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

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Report on Fourth Assessment Visit

Anti-Money Laundering and Combating the Financing of Terrorism

LATVIA

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LIST OF ACRONYMS USED

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
ATTF	Agence de Transfert de Technologie Financière, Luxembourg
AVC	Latvian Administrative Violations Code
BaFIN	Federal Financial Supervisory Authority, Germany
BoL	Bank of Latvia
C	Compliant
CoL	Commercial Law
CDD	Customer Due Diligence
CFT	Combating the financing of terrorism
CPL	Latvian Criminal Procedure Law
CO	Criminal Offence
Dir.	Directive
DNFBP	Designated Non-Financial Businesses and Professions
GDP	Gross Domestic Product
PGO	General Prosecutor Office
EC	European Commission
ECB	European Central Bank
ECDD	Enhanced Customer Due Diligence
EU	European Union
FATF	Financial Action Task Force
FCMC	Financial and Capital Market Commission
FSDC	Financial Sector Development Council
FIU	Financial Intelligence Unit
FI	Financial Institution
FT	Financing of Terrorism
FSRB	FATF Style Regional Bodies
IMF	International Monetary Fund
IT	Information Technology

KNAB	Corruption Prevention and Combating Bureau
LACA	Latvian Association of Certified Auditors
LC	Largely Compliant
LCL	Latvian Criminal Law
LCPL	Latvian Criminal Procedure Law
LEA	Law Enforcement Agency
LGSI	Lotteries and Gambling Supervisory Inspection
LVL	Latvian Lats
MER	Mutual Evaluation Report
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
MLA	Mutual Legal Assistance
ML	Money Laundering
ML/FT	Money Laundering and Financing of Terrorism
MLRO	Money Laundering Reporting Office
MoT	Ministry of Transport
MOU	Memorandum of Understanding
N/A	Non applicable
NATO	North Atlantic Treaty Organisation
NC	Non compliant
PC	Partially compliant
PEP	Politically Exposed Persons
R	Recommendation
Res	Resolution
SR	Special Recommendation
SRO	Self-Regulatory Organisation
STRs	Suspicious transaction reports
TF	TF
TF Convention	UN International Convention for the Suppression of the Financing of Terrorism
TFEU	Treaty on the Functioning of the European Union

UN	United Nations
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
UTR	Unusual Transaction Report
VAT	Value Added Tax

I. PREFACE

1. This is the tenth report in MONEYVAL's fourth round of mutual evaluations, following up the recommendations made in the third round. The evaluation of the anti-money laundering and combating the financing of terrorism regime of Latvia was based on the FATF Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF)[1] and was prepared using the AML/CFT Methodology 2004[2]. 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 2003 FATF Recommendations and Special Recommendations 2001 (i.e. Recommendations 1, 3, 4, 5, 10, 13, 17, 23, 26, 29, 30, 31, 35, 36 and 40, and SR.I, SR.II, SR.III, SR.IV and SR.V), 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 Latvia, and information obtained by the evaluation team during its on-site visit to Latvia from 9 to 13 May 2011, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of relevant government agencies and the private sector in Latvia. 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 composed of members of the MONEYVAL Secretariat and MONEYVAL and FATF experts in criminal law, law enforcement and regulatory issues and comprised: Mr. Anar Salmanov, Deputy Director, Financial Monitoring Service, under the Central Bank of the Republic of Azerbaijan who participated as legal evaluator, Ms Elena Georgescu, Head of Division - Supervision Department, National Bank of Romania and Mr Christopher Burdick, Office Terrorist Financing and Financial Crime, U.S. Department of the Treasury who participated as financial evaluators, Mr Simon Golub, Head of Financial Crime and Money Laundering Section, Ministry of Interior, Police, General police directorate, Criminal Police Directorate, Slovenia who participated as a law enforcement evaluator, and Mr. Sener Dalyan and Ms. Irina Talianu, 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 (DNFBP), 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 3rd round reports; it is split into the following sections:

[1] This report is not based on the revised FATF Recommendations, which were issued in February 2012.

[2] As updated in February 2009.

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
8. Annex (implementation of EU standards).
9. 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 20th Plenary meeting – 12-15 September 2006), which is published on MONEYVAL's website[3]. The 2003 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, therefore 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 (2003) FATF Recommendations that are being reassessed in this report and the effectiveness of their 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 2011 or shortly thereafter.

[3] 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 Latvia at the time of the 4th on-site visit (9 to 13 May 2011) and immediately thereafter. It describes and analyses these measures offering 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 Recommendations in the fatf Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 have been re-assessed, as well as all those for which Latvia received non-compliant (NC) or partially compliant (PC) ratings in its 3rd round report. This report is not, therefore, a full assessment against the FATF Forty Recommendations 2003 and the 9 Special Recommendations on Terrorist Financing 2001 but is intended to update readers on major issues in the Latvian AML/CFT system.

2. Key findings

2. Latvia established an inter-agency working group to draft a national AML/CFT risk assessment in 2010 but at the time of the on-site visit the national AML/CFT risk assessment was not completed[4]. The authorities consider that the money laundering and financing of terrorism risk has not changed considerably since the last evaluation report. Nonetheless, the authorities identified the following money laundering (ML) threats to the Latvian economy: tax evasion involving organised criminal groups, money laundering through the real estate sector, grey economy, phishing schemes and fraud involving complex legal arrangements. The authorities consider the terrorist financing (TF) risk to be low.

3. Latvia has a comprehensive legal structure and has taken significant legislative steps to remedy many of the deficiencies identified in the third evaluation round, particularly on the preventive side. In particular, Latvia enacted a new Law on the Prevention of Laundering the Proceeds from Criminal Activity (Money Laundering) and of Terrorist Financing (AML/CFT Law) on 13 August 2008. The last amendment to the AML law, which entered into force on the 31st of March 2011, brought the material elements of the ML offence more into line with the Palermo and Vienna Conventions.

4. The TF offence is incriminated in the Criminal Law, but does not fully encompass all TF Convention and Special Recommendation (SR) II requirements. The evaluators noted that the Criminal Law does not specifically cover all acts which constitute an offence within the scope of, and as defined in, some of the treaties listed in the Annex to the TF Convention. The limitation arises from the fact that a part of the offences need to have an additional mental element in order to qualify as *"acts of terror"*.

5. The amendments made to the Criminal Procedural Law (CPL) since 2006 have improved the legislative framework for confiscation, particularly by subjecting indirect proceeds of crime to confiscation. The Latvian legal system has two confiscation concepts, which are the penalty confiscation and the confiscation of criminally obtained property. The Latvian legal framework provides for provisional measures and confiscation with regard to property laundered, proceedings from and instrumentalities used in and intended for use in ML and TF or other predicate offences.

[4] The results of the national risk assessment were planned to be published in September 2011 after the on-site visit concluded.

6. Latvia has implemented the UN Security Council Resolutions (UNSCRs) 1267 and 1373 by means of EU Council Regulations and Common Positions, as well as under the AML/CFT Law and other national legislation. The implementation of SR.III relies upon the application of binding EU legislation; however, the overall co-ordination on dissemination of the lists is unclear. While on the financial side the persons subject to the AML/CFT Law seemed to be sufficiently aware of the obligations related to SR III, there is a lack of appropriate coordination on the dissemination of the lists which stem from the UNSCR and EC Regulations in respect of some designated non-financial businesses and professions (DNFBP) sectors (real estate agents, car dealers, auditors and lawyers).

7. The Latvian AML Law establishes the Financial Intelligence Unit (FIU) referred to as the "*Office for Prevention of Laundering of Proceeds derived from Criminal Activity"*, within the Prosecutor's Office system. The Latvian FIU is entitled to disseminate its reports either to the pre-investigation institutions or directly to the Prosecutor's Office. This is considered to be a welcome improvement from the position in the third round evaluation report. The Latvian FIU's disseminations to the competent Law enforcement agencies (LEA) are mainly related to criminal offences of tax evasion and misuse of bank accounts (mainly abroad). Guidelines provided to the reporting entities are generic and not sector-specific to the financial institutions (FIs) and DNFBP.

8. Overall progress has been made to strengthen the preventive AML/CFT system. The AML/CFT Law has expanded the scope of persons subject to the AML/CFT Law (obligors), established enhanced customer due diligence measures, increased the number of supervisory authorities and their role in preventing money laundering and terrorism financing, and introduced a risk-based approach to customer due diligence (CDD). Since the last Mutual Evaluation Report (MER), the Latvian authorities have established the concept of Enhanced CDD through both law and regulation - where Latvia has applied it to PEPs, Correspondent banking, and non face-to-face business. In particular, the Financial and Capital Market Commission (FCMC) issued the Regulation for Enhanced Due Diligence that is binding on its obligors. The financial sector appears to be aware of the prohibition on the use of anonymous accounts; however fictitious accounts and numbered accounts are not expressly prohibited by law. With respect to politically exposed persons (PEPs), Latvia has adopted a restrictive legal approach, therefore not covering all categories of persons in the FATF definition.

9. The Latvian AML/CFT Law establishes an obligation for all covered entities to report to the FIU without delay any unusual or suspicious transaction for ML and TF.

10. Since the 3rd round report Latvia has improved the supervisory regime, transposing into the new AML/CFT law both the provisions of the third European Union (EU) AML/CFT Directive (2005/60/EC) and its Implementing Directive (2006/70/EC). Under the new AML/CFT legal framework, almost all FIs have a designated supervisory authority. However, the evaluation team found a lack of a dedicated supervisor for the following categories: persons providing money collecting services, reinsurance services, and micro-credit lending services provided by non-banks.

11. The AML/CFT supervision of the financial sector is divided between the FCMC, the Bank of Latvia (BoL) and the Ministry of Transport (MoT). However, according to the AML/CFT Law, only the FCMC is permitted to issue regulatory provisions for the supervision and control of AML/CFT regime. This raises questions with regard to the regulation and supervision of both sectors.

12. The FCMC is the only supervisory entity that can issue financial sanctions, according to the AML/CFT Law. The BoL, on the other hand, can suspend licenses for a limited period of time or withdraw the license. This power has been exercised in practice for failure to comply with AML/CFT regulations. The MoT's sanctioning powers are unclear.

13. With regard to DNFBP, Latvia has also designated the Ministry of Finance's State Revenue Service as a supervisory body for most DNFBP. During the on-site visit, the team noted that there was a lack of effective systems for monitoring and ensuring compliance with CDD requirements

across most of the DNFBP sectors, as well as indications of gaps in CDD practices among DNFBP.

14. As set out in the 3rd round mutual evaluation report (MER), Latvia is a party to a number of international agreements, such as the 1959 European Convention on Mutual Legal Assistance (MLA) in Criminal Matters and its Additional Protocols, and the 1990 Strasbourg Convention and 2005 Warsaw Convention. It is a party to several bilateral mutual legal assistance agreements. MLA is provided on the basis of international, bilateral, or multilateral agreements, where available. Where there is no agreement on MLA, the CPL states that MLA is provided on the basis of reciprocity.

3. Legal Systems and Related Institutional Measures

15. The new AML/CFT Law and the amendments to the CPL have improved the legislative framework. With reference to predicate offences, the AML/CFT Law explicitly provides that a person may be convicted of a ML offence even in the absence of a judicial finding of guilt in respect of the predicate offense. However, with regard to the practical application of the legal provisions, the evaluators received various opinions from the practitioners. Judicial practice seems to prefer a higher level of proof for the underlying predicate offence, which has made it difficult, if not impossible, to successfully prosecute an autonomous ML offence.

16. Under the Latvian AML/CFT Law, proceeds shall be considered as derived from criminal activity where a person, directly or indirectly, acquires ownership or possession of them as a result of a criminal offence, and in other cases specified by the CPL. In addition, the proceeds from criminal activity shall also mean the funds that belong to a person or that are, directly or indirectly, controlled by a person who is suspected to be part of terrorist groups or activities.

17. The report reveals that apart from self-laundering, third party laundering and autonomous laundering offences are being investigated and prosecuted in practice. However, on the basis of the evidence and data made available during the on-site visit, some doubts remain in relation to the effective implementation, as the evaluation team found that demanding levels of proof may have impacted the effective prosecution of the predicate offences.

18. The evaluation team welcomes the amendment made to the Latvian Criminal Law (LCL) where the TF offence is qualified as an especially serious crime. The offences considered as "*terrorism*" are provided by the LCL, but the evaluators noted that the list does not cover all acts which constitute an offence within the scope of, and as defined in, some of the treaties listed in the Annex to the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention), eg. the acts set out in the 'Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents'. Therefore a limitation arises from the fact that the remaining unlisted offences need an additional mental element in order to qualify as *"acts of terror"*. With regard to effectiveness, there has not been any investigation, prosecution or conviction for TF offences in Latvia, though there are no statistics on the matter.

19. Latvia's provisional measures and confiscation regime is generally comprehensive. The amendments made to the CPL have improved the legislative framework for confiscation particularly by subjecting indirect proceeds of crime to confiscation. The Latvian legal system has two confiscation concepts that are the penalty confiscation and the confiscation of criminally obtained property. The proceeds are to be recognised as derived from criminal activity by a court adjudication that has entered into effect, or by a decision of a public prosecutor regarding the termination of criminal proceedings. The evaluators were advised by the practitioners that the focus in practice is on seizing of the whole property of suspects during investigations. However, the effectiveness of the system is questionable due to confusing statistics on confiscations and provisional measures. An overall lack of coordination on the gathering of statistics on amounts frozen, seized and confiscated is noticeable. Furthermore, the authorities were unable to

demonstrate whether the provisions related to third party confiscation, value confiscation and confiscation of indirect proceeds of crime have been applied effectively.

20. As a member of the EU, Latvia implements its obligations to freeze funds and assets of terrorists on the basis of EC Regulations and complementary domestic legislation. UNSCRs 1267 and successor resolutions are implemented by EU Council Regulation No. 881/2002, whereas, the most important part of UNSCR 1373 is implemented by EU Council Regulation No. 2580/2001. The evaluation team noted that the overall dissemination of the new lists to the FIs subject to the AML/CFT Law is satisfactory and effective. The freezing system in place for listed persons in Latvia relies on a reporting mechanism to the FIU and the transactions performed by such persons are to be considered by the subject persons as "*unusual transaction*" and thus, a matter of automatic reporting. However, the evaluators have concerns about the effectiveness of the procedures in place to freeze assets of designated persons. While the FIU permits freezing up to 9 months, the system relies on a judicial-based mechanism, which has not yet been tested in practice, to ensure freezing of assets until the person is de-listed. There is no specific national legislation to meet the requirements in relation to access of frozen funds for expenses and other purposes. There is no national mechanism in place to consider freezing requests under UNSCR 1373 or by third countries that are outside the EU and NATO.

21. The Latvian FIU is a specially established public institution that, pursuant to the AML/CFT Law, exercises control of unusual and suspicious transactions reports. The FIU obtains, receives, makes records, processes, compiles, stores, analyses these reports and provides to a pre-trial investigation institution, the Office of the Prosecutor or the Court, information that may be used for the prevention, uncovering, pre-trial criminal proceedings or adjudication of money laundering, terrorist financing or an attempt or other criminal offence related thereto. The Prosecutor General establishes the structure and draws the list of positions within the FIU in accordance with the allocated state budget resources. Cabinet of Ministers' Regulation 1071 establishes the unusual transaction indicators list and the procedure for reporting unusual and suspicious transactions. This Regulation partially covers the standards set by FATF for guidance on suspicious transactions reporting.

22. During the on-site visit the Latvian authorities indicated that in practice the FIU has access to all databases managed by the State or Municipality authority, but those databases are not integrated and thus, no automatic search can be performed in the course of the analytical work. In general, the cooperation between FIU and LEA appears to be good. Information flows go upon request both ways: from FIU to LEA and vice-versa.

4. Preventive Measures – financial institutions

23. An important development since the last mutual evaluation report is that the amended AML/CFT Law has expanded the number of supervisory authorities and introduced the concept of the risk-based approach. The amended AML/CFT Law now includes, *inter alia*, a comprehensive framework for defining and applying CDD, including enhanced CDD procedures and record keeping requirements. It additionally sets out provisions catering for simplified and enhanced CDD measures and provisions for exemptions from certain CDD measures, where financial activity is conducted (amongst others) on an occasional or very limited basis. The FCMC has adopted the Regulation for Enhanced Customer Due Diligence (ECDD) that is binding upon all entities supervised by the FCMC. However, this regulation does not cover all FIs only those supervised by the FCMC.

24. The Latvian authorities have promulgated a risk-based approach based on four categories of risk, that firms should consider when determining the risk of their client base and when setting their own internal control procedures. These four categories of risk are: country risk; risk associated with the legal form of the customer; risk associated with the economic or personal activity of the customer; and risk associated with the products or services used by the customer. This concept is

articulated in the AML/CFT Law and repeated in the FCMC Regulation on ECDD and throughout various Government regulations and guidance.

25. Under the new AML/CFT legal framework, almost all obligors have a designated supervisory authority. The AML/CFT Law defines persons providing money collecting services as an obligor; however, this category does not have a dedicated supervisory and control authority under the aforementioned Law. While there are no reinsurance activities within Latvia, and the AML/CFT Law does not include reinsurance as an obliged entity, the Reinsurance Law does provide some AML/CFT controls, including a requirement for firms to maintain internal AML/CFT procedures in order to obtain a license. Lastly, there are micro-credit lending services available through both banks and non-banks. While this financial service, when provided through a bank, would be subject to FCMC supervision, the other micro-lending services would not be covered by any designated supervisory authority.

26. The evaluators were concerned at the high level of accounts closed shortly after being opened due to failure to complete full CDD on the account holder. Interviewed representatives of the financial sector revealed that while they are required under Art. 43, part 2 to submit an STR when they close an account due to failure to complete CDD, they do not always do so. The Latvian authorities confirm that there have been cases where banks have been sanctioned for not reporting in such cases.

27. With respect to PEPs, Latvia has adopted a restrictive legal definition. The AML/CFT Law's definition is limited to a defined list, and as such, it does not allow for additional interpretation. Given the list-based approach, there is inadequate coverage of all of the FATF defined categories of PEPs.

28. The AML/CFT Law requires credit institutions to undertake various enhanced CDD measures before initiating a correspondent banking relationship with a credit institution or with an investment brokerage firm, including gathering information on the respondent institution to fully understand the nature of its business and determining from publicly available sources its reputation and the quality of supervision. Although the law does not explicitly say that a FI should assess whether a respondent institution's AML/CFT policy is adequate and effective, both regulators and FIs explained during the on-site visit that they do conduct a thorough analysis before beginning their relationship.

29. The implementation of AML/CFT preventative measures for new or developing technologies and non-face to face business in Latvia had improved since the last report. The AML/CFT Law requires reporting entities to regularly assess the efficiency of their internal control system to examine risks which may arise from the development of new technologies and when necessary, to take measures to improve the efficiency of the internal control system.

30. With respect to third party introduced business, the AML/CFT Law establishes that obligors are entitled to recognise and accept the results of customer identification and CDD performed by credit institutions and FIs, other than (capital) companies that buy and sell foreign currency and payment institutions, in a member state and a third country provided that the requirements in respect of prevention money laundering and of terrorist financing, as enforced in these countries, are equivalent to those of the AML/CFT Law. However, the assessors are of the opinion that the effectiveness of the legal provisions is diminished by the need for the customer's agreement to pass the information and copies of documents obtained as a result of the customer identification and CDD, which could delay the process or even cancel it.

31. With reference to financial institution (FI) secrecy laws, no major changes have been made to the legislation in relation to access to information at FIs since the 3rd round MER. During the on-site visit the evaluation team did not detect any problems in relation to the effectiveness and efficiency of the procedures.

32. The record keeping obligations are regulated by the AML/CFT law and by the FCMC Regulations on Enhanced CDD. The Latvian authorities consider that the records kept by FIs are sufficient for

reconstruction of a transaction. Examination of the client accounts during the on-site examinations in banks has proved that the chain of transactions can be reconstructed. In the on-site interviews, law enforcement and prosecutors did not indicate any difficulty in getting necessary information when requested, and that full documentation is available when requested. However, the Latvian legal regime restricts the maximum time of keeping records to a period to 6 years, whereas the FATF standard requires at least five years or longer (without imposing an upper limit).

33. Regarding wire transfer rules, Latvia implements, as other EU countries, EU Regulation (EC) No 1781/2006 covering requirements for information accompanying transfers of funds without any additional implementation requirements. National implementation is therefore limited to establishing an appropriate monitoring, enforcement and penalties regime.

34. The FCMC addressed the issue of countries which do not or insufficiently apply FATF Recommendations, by adopting the Regulation for Enhanced Customer Due Diligence. This is binding upon all entities supervised by the FCMC. However, the Regulation on ECDD does not cover all FIs, but only those supervised by the FCMC. During the on-site visit, the evaluation team noted delays in updating references from the list which might negatively impact on effectiveness.

35. The new AML/CFT Law establishes the duty to report any unusual or suspicious transactions without delay. Regulation 1071 provides a comprehensive and sector specific list of indicators for unusual transactions which is binding upon all persons subject to the AML/CFT Law. Regulation 1071 provides for quantitative thresholds and all transactions meeting those criteria are subject to reporting on a compulsory basis regardless of any suspicious character of the transaction.

36. According to the AML/CFT Law a suspicious transaction is defined as a transaction that gives rise to a suspicion of laundering of proceeds from criminal activity (money laundering) or of terrorist financing or an attempt thereof, or of any other criminal offence related thereto.

37. The FIU promulgated a suspicious indicators list in the FIU Instruction of 19 January 2009 entitled "*On completion of the Paper Form of Unusual or Suspicious transaction reports*". Obligors can submit reports electronically or via paper copy forms, which are different. In addition, the evaluation team found that the distinction between unusual and suspicious transaction reports was very difficult to discern. Furthermore, a list of Indicators document relating to suspicious financial transactions, which also contains codes for each ground of suspicion, was issued by the FIU and is up-dated whenever necessary. Overall the evaluators considered that the various documents were confusing and should be consolidated. The number of reports received annually by the FIU appears to be high, but the Latvian authorities do not keep statistics on the total number of STRs and UTRs but only on the transactions reported.

38. The obligation to send reports on terrorist financing to the FIU is provided for in the Latvian legislation in the AML/CFT Law and the Cabinet of Ministers' Regulation 1071. The terrorism related reports are mentioned both under the STR and Unusual transactions reports (UTR) requirements. The distinction between the two instances appears to be related to the terrorist lists: the persons identified on various terrorist lists as described under SR III are to be considered as unusual transactions, and otherwise as suspicious. As a result of the terrorist financing offense's deficiency, the reporting obligation does not cover funds suspected to be linked or related to or to be used for terrorism, terrorist acts or by terrorist organisations.

39. With regard to foreign branches and subsidiaries, the AML/CFT Law requires obligors to ensure that its structural units, branches, representative offices and subsidiaries comply with a strict set of AML/CFT requirements, namely customer identification, due diligence and record keeping. There is no requirement to apply the higher standard where AML/CFT provisions differ between Latvia and the country of residence of the branch/subsidiary.

40. The sectoral legislative acts (Law on Credit Institutions, Law on the Financial Instruments Market, Law on the Investment Management Companies, Law on Payment Services and

Electronic Money) regulating the licensing procedure of the credit and FIs in Latvia establish the necessary 'fit and proper' requirements to prevent criminals and their associates from being involved in owning, controlling or managing financial institutions.

41. The sanctioning regime related to FIs in Latvia in cases of non-compliance with AML/CFT legal framework consists of criminal sanctions, administrative sanctions, as well as fines and other penalties applied to legal persons, according to the sector specific Laws.

42. FIs subject to the Core Principles are subject to licensing and on-going supervision of the FCMC. Their supervisory duties extend to AML/CFT matters. The Law on Credit Institutions contains the regulatory and supervisory measures that apply for prudential purposes and which are also relevant to ML.

43. The statutory powers on sanctions differ among supervisory authorities, as do the types of sanction that may be applied to the regulated entities. While the FCMC enjoys full sanctioning powers, the BoL cannot apply financial sanctions and the MoT only has the right to issue warning notices. Given this the full effectiveness of the sanctioning regime is questionable, and the FCMC has not imposed any sanctions on directors and management of FIs under its supervision.

44. Steps have been taken by the Latvian authorities to provide guidelines to the FIs to assist them in complying with AML/CFT requirements. The FIs are generally aware of their duties in relation to the AML/CFT Law. However, little guidance has been provided in relation to suspicion indicators both for ML/ and TF cases.

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

45. With the amendments to the AML/CFT Law, the Latvian authorities have covered all the categories of DNFBP to include both independent accountants and independent lawyers. The AML/CFT reporting obligations regarding FIs in Latvia apply equally to the DNFBP obligors.

46. According to the AML/CFT Law, the Lotteries and Gambling Supervisory Inspection is the supervisory authority in respect of the organisers of lotteries and gambling for AML/CFT purposes and they have been established in this regard. Based on discussions held on-site with the supervised entities and also with the supervisory authority they have the power to impose sanctions and they have exercised these statutory prerogatives.

47. The State Revenue Service (SRS) is the supervisory and control authority for most of the DNFBP, including among others: tax advisors (certified), external accountants, dealers in precious metals and stones, auto dealers, real estate dealers. During the on-site interviews it was indicated by SRS officials that most supervisory activities conducted by the SRS are carried out off-site. However, the SRS has also developed recommendations to perform thematic on-site checks to assess that their obliged entities are meeting the obligations of the AML/CFT Law.

48. In respect of AML/CFT compliance, there are three self-regulatory Organisations governing their respective professions: the Latvian Council of Sworn Advocates; the Latvian Council of Sworn Notaries; and the Latvian Association of Certified Auditors. Latvia has also provided coverage for transactions with movable and immovable values included in the list of state protected cultural heritage monuments through the State Inspection for Heritage Protection.

49. However, the supervision provided for some of the DNFBP still appears weak in a number of respects and the evaluators noted that the AML/CFT awareness among the self-regulatory organisations is uneven. The Association of Certified Auditors and the Council of Sworn Notaries appear to have a relatively adequate level of understanding of their AML/CFT supervisory functions, whereas the advocates do not appear to be fully sensitive to their role as a supervisory authority for their members.

50. The SRS is largely concentrated on its functions of tax collection. The SRS indicated that the main instrument for performing supervisory duties on AML/CFT issues is offsite assessment and

monitoring, but no internal procedures appear to exist to support this process. The SRS has issued general guidance but its dissemination among the supervised entities is inadequate.

6. Legal Persons and Arrangements & Non-Profit Organisations

51. The evaluation team welcomes the significant improvements made by the Latvian authorities since the last evaluation report in respect of R 33. The electronic collection of data on commercial companies has substantially improved the transparency of the Commercial Registry and the access to data concerning legal persons.

52. The definition of "*beneficial owner*" as prescribed by the FATF Recommendations was introduced into the AML/CFT Law in 2008, and it provides an explicit requirement for FIs and DNFBP to identify the beneficial owners of the legal persons.

53. Nevertheless, the statutory administrative sanctions for not providing full information to the Registry are low. In the evaluators' view, this may have an adverse effect on the reliability and/or accuracy of the information maintained by the Commercial Registry.

54. With regard to the regulation of bearer shares, the Commercial Law provides that bearer shares may be issued only in dematerialized form, i.e. prohibiting the issuance in paper form. Furthermore, the Commercial Code requires that all bearer shares be registered in the Latvian Central Depositary.

7. National and International Co-operation

55. The authorities have a variety of mechanisms in place to facilitate internal co-operation and policy development. The evaluators welcomed the work of the Financial Sector Development Council chaired by the Prime Minister and the establishment of the working group for the national AML/CFT risk assessment. Furthermore, the FIU contributes to the training of other domestic authorities and law enforcement authorities, as well as the private sector.

