or sufficient expertise in this matter in order to detect a potential abuse. Information gathered during inspections of NPOs (undertaken mainly for tax purposes) is not shared with other authorities, which would have competencies within the fight against TF. Apart from violations of tax related obligations, no sanctions have been imposed to NPOs for breaches of the requirements they are subject to. On a positive note, regarding the detection of potential suspicious activities of NPOs, the evaluators welcomed the awareness of the financial sector regarding the potential risks of the NPO sector and the fact that these are treated as high risk customers and are subject to enhanced CDD measures.

1414. The evaluators were not informed about any outreach activity with regard to NPOs, which would be undertaken with the view of raising awareness of these in respect of the possible TF risks. It was also not possible to conclude, which authority would be responsible for organising such activities.

5.3.2 Recommendations and comments

1415. The authorities should undertake a comprehensive assessment of the size, characteristics and activities of the NPO sector and evaluate this in the context of the potential ML and TF risks of the country, in order to formulate specific vulnerabilities of the sector or its individual components. Such assessments should be periodically repeated in order to ensure that new trends and developments are taken into consideration. Furthermore, on the basis of this information, a review should be done by the authorities of the legislation governing NPOs in place, as well as of the entire institutional framework related to the activities of NPOs.

1416. Legislative and practical changes should be implemented with regard to the registration framework in order to ensure that all NPOs operating on the territory of BiH are obliged to be registered and that all NPOs are registered only at one instance. In addition, a single registry of all NPOs should be established in order to enable accurate collection of data on the size of the sector, as well as to facilitate search and information gathering in particular for the purposes of LEAs.

1417. Availability of information on NPOs should be enhanced. NPOs should be obliged to keep the information required by the standards and all this information should be available to the public either directly or through a public authority. There should be a clear provision imposing an obligation on NPOs to provide the public with access to information held only by the NPO (and not included in the public register). This information accessible to public should be up-to-date. NPOs should also be required to maintain sufficiently detailed financial records for the period of five years.

1418. The framework in place, both through legislative measures and in practice, should ensure that the requirements to which NPOs are subject are implemented in practice. Clear supervisory and sanctioning powers should be attributed and inspections should be undertaken. The competent supervisors should have sufficient expertise to detect suspicious behaviours.

1419. Cooperation and coordination amongst national authorities in respect of their duties and information concerning the NPO sector should be enhanced. A pro-active approach should be adopted in order to ensure that the different components (supervisors, LEAs, institutions in charge of state security) are aware of the full picture of the NPO sector, its activities, characteristics, but also the broader context of general TF risks in the country.

1420. The authorities should undertake awareness raising activities for NPOs with regard to ML and TF risks and possible protection against them. Actions should be taken also in respect of promoting transparency, accountability, integrity and public confidence in the NPO sector.

5.2.2 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**NC**	• No review of the adequacy of the relevant laws in order to identify the risks and prevent the misuse of NPOs for terrorism financing purposes was undertaken; • No review of the size, characteristics and activities of the NPO sector; • Lack of outreach to the NPO sector; • Shortcomings of the framework with regard to registration and access to information on NPOs; • Lack of clarity with regard to the supervisory competencies; • No particular mechanism established for responding to international requests regarding NPOs. **Effectiveness** • Lack of an overall understanding of the size, characteristics and activities of the NPO sector; • Supervision of NPOs is undertaken only for tax purposes; • No mechanism in place to facilitate information exchange and cooperation in respect of NPOs between national authorities, lack of a proactive approach to information sharing in this respect.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31 and R. 32)

6.1.1 Description and analysis

Recommendation 31 (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

1421. BiH was rated PC in the last evaluation round based on the following:

- Legal and institutional basis in place but questions remain on effectiveness, coordination and information sharing;
- Possible need to review structure and operational efficiency of the Working Group;
- Need to strengthen co-ordination between the various authorities in the financial sector.

Effective mechanisms in place for domestic cooperation and coordination in AML/CFT (c.31.1)

1422. As indicated in the previous report, the fragmented political structure of BiH and its complex legal and institutional frameworks mean that effective domestic cooperation and coordination at the policy, strategic and operational level pose considerable challenges. Mechanisms for cooperation and coordination are required not only between policy makers and various competent authorities within each of the four jurisdictions, but also between them and their counterparts in the other three jurisdictions. In some respects the mechanisms in place for cooperation and coordination are the same as at the time of the last evaluation, but certain changes have been introduced.

1423. At a policy and strategic level, the main mechanism for ensuring cooperation and coordination amongst the different authorities involved in the prevention of ML and TF across BiH as a whole remains the Working Group of Institutions of BiH for the Prevention of ML and TF. This is an inter-ministerial and professional body of the Council of Ministers of BiH, which was established in 2008. It is composed of representatives from 17 authorities and is chaired by a member of the FID, with the Chief State Prosecutor serving as the deputy chair.

1424. The terms of reference of the Working Group are set out at paragraph 1033 of the previous report. In summary, they are to improve overall coordination of AML/CFT work among the relevant institutions, to create an AML/CFT strategy and to propose legislative changes and amendments in relation to AML/CFT. There was no indication during the onsite visit that the terms of reference have changed.

1425. At the time of the last onsite visit, the main task of the Working Group had been the drafting of a new AML/CFT Law and little progress appeared to have been achieved in creating an AML/CFT strategy, but in 2009 the Working Group adopted an agreed multi –agency action plan for the implementation of an AML/CFT strategy to cover the period from 2009 to 2013. In addition, the authorities prepared a national action plan in 2011 to address deficiencies in the AML/CFT regime following the opening of Compliance Enhancing Procedures by MONEYVAL in 2010. However, no successor action plan to that created in 2009, to cover the period from 2013 onwards, has been prepared by the Working Group (although individual authorities such as SIPA have their own action plans, and the Ministry of Security of BiH has issued a Strategy for the Fight against Organised Crime in BiH for the years 2014 – 2016 which formulates specific objectives concerning individual types of offences related to organised crime, including money laundering. However, while the Strategy foresees the adoption of an Action Plan specifying the concrete activities necessary to achieve implementation, this has not been adopted).

1426. The evaluators were provided with very little information about the functioning of the Working Group, such as the frequency of meetings, issues discussed or conclusions reached. Specifically, it was not possible to determine to what extent strategic analysis or planning takes place with a view to identifying current methods, trends, threats and vulnerabilities and formulating future policies and priorities accordingly.

1427. It is nonetheless clear that steps have been taken to implement some aspects of the action plans referred to above. One example in a legislative context is the introduction of a new AML/CFT Law in 2014. This addressed a number of requirements relating to obliged entities, and also contained provisions aimed at enhancing cooperation which are looked at below. Another example, at a practical level, is the introduction of a programme of seminars and other training initiatives for the competent authorities across BiH as a whole.

1428. However, there have been considerable difficulties and delays in implementing some other aspects of the action plans. This is particularly the case in respect of amendments to the state-level Criminal Code that were necessary to clarify the issue of jurisdiction for money laundering and to remedy deficiencies in the criminalisation of terrorist financing (as described in detail under R1 and SR II). These problems appeared to stem from the fact that the authorities under the different legal systems were divided over the best way to take these matters forward.

1429. This is consistent with the material provided to the evaluation team before the onsite visit, which included documents expressing divergent views as between the state-level authorities and the authorities in the RS about the merits of proposed legislative changes to the Criminal Codes.

1430. Divergence of view between the authorities of the different legal systems is further demonstrated by their AML/CFT legislative frameworks. Although the frameworks of the four jurisdictions are harmonised in many respects, there remain a number of differences between them. For example, self-laundering is expressly criminalised at state level and in the RS, but not in the FBiH or BD. Other examples are the absence of extended confiscation provisions in BD despite their introduction in the other legal systems, and the fact that only the RS has an asset recovery agency (although legislation establishing an equivalent agency has been approved in the FBiH).

1431. The complexities of BiH's internal structure appear to cause fewer difficulties in cooperation and coordination at an operational level. There are gateways in place to share information which appear to be used effectively.

FIU cooperation with other authorities

1432. The AML/CFT Law sets out the legal framework for cooperation between the FID and other domestic competent authorities. Article 57 of the AML/CFT Law requires the FIU to provide assistance to prosecutors. Article 61 of the AML/CFT Law sets out the obligation of other state authorities to provide information to the FID and regulates the provision of information by the FID to authorities responsible for the investigation of ML/TF. Further obligations for submitting information to the FID by other authorities are set out in Chapter IX (Article 71 *et al*) of the AML/CFT Law.

1433. In general, the FIU reported that they do not encounter problems in obtaining information, when requested from other authorities. The evaluation team was further advised that, when necessary, other authorities would go on-site in order to obtain the information requested by the FID.

Supervisory authorities' cooperation with other authorities

1434. The different financial sectoral laws oblige individual supervisory authorities to cooperate and share information with their counterparts situated at a different level within the administrative structure of BiH (i.e. between the authorities from the two Entities and BD and between the authorities from the two Entities, BD and the state level authority). Furthermore, the sectoral legislation enables the supervisory authorities to provide information to other national authorities on

the basis of an agreement. These legal provisions are enforced by a number of bilateral and multilateral MoUs, which were signed between the supervisory authorities situated in different Entities. Given that no new MoUs were signed between the supervisory authorities after the adoption of the 3rd round report, the reader is referred for further detailed information to the analysis under R.31 therein.

1435. In addition, Article 80(4) of the AML/CFT Law states that the FIU shall cooperate with other supervisory authorities on matters concerning the supervision of the AML/CFT Law. The supervisory authorities are also obliged to submit to the FID information on the supervisory actions undertaken in this respect and their outcome. The FID is obliged to inform them on further actions it has undertaken.

1436. During the on-site visit, all of the supervisory authorities under the different jurisdictions reported an excellent level of cooperation with their counterparts under the other jurisdictions, as well as with other supervisory authorities within a particular jurisdiction, where joint inspections are undertaken as a matter of practice and information is shared regularly on the results of supervisory actions.

1437. Furthermore, within criminal proceedings, the LEAs may request action to be undertaken by the supervisory authorities. It has been confirmed during the on-site visit that in practice the Banking Agencies or Insurance Agencies, for example, would undertake inspections based on requests from LEAs. In addition, the Banking Agencies reported during the on-site when the FIU or prosecutors need information from FIs, they would usually approach the relevant Banking Agency in this respect, who would gather information on their behalf.

Cooperation between law enforcement authorities and with other authorities

1438. The CPCs of the Entities (Article 21 of the CPCs of RS and Article 22 of the CPC of FBiH) provide that all the authorities from the relevant entity are required to cooperate with the courts and the prosecutors leading criminal proceedings. Article 21 of the CPC of BiH provides that all the authorities in the territory of BiH shall maintain official cooperation with the courts and prosecutors leading criminal proceedings. The following articles (Article 22 of the CPC of RS and BiH and Article 23 of the CPC of FBiH) provide that the competent authority (court or prosecutor) shall file a request for the provision of assistance.

1439. The legislation governing the functioning of the individual law enforcement agencies also provide for the provision of assistance and cooperation. For example, the SIPA Law in Articles 21 and 22 establishes a number of obligations for a wide range of state authorities and LEAs to provide assistance to SIPA, as well as on SIPA to provide these authorities with information relevant for their work. In the SIPA Strategic Action Plan for the years 2012-2014, issued in December 2012, enhancement of cooperation was stressed as one of the key priorities for the Agency.

1440. The Ministry of Interior of FBiH informed the evaluation team that the coordination, distribution of work and information-sharing amongst the police forces in FBiH are regulated by an internal document 'Instruction on the Methods of Operation and Investigation in the Territory of FBiH and the Division of Competencies between the Different Police Forces in FBiH and the cantons'.

1441. The representatives of Police of BD confirmed that the MoU between LEAs operating in BiH also applies to them and would use this document as guidance for cooperation with LEAs from State or Entity level. However, no internal regulations exist with regard to cooperation, as the territory is rather small and the number of different LEAs is limited.

1442. The HPJC also issued a non-binding Guidance on Cooperation of Law Enforcement Officers with Prosecutors. This document proposes basic procedures for cooperation between LEAs and prosecutors in the investigation stage of the criminal proceedings. In particular, it prescribes the

situations in which LEAs should inform the prosecutor (and *vice versa*) of initiated investigations and reported offences, cooperation in conducting investigative actions aiming at obtaining evidence and joint approach to public relations. Article 20 of the Guidance also foresees the organisation of regular meetings between prosecutors and senior police officers, which should take place at minimum every three months for discussion of strategic issues and on a monthly basis on an operational level.

1443. In 2011, the Directorate for Coordination of Police Bodies of BiH was established, as an administrative organisation within the Ministry of Security of BiH with operational independence. It is the main authority responsible for international and national cooperation amongst police forces, other LEAs, prosecutors and taxation authorities at all levels in BiH. It is within this Directorate that the National Central Bureau of Interpol of BiH is established.

1444. The Tax Administrations of the Entities and BD and the ITA have MoUs in place to ensure cooperation and information sharing. It was confirmed that they would gather information from one another even upon a request to one authority coming from a different LEA or prosecutor.

1445. Resulting from the interviews, which took place during the on-site, despite the complexity of the institutional system, law enforcement authorities have not encountered any difficulties in the attribution of jurisdiction amongst the different levels. It appears that the authorities would share information or transfer cases with ease when the issue concerns more than one authority, when the jurisdiction is with another authority, when information from another authority is needed. Examples were provided of specific cases in which jurisdiction for money laundering cases had been agreed between the various authorities. However, when the LEA considers itself as competent to handle the case, they would not inform any other authority about an initiated investigation. This concern was confirmed on several occasions, when several authorities mentioned cases, where related investigations were led simultaneously by several authorities without their knowledge and cooperation. This was not due to unclear provisions on jurisdictions, as the cases mentioned were not identical, nevertheless, exchange of information would have avoided the repetition of some investigative actions.

Terrorism Financing

1446. The authority responsible for setting out strategies and action plans with regard to terrorism and TF is the Counterterrorism Unit of the Ministry of Security of BiH. This Unit is also responsible for collecting all relevant information and intelligence in this matter, providing guidelines and coordinating the activities of all public authorities of BiH with regard to terrorism and TF.

1447. The representatives of the Counterterrorism Unit reported that they have close cooperation with SIPA, in particular with the FID, and that they propose activities and guidelines for them to implement. Nevertheless, it was not clear from the discussions held during the on-site visit whether all the relevant information and "watch-lists" would be shared between the authorities.

1448. A strong cooperation was reported between the counterterrorism officials from the CID of the SIPA and the SIA. The representatives of the CID reported that both agencies cooperate extensively on both an operational and a strategic level. The SIA also referred to cooperation with other LEAs, in particular with the customs authorities/border police in respect of individuals crossing the borders.

1449. With regard to NPOs, the authorities responsible for the registration and control of NPOs advised that they provide information on NPOs from the registers to any authority upon request, nevertheless, they do not disseminate information proactively with any other authorities.

Additional element – Mechanisms for consultation between competent authorities and the financial sector and other sectors (including DNFBPS) (c. 31.2)

1450. The Banking Agencies of the Entities reported that they are actively engaged in the work of the Committee for Prevention of ML and TF, which operates under the auspices of the Banking

Association. This Committee organises biannual meetings for compliance officers of banks. The evaluation team was not provided with any further information on the issues discussed at these meetings and the practical impact of this forum on the AML/CFT framework.

1451. No additional information has been provided by the authorities in this respect.

Recommendation 32.1 (Review of the effectiveness of the AML/CFT system on a regular basis)

1452. With regard to criminal proceedings, the authority competent for the collection of statistics on all criminal proceedings is the HPJC. The HJPC uses these statistics exclusively for the purposes of administrative planning with regard to the judiciary and prosecutors' offices (such as to foresee the number of staff needed). ML and TF are not considered separately from other criminal offences for these purposes. It appeared that these statistics are not analysed by the HJPC in respect of the effectiveness of investigations, prosecutions and convictions of ML/TF, and nor are they provided to any other authority to enable this to be done.

1453. For the purposes of a general policy coordination of the AML/CFT framework, the above mentioned Working Group was established. Although the relevant framework has been set up, it was not demonstrated that a comprehensive review of the data maintained by the authorities would be undertaken. This covers both the analysis of the different types of statistical data by the competent authorities, and consequently the lack of a holistic review of the statistics maintained by the various competent authorities. This was confirmed during the on-site visit.

Recommendation 30 (Policy makers – resources, professional standards and training)

1454. Insufficient information was provided with regard to the actual composition of the Working Group. However, it appears that it is comprised of representatives of the relevant institutions, which take part on this forum only as a marginal activity within their overall professional duties. The fact that there is no permanent body responsible for the preparation of the policy making activities could be the cause of the lack of capacity to undertake broader assessments of the situation and identify key areas on which future activities should be focused (including analysis of the statistics and other data maintained by the different stakeholders)

Effectiveness and efficiency

1455. Although the membership of the Working Group includes representatives of many of the key AML/CFT authorities, representatives from the FID indicated that it would be desirable to broaden the participation in this group to include other stakeholders from within the AML/CFT framework, such as some supervisory authorities and more representatives from entity level institutions. Subject to that point, based on the limited information provided the evaluators consider that the composition of the Working Group and its terms of reference could provide the necessary mechanism for domestic cooperation and coordination at a policy and strategic level, assuming that the Working Group discharged its functions effectively. However, the extent to which it is doing so in practice is questionable. Although progress has clearly been made in some respects, for example with the introduction of the new AML/CFT Law, the problems referred to above in enacting legislation to address other gaps in the legal framework, particularly in key areas such as the criminalisation of terrorist financing, are indicative of an absence of cooperation and coordination between the authorities which is a cause for concern.

1456. The same may be said of some other aspects of the Working Group's functions, such as the apparent lack of analysis of statistical or other information and the effect this has on the ability of the Working Group to develop policy and provide strategic direction. This is reflected in the absence of any country-wide strategy or action plan for dealing with ML and TF for 2013 onwards (other than in the context of CEPs).

1457. In addition, the inconsistencies as between the various legal frameworks suggest that the different authorities are not in agreement on some key issues. While these inconsistencies do not appear to have had a negative impact on implementation in practice, there is a risk that the absence of properly harmonised legal systems could be exploited by persons trying to find gaps in the system as a whole (e.g. by choosing to operate in a part of the country where the confiscation regime less stringent).

1458. Cooperation and coordination appear much more effective and efficient at an operational level.

1459. The representatives of the Directorate for Coordination of Police Bodies of BiH reported that they have coordinated a number of successful cases involving different authorities within different levels in the country. Joint teams have also been established. Exchange of information was reported as functioning to a satisfactory extent.

1460. The representatives of the FID informed the evaluation team that in practice they have never encountered problems in obtaining the necessary information from other authorities, also when requesting the authorities in question to undertake on-site visits in order to obtain information necessary for the FID. The FID reported that it suspended a number of transactions based on requests from other authorities of BiH. Concrete examples were given of cases where cooperation involved a number of different LEAs, as well as financial market supervisors; this involving authorities from the levels of State and both Entities. In 2013, for example, the Financial Investigation Department of the Ministry of Interior of FBiH received information about illegal trade of securities in the territory of the FBiH from the FID; the evaluation team was advised that, in addition, the following authorities were involved in the subsequent investigation: MoI of RS, SIPA, Securities Commission of FBiH and RS.

1461. During the on-site visit, the evaluation team noted that LEAs (in particular police at different levels, border police and other investigative bodies, such as Tax Administrations) cooperate very efficiently and regularly on an operational basis. None of the different bodies met on-site indicated ever having encountered any problems in this respect. The authorities also mentioned, on several occasions, that cooperation takes place also with regard to sharing of expertise, as LEAs would contact the Tax Administrations or the FIU in order to assist them in their work, when specific expertise was needed. Nevertheless, it has not been demonstrated that representatives of these agencies cooperate at a strategic level with a view to identifying trends or typologies and developing specific policies.

1462. Despite the generally positive picture with regard to cooperation amongst law enforcement authorities, it was mentioned on a number of occasions that it was not uncommon for parallel investigations on the same case to be initiated inadvertently by different agencies, since there is no central database for the creation of a single case file, which would alert every authority of any current or past investigation on the same target.. The absence of a central database also complicates the information-gathering process, since information, while generally available, is spread across a large number of authorities. This was mentioned in particular with regard to the number of different registries (on property, legal persons, etc.).

1463. Cooperation between police forces and the prosecutors, which is required during the investigation and in the first stages of criminal proceedings, appears to be functioning adequately. The police authorities consult the prosecutors when advice is needed and request assistance (for example when the use of special investigative techniques is required), when necessary. Cooperation also takes place between the police forces and the FIU, which appear to resort to it for ML expertise or when its particular competencies are needed for the purpose of obtaining information domestically or internationally.

1464. The FID, given its position within the SIPA, cooperates extensively with other law enforcement bodies, in particular with the other departments of SIPA.

1465. The evaluators raised concerns about the lack of feedback between the authorities in certain instances, when files are transmitted or information shared. This would be the case mainly when information is shared on a spontaneous basis or when files are forwarded by the police to the prosecutor's office or between the FIU and other authorities. It was observed that authorities receiving information or notifications would not provide feedback and the providing authority would not request it. Such feedback would seem to be essential in order to enhance the quality of such cooperation in the future.

1466. As regards operational cooperation with regard to TF, the representatives of SIA, CID and FID reported that they also share extensively information and cooperate with the view of establishing together a sufficient file to be handed to the prosecutor, so that criminal proceedings could be initiated.

6.1.2 Recommendations and Comments

Recommendation 31

1467. The evaluators recommend that the existing mechanisms for cooperation and coordination at a policy and strategic level are reviewed, in order to identify ways in which this can be improved. In particular, the authorities are strongly urged to take steps to facilitate agreement being reached on points of difference between the four jurisdictions at an earlier stage than at present. This would reduce the risk of delays being caused by the rejection of legislation at an advanced stage in the legislative process. One way to achieve this might be to make changes to the membership of the Working Group, whether as suggested by the FID or otherwise, to ensure that the decision making process is fully informed by the necessary expertise from the outset.

1468. There should also be an increased focus on analysis and understanding of the AML/CFT situation in the country and consequent implications for the AML/CFT framework, as well as the subsequent identification of concrete areas for focus and priorities. This should in turn be reflected in an updated strategy or action plan for tackling ML and TF going forward.

1469. In addition, the authorities of the different jurisdictions should continue the process of harmonising their legal frameworks, in order to remove the risk of differences being exploited by third parties.

1470. At an operational level, the authorities should consider reviewing the use of FID disseminations for the work of law enforcement authorities and subsequent prosecutions with the view of identifying possible bottlenecks. Measures should be formulated and put in place in order to address the identified obstacles.

1471. Authorities should consider requesting and providing feedback, when information is shared or assistance provided. Consequently, this information should be used in order to enhance the quality of cooperation.

1472. Although cooperation on operational level seems to be satisfactory overall, the authorities should consider putting into place mechanism to avoid the occurrence of parallel investigations.

Recommendation 32

1473. A mechanism should be put in place to ensure that statistics maintained by the authorities are regularly reviewed and strategic analysis thereof is undertaken.

Recommendation 30

1474. The authorities should consider either establishing a permanent body in charge of policy cooperation in the matters of AML/CFT or providing the Working Group with a number of permanent staff.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**PC**	**Effectiveness** • Significant delays in the enactment of legislation due to lack of agreement between policy makers; • Insufficient analysis of ML/TF issues by policy makers and competent authorities, resulting in absence of effective strategy to address those issues; • Inconsistencies between the four legal frameworks create risk of exploitation by third parties.

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

6.2.1 Description and analysis

Recommendation 35 (rated PC in the 3rd round report) & Special Recommendation I (rated PC in the 3rd round report)

Summary of 2009 factors underlying the rating

1475. Recommendation 35 was rated PC in the 3rd round MER based on the insufficiencies in the effective implementation of the Conventions due to existing deficiencies related to criminalisation of ML/TF offences.

1476. Special Recommendation I was also rated PC in the 3rd round MER due to the deficient implementation of UNSCR 1267 and 1373.

Ratification of AML Related UN Conventions (c. R.35.1 and of CFT Related UN Conventions (c. SR I.1)

1477. The 1988 UN Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) was ratified by the Socialist Federal Republic of Yugoslavia in 1990. BiH succeeded to this Convention in 1993. It ratified the Palermo Convention and its first two Protocols in 2002, and acceded to the Protocol on Illicit Firearms in 2008. BiH ratified the UN International Convention for the Suppression of the Financing of Terrorism ("TF Convention") in 2003. Also, it is party to all 9 conventions listed in the Annex of the TF Convention.

Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1) and the Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c.35.1)

1478. The majority of the provisions of the Vienna and Palermo Conventions are implemented by BiH broadly in line with the requirements of the Conventions. Concerns remain with regard to Article 5(4) of the Vienna Convention and Article 13 of the Palermo Convention, as it has not been demonstrated that the authorities of BiH have the power to execute a confiscation order on the basis of a foreign request (for further detail on this issue, the reader is referred to the analysis under R.36). Consequently, doubts remain about the implementation of Article 5(5) of the Vienna Convention and

Article 14 of the Palermo Convention with regard to the disposal of assets confiscated on the basis of a foreign request. Furthermore, BiH has not yet notified the Secretary General of the competent national authority to execute MLA requests, as required under Articles 7(8) and 18(13) of the Vienna and Palermo Conventions, respectively.

1479. With regard to the Vienna Convention, the misuse of commercial carriers, vessels and mail for illicit traffic, is partially mitigated by the measures foreseen by the CPC (such as provisional seizure of correspondence, evidence, special investigative techniques, as well as the search or persons, objects, ships, etc.), together with the provisions of the MLA Law, which give place to international cooperation and assistance, and bilateral and multilateral agreements, established for the purposes of undertaking joint investigations. No further information on the specific measures to implement Articles 15, 17 and 19 of the Vienna Convention has however been provided by the authorities, especially in relation to the preventive measures required by the discussed Articles. Thus, it cannot be concluded that these Articles are fully implemented by BiH.

1480. Concerning the implementation of the Palermo Convention, insufficient information was provided about the measures that have been put in place in relation to Art. 30 (measures to ensure the implementation of the Convention through economic development and technical assistance), it remains therefore unclear whether any such measures have been considered and put into practice by the authorities.

1481. It is to be stressed that the evaluation team welcomed that BiH included extended confiscation in its legislation and it has been confirmed during the on-site visit that this provision was already applied in practice. In addition, the law enforcement agencies and the FIU in BiH have demonstrated a highly pro-active approach with regard to cooperation, information sharing and provision of assistance on both national and international level. A number of actual cases of cross-border cooperation were presented to fund this conclusion (for further information in this respect, the reader is referred to the analysis under R.31 and R.40).

Implementation of the Terrorist Financing Convention (Articles 2-18, c.35.1 & c. SR. I.1)

1482. The provisions of the TF Convention are partly implemented by BiH. The analysis under c. II.1 stressed, amongst others, that not all offences included in the Annex Conventions to the TF Convention are covered in their full scope under the TF offence, as well as the TF offence is not broad enough to encompass the provision of funds to terrorist organisations or individual terrorists other than for the purposes of a terrorist act.[72] Please refer to the analysis under SR.II for more detailed information in this respect.

1483. Furthermore, it cannot be concluded that Article 18 of the Convention is implemented to its full extent. Despite the fact that the majority of the preventive measures are in place, their effective implementation with regard to the prevention of TF is hindered in practice by the lack of guidance for the identification of suspicions of TF in particular. Furthermore, Article 18(2a) cannot be considered as implemented due to the serious shortcomings of the preventive framework in place with regard to MVTSPs (for further information in this respect, the reader is referred to the analysis under SR.VI).

Implementation of UNSCRs relating to Prevention and Suppression (c. SR.I.2)

1484. The analysis under SR.III also applies to c.SR.I.2.

Additional element – Ratification or Implementation of other relevant international conventions

1485. BiH ratified the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime (ETS 141) in 2004 and the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of

[72] The TF offence in the CC BiH was amended and these amendments were brought into force on 24 March 2015.

Terrorism (CETS 198) in 2008. In 2006 BiH ratified also the UN Convention against Corruption (the Merida Convention).

6.2.2 Recommendations and comments

Recommendation 35

1486. The authorities are invited review the implementation of the full extent of the Conventions under their national framework in order to identify whether additional measures should be taken. In particular the notifications to the Secretary General, as required by the Vienna and Palermo Conventions with regard to the authority responsible for the execution of the MLA requests, should be made.

Special Recommendation I

1487. The authorities are encouraged to take additional measures to implement fully the TF Convention, in particular by addressing the shortcomings identified in SR.II.

1488. The recommendations and comments provided under SR.III also apply for this section.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**LC**	• Shortcomings of the criminalisation of TF negatively impact on the implementation of the TF Convention.
SR.I	**PC**	• Minor deficiencies with regard to the implementation of S/RES/1267(1999); • No legal basis for the application of freezing measures under UNSCR 1373; • Deficiencies in the criminalisation of TF.

6.3 Mutual legal assistance (R. 36, SR. V)

6.3.1 Description and analysis

Recommendation 36 (rated LC in the 3rd round report)

Summary of 2009 factors underlying the rating

1489. BiH was rated LC in the 3rd round MER. Concerns were raised with regard to the provision of assistance in a timely manner when entity/district level authorities were involved (concerns raised by other states) and due to the absence of a mechanism in place for avoiding conflicts of jurisdiction involving other states.

Legal framework

1490. The legislative framework of BiH for the provision of mutual legal assistance (MLA) applies equally to cases involving money laundering and financing of terrorism.

1491. Provision of MLA is governed by the Law on Mutual Assistance in Criminal Matters (MLA Law), issued at the state level, which entered into force on 15 July 2009 and was amended on 15 July 2013. Further procedural rules prescribing the roles and responsibilities of non-state level authorities in providing international legal assistance can be found in separate chapters of the three Criminal

Procedure Codes of the Entities and the Brčko District (Chapter XXXI of the CPC-FBiH and CPC-RS and Chapter XXX of the CPC-BD), which are almost entirely identical in their language and therefore practically the same rules apply to all non-state level authorities throughout BiH. These provisions complement the regulation at the state level and they explicitly state that they apply only if the law on state level or an international convention do not provide otherwise.

1492. Pursuant to Article 1 of the MLA Law, apart from domestic legislation, MLA is also provided on the basis of multilateral international treaties to which BiH is a party and bilateral agreements concluded in this respect. According to paragraph 1 of the same Article, the provisions of an international agreement prevail over domestic legislation. With regard to jurisdictions with which BiH has not concluded an agreement on MLA, the provision of MLA would be subject to the principle of reciprocity in accordance with Article 12 of the Law on MLA.

1493. Since the 3rd round evaluation, BiH concluded an agreement on mutual legal assistance in criminal matters with Slovenia (entered into force in 2010), Islamic Republic of Iran (entered into force in 2013), China (entered into force in 2014) and Republic of Moldova (entered into force 2014). Agreements on MLA in criminal matters have also been signed, but have not yet entered into force, with India (signed 2009), Algeria (signed 2011) and Morocco (signed 2014). The full list of bilateral agreements concluded in the matters of MLA in criminal matters, execution of court judgments in criminal matters and extradition is available on the website of the Ministry of Justice of BiH.[73]

Widest possible range of mutual assistance (c.36.1)

1494. Articles 8 and 13 of the MLA Law set out the range of MLA in criminal matters that the authorities of BiH are able to provide. These include extradition of suspects, accused and sentenced persons, transfer of criminal proceedings, recognition and enforcement of foreign judicial decisions, as well as general types of legal assistance. General types of legal assistance, pursuant to Article 13, include the execution of individual procedural actions such as service of summons, service of documents and other objects relevant to the proceedings, seizure of objects, handing over of seized objects to the requesting state, taking testimony from the accused, a witness or an expert, spot examination, search of sites and persons, and control of delivery, surveillance and telephone tapping, information and intelligence exchange. Furthermore, the possibilities for assistance provided for in Article 13 are only demonstrative, as the article contains a general provision stating that assistance may also be provided for other actions that may arise in criminal proceedings and are not contrary to the present law and the criminal legislation of BiH.

1495. Following amendments to the MLA Law, adopted in 2013, the following types of assistance have been included: seizure of articles found during the search (Article 13), examination of suspects, accused, witnesses and experts via a video-link (Articles 16a and 16b), examination of witnesses and experts by telephone conferencing (Article 16c), formation of joint investigation teams (Article 24), conduct of cross-border surveillance (Article 24a), authorisation of a controlled delivery (Article 24b) and assistance in undercover investigations (Article 24c).

1496. Overall, it is considered that the legislation of BiH enables its authorities to provide broad mutual legal assistance in criminal matters. Nevertheless, concerns were raised in relation to the requirements of letter (f) of c.36.1, which requires states to be able to provide assistance with regard to requests concerning *"identification, freezing, seizure or confiscation of assets laundered or intended to be laundered, the proceeds of ML and assets used for or intended to be used for FT, as well as the instrumentalities of such offences and assets of corresponding value"*. Articles 13 and 20 of the MLA Law refer to the seizure of "objects" which is not defined within the Law. This raises concerns as to whether it fully covers the definition of "assets", as required by the FATF Standards.

[73] http://www.mpr.gov.ba/organizacija_nadleznosti/medj_pravna_pomoc/bilateralni_ugovori/ugovori/default.aspx?id=3813&langTag=en-US

1497. Furthermore, under Article 20 of the MLA Law, the property which may be subject to such seizing measures and consequently handed over to the requesting state includes the following:

- objects used in the commission of an offence;
- objects resulted from the commission of an offence or their equivalent value;
- proceeds of crime or their equivalent value;
- gifts and other things given with a view to inciting an offence and giving remuneration for an offence or their equivalent value.

1498. From the list above, it appears that corresponding value of instrumentalities is not covered, which would also impact in some cases on the ability to respond to MLA requests regarding funds intended to be used in TF.

1499. With regard to confiscation, the MLA Law under Articles 13, 19 and 20, provides for the seizure of assets, which may consequently be handed over to the requesting state for confiscation. The provisions of the MLA Law related to the enforcement of foreign judgments in criminal matters regulate solely the enforcement of custodial sentences. Therefore, it appears that BiH is not able to execute a foreign request in relation to confiscation. Given that the requirements of c.36.1(f) are based on the Palermo Convention, in order to comply with this criterion, states should be able to execute confiscation judgments in a manner required by Article 13 of the Convention either by executing a foreign order for confiscation or, on the basis of a foreign request, issuing a domestic order and executing it. This shortcoming could be partially remedied by the direct application of the Palermo Convention for this purpose, on the basis of the prevalence of provisions of international conventions over the MLA Law. It is however unclear, whether this would be the case applied in practice by the authorities since the Convention does not provide for concrete procedures on the practical execution of the requests. No statistical data was provided by the authorities on MLA requests related to confiscation and it was therefore not possible to reach a conclusion with regard to the practical implementation of this provision.

Provision of assistance in timely, constructive and effective manner (c. 36.1.1)

1500. The timeliness of the execution of requests may be affected by the complexity of the technical aspects of the framework, as described below under c.36.3. Furthermore, the evaluators were advised that the relevant authorities do not have any internal guidelines on appropriate timeframes with regard to executing an MLA request, nor guidelines which would establish a prioritisation of MLA requests with regard to the urgency of the request.

1501. In addition, it appeared during the on-site visit that the Ministry of Justice of BiH does not follow-up on the requests forwarded. When inquired about the reason for the lengthiness of execution of some requests, the representatives of the Ministry stressed their role as merely a mediator between the foreign authority and a domestic prosecutor/court.

1502. Despite a lack of mechanisms to ensure the timeliness of provision of assistance, feedback provided by other countries pointed to a general satisfaction with the manner and timeframes of the provision of MLA by the authorities of BiH.

Mutual legal assistance should not be prohibited or made subject to unreasonable, disproportionate or unduly restrictive conditions (c. 36.2)

1503. Conditions for refusal of MLA request are stipulated in Article 9 of the Law on MLA. This Article was amended within the amendments to the MLA Law in 2013 and currently a request for assistance may be refused if: a) execution of the request would be in contravention of public order of BiH or is likely to prejudice the sovereignty or security; b) the request concerns an offence which is considered a political offence or an offence connected with a political offence; c) the request concerns an offence under military law; d) the person to whom the request pertains has been

acquitted of charges based on the substantive-legal grounds or if the proceeding against him has been discontinued, or if he was relieved of punishment, or if the sanction has been executed or may not be executed under the law of the State where the verdict has been passed; e) criminal proceedings are pending against the accused in BiH for the same criminal offence, unless the execution of the request might lead to a decision releasing the accused from custody; or f) criminal prosecution or execution of a sanction pursuant to the national law would be barred by the statute of limitations.

1504. MLA request may also be denied on the basis of actual reciprocity with the requesting state. No problems have been, however, reported by other jurisdictions with regard to the application of the principle of reciprocity by BiH.

1505. Finally, BiH does not subject the provision of MLA to the principle of dual criminality. In conclusion, it is considered that the provision of MLA is not subject to unreasonable, disproportionate conditions.

Clear and efficient processes for the execution of mutual legal assistance requests in a timely way and without undue delays (c. 36.3)

1506. The institutional framework and the procedure for the execution of foreign judgments remain unchanged since the 3rd round evaluation; with the authority responsible for processing incoming and outgoing requests being the Ministry of Justice of BiH. For further details, the reader is referred to paragraphs 1060 and 1064 of the 3rd round MER.

1507. At the time of the 3rd round evaluation, the evaluators expressed concerns with regard to the efficiency and timeliness of the framework for provision of MLA, in particular when authorities from the Entities were involved. This conclusion was based on the fact that the MLA Law does not foresee any concrete timeframes for the execution of MLA requests, as well as on the concerns raised due to the complexity of the internal procedure for distribution of cases to the responsible national authorities. This requires the Ministry of Justice of BiH to forward the request to the competent state authority and as there are no specific procedures for the distribution of cases for the execution of MLA requests, this would be done according to the provisions on jurisdiction applicable under the national criminal legislation. Given the complexity of the jurisdictional division under the national framework, concerns were raised as to whether the Ministry of Justice of BiH would be able to decide on the competence and that delays could be possibly caused by a wrongful distribution of requests by the Ministry and subsequent declaration of incompetence.

1508. The evaluation team was advised that in practice, upon the receipt of a request from the foreign country by the Ministry of Justice of BiH, the request is forwarded to the competent body for the purpose of execution of the request (prosecutor's office, court, police authority etc.). Such request is forwarded to a competent body in the Republic of Srpska through the Ministry of Justice of the Republic of Srpska, and in Brčko through the Judicial Commission of Brčko District of Bosnia and Herzegovina. In the FBiH, the Ministry of Justice of Bosnia and Herzegovina forwards the requests directly to the court or prosecutor's office competent to act upon the request. This is agreed with the Federal Ministry of Justice with the aim to increase the efficiency of proceedings and execution of foreign requests. Regarding the requests that fall under the jurisdiction of the court or prosecutor's office at the state level, Ministry of Justice of Bosnia and Herzegovina forwards such requests directly to the Court of Bosnia and Herzegovina or the Prosecutor's Office of Bosnia and Herzegovina.

1509. The authorities informed the evaluators that no internal guidelines or procedures were issued in order to set timeframes or priorities for the execution of requests and the Ministry of Justice of BiH does not follow-up on the requests once forwarded to the competent authority.

1510. In addition, as stated above, under the Law on MLA it is stipulated that Ministry of Justice of BiH is the central authority to receive MLA request from a foreign jurisdiction. However, it was

noted that BiH submitted a declaration before ratifying the Warsaw Convention (CETS 198) designating the Ministry of Security of BiH as the central authority responsible for receiving MLA requests. This could cause confusion to foreign jurisdictions in respect of identifying the authority, to which the request for MLA should be addressed. There has been, however, no information which would confirm such concerns.

1511. Nevertheless, it is to be emphasised that, despite the low number of feedback provided from other countries in this respect, all the responses submitted coincided in confirming the effective provision of MLA by BiH.

Provision of assistance regardless of possible involvement of fiscal matters (c. 36.4)

1512. Following to the amendments to the MLA Law, Article 10 (2) explicitly states that *"no request for MLA shall be denied solely because it concerns an offence, which is considered to be a fiscal offence pursuant to national law"*. This explicit provision is a welcome clarification, it is however to be noted that already during the 3rd round assessment the evaluators considered the legislation as compliant with criterion c.36.4, as the refusal of provision of MLA was possible only on the basis of one of the conditions included in the exhaustive list in Article 9; involvement of fiscal matters was not one of these conditions.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 36.5)

1513. On the basis of the MLA Law, a request for assistance may be refused solely on the basis of grounds explicitly foreseen in the Law. The general provision containing grounds for refusal of a request is Article 9; further specific conditions are included in other articles for the individual types of assistance requested.