56. The FIU's cooperation and exchange of information at an international level is generally well regarded.

8. Resources and statistics

57. There is a need for specialised continuous training for police officers in AML/CFT matters in economic and financial analysis. More specialised investigators and equipment are needed for the law enforcement authorities (especially the financial police).

58. The FIU is well structured and professional. All working places are appropriately equipped with hardware for users to fulfil their functions according the requirements of the AML/CFT Law. Despite the recommendations of the 3rd round mutual evaluation report, the number of employees has not increased. The FIU's IT and other analytical tools could be improved to increase the FIU's effectiveness in light of the significant number of reports and transactions which are still manually analysed by a limited number of employees.

59. The statistics kept by the Latvian authorities are not always comprehensive and do not contain all the necessary data for an accurate analysis of effectiveness. No reliable statistics are maintained with respect to the total number of STRs and UTRs received, as the authorities only track the total number of transactions and not the total number of reports. This makes it difficult to analyse the effectiveness of the reporting system and of the FIU's analytical work, especially with regard to disseminated cases to the LEAs. The evaluation team recommends that the statistics system could be improved by tracking the number of STRs and UTRs.

60. In general, the statistics maintained by the Latvian authorities is an area which needs improvement.

III. MUTUAL EVALUATION REPORT

1. GENERAL

1.1. General Information on Latvia

1. Latvia covers an area of approximately 64,559 Km^2 and is divided into four historical districts: Kurzeme, Zemgale, Vidzeme and Latgale. Latvia has a maritime border with the Baltic Sea (west) and land borders with Estonia (north), Russia (east), Belarus (south-east) and Lithuania (south). The capital city is Riga.
2. Its population is approximately 2,240,000 (June 2010), out of which 1,519,000 live in urban areas and approximately 704,000 in Riga.
3. As noted in the 3rd round Mutual Evaluation Report, Latvia acceded to the European Union in 2004 and the Lat is the official currency of the Country. It is a parliamentary republic, with a single chamber (Saeima). The President is the Head of State and the Prime Minister is the Head of Government.
4. Since 2007 Latvia has gone from high growth to rapid recession. From 2004 until 2007, Latvia achieved for several years the highest GDP growth in the EU 27 (European Union - 27 countries)[5], topping 11% in 2006. In 2007 It still was the second country in EU 27 in GDP growth, after Slovakia, but the global financial crisis hit Latvia in 2008, decreasing the GDP by 21.4%, in 2008-2009. The first half of 2009 was the most critical period, with economic activities decreasing very rapidly and increasing unemployment.
5. In the second half of 2009 the economic downturn continued more slowly than in the previous half and with a slight increase of exports and in manufacturing output.
6. Since 2010, the economic recession in Latvia has stopped and growth has resumed, due to the increase in export volumes and growth of tradable sectors, thus partially offsetting the still weak domestic demand and development of domestic market-oriented services sectors.
7. The Latvian Ministry of Economics has provided the following updated key indicators of economic development:

Table 1: Latvian economic development indicators

	2007	2008	2009	2010e	2011f
GDP growth (%, in current prices)	10,0	-4,2	-18,0	0,0	3,5
Consumer prices (%, in current prices)	10,1	15,4	3,5	-1,1	3,5
General government budget balance (% of GDP)	-0,3	-4,1	-10,2	-8,5	-5,4
General government debt (% of GDP)	9,0	19,7	36,7	42,0	46,0
Exports-imports balance (% of GDP)	-20,2	-13,6	-1,5	-1,6	-1,9
Unemployment rate[6]	6,0	7,5	16,9	19,0	17,0

e – estimation, f - forecast of Ministry of Economics

[5] Eurostat charts – Real GDP growth rate.

[6] Unemployment rate*: % of unemployed in economically active population aged 15-74 years.*

1.2. General Situation of Money Laundering and Financing of Terrorism

8. Latvia's geographical location, with its ports on the Baltic Sea and the land borders with other Baltic States, makes it a major transit point. The current risks and vulnerabilities in relation to ML and FT that are faced in Latvia are considered to be connected with the "shadow economy" and phishing schemes abroad. ML in Latvia is related mainly to illegal proceeds generated by:

   - Evasion of taxes (VAT), which has been identified as a domestic predicate crime. Illegal proceeds are laundered in Latvia or in other countries (for example in Estonia or Lithuania) mostly by creating large schemes of transactions executed by a number of legal persons.
   - Fraud, identified as phishing schemes related to internet crimes in Germany and some other countries.

9. The Latvian authorities provided the evaluators with the number of reported offences causing damage and estimated amounts of economic loss resulting from major proceeds generating offences, as shown in the table below:

Table 2: Number of criminal offences and estimated economic loss

	2005	2006	2007	2008	2009	2010
CRIMINAL OFFENCES AGAINST PROPERTY						
Theft	27.327	23.296	19.509	23.634	26.928	25.659
Burglary	-	-	-	-	-	-
Fraud	1.524	848	1.118	1.730	1.450	1.521
Robbery	2.346	2.248	1.454	1.441	1.509	1.072
Theft of vehicles	2.225	2.168	1.804	1.868	1.801	1.251
Concealment	7	9	4	3	26	16
Other CO against property	-	-	-	-	-	-
CRIMINAL OFFENCES OF ECONOMIC NATURE						
Business fraud						
Fraud	1.524	848	1.118	1.730	1.450	1.521
Issuing of an uncovered cheque, misuse of a credit card	461	650	475	395	426	390
Tax evasion	109	410	292	330	224	115
Forgery	1.014	1.130	1.022	1.013	823	720
Abuse of authority or rights	-	2	1	2	1	2
Embezzlement	975	689	711	712	884	1.101
Usury	-	-	-	-	-	1
Abuse of insider information	9	-	6	2	2	2
Abuse of financial instruments market	-	-	-	-	-	-
Unauthorised use of another's mark or model	6	13	6	8	5	12
Other CO of economic nature	36	525	334	349	325	323
OTHER CRIMINAL OFFENCES						
Production and trafficking with drugs	1.049	997	1.434	2.512	2.307	2.189
Illegal migration	2	33	28	18	23	8
Production and trafficking with arms	303	255	227	270	282	238
Falsification of money	341	619	508	378	441	385
Corruption (SRS, FPD)	1	4	9	8	9	5
Smuggling	79	68	76	114	227	329
Murder, grievous bodily harm	463	379	358	387	297	263
Prohibited crossing of State border or territory	2	7	7	3	1	1
Trafficking in human beings	4	23	22	22	32	32
Violation of material copyright	5	6	13	12	18	16
Kidnapping, false imprisonment	2	8	6	3	12	8
Burdening and destruction of environment	2	4	2	1	2	2

Unlawful acquisition or use of radioactive or other dangerous substances	-	1	-	-	1	1
Pollution of drinking water	-	-	-	-	-	-
Tainting of foodstuffs or fodder	2	4	1	3	3	5
Other Criminal Offences (Not Included Above) against life and limb, human rights, honour, sexual integrity, public health, etc.						
Crimes against humanity and peace, war crimes and genocide	10	14	18	10	12	12
Crimes against the State	12	28	19	18	23	19
Criminal offences against bodily integrity of persons	1.989	5.498	4.166	3.586	3.228	3.223
Criminal offences against fundamental rights and freedoms of a person	193	247	251	236	199	181
Criminal offences against personal liberty, honour and dignity	38	66	66	57	83	38
Criminal offences against morals, and sexual inviolability	765	385	435	509	390	322
Criminal offences against the family and minors	597	627	500	410	240	279
Criminal offences against general safety and public order	3.190	3.135	2.891	3.876	3.530	3.290
Criminal offences against traffic safety	3.627	5.520	5.072	4.530	3.264	2.300
Criminal offences against administrative order	1.533	1.851	1.364	1.252	1.144	1.070
Criminal offences against administration of justice	1.560	1.425	791	961	819	697
Criminal offences committed in state authority service	167	285	282	448	131	155
Criminal offences committed in military service	77	95	17	19	12	9
TOTAL CRIMINAL OFFENCES	**51.435**	**62.328**	**55.620**	**57.475**	**56.748**	**51.108**
Approximate economic loss or damage of all crimes (Euro, MM)	**107,5**	**28,6**	**24,8**	**20,6**	**15**	**24,67**
KNAB: corruption (number of cases sent for criminal)	24	41	18	16	16	15

10. Latvia has an "*all crimes approach*", which implies that every criminal offence, including terrorist financing, can be a predicate offence for ML.

11. With respect to the reporting of suspicious transactions, the situation has changed since the last evaluation. Overall, the number of STRs increased until 2008. However, during 2009 and 2010 the figures decreased by 30% and the lowest figure was in 2010, with 16,407 reports.

12. The FIU has received substantial numbers of unusual (and some suspicious) transactions reports, mainly from the banks.

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

Financial sector

13. Since the last mutual evaluation assessment, Latvia's financial sector growth has continued, albeit with a weakening during the recent financial crisis. At the time of the on-site visit the Latvian financial/credit sector included 21 Latvian banks, with 4 EU bank subsidiaries, and 8 foreign bank branches. The banking sector represents 93.1% of total assets in the financial sector. Out of all Latvian banks, 3 are state-controlled banks with more than 75% capital: Citadele (75%), Parex (85%), and Mortgage & Land Bank (100%). The U.S. Department of the Treasury identified two small Latvian banks under the USA Patriot Act in 2005 as 'primary money laundering concerns' in a proposed rulemaking, which was noted in the third round mutual evaluation report. For one bank, the proposed rule was withdrawn in 2006. In the case of the other bank, the Latvian authorities closed the bank in May 2009, and the U.S. Department of the Treasury withdrew the rule in 2011.

Table 3: Ownership structure of the commercial banks

Ownership structure of commercial banks			
	Dec 08	**Dec 09**	**Dec 10**
Foreign ownership more than 50%	11	12	11
Foreign ownership less than 50%	4	4	5
Resident Shareholders 100%	6	5	5
Foreign Branches	6	6	8
Total number of banks	27	27	29

14. During the third round mutual evaluation, the assessment team noted that non-resident deposits represented a disproportionate share in smaller banks. The assessment team confirmed that the situation was largely the same at the time of the fourth on-site visit.

15. The insurance sector includes 13 insurance companies and 11 foreign insurance company branches with 102 insurance brokerage companies. There are no reinsurance companies operating in Latvia. According to the previous mutual evaluation report, several companies provided reinsurance service to non-resident companies. These firms are not licensed or supervised in any form.

16. The investment sector continues to play a small role. It includes 16 investment management companies and 7 investment brokerage companies offering 37 investment funds, 7 private pension companies offering 21 pension plans, as well as 27 state pension scheme investment plans.

17. 34 credit unions operate in Latvia, 23 payment institutions, 1 stock exchange, and the Latvian Central Depository.

18. All of these institutions are under the supervision of the Latvian Financial & Capital Markets Commission.

19. According to the BoL's statistics, there are 69 companies operating in the currency exchange sector. Foreign ownership is small with four Estonian and one British company.

20. There are also money value transfer businesses that are offered by the Latvian Post and financial institutions. The Ministry of Transport monitors the operations of the Latvian Post while MVTs offered through banks are supervised by the FCMC.

21. Shortly before the on-site visit 25 e-money institutions had been registered by the Bank of Latvia and subject to the Credit Institutions Law until April 30, 2011. On the same day amendments to the Payment Institutions and E-Money Law came into force and the e-money institutions became subject to FCMC oversight. Consequently the status of these entities changed from credit institutions to financial institutions. Since 2008, based on the Credit Institutions Law, these entities were subject to Bank of Latvia supervision. At the time of the on-site visit, the new amendments had entered into force, with the beginning of the FCMC's supervision over these entities. According to law enforcement, unlicensed/unregistered e-money institutions continue to offer a lucrative money laundering means. As these services are typically registered in third countries, they usually fall outside the Latvian authorities' supervision.

22. The fourth on-site visit confirmed that non-resident deposits continue to play a significant role in the Latvian financial sector. Until May 2011, non-resident deposits were 4.3 Mln LVL out of 10.8 Mln LVL total deposits. This accounts for approximately 40% of all deposits. In the last two years, non-resident deposits have risen by 26% in 2011 and 27% in 2010.

Table 4: Non-resident deposits bank groups

June 30, 2011	Percentage of non-resident deposits in the bank group deposit base	Percentage of non-resident deposits in the system by bank group
EU bank subsidiaries	12.2%	9.1%
Domestic banks with significant market share	68.2%	66.0%
Other banks	44.7%	25.0%
Total	44.1%	100.0%

23. A significant development in the field of non-resident investments was a 2010 initiative to provide a mechanism for obtaining a temporary residence permit in case of an investment into the Latvian economy. The law provides three mechanisms to grant residency permits: 1) an equity investment of 100,000 LVL (148,000 EUR) into a capital company (or an investment of LVL 25,000 when 20,000 in taxes is paid); or 2) a purchase of property for at least LVL 100,000 (148,000 EUR) that has an assessed value of either LVL 30,000 or LVL 10,000 (42,000 or 14,000 EUR), depending on where the property is located; or 3) an investment of at least LVL 200,000 in the form of subordinated capital into a credit institution of Latvia.

24. At the time of the on-site visit, the authorities reported that the Latvian Office of Citizenship and Migration Affairs had received 455 applications from foreigners (reflecting over 1,000 persons). The top 5 countries of the origin are the Russian Federation (343), Ukraine (32), Kazakhstan (31), Israel (13), and Belarus (9).

25. This new law, according to those met during the on-site visit, was advertised at the Riga airport in non-Latvian languages to attract foreign investors. Until 1st July 2011 there has been only one negative decision, in all other cases residence permits were granted. The Authorities estimated that approximately LVL 59,000,000 (or 84 Million EUR) have been invested in Latvia.

26. No information was provided to the team regarding any AML/CFT control measures in place; nevertheless Authorities noted that state security services are involved in handling each and every case.

Table 5: Financial Institutions

Type of business	Supervisor	No. of Registered Institutions
1. Acceptance of deposits and other repayable funds from the public	Financial and Capital Market Commission	21 bank; 10 branches of the banks incorporated in EU MS
2. Lending	Financial and Capital Market Commission (banks)	21 bank; 10 branches of the EU MS banks; (till November 2011 lending is not subject to licensing) 48 credit service providers to a customer
3. Financial leasing	Financial and Capital Market Commission (banks)	21 bank; 10 branches of the EU MS banks;
4. The transfer of money or value	Financial and Capital Market Commission (credit institutions, payment institutions)/ Ministry of Transport	State JSC "Latvijas Pasts" (Post of Latvia) (total number of employees providing MVT services: 819 (April 2011)

5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	Financial and Capital Market Commission (credit institutions, payment institutions)	21 bank; 10 branches of the EU MS banks; 18 payment institutions
6. Financial guarantees and commitments	Financial and Capital Market Commission (banks)	21 bank; 10 branches of the EU MS banks; data on total number not available (financial guarantees and commitments are not subject to licensing)
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	Financial and Capital Market Commission	4 investment brokerage companies
8. Participation in securities issues and the provision of financial services related to such issues	Financial and Capital Market Commission	21 bank; 10 branches of the EU MS banks; data on total number not available (financial guarantees and commitments are not subject to licensing) and 6 broker investment companies
9. Individual and collective portfolio management	Financial and Capital Market Commission	2 investment brokerage companies, 10 banks
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	Financial and Capital Market Commission	2 investment brokerage companies, 21 bank
11. Otherwise investing, administering or managing funds or money on behalf of other persons	Financial and Capital Market Commission	4 investment brokerage companies, 16 investment management companies, 21 bank
12. Underwriting and placement of life insurance and other investment related insurance	Financial and Capital Market Commission (life insurance companies)	3 life insurance companies; 5 branches of the EU MS life insurance companies.
13. Money and currency changing	Bank of Latvia	69 companies

27. Since the last mutual evaluation the Latvian authorities have intensively acted for the improvement of the AML/CFT legal and regulatory framework, as well as of the supervisory system. The new Law on the Prevention of Laundering the Proceeds from Criminal Activity (Money Laundering) and Terrorist Financing (issued in 2008 and effective in mid August 2008, subsequently amended in 2009, 2010 and March 2011) has increased the number of supervisory authorities.

28. Under the new AML/CFT legal framework, almost all obligors have a designated supervisory authority. Article 3 (1) 8 defines persons providing money collecting services as an obligor. However, this category does not have a dedicated supervisory and control authority, as described under Article 45 of the aforementioned Law. In addition, there is no presence of reinsurance activities within Latvia. The AML/CFT Law does not include reinsurance as an obliged entity. However, the Reinsurance Law does provide some AML/CFT controls, including a requirement for firms to maintain internal AML/CFT procedures in order to obtain a license. Furthermore, the Reinsurance Law also provides for sanctions by the FCMC in case of violations of the

AML/CFT Law, despite not being subject to the AML/CFT Law or subject to supervision by a dedicated supervisory authority. Lastly, there are micro-credit lending services available through both banks and a firm licensed by the Consumer Rights Protection Centre. Authorities assess a minimum ML threat due to the small nature of the loans involved (up to 500 EUR). While this financial service, when provided through a bank, would be subject to FCMC supervision, the other micro-lending services would not be covered by any designated supervisory authority.

29. Since the last mutual evaluation report the Ministry of Transport (MoT) has been designated as the AML/CFT regulator for the Latvian Post.

30. Although the Latvian authorities confirmed that no companies providing reinsurance services are operating on the domestic market, the findings of the last mutual report ("there is currently no basis for licensing or supervision of these reinsurance companies") are still partially valid. An inconsistency appears between the provisions of the Law on Activities of Insurance and Reinsurance Intermediaries and the types of business covered by the AML/CFT Law (Art.3), and as a consequence, the reinsurance activity is not covered under Art.45 of the AML/CFT Law by a supervisory authority.

31. The statutory powers of the supervisory authorities differ in terms of issuing binding regulations. While the FCMC as the supervisory authority for banking, insurance and capital market is the sole authority entitled by the new AML/CFT Law to issue binding regulations, the BoL, which ensures constant supervision of the currency exchange companies, has issued AML/CFT Recommendations. The MoT has also limited authority to issue binding regulations for the entities it supervises and to fulfil its obligations as a supervisory and control authority effectively according to the Art.46 of the AML/CFT Law.

32. However, the evaluators took note that the MoT has elaborated a draft law for amending the Law on Post and if this legislative change is made, the supervision of the Latvian Post will be transferred to the FCMC. That said, there is still room for improvement - by empowering the three supervisory authorities with the same powers in terms of issuing binding regulations for the sectors under their responsibility.

33. The supervision with regard to the institutions (banks and Latvian Post) operating money value transfer systems (MVTs) seems potentially to be uneven between the FCMC and the MoT, given the FCMC's strict supervision on banks, which positively impacts on the MVTs operating there, while the Postal service is less guided and supervised by the designated authority, which has no particular expertise on AML/CFT matters.

34. Also there are major differences between supervisory authorities in terms of statutory sanctioning prerogatives for AML/CFT purposes. The FCMC is the only supervisory authority that can issue financial sanctions. The BoL can suspend the licenses for a limited period of time or withdraw the license in case of major breaches of AML/CFT regulations (sanction which in practice has been exercised). The MoT's sanctioning power is unclear.

Designated Non-Financial Businesses and Professions (DNFBP)

35. All the categories of the designated non/financial business and professions (DNFBP), including independent accountants and independent lawyers, are currently covered by the provisions of the new AML/CFT Law.

36. There are three Self-Regulatory Organisations governing their respective professions: Latvian Council of Sworn Advocates, Latvian Council of Sworn Notaries and Latvian Association of Certified Auditors (LACA). The Lotteries and Gambling Supervision Inspection (LGSI) supervises all kinds of gambling and all kinds of gambling and lotteries, while the remaining categories of DNFBP come under the supervision of the State Revenue Service (SRS). The AML/CFT Law set up as well a designated authority in charge of the control and

supervision of the transactions with the items included in the list of state protected cultural heritage monuments, which is the State Inspection for Heritage Protection.

37. The guidelines/methodological material/instructions/regulations issued by the DNFBP' control authorities are advisory, and do not constitute "other enforceable means" as they do not contain sanctions. A detailed overview of the structure of the supervisory architecture in respect of DNFBP is presented below, in the next table.

Table 6 – AML/CFT supervisory framework for Latvian DNFBP

Type of business	Supervisor	No. of Registered Institutions
1. Casinos (which also includes internet casinos)	Lotteries and Gambling Supervisory Inspection	16 license holders with 330 gaming halls and 6 casinos
2. Real estate agents	State Revenue Service	307 (subjects of the Law involved in real estate selling and/or purchase) 314 (subjects of the Law involved real estate transactions as agents or intermediaries) 121 (subjects of the Law involved real estate trading) 133 (subjects of the Law involved real estate transactions as intermediaries) 132 (subjects of the Law providing services in regard to trading of real estate, transportation means and other goods)
3. Dealers in precious metals and precious stones	State Revenue Service	A large number of unlicensed, unregistered agents operate outside the Latvian AML/CFT regime. 14 (dealers in precious metals, precious stones and articles thereof) 9 (intermediaries in dealing in precious metals, precious stones and articles thereof)
4. Dealers in precious stones		
5. Lawyers, notaries, other independent legal professionals and accountants – this refers to 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	Latvian Council of Sworn Advocates Latvian Council of Notaries State Revenue Service	1333 plus 11 foreign 125 Sworn Notaries 786 (subjects of the Law involved in tax consulting) 2423 (subjects of the Law involved in providing services as external accountants) 590 (subjects of the Law involved in providing legal services)
6. Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere	State Revenue Service	159 (subjects of the Law involved in company service providing) 134 (subjects of the Law involved in managing clients money, financial instruments and other assets) 93 (subjects of the Law involved in providing services for managing or opening bank or other financial institutions accounts) 296 (subjects of the Law involved in creating, management, ensuring operations of legal arrangements) 443 (subjects of the Law involved in providing services for creating and ensuring operations of legal arrangements) 70 (subjects of the Law involved in trading transportation means) 35 (subjects of the Law involved in trading transportation means as intermediaries)
7. Transactions with cultural monuments	State Inspection for Heritage Protection	N/A

Table 7: Non-Profit Organisations

Type of business	Supervisor	No. of Registered Institutions
a) Associations, registered in the Central Register of Associations	Ministry of Justice	Existent 14 204 (registered together 14 563)
b) Foundations, registered in the Foundations Register	Ministry of Justice	Existent 1023(registered together 1068)
c) Registered churches and religious communities	Ministry of Justice	Churches – existent 17; Congregations – existent 1150 (registered together 1170); Diocese – existent 3; Other religious institutions – existent 35 (registered together 36).

38. The supervision provided for some of the DNFBP is still weak in a number of respects and requires efforts to be brought in line with FATF requirements. The level of AML/CFT awareness among the three self regulatory organisations is uneven.

39. While the Latvian Council of Sworn Notaries and Latvian Association of Certified Auditors appear to have a relatively sufficient degree of understanding of their AML/CFT supervisory role and functions, the Latvian Council of Sworn Advocates seems not be fully preoccupied and sensitive about their role as concerns the supervised members.

40. As regards the SRS, even it is aware of the extension of its prerogatives over new supervised entities, this is primarily connected to the function of tax collection. The indication that the main way of performing AML/CFT supervision is off-site monitoring could not be supported by the existence of internal procedures on how this process is performed. The dissemination of the general guidance issued by the SRS among the supervised entities is insufficient.

41. The Lotteries and Gambling Supervision Inspection maintains regular contact with the casinos and gambling halls and is equipped with supervisory and sanctioning powers (but cannot issue binding regulations).

42. The State Inspection for Heritage Protection is entrusted with the supervision of transactions involving Cultural Monuments and Cultural Objects. It has the ability to check the transaction for unusual transaction elements specified in Cabinet Regulation No.1071 of 22.12.2008 "*Regulations regarding List of Elements of Unusual Transactions and Procedures for Reporting about Unusual or Suspicious Transactions*" and on checking the parties to the transaction against the list of persons suspected of terrorism provided by the Financial Intelligence Unit.

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

43. There have been few significant changes to the commercial laws since the 3rd evaluation, and thus much of the information contained in the 3rd MER remains appropriate.

44. Latvia has amended the CoL as regards the bearer share regulation. Article 229 (2) of the CoL provides that the bearer shares may be issued only in dematerialized form (paper form is prohibited). Detailed analysis on Latvia's bearer shares regime can be found in Section 5.1.

45. According to Section 236.1 of the CoL all bearer shares shall be registered in the Latvian Central Depositary. Under the Transitional Provision 11 of the CoL, the bearer shares issued in the past

should have been registered in the Latvian Central Depositary not later than 31 December 2009. Article 236-2 of the CoL provides that the company and competent authorities are entitled to request the information from the Latvian Central Depository regarding the holders of bearer shares.

46. Under Section 94 of the Financial Instrument Market Law, the Latvian Central Depositary issued the Regulation "On procedures for the registration and accounting of financial instruments". The aforesaid Regulation (item 4.1.7.) stipulates the obligation to submit the shareholder register to the Latvian Central Depositary to register the bearer shares.

47. The information/data contained in the shareholder register is provided by the CoL (Section 235) and includes the identification data of the shareholders. The obligation to submit the notification on beneficial owners to the Commercial Register equally relates to the holders of bearer shares (under the Section 17.1. of the CoL). Until now, 39 companies have been registered in the Commercial Register which have issued bearer shares.

48. Although the Law on Commercial Registry does not contain the definition of the "beneficial owner", the nature of this term is defined by the AML/CTF Law and the obligation to submit the notification on beneficial owners to the Commercial Register is stipulated by the Commercial Code (Section 17.1 of the Commercial Code).

1.5. Overview of Strategy to Prevent Money Laundering and Terrorist Financing

a. AML/CFT Strategies and Priorities

49. Following the 3rd round MER, the existing Council for Prevention of Laundering of Proceeds derived from Criminal Activity has been transformed into the Finance sector Development Council, chaired by the Prime Minister.

50. The AML/CFT law legally establishes the status of the new Council by stipulating that it is the coordinating body for the harmonization and improvement of cooperation between state authorities and the private sector in order to prevent money laundering and terrorist financing.

51. Among the most important decisions of the Council are:

- The creation of a comprehensive plan in order to improve correspondent banking relationships with US banks.
- Entrusting the State Revenue Service with the task of supervising non-financial institutions, which has also been incorporated into the regulations of the AML law.

52. Since its creation, there were two meetings of the Council held in 2008 and one meeting in 2009. The agenda of the meetings also contained AML/CFT issues (e.g., increasing the role of the Company Register in preventing money laundering and terrorist financing, and money laundering issues in Post Office).

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

FCMC

53. The Financial and Capital Market Commission is an autonomous public institution, which carries out the supervision of Latvian banks, insurance companies and insurance brokerage companies, participants of financial instruments market, as well as private pension funds.

Bank of Latvia

54. The BoL, the country's central bank, is an independent institution that sets and executes monetary policy, manages the foreign currency and gold reserves, issues cash currency and ensures the functioning of the interbank settlement systems, and compiles financial statistics.
55. The BoL is a participant in the European System of Central Banks.
56. The BoL conducts its supervisory role in relation to the currency exchange companies. The BoL Licensing Committee is comprised of five members. In addition, a total of six staff have been assigned to carry out off-site and on-site inspections of currency exchange companies on behalf of the BoL.

Ministry of Transport

57. Ministry of Transport has been designated as the AML/CFT supervisory authority for the Latvian Post. It is financed from the State budget and has no operational independence.