1514. In addition, the authorities of BiH shall provide assistance in respect of all the information, which is available to them in a national context. In this regard, it is important to note, that no secrecy and confidentiality laws were detected that would obstruct an execution of a MLA request. For more detailed information on the secrecy of financial institutions, the reader is referred to the analysis under Recommendation 4.

Availability of powers of competent authorities (applying R.28, c. 36.6)

1515. The powers of law enforcement agencies in the context of compliance with R.28 (see the 3rd round report) remain applicable in the case of rendering MLA at the time of the present round.

Avoiding conflicts of jurisdiction (c. 36.7)

1516. Conflicts of jurisdiction are dealt with on a case by case basis, pursuant to Articles 82 to 91a of the MLA Law, which set the conditions and the procedure for assuming and transfer of criminal proceedings, as well as the procedure applicable in case of parallel proceedings. The procedure for these actions follows the procedure for MLA, with the court or prosecutor (depending on the stage of the proceedings) sending or receiving a request by a letter rogatory through the Ministry of Justice of BiH. In case the jurisdiction would fall within the competencies of an entity level court or prosecutor, the request between the State level Ministry of Justice and the competent authority would be transmitted in addition through the Entity level Ministry of Justice. Article 88 further sets the conditions applicable to assumed proceedings, which regulate the validity of already undertaken evidential actions.

Additional element – Availability of powers of competent authorities required under R. 28 (c. 36.8)

1517. The evaluators concluded in the 3rd round MER that the competent authorities dispose of a wide range of powers, sufficient to comply with the requirements of Recommendation 28. For further information on the powers available to law enforcement agencies, the reader is referred to the analysis under R.28 of the 3rd round MER.

Special Recommendation V (rated LC in the 3rd round report)

International Co-operation under SR. V (applying 36.1 – 36.7 in R.36, c.V.1)

1518. The framework for the provision of legal assistance, as described above, applies equally to all MLA requests. Cases related to TF are therefore also covered.

Additional element under SR V (applying c. 36.8 in R. 36, c.V.6)

1519. The framework for the provision of legal assistance, as described above, applies equally to all MLA requests. Cases related to TF are therefore also covered.

Recommendation 30 (Resources – Central authority for sending/receiving mutual legal assistance/extradition requests)

1520. In the Sector for International and Inter-Entity Legal Assistance and Cooperation of the Ministry of Justice of BiH, there are 7 lawyers working on MLA in criminal matters. The representatives of the Ministry of Justice of BiH during the on-site visit pointed to the need for further human resources to be allocated to this department, as they considered that the current capacity was not sufficient. Nevertheless, it was reported that the department has undergone a rationalisation of its operations and an internal database was created in order to facilitate the workload.

1521. Furthermore, several trainings took place with regard to both executing foreign MLA requests, but also in respect of formulating MLA requests to be sent to abroad. These trainings included the staff of the Ministry of Justice of BiH, but also prosecutors and judges. A number of the trainings were organised with the assistance of foreign stakeholders.

1522. In order to increase the range of assistance provided to foreign countries, the Court of Sarajevo was equipped with video conferencing facilities and provides such services in respect of MLA requests. The use of these facilities remains limited for the moment, given the high amount of demand and the limited capacity of the Court of BiH in Sarajevo, which is providing these services for requests handled by the authorities at all levels. The High Judicial and Prosecutorial Council (HJPC) informed the evaluation team that it is working toward equipping with such facilities also the courts at cantonal level.

Recommendation 32 (Statistics – c. 32.2)

1523. The following tables present the numbers of in-coming requests received and out-going requests for MLA related to the offence of ML sent by the authorities of BiH in the period 2010 to 2014:

Table 42: In-coming requests for MLA

Year	Received	Pending	Refused	Executed
2010	0	0	0	0
2011	6	3	1	2
2012	3	2	0	1
2013	9	4	1	4
2014	3	2	0	1

Table 43: Out-going requests for MLA

Year	Received	Pending	Refused	Executed
2010	0	0	0	0
2011	1	0	0	1
2012	4	2	1	1
2013	0	0	0	0
2014	4	1	1	2

1524. No MLA requests were sent or received in respect of financing of terrorism.

1525. No information was provided with regard to MLA requests related to the application of provisional measures or confiscation. No information was provided regarding the time necessary for the execution of the requests.

Effectiveness and efficiency

1526. As stated above, despite the complicated framework for the provision of MLA, the feedback from other jurisdictions leads to a conclusion that the system is functioning well in practice. In addition, the foreign jurisdictions emphasised the improvement of the timeliness and quality of the provision of assistance by the authorities of BiH.

1527. The positive functioning of the system in practice may be partially due to the dedication of the authorities involved. The Ministry of Justice of BiH referred to a number of training activities undertaken in respect of the other key stakeholders in order to improve their expertise, efforts were made within the competent department of the Ministry of Justice of BiH to overcome the difficulties caused by lack of staff.

1528. In practice, the authorities of BiH provide MLA to the full extent of possibilities foreseen by the legislation. Information was provided about cases of video-conferences used for the purposes of providing testimonies, as well as joint investigative teams have been established, mainly with neighbouring countries. In addition, the evaluation team was given during the on-site visit examples of cases in which MLA was provided. These included, amongst others, the competent prosecutor's office requesting information from national registries held by other state authorities, this information was then submitted to the requesting country.

6.3.2 Recommendations and comments

Recommendation 36 & Special Recommendation V

1529. It is recommended to the authorities to establish clear procedures and guidance with regard to the distribution of the cases amongst national authorities and which would set timeframes and rules for prioritisation for the treatment of requests. In this respect, it should be considered to broaden the powers of the Ministry of Justice in this respect, in order to monitor and follow-up on the requests it handles and to further analyse this information with the view of identifying patterns and proposing structural improvements.

1530. The authorities should review the adequacy of their competencies in respect of executing requests related to confiscation and whether they have sufficient powers to provide assistance in this matter in the extent required by international conventions.

1531. Competent authorities of BiH should review declarations designating central authorities responsible for sending and answering MLA requests made with respect to international conventions in order to bring such declarations in line with Law on MLA. In particular, the declaration to CETS 198 should be reviewed.

Recommendation 30

1532. The BiH authorities should consider reinforcing the current staff dealing with letters rogatory in criminal matters.

Recommendation 32

1533. The BiH authorities should keep accurate and detailed statistics on MLA requests relating to freezing, seizing and confiscation that are made or received. Furthermore, the statistics maintained should include information about the timeframes in which the requests were executed.

6.3.3 Compliance with Recommendation 36 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3. underlying overall rating
R.36	**LC**	• Lack of clear procedures to ensure the timeliness of the execution of the requests; • Concerns about the power to execute MLA requests related to confiscation when there is no international convention in place.
SR.V[74]	**LC**	• The deficiencies described under R. 36-38 have a negative impact on the rating of this Recommendation.

6.4 Other Forms of International Co-operation (R. 40 and SR.V)

6.4.1 Description and analysis

Recommendation 40 (rated LC in the 3rd round report)

Summary of 2009 factors underlying the rating

1534. BiH was rated LC in the last round. The rating was based on the fact that meaningful statistics had not been maintained and made available to the evaluation team.

Legal framework

1535. The competencies of the relevant authorities with regard to international cooperation are based on the respective laws regulating their functioning. The most pertinent in this context would be the following:

- AML/CFT Law;
- SIPA Law;
- Laws on Banking Agencies of FBiH and RS;
- Laws on Securities Markets of FBiH and RS;
- Law on the Insurance Agency of BiH, Laws on Insurance Companies of FBiH and RS.

Wide range of international co-operation (c.40.1), Provision of assistance in timely, constructive and effective manner (c.40.1.1), Clear and effective gateways for exchange of information (c.40.2)

FIU

1536. On the basis of Article 66 of the AML/CFT Law, the FID may submit data, information and documentation obtained in BiH to foreign FIUs, both spontaneously or on the basis of a prior request. Furthermore, Article 67 enables the FID to share information with foreign LEAs, on the basis of a suspicion where concrete links with money laundering and financing terrorist activities exist. Pursuant to Article 69, the FID may, upon an explained written proposal from a foreign FIU, issue a written order to a liable person to temporarily postpone a suspicious transaction(s).

[74] The review of Special Recommendation V has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 37, 38 and 39.

1537. As the AML/CFT Law provides sufficient basis for international cooperation, the FID does not require any further agreements or mechanisms to be put in place in order to provide assistance to and exchange of information with foreign counterparts. The FID concludes such MoUs, when this is required by the legislation of the counterpart. To date it has concluded 11 MoUs with foreign FIUs. The only limitation to which the FID is bound by, with regard to cooperation with foreign counterparts, is the requirement to ensure that the information provided will only be used for the purposes envisaged by the AML/CFT Law and that an equivalent level of confidentiality is guaranteed.

1538. In practice, as a member of the Egmont Group, the FID uses the Egmont Secure Web to share and receive intelligence internationally. During the on-site visit, the representatives of the FID reported that no problems were encountered in this respect. Furthermore, the FID is not restricted in cooperating with foreign counterparts which are not members of the Egmont Group. Nevertheless, the evaluation team was informed in this respect that certain difficulties were encountered with respect to such countries.

Supervisory authorities

1539. The framework for international cooperation by the Banking Agencies remains the same as at the 3rd round MER in both Entity levels. Whilst the Laws on Banking Agencies of the FBiH and RS only contain a general provision permitting both Agencies to cooperate on an international level (Articles 6 and 9, respectively), they further provide that agreements should be concluded in order for the Banking Agencies to share confidential information and cooperate with any of the types of listed institutions (including foreign counterparts) (on the basis of Articles 19c and 32, respectively). As a consequence, Banking Agencies in FBiH and RS are able to exchange information, but only with institutions with which they have concluded agreements. At the time of the 3rd round evaluation, the Banking Agency of FBiH had five MoUs in place, one multi-lateral agreement with South-Eastern European countries and three MoUs had been in the process of being negotiated. The Banking Agency of RS had entered into 11 MoUs. The evaluators considered the MoUs presented for the purposes of assessment as generally comprehensive and establishing sound procedures. No information was provided as to whether new MoUs were signed since the adoption of the 3rd round MER. It would seem that the Banking Agencies have a broad authority in respect of international cooperation on the basis of the signed MoUs, nevertheless, the number of such agreements in place seems rather limited. In addition, it is to be noted that the foreign participation in the banking sector in BiH is mainly represented by Austria, Germany and Italy, nevertheless, no agreements have been concluded with the respective supervisory authorities from these countries.

1540. The Securities Commission of the FBiH may conclude agreements with foreign regulators of securities markets on the basis of Article 251 of the FBiH Law on the Securities Market. The RS Law on the Securities Market provides in Article 260(n) that the Securities Commission of RS shall cooperate with similar organisations abroad, without explicitly requiring the Commission to conclude agreements in this respect. At the time of the 3rd round evaluation, the Securities Commission of RS had concluded MoUs with two foreign counterparts, the Securities Commission of FBiH had concluded 9 MoUs and the Securities Commission of BD two. The authorities did not report to the evaluation team the signing of any new MoUs since the time of the 3rd round visit. It is therefore supposed that the numbers remain the same. The Securities Commissions of both Entities and BD confirmed that without having a MoU in place, it is not possible to exchange information with foreign counterparts.

1541. With regard to the insurance sector, according to Article 9 of the Law on the Insurance Agency of BiH, the Agency is the responsible body for international relations of BiH with regard to the insurance sector. This entails the representation of BiH at international fora, but also concluding agreements on cooperation with relevant authorities of foreign countries and cooperation in this

respect with the Insurance Agencies of the Entities. The Insurance Agencies of the Entities are also able to conclude agreements on cooperation with foreign competent authorities, this being stipulated by Articles 18(4) of the Laws on Insurance Companies of RS and FBiH. Whilst the Insurance Agency of FBiH may conclude such agreements only in collaboration with the Insurance Agency of BiH, the Insurance Agency of RS may do so in collaboration with the Insurance Agency of BiH or independently. These agreements may be concluded only if the other authority would apply the same standards for confidentiality as set forth for the Insurance Agencies of BiH and the Entities. At the time of the 3rd round evaluation, the evaluation team was informed that no MoUs had been concluded between the supervisory authorities of the insurance sector with relevant foreign authorities. No information was provided that would indicate any developments in this matter since the 3rd round evaluation and it therefore appears that the situation remains the same. Furthermore, the Insurance Agencies stated during the on-site visit, that no requests for cooperation from foreign counterparts had been received to date.

1542. No information was provided with regard to the possibility of international cooperation of the respective Ministries of Finance and the Finance Directorate of the BD, which are pursuant to the new AML/CFT Law responsible for the supervision of MVTSPs and providers of other financial services, when not undertaken by banks.

1543. No information was provided about the possibility of international cooperation with foreign counterparts from the supervisors of DNFBPs; this including the FID when acting in its capacity as a supervisor of TCSPs (should the foreign counterpart not be also a FIU).

Law enforcement authorities

1544. The legal basis for exchange of information by law enforcement authorities is regulated primarily by the relevant legislation which regulates their functions. As regards the SIPA, for example, Article 23 of the SIPA Law enables the Agency to exchange information and joint execution of the activities that fall within the scope of its competence. It is assumed that similar provisions would be included in the other legislation at Entity and BD level, these legislative texts have however not been provided to the evaluation team.

1545. The main authority in BiH responsible for international and national cooperation amongst police forces is the Directorate for Coordination of Police Bodies of BiH. This institution was established in 2011 and is an administrative organisation within the Ministry of Security of BiH with operational independence. It is within this Directorate that the National Central Bureau of Interpol of BiH is established. According to the information provided by the authorities during the on-site visit, it appears that this would be the channel which would be mainly used by the police forces in order to exchange information with their counterparts; they would contact first the Directorate, which would then mediate the exchange of information.

1546. The Directorate for Coordination of Police Forces of BiH was the recipient of a number of IPA Projects, as well as a Twinning Project, organised by the EU. The aim of these projects was to strengthen the functioning of the Directorate and its ability to effectively provide assistance in an international context.

1547. The Ministry of Security is also designated as the national contact point for the purposes of cooperation with the EUROPOL on the basis of the agreement between the authorities of BiH and the EUROPOL. This agreement sets forward the conditions for the exchange of information and other ways of cooperation. The representatives of EUROPOL and the authorities of BiH are in the process of negotiating this agreement, which is expected to be signed in due course.

1548. BiH also signed agreements on cooperation in security matters and organised criminality, or in general on police cooperation with a number of foreign jurisdictions; these agreements would usually be in the form of a MoU and BiH would be represented by the Council of Ministers or the Ministry of

Security. Since the time of the 3rd round evaluation, agreements have been signed with the following countries: France (2010), Croatia (signed 2010, entered into force 2012), Serbia (signed 2010, entered into force 2012), Qatar (2010), Jordan (2011), Spain (2011), Republic of Moldova (2012), Sweden (2012), Czech Republic (2013) and Germany (2014). Moreover, BiH is a party to the Police Cooperation Convention for Southeast Europe, which it signed in 2006 and which provides a useful forum for sharing of experience and envisaging joint actions.

1549. In addition, the recently established Agency for the Prevention of Corruption and Coordination of the Fight against Corruption (Anti-Corruption Agency) signed in June 2014 a MoU with the Federal Bureau of Anti-Corruption within the Ministry of Interior of Austria on cooperation and exchange of information and expertise. This is considered as a most welcomed step.

1550. For detailed information on the exchange of information with foreign counterparts by the customs, the reader is referred to the analysis under the relevant section of Special Recommendation IX.

Spontaneous exchange of information (c. 40.3)

FIU

1551. The AML/CFT Law states explicitly that the provision of information by the FID to foreign FIUs may be initiated by a request or provided spontaneously. The provision also generally covers all the information, data and documents held by the FID, and are therefore not limited solely to ML.

Supervisory authorities

1552. The legislation regulating international cooperation of the supervisors of the financial sector does not establish any limitation on the manner of disclosure of information held by the agencies, nor the type of information. The provisions for exchange of information with foreign counterparts are applicable to all the data and information held by the relevant authority, not imposing a limitation to ML; information related to the underlying predicate offences would therefore also be covered. Given the general wording of the provisions and the overall referral to the concluded agreements, spontaneous disclosure of information is also not explicitly excluded. In general, the powers of the competent authorities in this respect are rather broad and the concrete terms of international cooperation would be dependent on the wording of the provisions of the relevant MoU.

1553. No information was provided in this respect with regard to the supervisors of DNFBPs.

Law enforcement authorities

1554. The competent authorities are able to exchange information both spontaneously and on request. Furthermore, there is no limitation as to the type of offences to which it should be related. In particular, Article 23(2) of the SIPA Law explicitly enables the SIPA to "*provide foreign law enforcement and other foreign appropriate bodies with data on citizens of BiH based on information that the citizen poses a danger to the security of BiH, the receiving State or a broader danger to regional or global security*".

Making inquiries on behalf of foreign counterparts (c.40.4), Conducting of investigation on behalf of foreign counterparts (c. 40.5)

FIU

1555. Articles 66 and 67 of the AML/CFT Law, which establish the competency of the FIU to provide information to foreign FIUs and LEAs, do not restrict the type of information that may be provided by the FID. The FID is therefore able to provide all the information to which it has access (for more detailed information on the databases and other sources of information to which the FID has access, the reader is referred to the analysis under R.26).

1556. Pursuant to Article 56 of the AML/CFT Law, when the FID while undertaking its duties suspects ML or the funding of terrorist activities in reference to a certain transaction or person, it may request further information, data and documentation from a reporting entity, as well as it may inspect documentation in the premises of a reporting entity. Article 56 further explicitly specifies that the above described competences apply equally in cases, where the provision of data, information or documentation was requested by a foreign FIU or a foreign LEA on the basis of Articles 66 and 67 of the AML/CFT Law.

1557. Furthermore, Article 61 gives the FID the authority to request information, data or documentation also from public institutions and authorities, when this may be needed for the undertaking of its duties set by the AML/CFT Law. Given that on the basis of Articles 66 and 67, the FID is authorised to provide a foreign FIU or a foreign LEA with "information, data or documentation obtained in BiH", it would seem that the reading of these articles together would enable the FID to conduct inquires on behalf of foreign counterparts.

1558. In addition, as described above, upon an explained written proposal from a foreign FIU, the FID may issue a written order for the temporary postponement of a transaction by a reporting entity. This power is regulated by Article 69 of the AML/CFT Law.

Supervisory authorities

1559. The limits of the powers of supervisory authorities, when applied on behalf of foreign requests have not been sufficiently clarified. From the legislation it appears that the Banking Agencies and Insurance Agencies from both Entities have the competency to conclude agreements with foreign authorities solely for the purposes of exchange of information. As the provisions do not explicitly state, whether this information had to be in the possession of the Agency beforehand, it is possible that, should the relevant MoU foresee such a situation, the Agencies should be able to request additional information from the entities under its supervision on the basis of a request from a foreign authority. Nevertheless, it appears that the Agencies would not have the competency to undertake any actions not related to the exchange of information, such as undertaking inspections for example.

1560. On the other side, the legislation attributing powers to the Securities Commission of RS includes solely a very general provision that the Commission "shall cooperate with similar organisations abroad". The Securities Commission of FBiH is competent to conclude agreements "on cooperation in the exercise of its powers under this Act". Extent of the powers, which both Commissions would be able to undertake on behalf of a foreign counterpart, would also be subject to a further definition by the relevant MoU, nevertheless, it can be supposed that such a broad definition would allow the full application of the powers of the Commissions on the basis of the foreign request.

1561. No information was provided in this respect with regard to the other supervisory authorities, as well as the application in practice of the above described provisions was not sufficiently clarified, it is therefore not possible to conclude that supervisory authorities in BiH have the power to conduct inquiries and inspections on the basis of a foreign request.

Law enforcement authorities

1562. Whilst it appears that there are no restrictions for the police forces of BiH to share with foreign authorities the information, which is in their possession or to which they have direct access, further inquiries or investigations on behalf of foreign counterparts would have to be conducted within MLA channels.

1563. The law enforcement authorities met on-site confirmed that in practice, as for them, as well as for the majority of their foreign counterparts, it is necessary to have a court order in order for the evidence to be admissible in practice at the court, they would generally use the MLA channel for the purposes other than information sharing.

No unreasonable or unduly restrictive conditions on exchange of information (c.40.6)

FIU

1564. Prior to the provision of information by the FID to its foreign counterparts, it shall request a confirmation by the foreign FIU that this information will be used only for purposes as defined by the AML/CFT Law of BiH. This provision is compliant with the Egmont Principles on Exchange of Information and it is therefore considered that there are no unreasonable or unduly restrictive conditions to which would be subject the exchange of information with foreign counterparts by the FID.

Supervisory authorities

1565. Whilst the Laws on Banking Agencies of both Entities require that the shared information be used by the foreign authority only "*in line with its competencies, in particular for the purposes of its supervisory duties*", the other laws regulating information sharing by supervisory authorities with their foreign counterparts do not impose any limitation on the sharing of information. It is supposed that further details on the use of the information provided would be regulated by the relevant MoUs. It can be therefore concluded that there are no undue legislative restrictions to the provision of information by supervisory authorities.

Law enforcement authorities

1566. There are no unduly restrictive conditions restricting the exchange of information by law enforcement authorities.

Provision of assistance regardless of possible involvement of fiscal matters (c.40.7)

1567. The FIU, supervisory authorities and law enforcement agencies may provide assistance regardless of possible involvement of fiscal matters.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c.40.8)

1568. The FIU, supervisory authorities and LEAs are not subject to any secrecy or confidentiality laws in respect of provision of information to their foreign counterparts.

Safeguards in use of exchanged information (c.40.9)

FIU

1569. As stated above, the AML/CFT Law requires for the FID to disclose information to a foreign FIU only after a written warrant is given that ensures that the information provided will be used solely for the purposes defined by the AML/CFT Law of BiH. Furthermore, information may be disclosed only if confidentiality protection similar to the one guaranteed by the legislation of BiH is guaranteed by the foreign institution.

Supervisory authorities

1570. The Banking Agencies may conclude the agreements necessary for exchange of information under the condition that the entity, with which the agreement on cooperation is to be signed, is subject to the obligation of keeping the confidentiality of information, which is at a minimum equal to the requirements stipulated by the Laws on Banking Agencies of FBiH and RS. The exchange of information by Insurance Agencies is also subject to the same safeguard.

1571. The legal provisions regulating international cooperation of the Securities Commissions in RS and FBiH, as presented above, do not include any limitations or safeguards. Nevertheless, international cooperation would be undertaken exclusively on the basis of a MoU, where such safeguards could be included. These MoUs were however not presented for the purposes of this assessment, it is therefore not possible to evaluate whether they include such safeguards or not.

1572. No information was provided in respect of other supervisors.

Law enforcement authorities

1573. In order for SIPA to share information with foreign authorities, it must ensure that the receiving authority guaranties to the data the same level of protection as provided in BiH. No further information has been provided in this respect with regard to the other law enforcement authorities.

Additional elements – Exchange of information with non-counterparts (c.40.10 and c.40.10.1)

FIU, Supervisory authorities, Law enforcement authorities

1574. On the basis of Article 67 of the AML/CFT Law, the FID may provide information also to foreign LEAs. Such provision of information shall be based on an explanation for suspicion and on a statement of concrete links with ML or TF activities. It is subject to the same safeguards as described above for cooperation with foreign FIU – a guarantee of a similar protection of confidentiality and a guarantee that the information shall be used solely for the purposes defined by the AML/CFT Law. As regards out-going requests, Article 65 of the AML/CFT Law enables the FID to request data, information and documentation not only from foreign FIUs, LEAs, but also from foreign administrative bodies and international organisations.

1575. The Laws on Banking Agencies of FBiH and RS foresee a range of institutions, with which the Banking Agencies may conclude agreements for the purposes of cooperation, equally on an international level. These agreements would probably be also in the form of MoUs, as is the practice with supervisory counterparts. The institutions, with which information may be exchanged, are included in a non-exhaustive list in the Laws on Banking Agencies of FBiH and RS in Articles 19b and 31, respectively. They include central banks, ministries of finance, central clearing institutions for securities and others. Despite the lack of legal impediments, the evaluators were not informed about any agreement concluded with a foreign institution, which would not be a supervisory counterpart to the Banking Agencies.

1576. The FBiH Securities Commission is authorised to enter into agreements solely with foreign regulators of capital markets. The RS Securities Commission shall cooperate with "similar organisations abroad", whilst the Insurance Agencies of BiH, FBiH and RS shall conclude agreements with foreign "competent authorities". Neither of these terms is however defined in the legislation and there exact scope is therefore not clear. It cannot be hence concluded that the authorities listed in this paragraph have the powers to cooperate directly with foreign authorities, which are not their direct counterparts.

1577. No information has been provided in this respect with regard to law enforcement authorities.

Exchange of information to FIU by other competent authorities pursuant to request from foreign FIU (c.40.11)

1578. As described above, it is considered that the FID has the competency to request information held by other public authorities of BiH and the Entities upon a request of a foreign FIU or LEA.

Special Recommendation V (rated LC in the 3rd round report)

Summary of 2009 factors underlying the rating

1579. BiH was rated LC in the previous round due to the deficiencies described under R. 36-38.

International co-operation under SR.V (applying 40.1-40.9 in R.40, c.V.5)

1580. The framework for international cooperation of the FIU, law enforcement and supervisory authorities, as described above, applies equally to requests related to TF.

Additional element under SR.V – (applying 40.10-40.11 in R.40, c.V.9)

1581. The framework for international cooperation of the FIU, law enforcement and supervisory authorities, as described above, applies equally to requests related to TF.

Recommendation 32 (Statistics – other requests made or received by the FIU, spontaneous referrals, requests made or received by supervisors)

1582. The following tables presents the number of in-coming requests received and out-going requests sent by the FID in the period 2009 to September 2014:

Table 44: In-coming requests received by the FID

Year	Received	Executed	Refused	Information received spontaneously
2009	83	52	0	0
2010	55	65	0	0
2011	75	75	0	1
2012	46	49	0	1
2013	63	79	1[75]	1
2014 (Jan-Sep)	31	37	0	7

Table 45: Out-going requests sent by the FID

Year	Sent	Information sent spontaneously
2009	57	0
2010	46	1
2011	48	0
2012	52	3
2013	47	0
2014 (Jan-Sep)	31	2

1583. No statistics were available with regard to international cooperation performed by supervisory and law enforcement authorities.

Effectiveness and efficiency

Recommendation 40 & Special Recommendation V

FIU and law enforcement authorities

1584. The FIU informed the evaluators during the on-site visit that they cooperate and share information extensively with their foreign counterparts. This was confirmed during the interviews with other law enforcement authorities, which resort to the FIU for assistance, when information from foreign countries is needed. A number of concrete case examples were given to the evaluation team to illustrate this cooperation. There was also one reported case, when a foreign FIU has frozen assets upon a request of the FID.

1585. Despite the lack of statistics maintained by LEAs in respect of cooperation with foreign counterparts, during the on-site visit, the authorities provided details about a number of cases, where direct channels for exchange of information were used. This was for example in the case of Copic, where the LEAs of BiH and RS were provided with information from LEAs in 17 countries through the Interpol channel, but other concrete cases of cooperation were also referred to.

1586. The LEAs also reported that in cases of difficulties with obtaining information through their channels (such as details on bank accounts), they would cooperate with the FIU, which would receive

[75] The authorities informed that the request was refused due to the fact that it was sent with the view of using the information in misdemeanour proceedings.

such information through the Egmont Secured Web and further forward it to the competent LEA in BiH (as mentioned above).

1587. A case was also brought to the attention of the evaluators of a cross-border surveillance drill, in which 11 countries took part. This exercise concerned mainly members of border police units and within BiH it was coordinated by the Directorate for Coordination of Police Bodies of BiH.

1588. With regard to the timeliness of the provision of assistance to foreign counterparts, the authorities met on-site stressed that even for the undertaking of their domestic duties they encounter problems caused by the high number of different registers and authorities holding these registers, which in practice reduces the effectiveness and timeliness of search for information by LEAs. This difficulty would affect to the same extent also provision of assistance to foreign authorities.

1589. In practice, the authorities met on-site demonstrated high commitment and dedication to international cooperation and informed the evaluation team about the quality of such cooperation. This has been confirmed by the information provided by other jurisdictions, which assessed the provision of assistance by the FID and LEAs (the latter mainly through the Interpol channel) as timely and of very high quality.

1590. No information was provided with regard to international cooperation related specifically to TF and the statistics provided did not contain breakdowns, which would enable the assessment of the effectiveness of the framework in this respect.

Supervisory authorities

1591. Effectiveness of international cooperation of supervisory authorities has not been demonstrated. The evaluation team was not provided with any statistics in this respect, nor was any information provided in respect of anecdotal cases during the on-site.

6.4.2 Recommendation and comments

Supervisory authorities

1592. Supervisory authorities should maintain statistics on instances of cooperation with foreign authorities.

1593. Authorities should consider explicitly enabling supervisory authorities to undertake inspections on behalf of foreign counterparts.

1594. Supervisory authorities should review their role in international cooperation and their need in order to consider signing MoUs with further foreign authorities.

Law enforcement authorities

1595. Law enforcement authorities should maintain statistics in relation to instances of international cooperation.

6.4.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**LC**	• Effectiveness of international cooperation of the supervisory authorities was not demonstrated due to the lack of statistical evidence.
SR.V	**LC**	• Effectiveness of international cooperation in relation to TF was not demonstrated due to the lack of necessary breakdowns of statistical evidence.

7 OTHER ISSUES

7.1 Resources and Statistics

7.1.1 Description and analysis

Recommendation 30 (rated NC in the 3rd round report)

Summary of 2009 factors underlying the rating

1596. BiH was rated NC for R.30 in the 3rd round due to the fact that the FID was significantly below its proposed staffing level, the FID's IT system did not provide sufficient operational scope or capacity to effectively support FID's operations, while the resources devoted to supervision of AML/CFT controls by supervisors of financial institutions and DNFBPs were insufficient. In addition, there was lack of adequate structure, funding, staffing, and technical resources available for supervision of implementation of the national AML/CFT requirements by DNFBPs as well as lack of defined professional standards (including confidentiality and integrity requirements), and required expertise/skills of the staff of bodies implementing supervision of DNFBPs.

FIU

1597. The evaluators consider that the allocation of human resources within the FID is fairly adequate. However, the Section for Prevention and Investigation is still lacking five investigative analysts which equals approximately 30% of all planned job positions in that section and 17% of all job positions in total. Although this resourcing shortcoming does not seem to impact on the FID's effectiveness in performing its core-functions according to the authorities, the evaluation team would encourage the authorities to fill in all job positions as planned in the systematization of job positions.

1598. In terms of technical resources although the FID has been equipped with network analysis tools and a number of analysts have received training in conducting such analysis, the FID still lacks a bridge between the case management system and the network analysis tool. The authorities are invited to install as soon as possible a new IT system that would enable the effective undertaking of the analysis process.

1599. All police officers employed by the FID are bound by official secrecy pursuant to Article 37 of the Law on Police Officers. In addition, according to the provisions of the Law on Protection of Classified Information and the internal rules of the SIPA, all budgeted positions in the FID are subject to security clearance and issuance of permits for access to classified data. The staff of the FID is also subject to provisions of the Code of Ethics of Civil Servants in the Institutions of BiH and Code of Ethics of the Police Officers of SIPA[76], depending on the status of their employment. The SIPA also issued in 2014 a SIPA Integrity Plan which sets out objectives, measures and recommendations for the improvement of the Agency. The FID staff members met on-site appeared to be of high integrity and showed motivation for their respective duties and responsibilities.

1600. The list of training activities provided on-site and attended by the FID and SIPA staff (a full list of the trainings is included in Annex XXVIII) shows the commitment of the FID and SIPA not only to increase their expertise and skills, but also to enhance the knowledge of AML/CFT issues of the private sector and the effectiveness of implementation of AML/CFT measures by the private sector. Despite the high number of training events and workshops held, the evaluation team would invite the FID and SIPA to ensure that a larger portion of the staff members attend and benefit from these events.

[76] http://www.sipa.gov.ba/assets/files/secondary-legislation/eticki-kodeks-en.pdf

Customs authorities

1601. It appears that the structure of the ITA has not changed since the previous evaluation round. The ITA has 5 departments and 4 regional centres. The Customs Department deals exclusively with customs. The total number of staff in 2013 was 2444 employees, out of which 1320 were employed in the Customs Department. The number of staff has been stable in the period under assessment (2437 in 2011 and 2424 in 2012).

1602. During the on-site visit, the authorities reported that the ITA does not exercise its duties at the maritime border of BiH, which was reasoned by the fact that the ITA lacks resources.

1603. The staff of ITA regularly participates at trainings on issues connected to its field of responsibility. The authorities provided a list with significant number of trainings, which were attended by the employees of ITA in the period under assessment. However, there was only one training on the list connected to the issues of ML and TF. The evaluation team was informed by the representatives of the ITA and the Border Police that they lack sufficient expertise with regard to ML/TF matters and that the trainings provided in this respect are insufficient.

1604. From the information provided, it is not possible to fully assess the adequacy of resources of the customs authorities. It can be, however, concluded that the level of expertise of the staff with regard to ML/TF issues is not sufficient, as well as financial and human resources should be increased in order to enable a full control of all the borders of the country.

Mutual legal assistance

1605. In the Sector for International and Inter-Entity Legal Assistance and Cooperation of the Ministry of Justice of BiH, there are 7 lawyers working on MLA in criminal matters. The representatives of the Ministry of Justice of BiH pointed to the need for further human resources to be allocated to this department, as they considered that the current capacity was not sufficient. Nevertheless, it was reported that the department has undergone a rationalisation of its operations and an internal database was created in order to facilitate the workload.

1606. Furthermore, several trainings took place with regard to both executing foreign MLA requests, but also in respect of formulating MLA requests to be sent to abroad. These trainings included the staff of the Ministry of Justice of BiH, but also prosecutors and judges. In order to increase the range of assistance provided to foreign countries, the Court of Sarajevo was equipped with video conferencing facilities and provides such services in respect of MLA requests.

Supervisory authorities

1607. At the time of the on-site visit, the only supervisory authorities having dedicated AML/CFT units are the Banking Agencies in the FBiH and RS. The lack of specialized experts on AML/CFT area which are able to perform on-site and off-site supervision is one of the major shortcomings throughout all supervisory bodies, which may negatively impact their capacity to supervise and ensure adequate implementation of the national AML/CFT framework.

1608. According to the Laws on the Banking Agency of RS and FBiH, the supervision and examination of the banks shall be performed by examiners that have passed the professional expertise exam. Both the management and the staff of the Banking Agencies are subject to the confidentiality requirements.

1609. The relevant articles of the Laws on Securities Commissions (of FBiH and RS), the Law on Securities of BD and the Laws on Insurance Commissions (of FBiH and RS) give detailed and specific confidentiality principle for all personal, including hired auditors and experts (in case of insurance sector). In addition, Article 74 of the AML/CFT Law provides the legal requirement for data protection and confidentiality, including in relation to the supervisors.

1610. Since 2009 the experts of the Banking Agencies in the FBiH and RS participated in number of trainings related to AML/CFT issues. The international element of most of the trainings is a guarantee for professional standards achieved.

Policy makers

1611. At a policy and strategic level, the main mechanism for ensuring cooperation and coordination amongst the different authorities involved in the prevention of ML and TF across BiH as a whole remains the Working Group of Institutions of BiH for the Prevention of ML and TF. This is an inter-ministerial and professional body of the Council of Ministers of BiH, which was established in 2008. It is composed of representatives from 17 authorities and is chaired by a member of the FID, with the Chief State Prosecutor serving as the deputy chair.

1612. Insufficient information was provided with regard to the actual composition of the Working Group. However, it appears that it is comprised of representatives of the relevant institutions, which take part on this forum only as a marginal activity within their overall professional duties. There is no permanent body (or permanent staff) responsible for the preparation of the policy making activities.

Recommendation 32 (rated NC in the 3rd round report)

Summary of 2009 factors underlying the rating

1613. BiH was rated NC for R.32 in the 3rd round as there were no comprehensive and detailed statistics on money laundering investigations, prosecutions and convictions kept and maintained by relevant government authorities, particularly at the level of the Entities and Brčko District. There was little or no use made of statistical data by law enforcement agencies to pinpoint areas of risk or highlight where resources are required. No evidence was provided that statistical data was required or used by the Working Group to develop its national strategy. There was an absence of comprehensive and detailed statistics on MLA requests.

Criminalisation of money laundering and the financing of terrorism

1614. The position with regard to maintaining statistics on ML cases suggests that things have improved since the last evaluation. However, the improved process for gathering statistics does not appear to have led to any systematic review of the effectiveness of systems in this area. In addition, the evaluators have some doubts as to the reliability of the statistics that are maintained.

1615. There was no data in respect of terrorist financing cases, despite reference to one indictment and some on-going investigations having been made by the authorities during the onsite visit.

1616. The evaluators were informed that statistics on property seized, confiscated and recovered following conviction for ML/FT is automatically collected by the HJPC. However, the authorities confirmed this does not include statistics on the value of assets subject to confiscation or provisional measures.

1617. No comprehensive statistics were provided to the evaluators with regard to freezing measures relating to terrorist funds.

FIU

1618. In practice, the FID collects data on, *inter alia*, CTRs and STRs filed by reporting entities and domestic authorities, cases opened by the FID, disseminated cases and requests sent and received from foreign FIUs.

1619. An assessment on the effectiveness of the analytical function of the FID based on statistical data has not been carried out, given that a limited number of investigations, prosecutions, and convictions have been achieved based on FIU disseminations.

Customs authorities

1620. The authorities maintain statistics on the number of cross-border transportations of currency above threshold and the value of the currency transported. The statistics provided by the authorities however has certain inconsistencies. ITA also maintains statistics on its cooperation with foreign counterparts.

Mutual legal assistance

1621. The HJPC maintains statistics on the numbers of in-coming requests received and out-going requests for MLA related to the offence of ML sent by the authorities of BiH. No MLA requests were sent or received in respect of financing of terrorism.

1622. No information was provided with regard to MLA requests related to the application of provisional measures or confiscation. No information was provided regarding the time necessary for the execution of the requests.

Supervisory authorities

1623. The supervisory authorities maintain statistics on the number and nature of AML/CFT supervision as well as sanctions applied, however the statistics maintained lacks comprehensiveness. In addition, no evidence was provided that statistical data is used as a part of the risk-based supervisory process.

Policy makers

1624. No comprehensive review or analysis of different statistical data maintained by the competent authorities for the purposes of a general policy coordination of the AML/CFT framework is undertaken by the Working Group of Institutions of BiH for the Prevention of ML and TF.

7.1.2 Recommendations and comments

Recommendation 30

1625. The authorities are encouraged to increase the number of staff to the full number of positions foreseen in the FID systematisation and ensure that a higher number of the FID and SIPA staff participate at specialised trainings related to their duties.

1626. Financial and human resources of ITA should be increased in order to enable a full control of all the borders of the country.

1627. Adequate training on AML/CFT issues should be provided to staff of authorities competent in respect of control of cross-border transportation of cash and bearer negotiable instruments.

1628. The authorities should consider increasing the level of staff dedicated or with knowledge/skills on AML/CFT supervision across the FIs supervisory authorities.

1629. The regime would highly benefit if from AML/CFT departments in the Insurance and Securities Commissions or from specialised personnel in the general supervision departments. The entities Ministers of Finance and in Brčko District Financial Directorate should have AML/CFT trained employees.

1630. The authorities should consider either establishing a permanent body in charge of policy cooperation in the matters of AML/CFT or providing the Working Group with a number of permanent staff.

1631. The BiH authorities should consider reinforcing the current staff dealing with letters rogatory in criminal matters.

Recommendation 32

1632. The authorities are recommended to put in place processes for the regular review and analysis of statistics from all four legal systems to access effectiveness of the BiH system for investigating and prosecuting money laundering and terrorist financing.

1633. The authorities should maintain comprehensive statistics with regard to freezing measures relating to terrorist funds.

1634. The authorities are strongly recommended to maintain with comprehensive statistics in relation to the supervisory and sanctioning regime. These statistics shall be used also as part of the risk-based supervisory process.

1635. A mechanism should be put in place to ensure that statistics maintained by the authorities are regularly reviewed and strategic analysis thereof is undertaken.

1636. The BiH authorities should keep accurate and detailed statistics on MLA requests relating to freezing, seizing and confiscation that are made or received. Furthermore, the statistics maintained should include information about the timeframes in which the requests were executed.