Ministry of Justice

58. The work of courts in Latvia is regulated by Constitution and Law on Judicial Power.
59. The Ministry of Justice ensures the principle of the independence of the judiciary, which is embraced in the Constitution of the Republic of Latvia and the law on Judicial Power. However the Ministry of Justice is also responsible for drafting and implementing public policy in the fields of state laws, administrative laws, civil laws, criminal laws and laws governing religion, as well as procedural laws. All legal acts drafted by other government institutions are subject to approval of the Ministry of Justice.
60. Since 2004, when Latvia became a member State of the European Union, the Ministry of Justice has been responsible for securing Latvian representation at the European Court of Justice and harmonisation of national legislation with legal acts of the European Union thus ensuring compliance with the rule of law in Latvia on both, the national and international level.
61. In 2004 the Ministry of Justice was reorganised and more emphasis was concentrated on the sector of strategic planning, hence increasing possibilities for further development.
62. In 2011 there were 529 judges.

The Public Prosecution Service

63. The Specialised Prosecution Office for Organised Crime and Other Branches is established with a group of 10 prosecutors specialized in the investigation and criminal prosecution of economic and financial crimes related to laundering of the proceeds of crime within the Riga Judicial Region and in the crimes related to illegal circulation of drugs and trafficking of human beings.
64. These prosecutors are also specialized in money laundering cases and supervise the files disseminated by the FIU to the Economic Police Department of the State Police (current name the Economic Crime Combating Police) and to the Financial Police Department of the State Revenue Service.
65. The International Cooperation Division of the Prosecutor's General Office was established in 2000. Since 2011, the Division consists of 6 prosecutors and one Head prosecutor.
66. The Prosecutor's Office, as a judicial authority, is independent from the executive or legislative power.

Financial Intelligence Unit (FIU)

67. The FIU is established under the AML Law as a central national agency within the Prosecutor's Office's system. The FIU consists of the head, the deputy head, a secretary, one computer specialist, one head of the unit, 6 computer operators and 8 financial transactions analysts. The Latvian FIU has its own budget.

68. According to the AML/CFT Law, the FIU is empowered to receive and analyze suspicious and unusual transactions reports received from financial institutions and DNFBP, and disseminate this information when there are reasonable suspicions that a person has committed or is attempting to commit an offence or is laundering the proceeds of crime.

Financial Police Department

69. The Customs Criminal Board is a structural unit of the State Revenue Service with a primary of task detecting and preventing crime in the area of state revenue and also to detect and prevent criminal offences in the performance of civil servants and other staff of the State Revenue Service.

Corruption Prevention and Combating Bureau (KNAB)

70. KNAB is in charge of detecting criminal offences related to corruption committed in the public service and relating to financing of political parties.

71. It is an institution of state administration under the supervision of the Cabinet of Ministers. In practice, this supervision is exercised by the Prime Minister.

72. The work of criminal intelligence and investigation is carried out by the Division of Criminal Intelligence Process, Division of Investigation, and Division of Intelligence Support which consists of 58 employees. The total number of KNAB employees (including corruption prevention staff and administrative staff) is 147 people.

73. The KNAB's budget is decided by the Parliament on the basis of a proposal by the Cabinet of Minister.

c. The approach concerning risk

74. The 2006 MONEYVAL report concluded that *"Latvia has not adopted an overall risk-based approach to the application of AML/CFT requirements, though the FCMC Regulation includes some references to high-risk customers".* The report also underlined that "*in practice, risk characteristics are taken into account in determining the depth and frequency of supervisory attention given to individual financial institutions*"

75. Since the last MER, Latvia has established the framework for a risk-based approach by the new AML/CFT Law in that the subject persons must assess the client's risk for AML/CFT in the process of performing the CDD (Chapter III Art.17).

76. Latvia established an inter-agency working group to draft a national AML/CFT risk assessment in 2010 but no specific national AML/CFT risk assessment has been completed since the last evaluation. The authorities consider the main areas of vulnerability to be tax evasion and tax related frauds. The Latvian authorities indicated also that sophisticated structures were put in place by launderers to transfer money abroad (sometimes in off-shore centres) rather than re-investing the criminal assets in Latvia.

77. Latvia's Prime Minister has created a working group chaired by the FIU, in order to detect and assess the existing risks in detail, according to the Finance Sector Development Council (FSDC)

Action Plan. The working group for AML/CFT risk assessment was planning to finish their work no later than September 2011[7].

78. In order to be in line with the requirements of the new law, the FCMC has issued Regulations on Enhanced CDD, which are *binding to all financial market participants it supervises.* The BoL also issued recommendations[8] which are not binding ones, where it describes the risk-based approach to the respective supervised entities. The Methodological material issued by the SRS, which is not a binding regulation, requires the supervised entities to comply with CDD obligations stated by the AML/CFT Law without setting out clear procedures on how the risk-based approach is to be implemented.

79. No specific guidance on the risk-based approach in the CDD process in respect of AML/CFT issues was identified in the case of the three self regulatory organisations and with respect to the other designated controlling authorities, with the exception of the Latvian Association of Certified Auditors.

80. Various instructions in Latvia lay out the following risk categories: country risk, risk associated with the legal form of the customer, risk associated with the economic or personal activity of the customer, and risk associated with the products or services used by the customer. For these categories, the obligor should weigh these risk characteristics for CDD and apply the appropriate CDD measures, such as enhanced or simplified CDD. Latvia allows for some exemptions from CDD. These principles are stated in the FCMC Regulations on Enhanced Customer Due Diligence, and they are repeated throughout industry-specific guidance. According to certain guidance, institutional risk assessments for ML/TF are required before a firm enters into a business relationship.

d. Progress since the last mutual evaluation

81. Latvia has continued the improvement and development of its AML/CFT systems since the evaluation in 2006.

82. In order to ensure the transposition of the EU Directives 2005/60/EC and 2006/70/EC *The Law On the Prevention of Laundering of Proceeds derived from Criminal Activity and Terrorist Financing*, hereinafter the AML/CFT Law, was introduced. The Law became effective in mid August 2008 with a number of amendments in 2009 and 2010.

83. This new law differs in the following major aspects:

a) The scope of persons subject to the new AML/CFT Law is expanded and now includes also:

   i. trust and company service providers,

   ii. persons, providing money collection services,

   iii. any merchants, when payment is made in cash and exceeds 15,000 EUR equivalent.

b) A risk-based approach to customer due diligence was introduced and the banks and other financial institutions have an obligation to refrain from executing transactions or debit operations on customer's account where the transaction is related or may be reasonably suspected of being related to money laundering or terrorist financing.

[7] According to Latvian authorities, the working group has finished its work on 01.09.2011 and reported the results of the risk assessment to Financial Sector Development Council on 27.10.2011. As a result it was decided to create a new working group tasked with the duty to work out a plan of measures addressing the risks disclosed. The Prime Minister issued an Order On creating a new working group for these purposes on 03.02.2012. The Head of the Latvian FIU was appointed to lead the working group. The interim results will be reported to the Council not later than 31.08.2012.

[8] *Recommendations to Capital Companies that Have Received a Licence issued by the Bank of Latvia for Purchasing and Selling Cash Foreign Currencies for Developing an Internal Control System for the Prevention of Laundering the Proceeds from Criminal Activity (Money Laundering) and Terrorist Financing*", which took effect on June 1, 2009.

c) The Law provides the possibility for banks and life insurance companies to access a wide range of state databases to assess their customers and the money laundering risks associated with them.

d) Banks and other financial institutions have the obligation to provide the FIU within 7 days, requested information and documents about the customer or the transaction, the origin and further movement of funds. Previously banks had to respond within 14 days.

e) The number of supervisory authorities increased.

84. Together with the entry into force of the new AML/CFT Law, between December 2008 and January 2009 the Latvian Government adopted a number of normative acts in order to complete and further detail its provisions.

85. In order to be in line with the requirements of the new AML/CFT Law, the Financial and Capital Market Commission (hereinafter FCMC) issued Regulations of Enhanced CDD. These Regulations introduce the risk-based approach to the CDD procedures and are binding upon all the financial market participants supervised by the FCMC.

86. The BoL, as a supervisory authority for foreign currency exchange offices, has issued recommendations for currency exchange offices concerning the obligation to establish an internal control system, identification of clients and their beneficiaries, PEP identification, reporting obligation, and which describe the risk-based approach for evaluating the AML/CFT risk of their clients.

87. The State Revenue Service became the supervisory authority for the majority of DNFBP in accordance to the new AML/CFT Law.

88. The Methodology issued by the SRS includes specific obligations of DNFBP regarding internal control systems, customer due diligence and reporting duties.

89. In order to comply with the new requirements of the AML/CFT Law, the Latvian Administrative Violations Code was amended on 20 May 2010 (the amendment coming into force on 23 June 2010). The Code now stipulates responsibility:

a) for failure to report on unusual and suspicious financial transactions (Article 165-4),

b) for violation of client identification requirements (Article 165-7),

c) for failure to comply with the procedure established for prevention of legalization of proceeds from crime and terrorist financing (Article 165-8).

90. CPL and CL were also amended to enhance compliance with the international standards in AML/CFT area, i.e. by introducing the provision that criminal assets may come into the property or possession of a person directly or indirectly and by introducing new sections to cover various forms of terrorism financing.

91. The Law "On Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism" entered into force on 31 December 2009. 4 other draft laws were adopted to bring Latvian legislation into compliance with above mentioned convention. The amendments drafted mainly concern the monitoring of banking transactions and the possibility for other states to request such monitoring.

92. Several amendments were made to the CPL in relation to extradition proceedings to third countries and the EU and on the regulation on executing foreign judgments in order to improve international cooperation.

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

93. In the previous assessment report, the assessors concluded that, although the ML offence was largely in line with the UN Conventions, there were a number of flaws in its implementation. In the 2006 MER there was also concern that a conviction on the predicate offence might be necessary in order to prove that property was the proceeds of crime.

Recommendation 1 (rated LC in the 3rd round report)

Legal Framework

94. Latvia has signed and ratified the 1988 UN Convention on Illicit Drugs and Psychotropic Substances (Vienna Convention) in 1994 and the 2000 UN Convention against Transnational Organised Crime (Palermo Convention) in 2001. The offence of money laundering has been criminalised in the LCL since 1998.

95. Since the last evaluation report, the Latvian authorities adopted a new AML/CFT Law to which a number of amendments were introduced in 2009, 2010 and 2011.

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

96. The new AML/CFT Law of the Republic of Latvia defines laundering of the proceeds from criminal activity (money laundering) and terrorist financing in Article 5 as:

(1) Laundering the proceeds from criminal activity (money laundering) shall mean the following activities:

1) converting the proceeds from criminal activity into other valuables, changing their location or ownership, knowing that such property is the proceeds of crime and provided that they have been committed for concealing or disguising the illicit origin of such proceeds or assisting any other person who is involved in the committing of such activity to evade the legal liability of his/her action;

2) concealing or disguising the true nature, origin, location, disposition, movement or ownership of the proceeds from criminal activity, knowing that such property is the proceeds of crime;

3) acquiring the proceeds from criminal activity for ownership, possession or use knowing, at the time of acquiring such rights that the proceeds were derived from criminal activity;

4) participating in any of the activities mentioned in Subparagraphs 1, 2 and 3 of Paragraph 1 hereof.

(2) Money laundering shall be recognised as such even where the criminal offence, which is defined by the Criminal Law and results in a direct or indirect acquisition of the proceeds derived thereby, was committed outside the Republic of Latvia and the criminal liability is intended for

such a criminal offence at the place of its commitment *(3) Terrorist financing shall mean the activities as defined by the Criminal Law.*

97. The money laundering offence penalties are provided in Latvian legislation by Section 195 of the LCL:

(1) For a person who commits laundering of criminally acquired financial resources or other property – the applicable sentence is deprivation of liberty for a term not exceeding three years, or a fine not exceeding one hundred times the minimum monthly wage, with or without confiscation of property.

(2) For a person who commits the same acts, if the commission thereof is repeated or if committed by a group of persons pursuant to prior agreement – the applicable sentence is deprivation of liberty for a term of not less than three and not exceeding eight years, with confiscation of property.

(3) For a person who commits the acts provided for by Paragraphs one or two of this Section, if commission thereof is on a large scale, or if commission thereof is in an organised group – the applicable sentence is deprivation of liberty for a term of not less than five and not exceeding twelve years, with confiscation of property, and with or without police supervision for a term not exceeding three years.

98. The ML definition provided by the AML/CFT Law is in line with the wording of the Vienna and Palermo conventions. Those conventions require countries to establish as a criminal offence the following intentional acts: conversion or transfer of proceeds; concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to proceeds; and the acquisition possession or use of proceeds. The physical and material elements of the ML offence strictly follow the definitions of Vienna and Palermo Conventions listed in Article 3(1)(b) (i)-(ii) and (c) (i), and Article 6(1)(a)(ii) and (b)(i) of these conventions respectively.

99. Article 6 (1) (a) (i) of the Palermo Convention and Article 3 (b) (i) of the Vienna Convention require the incrimination of conversion or transfer of property for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions – *conversion or transfer* is covered by the subsection 1 of section (1) of Article 5, and the wording *"changing their location or ownership"* equals to the concept of *"transfer"*.

100. *Concealment or disguising* is also covered by the subsection 2 of section (1) of Article 5. Article 6 (1) (a) (ii) of the Palermo Convention and Article 3 (b) (ii) of the Vienna Convention embraces the element of *"rights*". Terminology "piederība" which is used in Article 5 (1) (2) of the AML/CFT Law included both terms "*rights*" and "*ownership*" defined in the conventions.

101. *Acquisition, possession* or *use* is also covered by subsection 3 of section (1) of Article 5.

102. *Knowledge* is covered in subsections 1–3 of section (1) of Article 5.

103. In accordance with Section 7 of the LCL, Section 195 (1) the penalty for simple ML is deprivation of liberty for a term not exceeding 3 years which is classified as a crime less serious and the punishment not enough dissuasive. For qualified circumstances, the ML offence is punishable with deprivation of liberty for a term of not less than 3 and not exceeding 8 years or deprivation of liberty for a term of not less than 5 and not exceeding 12 year (Section 195 (2) and (3) of the LCL respectively).

104. According to LCL, an offence shall be considered as serious crime if there is an intentional offence for which the Law provides for deprivation of liberty for a term exceeding five years but not exceeding ten years, or an offence which has been committed through negligence and for which the Law provides for deprivation of liberty for a term exceeding ten years. A criminal offence shall be considered as especially serious whether there is an intentional offence for which the Criminal Law provides for deprivation of liberty for a term exceeding ten years, life

imprisonment or the death penalty[9]. However, for a person who commits a basic money laundering offence, the applicable punishment is deprivation of liberty for a term not exceeding 3 years, therefore it is apparent that ML is considered in Latvia as a serious crime only under aggravating circumstances.

105. There is no clear reference in the domestic legislation that the money laundering definition provided for in article 5 of the AML/CFT Law is defined for the purposes of the LCL. However, the Latvian authorities provided examples, namely number of judgments, where judges make reference to the Article 5 of the AML/CFT Law, thus, in practice, the requirement appears to be met.

The laundered property (c.1.2) & proving property is the proceeds of crime (c.1.2.1)

106. According to the standards, the ML offence should extend to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime. Pursuant to Article 4 of the AML/CFT Latvian Law, the proceeds shall be considered as derived from criminal activity where a person, directly or indirectly, acquires ownership or possession of them as a result of a criminal offence, and in other cases specified by the CPL. In addition, the proceeds from criminal activity shall also mean the funds that belong to a person or that are, directly or indirectly, controlled by a person who:

- is included in the list of persons who are suspected of being involved in terrorist activities that is compiled by countries or international organisations recognised by the Cabinet of Ministers;
- may reasonably be suspected of the execution of or participation in a terrorist-related criminal offence on the basis of information available to bodies performing investigatory operations, pre-trial investigation institutions, the Office of the Prosecutor or the court.

107. In addition, CPL Section 355 provides that property shall be recognised as of criminal origin, if such property has come into the property or possession of a person as a result of a criminal offence directly or indirectly. The article also provides that if the opposite has not been proven, property, including financial resources, shall be recognised as criminally acquired if such property or resources belong to a person who:

- is a member of an organised criminal group, or supports such group;
- has him or herself engaged in terrorist activities, or maintains permanent relations with a person who is involved in terrorist activities;
- has him or herself engaged in the trafficking of human beings, or maintains permanent relations with a person who is engaged in the trafficking of human beings;
- has him or herself engaged in criminal activities with narcotic or psychotropic substances, or maintains permanent relations with a person who is engaged in such activities;
- has him or herself engaged in criminal activities with counterfeit currency, State financial instruments or maintains constant relations with a person who is involved in such activities;
- has him or herself engaged in criminal activities in order to cross the State boundary or to promote relocation of another person across the State boundary, or to ensure a possibility to other persons to reside illegally in the Republic of Latvia, or maintains constant relations with a person who is involved in such activities;
- has him or herself engaged in criminal activities in relation to child pornography or sexual abuse of children, or maintains constant relations with a person who is involved in such activities.

[9] The death penalty has been excluded from the LCL since 01.01.2012

108. It appears that the legal provision opens the door for compliance with the criterion 1.2.1. by the wording *"if the opposite has not been proven"*, but during the on-site interviews, different views of the practitioners make it unclear whether the conviction of the offender for the predicate offence is required as a pre-condition when proving that property is the proceeds of crime and therefore, laundered. The criminal provisions on ML do not provide that a conviction for the predicate offence is required. The prosecutors confirmed that, in principle, a conviction on the predicate offence is not necessary to prove that property is the proceeds of crime. However, the courts representatives stated that it is required that prosecutors prove in full and with specificity the predicate offence and the proceeds derived from it in the course of a criminal prosecution for ML.

109. This approach would in theory enable the authorities to prosecute someone for ML even if a person charged with the predicate offence has not been convicted. The evaluation team was assured that this applies at any stage of the proceedings, including when a decision is being made whether or not to initiate an investigation.

110. At the same time, the Latvian authorities explained that it is easier to prosecute and convict a person for ML when there is a prior conviction for the predicate offence. Otherwise, it will have to be proven that the conduct amounted to a predicate offence and the particular laundered assets originated from that specific predicate offence, which is a rather high standard of proof.

111. When the predicate offence is committed abroad, the prosecutors met during the on-site visit indicated that although they could try to prove the criminal origin of the assets by establishing in full the elements of the predicate offences as for predicate offences committed domestically, a conviction in the foreign jurisdiction for the predicate offence, if one existed, would be preferred by the courts.

112. Due to the high standard of proof required by courts to clearly establish the existence of the generating offence in ML cases, it appears that in practice, prosecutors tend to prosecute the predicate activity and the ML together, and do not pursue stand-alone ML criminal cases. Most prosecutions for ML are self laundering cases.

The scope of the predicate offence (c.1.3) & Threshold approach for predicate offences (c.1.4)

113. All offences listed in the LCL are predicate offences for ML. Latvia follows an "all crimes" approach, and all predicate offences for money laundering required under the Glossary to the FATF Recommendations are covered[10].

114. The missing item is related to the additional mental element of the financing of terrorism offence as described under the SR.II.

Extraterritorially committed predicate offences (c.1.5)

115. According to the Latvian AML/CFT Law, Article 5 section 2, jurisdiction to prosecute money laundering extends to predicate offences that occurred outside the territory of the country. Money laundering shall be recognised as such even if the predicate criminal offence, which is defined by the LCL and results in a direct or indirect acquisition of the proceeds derived thereby, was committed outside the Republic of Latvia and, according to the local legislation, the person committing such criminal activity is held criminally liable.

116. In addition, Latvian citizens, non-citizens and foreigners who have a permanent residence permit for the Republic of Latvia, shall be held liable for an offence committed on the territory of another state or outside the territory of any state, if that particular offence is provided by LCL,

[10] A comparative list of the categories of designated FATF predicate offences that have been covered can be found in Annex 1 of this report.

regardless of whether it is considered as criminal behaviour on the territory where it was committed. As example, if a person is a Latvian national he/she shall be liable for an offence committed abroad regardless of the fact that this particular behaviour constitutes or not a criminal conduct on the foreign territory.

117. Foreigners who do not have a permanent residence permit for the Republic of Latvia and who have committed a crime abroad, in the cases provided for in the international agreements binding upon the Republic of Latvia, irrespective of the laws of the state in which the offence has been committed, shall be held liable in accordance with LCL if they have not been held criminally liable for such offence or committed to stand trial in the territory of another state (LCL, Section 4).

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

118. The criminal legislation does not define fundamental principles which would have as result the prevention to apply ML offence on the same person who committed the predicate offence. Self-laundering is criminalised in Latvia (LCL, Section 195). The wording of Section 195 LCL does not distinguish between laundering by the person who committed the predicate offence and a third person.

Ancillary offences (c.1.7)

119. The appropriate auxiliary offences are covered by Sections of the LCL as described in the 3rd round report. No changes in the criminal legislation have been made in relation to ancillary offences, including attempt, preparation, aiding and abetting, facilitating, and counselling. The table below provides an overview.

120. The ancillary offence

Table 8: Ancillary offences

FATF terminology	Article in CL	Explanation
Association to commit or conspiracy	Section 21 – organised groups	An **organised group** is an association formed by more than two persons, which has been created for purposes of jointly committing criminal offences or serious or especially serious crime and whose participants in accordance with previous agreement have divided responsibilities.
Attempt	Sections 15 (3) and 15 (4) – completed and uncompleted criminal offences	The locating of, or adaptation of, means or instrumentalities, or the intentional creation of circumstances conducive for the commission of an intentional offence, shall be considered to be **preparation for a crime** if, in addition, it has not been continued for reasons independent of the will of the guilty party. A conscious act (failure to act), which is directly dedicated to intentional commission of a crime, shall be considered to be an **attempted crime** if the crime has not been completed for reasons independent of the will of the guilty party.
Aiding and abetting	Sections 20(3) and 20(4) – instigator and abettor	A person who has induced another person to commit a criminal offence shall be considered to be an **instigator**. A person who knowingly has promoted the commission of a criminal offence, providing advice, direction, or means, or removing impediments for the commission of such, as well as a person who has previously promised to conceal the perpetrator or joint participant, the instrumentalities or means for committing the criminal offence, trail of the criminal offence or the objects acquired by criminal means or has previously promised to acquire or to sell these objects shall be considered to be an **abettor**.
Facilitating	Section 20(4) – abettor	Aforesaid

Counselling the commission	Sections 20(3) and 20(4) – instigator and abettor	Aforesaid
Other	Section 18 and 19 – participation of several persons in a criminal offence and participation	The participation by two or more persons knowingly in joint commission of an intentional criminal offence is participation or joint participation. Criminal acts committed knowingly by which two or more persons (that is, a group) jointly, knowing such, have directly committed an intentional criminal offence shall be considered to be participation (joint commission). Each of such persons is a participant (joint perpetrator) in the criminal offence.

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)

121. Citizens, non-citizens and foreigners who have a permanent residence permit for the Republic of Latvia, shall be held liable, in accordance with the Criminal Law, in the territory of Latvia for an offence committed in the territory of another state or outside the territory of any state regardless of whether it has been recognised as criminal and punishable in the territory of commitment (LCL, Section 4).

Recommendation 32 (money laundering investigation/prosecution data)

122. Article 51 subsection 10 of the AML/CFT Law requires the Latvian FIU to publish information about its activity. The information published by the FIU covering, inter alia, the number of cases investigated and of persons brought to criminal prosecution during the previous year, the number of persons convicted for the criminal offence of ML/FT and the volume of suspended and seized funds. Besides the legal obligation of the FIU to maintain statistics on prosecutions and investigations, each law enforcement authority keeps its own statistics (State Police, Prosecution Office).

Table 9: Number of ML cases

ML cases	**ML investigations**		**ML prosecutions**		**ML convictions**	
	cases	**persons**	**cases**	**persons**	**cases**	**Persons**
2006	15	n/a[11]	10	47	3	4
2007	28	n/a	27	62	26	62
2008	73	n/a	12	29	13	29
2009	54	n/a	25	51	5	10
2010	54	n/a	32	73	10	13

123. The statistics provided emphasize that, in certain years only a small number of the persons prosecuted for ML (4 in 2006, 10 in 2009, and 13 in 2010) were finally convicted by the courts.

[11] n/a: Not applicable. Statistics are not maintained as irrelevant at this stage.

124. More detailed statistics on ML convictions were provided by the Latvian authorities to the assessment team.

Table 10: ML convictions

Year	Paragraph of LCL Section 195	Number of convicted persons	Main penalties										Additional penalties		
			Duration of deprivation of liberty (years)			Duration of conditional deprivation of liberty (years)					Fine	Compulsory labour	Confiscation of property (persons)	Fine	Rights restriction (persons)
			5	6	7	3	4	5	6	7					
2009	Part.2	1	0	0	0	0	0	0	0	0	0	0	0	1	0
	Part.3	9	1	1	1	0	0	5	1	0	0	0	6	0	4
	Total	**10**	**1**	**1**	**1**	**0**	**0**	**5**	**1**	**0**	**0**	**0**	**6**	**1**	**4**
2010	Part.2	1	0	0	0	0	0	0	0	1	0	0	1	0	0
	Part.3	12	1	1	1	0	0	7	1	0	0	1	8	2	2
	Total	**13**	**1**	**1**	**1**	**0**	**0**	**7**	**1**	**1**	**0**	**1**	**9**	**2**	**2**
2011	Part.3	3	0	0	0	0	0	3	0	0	0	0	3	3	2
	Total	**3**	**0**	**0**	**0**	**0**	**0**	**3**	**0**	**0**	**0**	**0**	**3**	**3**	**2**

125. As emphasized by the statistics, between 2006 and 2010, 57 convictions for ML offence were achieved. However, during the on-site interviews it was indicated that, under Latvian legislation and jurisprudence, autonomous ML convictions were achieved.

Table 11: Predicate crimes[12]

Art. of CC	109.	175.	177.	179.	185.	193.	193.[1]	195.[1]	207.	210.	217.	218.	272.	275.	301.
2006	-	1	3	-	1	-	-	-	-	-	-	-	1	1	-
2007	-	-	6	1	-	8	4	2	-	-	-	2	-	6	1
2008	-	-	6	-	-	-	-	-	-	1	1	12	-	1	-
2009	-	-	3	3	-	-	-	-	3	-	-	1	-	6	-
2010	1	1	3	2	-	-	1	-	-	-	-	7	-	1	-
2011	-	2	4	-	-	1	-	-	-	-	1	6	-	1	-

126. It is also unclear if ML convictions can be achieved in the absence of a conviction for a predicate offence. A number of law enforcement and judiciary representatives indicated that

[12] Art. 109: Smuggling, Art. 175: Theft, Art. 177: Fraud; Art. 179: Misappropriation; Art. 185: Intentional destruction of and damage to property; Art. 193: Illegal activities with financial instruments and means of payment, Art. 193[1]: Obtaining, manufacture, distribution, utilisation and storage of data, software and equipment for illegal acts with financial instruments and means of payment, Art. 195[1]: Knowingly provide false information regarding ownership and resources, Art. 207: Entrepreneurial activities without registration or permit (licence), Art. 210: Fraudulent obtaining and use of credit and other loans, Art. 217: Violation of the provisions regarding accounting and statistical information, Art. 218: Evasion of tax payment and payments equivalent hereto, Art. 272: Failing to provide requested information and providing false information, Art. 275: Forgery of a document, seal and stamp and use and Sale of a forged document, seal and stamp, Art. 310: Compelling the giving of false testimony, explanations, opinions and translations.

there are no cases of conviction for ML offences without prior conviction for the predicate offence.

127. The authorities were not able to specify the sanctions applied for the underlying predicate offences for the above mentioned convictions.