7.1.3 Compliance with Recommendations 30 and 32

	Rating	Summary of factors underlying rating
R.30[77]	**PC**	• A higher number of employees should participate in activities aiming at increasing the expertise of FID staff; • The information gathered during the supervisory activities of the competent authorities but not forwarded to the FID is not subject to confidentiality; • No information concerning professional standards, integrity and skills for the Securities Commission from BD; • No data on trainings has been provided by the Securities Commissions from FBiH, RS and BD; • Lack of resources all over the supervisory authorities.
R.32[78]	**PC**	• There is no process for reviewing of the effectiveness of the system for investigating and prosecuting money laundering; • Discrepancies between the statistical data and the information provided during the onsite visit calls into question the effectiveness of the systems for collecting data on ML and TF cases; • Lack of comprehensive statistics undermines the effectiveness of FIU assessment; • No mechanism in place for the assessment of effectiveness of the

[77] The review of Recommendation 30 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on resources integrity and training of law enforcement authorities.

[78] The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 20, 27, 38 and 39.

		AML/CFT framework; • Lack of statistics maintained by the supervisory and law enforcement authorities with regard to the exchange of information with foreign counterparts and non-counterparts; • Lack of necessary breakdowns of statistical evidence regarding international cooperation in relation to TF.

7.2 Other Relevant AML/CFT Measures or Issues

7.3 General Framework for AML/CFT System (see also section 1.1)

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations

Table 2: Recommended Action Plan to improve the AML/CFT system

8 TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF 40+ 9 Recommendations is made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004 (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

The following table sets out the ratings of Compliance with FATF Recommendations which apply to Bosnia and Herzegovina. *It includes ratings for FATF Recommendations from the 3rd round evaluation report that were not considered during the 4th assessment visit. These ratings are set out in italics and shaded.*

Forty Recommendations	Rating	Summary of factors underlying rating[79]
Legal systems		
1. Money laundering offence	**LC**	• Despite improvements in the quality of convictions, overall numbers are modest and prosecutors in some parts of the country are still not giving sufficient priority to money laundering; • Lack of clarity as to jurisdiction for money laundering increases the risk of legal challenge to prosecutions.
2. *Money laundering offence Mental element and corporate liability*	***LC***	• *Although such case law exists at state level, there is still uncertainty among practitioners whether the intentional element of ML may be inferred from objective factual circumstances which may well compromise the effectiveness of the AML regime;* • *Despite the adequate legal framework, the prosecution only rarely targets the legal persons (shell companies etc.) involved in ML cases.*
3. Confiscation and provisional measures	**PC**	• The confiscation of instrumentalities is subject to imprecise conditions in most cases. **<u>Effectiveness</u>** • The continued application of high evidential standards by the courts in some parts of the country means that the number of confiscation orders remains low overall; • Limited use of provisional measures means that a high proportion of confiscation orders cannot be enforced; • Value based confiscation is not being applied

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

		sufficiently.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**C**	
5. Customer due diligence	**PC**	• No mandatory explicit obligation to apply CDD measures to all existing clients. **Effectiveness** • Relevant by-laws (e.g. Decisions and Rulebooks) on application of AML/CFT measures should give more detailed specifications (guidance) to financial sector. Shortcomings in the implementation of beneficial ownership requirements; • Lack of guidance and trainings on the application of risk-based approach (simplified and enhanced CDD); • Inconsistent implementation of measures to be taken in case of enhanced due diligence (some FI were not entirely clear on the distinction between CDD and ECDD while there was little recognition of reduced or simplified due diligence); • Unable to fully measure the effectiveness of implementation of the newly introduced AML/CFT Law.
6. Politically exposed persons	**LC**	**Effectiveness** • Relevant by-laws (e.g. Decisions and Rulebooks) on application of AML/CFT measures regarding PEP's are not fully harmonized with the AML/CFT Law; • Low awareness on the detection of the source of wealth and persons related to PEPs; • Low awareness of application of the AML/CFT requirements in relation to PEPs by the non-banking financial institutions.
7. Correspondent banking	**LC**	• The correspondent relationship requirements are limited to correspondent relationships with banks or other credit institutions and not with all financial institutions as it is prescribed in Recommendation 7; • The special measures apply only to countries that are outside the scope of Art. 85 of the AML/CFT law; • No explicit requirement for assessment of the collected correspondent information.

8. New technologies and non face-to-face business	**LC**	**<u>Effectiveness</u>** • Lack of guidance concerning (or low awareness of the procedures to be applied in) circumstances of non-face-to-face business and on how CDD measures should operate in non-face to face transactions; • Lack of awareness of risks regarding misuse of new technologies and effective compliance is not demonstrated.
9. Third parties and introducers	**LC**	• No clear requirement for the non-banking financial institutions to satisfy themselves that the third party is regulated and supervised in accordance with Recommendation 23, 24 and 29; • No direct requirement for the competent authorities, in determining in which countries the third parties can be based, to take into account the information available on whether those countries adequately apply the FATF Recommendations.
10. Record keeping	**LC**	• Absence of explicit obligation for liable persons to keep records of business correspondence (criteria 10.2) and low awareness of such obligation.
11. Unusual transactions	**LC**	• FID Guidelines declare all unusual and complex transactions to be suspicious, obliging the financial institution to file an STR and therefore potentially lifting the obligation to further examine the transaction or client. **<u>Effectiveness</u>** • Uneven understanding of internal detection mechanisms.
12. DNFBPS – R.5, 6, 8-11[80]	**PC**	***Applying Recommendation 5*** • No mandatory explicit obligation to apply CDD measures to all existing clients; • Poor implementation of beneficial ownership requirements; • Poor implementation of on-going due diligence; • Lack of guidance and trainings on the application of risk based approach; • Inconsistent implementation of measures to be taken when enhanced due diligence; • Unable to measure the effectiveness of implementation of the newly introduced AML/CFT Law.

[80] The review of Recommendation 12 has taken into account those Recommendations that are rated in this report.

		Applying Recommendation 6 • No guidance on the application of PEP's related obligations; • Low awareness on the detection of PEP's and their source of wealth and persons related to PEPs. ***Applying Recommendation 8*** • Lack of guidance concerning (or low awareness of the procedures to be applied in) circumstances of non-face-to-face business and on how CDD measures should operate in non-face to face transactions; • Lack of awareness of risks regarding misuse of new technologies and effective compliance is not demonstrated. ***Applying Recommendation 9*** • No clear requirement for the DNFBPs to satisfy themselves that the third party is regulated and supervised in accordance with Recommendation 23, 24 and 29; • No direct requirement for the competent authorities, in determining in which countries the third parties can be based, to take into account the information available on whether those countries adequately apply the FATF Recommendations. ***Applying Recommendation 10*** • Absence of explicit obligation for liable persons to keep records of business correspondence (criteria 10.2); • Absence of explicit obligation for liable persons to keep records regardless of whether the account or business relationship is on-going or has been terminated (criteria 10.1). ***Applying Recommendation 11*** • Low level of and uneven awareness about unusual and complex transactions.
13. Suspicious transaction reporting	**PC**	• By-laws do not cover funds but rather transactions. **<u>Effectiveness</u>** • Large amount of STRs are only reported in the aftermath of supervisory action; • Defensive reporting undermines the quality of STRs and reduces their actual number even further; • Overreliance on CTR reporting in practice leads to disregard of STR reporting;

		• Subjective test of suspicion is rarely applied in practice, leading to overreliance on list of indicators provided by the authorities.
14. *Protection and no tipping-off*	***LC***	• *Protection from criminal and civil liability not extended to directors, and officers of obliged entities;* • *Loopholes in the new legislation for the prohibition of tipping off;* • *Effectiveness.*
15. Internal controls, compliance and audit	**PC**	• No requirement for an authorised person of financial institution (different than banks, MCOs and leasing companies) with more than four employees to be appointed at management position; • No independence requirements for the internal auditing of the securities companies; • No sample testing abilities in the work of the audit of the securities and insurance companies; • No information on the application of criterions 15.2 and 15.4 for financial institutions registered in BD of BiH; • No employees screening procedures in the securities sector. **<u>Effectiveness</u>** • Concerns related to the effectiveness of the internal and external audit; • Concerns related to the internal procedures quality.
16. DNFBPS – R.13-15 & 21[81]	**PC**	***Applying Recommendation 13*** **<u>Effectiveness</u>** • Varying awareness of reporting obligation throughout the DNFBP sector; • Client interest overrules reporting obligations in the case of lawyers; • Overall continuous low reporting by DNFBPs. ***Applying Recommendation 15*** • No requirement for the authorised person of DNFBP with more than four employees to be appointed at management position. **<u>Effectiveness</u>** • Concerns related to the effectiveness of the internal and external audit;

[81] The review of Recommendation 16 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendation 14.

		• Concerns related to the quality of the internal programs and procedures. ***Applying Recommendation 21*** • No enforceable requirement for DNFBPs to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations; • No effective measures in place to ensure that DNFBPs are advised of concerns about weaknesses in the AML/CFT systems of other countries; • No mechanisms in place that would enable the authorities to apply counter-measures to countries that do not apply or insufficiently apply FATF recommendations; • No requirement to examine, as far as possible, the background and purpose when transactions have no apparent economic or visible lawful purpose, and to make available written findings to assist competent authorities and auditors.
17. Sanctions	**PC**	• The sanctioning regime under the AML/CFT Law does not cover all the possible breaches; • There is no clear possibility for sanctioning the directors and senior management. **Effectiveness** • The effectiveness of the sanctioning regime provided by the new AML/CFT Law not demonstrated; confusion among the authorities on sanctioning competences and on applicable law for sanctions; • Overreliance of the written warnings in the banking sector of RS which are not effective, proportionate and dissuasive enough; • The imposed sanctions for the banking sector of the FBiH are at the minimum level and therefore are not effective, proportionate and dissuasive enough; • No AML/CFT sanctions imposed to non-banking financial institutions.
18. Shell banks	***C***	
19. Other forms of reporting	***C***	
20. *Other DNFBPS and secure transaction techniques*	***LC***	• *No documented strategy to reduce the use of cash;* • *There are strong concerns on the effectiveness of the extended scope of the law particularly as there are no means of monitoring the added DNFBPs.*

21. Special attention for higher risk countries	**PC**	• No enforceable requirement for non-banking financial institutions to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations; • No effective measures in place to ensure that non-banking financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries; • No mechanisms in place that would enable the authorities to apply counter-measures to countries that do not apply or insufficiently apply FATF recommendations; • No requirement to examine, as far as possible, the background and purpose when transactions have no apparent economic or visible lawful purpose, and to make available written findings to assist competent authorities and auditors.
22. Foreign branches and subsidiaries	**LC**	• There is no requirement to notify the Banking Agencies of FBiH and RS as primary supervisory authorities if the regulations of a foreign country do not allow the implementation of AML/CFT measures.
23. Regulation, supervision and monitoring	**PC**	• Legal uncertainty about the supervisory functions in relation to the brokerage activities of the banks; • Failure to include criminal associates into the scope of the measures aimed at prevention of criminals from holding a controlling interest or management function in financial institutions; • The requirements of criterion 23.3 in relation to the leasing activities are not met; • No clear requirements for clean criminal records in relation to the Directors and the Management Board of a banks registered in RS; • The measures to prohibit persons with a criminal record from being shareholders or board members of securities intermediaries does not extend to all criminal liabilities; • Lack of requirement for professional qualifications and expertise of the directors and senior managers for investment funds; • No licencing or registration requirements the FI referred to in EC 23.7. **<u>Effectiveness</u>** • Lack of effective on-going supervision and monitoring in the non-banking financial

		institutions; • Effectiveness concerns in relation to the threshold approach in licensing in the banking and securities sector.
24. DNFBPS - Regulation, supervision and monitoring	**NC**	• No adequate powers of the authorities to perform its functions, including powers to monitor and sanction; • No evidence for the existence of legal obligations or regulatory measures in the FBiH and BD 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; • No clear requirements for the casinos registered in RS to ensure that all beneficial owners with significant and controlling interest are not criminals or their associates; • No clarity if the term *authorised persons* covers the persons holding management function in a casino. **Effectiveness** • No AML/CFT on-site and off-site inspections have been performed over the activity of the DNFBP sector; • The authorities do not have sufficient level of training in order to perform their AML/CFT obligations; • Uncertainty over the existence of casinos in BD.
25. Guidelines and Feedback	**PC**	• Provisions of the new AML/CFT Law have not been fully implemented in practice by the financial and DNFBP sectors; • The Guidelines and the Rulebook had not been up-dated at the time of the on-site evaluation; • Deficiencies with regard to case by case feedback to FIs; • Lack of guidance from supervisory authorities; • Low level awareness amongst supervisory authorities of competencies and obligations; • Low level of training.
Institutional and other measures		
26. The FIU	**PC**	• The FIU does not publicly release periodic reports including trends and typologies; **Effectiveness**:

		• Dissemination procedure regarding cases referred to entity and cantonal level law enforcement agencies could not be assessed; • Doubts whether in practice the FID has timely access to all necessary administrative, financial and law enforcement information and data held on an entity level; • Lack of adequate IT system to allow in-depth analysis; • Lack of explanations in relation to statistics undermines assessment of effectiveness.
27. *Law enforcement authorities*	*LC*	• *Low effectiveness as ML rarely investigated as an offence when not related to tax evasion;* • *Perception of corruption may have an impact on effectiveness of the system;* • *No clear national strategy geared to increase the effectiveness of action taken against the proceeds of crime.*
28. *Powers of competent authorities*	*LC*	*Concerns over effectiveness*
29. Supervisors	**PC**	• Lack of adequate supervisory powers in the insurance market to monitor and ensure compliance with AML/CFT requirements and to take enforcement measures and sanction both the institutions/businesses and their directors/senior management for with AML/CFT breaches; • No direct AML/CFT supervisory powers for the Securities Commission of the FBiH. **Effectiveness** • Effectiveness of supervisory powers not demonstrated.
30. Resources, integrity and training[82]	**PC**	• A higher number of employees should participate in activities aiming at increasing the expertise of FID staff; • The information gathered during the supervisory activities of the competent authorities but not forwarded to the FID is not subject to confidentiality; • No information concerning professional standards, integrity and skills for the Securities Commission from BD;

[82] The review of Recommendation 30 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on resources integrity and training of law enforcement authorities.

		• No data on trainings has been provided by the Securities Commissions from FBiH, RS and BD; • Lack of resources all over the supervisory authorities.
31. National co-operation	**PC**	**<u>Effectiveness</u>** • Significant delays in the enactment of legislation due to lack of agreement between policy makers; • Insufficient analysis of ML/TF issues by policy makers and competent authorities, resulting in absence of effective strategy to address those issues; • Inconsistencies between the four legal frameworks create risk of exploitation by third parties.
32. Statistics[83]	**PC**	• There is no process for reviewing of the effectiveness of the system for investigating and prosecuting money laundering; • Discrepancies between the statistical data and the information provided during the onsite visit calls into question the effectiveness of the systems for collecting data on ML and TF cases; • Lack of comprehensive statistics undermines the effectiveness of FIU assessment; • No mechanism in place for the assessment of effectiveness of the AML/CFT framework; • Lack of statistics maintained by the supervisory and law enforcement authorities with regard to the exchange of information with foreign counterparts and non-counterparts; • Lack of necessary breakdowns of statistical evidence regarding international cooperation in relation to TF.
33. Legal persons – beneficial owners	**PC**	• The mechanism in place to ensure adequate transparency concerning the beneficial ownership and control of legal persons is not sufficiently comprehensive; • Concerns about the extent and accuracy of the information included in the Court Registries; • Limited accessibility and possibility for search for information in the various databases, mainly due to the fact that some are still maintained only in a paper form and they are overall not interconnected.

[83] The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 20, 27, 38 and 39.

34. *Legal arrangements – beneficial owners*	***N/A***	• *Bosnia and Herzegovina is not a signatory to the Hague Convention;* • *The concept of trusts or other similar legal arrangements (other than corporates) is not known under the laws of Bosnia and Herzegovina – although reference to the term 'trust' is used under the new AML Law.*
International Co-operation		
35. Conventions	**LC**	• Shortcomings of the criminalisation of TF negatively impact on the implementation of the TF Convention.
36. Mutual legal assistance (MLA)	**LC**	• Lack of clear procedures to ensure the timeliness of the execution of the requests; • Concerns about the power to execute MLA requests related to confiscation when there is no international convention in place.
37. Dual criminality	***LC***	• *The existing legal deficiencies related to criminalisation of ML and FT could potentially impede effective co-operation.*
38. *MLA on confiscation and freezing*	***LC***	• *The shortcomings related to confiscation regime may have a negative impact on the ability of rendering MLA in such cases;* • *No information on arrangements for coordinating seizure and confiscation actions.*
39. *Extradition*	***LC***	• *In the absence of proper statistics relating to ML, the predicate offences and FT, and information whether extradition requests are handled within timeframes it has not been possible to establish the overall effectiveness of the system in place.*
40. Other forms of co-operation	**LC**	• Effectiveness of international cooperation of the supervisory authorities was not demonstrated due to the lack of statistical evidence.
Nine Special Recommendations		
SR.I Implement UN instruments	**PC**	• Minor deficiencies with regard to the implementation of S/RES/1267(1999); • No legal basis for the application of freezing measures under UNSCR 1373; • Deficiencies in the criminalisation of TF.
SR.II Criminalise terrorist financing	**PC**	• The terrorist financing offences in the four Criminal Codes are not wide enough to encompass the provision of funds to terrorist organisations or individual terrorists other than for the purposes of a terrorist act;

		• Some elements of the treaty offences in the annex to the TF Convention are not covered by the CC BiH and so are not within the ambit of the terrorist financing offence; • The legislation is insufficiently clear as to whether the offence of terrorism in the CC FBH, CC RS and CC BD, and therefore the offence of terrorist financing, applies in relation to acts that may cause damage solely to the Entities and Brčko District themselves. **Effectiveness** • The absence of any significant enforcement activity to date in the context of the known risks of terrorist financing, and lack of clarity in some quarters as to the legal framework, raise serious concerns as to effective implementation.
SR.III Freeze and confiscate terrorist assets	**PC**	• No prescribed procedure to create a national list of terrorists under UNSCR 1373 or to make or to respond to third country requests that meet the criteria set out in UNSCR 1373; • Lack of a clear framework for supervision of compliance with the obligations under the current mechanism to freeze funds and assets used for TF and the sanctioning of its potential violations; • Insufficient outreach to the private sector and other key stakeholders; • Conditions for accessing frozen funds are not fully in line with the requirements of UNSCR 1452. **Effectiveness** • The Consolidated List is not published without delay; • Lack of awareness of the existence of the Consolidated List and the related obligations.
SR.IV Suspicious transaction reporting	**PC**	• By-laws do not cover funds but rather transactions. **Effectiveness** • Lack of STR reporting in relation to TF although high risk of terrorism in the context of BiH; • Lack of specific indicators in by-laws contributes to lack of awareness in terms of TF issues among private sector, despite high vulnerability to terrorism.

SR.V International co-operation[84]	**LC**	• The deficiencies described under R. 36-38 have a negative impact on the rating of this Recommendation.
SR.VI AML requirements for money/value transfer services	**PC**	• No registration or licensing requirements for all MVTs (except for those operating through banks); • Absence of monitoring measures for MVTs; • No obligation to maintain a current list of its agents which must be made available for the designated competent authorities; • Sanctions for failure to comply with the SR.VI requirements should be introduced.
SR.VII Wire transfer rules	**LC**	• No monitoring of the activities of the Post Office; • No obligation for beneficiary financial institutions to adopt effective risk based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.
SR.VIII Non-profit organisations	**NC**	• No review of the adequacy of the relevant laws in order to identify the risks and prevent the misuse of NPOs for terrorism financing purposes was undertaken; • No review of the size, characteristics and activities of the NPO sector; • Lack of outreach to the NPO sector; • Shortcomings of the framework with regard to registration and access to information on NPOs; • Lack of clarity with regard to the supervisory competencies; • No particular mechanism established for responding to international requests regarding NPOs. **Effectiveness** • Lack of an overall understanding of the size, characteristics and activities of the NPO sector; • Supervision of NPOs is undertaken only for tax purposes; • No mechanism in place to facilitate information exchange and cooperation in respect of NPOs between national authorities, lack of a proactive approach to information sharing in this respect.

[84] The review of Special Recommendation V has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 37, 38 and 39.