128. Notwithstanding the mandatory requirement of the Latvian FIU to keep statistics, the evaluation team received various data on ML investigations/cases and on the amounts of assets secured by coercive measures in accordance with the CPL. The evaluation team is of the opinion that more coordination between the Latvian authorities in gathering information and keeping comprehensive statistics is necessary.

Effectiveness and efficiency

129. The evaluation team welcomes the progress made by Latvia on the number of investigations, prosecutions and convictions for ML offences which has been increasing since 2006. The assessors were informed that apart from self-laundering, third party laundering and autonomous laundering offences are being investigated and prosecuted in practice. However, on the basis of the evidence and data made available at the on-site visit, some doubts remain in relation to the effective implementation.

130. The authorities considered that the most common predicate offences for money laundering in Latvia are tax evasion and fraud. Tax evasion has been identified as domestic predicate crime and the illegal proceeds are laundered in Latvia or abroad. It is typical for the launderers to create schemes of complicated and extensive transactions executed by a number of legal persons. A series of cases have been identified where the fraud was conducted through phishing schemes (internet crimes) committed on foreign nationals abroad.

131. However it is unclear to the evaluation team if prosecutions and convictions for money laundering relate also to other major proceeds-generating predicate offences. Many of the ML cases continue to be related to tax evasion and fraud.

132. The statistics supplied by authorities do not provide a fully comprehensive picture of the ML cases due to the lack of relevant information on the number ML cases generated by FIU, police or prosecution. Although the evaluators have been informed that there is no need for a prior conviction of a predicate offence in order to convict a person for ML offence, the evaluators received various opinions from the practitioners. Judicial practice seems to prefer a higher level of proof for the underlying predicate offence, which has made it difficult, if not impossible, to prosecute an autonomous ML offence. It also appears that the lack of adequate evidence for the predicate offence is the most common failing reason in ML cases. Although if it is not required by the law, in practice there is a prerequisite condition to prove the funds generating criminal conduct. Even if this situation is not the result of an inadequate legislative framework, but rather of the hesitant attitude of the practitioners in respect of the proof of the predicate offence, it negatively affects the effectiveness of the system.

133. Under the Article 442 of the CPL, the district (city) court shall examine ML cases as a first instance court. The members of the different levels of judiciary interviewed on-site indicated that there is a need for additional (more reasonable) evidentiary to prove the guilt and convict the person for the money laundering offence. The evaluators are of the opinion that this constitutes an obstacle for developing court jurisprudence for the money laundering offence.

134. The court representatives interviewed confirmed that extensive training was provided for judges on money laundering issues in Latvia and abroad. However, there is a clear need for further training dedicated to judiciary and law enforcement authorities, particularly on investigation and prosecution of ML techniques.

2.1.2. Recommendations and comments

Recommendation 1

135. Consideration must be given to effective implementation of ML legislation by practitioners. The Latvian authorities should provide further training for judiciary and law enforcement authorities, in particular with regard to ML investigation and prosecution techniques and methods.

136. There is a clear need for further guidance to enable prosecutors and law enforcement to have a common understanding as to how they may prove underlying predicate criminality by drawing inferences drawn from objective facts and circumstances and without the need to prove that property originated from a particular predicate offence committed on a particular date.

137. Efforts should be initiated by the national authorities to ensure that the issue of no requirement of a prior conviction for the predicate offence in order to convict a person for ML is fully understood and accepted by judiciary.

138. The FT offence should be fully aligned with the TF Convention.

139. Case law should be established on autonomous ML cases in order to clarify the level of proof required where there has been no conviction for the predicate offence.

Recommendation 32

140. In order to effectively assess the implementation of ML legal provisions, the authorities should maintain and develop more comprehensive statistics in order to cover the number of police/prosecution generated cases and FIU generated cases,.

2.1.3. Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating[13]
R.1	**LC**	• The financing of terrorism is not fully in line with requirements of the TF Convention. • Demanding proof level for the predicate offence impact effectiveness. • Autonomous ML investigations and prosecutions constitute a challenge for the judiciary.

2.2. Criminalisation of Terrorist Financing (SR.II)

2.2.1. Description and analysis

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

141. In the 3rd MER round, a general concern was expressed on the definition of *"financial resources"*, as they were not fully defined in accordance with the UN Convention for the Suppression of the Financing of Terrorism.

[13] Note to assessors: for all Recommendations, the description and analysis section should include the analysis of effectiveness and should contain any relevant statistical data

Legal framework

142. Latvia has signed and ratified the UN Convention for the Suppression of the Financing of Terrorism on 14th November, 2002. As part of the ratification act, Latvia criminalised TF in Section 88^1 of the LCL, which entered into force on the 1st June, 2005. No substantial changes have been made since the 3rd mutual evaluation round with regard to the act provided by Section 88^1 of the LCL.

143. Only one editorial amendment has been made to Section 88^1 of the LCL since it entered into force. The amendment made on the 12th of January 2008, provided the replacement of the word *"organisations"*, in relation to the terrorist groups, with the word *"groups*", in order to ensure a terminology consistent with LCL provisions. Section 88 paragraph 3 of the LCL, defines terrorist groups is groups of persons, pursuant to previous agreement. *"Group of persons"* is defined by Section 19 of LCL as a group formed by two or more persons participating to the commitment of a particular crime.

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

144. TF offence is qualified as an especially serious crime and is provided by Section 88^1 of the LCL: *"**(1)** For a person who commits the direct or indirect collection or transfer of any type of acquired funds or other property for the purposes of using such or knowing that such will be fully or partially used in order to commit one or several acts of terror or in order to transfer such to the disposal of terrorist groups or individual terrorists (financing of terrorism) – the applicable punishment is life imprisonment or deprivation of liberty for a term of not less than 8 and not exceeding 20 years, with confiscation of property. **(2)** For a person who commits the financing of terrorism if commission thereof is by a group of persons pursuant to previous agreement or it committed on large scale – the applicable punishment is life imprisonment or deprivation of liberty for a term of not less than 15 and not exceeding 20 years, with confiscation of property."*

145. Terrorism is defined by Section 88 of the LCL as the use of explosives, use of fire, the use of nuclear chemical, chemical, biological, bacteriological, toxic or other weapons of mass destruction, mass poisoning, spreading of epidemics and epizootic diseases, kidnapping of persons, taking of hostages, hijacking of air, land or sea means of transport or other activities if they committed for the purpose of intimidating inhabitants or with the purpose of inducing the State, its institutions or international organisations to take any action or refrain there from, or for purposes of harming the State or the inhabitants thereof or the interests of international organisations.

146. Two separate LCL Sections (Sections $88.^2$ and $88.^3$) deal with the invitation to terrorism and terrorism threats, and the recruitment and training of persons for the commitment of acts of terror.

147. The evaluation team welcomes the editorial amendment made to Section 88^1 of the LCL. However, TF offence, as provided by Latvian legislation, does not fully comply with the provisions of Articles 1 and 2 of the TF Convention, and a number of shortcomings still remain.

148. The concept of *"wilfully"* is missing from the disposition of Section 88^1 of the LCL. It was argued by the Latvian authorities during the on-site visit that the words "*direct or indirect collection or transfer of any type of acquired funds or other property*" conforms with requirement of SR.II paragraph (a) and Article 2 of the TF Convention, namely that TF offences should extend to any person who wilfully provides or collects funds by any means, directly or indirectly. However, in the absence of any case law or other sources of guidance it cannot be anticipated whether the Latvian judicial practice would actually accept that the "*direct or*

indirect collection or transfer of any type of acquired funds or other property" clearly shows the intention of legislative authority to criminalise the wilful provision or collection funds[14].

149. Paragraph (b) of Criterion II.1 to SR.II requires extending TF offences to any funds (which is defined in the TF Convention) whether from a legitimate or illegitimate source. Paragraph (b) is reflected in Section 88[1] subsection (1) of the LCL providing "*any type of acquired financial funds or other property*". The wording *"any type"* provided by Section 88[1] (1) of the LCL relates to the source of the funds and property in the sense that they may be both from a legitimate source as well as from illegitimate source by that corresponding with requirements of TF Convention. Definition of funds is covered by Article 1 (paragraphs 1 and 2) of the AML/CFT Law.

150. Another difficulty arises in relation to the additional mental element required by the Latvian law in relation to acts that can be qualified as "*acts of terror*", as Article 2 (1)(a) of the TF Convention requires countries to criminalise an act which constitutes an offence within the scope of and as defined in one of the treaties listed in the Annex.

151. The definition of the TF offence provided by Section 88 (1) is related to Article 88 where "Terrorism" is defined as "… *use of explosives, use of fire, the use of nuclear chemical, chemical, biological, bacteriological, toxic or other weapons of mass destruction, mass poisoning, spreading of epidemics and epizootic diseases, kidnapping of persons, taking of hostages, hijacking of air, land or sea means of transport or other activities* ***if they committed for the purpose*** *of intimidating inhabitants or with the purpose of inducing the State, its institutions or international organisations to take any action or refrain there from, or for purposes of harming the State or the inhabitants thereof or the interests of international organisations*".

152. As it may be concluded from the table below providing an overview, the evaluators consider that Section 88 (1) of the LCL does not cover all relevant acts annexed to the TF Convention.

Table 12: Acts of terrorism listed in Section 88 of the LCL

Treaties listed in the Annex to the TF Convention	Analysis based on the Section 88 of the LCL
Unlawful Seizure of Aircraft	Hijacking of air transport
Unlawful Acts against the Safety of Civil Aviation	**N/A**
Crimes against Internationally Protected Persons, including Diplomatic Agents	**N/A**
Taking of Hostages	Kidnapping of persons, taking of hostages,
Physical Protection of Nuclear Material	The use of nuclear chemical, chemical, biological, bacteriological, toxic or other weapons of mass destruction, mass poisoning, spreading of epidemics and epizootic diseases,
Unlawful Acts of Violence at Airports Serving International Civil Aviation	**N/A**

[14] Latvian authorities presented to the evaluators a scientific and practical commentary on LCL (*U.Krastiņš, V.Liholaja, A.Niedre "Krimināllikuma zinātniski praktiskais komentārs. Sevišķā daļa.", Firma "AFS", Riga, 2007*) which explains that activities described in Article 88¹ are realized with a specific goal.

Unlawful Acts against the Safety of Maritime Navigation	Hijacking of sea means of transport
Unlawful Acts against the Safety of Fixed Platforms	Destruction or damage to physical objects, automated data processing systems, electronic networks, as well as other objects located in the territory or the continental shelf of the State
Terrorist Bombings	**Use of explosives**

153. The Latvian authorities argued that the missing offences are covered by the wording "*other activities*" in Section 88 (1) of the LCL in conjunction with other Articles of the LCL, due to an "open-list approach" which is a common way to draft Articles in LCL.

154. The evaluators are of the opinion that the wording *"other activities"* should be read in conjunction with the continuation of the article which provide the condition qualifying them as "*acts of terror*" by including a mental element: *"if they committed for the purpose of..."*.

155. Therefore, the above mentioned part of Article 88 is in line with Article 2 (1)(b) of the TF Convention requiring from countries to criminalise *"any other act….when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act".*

156. If the argument of the Latvian authorities that the wording "*other activities*" deals with the rest of the offences within the scope of and as defined in the treaties listed in the Annex to the TF Convention is accepted, a limitation arises from the fact that the rest of the offences need to have an additional mental element in order to qualify as *"acts of terror"*.

157. This is not in line with Article 2 (1)(a) of the TF Convention which states that financing of the particular offences covered by the Annex to the TF Convention shall not require any specific reference to a mental element.

158. During the on-site visit there was no unanimity among the practitioners interviewed as to whether acts of terror against the international community are criminalised in LCL or not. The authorities argue that reference to the *"State"* has to be defined as any state (jurisdiction) under the TF Convention, because of the wording used in Article 88 of the LCL until 2005 was "Republic of Latvia". But following the amendments the wording "State" is being used and this amendment was made with an aim to broaden the scope of Article 88. However, due to the absence of any prosecutions or convictions for the offence of financing of terrorism in Latvia, the evaluators consider that this interpretation is not fully demonstrated.

159. The reference to intention has been included into Section 88^1 (1) of the LCL. It is determined that the collection or transfer of funds or other property have to be committed "*for the purposes of utilising such or knowing that such will be fully or partially utilised in order to commit one or several acts of terror or in order to transfer such to the disposal of terrorist groups or individual terrorists*". These words comply with requirements mentioned in Article 2 (1) of the TF Convention and Criterion II.1 to SR.II. TF as defined in the LCL does not require that the funds were actually used to carry out or attempt a terrorist act(s). TF may be incriminated in the moment where the person starts collecting or transferring funds or other property for any purpose, including day-to-day activities of a terrorist organisation. According to the Latvian legislation, for TF crime it is not required that funds should be linked to a specific terrorist act(s). There is no reference within Section 88^1 (1) of the LCL to specific activities. In the evaluator's view, the wording *"at the disposal"* covers the financing of all activities established under Article 88 (1) of the LCL and the financing of other (legitimate) activities carried out by a terrorist group or individual terrorist.

160. The general norm, Section 15 of the LCL together with Section 88^1 is applicable to hold a person criminally liable for an attempt to commit the offence of the financing of terrorism as it is considered a especially serious crime. Section 88^1 (1) of the LCL has been formulated flexibly

and there is no requirement for funds or other property to be collected in a particular amount. Also, there is no requirement that the funds or other property were actually used to carry out or attempt a terrorist act. Consequently, the criminal liability for commitment of TF applies as soon as the person starts collecting or providing funds or other property. In addition, the relevant provisions of the LCL (Sections 18, 19, 20) comply with requirement established within paragraph (e), Article 2(5) of the TF Convention.

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

161. As indicated under R. 1 above, Latvia has an *"all crimes approach"* and every criminal offence (including TF offence) can be a predicate offence for ML.

162. However, since the LCL does not cover all acts which constitute an offence within the scope of, and as defined in some of the treaties listed in the Annex to the TF Convention, only some offences are considered in Latvia terrorism and financing of terrorism. Assessors consider that the scope of TF as predicate offences for ML is limited.

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

163. TF offences are applicable regardless of the location of the terrorist group or irrespective of the place where the terrorist act is, or is planned to be committed (LCL, Sections 2–4).

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

164. Criminal legislation does not contain any explicit provision covering whether the intentional element of a criminal offence, including TF, may be inferred from objective factual circumstances. The interviewed authorities indicated that according to the general principles of the LCL, the intentional and other subjective elements of the offence may be inferred from objective factual circumstances[15].

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

165. Articles 70 (1) to 70 (8) of the LCL provide for liability of legal persons and sanctions largely in compliance with Recommendation 2.

166. However, Section 70.1 of the Criminal Law envisages that for the criminal offences provided for in the Special Part of the Criminal Law, coercive measures are applied to a legal person, if the criminal offence has been committed in the interests of the legal person by a natural person. Since the TF offence in general would not result in a legal person *"having interest"*, the penalty applicable for the legal person is highly questionable. The requirement of *"in the interests of the legal person"* seems to be more restrictive than the requirement of UN TF Convention.

167. the Latvian authorities argue that such requirement has an objective justification – to form a link between the legal person and the acts committed by the natural person. It is understood that it would be unreasonable to apply coercive measures in cases where a person responsible for the management or control of that legal person did the punishable acts on his own without any profit for the company.

[15] In absence of cases, in order to support their approach, authorities referred to Scientific-practical commentary of Criminal Law, Nr.1 "General Part". Dr. Habil Jur, Prof. U. Krastiņš, 2007, Rīga, Firma "AFS".

168. The application of coercive measures established in the LCL to legal person does not preclude application of criminal liability to natural person who committed particular offence (LCL, Section 12).

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

169. In relation to sanctions, Section 88^1 (1) of the LCL provides punishment of life imprisonment or deprivation of liberty for a term of not less than 8 and not exceeding 20 years, with confiscation of property. Section 88^1 (2) of the LCL provides punishment of life imprisonment or deprivation of liberty for a term of not less than 15 and not exceeding 20 years, with confiscation of property. Considering the sanctions for similar acts in the Chapter X of the LCL ("Crimes against the State"), the sanctions for terrorism and financing of terrorism seem to be proportionate, dissuasive and potentially effective.

170. The criminal responsibility for preparation and attempt to commit the offence of TF is provided in Articles 88.¹ and 15. The criminal responsibility of the organiser, instigator and abettor is provided in Articles 88.¹ and 20. All those acts are punishable as crimes committed which means that the maximum penalty is the same as in Article 88^1.

Recommendation 32 (terrorist financing investigation/prosecution data)

171. There have not yet been criminal cases brought to court in Latvia for TF, and apparently no formal criminal proceedings have been initiated on this basis.

Additional elements

172. The existing legislative framework has not yet been tested before the judiciary (not even at the level of prosecutors), so there are no statistics on criminal sanctions applied to persons for FT offences.

Effectiveness and efficiency

173. Assessing effectiveness of the implementation of the legal provisions in the absence of any investigation, prosecution or conviction for TF is not possible. Apart from the points raised in the analysis, the legislative base is largely in place. The lack of full compliance of all relevant provisions of the LCL to international standards might have a negative impact on effectiveness as the evaluators are of the view that collectively, the legal provisions still do not exhaustively cover all the essential criteria of SR. II.

2.2.2. Recommendations and comments

Special Recommendation II

174. Most of the provisions required under the TF Convention are covered in the Latvian criminal legislation, but some elements have not been included yet. In particular, the wilful provision or collection of funds with the unlawful intention that they should be used or in the knowledge that they are to be used, in full or in part, to carry out a terrorist act(s); by a terrorist organisation or by an individual terrorist should be clearly mentioned as required by Essential Criterion II.1 and Article 2 (1) of the TF Convention.

175. The LCL should be revised to enlarge the scope of financing of terrorism in relation to all offences covered by the treaties that are listed in the annex to the TF Convention without any additional mental element required.

Recommendation 32

176. There has not been any investigation, prosecution or conviction for TF offences in Latvia and though there are no statistics on the matter.

2.2.3. Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**LC**	• Some of the financing of the offences covered in the Annex to the TF Convention have in Latvian legislation an additional mental element which is not required under A 2 (1) (a). • In the absence of investigations or convictions, effectiveness is challenged by various views expressed by practitioners in relation to the understanding of "State" mentioned under the LCL as to whether it refers to acts of terror against all the international community or only against the Latvian State.

2.3. Confiscation, Freezing and Seizing of Proceeds of Crime (R.3)

2.3.1. Description and analysis

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

177. The shortcomings identified in the 2006 MER were that: a) property has not been defined for the purposes of the LCL and Latvian Criminal Procedure Law (LCPL), b) the definition of proceeds of crime/illegally acquired property needs to be broadened to deal with property obtained directly and indirectly, c) and that the "forfeiture" does not include property that is intended for use in the commission of an offence, except in cases of preparation or attempt to commit a crime, d) there is no measure that would allow for the voiding of contracts or actions.

Legal framework

178. In Latvia there are two types of confiscation: Article 42 of LCL provides for confiscation of property which is a penalty and is applied to property which belongs to the sentenced person. Chapter 27 of LCPL (Articles 355-360) deals with criminally acquired property. Article 240 of LCPL deals with confiscation of *"instrumentalities"*.

179. Section 42 of the LCL defines the confiscation of property as a penalty imposed upon conviction as a compulsory alienation to State ownership without compensation of the property owned by a convicted person or parts of such. The confiscation of property may be determined only in cases provided for in the Special Part of the LCL and this includes TF, ML and other predicate offences. Property owned by a convicted person, whom he or she has transferred to another natural or legal person, may also be confiscated.

180. The confiscation procedure in respect of direct and indirect proceeds of crime is provided by Chapter 27 (Sections 355–360) of the CPL. Unlike Section 42 of the LCL, Sections 355–360 of

the CPL are not restricted to a list of criminal offences and can be used to obtain the confiscation of proceeds from any offence, including the proceeds from the ML and TF offences.

Confiscation of property (c.3.1)

181. *"Property"* has not been defined for the purposes of the LCL and CPL in the AML/CFT Law itself. Property shall be considered as criminally acquired where a person, directly or indirectly, acquires ownership or possession of them as a result of a criminal offence and in other cases specified by the CPL. Proceeds from criminal activity shall mean "criminally acquired property and financial resources" as used in the CPL. In addition, proceeds from criminal activity shall also mean the funds that belong to a person or that are, directly or indirectly, controlled by a person who is included in the list of persons who are suspected of being involved in terrorist activities that is compiled by countries or international organisations recognised by the Cabinet of Ministers and may reasonably be suspected of the execution of or participation in a terrorist-related criminal offence on the basis of information available to bodies performing investigatory operations, pre-trial investigation institutions, the Office of the Prosecutor or the court.

182. The proceeds shall be recognised as derived from criminal activity by a court adjudication that has entered into effect, or by a decision of a public prosecutor regarding the termination of criminal proceedings.

183. During pre-trial criminal proceedings, property may also be recognised as criminally acquired by a decision of a district (city) court in accordance with the procedures specified in Chapter 59 of the CPL, if a person directing the proceedings has sufficient evidence that does not cause any doubt regarding the criminal origins of the property or the relation of the property to a criminal offence, or by a decision of a person directing the proceedings, if, during a pre-trial criminal proceedings, property was found with and seized from a suspect, accused, or third person in relation to which property the owner or lawful possessor thereof had previously submitted a loss of property, and, after the finding thereof, has proven his or her rights to such property, eliminating any reasonable doubt.

184. Criminally acquired property shall be confiscated, if the further storage of such property is not necessary for the achievement of the purpose of criminal proceedings and if such property does not need to be returned to the owner of lawful possessor, and an acquired financial resource shall be transferred to the state budget (CPL, Section 358 (1)).

185. If criminally acquired property has been alienated, destroyed, concealed or disguised, and the confiscation of such property is not possible, other property, and financial resources, at the value of the property being confiscated may be subjected to confiscation or recovery (LCPL, Section 358 (2)).

186. Regarding confiscation procedure of instrumentalities used in the commission of crime (including ML, TF or other predicate offences) Section 240 (1)(6) of the CPL provides that instrumentalities which were intended or have been used for commission of a criminal offence shall be confiscated, but if they do not have any value – destroyed.

187. According to Section 240 (7) of the CPL subject of confiscation may be other property and also financial resources of the perpetrator of corresponding value of instrumentalities if it has been used for commission of a criminal offence and if it does not belong to perpetrator.

188. Thus, the laundered property and the proceeds (Section 355 of the CPL), as well as the instrumentalities used in or intended to use in (Section 240 (1) 2. and 6. and (7) of the CPL) the commission of any ML, TF and other predicate offences shall be confiscated, as well as property of corresponding value (Section 358 (2)).

189. Section 358 (1) and (4) of the CPL states that criminally acquired property shall be confiscated and an acquired financial resource shall be transferred to the state budget: resources

that a person has acquired from the marketing (*selling*) of property, knowing the criminal origins of such property; fruits acquired as a result of the utilisation of criminally acquired property; confiscated financial resources; financial benefits, or material benefits of another nature, that a state official has accepted as a bribe.

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

190. Freezing and seizing procedure in criminal cases is governed by Chapter 28 (Sections 361–366) of the LCPL.

191. For freezing, CPL uses the terminology *"imposition of an attachment on property"* which is imposed in order to ensure the solution of financial matters in criminal proceedings, as well as the possible confiscation of property. The attachment shall be imposed in criminal proceedings on the property of a detained person, suspect, or accused, and also on property due to such person from other persons, or the property of persons who are materially liable for the actions of the suspect or accused. An attachment may be imposed as well on property in order to ensure the collection of the value of an instrumentality of criminal offence to be confiscated, if such instrumentality is owned by another person. An attachment may also be imposed on criminally acquired property, or property related to criminal proceedings, that are located with other persons. Section 361 (1^1) of the CPL provides possibilities to freeze property, also financial resources, in the value of criminally acquired property, as well as the yields acquired as a result of the utilisation of criminally acquired property.

192. Subject to the approval of investigative judge, a decision on freezing of property shall be passed by investigator or prosecutor. In urgent cases, the decision may be taken by an investigator with prosecutor's approval, with the subsequent reporting to an investigative judge not later than on the next business day, by presenting the protocol and other materials that justify the necessity and emergency of the attachment (LCPL, Section 361 (3 and 4)). Should the investigating judge deem that a freezing has taken place illegally, the attachment shall be seized from the property.

193. The Latvian FIU also has the power to freeze (suspend) the transaction or the particular debit operation on the customer's account where: money or other funds are recognised as derived from criminal activity – up to 6 months in cases of TF; on the basis of information that there is a suspicion of committing a criminal offence, including money laundering or an attempt thereof – up to 45 days (AML/CFT Law, Article 32). Whether the FIU, based on the information received from the obliged entities and international information exchange, has identified a grounded suspicion of a criminal offence arises committed or being committed including ML, TF or an attempt of such activities, with the agreement of the prosecutor general or specially authorised prosecutor issues order for the obliged entities to monitor the transactions on the customer's accounts – up to 1 month. If necessary, this period can be prolonged by the prosecutor general or specially authorised prosecutor.

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

194. Based on information obtained by the evaluation team during its on-site visit, seizure measures are taken on an *ex parte* basis. There is a basic principle that the initial application to freeze or seize property subject to confiscation may be made *ex-parte* or without prior notice. It means that decision of freezing of property taken by an investigative judge should be notified to the person whose property is arrested only when executing such decision (CPL, Section 361).

195. The property of the person which is the subject for freezing and/or seizing should not necessarily be on the spot where freezing or seizing is applied, but he/she must be notified of the freezing and seizing of property as soon as possible after that and a copy of property freezing arrest protocol must be issued to him/her (CPL, Sections 362 and 363).

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

196. According to Section 190 of the CPL, a person directing the proceedings, without conducting the seizure provided for in Section 186 of the CPL, is entitled to request from natural or legal persons, in writing, objects, documents and information regarding the facts that are significant to criminal proceedings, including in the form of electronic information and document that is processed, stored or transmitted using electronic information systems. This includes rights to request documents and information from relevant state data bases such as Unified Computerised Land Register, Road Traffic Safety Department Register about vehicles and driver's licence and others.

197. The heads of legal persons have a duty to perform a documentary audit, inventory, or departmental or service examination within the framework of the competence thereof and on the basis of a request of a person directing the proceedings, and to submit documents, within a specific term, together with the relevant additions regarding the fulfilled request (CPL, Section 190 (3)).

198. If persons do not submit the objects and documents requested by law enforcement agencies or prosecutors during the set term, the law enforcement agencies and prosecutors may conduct a seizure or search of requested objects or documents (CPL, Section 190 (2)).

199. The evaluators welcome the recent establishment of the Asset Recovery Office (ARO) on the 27th of February 2009, within the Economic Crime Enforcement Department, in accordance with Article 1 Part 3 of Council Decision 2007/845/JHA of 6 December 2007, in the field of tracing and identification of proceeds from, or other property related to crime. ARO provides support for structural units of the State Police in tracing unlawful proceeds abroad by submitting requests to competent authorities of Member States and fulfils requests of Member States to help tracing assets in Latvia.

Protection of bona fide third parties (c.3.5)

200. Bone fide third party rights are protected by Section 360 of the LCPL. This Section gives the right to a person whose interests have been infringed by any act or decision of an investigation body or a prosecutor or of a court to appeal that act or decision. If criminally acquired property has been returned to the owner or lawful possessor thereof, the third person who acquired such property, or pledge, in good faith has the right to submit a claim, in accordance with civil procedures, regarding compensation for the loss, including against an accused or convicted person.

201. The evaluation team considers that the safeguards provided by the Latvian legislation on the matter are consistent with the Palermo Convention.

Power to void actions (c.3.6)

202. Section 1415 of the Civil Law of Latvia provides that an impermissible or indecent action, the purpose of which is contrary to laws or moral principles, or which is intended to circumvent the law, may not be the subject-matter of a lawful transaction; such a transaction is void. This general rule relates to all forms of the transactions such as written form of lawful transactions, an oral agreement etc.

Additional elements (c.3.7)

203. Latvian legislation does not provide directly for the confiscation of the property of organisations that are found to be primarily criminal in nature. This is argued by the fact that legal person cannot be found guilty due to lack of will (*it is admitted in theory that a legal*

person cannot have consciousness and there is always a natural person who actually commits the act). Meanwhile the LCL provides for coercive measures applicable to legal persons, including confiscation of property. Also establishment of a criminal organisation, involvement or leading of such organisation is punishable according to Article 89.1 of the LCL.

204. As described in the 3rd round MER, the civil forfeiture i.e. confiscation based on civil standards of evidence, is still not recognised in the CPL.

205. Nonetheless, Section 355 (2) of the LCPL provides for the possibility of reversal of the burden of proof *("if the opposite has not been proven by a person"*) in a number of circumstances. For example, the property and financial resources is considered as criminally acquired and thus confiscated if such property belong to a person, who has been recognised as a member of an organised criminal group, or supports such group. However, it has to be said that such property shall be confiscated in relation to a person, not to the organisation itself.

206. Section 356 (2)(1) of the LCPL provides that the criminally obtained valuable, materials, and documents may be confiscated without a judgment of conviction. A district (city) court upon the claim of prosecutor or investigator can acknowledge property as proceeds from crime and confiscate such property if prosecutor or investigator produces sufficient evidence of criminal origin of property in question.

207. Financial resources that have been acquired in marketing (*selling*) confiscated property, or property the ownership of which has not been ascertained or the owner of which does not have lawful right to such property, or the owner or lawful possessor of which has refused such property shall be confiscated and an acquired financial resource shall be transferred to the state budget.

Recommendation 32 (statistics)

208. Statistical information in relation to the confiscation and provisional measures regime was provided to a limited extent to the evaluators.

209. The table below sets out the aggregate confiscation and provisional measures by the Economic Crime Enforcement Department of the State Police applied for all crimes for the period 2006–2010.

Table 13: Confiscations and provisional measures (Economic Police)

	2007	2008	2009	2010
Proceeds seized	1,952,448 LVL	37,109 EUR 20,672 USD 192,446 LVL	1,622,295 EUR 1,495,714,14 USD 98,735.09 LVL 91,000 GBP	458,815.55 EUR 855,586.47 USD 26,863.66 LVL 137,200 CHF
Including proceeds confiscated and included in state budget	1,390,649 LVL	196,541 LVL	142,879 EUR 24,292 USD 590.68 LVL	31 EUR 81,351.80 USD 310,939.54 LVL

Including proceeds returned to the owner or lawful possessor	———	37,109 EUR 20,672 USD 192,446 LVL	———	1,573,731.38 EUR 732,544.01 USD 109,689.86 LVL
Including proceeds voluntary returned and included in state budget	———	196,541 LVL 2,358 USD 728,725 EUR	———	5,840 LVL
Including proceeds returned to the owner or lawful possessor	———	37,109 EUR 20,672 USD 192,446 LVL	———	1,573,731.38 EUR 732,544.01 USD 109,689.86 LVL
Including proceeds voluntary returned and included in state budget	———	196,541 LVL 2,358 USD 728,725 EUR	———	5,840 LVL

210. Statistics on provisional measures and confiscations for ML offences (at the moment there has not been any investigation, prosecution or conviction for TF offences) were provided by the Latvian FIU.

Table 14: Criminal Proceedings on Criminally Obtained Property (based on the provisions of the CPL Chapter 59)

	2007	**2008**	**2009**	**2010**
Number of criminal proceedings on criminally obtained property	10	22	25	31
Property which is recognised as criminally obtained and transferred to the state budget	LVL 455,606.79; EUR 966.16	LVL 336,632.69; EUR 1,099,351.33	LVL 564,853.58; EUR 80,638.69; USD 477.21	LVL 370,792.78; EUR 213,350.07; USD 228.57
Seized Property in Criminal Proceedings on Money Laundering				
Seized financial assets	LVL 354,952.79; EUR 52.40	LVL 1,337,916.08; EUR 1,344,085.38; USD 100,659.78	LVL 1,249,782.65; EUR 611,330.84; USD 57,507.46; EEK 764,766.70	LVL 307,050.67; EUR 617,781.37; USD 87,865.97

Seized movable property (vehicles)	0	0	17	12
Seized real estate	0	2	28	35

Table 15: Confiscations and provisional measures in ML cases:

Money Laundering						
	Frozen (by FIU)		Seized		Confiscated	
	orders	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
2006	125	17,216,846	6	460,051	3	17,676
2007	94	9,248,720	48	7,439,525	16	3,130,383
2008	99	3,841,800	18	2,257,000	38	8,074,795
2009	70	7,403,723	16	1,063,990	1+32	731 723
2010	48	1,980,520	9	357,665	2+ 41	15 811 2 053 839

211. The financial assets which were recognised as criminally acquired and confiscated in the period 2009-2011 (first quarter) derived from the following predicate crimes.

Table 16: Confiscations broken up on predicate offences

LCL Section	Number of proceedings	Amount (in EUR)
Evasion of taxes Section 218 (2)	46	2,115,620
Fraud Section 177	15	769,623
Entrepreneurial activities without registration Section 207	2	210,839

Effectiveness and efficiency

212. The Latvian legal framework is convincing in that it provides for a seizure and provisional measures with regard to property laundered, proceeds from and instrumentalities used in and intended for use in ML and TF or other predicate offences.

213. Law enforcement agencies are provided with sufficient legal means on the application of provisional measures and seizure. Nevertheless, during the on-site interviews, a need of targeted training on the topic of the identification and tracing of property that is, or may become subject to confiscation was apparent to the evaluators.

214. The evaluators welcome the establishment of the Asset Recovery Office in 2009. Based on the information obtained during the on-site visit, the Asset Recovery Office has been active in processing national and foreign requests on identification of assets, processing 13 foreign requests and 2 national requests.

215. However, the effectiveness of the system is questionable due to confusing statistics on confiscations and provisional measures.

216. An overall lack of coordination on the gathering of statistics on amounts frozen, seized and confiscated is noticeable. In particular, the authorities could not demonstrate whether all law enforcement bodies follow the proceeds effectively.

217. Furthermore, the authorities were unable to demonstrate whether the provisions related to third party confiscation, value confiscation and confiscation of indirect proceeds of crime have been applied effectively or if they ever have been applied.

2.3.2. Recommendations and comments

218. The CPL Section 358 (2) provides for the recovery of assets of equivalent value. Nonetheless this provision has never been tested in practice. Using this provision would enhance the general effectiveness of the provisional measures system as a whole.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	LC	▪ Deficiencies in criminalisation FT (noted in SR. II) limit the power to confiscate. ▪ Effectiveness could not be fully demonstrated

2.4. Freezing of Funds Used for Terrorist Financing (SR.III)

2.4.1. Description and analysis

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

219. In the 3rd round assessment, there were the following concerns in the MER: the financial resources and property are not defined in accordance with the TF Convention; within the context of UNSCR 1373, Latvia does not have a national mechanism to consider requests for freezing from other countries (outside the EU mechanisms) or to freeze the funds of EU internals (citizens or residents); there is no publicly known and clearly defined procedure for de-listing of suspected terrorist listed by Latvia apart from those on the EU list; there is no access to funds for basic living expenses and legal costs.

220. As a member of the EU, Latvia implements its obligations to freeze funds and assets of terrorists on the basis of EC Regulations and complementary domestic legislation. UNSCRs 1267 (1999) and successor resolutions are implemented by Council Regulation No. 881/2002 of 27 May 2002, whereas, the most important part of S/RES 1373/2001, is implemented by Council Regulation No. 2580/2001 of 27 December 2001. In this respect, no substantial changes have taken place since the 3rd round report and therefore findings and conclusions of the previous evaluation team are valid without the need of reiteration.

221. In January 2007 the Law "On implementation of sanctions established by international organisations in the Republic of Latvia" entered into force, which states that all registered participants in the financial and capital market in the Republic of Latvia are prohibited to perform any kind of operation with financial instruments and financial assets that are partly or completely, directly or indirectly owned by a state or by a person regarding whom financial restrictions have been established.

222. In January 2009 the Cabinet of Ministers adopted Regulations "On the countries and international organisations which have compiled lists of persons suspected of being involved in terrorist activity", which sets down countries and international organisations, whose lists of persons under suspicion of taking actions related to terrorism are recognised in Latvia.

223. As a member state of EU, Latvia is a party to the Treaty on Functioning of the European Union. Article 288 of TFEU states that a regulation shall have general application, it shall be binding in its entirety and it is directly applicable in all Member States. Therefore, the regulations adopted by the EU are immediately effective in the national legal system of the Republic of Latvia, without the need for national implementing legislation.

224. The evaluation team welcomed that Latvia has also enacted the domestic Law "On implementation of sanctions established by international organisations" that came into force on the 1st January 2007. In accordance with the Law, all registered participants in the financial and capital market in the Republic of Latvia are prohibited to perform any kind of operation with financial instruments and financial assets that are partly or completely, directly or indirectly owned by a state or by a person regarding whom financial restrictions have been established.

Freezing assets under S/Res/1267 (c.III.1) and under S/Res/1373 (c.III.2)

225. S/RES/1267 (1999) has been implemented in Latvia on the basis of Council Common Position 2002/402/CFSP of 27 May 2002, which constitutes the base for the EU to adopt respective Regulations in the matters concerned. The corresponding Regulation to implement provisions of S/RES/1267 (1999) is Council Regulation 881/2002. Article 2 of this Regulation provides for the operative obligation to freeze, as well as the prohibition on making funds available to any natural or legal person, group or entity targeted by the Regulation, and listed in the Annex 1 thereto. The list in Annex 1 corresponds to UNSC respective designations, stipulated in S/RES/1267. In accordance with Article 7a of Regulation 881/2002 where UNSC or the Sanctions Committee decides to list a natural or legal person, entity, body or group for the first time, the European Commission shall, as soon as a statement of reasons has been provided by the Sanctions Committee, take a decision to include such person, entity, body or group in Annex I. Therefore, the list in Annex 1 of Regulation 881/2002 is updated on regular basis according to UN SC respective amendments of S/RES/1267 list. Regulation 881/2002 has been amended 144 times as till 3 February 2011.

226. The reporting obligation for persons and organisations being subject to the AML/CFT Law are provided by the Law itself and Cabinet of Ministers Regulation "*On unusual transaction indicator list and procedure for reporting unusual and suspicious transactions*" from December 2008. The subjects of the AML/CFT Law shall report without delay to the Latvian FIU about each consulted, intended (planned), notified, initiated, delayed, executed or confirmed transaction which meets at least one of the indicators of an unusual transaction set out in these regulations. As further described under Recommendations 13 and 16, all relevant financial institutions and DNFBP (as required by FATF standards) are subject to the AML/CFT Law in Latvia.

227. Furthermore, according to the Article 8 point 8.1. of the Regulation, the first of the indicators refer to cases where one of the parties is a *person suspected of committing a terrorist act or of participation therein and is included on the list of persons regarding which the FIU has informed the subjects of the Law and their supervisory and control authorities*.

228. According to the AML/CFT Law, a subject person should take the decision to refrain from executing one or several linked transactions or debit operations of a particular type on the customer's account where the transaction is related or may be reasonably suspected of being related with terrorist financing. The Latvian authorities explained that this general provision shall also apply to terrorist lists, as they would provide *"terrorist related"* grounds for suspicions. Article 36 (2) of the AML/CFT Law stipulates that the exemptions from refraining from executing a transaction shall not apply to listed persons. However, it has to be said that this postponement of an operation mechanism has never been tested in practice.

229. Accordingly, the freezing system in place for listed persons in Latvia relies on a reporting mechanism to the FIU and the transactions performed by such persons are to be considered by the subject persons as "unusual transaction" and thus, a matter of automatic reporting.

230. Freezing actions take place without prior notice to the designated persons involved. Article 38 (1) of the AML/CFT Law prohibits a person subject to the Law from notifying the customer, the beneficial owner and other persons, except supervisory and control authorities, to the effect that information about the customer or his/her transaction (transactions) has been submitted to the Latvian FIU and that this information is or may be analysed or pre-trial criminal proceedings performed in relation to the committing of a criminal offence, including that of ML, TF or an attempt thereof.

231. In general, Latvia has an FIU based system (please see the table) to freeze funds in accordance with UNSCR 1267 directly through the EU regulation mechanisms where all obliged subjects of the AML/CFT Law have to report to the Latvian FIU on any suspicious transactions.

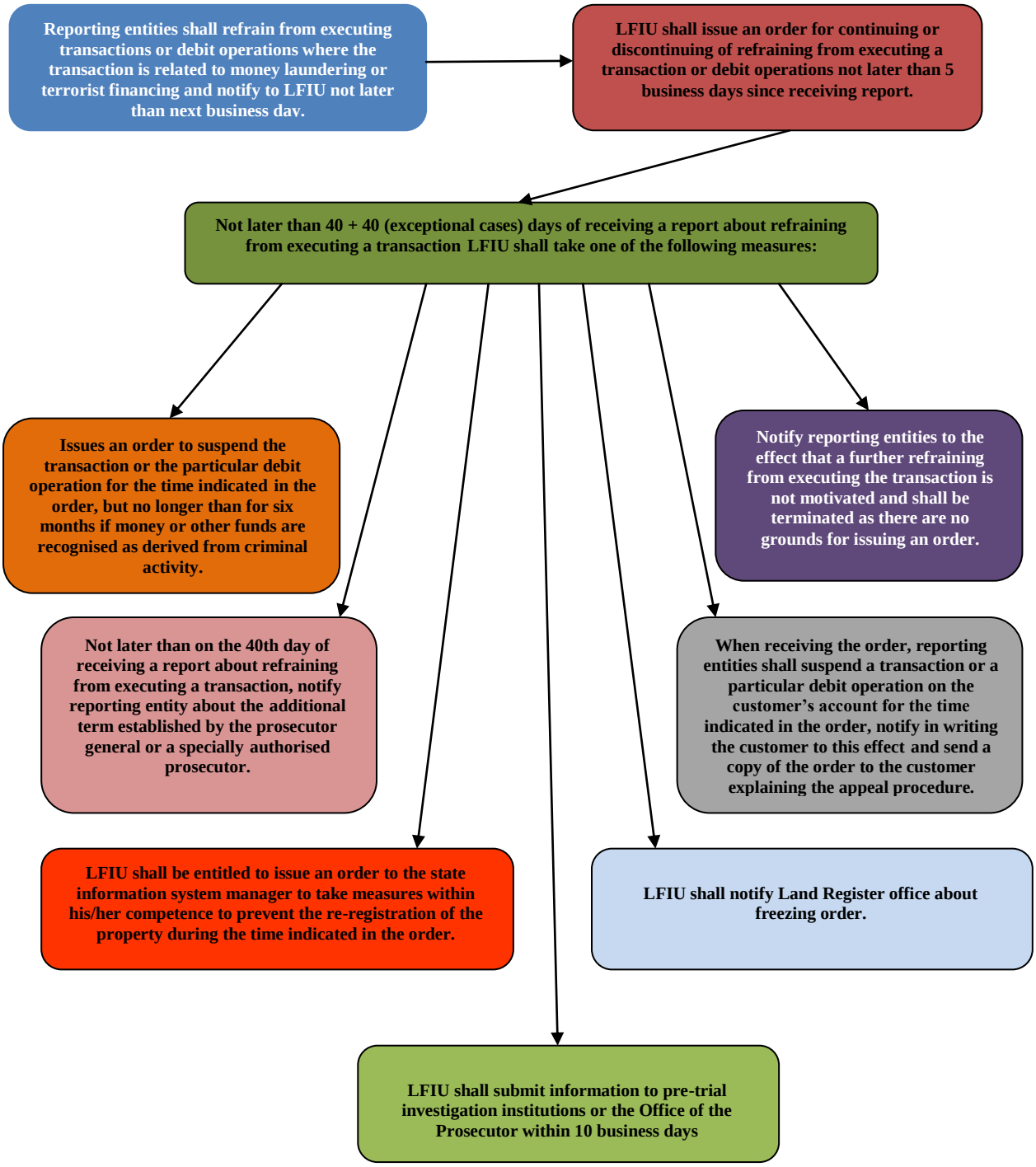
232. When tracing whether assets of any persons on lists are held in Latvia, inquiries are made by the Latvian FIU with the State Information System Manager (to take measures within competence to prevent the re-registration of the property during the time indicated in the Latvian FIU order), and Land Register office (for corroboration on a voluntary basis of the immovable property included in the Latvian FIU order).

233. However, the evaluators have concerns about the effectiveness of the procedures in place to freeze assets of designated persons. Notwithstanding the FIU based freezing system up to 9 months (5 days (Article 32 (2) + 80 days (Article 32 (3) + 6 months (Article 32 (3a)) the system relies on judicial-based mechanisms (which has not yet been tested in practice) to ensure freezing of assets until the person is de-listed. In such cases, seizure and confiscation of terrorist funds can be applied according to the criminal procedures as mentioned by the Latvian authorities. It is still unclear whether under this judicial-based mechanism would be possible to freeze at the request of LFIU "*without delay*", particularly taking into account that such mechanism would require the relevant law enforcement authorities to collect some degree of evidence to substantiate the suspicion for a court order to be issued.

234. It is also unclear what measures can be taken by authorities in the case of funds and other assets that are simply held by listed persons, without any transaction involved, such as money deposited (prior to listing) in a bank account or property held by listed persons.

235. S/RES/1373 (2001) has been implemented in Latvia on the basis of Council Common Position 2001/930/CFSP of 27 December 2001 on combating terrorism and Council Common Position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism, which constitutes the base for the EU to adopt respective Regulations in the matters concerned. The corresponding regulation to implement provisions of S/RES/1373 (2001) is Council Regulation 2580/2001. Article 2 of this Regulation provides for the operative obligation to freeze, as well as the prohibition on making funds available to any natural or legal person, group or entity targeted by the Regulation, and listed thereto. The targeted persons, groups or entities are determined by the Council acting by unanimity and is listed in separate Council Decisions.

Terrorist asset freezing procedure of the Republic of Latvia



236. However, the Regulation 2580/2001 does not cover persons, groups or entities having their roots, main activities and objectives within the EU – EU internals. EU internals are still listed in the Annex to Common Position 2001/931/CFSP where they are asterisked, therefore signalling that they are not covered by the freezing measures but only by an increased police and judicial cooperation between the Member States, as provided in Article 4 of Regulation 2580/2001. The evaluation team was informed by the Latvian authorities that in order to resolve the existing problem of freezing of terrorists assets or of other persons designated in context of S/RES/1373 (2001) (as the EU internals), the European Commission is in the process of drafting of new regulations that should be the basic legal framework to enable freezing measures against EU internals.

237. At the time of the visit there were no funds frozen in Latvia pursuant to UNSCRs 1267 and 1373 or transactions prohibited pursuant to the AML/CFT Law. Furthermore, so far, no proposal for EU- or UN-listing has been put forward by Latvia.

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

238. The Latvian authorities advise that they are prepared to consider freezing actions at the request of other jurisdictions, but they have not been asked to do so. If the authorities received a foreign request, they would use Article 63 of the AML/CFT Law which grants the Latvian FIU the power to issue orders (refraining from execution of transaction orders) at the request of authorised institutions of other countries or international institutions preventing terrorism.

239. Nevertheless, it is still unclear whether this provision is fully applicable to obligations under Criterion III.3, bearing in mind that the LFIU should issue an order where the information in the request creates reasonable suspicion that a criminal offence is taking place, including a criminal offence of ML, TF or of an attempt thereof.

240. Questions arise also in relation to the timeframe of the freezing of transactions, as according to Article 32 of the AML/CFT Law, the transaction shall be suspended for the time indicated in the order, but no longer than for 45 days. For the prolongation of such status through a different order, evidence must be gathered by prosecutors.

241. The Cabinet of Ministers Regulation "*On the countries and international organisations which have compiled lists of persons suspected of being involved in terrorist activity*" of 13 January 2009, sets down countries and international organisations, whose lists of persons under suspicion of taking actions related to terrorism are recognised in Latvia. Thus, terrorist lists compiled by EU Council, UNSC, member states of EU and member states of NATO are recognised in Latvia. In case of receipt through diplomatic channels of the respective lists they are transmitted by the Ministry of Foreign Affairs without delay to the competent authorities.

242. The actions initiated under the freezing mechanisms of other jurisdictions have not been sufficiently tested in practice and implemented to the domestic legislation. The provisions of the Cabinet of Ministers Regulation "*On the countries and international organisations which have compiled lists of persons suspected of being involved in terrorist activity*" are very narrow as there is no national mechanism in place to consider freezing requests under UNSCR 1373 or by third country request that are outside the EU and NATO.

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

243. In Latvia, the assets subject to freezing are defined by EU Regulation 881/2002 and EU Regulation 2580/2001. The third round evaluation report identified that the scope of EU Regulation 881/2002 does not extend to funds or other assets that are owned or controlled jointly by designated persons or entities and to those funds or other assets neither that are derived or are generated from funds or other assets owned or controlled by such persons or

entities. The EU Regulation 881/2002 implementing S/RES/1267(1999) simply direct the freezing of all funds and economic resources belonging to, or owned or held by, a natural or legal person, group or entity designated on the list (Article 2 (1)).

244. The examiners noted that the Council of the EU adopted the EU Regulation 1286/2009 to widen the scope of the freezing measures to any 'funds and economic resources belonging to, owned, held or controlled' by designated individuals or entities. Hence, this evaluation team concluded that funds and economic resources owned or controlled jointly by a designated and a non-designated person, entity or organisation are also subject to freezing measures due to directly applicable EU regulations.

245. Authorities make reference to article 4 (3) of the AML/CFT Law where it is pointed out that in addition to the property and resources as set out in the CPL, the proceeds from criminal activity shall also mean the funds that belong to a person or that are, directly or indirectly, controlled by a person who 1) is included in the list of persons who are suspected of being involved in terrorist activities that is compiled by countries or international organisations, or may reasonably be suspected of the execution of or participation in a terrorist-related criminal offence on the basis of information available to bodies performing investigatory operations, pre-trial investigation institutions, the Office of the Prosecutor or the court.

246. UNSCR 1267 explicitly requires the freezing of funds or other assets owned or controlled directly or indirectly by designated persons or entities. The EU Regulation 881/2002 and EU Regulation 1286/2009 does not explicitly cover indirect ownership or control over funds or economic resources that might prevent the application of freezing measures under EU legal framework.

247. The definition of funds, financial assets and economic resources determined by directly applicable EU Regulation 2580/2001 is in compliance with the scope of UNSCR 1373.

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

248. The Council and the European Commission make Regulations and Decisions public through the Official Journal of the EU, which can be accessed on the website of the European Union. In accordance with the Law "*On implementation of sanctions established by international organisations*" Latvian Ministry of Foreign Affairs, after corresponding publication of amendments to Regulation 881/2002 or Regulation 2580/2001 in Official Journal of the EU, informs the relevant competent authorities. With relation to the "*without delay*" there is no any reference in the Law to a specific timeframe.

249. The AML/CFT Law (Articles 51 (7) and 4) provides for further steps on how actions taken under freezing mechanism are duly communicated to the financial sector. The Latvian FIU shall notify the persons subject to this Law, their supervisory and control authorities of the designated persons and ensure that it is updated.

250. The authorities consider that publications on the EU's official journal and the communication activity of the LFIU are sufficient notifications to all for whom the legislation creates obligations and rights.

251. Notwithstanding the fact that EC Regulations are directly applicable, it seems that there is a lack of appropriate coordination on the dissemination of the lists, which stem from the UNSCR and EC Regulations in respect of some sectors: real estate agents, car dealers, accountants, auditors and lawyers interviewed were not aware of those lists. At the same time, the evaluation team noted that the overall coordination on dissemination of the lists to the representatives of credit institutions and the casinos representatives is satisfactory and effective.

252. The interviewed authorities indicated that there is a plan to examine the system of coordination and dissemination in the near future.

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

253. In case of Criterion III.6 the Latvian authorities advised that the "*EU Best Practices for the effective implementation of restrictive measures*" is used to give practical guidance and recommendations on issues arising in the implementation of financial sanctions.

254. Also, the AML/CFT Law provides for basic implementing provisions to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanism. Moreover, those provisions are complemented with respective explanatory guidelines from supervisory authorities, such as the FCMC, the Bank of Latvia and the SRS.

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

255. Criterion III.7 requires countries to have in place effective and publicly known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner. In this respect, the findings and conclusions of the 3rd round remain valid. Latvia has no listing/delisting mechanism of its own and on the formal de-listing procedures established under the European Union mechanisms, this evaluation team was not made aware of any substantial changes since the last MER.

256. Relevant EU regulations do not provide for a national autonomous decision for considering de-listing requests and unfreezing as a whole. Any freezing remains in effect until otherwise decided by the EU. Common Position 2001/931/CFSP of the European Union implements S/RES 1373 (2001) and provides for a regular review of the sanctions list which it has been established. Moreover, listed individuals and entities are informed about the listing, its reasons and legal consequences. If the EU maintains the person or entity on its list, the latter can lodge an appeal before the European Court of First Instance on order to contest the listing decision. Delisting from the EC regulations may only be pursued before the EU courts.

257. As concerns S/RES/1267(1999) and Regulation 881/2002 thereto, Article 7a (5) stipulates that where the UN decide to de-list a person, entity, body or group, or to amend their identifying data, the Commission shall amend Annex I accordingly. Such amendments to Regulation are published in Official Journal of European Union, and upon publication directly apply to Latvia.

258. However, there is no internal legislation, no publicly known procedures and no appropriate domestic authority in place in Latvia to allow and provide information as to where and how a petitioner should submit its request for de-listing and for unfreezing the funds or other assets in a timely manner consistent with international standards. Therefore, essential criterion c.III.7 is not met.

259. As at the time of the on-site visit, there had not been any cases in Latvia requesting delisting.

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

260. Essential criterion III.8 requires that countries should have effective and publicly-known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person. The freezing as such would be automatically applied without any national measures.

261. There is no specific internal legal basis for implementation of this criterion and during the interviews, the authorities stated that Latvia relies upon general principle established by Article 263 TFEU. In such cases, the Court of Justice of the EU shall review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, other than

recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties.

262. Examiners could not identify any internal mechanisms for unfreezing of the funds of persons who are inadvertently affected by the freezing measure. Therefore, essential criterion c.III.8 is not met.

263. At the time of the on-site visit, there had not been any cases in Latvia requesting unfreezing in the context of SR.III.

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

264. At the time of the 3rd round MER, Latvia had no specific national legislation to meet the requirements in Criterion III.9. During the 4th round on-site visit, the evaluators were informed that UNSCR 1267, as amended by UNSCR 1452, provides that the freezing measures under UNSCR 1267 do not apply to funds and economic resources that have been determined by the relevant state (Latvia) necessary for basic expenses, including payments for foodstuff, rent, etc.

265. This provision authorizes the use of funds that are frozen for basic expenses, certain fees, or for extraordinary expenses.

266. Neither EU Regulation 881/2002, nor the subsidiary regulation against Taliban provides specific provisions on humanitarian exemptions. There is a specific procedure in EU Regulation 2580/2001 for humanitarian exemptions and application must be made to the competent authority of the member state in whose territory the funds have been frozen.