SR.IX Cross Border declaration and disclosure	**PC**	• Not all bearer negotiable instruments are covered by the declaration obligation; • The declaration obligation does not seem to apply to shipment of currency through containerised cargo; • Customs authorities do not have any powers with regard to the implementation of the regime under SR.III; • Insufficient mechanisms to ensure coordination of competent authorities at policy level; • Statistics are not maintained on cases when a suspicion of ML/TF is identified, but the assets involved are below the threshold for declaration. **Effectiveness**: • Lack of clarity with regard to the power to stop and restrain cash and bearer negotiable instruments; • The system of control of cross-border transportation of cash and bearer negotiable instruments is not implemented at the maritime border and is not effective at the land crossing points; • Concerns about the dissuasiveness of the sanctioning regime; • Lack of AML/CFT expertise of the staff of competent authorities; • The statistics maintained show minor inconsistencies.

9 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)	**Recommendation 1** • The language governing the physical elements of the offence should be amended so that it more closely mirrors the language of the Conventions, and that explicit reference is made to the indirect proceeds of crime. A definition of property should also be introduced to make it clear that the offence of ML applies to all forms of property, including incorporeal or intangible property and legal documents or instruments; • If the Entities and Brčko District retain jurisdiction for the offence of ML, the authorities should examine the inconsistencies between the four Criminal Codes outlined under Rec.1 and consider introducing amendments to achieve further harmonisation as appropriate. This is particularly the case with regard to the absence of any explicit reference to self –launderers in the CC FBiH and the CC BD; • It is recommended that efforts continue to be made to increase both the number of ML investigations and prosecutions and the range of predicate offences involved. This recommendation applies across BiH as a whole. However, it will be especially important for prosecutors in the FBiH and Brčko District to give greater priority than at present to addressing possible laundering activity when dealing with acquisitive predicate offences, should the authorities decide that the Entities and BD will retain jurisdiction for the offence of ML; • Greater resources should be provided to the judicial and prosecutorial authorities in terms of numbers, expertise, training and technology, in order to facilitate more effective investigation and prosecution of ML cases. It is particularly important that this be addressed in relation to the FBiH and BD in the event that they retain jurisdiction for the investigation and prosecution of ML.
2.2 Criminalisation of Terrorist Financing (SR.II)	• Legislation should be amended urgently to address the issue of the absence of criminal sanction for the provision of funds to a terrorist organisation or an individual terrorist other than for the purposes of a terrorist act[85];

[85] The terrorist financing offence was amended and the revised version came into force on 24 March 2015 Article 202 (2) now reads as follows:

	• The legal framework also requires amendment to ensure that all of the elements of the treaty offences come within the ambit of terrorist financing at state level. It is particularly important that the purposive element in respect of the offence of hostage taking is widened to include any legal or natural person or group of persons as soon as possible, given the current situation with regard to support for ISIL from within BiH; • It is also recommended that a definition of funds be included in the legislation in line with the definition in the TF Convention, to put the issue beyond doubt; • The authorities should consider confining jurisdiction for all TF offences to the state-level courts. This would bring the legal framework in line with practice and also with what appears to be the understanding of the position by some of the authorities. It would also mean that the omissions and inconsistencies in the legal framework at the level of the Entities and Brčko District would no longer apply; • If however the Entities and Brčko District retain jurisdiction for terrorist financing, their Criminal Codes will require amendment to address some technical deficiencies. An amendment is necessary to cover criminal sanction for the provision of funds to a terrorist organisation or an individual terrorist other than for the purposes of a specific terrorist act in the same way as the state-level Criminal Code. In addition, a definition of funds should be included for the same reasons as indicated above in relation to the state-level of funds. The definition of terrorist act for the purposes of the offence of terrorism should be amended, to specify that it includes acts that may cause damage which is confined to the Entities and Brčko District themselves; • The evaluators further recommend in the interests of consistency that the legislation should be amended so that the offences at Articles 202a to 202d of the CC BiH are introduced under the three Criminal Codes for the purposes of the offences of hostage taking and terrorism; • At an effectiveness level, the authorities are strongly advised to make greater efforts to investigate and prosecute terrorist financing. The recommendations made above in the context of money laundering as to the provision of greater resources to the judicial and prosecutorial authorities apply equally in the

"Financing of terrorist activities (Article 202)

...

(2) Whoever by any means, directly or indirectly, gives or collects or in other way provides funds aiming that they, in full or in part:

a) be used for any aim by the terrorist organisations or individual terrorists or

b) knowing that they shall be used for perpetration of criminal offences from paragraph 1 by terrorist organisations or individual terrorists.

shall be punished by the punishment from paragraph 1 of this article."

	context of terrorist financing.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• The CC of RS should be amended, in order to make an explicit reference in the CC RS to derived and intermingled assets and to bring the CC RS in line with the other Criminal Codes on this point; • The authorities should review the overly vague conditions attached to the confiscation of instrumentalities as well as to *in rem* confiscation of instrumentalities and other objects, with a view to clarifying them or removing them; • Consideration should also be given to introducing legislation to permit *in rem* confiscation of criminal proceeds to be used in situations where a criminal conviction is not possible; • The evaluators reiterate the recommendation in the previous report that the authorities review the effectiveness of the confiscation regime, which should involve the collection and analysis of comprehensive statistics; • The authorities should wider apply provisional measures as well as the routine instigation of parallel financial investigations and the use of value based confiscation in appropriate cases; • Greater use of the extended confiscation provisions in order to improve the rate of confiscation orders is recommended, particularly in the FBiH. The authorities in Brčko District are advised to consider introducing a similar extended confiscation regime. In addition, the authorities at state level and in the FBiH should consider amending their extended confiscation provisions to ensure that they may be applied in relation to assets in third party hands; • These different measures should be accompanied by further training for prosecutors and judges; • The creation and effective implementation of an asset recovery office in the RS is a welcome improvement. The forthcoming implementation of recent dedicated asset recovery legislation and the related establishment of an asset recovery agency in the FBiH will be very positive developments. The authorities are strongly encouraged to take all necessary steps to ensure that implementation is effective. It is recommended that the authorities at state level and in Brčko District take similar action.
2.4 Freezing of funds used for terrorist financing (SR.III)	• In addition to the introduction of comprehensive and directly applicable legal framework that provides for freezing funds and assets under UNSCR 1267, it is recommended to establish a corresponding framework for the freezing of funds also under UNSCR 1373; • The authorities should adopt a pro-active approach with regard to considering persons, who should be proposed for designation to the UNSC Committee, or who should be

	included on a national list. This should take place both in the context of the local happenings, but consideration should also be given to designations made by other countries; • A comprehensive and clear framework for supervision of compliance with the requirements under the UNSCRs, as well as an adequate and dissuasive sanctioning regime should be put in place. The authorities competent for supervision should understand fully the purpose and requirements of the framework; • It is recommended that the authorities significantly enhance outreach to the private sector as a matter of urgency with regard to all the aspects of the framework; • The conditions for accessing frozen funds should be brought in line with the requirements of UNSCR 1452; • The authorities are invited to review the procedures for the application of the freezing measures in order to ensure that these are applied without delay. This would in particular concern increasing the timeliness of the publication of the Consolidated List by the Ministry of Security.
2.5 The Financial Intelligence Unit and its functions (R.26)	• The authorities should review the framework of registries and other databases held by authorities at entity, BD and cantonal level in order ensure that all administrative, financial and law enforcement information that the FID (and other competent authorities) needs in order to undertake its functions are readily accessible. In this regard, particular focus should be given to the obtaining of this information in a timely manner, and ensuring that the information is up-to-date and accurate; • The FID should publish annual reports containing trends, typologies and anonymised case examples for reporting entities as well as for wider public; • The FID should consider putting in place mechanisms to obtain regular qualitative feedback on all the disseminations forwarded to competent authorities. Furthermore, the information obtained should be used in order to assess and further enhance the effectiveness of its work; • The authorities are recommended to install as soon as possible a new IT system that would enable the effective undertaking of the analysis process (in particular that would allow for case management data to be transferred into network analysis tools); • The evaluators invite the authorities to renew the AMLS electronic reporting tool and allow for the possibility to attach information and data to the STRs with the view of speeding up the analysis process; • The authorities should revise the remaining technical shortcomings of the legislation (i.e. Article 57(3) AML/CFT Law).

2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	
2.7 Cross Border Declaration or Disclosure (SR.IX)	• The authorities are invited to pursue the initiated efforts to establish a forum for coordination and policy development with regard to cross-border transportation of currency and bearer negotiable instruments. In addition, efforts should be undertaken to adequately assess connected risks and identify recurrent methods and typologies. Finally, the authorities should ensure that the employees of the relevant agencies are aware of the outcomes of these assessments, as well as the policies formulated and have sufficient expertise to reflect them in practice; • Steps should be taken to ensure that control of cross border transportation of cash and bearer negotiable instruments is implemented effectively at all borders, including sea and land; • The authorities should revise the declaration obligation set by the legislation and the bylaws with regard to bearer negotiable instruments, in order to harmonise them and above all to ensure that all types of bearer negotiable instruments are covered. The declaration obligation should be broadened in order to cover shipment of currency through containerised cargo; • The authorities should review the legislation in order to ensure that the competent authorities are attributed a clear power to stop and restrain currency and bearer negotiable instruments in all the cases foreseen by SR.IX. Trainings should be provided for the staff of the authorities in order to ensure a consistent interpretation and application of the attributed powers; • The authorities should take measures to implement the obligations resulting from UNSCRs 1267 and 1373 in respect of persons who carry out physical cross-border transportation of currency or bearer negotiable instruments that are related to terrorist financing; • Adequate training on AML/CFT issues should be provided to staff of authorities competent in respect of control of cross-border transportation of cash and bearer negotiable instruments; • Statistics should be kept also on all cases where a suspicion of ML/TF was identified. The authorities are further invited to consider keeping records also on cross-border transportations of currency and bearer negotiable instruments below the set threshold with the view of using this data for the purpose of establishing trends on a strategic level, but also for monitoring possible regular transportations of amounts below the threshold.

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)	**Recommendation 5** • The relevant by-laws (e.g. Decisions and Rulebooks) on application of AML/CFT measures should give more guidance; • The authorities should conduct a national ML/TF risk assessment in order to have better understanding of relevant risks on the national level; • It is also recommended to provide additional guidance and trainings to private sector on the application of risk based approach; • It is recommended to raise awareness on the concept and applicability of a comprehensive coverage of the beneficial owner including identification procedures. **Recommendation 6** • The authorities should take measures to organise awareness rising and training campaigns throughout the financial sector improve the understanding the detection of the source of wealth and persons related to PEPs throughout the financial sector; • Guidance need to be issued/renewed on the issue of PEP (e.g. for insurance sector); • It is highly recommended for BiH to sign and ratify the Merida Convention. **Recommendation 7** • The authorities should introduce positive obligation for non-banking financial institutions to assess the respondent institution's AML/CFT controls; • The legal provisions concerning the obligations deriving from Art. 24 of the AML/CFT Law should be extended to the correspondent relationships with all financial institutions from all foreign countries and jurisdictions. **Recommendation 8** • Although the financial institutions met by the evaluators reported that they do not undertake non-face-to-face business the enhanced obligations under the new AML Law call for more awareness of the procedures to be applied in such circumstances throughout the whole financial sector.
3.3 Third parties and introduced business (R.9)	• The authorities are recommended to include in the legislation a clear requirement for the non-banking financial institutions to satisfy themselves that the third party is regulated and supervised in accordance with Recommendation 23, 24 and

	29; • A direct requirement for the competent authorities, in determining in which countries the third parties can be based, to take into account the information available on whether those countries adequately apply the FATF Recommendations, should be also introduced in the legislation; • The authorities should include the custodian operations in their risk assessment especially in relation to third party reliance.
3.4 Financial institution secrecy or confidentiality (R.4)	
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	**Recommendation 10** • There should be an obligation to keep records longer if requested by a competent authority in specific cases as required in FATF standards; • AML/CFT Law could stipulate more clearly that obligation to keep records applies regardless of whether the account or business relationship is on-going or has been terminated (criteria 10.1); • The BiH authorities are recommended to include in legislation the obligation to keep records of business correspondence; • The BiH should as soon as possible issue guidelines with regard to the manner in which the minimum information on identification and monitoring of clients and transactions minimum information (referred to in Article 54 paragraph (1) of AML/CFT Law) is included in the records. **Special Recommendation VII** • Beneficiary financial institutions should be required to adopt effective risk based procedures for identifying and handling wire transfers that are not accompanied by complete originator information (C. VII.5); • The authorities should take measures to ensure that the Post Office is efficiently monitored/supervised on its compliance with the wire transfer requirements (and AML/CFT more generally).
3.6 Monitoring of transactions and relationships (R.11 & 21)	**Recommendation 11** • The authorities should further explain circumstances and scenarios for unusual and complex transactions in their guidelines and by-laws; • The authorities should consider clarifying Article 38 Paragraph 1 of the FIU Guidelines in order to have a clear distinction between unusual and suspicious transactions and to further clarify the grounds of reporting. **Recommendation 21**

	• There should be effective measures in place to ensure that financial institutions are advised of concerns about weakness in the AML/CFT systems of other countries; • The BiH legal framework should include a general provision concerning the obligation of non-banking financial institutions to pay special attention to business relationships and transactions with persons from or in countries that fail or insufficiently apply FATF Recommendations. The BiH AML/CFT legal framework should include a provision concerning the obligation for entities to examine as far as possible those transactions that have no apparent economic or visible lawful purpose and to make written findings available to assist competent authorities (e.g. supervisors, law enforcement agencies and the FIU) and auditors; • The authorities should be legally empowered to apply counter-measures within the meaning of Recommendation 21.
3.7 Suspicious transaction reports and other reporting (R.13,14, 19, 25 & SR.IV)	**Recommendation 13 and Special Recommendation IV** • The authorities should: - Amend the by-laws as soon as possible and clearly make reference to funds instead of transactions; - Organize training seminars for all sectors and raise awareness in relation to the newly amended by-laws; - Publish targeted trends & typology reports that demonstrate how the different financial sectors can be misused for ML/TF in practice; - Update the list of sector-specific indicators in cooperation with the private sector by organizing workshops and training events that would cover possible trends, typologies and common practices in ML/TF concerning their particular sector; - Amend the general list of indicators by adding indicators for TF and pay particular attention to raising awareness in this field; - Provide the private sector with periodic and continuous feedback on the quality and usefulness of STRs and consider implementing targeted sectoral training drawing on examples from the FIU's experience of STRs of insufficient quality; - Look into cases in which STRs have only been filed in the aftermath of supervisory action and should have been filed earlier. Subsequently, address the issue of late reporting with the concerned sectors and monitor future reporting behaviour. **Recommendation 25** • SIPA could consider offering feedback to reporting entities in an informal way in order to enhance the level of reporting as well as providing statistics;

	• Statistics should be used to identify areas of vulnerability, trends and typologies which could then be shared with the industry.
3.8 Internal controls, compliance, audit and foreign branches (R.15 and 22)	**Recommendation 15** • The authorities shall introduce specific legal requirement that the AML/CFT authorised person of financial institutions (different than banks, MCOs and leasing companies) with more than four employees should be appointed at management position; • The legislation on securities should provide that the internal auditing should be independent; • The authorities are recommended to introduce sample testing abilities in the work of the audit of the securities and insurance companies; • It is also strongly recommended that all the requirements of criterions 15.2 and 15.4 to be introduced for BD of BiH. **Recommendation 22** • A requirement should be introduced that financial institutions branches and subsidiaries in host countries should be required to notify the Banking Agencies of FBiH and RS as competent supervisory authorities if the regulations of a foreign country do not allow the implementation of AML/CFT measures.
3.9 Shell banks (R.18)	
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 and 25)	**Recommendation 23** • The authorities should take action to clarify the legal uncertainty about the supervisory functions in relation to the brokerage activities of the banks as described under the analytical part of Rec. 23.2; • Steps should be taken in order to introduce the risk-based supervision for the non-banking financial institutions; • The entity level legislation should be harmonized with the AML/CFT Law and prescribe equal standard for supervision among all competent authorities; • The number of AML/CFT on-site and off-site inspections in the insurance and the securities sector should be increased; • The authorities should take further steps to prohibit criminal associates from holding a significant or controlling share in FI and to extend the scope of the criminal conviction requirements to all crimes. A clean criminal record of the senior managers of market intermediaries in BD should be required; • The Agency for Supervision of the Post Office Operation needs to be recognised as an AML/CFT supervisor under Article 80 of the AML/CFT Law and AML/CFT supervision and monitoring should start;

	• The authorities in RS are encouraged to adopt legislation to require a proof of the origin of the money for the FI shareholders to increase effectiveness of the licencing regime; • There should be licencing and regulation provisions for the FI listed in Article 4 of the AML Law, when carried out outside the FIs subject to Core Principles; • Amendments in the legislation related to the licensing regime of the MCOs are needed in order to fully cover the requirements of criterion 23.3. **Recommendation 17** • The authorities should take the necessary regulatory measures to clarify the powers and competences in applying the AML/CFT sanctioning regime. Amendments are also necessary to clearly provide for the possibility to sanction senior management and directors of the financial institutions; • The authorities are recommended to take the legislative measures to ensure the full scope of AML/CFT breaches (see the missing elements in the table included in the analytical part of Recommendation 17.1); • The authorities should invest more efforts to increase effectiveness of the supervisory and sanctioning regime of the insurance and securities sector as well as for the postal financial services; • The overreliance of the written warnings and the imposition of the minimum level sanctions should be also reconsidered in order for the sanctions to have the required by the FATF standard effectiveness, dissuasiveness and proportionality; • The authorities should consider the possible benefit for the sanctioning regime of introducing criminal sanctions for AML/CFT violations. **Recommendation 25** • Additional training in relation to the new rule book, guidelines and AML law would raise awareness and offer a more harmonised approach. **Recommendation 29** • The authorities should take measures to clarify the allocation of AML/CFT powers and responsibilities amongst supervisory bodies; • The ability of supervisors to sanction directors/senior management for AML/CFT breaches should be clearly stipulated.
3.11 Money or Value Transfer Services (SR.VI)	• The authorities should take measures to introduce registration or licensing of all MVTs (not only those operating through banks); • Monitoring measures and systems for MVTs should be implemented;

	• Licensed or registered MVT service operator should have the clear obligation to maintain a current list of its agents which must be made available for the designated competent authorities; • Sanctions for failure to comply with the SRVI requirements should be introduced.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	**Recommendation 5** • The recommendations formulated on the technical part of Recommendation 5 are applicable for the DNFBPs; • The authorities are recommended to continue raising awareness throughout the DNFBP sector particularly with regard to the treatment of PEPs, identifying beneficial owners and record keeping; • Relevant guidance to DNFBP sector should be published; • Supervisory action of DNFBPs must be taken and sanctions imposed when necessary. The skills necessary to supervise this sector should not be underestimated and additional efforts will be required in this area. **Recommendation 6** • It is recommended to continue with raising awareness and trainings throughout the whole DNFBP sector particularly with regard to the treatment of PEPs their awareness on the detection of the source of wealth and persons related to PEPs; • Guidance need to be issued or harmonized with new AML/CFT Law on issues with PEP's. **Recommendation 8** • Lack of guidance concerning (or low awareness of the procedures to be applied in) circumstances of non-face-to-face business and on how CDD measures should operate in non-face to face transactions; • Lack of awareness of risks regarding misuse of new technologies and effective compliance is not demonstrated. **Recommendation 9** • Although most DNFBPs undertake business on a one-to-one basis and they identify their clients directly, yet there is a need to clarify the position on third party reliance and introduced business for customer due diligence particularly since the new AML/CFT Law now specifically provides for third party reliance for certain parts of the identification process applied. **Recommendation 10** • The recommendations formulated on the technical part of Recommendation 10 apply for the DNFBPs;