267. In accordance with the respective EU Regulations and taking into account the Law *"On implementation of sanctions established by international organisations"* Ministry of Foreign Affairs is the designated authority to receive requests from affected persons for exemptions.

Review of freezing decisions (c.III.10)

268. Appropriate procedures by which the freezing measure can be challenged and reviewed by a court, as required by Criterion III.10 are provided only at European level. Freezing mechanisms envisaged by the relevant EC regulations can be challenged at the Courts of the European Community whereby any natural or legal person directly and individually affected by a restrictive regulation or decision can challenge it under the general principle established by Article 263 of the Treaty on the Functioning of the European Union. The legality of freezing measure can also be challenged by bona fide third parties before the Courts of the European Community.

269. In addition to that, the freezing decisions taken under the AML/CFT Law can be challenged under Article 34 of the Law. The AML/CFT Law provides for right to challenge decision taken by the Latvian FIU to specially authorised prosecutor and to Prosecutor General.

270. In this context, from the point of judicial-based mechanism for further freezing of terrorist funds, the ordinary administrative appeal procedure cannot be considered as an appropriate mechanism to remedy in a timely manner, the situation of such persons or entities affected by a freezing mechanism upon verification that the person or entity is not a designated person.

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

271. The general criminal law framework and mechanisms on seizure and confiscation have been discussed in relation to Recommendation 3. Latvia's legislation on confiscation, seizure and freezing is of general application, and therefore it could apply to assets involved in the commission of TF offences through ordinary judicial means as described under Recommendation 3, beyond those targeted by UNSCRs 1267 and 1373.

272. However this is somewhat limited in scope due to the limited scope of the TF offence itself.

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

273. In case of EU Regulation 881/2002 and EU Regulation 2580/2001, the *bona fide* third party may initiate proceedings before European Court of Justice.

274. In addition to that, the freezing decisions taken under the AML/CFT Law can be challenged under Article 34 of the Law. The AML/CFT Law provides for right to challenge decision taken by FIU to specially authorised prosecutor and to Prosecutor General.

275. In the absence of jurisprudence, it is difficult to assess whether freezing orders can be sustained or maintained for any length of time in the absence of criminal proceedings against a person whose assets are frozen.

276. In this context, the evaluation team is of the opinion that the ordinary administrative appeal procedure is not an appropriate mechanism to remedy in a timely manner, the situation of persons or entities affected by a freezing mechanism upon verification that the person or entity is not a designated person.

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

277. As regards the general requirements on monitoring in Criterion III.13 the evaluators were not provided with any information substantially different from what had been analyzed in the previous round of evaluation.

278. The Latvian authorities argued during the on-site visit that the assessment of compliance with freezing obligations is an integrated part of the supervision procedure of the authorities. It is now the AML/CFT Law regulating this area, providing that the competent supervisory and control authorities are designed by Article 45 which determines the system of the supervisory and control authorities of the persons subject to the Law. The same article stipulates the duty of these authorities to apply sanctions, as set out in other regulatory provisions, for the violation of such provisions and control the measures taken to remedy the violations.

279. There is a specific legal mandate in the AML/CFT Law (Article 46 (3_)) for supervisory and control authorities to review the compliance of financial institutions or other obliged entities with the obligations to review the list of targeted persons/entities and to freeze funds/assets. Link with the next.

280. Nevertheless here are no specific materials in supervisory manuals, guidelines or checklists for compliance or instructions for the persons subject to the AML/CFT Law regarding their obligations with respect to locating relevant fund/assets or, should they receive a freezing order from the Latvian FIU.

281. No breaches have been identified in the application of UNSCR 1267 and UNSCR 1337, thus no sanctions have been imposed on obliged entities.

Additional element – Implementation of measures in Best Practices Paper for SR.III (c.III.14) & Implementation of procedures to access frozen funds (c.III.15)

282. The Latvian authorities indicated that they have implemented all of the measures set out in the EU Best Practices Paper for SR. III by way of the EU and domestic legislation described earlier in this section and that they fully cooperate with foreign jurisdictions. Nevertheless, the authorities need to issue general public guidance as to the obligations under the relevant provisions. The mechanisms for unfreezing relating to the basic living expenses, which exist within the European Union framework, need clear and detailed explanation.

Recommendation 32 (terrorist financing freezing data)

283. There were no freezing of assets in Latvia based on UNSCRs as no terrorist assets were identified. The evaluation team was not given any detailed information of the occurrence of measures applied in respect of CFT freezing, applied directly by the persons subject to the AML/CFT Law or by the authorities following their own inquiries/investigation.

Effectiveness and efficiency

284. Effective implementation of UNSCRs 1267 and 1373 remains difficult to assess in Latvia as no bank accounts or other assets have been frozen on the basis of the UN or EU lists.

285. Additionally, a number of shortcomings identified in the previous assessment have not yet been addressed adequately.

286. The Latvian legal framework for asset/funds freezing related to terrorist financing has been created by the AML/CFT Law and complementary domestic legislation. The implementation of SR.III relies upon the application of binding EU legislation but the overall coordination on dissemination of the lists is unclear. Notwithstanding the fact that EC Regulations are directly applicable, there is a lack of appropriate coordination on the dissemination of the lists, which stem from the UNSCR and EC Regulations in respect of some sectors (real estate agents, car dealers, auditors and lawyers). Not all interviewed persons were aware of those lists. Although the AML/CFT Law provides for the competent supervisory and control authorities to constantly examine and monitor the implementation of SR.III in Latvia, the practice on scope of such powers and how they are used in practice is not clear.

2.4.2. Recommendations and comments

287. Implementation of SR.III appears to be formally achieved as Latvia has basic legal provisions for implementing action against European Union internals under domestic procedures. Nevertheless, Latvian legislation should provide clear procedures for freezing of funds and other assets held by listed EU-internals in all instances set forth by SR.III.

288. The evaluators have concerns about the effectiveness of the procedures in place to freeze assets of designated persons. Notwithstanding the FIU based freezing system the system relies on a judicial-based mechanism (which has not yet been tested in practice) to ensure freezing of assets until the person is de-listed.

289. It is also unclear what measures can be taken by authorities in cases of funds and other assets that are simply held by listed persons, without any transaction involved, such as money deposited (prior to listing) in a bank account or property held by listed persons.

290. There is no internal legislation, no publicly known procedures and no appropriate domestic authority in place in Latvia to allow and provide information as to where and how a petitioner should submit its request for de-listing and for unfreezing the funds or other assets in a timely manner consistent with international standards.

291. An effective national procedure for dealing with unfreezing requests in a timely manner upon verification that the person or entity is not a designated person should be established.

292. A practical procedure on how a petitioner could submit its request for de-listing, should be set out in domestic legislation and made publicly available.

293. The actions that can be initiated under the freezing mechanisms of other jurisdictions have not been tested in practice. There is no national mechanism in place to consider freezing requests under UNSCR 1373 or by third countries that are outside the EU and NATO.

294. The scope of EU Regulation 881/2002 does not extend to funds or other assets that are owned or controlled jointly by designated persons or entities and to those funds or other assets neither that are derived or are generated from funds or other assets owned or controlled by such persons or entities.

295. There is no specific national legislation to meet the requirements in relation to access to frozen funds for expenses and other purposes.

296. In the absence of jurisprudence, it is difficult to assess whether freezing orders can be sustained or maintained for any length of time in the absence of criminal proceedings against a person whose assets are frozen.

297. The competence of all supervisory and control authorities on monitoring effectively the compliance of persons subject to the AML/CFT Law and imposing sanctions for failure to comply with the relevant requirements should be made clear in the AML/CFT Law.

298. The evaluation team strongly advises the Latvian authorities to take additional steps in order to raise the awareness on the obligations deriving from UNSCRs amongst DNFBP.

2.4.3 Compliance with Special Recommendation SR.III

	Rating	Summary of factors underlying rating
SR.III	PC	• Within the context of UNSCR 1373, Latvia does not have a national mechanism to consider requests for freezing from other countries (outside the EU mechanisms) or to freeze the funds of EU internals (citizens or residents). No evidence that designation of EU internals have been converted into the Latvian legal framework. • The scope of EU Regulation 881/2002 does not extend to funds or other assets that are owned or controlled jointly by designated persons or entities and to those funds or other assets neither that are derived or are generated from funds or other assets owned or controlled by such persons or entities. • Concerns over effectiveness of freezing system at the request of another party that relies on judicial proceedings. • There is not any clear and publicly known procedure for de-listing and unfreezing. • Lack of awareness in a part of DNFBP sector of the UN and EU lists raise effectiveness concerns. • There is no specific national legislation to meet the requirements in relation to access to frozen funds for basic expenses and other purposes. • National freezing system, which has not yet been tested in practice, relies only on judicial-based mechanism to ensure freezing of assets of designated persons

Authorities

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

2.5.1. Description and analysis

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

Legal framework

299. The AML Law establishes the Financial Intelligence Unit referred to as the Office for Prevention of Laundering of Proceeds derived from Criminal Activity (hereinafter also the FIU, which is also referred to as the Control Service) within the Prosecutor's Office system.

300. The new Law on the Prevention of Laundering the Proceeds from Criminal Activity and of Terrorist Financing (AML/CFT Law in force since 13 August 2008) regulates the legal status, duties and rights of the Latvian Financial Intelligence Unit.

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

301. Pursuant to Article 50 of the AML/CFT Law, the Financial Intelligence Unit is a specially established public institution that, pursuant to this Law, exercises control of unusual and suspicious transactions and obtains, receives, makes records, processes, compiles, stores, analyses and provides to a pre-trial investigation institution, the Office of the Prosecutor and the court information that may be used for the prevention, uncovering, pre-trial criminal proceedings or adjudicating money laundering, terrorist financing or an attempt thereof or other criminal offence related thereto.

302. The Financial Intelligence Unit is operating under the supervision of the Office of the Prosecutor. The FIU is a legal entity monitored by the Prosecutor General and the Division of Prosecutors with Special Powers. The FIU has its own charter (by-law) that is approved by the Council of the Prosecutor General. The Prosecutors Office is an independent office.

303. The Prosecutor General establishes the structure and draws the list of positions within the Financial Intelligence Unit in accordance with the allocated state budget resources.

304. According to the AML/CFT Law, an Advisory Board (two representatives appointed by the Minister of Finance, of which one shall be from the State Revenue Service and one representative appointed by each of the following: the Minister of Interior, the Minister of Justice, the Bank of Latvia, the Financial and Capital Market Commission, the Association of Latvian Commercial Banks, the Latvian Insurers Association, the Latvian Association of Certified Auditors, the Latvian Council of Sworn Notaries, the Latvian Council of Sworn Advocates and the Supreme Court) shall be set up to facilitate the operation of the Financial Intelligence Unit and coordinate its cooperation with pre-trial investigation institutions, the Office of the Prosecutor, the court and the persons subject to the AML/CFT Law.

305. The Prosecutor General appoints the Head of the Financial Intelligence Unit for the term of four years and dismisses him/her. The Head of the Financial Intelligence Unit recruits and dismisses the employees of the Financial Intelligence Unit. Officials and employees of the Financial Intelligence Unit are remunerated as determined in the Law "On Remuneration of State and Local Government institutions Officials and Employees".

306. The Head and the employees of the Financial Intelligence Unit need to comply with the requirements of the Law on the State Secret in order to receive a special permission necessary for the access to strictly secret information.

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

307. Pursuant to the AML/CFT Law, the Advisory Board of the FIU should prepare and submit to the Financial Intelligence Unit proposals on amendments to the list of indicators of unusual transactions (Article 59 point 3).

308. According to Article 30 point 2 of the AML/CFT Law, the Cabinet of Ministers shall issue provisions establishing the list of indicators of unusual transactions and the procedure whereby unusual and suspicious transactions are reported and approve the reporting form.

309. Regulation 1071/2008 on unusual transaction indicators list and the procedure for reporting unusual and suspicious transactions, partially cover the standards set under essential criterion 26.2. Complete guidance on how the suspicious transactions reports should be filled in are missing from the Regulation. The emphasis in the Regulation is directed towards the completion of UTRs and it is necessary to look at additional documents in order to find the full guidance on completing STRs.

310. No further referrals are made in the Regulation 1071 to the suspicious transactions and how those transactions could be distinguished from the unusual transactions. Moreover, the template for reporting is common for both reports and does not clearly distinguish the separate reports (unusual and suspicious). From the text of the Regulation 1071/2008, clearly more emphasis is placed on unusual (threshold based) transactions, than on suspicious transactions reporting.

311. After the on-site visit (in June 2012), the Latvian authorities presented to the evaluation team two additional documents issued by the FIU on UTR and STR reporting. One document contains instructions on how the reporting forms shall be filled out in order to be forwarded to the FIU. The second document contains a list of indicators of suspicion and codes that should be mentioned in the reporting form. Those documents are not publicly available and according to the Latvian authorities have been disseminated electronically to the supervisors and reporting entities. There is no reference in the Regulation 1071 about the two documents issued by the FIU.

312. Regulation 1071 applies to all persons subject to the AML/CFT Law. However, the assessors have been informed that the subjects of the AML/CFT Law do not always use the reporting form annexed to the Regulation.

313. According to the above mentioned Regulation, the subjects of the AML/CFT Law report without delay to the FIU about each intended (planned), notified, initiated, delayed, executed or confirmed unusual transaction, which meets at least one of the indicators of an unusual transaction set out in these regulations or about such suspicious transactions. The Regulation also briefly describes the procedure of reporting (both unusual and suspicious transactions), by making reference to the form in the Annex, and lists the elements defining the unusual (threshold-based) transactions. According to the form, only one transaction can be included in one report. Additional information can be attached in an Excel form.

314. Reports shall be submitted "without delay" but no reference is made to a precise deadline, or instructions on how the report form should be filled out in the case of STRs. A "*Covering letter*" and "*disclosing documents*" should accompany the forms, but no indication on what those should contain is provided.

315. Under point 4 of the reporting form (Annexed to the 1071 Regulation) it is indicated *"Unusual transaction's indicator number according to Cabinet Regulation No 1071 of 22 December, 2008"* immediately followed by point 5 *"Indicator for Suspiciousness"*. Thus, it is not clear if the two issues are supposed to be considered simultaneously or separately, leaving room for interpretation. The Latvian authorities indicated that this issue depends on concrete situations, in the sense that an unusual transaction can also be suspicious at the same time.

316. As to the content of the report, Article 31 of the AML/CFT Law provides that "*The report submitted by a person subject to this Law to the Financial Intelligence Unit shall contain the following: 1) customer identification data; 2) a description of any planned, notified, advised,*

started, delayed, executed or confirmed transaction and identification data of the persons involved, the transaction volume, the time and place for executing or notifying the transaction, and copies of documents where a person subject to this Law has the documents evidencing the transaction; 3) the grounds for considering the transaction suspicious by the person subject to this Law or the indicator of an unusual transaction to which the transaction corresponds.". However, no connection is made between the content of the report described in the Law and the form annexed to the Regulation. Also, a confusing spread of the reporting procedures amongst the AML/CFT Law, Regulations and instructions issued by the FIU is noticeable, which might be misleading for the reporting entities.

317. The assessors are of the opinion that in the guidance document provided by the Latvian authorities to the reporting entities on reporting procedures and forms, the concept of suspicious transactions as defined by FATF standards is not properly described, leaving room for interpretation and confusion with the unusual (threshold based) transactions.

318. Bank of Latvia (BoL) has issued "*Recommendations to Capital Companies that Have Received a Licence Issued by the Bank of Latvia for Purchasing and Selling Cash Foreign Currencies for Developing an Internal Control System for the Prevention of Laundering the Proceeds from Criminal Activity (Money Laundering) and of Terrorist Financing*" where, in section IX, it provides guidance for currency exchange companies regarding STR reporting. It requires establishing a special register for registering STRs and provides, that the report shall contain the identification data of the customer and beneficial owner; a copy of the customer's identification document; a description of the currency exchange transaction conducted or proposed, as well as the place and time of conducting it; indicators that may deem a currency exchange transaction unusual or suspicious; any other data and documents that could play a role in assessing the certain transaction. The BoL Recommendation also sets reporting deadlines.

319. In practice, STRs are mainly from the commercial banks. Despite sound overall ML/TF awareness, DNFBP are providing an extremely low level of reporting in certain sectors, especially for advocates/lawyers, notaries, and other independent legal professions. This could be due to the fact that the guidelines provided to the reporting entities are generic and not sector-specific to the financial and DNFBP.

320. In addition, there is a need for more appropriate guidance on CTF measures as reporting entities appear to be focused only on lists of persons suspected of being involved in terrorist activity rather than the financing of terrorism.

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

321. According to Article 54 of the AML/CFT Law (previously, before 2008, Article 31 of the AML Law) all public and local government institutions have a duty to provide the Financial Intelligence Unit the requested information to fulfil its functions. When exchanging information with the Financial Intelligence Unit, the person who processes data is prohibited from disclosing to other natural or legal persons the fact of information exchange and the content of information, except in the cases when information is provided to pre-trial investigation institutions, the Office of the Prosecutor or the court.

322. Cabinet of Ministers Regulation No 1092 (in force since 1 January 2009) on the Procedure according to which State and Municipal authorities provide Information to the Office for Prevention of Laundering of Proceeds derived from Criminal Activity allows the FIU to request information held in the databases maintained by state institutions and municipalities.

323. During the on-site visit the Latvian authorities indicated that in practice they have access to all databases managed by the State or Municipality authorities, but those databases are not integrated and thus, no automatic search can be performed in the course of the analytical work.

324. At the request of the evaluation team, the Latvian authorities provided a list with the 20 on-line accessible data bases owned by 9 State agencies (*i.a.* Ministry of Interior, State

Revenue Service, State Land Service, Office of Citizenship and Migration Affairs). International public commercial databases are also used as source of information.

325. Provisions for access to financial information and other information from the private sector, is set out in paragraph 1 (point 3) of the Article 30 of the AML/CFT Law, which provides that persons subject to the Law have a duty to provide to the FIU additional information and documents about the customer or the transaction, the origin and further movement of funds, that has become available to the person subject to the AML/CFT Law, necessary for fulfilling the FIU's functions. The reply shall be sent within seven days[16] upon receipt of the written request from the Financial Intelligence Unit resulting from reports submitted by the subject of the law, or bodies and institutions referred to in Article 62 (authorised foreign institutions).

Additional information from reporting parties (c.26.4)

326. As described above, the access of the FIU to information form the private sector (financial and DNFBP) in regulated by paragraph 1 (point 3) of the Article 30 of the AML/CFT Law: "*Within seven days upon receipt of a written request by the Financial Intelligence Unit resulting from report submitted by the subject of the law or bodies and institutions referred to in Article 62 hereof, to provide additional information and documents, necessary for fulfilling its functions as set out in this Law, about the customer or the transaction, the origin and further movement of funds, that has become available to the person subject to this Law in order to comply with this Law.*"

327. The assessment team is of the view that the wording of the legal provision restricts the FIU's access to additional information in the sense that only the reporting entity that initially originated the report or other reporting entity which is mentioned in the report) might be asked directly for additional information, not all the reporting parties, and only about the specific person and transaction subject to the report.

328. Despite the challenging provision of the Law, the assessment team was informed that in practice, the FIU has successfully asked for additional information from subjects of the AML/CFT Law other than the one forwarding the report with the only condition that the information required relates to the subject of the report.

329. According to Art. 30.3 of the AML/CFT Law, information and documents on other transactions of that customer shall be provided to Financial Intelligence Unit upon request with the consent of the prosecutor general or specially authorised prosecutor. The extent of the information and documents to be submitted and the deadline for meeting the requirement may be extended with the consent of the Financial Intelligence Unit.

330. There is no specific provision/procedure in the AML/CF Law, but the Latvian authorities informed the evaluation team that in case of prosecutor's refusal to access additional information, the Head of the FIU could challenge the decision in accordance with the Law of the Office of the Prosecutor.

331. It is the view of the evaluation team that the requirement for the above-mentioned prosecutor's consent may present a restriction, which could raise questions about compliance with essential criterion 26.4. However, according to the Latvian authorities, such a case has not yet appeared in practice.

Dissemination of information (c.26.5)

332. The duty of the FIU to disseminate the financial information to domestic authorities for investigation where there are grounds to suspect ML or FT is stated in Article 51 (1) 2) of the

[16] Latvian authorities explained that in the original language it is "business days" but the translation provided to the evaluators missed this part

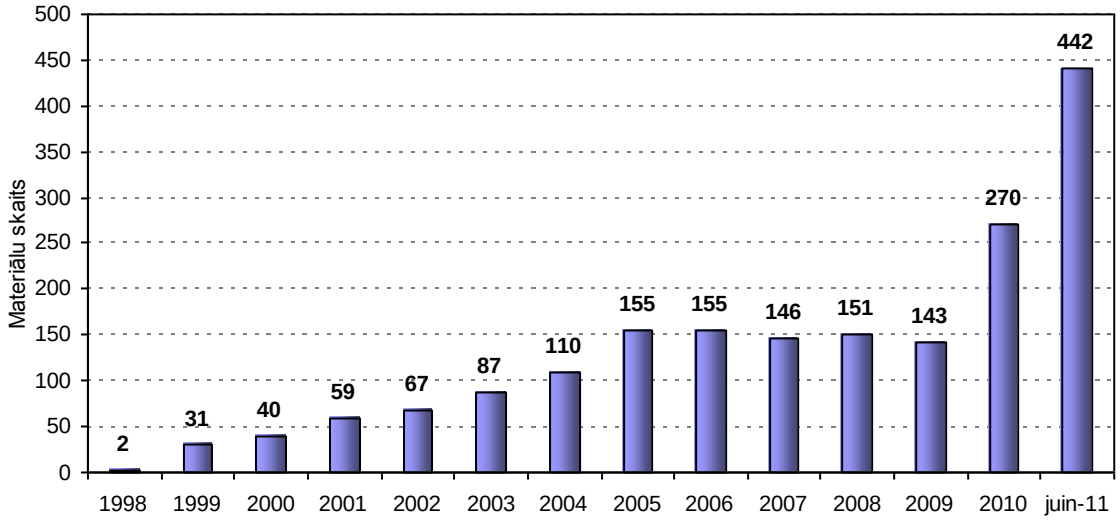
AML/CFT Law. The FIU shall *"provide to an investigation institution, the Office of the Prosecutor and the court information that may be used for the prevention, uncovering, pre-trial criminal proceedings or adjudicating money laundering, terrorist financing or an attempt thereof or other criminal offence related thereto".*

333. In addition, according to Article 55 of the AML/CFT Law, the FIU must submit information to pre-trial investigation institutions, the Office of the Prosecutor or the court, where this information creates reasonable suspicion that the respective person has committed a criminal offence, including that of money laundering, terrorist financing or an attempt.

334. Following the on-site interviews it was accepted that there are no impediments to the dissemination of information from the FIU to law enforcement in practice.

335. According to Article 52 of the AML/CFT Law, where the orders set out in the Law are issued, their consequences shall not incur legal (including civil) liability for the Financial Intelligence Unit and its officials. However, the FIU staff could incur criminal or civil liability should they exceed the scope of the Law.

Table 17: Cases forwarded from the FIU to law enforcement institutions



336. Most of the cases disseminated by Latvian FIU are sent to the Finance Police and Economic Police as indicated in the table below:

Table 18: Disseminated cases[17] broken down by beneficiary[18]

Year	Cases of FIU	Finance police Art.217,218 and 195 of CL	Economic Police Art. 177,179,190 ,193, 195[1], 206,207 etc and 195 of CL	Anti-corruption bureau Art.219, 318, 323 and 195 of CL	Others Art.195 etc of CL	Criminal cases started on the bases of FIU cases[19]*	Added to already started criminal cases*
2006	155	124	25	4	2	42	5
2007	146	98	27	2	19	40	10
2008	151	91	45	3	12	47	30
2009	143	68	63	3	9	57	12
2010	270	139	117	10	4	49	83
2011	146	n/a	n/a	n/a	n/a	n/a	n/a

337. In general, the cooperation between FIU and Law enforcement agencies appears to be good. Information flows go both ways upon request: from FIU to LEA and vice-versa.

338. The cooperation exists mainly with the State Police. The Latvian authorities provided statistics of the law enforcement requests or initiatives (Finance police, Economic police, Anti-Corruption bureau and others) sent to the FIU to support on-going investigations.

339. During the on-site visit, the evaluators were advised that the Latvian FIU's disseminations to the competent Law enforcement agencies are mainly related to criminal offences of tax evasion and misuse of bank accounts (mainly abroad). However, that is not completely in line with the statistics of proceeds-generating criminal offences in Latvia. Having in mind the overall number of reports (STRs and UTRs) received by the FIU, analysed and disseminated to Law enforcement agencies, the FIU's work gives a general picture of an approach based on simpler and less time-consuming cases. In other words, the evaluators were not convinced that real quality added value is given to the STRs by the FIU[20].

[17] The first figure reflects the number of criminal cases opened on the basis of material submitted by the FIU; the second figure shows the number of already existing criminal cases to which the FIU added material. Figures are as of the 1st of January of each year

[18] Art. 177: Fraud; Art. 179: Misappropriation; Art. 193: Illegal activities with financial instruments and means of payment, Art. 195: Laundering of the proceeds of crime; Art. 190: Smuggling; Art. 195[1]: Knowingly provide false information regarding ownership and resources, Art 206: Illegal use of trademarks, other distinguishing marks and design; Art. 207: Entrepreneurial activities without registration or permit (licence), Art. 217: Violation of the provisions regarding accounting and statistical information, Art. 218: Evasion of tax payment and payments equivalent hereto, Art. 2019: Avoiding submission of the declarations; Art. 272: Failing to provide requested information and providing false information; Art. 318: Using an official position in bad faith; Art. 323: Giving of bribes.

[19] the asterisk shows the number of materials resolved by LEA until the 1 January of each year

[20] The Latvian authorities have commented that the statistics show: 1) materials with large schemes (priority of FSDC – more than 20 persons involved in each scheme): in 2008 – 23, in 2009 – 21, in 2010 – 54, in 2011-52, 2) number of materials with total sum of transactions more than 1 million LVL: in 2008 – 31, in 2009 – 22, in 2010 – 29, in 2011 – 43.

Table 19: Requests for information received by Latvian FIU from law enforcement

Year	State police	Customs Crim. police	Prosecutor Offices	Anti-corruption Bureau (KNAB)	Financial Police	Security police	Constit. Defence bureau	Others	TOTAL
2006	40	3	2	1	5	3	-	1	**55**
2007	47	1	4	3	6	-	1	-	**62**
2008	48	1	5	5	2	-	-	-	**61**
2009	15	1	3	4	5	-	-	-	**28**
2010	11	2	1	4	4	-	-	1	**23**
2011 as of 01.06.	22	-	2	-	6	-	2	1	**33**

Table 20: Money laundering cases investigated by Finance Police Department

	2006	2007	2008	2009	2010
Cooperation with Latvian FIU					
Number of received FIU notifications[21]	129	112	92	67	146
Number of cases when Finance Police Department (FPD) requested information from FIU	8	5	1	6	5
Solved Cases on Money Laundering					
Number of Criminal Proceedings on Money Laundering Sent to Prosecution:	13	21	14	21	24
- Initiated on FIU notifications	3	4	6	1	3
- Initiated on the results of FPD financial intelligence (in all cases were used secret information acquisition methods like wiretapping etc.)	8	12	4	10	14
- Initiated on the State Revenue Service structural units notifications	2	5	3	10	5
- Initiated on other institution notifications	0	0	1	0	2

340. An important gap between the number of cases sent by the FIU and the number of investigations started by the Finance Police Department upon those notifications is noticeable. In 2010, 146 notifications were sent by the FIU and only 3 investigations on ML were started based on them. In general, the ratio of cases confirmed by law enforcement is limited to an average of 3,2% of the total number of disseminated cases, which in the assessor's view is not satisfactory enough.