	• According to Article 54 paragraph (3) the Council of Ministers of BiH shall also issue the guidelines with regard to the manner in which the identification and monitoring of clients and transactions minimum information (referred to in Article 54 paragraph (1) of AML/CFT Law) are included in the records of the conducted identification of clients and transactions. These guidelines need to be issued as soon as possible.
4.2 Suspicious transaction reporting (R.16)	**Recommendation 13** • The authorities should raise awareness in the DNFBP sector by introducing targeted training programs and awareness raising events with all the different sectors over a longer period of time; • It is recommended to publish targeted trends and typology reports that showcase how the different DNFBP sectors can be misused for ML/TF in practice. **Recommendation 15** • All the recommendations made for the FI are applicable for the DNFBP sector as well; • The authorities should also make efforts to assess the adequacy of the internal AML/CFT procedures and programs. **Recommendation 21** • There should be effective measures in place to ensure that DNFBPs are advised of concerns about weakness in the AML/CFT systems of other countries; • The BiH legal framework should include a general provision concerning the obligation of DNFBPs to pay special attention to business relationships and transactions with persons from or in countries that fail or insufficiently apply FATF Recommendations; • The AML/CFT legal framework should include a provision concerning the obligation for entities to examine as far as possible those transactions that have no apparent economic or visible lawful purpose and to make written findings available to assist competent authorities (e.g. supervisors, law enforcement agencies and the FIU) and auditors; • The authorities should be legally empowered to apply counter-measures within the meaning of Recommendation 21.
4.3 Regulation, supervision and monitoring (R.24-25)	• The situation of casinos in BD should be clarified; • The competent supervisory authorities should have the proper AML/CFT supervisory powers (see analysis under R29); • The competent authorities in the FBiH and BD should take the necessary legal or regulatory 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; • The competent authorities of RS should take the necessary legal or regulatory measures to ensure that all beneficial owners with significant and controlling interest of a casino are not criminals or their associates; • Clear definition of the term authorized person should be introduced in the legislation of RS in order to clearly cover the persons holding management function in a casino; • Effective on-site and off-site AML/CFT control over the DNFBP sector should be performed by the competent authorities; • The authorities should increase the level of training and expertise of the DNFBP supervisors to properly undertake AML/CFT on-site and off-site control. **Recommendation 25** • Co-ordinated trainings of DNFBPs and their supervisory authorities in relation to AML/TF issues are recommended; • It is important that the FIU engage with DNFBPs regularly and provide feedback on the STRs received in order to encourage further reporting; • Submissions to SIPA from DNFBPs are low so feedback from the FIU is the key issue to encourage further reporting. It is also suggested that further training to this sector may assist with better identifying risk and implementing additional measures to mitigate.
4.4 Other non-financial businesses and professions/ Modern secure transaction techniques (R.20)	
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal persons – Access to beneficial ownership and control information (R.33)	• The authorities should ensure that any gaps within the existing mechanism providing for transparency of legal persons are adequately covered. Alternatively, the authorities should consider either requiring legal persons registered in BiH to obtain and hold adequate, accurate and current information on their beneficial ownership and ensure that such information can be accessed in a timely manner by competent authorities and obliged entities or extend the requirement to identify and verify the beneficial owner of the legal entity to the authority registering legal entities. This information should be included in the Register and should be made available to the competent authorities and obliged persons; • It is strongly recommended to the authorities to keep all the databases of registered legal entities in an electronic form,

	these databases should be interconnected and should enable a comprehensive search; • The authorities should put in place a mechanism to ensure that all the information included in the registers is accurate and up-to-date; • The authorities should review to which extent bearer instruments may figure in BiH (either in the form of bearer bonds or as foreign shareholders, which issue bearer shares) and whether all the necessary precautions were taken in order to mitigate the risks associated with such instruments.
5.2 Legal arrangements – Access to beneficial ownership and control information (R.34)	
5.3 Non-profit organisations (SR.VIII)	• The authorities should undertake a comprehensive assessment of the size, characteristics and activities of the NPO sector and evaluate this in the context of the potential ML and TF risks of the country, in order to formulate specific vulnerabilities of the sector or its individual components. Such assessments should be periodically repeated in order to ensure that new trends and developments are taken into consideration. Furthermore, on the basis of this information, a review should be done by the authorities of the legislation governing NPOs in place, as well as of the entire institutional framework related to the activities of NPOs; • Legislative and practical changes should be implemented with regard to the registration framework in order to ensure that all NPOs operating on the territory of BiH are obliged to be registered and that all NPOs are registered only at one instance. In addition, a single registry of all NPOs should be established in order to enable accurate collection of data on the size of the sector, as well as to facilitate search and information gathering in particular for the purposes of LEAs; • Availability of information on NPOs should be enhanced. NPOs should be obliged to keep the information required by the standards and all this information should be available to the public either directly or through a public authority. There should be a clear provision imposing an obligation on NPOs to provide the public with access to information held only by the NPO (and not included in the public register). This information accessible to public should be up-to-date; • The framework in place, both through legislative measures and in practice, should ensure that the requirements to which NPOs are subject are implemented in practice. Clear supervisory and sanctioning powers should be attributed and inspections should be undertaken. The competent supervisors should have sufficient expertise to detect suspicious behaviours; • Cooperation and coordination amongst national authorities in

	respect of their duties and information concerning the NPO sector should be enhanced. A pro-active approach should be adopted in order to ensure that the different components (supervisors, LEAs, institutions in charge of state security) are aware of the full picture of the NPO sector, its activities, characteristics, but also the broader context of general TF risks in the country; • The authorities should undertake awareness raising activities for NPOs with regard to ML and TF risks and possible protection against them. Actions should be taken also in respect of promoting transparency, accountability, integrity and public confidence in the NPO sector.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31 and 32)	**Recommendation 31** • The evaluators recommend that the existing mechanisms for cooperation and coordination at a policy and strategic level should be improved. In particular, the authorities are strongly urged to take steps to facilitate agreement being reached on points of difference between the four jurisdictions at an earlier stage than at present. This would reduce the risk of delays being caused by the rejection of legislation at an advanced stage in the legislative process. One way to achieve this might be to make changes to the membership of the Working Group, whether as suggested by the FID or otherwise, to ensure that the decision making process is fully informed by the necessary expertise from the outset; • There should also be an increased focus on analysis and understanding of the AML/CFT situation in the country and consequent implications for the AML/CFT framework, as well as the subsequent identification of concrete areas for focus and priorities. This should in turn be reflected in an updated strategy or action plan for tackling ML and TF going forward; • In addition, the authorities of the different jurisdictions should continue the process of harmonising their legal frameworks, in order to remove the risk of differences being exploited by third parties; • At an operational level, the authorities should consider reviewing the use of FID disseminations for the work of law enforcement authorities and subsequent prosecutions with the view of identifying possible bottlenecks. Measures should be formulated and put in place in order to address the identified obstacles; • Authorities should consider requesting and providing feedback, when information is shared or assistance provided. Consequently, this information should be used in order to enhance the quality of cooperation;

	• Although cooperation on operational level seems to be satisfactory overall, the authorities should consider putting into place mechanism to avoid the occurrence of parallel investigations. **Recommendation 32** • A mechanism should be put in place to ensure that statistics maintained by the authorities are regularly reviewed and strategic analysis thereof is undertaken.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	**Recommendation 35** • The authorities are invited review the implementation of the full extent of the Conventions under their national framework in order to identify whether additional measures should be taken. In particular the notifications to the Secretary General, as required by the Vienna and Palermo Conventions with regard to the authority responsible for the execution of the MLA requests, should be made. **Special Recommendation I** • The authorities are encouraged to take additional measures to implement fully the CFT Convention, in particular by addressing the shortcomings identified in SR.II; • The recommendations and comments provided under SR.III also apply for this section.
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	• It is recommended to the authorities to establish clear procedures and guidance with regard to the distribution of the cases amongst national authorities and which would set timeframes and rules for prioritisation for the treatment of requests. In this respect, it should be considered to broaden the powers of the Ministry of Justice in this respect, in order to monitor and follow-up on the requests it handles and to further analyse this information with the view of identifying patterns and proposing structural improvements; • The authorities should review the adequacy of their competencies in respect of executing requests related to confiscation and whether they have sufficient powers to provide assistance in this matter in the extent required by international conventions; • Competent authorities of BiH should review declarations designating central authorities responsible for sending and answering MLA requests made with respect to international conventions in order to bring such declarations in line with Law on MLA. In particular, the declaration to CETS 198 should be reviewed.
6.4 Extradition (R.37 & 39, SR.V)	
6.5 Other Forms of Co-operation (R.40 & SR.V)	• Supervisory authorities should maintain statistics on instances of cooperation with foreign authorities; • Authorities should consider explicitly enabling supervisory

	authorities to undertake inspections on behalf of foreign counterparts; • Supervisory authorities should review their role in international cooperation and their need in order to consider signing MoUs with further foreign authorities; • Law enforcement authorities should maintain statistics in relation to instances of international cooperation.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	**Resources** • The authorities are encouraged to increase the number of staff to the full number of positions foreseen in the FID systematisation and ensure that a higher number of the FID and SIPA staff participate at specialised trainings related to their duties; • Financial and human resources of ITA should be increased in order to enable a full control of all the borders of the country; • Adequate training on AML/CFT issues should be provided to staff of authorities competent in respect of control of cross-border transportation of cash and bearer negotiable instruments; • The authorities should consider increasing the level of staff dedicated or with knowledge/skills on AML/CFT supervision across the FIs supervisory authorities; • The regime would highly benefit if from AML/CFT departments in the Insurance and Securities Commissions or from specialised personnel in the general supervision departments. The entities Ministers of Finance and in Brčko District Financial Directorate should have AML/CFT trained employees; • The authorities should consider either establishing a permanent body in charge of policy cooperation in the matters of AML/CFT or providing the Working Group with a number of permanent staff; • The BiH authorities should consider reinforcing the current staff dealing with letters rogatory in criminal matters. **Statistics** • The authorities are recommended to put in place processes for the regular review and analysis of statistics from all four legal systems to access effectiveness of the BiH system for investigating and prosecuting money laundering and terrorist financing; • The authorities should maintain comprehensive statistics with regard to freezing measures relating to terrorist funds; • The authorities are strongly recommended to maintain with comprehensive statistics in relation to the supervisory and sanctioning regime. These statistics shall be used also as part of

	the risk-based supervisory process; • A mechanism should be put in place to ensure that statistics maintained by the authorities are regularly reviewed and strategic analysis thereof is undertaken; • The BiH authorities should keep accurate and detailed statistics on MLA requests relating to freezing, seizing and confiscation that are made or received. Furthermore, the statistics maintained should include information about the timeframes in which the requests were executed.
7.2 Other relevant AML/CFT measures or issues	
7.3 General framework – structural issues	

10 TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

RELEVANT SECTIONS AND PARAGRAPHS	COUNTRY COMMENTS

V. COMPLIANCE WITH THE 3RD EU AML/CFT DIRECTIVE

BiH is not a member country of the European Union. It is 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: "the 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**.

Notwithstanding, the new BiH anti-money laundering and financing of terrorism law adopted in June 2014 provides for implementation of the 3rd EU AML/CFT Directive.

The following sections describe the major differences between the Directive and the relevant FATF 40 Recommendations plus 9 Special Recommendations.

1.	**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. What is the position in your jurisdiction?
Description and Analysis	The Criminal Code of RS prescribes the liabilities of legal persons in the following articles: *Basics of liability of a legal person – Article 127* *For a criminal offence which a perpetrator committed in the name, on account of or on behalf of a legal person, is a liable legal person:* *1) when the characteristics of the committed criminal offence arise from the decision, order or permission of managing or supervisory authorities of the legal person; or* *2) when the managing or supervisory authorities of the legal person influenced the perpetrator or enabled him to commit the criminal offence; or* *3) when a legal person has illegally acquired property gain or uses objects which resulted from a criminal offence; or* *4) when the managing or supervisory authorities of the legal person missed out on the obliged supervision of the legality of the work of employees.* *Limits of liability of a legal person for a criminal offence – Article 128*

	(1) Besides the conditions from Article 127 of this Law, a legal person is liable for a criminal offence also when the perpetrator is not criminally responsible for the committed criminal offence. *(2) The liability of a legal person shall not exclude the criminal liability of natural i.e. liable persons for the committed criminal offence.* *(3) a legal person may be liable for criminal offences committed out of negligence under conditions from Article 127, point 4 of this Law, in which case the legal person may be punished less severely.* *(4) When in the legal person besides the perpetrator there is no other person or authority which could direct or supervise the perpetrator, the legal person is liable for the committed criminal offence within the perpetrator's limits of liability.*
Conclusion	BiH recognizes the liability of legal persons for committing the act of money laundering and for offences of noncompliance with the preventive measures under the AML/CFT Law and provides for sanctions accordingly.
Recommendations and Comments	No recommendations/comments.

2.	**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. What is the position in your jurisdiction regarding passbooks or accounts on fictitious names?
Description and Analysis	Relevant requirement are met with Articles 4 (Liable persons for implementation of measures) and 8 (declining a business relationship and a transaction) of AML/CFT Law. Provisions of Article 8 of the AML/CFT Law provides that *a obligor may not establish a business relationship or carry out a transaction i.e. discontinue already established business relationship if not spent identification and monitoring measures which include the following:* - *Identification of the client and verifying his identity on the basis of documents, data or information obtained from a reliable and independent source;* - *Identification of the beneficial owner;*

	- *Obtaining information on the purpose and intended nature of the business relationship or transaction, as well as other information prescribed by this Law;* - *Carrying out continuous monitoring of business relationships including control transactions during the business relationship to ensure that transactions are carried out in accordance with the findings of obligors on the client, the business and risk profile and, where necessary, the source of funds and ensuring documentation updates, data or information that are conducted.* Provisions of Article 35 of the AML/CFT Law provides that a obligor will not open, issue or have hidden accounts, savings books or bearer passbooks or other products that allow, directly or indirectly, to hide the client's identity. In addition to these provisions prescribed by the Law, the prohibition of opening and maintaining anonymous accounts or accounts in fictitious names is also prescribed by the provisions of Article 11, Paragraph 5 of the Decision for Banks, which read as follows: *Banks cannot open an account or conduct business with a client who insists on his anonymity, or that the identification used a false name, presenting false identification information and forged papers. In such cases, banks may refuse to open an account, or establishing a business relationship with clients without obligation to give reasons. In these cases it is necessary to make a record of the business of client contact and inform the Financial Intelligence Department, hereinafter referred to as the FIU.*
Conclusion	Covered partially
Recommendations and Comments	To introduce mandatory explicit obligation to apply CDD measures to all existing clients

3.	**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 amounting to EUR 15 000 or more.
FATF R. 5	Financial institutions should undertake CDD measures when carrying out occasional transactions above the applicable designated threshold.
Key elements	Are transactions and linked transactions of EUR 15 000 covered?
Description and Analysis	Article 6 of the AML/CFT Law (Identification and monitoring of client) stipulates the following: *A liable person shall carry out measures of identification and tracking of clients when:* *a) Establishing a business relationship with a client;* *b) Making a transaction of BAM 30,000 (€15,000) or more,*

	regardless of the number of operations, either one or a set of several obviously connected transactions; *c) Doubting the authenticity or adequacy of previously received information about the client or the beneficial owner;* *d) Suspecting money laundering or financing terrorist activities relating to the transaction or client, regardless of the amount of transaction.*
Conclusion	Covered
Recommendations and Comments	No recommendations/comments

4.	**Beneficial Owner**
Art. 3(6) of the Directive (see Annex)	The definition of 'Beneficial Owner' establishes minimum criteria (percentage shareholding) 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	Which approach does your country follow in its definition of "beneficial owner"? Please specify whether the criteria in the EU definition of "beneficial owner" are covered in your legislation.
Description and Analysis	Article 3 paragraph n) of the AML/CFT Law defines the beneficial owner following way: *Beneficial owner* of a client is: 1) Beneficial owner of a client and/or natural person on whose behalf the transaction or activity is conducted; 2) Beneficial owner of a business company, or of another legal person, is: - A natural person who, directly or indirectly, holds 20% or more of business share, stocks, voting right or other rights, based on which it participates in the management of a legal person, or participates in the capital of the legal person with 20% or more share or has a dominant status in property management of the legal person; - A natural person who indirectly provides or keeps providing funds for a business company and is on this basis entitled to participate in decision making by managerial bodies of the business company on its financing and business dealings.

	3) Beneficial owner of a foreign legal person which receives, manages or distributes property for certain purposes is: - A natural person who directly or indirectly utilizes more than 20% of property managed, provided that the future users are identified; - A natural person or group of persons in whose interest the legal person is founded or is engaged in business operation, provided that the person or group of persons are identifiable; - A natural person who directly or indirectly manages more than 20% of the property of a foreign legal person with no limitations.
Conclusion	Not covered
Recommendations and Comments	To amend the definition of "beneficial owner" in way that it would also incorporate those persons who exercise ultimate effective control over a legal person or legal arrangement.

5.	**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 Art. 3(1) or (2) of the Directive. Art. 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 (2004 AML/CFT Methodology para 23; Glossary to the FATF 40 plus 9 Special Recs.).
Key elements	Does your country implement Art. 4 of Commission Directive 2006/70/EC?
Description and Analysis	No relevant provisions
Conclusion	Art 4 has not been implemented
Recommendations and Comments	No recommendations/comments.

6.	Simplified Customer Due Diligence (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 should be subject to the full range of CDD measures, there are instances where reduced or simplified measures can be applied.
Key elements	Is there any implementation and application of Art. 3 of Commission Directive 2006/70/EC which goes beyond the AML/CFT Methodology 2004 criterion 5.9?
Description and Analysis	Simplified procedure for the identification and tracking of client is defined by Article 29 of the AML/CFT Law and is possible *if the client*: *a) An authority or institution in BiH or an institution with public authority;* *b) A bank, insurance company and other legal entity and natural person that acts as an intermediary in sales of insurance policies, investment and pension funds irrespective of their legal form, based in BiH or countries included in the list referred to in Article 85 paragraph (4) hereof;* *c) A clients that was categorised by a liable person into a group of clients with a low risk level.* In addition Decisions (for the banks) stipulate the following: *Article 12* *1) The bank can apply simplified identification when establishing a business relation with the following clients:* *1. Government bodies and institutions, independent of the level of the organization state structure (state, entities, district, cantons, municipalities),* *2. Public companies and institutions which founders are state bodies and institutions form the point 1. of this Article,* *3. Parties obliged to implement measures on prevention of money laundering and terrorism financing activities, which are supervised in accordance with the implementation of the legal and other regulations in reference to the prevention of money laundering and terrorism financing activities by bodies and agencies which are organized in compliance with the laws,* *4. other clients, legal entities and individuals for which the bank, based on the analyses determines that have a low risk of money laundering and*

	terrorism financing activities, such as individual who open accounts which serve for paying the regular monthly payments (salaries, pensions, etc.) as well as saving accounts. *Article 13* *Low level of risk from money laundering and terrorism financing activities can be carried by clients which come from the countries members of the European Union or other countries which, according to the data of the Financial intelligence department, fulfil the internationally accepted standards for prevention of money laundering and terrorism financing activities.* *Article 14* *(1) The banks, as a part of the simplified client identification and monitoring, shall gather following data and information about the client:* *Name, address and the head office of the legal entity, that is name, surname and address of the individual which is establishing the business relation;* *Name and surname of the legal representative or authorized individual which is establishing the business relation for the legal entity;* *Purpose and intention for the business relation and source of funds;* *Date for establishing the business relation and* *Other in compliance with the appropriate regulations.* *(1) The bank shall secure verification of the gathered data and information about the client by reviewing the documents in which the gathered data are recorded and information about the client such as: personal identification document, certifications from appropriate registers, documents on which the client or the authorized individual deposited his signature and other in compliance with the risk analyses performed by the bank.*
Conclusion	Applied
Recommendations and Comments	Relevant guidance's on simplified identification need to be harmonized with new AML/CFT Law and national risk assessment results (if such assessments will be done in future).

7.	**Politically Exposed Persons (PEPs)**
Art. 3 (8), 13 (4) of the	The Directive defines PEPs broadly in line with FATF 40 (Art. 3(8)).