341. Similar concerns were expressed by some of the representatives of the reporting entities which were not sure to what extent valuable additional information (apart from the report itself) is included in the cases disseminated by FIU to law enforcement agencies.

342. In respect of the statistics provided to the evaluation team, concerns arise from the numbers provided in **Table 18: Disseminated cases broken down by beneficiary.** According to the

[21] Some notifications are received through another LEA

figures listed under column **„cases started on the bases of FIU cases“,** 49 ML cases were initiated by all law enforcement authorities in 2010. However, the main beneficiary of the FIU outcome, namely the Finance Police Department, started only 3 investigations based on those disseminated cases. This indicates that almost all the FIU cases disseminated to other law enforcement authorities mentioned in **Table 18: Disseminated cases broken down by beneficiary** generated an investigation. This situation raises two issues: either the accuracy of statistics is questionable, or the quality of the FIU reports to other law enforcement authorities (except Finance Police Department) is much higher.

Operational independence and autonomy (c.26.6)

343. The situation described under the 3rd round MER has slightly changed. At that time, concerns have been mentioned regarding FIU operational independence, due to the fact that in accordance with the AML/CFT law in force until 2008, the FIU forwarded materials to the law enforcement agencies via specially authorised prosecutors.

344. Since the last MER, this situation has been improved in that, according to the new AML/CFT law (Art. 55), the FIU submits materials directly to the pre-trial investigation institutions, and at the same time to the Office of the Prosecutor or to the court.

345. According to the Latvian AML/CFT Law, the Head of the FIU is appointed for 4 years by the Prosecutor General and he can only be removed for the commission of a criminal offence, an intentional violation of the law, or for negligence which is related to his professional activities or which has resulted in substantial consequences, or for a shameful offence which is incompatible with his status.

346. The structure and the staff of the FIU is determined by the Prosecutor General in accordance with the funds allocated from the State budget. In practice, the head of the FIU prepares proposals for its structure and the Prosecutor General approves it.

347. Article 50 of the AML/CFT Law provides that FIU has its own budget and the FIU has a separate line in the national budget.

348. The Head of the FIU recruits and dismisses the employees of the Financial Intelligence Unit. Officials and employees of the FIU are remunerated as determined in the Law *“On Remuneration of State and Local Government institutions Officials and Employees."*

349. The Head and the employees of the FIU must comply with the requirements of the Law on the State Secret in order to receive a special permission necessary for the access to secret information.

350. Article 59 of the AML/CFT Law sets out the tasks of the Advisory Board of the FIU - to facilitate the operation of the Financial Intelligence Unit and to coordinate its co-operation with pre-trial investigation institutions, the Office of the Prosecutor, the court and the persons subject to this Law in following way:

"1) to coordinate the cooperation of public institutions, the persons subject to this Law and their supervisory and control authorities for the fulfilment of the requirements of this Law;
2) to develop proposals for the needs of the Financial Intelligence Unit to perform its tasks as set out in this Law;
3) to prepare and submit to the Financial Intelligence Unit proposals on amendments to the list of indicators of unusual transactions;
4) on request by the Prosecutor General or on its own initiative, to notify the Prosecutor General on the performance of the Financial Intelligence Unit and submit proposals for its improvement."

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

351. Information protection at the FIU is regulated by the Article 53 of the AML/CFT Law:

"(1) Information available to the Financial Intelligence Unit shall be used only for the purposes of this Law and in due course of this Law. An employee of the Financial Intelligence Unit who has used such information for other purposes or disclosed it to the persons who are not entitled to receive that information shall be held criminally liable in due course of the Criminal Law.
(2) Information obtained at the Financial Intelligence Unit as a result of the procedure supervised by the Prosecutor General or specially authorised prosecutors shall not be disclosed to the bodies performing investigatory operations, pre-trial investigation institutions, the Office of the Prosecutor or the court or used for their needs.
(3) The Financial Intelligence Unit shall take the necessary administrative, technical and organisational measures to ensure that information is protected, prevent unauthorised access to information and protect it from modification, dissemination or destroying. The Financial Intelligence Unit shall keep information on transactions for at least five years. Processing of the information received by the Financial Intelligence Unit is not included in the personal data processing register of the Data State Inspectorate."

352. The conditions for the disclosure of the information is regulated by the Article 55 of the AML/CFT Law:

"The Financial Intelligence Unit shall submit information to pre-trial investigation institutions, the Office of the Prosecutor or the court, where this information creates reasonable suspicion that the respective person has committed a criminal offence, including that of money laundering, terrorist financing or an attempt thereof."

353. Criminal liability is stated by the Criminal Law in Section 200:

"Disclosure of Non-disclosable Information, which is not an Official Secret; Unauthorised Acquisition and Disclosure of Information Containing Commercial Secrets, and Unauthorised Disclosure of Inside Information of the Financial Instrument Market

(1) For a person who commits disclosure of non-disclosable information, which is not an official secret, if commission thereof is by a person who not a State official and who in accordance with the law is liable for the storage of information, the applicable sentence is custodial arrest or community service, or a fine not exceeding fifty times the minimum monthly wage.
(2) For a person who commits unauthorised acquisition of economic, scientific technical, or other information in which there are commercial secrets, for use or disclosure by himself or herself or another person, or commits unauthorised disclosure of such information to another person for the same purpose, as well as commits unauthorised disclosure of inside information of the financial instrument market, the applicable sentence is deprivation of liberty for a term not exceeding five years or custodial arrest, or community service, or a fine not exceeding one hundred times the minimum monthly wage.
(3) For a person who commits theft of the information indicated in Paragraph one or two of this Section, the applicable sentence is deprivation of liberty for a term not exceeding eight years or community service, or a fine not exceeding one hundred and fifty times the minimum monthly wage."

354. During the on-site visit, the evaluators were introduced to the measures taken for the protection of information kept by the FIU in practice.

355. For the electronic storage of information and protection of that information, the Latvian FIU has developed a secure data management system. The evaluators were informed that the reports database (CS Database) containing all incoming documents of the FIU: STRs, UTRs, requests, applications, complaints, etc., is stored and processed in a special isolated local network that is not technically accessible by the Internet and other systems.

356. All user actions within the system (alteration, erasing, viewing information) in all user forms and all data levels (temporarily tables, report level tables, work tables, aid tables) are recorded in

journal bases. In cases when the actions are done with separate person records in report or work table level, the context is also recorded in which these actions are performed.

357. The Latvian FIU has developed original domestic analytical/visualisation software which at any time can be modified as it needed to fulfil the concrete analytical needs of the FIU. The software has been produced and developed since 1998 based on the concluded agreements, by the University of Latvia, Institute of Mathematics and Computer Science. During the on-site visit, the evaluators were generally introduced with the functionality of the software, e.g. possibilities to visualize as schemes the summarized information, electronic archiving of information received and produced by the FIU. In addition, the Latvian authorities had provided a number of explanations on how software can be used, and how information protection mechanics (in the software part) compliance with international requirements. The evaluators were also introduced to the protection mechanics against arbitrary modification and deletion of data.

358. However, the evaluators were advised that the software is used only in the preliminary phase of the analytical process, in order to prioritise the cases. Also, the software is not connected with any data base apart from the one managed by the FIU, which limits its integration functions. All further analysis is done manually by the FIU employees, based on the FIU Deputy Head's decision.

359. During the on-site visit it resulted that the outgoing documents, which are originated by the FIU, are not imported and stored in FIUs protected system. These documents are created in MS Word and are electronically stored and archived separately from FIU data management system. The securely archived form is the printout version. In other words, the content of disseminated FIU reports, sent to the law enforcement agencies and which include all initial information and analytical findings, are not input in the FIU information system and as such, they are not part of its electronically protected system which prevents arbitrary/erroneous modification or deletion[22].

360. A number of physical security measures have been implemented by the FIU to protect the premises and the information held within. The security measures include control on the doors and intruders' alarms. In addition, there is a special safe for particular sensitive documents in the Head of the FIU's office. In all the FIU has eight safes.

361. In 2009 the FIU issued an instructions document, which describes the procedure for the registration, processing, storage and destruction of information received by the Office for Prevention of Laundering of Proceeds Derived from Criminal Activity.

Publication of periodic reports (c.26.8)

362. In accordance with Paragraph 1 (point 10) of the Article 51 of the AML/CFT Law the FIU has the duty to publish information about its activity, indicating the number of cases investigated, persons brought to criminal prosecution, the number of convicted persons for the money laundering and terrorist financing, and the volume of suspended and seized funds.

363. The evaluators were advised that FIU issued an on-line annual report in 2010, which contains the general description of the FIU, its results of work, description and implementation of operational priorities, trainings and current typologies of money laundering. The 2010 report contains data from 2005 as the reports are updated annually. Every year the previous reports are deleted from the website and only the current report is maintained.

364. The evaluation team was informed during the on-site visit that each year, on its own initiative, the FIU notifies the Advisory Board and the Prosecutor General about its activity.

[22] Latvian authorities informed the evaluation team that there are 3 printouts signed by the Head of the FIU: one for LEA as a part of material, one for prosecutor-supervisor of concrete investigation and one at the disposal of FIU. Also, Latvian authorities stated that immediately after experts visit (June 2011) FIU introduced measures which totally prevents any modification or deletion. The assessment team cannot confirm the above mentioned.

365. The FIU also conducts analyses on legalization and terrorism financing methods and typologies and provides the persons subject to this Law and their supervisory and control institutions with information on these matters, as well as with aggregated statistics of the reports. The Latvian authorities confirmed that for the persons subject to the AML/CFT Law it is done in process of training (including letters) and different meetings

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

366. The FIU of Latvia is an Egmont Group member since 1999.

367. The Latvian FIU has signed MOUs with the FIUs of Lithuania, Czech Republic, Belgium, Bulgaria, Finland, Estonia, Slovenia, Italy, Poland, Malta, Guernsey, Russia, Canada, Aruba, Romania, Australia, Antilles, Ukraine, Georgia, Moldova, Macedonia and San Marino.

368. The Latvian FIU also has signed FIU.NET User Protocol Statement.

369. The AML/CFT Latvian Law provides the power of the FIU to exchange information with authorised foreign institutions that exercise equivalent duties under the conditions that: 1) data confidentiality is ensured and data is used only for mutually agreed purposes and 2) it is guaranteed that information is used only for preventing and detecting offences that are subject to criminal punishment in Latvia.

370. Authorities indicated that the FIUs members of the Egmont Group are considered as equivalent authorities. The law does not require the existence of an international agreement or an MoU.

371. On the basis of the respective provision of Law and the information gained from authorities, it was determined that the Latvian FIU adheres to the Principles of Information Exchange in international information exchange with foreign FIUs.

Recommendation 30 (FIU)

Adequacy of resources to FIU (c.30.1)

372. The Latvian FIU consists of the head, the deputy head, a secretary, one computer specialist, one head of the unit, 6 computer operators, and 8 financial transactions analysts.

373. Employees of the FIU, other than Head are hired, as well as dismissed, by the Head of the FIU. The structure of the FIU is proposed by the Head of the FIU and approved by the Prosecutor General.

374. At the time of the on-site visit the evaluation team was informed that all working places are appropriately equipped with hardware devices in order for the users to fulfil their functions according the requirements of the AML/CFT Law.

375. The Latvian FIU has developed its own analytical/visualisation software which at any time can be modified to adjust the concrete analytical needs of the FIU. However, the functionalities of the software are limited mainly to visualisation capabilities and electronic archiving of information received and produced by the FIU. The software is not connected to any other data base except for the FIU database (CS database) and cannot perform a number of analytical functions typical for an AML software such as: data mining, social network analysis, clustering, links analysis, event analysis, activities analysis or pattern analysis. Thus, it cannot be used for more than for the preliminary analysis for prioritisation purposes. All further analytical work is performed manually by the FIU employees.

376. This is considered to be a shortcoming by the evaluation team as in the context of limited number of FIU stuff and high number of reports (UTRs and STRs) received annually by the Latvian FIU. A simple mathematic division shows that each financial analyst in the Latvian FIU

had to analyse in 2010 no less that 3250 reports which raise serious concerns in terms of effectiveness and adequacy of the human and technical resources[23].

377. The FIU has its own budget which is prepared by the Head of the FIU and submitted to the Ministry of Finance.

Integrity of FIU authorities (c.30.2)

378. The Paragraph 5 of the Article 50 of the AML/CFT Law stipulates that the head and the employees of the Latvian FIU must comply with the requirements of the Law on State Secret to receive a special permission necessary for the access to secret information.

379. Article 53 of the AML/CFT Law prohibits the disclosure of information on STRs and UTRs except as it is provided for by this Law.

380. According to the Latvian authorities, the employees of the Latvian FIU come from different backgrounds: the prosecutor's office, various credit and state institutions. 5 of the employees have different master's degrees, 3 employees have two professional degrees/diplomas and 6 employees have one diploma each.

381. All employees must adhere to the by-laws (more than 20) of the Latvian FIU and its Code of Conduct

Training of FIU staff (c.30.3)

382. According to the Latvian authorities, FIU staff members meet two times per week to analyze work results of the FIU, together with AML practice of the police, prosecutors' office and courts. Changes to the relevant national and international normative acts, updates and changes concerning the FIU software, money laundering typologies and many other actual issues are also examined.

383. The FIU staff regularly participates in training courses in Latvia. The assessors were informed that in 2010 the FIU employees participated at 4 seminars in different court regions outside capital, organised for prosecutors, investigators and judges.

384. With regards to the international training, the following statistics were provided:

Table 21: Training provided for FIU staff

Year	Number of seminars	Number of employees trained	Countries
2008	7	9	Finland, Lithuania, Austria, Moldova
2009	5	7	Poland, Moldova, Estonia, Malta
2010	9	12	Moldova, United Kingdom, France
2011	3	3	Norway, Estonia, Azerbaijan

Recommendation 32 (FIU)

385. The obligation to keep statistics is mentioned marginally as one of the duties of the FIU, within Article 51 of the AML/CFT Law, only for publicly available reports and supervisory purposes. The FIU shall submit information within its competence about the statistics, quality

[23] Since 11.04.2012, the FIU is located on other premises, it has totally new equipment and 4 additional stuff members. The budget for 2011 was LVL 240 291 and LVL 312 291 in 2012

and efficiency of the reports submitted by the persons subject to the AML/CFT Law, at supervisory and control authorities' request. Also, the FIU has to publish information about its performance, indicating the number of cases investigated and of persons brought to criminal prosecution during the previous year, the number of persons convicted for the criminal offence of money laundering or of terrorist financing and the volume of suspended and seized funds.

386. An indirect requirement to keep statistics for analysis of effectiveness purposes by the FIU is mentioned in Article 51 point (8) of the AML/CFT Law, stating that on request from supervisory and control authorities, the FIU shall submit information within their competence about the statistics, quality and application efficiency of the reports submitted by the persons subject to this Law.

387. Some statistics are maintained by the FIU but often the data contained are contradictory or inconsistent, which raises significant questions in relation to their accuracy. This goes particularly when differentiating UTRs from STRs versus the whole number of reports.

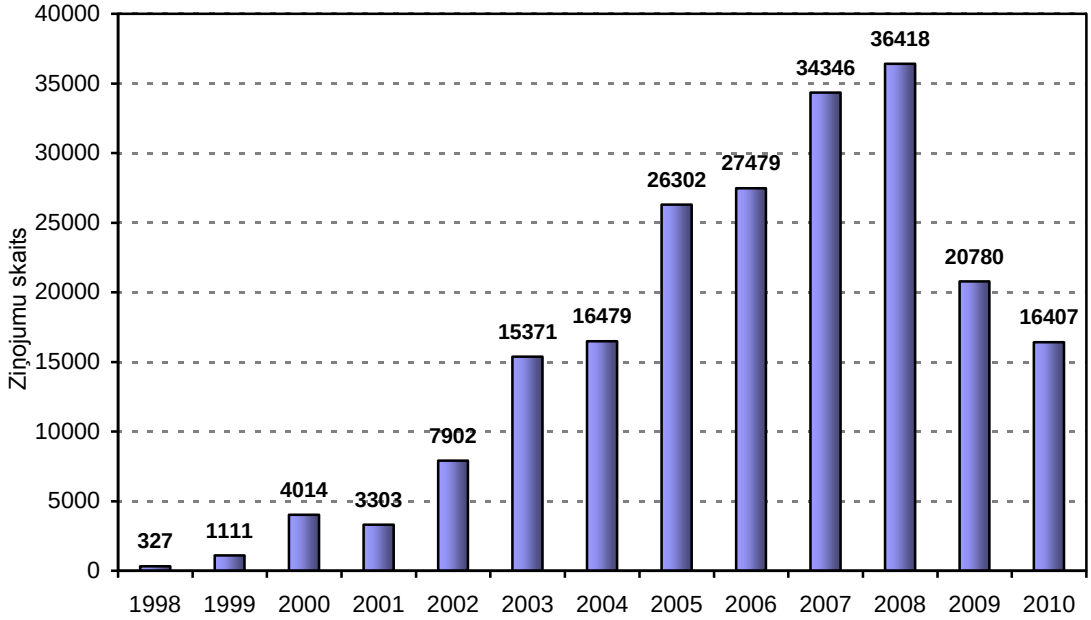
388. The statistics kept in respect of the STRs and UTRs emphasise the number of transactions contained within the suspicious reports not the number of the reports itself, so no relevant analysis can be made in respect of the ratio STRs – cases - investigations by law enforcement. The Latvian authorities explained that statistical software can produce these figures, but it was concluded that there is no need for analytical results.

389. The evaluation team considers that the statistics maintained by the Latvian authorities is an area for improvement.

Effectiveness and efficiency

390. The number of suspicious transactions included in reports received by the FIU increased in years after the 3rd round evaluation yet, the FIU is dealing with an increased work load with the same number of staff.

Table 22: Number of reports received by the FIU (UTRs and STRs)



391. The decrease in the number of the reports (2009-2010) was explained by the Latvian authorities by the new requirement of the Paragraph 2 of the Article 20 of the AML/CFT Law in respect of the UTRs: "*When monitoring a business relationship, any person subject to this Law shall pay particular attention to the following: unusually large and complex transactions or*

mutually linked transactions, which have no apparent economic or visible lawful purpose, and are not typical for a customer."

392. Pursuant to this requirement, very often, one report of the subject person consists of information on several transactions. In this regard, the situation shows that changes of the number of reported transactions are not so significant (2008 – 46.951, 2009 – 40 426 and 2010 - 37 216).

393. Following the explanation provided by the Latvian authorities it appears that there was a shift in the reporting behaviour of the reporting entities, in the sense that they started to report more ST instead of UT (so that together the numbers remain quite steady). Also, it is clear that the statistics reflect the number of transactions contained in the reports and not the number of the STRs and UTRs as such. The lack of knowledge on the actual number of STRs and UTRs at the FIU level is apparent to the evaluation team.

Table 23: Statistical data on transactions included in UTRs and STRs received by the FIU

	2008		2009		2010		31.5.2011	
Monitoring Entities	**UT**	**ST**	**UT**	**ST**	**UT**	**ST**	**UT**	**ST**
Commercial banks	6 858	21 798	8 224	21 326	8 538	22 528	3 785	5917
Insurance companies	9 532	26	749	2 170	860	0	24	14
Notaries	7	5	10	2	11	0	3	7
Currency exchange	3 074	48	1 932	7	1 356	2	664	45
Broker companies	0	0	29	0	5	0	12	0
Securities' registrars	0	0	0	0	2	0	0	0
Lawyers	0	3	0	13	0	26	0	1
Accountants/auditors	0	0	3	0	1	0	1	0
Casino	204	0	197	0	96	1	48	0
Dealers in precious metals and stones	0	0/2	5	0/0	2	0/0	3	0/0
Real estate agents	0	0	0	0	0	0	0	0
Company service providers	0	0	0	0	0	0	0	0
Others	839	4 557	838	4921	342	3446	361 (incl. MTS –222)	580 (incl. FIU`s-235)
Total	**20 514**	**26 437**	**11 987**	**28 439**	**11 213**	**26 003**	**4 901**	**6 564**

Table 24: Financing of Terrorism reports (UTRs and STRs)

	2008	2009	2010	31.5.2011
Monitoring entities, e.g.				
Commercial banks	7	20	8	7
Insurance companies	0	0	1	0
Notaries	0	0	0	0
Currency exchange	0	0	1	0
Broker companies	0	0	0	0
Securities' registrars	0	0	0	0
Lawyers	0	0	0	0
Accountants/auditors	0	0	0	0
Casino	0	0	0	0
Dealers in precious metals and stones	0	0	0	0
Real estate agents	0	0	0	0
Company service providers	0	0	0	0
Others (please specify and if necessary add further rows)	0	0	0	0
Total	**7**	**20**	**10**	**7***

394. From the statistics provided by the Latvian authorities an important gap between the number of transactions contained in the reports received and the cases opened by the FIU is apparent. During the on-site interviews, the assessors were told that all the reports (STRs and UTRs) are analysed, though it is unclear what happens with the rest of the transactions (the difference between the total number of transactions included in the reports and the number of transactions included in the opened cases), besides being introduced in the FIUs internal data base in order to be used in future requests/analysis.

395. The assessors were explained that the Latvian FIU assigns reference numbers only when cases are sent to law enforcement.

396. The Latvian authorities explained that visualisation of the case shows the number of transactions and also statistics shows how many transactions are in materials in total, (for example 4625 in 2011), and also per each reporter. But the last information is confidential and is available only to a specific person subject to the AML/CFT Law and supervisors.

397. The statistics kept by the FIU are not relevant in analysing the effectiveness of the reporting system as the number of *"reports on suspicious transactions"* refers to *transactions* included into all the reports, not to the number of the *reports* which for the FIU represent *"cases"*. Furthermore, no relevant analysis can be done with respect of the ratio between number of STRs – number of cases analysed within the FIU – number of disseminated cases – number of investigations started by LEA, in the absence of statistics on STRs received by the FIU.

398. There is not enough evidence of money laundering convictions been achieved based on FIU disclosures, which raise effectiveness concerns.

399. At the time of the on-site visit, the evaluators were provided with information on the number of investigations initiated based on the notifications made by the FIU and the number of investigations already started by the law enforcement authorities where FIU's notifications have been added. The evaluators were also advised that the Latvian authorities did not maintain statistics on STRs resulting in prosecution or conviction for ML (additional element R32.3). At a very late stage, in June 2012, the Latvian authorities provided statistics concerning ML convictions based on FIU disseminations. However, the absence of statistical information relating to the number of prosecutions and convictions, based on FIU's notifications in the routinely self assessment of the efficiency of the FIU, raises concerns. Under these circumstances the evaluators could not adequately assess the quality of the analytical work and the effectiveness of the FIU.

400. The Latvian authorities commented on the above statement that: 1) Art. 2 of the AML/CFT Law states that "This Law aims at preventing laundering the proceeds from criminal activity (money laundering) and terrorist financing", 2) The name of LFIU is- Office for Prevention of Laundering of Proceeds derived from criminal Activity, 3) the number of freezing orders per years shows our place of this activity in Europe. Please see also priorities of the FSDC (annual reports) and requirements of Art. 32 of the AML/CFT Law, 4) the number of materials per year also shows the progress of the work: in 2009 – 143 (37 based on Art.195 of CL), in 2010 – 270 (161 based on Art.195 of CL), in 2011-442 (340 based on Art.195 of CL).

401. The evaluators noted that the FIU has direct access to a wide range of information held by public authorities which helps undertaking its core functions. However, the databases to which the FIU has access to are not integrated and thus, no automatic searches can be performed. This issue has been raised in the context of the large number of transactions analysed by the FIU.

402. There is also a concern whether the current level of human resources allows the FIU to maintain its strategy of focusing on important and usually more demanding and time consuming cases, and still be able to add enough additional quality intelligence to STRs and to undertake its other duties, responsibilities and various functions in a timely manner.

403. The FIU developed its own analytical/visualisation software which is connected exclusively to the FIU database, has mainly visualisation functions and is used only for the preliminary analysis. All further analytical work is performed manually by the FIU employees.

404. All public and local government institutions have a duty to provide the Financial Intelligence Unit, in due course established by the Cabinet of Ministers, the requested information, necessary to fulfil its functions.

405. Nevertheless, the direct access to financial information of the FIU is limited to additional information and documents about the precise customer or the transaction already reported by a particular entity. The reply shall be sent within seven days upon receipt of the written request from the FIU if the request results from reports submitted by the subject of the law, or bodies and institutions referred to in Article 62 (authorised foreign institutions). Additional information for other transactions of that customer may be required for analytical purposes only under prosecutor agreement. The restricted FIU access to additional financial information might negatively impact on its effectiveness and on quality of the analysis disseminated to LEA.

2.5.2. Recommendations and comments

Recommendation 26

406. The Latvian FIUs disseminations to the competent Law enforcement agencies are mainly related to criminal offences of tax evasion and misuse of bank accounts (mainly abroad). To avoid over-emphasis on simpler and less time consuming cases, the FIU should carry out a more in-depth analysis of the reports, adding value to the STRs received, with a view to improving the quality of the information it disseminates.

407. The IT and other analytical tools within the FIU still leave room for improvement to increase FIU effectiveness in the context of the high level of reports and transactions manually analysed by a limited number of employees.

408. A reduced workload on current regular matters would leave more room to focus on important and complex ML cases (usually more demanding and time consuming).

409. In the evaluators' view, FIU should also upgrade the IT system to enable an input and storage of the content of FIUs outgoing documents, especially disseminations (analysis). Consequently all analytical findings and conclusions could be a part of FIU's IT protection system against arbitrary modification and deletion and would be easy accessible.

410. Guidelines provided to the reporting entities are generic and not sector-specific to the financial and DNFBP. In addition, there is a need for more appropriate guidance on CTF measures as reporting entities appear to be focused only on lists of persons suspected of being involved in terrorist activity.

411. Regulation 1071 regarding the reporting obligations concentrate mainly on defining unusual transactions and just mentions suspicious transaction reporting. Instructions on completion of the Paper Form of Unusual or Suspicious Transaction Reports is a separate document. In addition, a closed list of indicators for suspicious is distributed among the reporting subjects. The two additional documents as such are not a part of the regulation and cause confusion among the reporting entities. The Latvian authorities should issue new guidance regarding the manner and the procedures when reporting UTRs and STRs. That guidance should enable reporting entities to concentrate on cases that really are suspicious and without limitations, as already recommended in 3rd MER.

412. The reporting form in written format (annex to Regulation 1071) allows only one transaction per report (whether unusual or suspicious), while the electronic format can include more than one transaction, but only when the same persons are involved in those transactions. Each format is intended for reporting unusual and suspicious transaction. This makes it impossible to distinguish between UTRs and STRs as one report can include both. The Latvian authorities should, together with issuing new guidance, prescribe new forms for reporting UTRs and STRs separately in order to avoid confusion and which would allow the FIU to pursue a more analytical and focused approach when conducting its functions.

413. Legislation should be amended to lift the restrictions for the FIU to have full access to financial information required to properly undertake its functions, including information on persons related/involved in the suspicious transactions but who have not been subject to a report received from an entity listed by the AML/CFT Law. This would also exclude any doubts as to the operational independence and autonomy of the FIU.

Recommendation 30

414. As stated above, the FIU is well structured and professional. All working places are appropriately equipped with hardware devices in order for the users to fulfil their functions according the requirements of the AML/CFT Law.