Directive *(see Annex)*	It applies enhanced CDD to PEPs residing in another Member State or third country (Art. 13(4)). Directive 2006/70/EC provides a wider definition of PEPs (Art. 2) and removal of PEPs after one year of the PEP ceasing to be entrusted with prominent public functions (Art. 2(4)).
FATF R. 6 and Glossary	Definition similar to Directive but applies to individuals entrusted with prominent public functions in a foreign country.
Key elements	Does your country implement Art. 2 of Commission Directive 2006/70/EC, in particular Art. 2(4), and does it apply Art. 13(4) of the Directive?
Description and Analysis	Article 3 paragraph n) stipulates the definition of "beneficial owner" as "real owner" in following way: *Real owner of a client is:* *1) Real owner of a client and/or natural person on whose behalf the transaction or activity is conducted;* *2) Real owner of a business company, or of another legal person, is:* *- A natural person who, directly or indirectly, holds 20% or more of business share, stocks, voting right or other rights, based on which it participates in the management of a legal person, or participates in the capital of the legal person with 20% or more share or has a dominant status in property management of the legal person;* *- A natural person who indirectly provides or keeps providing funds for a business company and is on this basis entitled to participate in decision making by managerial bodies of the business company on its financing and business dealings.* *3) Real owner of a foreign legal person which receives, manages or distributes property for certain purposes is:* *- A natural person who directly or indirectly utilizes more than 20% of property managed, provided that the future users are identified;* *- A natural person or group of persons in whose interest the legal person is founded or is engaged in business operation, provided that the person or group of persons are identifiable;* *- A natural person who directly or indirectly manages more than 20% of the property of a foreign legal person with no limitations.* Article 17 of the AML/CFT Law (Politically and publicly exposed persons) stipulates the following: *(1) Liable persons shall establish appropriate procedure to determine whether a client/client's beneficial owner from BiH or from abroad is a political or public figure. They shall define such procedures by their internal acts following, at the same time, the guidelines of the FIU and competent supervisory bodies referred to in Article 80 hereof.* *(2) If a client and or client's beneficial owner enters a business relationship or makes transaction or if a represented client/client's beneficial owner, on whose behalf a business relationship or transaction is made, is a political or public figure, the liable person shall, beside the measures referred to in Article 23 hereof, undertake the following measures as part of the procedure for intensified identification and*

	tracking of clients: *a) Collect information on the source of funds and property that is or will be a subject of business relationship or transaction from documents and from other documents submitted by the client/client's beneficial owner. When the above data may not be obtained in the mentioned way, the liable person shall obtain them directly from a written statement of the client;* *b) An employee of the liable person implementing the procedure for establishing a business relation with a client/client's beneficial owner being a political or public figure shall obtain a written approval of the highest-ranking management before entering into such a relationship;* *c) After commencement of the business relationship, the liable person shall trace transactions and other business activities of the political or public figure undertaken through the liable person, applying the identification and tracking procedure.* *(3) If the liable person establishes that a client or client's beneficial owner has become a political or public figure during the business relation, the liable person shall apply the activities and measures referred to in paragraph (2) hereof and shall obtain a written approval of the highest-ranking management for resuming the relation.* Article 19 of Decision (Politically exposed persons) is as follows: *When establishing a business relation or performing transactions, in the cases when establishing is not a longer business relation, the banks shall define adequate procedures, in order to determine if the client is a politically exposed individual.* *(2) Politically exposed individuals, are individuals who are assigned exposed public functions of a high rank in the country and abroad, including the members of the closer family and close colleagues.* *Individuals who were assigned these duties and who terminated them less than a year ago are also considered politically exposed individuals. Individuals on the functions of a middle or lower rank are not considered as politically exposed individuals.* *(3) The procedures will allow the banks to directly from the clients and/or publically accessible registers and data bases gather data and information about the client's political exposing. In regard to that* *the banks shall:* *1) Have adequate procedures based on risk in order to determine whether the client is a politically exposed individual;* *2) Have an approval from the management to establish business relations with such clients;* *3) Take adequate measures in order to determine the source of funds which is included in the business relation or transaction;* *4) Implement an enhanced monitoring of the business relation.* *(4) The same measures of identification and monitoring the banks shall implement in the cases when the founders, beneficial owners and the*

	individuals authorized to represent the legal entity are politically exposed individuals.
Conclusion	Art. 2 of Commission Directive 2006/70/EC, in particular Art. 2(4), has not been implemented.
Recommendations and Comments	No recommendations/comments

8.	**Correspondent banking**
Art. 13 (3) of the Directive	For correspondent banking, Art. 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 your country apply Art. 13(3) of the Directive?
Description and Analysis	When establishing a business relationship with a correspondent bank or similar credit institution based in a foreign country that is not on the list referred to in Article 85 paragraph (4) of AML/CFT Law, the obligor shall apply the measures referred to in Article 7 of this law relating to the procedure of identification and supervision.
Conclusion	Article 13 (3) of the Directive is applied by BiH.
Recommendations and Comments	The Council of Ministers of BiH shall, in accordance with data released by relevant international organisations, upon a proposal by the Ministry of Security of BiH, with previous consultations with the FID, make a list of countries applying internationally recognised standards in terms of preventing and detecting money laundering and financing terrorist activities (Article 85 paragraph 4 of AML/CFT Law).

9.	**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 products or transactions 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 technologies that might favour anonymity [...].
Key elements	The scope of Art. 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. How are these issues covered in

	your legislation?
Description and Analysis	These issues are covered by the following provisions of AML/CFT Law: *Article 25* *(New technological advances)* *(1) A liable person shall pay particular attention to the risk of money laundering and financing terrorist activities resulting from the application of new technological advances enabling client anonymity (e.g. electronic banking, cash machines, phone banking, etc.).* *(2) A liable person shall introduce procedures and undertake additional measures for eliminating the risks of and preventing abuse of new technological advances for the purpose of money laundering and financing terrorist activities.* In addition the provisions by the Decision on Minimum Standards for Banks regulate the issue in following way: *(1) Banks shall adopt policies and procedures and take measures necessary to prevent the misuse of technological developments in money laundering and financing of terrorist activities.* *(2) The policies and procedures of the bank shall define the specific risks relating to the establishment of business relations of the transactions electronically, via the Internet or other interactive computer system, telephone, ATM use.* *(ATM), the use of electronic cards that are associated with client accounts (debit and credit) for payments and cash withdrawals.* *(3) As part of managing these risks the bank shall:* . *when establishing a business relationship with the client identification apply measures under Article 17 of this decision;* . *ensure that Interbank electronic transfers (Swift et al.) and transfers carried out by clients with special terminals through free telecommunication lines (POS banking, electronic and internet banking), as well as other transfers referred to in paragraph (2) of this Article, through the entire stream of transfer, are accompanied by identification information to the principal and the payer and the purpose of the transfer;* . *establish, regularly review and test security measures and control processes and systems;* . *ensure that client authentication involves a combination of at least two ways of affirming the identity of the client;* . *implement safe and effective measure of authentication to confirm the identity and authorization of the client;* *(4) When making these transfers bank shall ensure compliance with all of these obligations both for domestic and for international transfers.* *(5) In cases where the bank cannot provide the required identification data and information about the clients will deny providing these types of banking services.*
Conclusion	The scope of AML/CFT Law relevant provisions is broader than FATF R. 8, because they focus on products or transactions regardless

	of the use of technology.
Recommendations and Comments	No recommendations/comments.

10.	**Third Party Reliance**
Art. 15 of the Directive	The Directive permits reliance on professional, qualified third parties from EU Member States or third countries for the performance of CDD, under certain conditions.
FATF R. 9	Allows reliance for CDD performance by third parties but does not specify particular obliged entities and professions which can qualify as third parties.
Key elements	What are the rules and procedures for reliance on third parties? Are there special conditions or categories of persons who can qualify as third parties?
Description and Analysis	The provisions of Article 18 of the AM/CFT Law stipulate following: *(1) A liable person may, under conditions set forth in this Law and other regulations passed in accordance with this Law, while establishing a business relationship with a client, entrust a third person with establishing and verifying the client's identity, establishing the identity of the beneficial owner of a client and collecting data about the purpose and planned nature of a business relationship or transaction.* *(2) A liable person shall establish beforehand if the third person who will be entrusted with carrying out measures of identification and monitoring of a client meets the conditions prescribed by this Law.* *(3) A liable person may not undertake to perform certain measures and activities of client identification and monitoring through a third person if the said person has established and verified the identity of the client without the liable person being present.* *(4) By entrusting a third person with undertaking certain measures and activities of client identification and monitoring, the liable person shall not waive the responsibility for correct implementation of measures and activities of client identification and monitoring under this Law. The liable person shall still have the final responsibility for implementing the measures and activities of client identification and monitoring.* *(5) The third person shall be responsible for fulfilling the obligations under this Law, including the responsibility for data and documentation safekeeping.* The provisions of Article 22 of the Decision on Minimum Standards of Banks require in addition to AML/CFT Law following: *(1)In fulfilling the requirements of the identification and verification of the client's identity the banks can rely on a third party, but the final responsibility for implementing the conditions is with the banks which*

	rely on the third party. The banks shall provide the needed identification data and information about the client. The banks must fulfil the conditions such as that the copy of the documentation with the identification data and information based on which the third party performed the verification of the client's identity is available at the bank's request, without delay. *(2) The third party, in this sense, presents all the parties in implementing the measures of the prevention of money laundering and terrorism financing activities defined by the Law on prevention of money laundering and terrorism financing activities which are regulated and supervised by special regulatory bodies. Third party can be an equivalent institution form a foreign country, for which the bank must provide evidence that it meets the defined conditions, and it can use the international institutions reports with authorities in prevention of money laundering and terrorism financing activities (FATF, MONEYVAL committee, Council of Europe, World Bank; IMF, etc.).* *(3) The third party is not presented by the institutions with which the bank concluded a contract for performing certain activities (outsourcing-externalization), nor in the cases when those institutions do meet the third party criteria. In these cases it is considered that the bank performed alone the identification and verification of the client's identity.*
Conclusion	Does not go beyond of FATF R.9.
Recommendations and Comments	No recommendations/comments.

11.	**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 to auditors and tax advisors; 2. apply to 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

	(2004 AML/CFT Methodology 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 12.1(d). Please explain the extent of the scope of CDD and reporting obligations for auditors, external accountants and tax advisors.
Description and Analysis	According to Article 4 paragraph l) CDD and record keeping obligations apply to auditors, tax advisors and accountants without any limitations.
Conclusion	The scope goes beyond FATF relevant requirements.
Recommendations and Comments	No recommendations/comments.

12.	**High Value Dealers**
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 those dealing in precious metals and precious stones.
Key elements	The scope of the Directive is broader. Is the broader approach adopted in your jurisdiction?
Description and Analysis	According to Article 4 paragraph n) subparagraphs 10) and 11) the application of AML/CFT measures is limited to legal and natural persons performing activities in dealing in precious metals and precious stones and products made of these materials and in trade in works of art, vessels, vehicles and aircrafts.
Conclusion	AML/CFT Law is wider than FATF R. 12 but it does not cover *Art. 2(1)(3)e) of the Directive.*
Recommendations and Comments	No recommendations/comments.

13.	**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 a customer has to be established and verified when he or she engages in financial transactions equal to or above EUR 3 000.
Key elements	In what situations do customers of casinos have to be identified? What is the applicable transaction threshold in your jurisdiction for identification of financial transactions by casino customers?
Description and Analysis	Article 15 paragraphs 7 and 8 of AML/CFT Law stipulate: (7)Casinos, gambling houses and other organizers of games of chance and special lotteries shall establish and verify identity of each participant in the game who carries out transactions in amount of BAM 4,000 or more. (8) Casinos shall identify clients immediately upon their entry, regardless of the amount of chips they buy.
Conclusion	BiH law is in line with Art. 10 of the Directive
Recommendations and Comments	No recommendations.

14.	**Reporting by accountants, auditors, tax advisors, notaries and other independent legal professionals via a self-regulatory body to the FIU**
Art. 23 (1) of the Directive	This article provides an option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body, which 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	No provisions which would apply Art. 23 (1) of the Directive
Conclusion	BiH has not applied Art. 23 (1) of the Directive
Recommendations and Comments	No recommendations/comments.

15.	Reporting obligations
Arts. 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 (Art. 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 it to the FIU, which can stop the transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report to the FIU immediately afterwards (Art. 24).
FATF R. 13	Imposes a 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? Does the legal framework address *ex ante* reporting (Art. 24 of the Directive)?
Description and Analysis	Chapter IV of AML/CFT Law regulates the notification of the FIU on the transactions of the Law in following way: *Article 38* *(Informing)* *(1) A liable person shall deliver to the FIU the data referred to in Article 54 paragraph 1 hereof relating to the following:* *a) a) Any attempted or completed suspicious transaction and any suspicious client or person;* *b) A cash transaction the value of which amounts to or exceeds BAM 30,000;* *c) Connected cash transactions the overall value of which amounts to or exceeds BAM 30,000.* *(2) When a liable person is to report about a suspicious transaction to the FIU, they shall also inform on the following:* *a) That a transaction by its characteristics relating to the status of a client or other characteristics of the client or funds or other characteristics evidently disagrees with usual transactions of the very client, as well as that it corresponds to the necessary number and types of indicators pointing to that there exist the reasons for a suspicion of money laundering or funding of terrorist activities;* *b) That the transaction is directed at avoidance of regulations governing the measures of the prevention of money laundering and terrorist activity financing.* *(3) The Council of Ministers of BiH may prescribe through a bylaw the terms and conditions under which a liable person shall not be required to deliver to the FIU the information about the cash transactions of a certain client in the amounts either equal or higher than those specified within paragraph 1 points b) and c) hereof.*
Conclusion	BiH law is in line with Art. 22 and 24 of the Directive
Recommendations and	No recommendations.

Comments	

16.	**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 reflected in Art. 26 of the Directive)
Key elements	Is Art. 27 of the Directive implemented in your jurisdiction?
Description and Analysis	No corresponding requirement
Conclusion	Art. 27 of the Directive not applied.
Recommendations and Comments	BiH should introduce the relevant measures which protect employees of reporting institutions from being exposed to threats or hostile actions. .

17.	**Tipping off (2)**
Art. 28 of the Directive	The 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 the 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 what circumstances are the tipping off obligations applied? Are there exceptions?
Description and Analysis	No corresponding requirement
Conclusion	Art. 28 of the Directive not applied.
Recommendations and Comments	No recommendations/comments

18.	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 where applicable 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 Art. 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	Please see *Branches and subsidiaries (2)* below
Conclusion	N/A
Recommendations and Comments	N/A

19.	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 should 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, if any, additional measures are your financial institutions obliged to take in circumstances where the legislation of a third country does not permit the application of equivalent AML/CFT measures by foreign branches of your financial institutions?
Description and Analysis	Article 9 of the new AML/CFT Law prescribes the main legal requirements in relation to the foreign branches and subsidiaries of the financial institutions of BiH. According to it, all liable persons shall fully apply the provisions of the AML/CFT Law in their subsidiaries consistent with home country requirements, to the extent possible under the relevant laws and regulation of the given country. Pursuant to para. 2 of the same article, in case there is a difference in the minimum AML/CFT requirements defined by the AML/CFT Law of BiH and by the legislation of the host country, the branch office, subsidiary or other organisational unit of the liable person shall apply either the Law of BiH or the laws and regulations of the host country. It shall depend on

	which set of rules ensures the higher AML/CFT standards to the extent possible under the laws and regulations of the given country. Subsequently, the Law requires that all liable persons *shall implement intensified measures of identification and tracking in subsidiaries and other organizational units abroad, particularly in countries which do not apply internationally accepted standards in the area of prevention of ML/TF activities, or which apply the standards to an insufficient extent, as much as allowed by the respective country legislation*. In addition, the secondary legislation is also regulating the matter. Some of the provisions of the secondary legislation are duplicating the Law (Article 2 of the Decisions on Banks, the Decisions on leasing companies and on MCOs of the FBiH and RS; Article 5 of the Guidance for the Insurance sector in RS and Chapter 5 of the Guidance for the insurance sector in FBiH). Similarly to the described above, the AML/CFT Law is giving the main legal basis for this criterion. Article 9, para. 3 of the AML/CFT Law requires that if the regulations of a foreign country do not allow the implementation of AML/CFT measures and activities as defined by AML/CFT Law of BiH, the liable person shall immediately inform the FID accordingly and adopt relevant measures to eliminate the respective risks.
Conclusion	BiH law seems to be in line with Art. 31(3) of the Directive
Recommendations and Comments	No recommendations.

20.	**Supervisory Bodies**
Art. 25 (1) of the Directive	The Directive imposes an obligation on supervisory bodies to inform the 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 in your jurisdiction?
Description and Analysis	In accordance with the new AML/CFT, the FID and the relevant supervisory bodies shall cooperate in supervising, within their individual competencies, the implementation of the provisions of this Law. Moreover, according to the AML Law, if a supervising body discovers a violation of the Law or of the provisions of other laws, which govern the operation of persons under obligation, they shall order the implementation of the appropriate control measures and shall without delay notify in writing the FID about the violations discovered. From an analysis and interpretation of these provisions it is clear that they are only

	imposing a reporting obligation of non-compliance with the Law rather than requiring the supervisory bodies themselves to file an STR.
Conclusion	There are no such requirements in the AML Law or related regulations.
Recommendations and Comments	BiH is recommended to impose an obligation on supervisory bodies to inform the FIU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.

21.	**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 a requirement can be broadly inferred from Recommendations 23 and 26 to 32.
Key elements	Are credit and financial institutions required to have such systems in place and effectively applied?
Description and Analysis	Under Article 56 of the new AML/CFT Law the FID, if it suspects ML/TF activities in connection with a transaction or a person, may demand in written form from an obliged person information listed in Article 54 of the Law, information on property and on bank deposits of such a person as well as all other information, data and documents needed for performing the duties of the FID according to the provisions of this law. In urgent cases the FID may request the information, data and documentation verbally and may inspect the documentation in the premises of the person under obligation, but the FID shall be obliged to submit a written request to the person under obligation the following working day at the latest. The obliged person is required to forward the relevant information, data and documentation to the FID without delay and at the latest within 7 days of receiving the request from the FID. There are however no obligations under the Law for the obliged persons to have in place systems to respond timely and promptly to such requests.
Conclusion	Article 32 of the EU Third AML Directive has not been transposed into the new legislation.
Recommendations and Comments	BiH may wish to assess the implications of such an obligation on the reporting obliged entities.

20.	Extension to other professions and undertakings
Art. 4 of the Directive	The Directive imposes a *mandatory* obligation on Member States to extend its provisions to other professionals and categories of undertakings other than those referred to in A.2(1) of the Directive, which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.
FATF R. 20	Requires countries only to consider such extensions.
Key elements	Has your country implemented the mandatory requirement in Art. 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes? Has a risk assessment been undertaken in this regard?
Description and Analysis	Article 4 of AML/CFT Law has wider scope than FATF Recommendations require but authorities have not provided evaluators any risk assessments.
Conclusion	Art. 4 of the Directive is applied in some extent
Recommendations and Comments	To conduct relevant risk assessment.

21.	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, if at all, does your country address the issue of equivalent third countries?
Description and Analysis	No corresponding requirement
Conclusion	Art. 11, 16(1)(b), 28(4),(5) of the Directive not applied.
Recommendations and Comments	No recommendations/comments

Annex to Compliance with 3rd EU AML/CFT Directive Questionnaire

Article 3 (6) of EU AML/CFT Directive 2005/60/EC (3rd Directive):

(6) "beneficial owner" means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;

(ii) the natural person(s) who otherwise exercises control over the management of a legal entity:

(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:

(i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;

(ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;

(iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;

Article 3 (8) of the EU AML/CFT Directive 2005/60EC (3rd Directive):

(8) "politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons;

Article 2 of Commission Directive 2006/70/EC (Implementation Directive):

Article 2

Politically exposed persons

1. For the purposes of Article 3(8) of Directive 2005/60/EC, "natural persons who are or have been entrusted with prominent public functions" shall include the following:

(a) heads of State, heads of government, ministers and deputy or assistant ministers;

(b) members of parliaments;

(c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;

(d) members of courts of auditors or of the boards of central banks;

(e) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;

(f) members of the administrative, management or supervisory bodies of State-owned enterprises.

None of the categories set out in points (a) to (f) of the first subparagraph shall be understood as covering middle ranking or more junior officials.

The categories set out in points (a) to (e) of the first subparagraph shall, where applicable, include positions at Community and international level.

2. For the purposes of Article 3(8) of Directive 2005/60/EC, "immediate family members" shall include the following:

(a) the spouse;

(b) any partner considered by national law as equivalent to the spouse;

(c) the children and their spouses or partners;

(d) the parents.

3. For the purposes of Article 3(8) of Directive 2005/60/EC, "persons known to be close associates" shall include the following:

(a) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in paragraph 1;

(b) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in paragraph 1.

4. Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph 1 of this Article for a period of at least one year, institutions and persons referred to in Article 2(1) of Directive 2005/60/EC shall not be obliged to consider such a person as politically exposed.

VI. LIST OF ANNEXES

ANNEX I	Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others
ANNEX II	Designated categories of offences based on the FATF Methodology and Convention Offences
ANNEX III	Anti Money Laundering and Terrorist Financing Law
ANNEX IV	Law on the State Investigation and Protection Agency
ANNEX V	Criminal Code of BiH (Extracts)
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ANNEX IX	Criminal Procedure Code of BiH (Extracts)
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ANNEX XIX	Rulebook for Risk Assessment and Enforcement of the Law on Prevention of ML/TF Activities
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ANNEX XXI	Law on MLA Assistance
ANNEX XXII	Law on Banks of RS
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ANNEX XXIV	Law on the Banking Agency of the FBiH
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