415. However, the number of employees has not increased since the 3rd MER even though it was one of the assessor's recommendations. The existing number of staff and the high level of reporting appear to determine a high workload and therefore the FIU's capacity to properly undertake its core functions is a concern. Increasing the FIU operational staff is recommended.

416. The IT tool that the FIU has at its disposal for analytical purposes has no does not have the functionalities to undertake automatic data processing such as data mining, social network analysis, clustering, links analysis, event analysis, activities analysis or pattern analysis and thus, it cannot be used for more than for the preliminary analysis for prioritisation purposes.

Introduction of more a elaborated IT tool to automate the analytical activity is recommended in the context of high number of reports.

Recommendation 32

417. The evaluators were provided with a number of statistics related to FIUs activity: number of transactions (deriving from STRs and UTRs), number of investigations initiated based on FIU's disseminations, already started investigations where FIU's notifications have been added etc

418. The evaluators were also advised that the Latvian authorities in general do not maintain statistics on STRs resulting in prosecution or conviction for ML (additional element R32.3).

419. The statistics kept by the Latvian authorities are not always comprehensive and do not contain all data necessary for an accurate analysis of effectiveness. No reliable statistics are kept in respect of the number of STRs and UTRs received, only on the total amount of transactions included herewith. This makes it difficult to analyse the effectiveness of the reporting system and of the analytical work of the FIU in relation to disseminated cases to LEA. Improving the system of maintained statistics to include the number of STRs and UTRs is recommended.

420. The Latvian authorities in general do not maintain statistics on STRs resulting in prosecution or conviction for ML and FT, which has a negative impact on the carrying out of comprehensive reviews of the AML/CFT system. Therefore, it is not clear whether a complete overview of the effectiveness and efficiency of the AML/CFT regime based on statistical analysis can be performed. Even if the some statistics were eventually provided, it was noted that these were collected exceptionally for the evaluation purpose and not as a standard procedure used to routinely evaluate effectiveness domestically. The evaluation team is of the opinion that the Latvian authorities should improve the system in order maintain more comprehensive statistics.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**LC**	• Guidelines provided to the reporting entities concerning the manner of reporting STs are set out in various documents which could lead to confusion over the reporting obligation. • Guidance on the manner of reporting limited to terrorism not to financing of terrorism. • The content of the FIUs disseminations are not a part of FIUs IT protected system against arbitrary modification and/or deletion. • FIU access to additional financial information requires prosecutor's approval. • Effectiveness could not been fully proved.

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)[24]

421. Latvia was rated non compliant in the 3rd MER because at the time of assessment, no respective measures were in place as the Law on Declaration of Cash at the State Border came into force after the assessment was conducted. It was recommended that the authorities should put in place mechanisms to ensure the effective implementation of the new Law on Declaration of Cash at the State Border.

422. At the time of the 4th round evaluation, the declaration of cash at the border in Latvia is governed by the following legislation:

- Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community;
- Law on Declaration of Cash at the State Border
- Cabinet Regulation of 19 June 2007 No 414 "Regulations regarding the Form of Declaration of Cash, the Procedures for Filling in and Submission Thereof and Verification of the Provided Information";
- Latvian Administrative Violations Code;
- Latvian Criminal Law

423. Sanctions for non-compliance with the above mentioned legislation are provided by Criminal Law and Latvian Administrative Violations Code. Duties of the State Revenue Service (SRS) customs officers are regulated by the SRS internal rules and regulations.

c. IX.1

424. The Latvian authorities adopted the first Law on Declaration of Cash at the State Border on October 13, 2005 which came into force on July 1, 2006. The law obligated any natural person who crossed the state border of Latvia, which is in the same time an external border of the European Community, to declare to the State Revenue Service of Latvia cash and other financial instruments in an amount equivalent or exceeding EUR 10,000 (Article 5). This obligation extended to the declaration of cash, checks, bills of exchange and other payment orders and financial instruments that are negotiable and/or are bearer instruments (Article 4).

[24] MONEYVAL discussed the evaluation of SR IX in its EU Member States in the follow-up round during its 35th plenary meeting in April 2011. MONEYVAL noted that under the supranational approach, there is a pre-condition for a prior supranational assessment of relevant SR IX measures. It further noted that there is as yet no process or methodology for conducting such an assessment (although one is planned). Pending the FATF's 4th round, as an interim solution, MONEYVAL agreed that it will continue with full re-assessments of SR.IX in the 6 remaining EU countries to be evaluated (which includes Latvia). These countries will be evaluated using the non-supranational approach. Nevertheless, it noted that, for the purpose of Criterion IX.1, the EU has been recognised by the FATF as a supranational jurisdiction and therefore there is no obligation to comply with this criterion for intra-EU borders. Downgrading solely for the lack of a declaration/disclosure system is thus not appropriate. The other criteria that mention supranational approach (C.IX.4, C.IX.5, C.IX.7, C.IX.13 and C.IX.14) would not be evaluated against the requirements that apply to the supranational approach, and C.IX.15 would not be evaluated. The FATF was advised of this solution as it involves a departure from the language of the AML/CFT Methodology. At its plenary meeting in Mexico in June 2011 the FATF took note of this interim solution for EU Member States in MONEYVAL's follow-up round.

425. The latest version of the Law on Declaration of Cash at the State Border was adopted on March 29, 2007 and came into force on June 15, 2007. In accordance with the above mentioned legislation, any natural person entering or leaving the European Union by crossing the state border of the Republic of Latvia and who has cash in the amount of EUR 10.000 or more, must submit to the customs official (state border guard official - at border crossing points where there is no customs control point) a written cash declaration.

426. Cabinet Regulation No. 414 (adopted 19 June 2007) approved the standard form of the declaration of cash at the State border, prescribed the procedures for filling in the declaration and submission thereof and the procedures for verification of information provided therein. Pursuant to the Cabinet Regulation No414 a natural person should declare cash above the threshold when entering or leaving the Community by filling in a declaration in two copies (on self-copying paper) and submit it to an authorised official of the competent authority at the State border crossing point. Declaration forms (in Latvian, English and Russian) are available in the competent authority at the State border crossing point.

427. The declaration form contains the identification data of the person (full name, date and place of birth, citizenship), owner of the cash, cash recipient, information on cash origin and intended use, amount and type of cash, transportation route and vehicles.

428. The declaration form contains also the type and amount of the cash:

- banknotes (released into circulation and are legal instruments of payment)
- coins (released into circulation and are legal instruments of payment)
- cheques, bills, payment orders and financial instruments issued on bearer or issued in a form that the title in this financial instrument is transferred to a third party together with the instrument itself
- blank cheques, bills, payment orders and other financial instruments which, if signed, give the right to receive the money without identifying the beneficiary

429. Duty to declare cash is to be considered not performed if the information provided is not precise or incomplete.

430. The Latvian authorities state that the declaration form is available at every border from competent authority. However, crossing the Latvian border on the occasion of the on-site visit, the evaluators were not supplied with a declaration form prior to landing, and were not otherwise advised prior to arrival at the Riga airport of the obligation to make a declaration. Furthermore, the evaluators could not confirm of whether posters, signs and brochures are deployed at all borders apart from the mentioned Airport.

431. The Latvian authorities indicated that there are clips demonstrating cash declaration procedures at the airport departure and arrival zone (at both Schengen and non-Schengen zones). The cash declarations forms are not automatically distributed to every single traveller with the requirement to fill it in. The decision of completing the form is under the responsibility of each individual. The travellers' control is made by random checks or risk assessment.

432. For controls on postal consignments and containerized cargo the general rules of the customs code apply. According to the Postal Law, currency may be sent only in insured postal items

433. The Latvian authorities admit that the public display of the declarations requirement could be improved, but pointed out that the advertising space belongs to the owner of the premises (the Riga Airport for instance) and the authorities must accept the billboards offered by them. Advertising the declaration duties on travel agencies websites was presented as an alterative solution but no steps have been taken to implement it in practice.

c. IX.2

434. In cases where a person fails to comply with the duty to declare cash, the given information (information that is indicated in cash declaration as well as other operational information) is gathered within the framework of procedural activities (the competent authority starts proceedings in the case of administrative violation according to Section 190^{15} of the Latvian Administrative Violations Code or starts criminal proceeding pursuant to Section 195^{2} of the Criminal Law.

435. Administrative liability for evasion of the declaration of cash is prescribed by the Section 190^{15} of Latvian Administrative Violations Code, and according to the Section 238^{1} of Latvian Administrative Violations Code an administrative violation report or a decision regarding commencement of record-keeping in the administrative violation matter shall be drawn up within a period of 24 hours upon receipt of an application or other materials regarding an administrative violation.

436. The evaluators were not provided with the legal provisions under SRIX.2 which would allow the Latvian authorities to request and obtain further information from the carriers with regards of the origin of the currency or bearer negotiable instruments and their intended use within the administrative procedure in case of a false declaration or disclosure. Therefore the criterion is not met.

c.IX.3

437. Within the existing legislation, competent authority is not able to stop or restrain currency or bearer negotiable instruments in cases where a person fails to comply with the duty to declare cash. The competent authority starts the proceedings in administrative violation case or criminal case (depending on the seriousness of the offence) and non-declared currency is returned to offender.

438. Administrative violation case should be considered within one month while the criminal offence can be considered in the period of several years. The Latvian authorities have been working on the amendments of the sanctions, e.g. it is planned to increase the limit of imposed fine as well as stipulate the possibility to confiscate the non-declared currency.

439. On the occasion of the on-site interviews the assessment team was advised that in case of failure to disclose the possession of cash and cash instruments above the threshold, an administrative protocol is executed.

440. The customs officers mentioned that random checks, based on a risk analysis are performed on persons crossing the border via the green corridor (nothing to declare line).

441. . The interviewees indicated that trained currency detector dogs at the borders would significantly increase the effectiveness of the Customs Officers in detecting cash couriers.

442. The essential criterion is not met.

c.IX.4

443. According to the Law on declaration of cash at the state border, the State Revenue Service has to ensure the availability of the information included in the declaration to the Money Laundering Prevention Service.

444. Nevertheless, the evaluators were not provided with the statistics on retained amount of cash or bearer negotiable instruments in cases of administrative violations or ML/FT suspicions. That includes the statistics when:

- A declaration exceeds the prescribed threshold; or
- Where there is a false declaration/disclosure; or

- Where there is a suspicion of money laundering or terrorist financing.

445. According to information provided by the Latvian authorities FIU has a direct access to the SRS database in all three cases listed above.

c.IX.5

446. All the information from cash declarations, as well as information on protocols on administrative violations, is stored at the Central Customs Information System and is available to FIU (FIU is the user of this database). In addition, the referred to information (statistics) is summarized and sent to the European Commission (number of cases of declaration, amounts, means of transport and routes). The competent authorities use electronic systems and databases of the European Commission (RIF, CIS, FIDE systems and 24-hour contact points) to exchange information on cases of failure to declare cash and false or incomplete declaration.

447. FIU of another Member State may receive the necessary information from the Latvian FIU or through customs administration (or other authority that is responsible for cash control on EU border) upon request (information from EU databases is available to customs administrations of all the Member States without prior request, operational information may be received via 24-hour contact point).

c.IX.6

448. There are written cooperation agreements between the State Revenue Service (National Customs Board is a part of the SRS structure) and FIU. Evaluation team was provided with a part of a such Inter-institutional agreement from May 17, 2007. The goal of the Agreement is to support efficiency of preventing the laundering of proceeds derived from criminal activity, to secure and ease receiving of information for the FIU on declaration of cash at the Republic of Latvia state border.

c.IX.7

449. There is a national contact point (in the structure of the Customs Criminal Board and the National Customs Board) that ensures risk information exchange (also with regard to cash control) by e-mail, phone or fax with customs services from other EU Member States and third countries.

450. Latvia as a member state of the European Union has access to the analytical action files of Europol which allows member states to exchange information, including on cross-border movement of funding of organised crime groups. They can also use the Europol analytical database to obtain information on other suspicious financial transactions and to identify international money laundering trends and the activities to which they relate.

451. The basis of information exchange and international cooperation between Latvians Custom's authorities and Customs authorities of a 3rd non - EU countries are two sorts of bilateral agreements:

- Between EU and 3rd countries (EU agreements with respective authorities of Canada, Albania, Hong Kong, India, South Korea, US, Japan)
- Between Latvia and 3rd countries (Belarus, Ukraine, Russia, Israel, Norway, Turkey, Uzbekistan, Armenia)

452. Latvia is also a member of World Customs Organisation from 1992.

c.IX.8

453. Sanctions for failure to declare cash or make false declaration are provided for in the Latvian Administrative Violations Code. According to Section 190 *"Evasion of the Declaration of Cash"* a fine is up to LVL 200 (≈ 285 €). The evaluators are of the opinion that in the case of administrative offence, fine is not dissuasive, proportionate and effective enough.

454. Sanctions for failure to declare cash / false declaration are provided also in the Section 195.2 "Avoidance of Declaring of Cash" of the Criminal Law, if the failure to declare the statutory amount is qualified:

> *"(1) For a person who commits the non-declaration or false declaration of cash as specified in regulatory enactments, which in crossing the State border of the Republic of Latvia is brought into the customs territory of the European Union or taken out thereof, if commission thereof is repeated within a period of one year, the applicable sentence is deprivation of liberty for a term not exceeding two years, or a fine not exceeding one hundred times the minimum monthly wage.*
>
> *(2) For a person who commits the non-declaration or false declaration of cash as specified in regulatory enactments, which in crossing the State border of the Republic of Latvia is brought into the customs territory of the European Union or taken out thereof, if commission thereof criminally acquired cash or if commission thereof is in an organised group, the applicable sentence is deprivation of liberty for a term not exceeding five years, or a fine not exceeding two hundred times the minimum monthly wage."*

455. At the time of the on-site visit, the evaluators were advised that between 2005 and 2010, only 5 administrative penalties were imposed in practice, all in 2009. Each of the fines was in amount of 200 LVL (≈285 €).

c.IX.9

456. All information provided by declarations, records for none or incorrect declaration is stored in customs electronic databases, and is available for FIU. FIU is empowered to investigate ML/FT cases, when there is physical cross-border transportation of currency or bearer negotiable instruments. National court is empowered to apply criminal sanctions in accordance with Criminal Law. Application of the injunction of a public prosecutor regarding a punishment is also possible in these cases.

457. There are no disclosures for suspicions of ML/TF in context with non-declared cash on the EU external border, but several times such disclosures were used as additional information to different kind of analysis.

c.IX.10

458. National customs board is empowered to investigate administrative offences (when there is incorrect declaration or none at all) and to apply only administrative penalties. FIU is empowered to investigate ML/FT cases. National court is empowered to apply criminal sanctions for AML/CFT in accordance with the Criminal Law.

There is no confiscation regime available for the Custom or other authorities in cases of non-disclosure or false disclosure in the administrative procedure. In the case of suspicions of a criminal offence including ML and TF, the Customs authorities forward the case to the Custom Criminal Board and they initiate the criminal procedures according to the CPL. Therefore criterion c.IX.10 is met.

c.IX.11

459. Custom's administration officials in cooperation with the State Border Guard provide boundary controls of persons within its jurisdiction. That includes the controls and verification of information in accordance with information provided by other law enforcement authorities about possible violations of law.

460. The Customs authorities declined competence in SRIII related matters. Responsible authorities in this regard are State Border Guard and Security Police. State Border Guard carries out its duties for organising and carrying out checkups of persons and means of transportation at the border crossing points. When performing these checks in all cases information on third country persons is verified, as well as in case of suspicions also on persons and vehicles from EU, EEA, Swiss Confederation countries. When suspiciousness arises on illegal immigration risks or any other issues of state security (including terrorism risk) such persons are checked on the border in Latvian or other European country data bases and information systems.

461. During these checks it is possible to find out also if a person entering the Schengen Zone is or is not included in the terrorist list.

462. Also, as soon as a person is identified as coming from country which is regarded as high terrorism risk country or there are suspicions for the Border Guard that a person should be additionally checked with the Security Police, these data are sent to Security Police for checking against the terrorist list as well as in all other situations.

c.IX.12

463. If the Latvian authorities discover an unusual cross-border movement of gold, precious metals or precious stones, information exchange is possible via National Contact Point of the SRS Customs Criminal Board or via Risk Management Unit of the SRS National Customs Board with the other Customs Services or other competent authorities of the countries from which these items originated and/or to which they are destined.

464. However, the Latvian authorities have not demonstrated or present any information that customs clearance of precious metals and precious stones is undertaken in a designated custom's office. Furthermore, they have not presented any information that there is active professional attention at all paid to such cross-border movements. In addition, the evaluators were not provided with statistics or examples illustrating the information exchange in this regard with the Customs Service or other competent authorities of foreign countries where these items originated from.

465. The evaluators were not advised of any specific legal provision dealing with the unusual movement of gold, precious metals and stones nor a methodology describing how to proceed in cases such assets are identified at the border.

466. According to Latvia authorities explanations' Control of such kind of goods is performed according to common customs legislation. Customs controls are targeted based on risk assessment as well as include a random element. In case of detected violation, administrative proceedings are commenced and the violation is considered as smuggling. The criminal proceedings are initiated if the violation is committed repeatedly within the period of one year, or it is committed on a large scale, or –committed in an organised group.

c.IX.13

467. The Latvian system for reporting cross border transactions seems to be subject to adequate safeguards to ensure proper use of the information or data that is reported or recorded. Only a limited number of officials have full access to the data base. Illegal dissemination of information is prohibited in accordance with the Law on State Revenue Service.

468. According to Regulation (EC) No 1889/2005 and the Council Regulation (EC) no 515/97 of 13 March 2007 on mutual assistance between the administrative authorities of the EU member states and cooperation between the latter and the EU Commission, to ensure the correct application of the law on customs and agricultural matters, information on cash control may be disclosed to EU Member States, European Commission or third parties.

c.IX.14

469. All the information from cash declarations, as well as information on protocols on administrative violations, is stored at the Central Customs Information System and is available to FIU (FIU is the user of this database). Administrative violations are also registered in the Punishment register.

470. In addition, the referred to information (statistics) is summarized and sent to the European Commission (number of cases of declaration, amounts, means of transport and routes). The competent authorities use electronic systems and the databases of the European Commission (RIF, CIS, FIDE systems and 24-hour contact points) to exchange information on cases of failure to declare cash and false or incomplete declaration.

471. The expert met on-site explained to the evaluators that some training on ML/FT issues was provided by the Latvian FIU. Information from the FIU data base shows a training session on "Cash declaration on the border and cooperation with FIU" which took place in 2007 with 44 participants from Customs authority.

472. The assessors are not aware of any particular programme deployed by the Latvian authorities with regard to the cash risk and threat assessment or any other targeted programme on AML/CFT.

Additional elements

c.IX.16

473. Latvia's authorities stated that the majority of measures mentioned in the Best Practices Paper for SR. IX are applied.

474. Following the on-site visit it resulted that Latvia has implemented, to an extent, the "Best Practices for detecting and preventing the illicit cross-border transportation of cash and bearer negotiable instruments". The mission saw some posters in Riga airport but they were quite discrete. No flyers have been distributed in the flights incoming from non-EU jurisdictions. Given that, the effective awareness rising on reporting obligations in other border points is questionable.

475. Taking into account the low number of declarations and the relatively low figures for the amount of currency declared yearly, a need to promote an enhanced campaign of awareness raising on the declaration requirements is apparent.

476. The interviewed experts explained that some random checks are performed based on a risk assessment but equally that the risk matrix could use some improvement to target the cash.

477. The sharing of information and the cooperation between the Customs authorities and the Latvian FIU is good and it is done in electronic forms.

c.IX.17

478. All the information from cash declarations, as well as protocols on violations, is stored at the electronic database of the National Customs Board, and is available to FIU (FIU is the user of this database).

Recommendation 30 (Customs authorities)

c.30.1

479. The customs authorities are structured according to internal regulations: ensuring customs control process, risk management, operational activities, intelligence activities, investigation activities, etc. To ensure the completion of its functions the Custom Authority uses trained staff and technical resources.

480. The structural unit of the State Revenue Service – Customs Criminal Board within the competence of which there is an investigation of criminal offences in the area of customs. It also investigates movement of undeclared funds across the customs border of the Republic of Latvia. In investigation of criminal offences staff of the authority acts based on the Criminal Law.

481. During the on-site interviews the need for dogs trained for cash detecting was expressed as a effective manner of undeclared cash identification at the border.

c. 30.2

482. The SRS National Customs Board has developed a customs clearance standard that provides for guiding principles and requirements of customs clearance and all customs officials must comply with upon performing of their professional duties at customs control points and premises, and other sectors under their supervision.

483. The Latvian authorities also implemented a customs client service standard that contains information on rights of customs clients, duties of the SRS National Customs Board and telephone number a client may call to report on noncompliant actions of customs officials.

484. The SRS Customs Criminal Board staff is recruited based on requirements provided for in legal acts (job descriptions) regarding the necessary qualification and education level. Investigators and operational staff have higher education in law, analysts – law, finance or economics. Customs-specific issues the staff apprehends at specialized training.

c.30.3

485. The evaluators were advised that customs staff training needs are discussed and performed on a regular basis.

Table 25: Trainings provided to the Customs' staff relating to cash control since 2006

Date	Theme	Provider	Training Methods	Number of participants
23.5.2006	Declaration of Cash at the State Border	State Revenue Service Customs Administration	Train-the-trainer workshop	25 (Team leaders)
25.5.2006	Declaration of Cash at the State Border	State Revenue Service Customs Administration	Train-the-trainer workshop	22 (Team leaders)

12.6.2006	Declaration of Cash at the State Border	State Revenue Service Customs Administration	Train-the-trainer workshop	32 (Team leaders)
14.12.2007	Declaration of Cash at the State Border and ML	State Revenue Service Customs Administration in cooperation with National FIU	Train-the-trainer workshop	44 (Team leaders)
2006-2011	Declaration of Cash at the State Border	Regional customs authorities (Trained trainers; Team leaders)	Practical workshops on a daily basis	826 Customs officers (in all 31 Customs Control Points)

486. Although the trainings are conducted on the regular basis, the evaluators were not convinced that the quality and the quantity of those trainings are sufficient since the results under SR.IX measures in practise are an area for improvement.

Recommendation 32

487. The SRS Customs Criminal Board maintains data on criminal proceedings on ML, initiated by the institution. In the evaluated interval, only two criminal proceedings were opened in 2008, on the basis of Section 195 of the Criminal Law when movement of cash across the border of the Republic of Latvia. The evaluation team was advised that the two cases were initiated by Custom's Criminal Board. The final outcome is not known.

488. As of 1 July 2006 the customs service started controls of cash movement across the external border of the EU. As described above, since then 5 administrative violations were detected.

489. The Latvian authorities provided the statistics on the declared amounts and the number of declarations in the time period 01.07.2006 - 01.05.2011. Concerning detections, no detailed statistics are available on the number of cases regarding the failure to comply with the obligation to declare.

Table 26: Number of cash declarations at Latvian border

	2006	**2007**	**2008**	**2009**	**2010**	**2011**
AIR	27	122	154	147	112	74
ROAD	5	23	20	21	19	12
RAIL	10	7	2	2	1	1
On entering	13	33	58	67	72	54
On leaving	29	119	118	103	60	33
Total declarations:	**42**	**152**	**176**	**170**	**132**	**87**
Declared amount (EUR)	**2.414.129**	**18.963.503**	**43.879.824**	**49.974.506**	**41.657.140**	**25.041.079**

490. The evaluators were not provided with the statistics of a retained amount of cash or bearer negotiable instruments in cases of administrative violations or ML/FT suspicions.

491. Statistics concerning unlawful activities in connection with the illegal trade of precious metals and stones were presented as showed below.

Table 27: Number of administrative protocols regarding illegal border crossing of natural persons with precious metals and stones in the time period 01.07.2006 – 01.05.2011:

	2006	2007	2008	2009	2010	2011
gold	0	2	0	0	0	0
precious metals	0	1	8	4	1	0
precious stones	0	0	0	0	0	0

Table 28: Number of criminal cases regarding illegal border crossing of natural persons with precious metals and stones in the time period 01.07.2006 – 01.05.2011:

	2006	2007	2008	2009	2010	2011
gold	0	1	0	0	0	0
precious metals	0	3	2	1	0	1
precious stones	1	0	0	0	0	0

2.6.2. Recommendations and comments

492. The assessment team welcomes the implementation of cross border cash declaration obligation by the Latvian authorities. However, the number of declarations and the ability of the Customs to detect and sanction the non-declared amounts are an area for improvement.

493. The administrative penalties (fine up to LVL 200 ≈ 285 €) for non-compliance with the obligation to declare seems low and therefore not enough dissuasive, proportionate and effective. Increasing the level of the administrative sanctions is recommended.

494. The tools at the disposal of the Customs officers to detect undeclared cash should be diversified and enhanced. A need for a more appropriate risk matrix for performing random checks on persons choosing the green corridor and provision of trained dogs are amongst such measures.

495. In order to be able to evaluate the overall effectiveness of the system, the Latvian authorities should maintain more detailed statistics on retained/seized amount of cash or bearer negotiable instruments in cases of administrative violations or ML/FT suspicions, statistics concerning unlawful activities in connection with the illegal trade of precious metals and stones concerning detections. No detailed statistics are available on the number of cases regarding the failure to comply with the obligation to declare and no statistics are available on information exchange with foreign counterparts regarding SR.IX.

496. The evaluators were not informed of any review on the current practices regarding cross-border transportation of currency and bearer negotiable instruments, including the regulatory side and the custom authorities involved in the execution since the adoption of the legal provisions on the matter. Therefore, it is strongly recommended to initiate a thorough review of effectiveness SR.IX measures, including a risk assessment. That review should also aim in identifying grounds for establishment of an operational system to targeting illicit cash couriers.

497. The Latvian authorities should pay more attention on the unusual cross-border movement of gold, precious metals or precious stones.

498. The purpose of Law on Declaration of the Cash at the State Border in Latvia is to prevent undeclared cash importation into the Republic of Latvia from non-EU countries, and its exportation out of the Republic of Latvia to non-EU countries. At the time of evaluation, the Latvian authorities have not demonstrated at all that adequate measures are in place and cover the requirements of SR.IX at the national level. There appears to be a lack of legislative measures concerning intra EU disclosure/declaration measures and consequently enforcement of those powers in Latvia.

499. The Latvian authorities should take steps to increase the awareness on the declaration of cash obligations for arriving and departing travellers by making SR.IX requirements at border point more visible.

Effectiveness and efficiency

500. Although the Latvian authorities seem to comply with the some of criteria under SR.IX, some deficiencies remain as already noted. Those refer mainly on ineffective sanctions and low extend of practical enforcement of SR.IX measures in general. The lack of detailed statistics undermines the assessment of effectiveness.

501. The level of awareness on risk situations or instances that could rise suspicions on ML/FT leaves room for improvement. The evaluators were not advised of any STR forwarded by the Custom Authority to the FIU.

502. The Latvian authorities presented the participation participated into two international joint customs and police operation (ATHENA in 2008 and ATHENA II in 2010) as operations aimed at identifying/targeting illicit cash couriers.

503. The risk matrix used for random checks needs up-dating.

504. The SRS Customs Criminal Board may only provide data on criminal proceedings on ML, started at the institution (since 2005 only two cases in 2008). As of 1 July 2006, the customs service started controls of cash movement across the external border of the EU. Since then 5 administrative violations were detected. Low level of sanctions might undermine effectiveness of the reporting system. Information on final results of administrative and criminal procedures was not provided. It is quite obviously that enforcement results on SR.IX measures are low.

505. The seizing and freezing capabilities of the Customs Authorities raise concerns. The suspicious or undeclared money might be frozen until a final decision is made but no longer than two weeks. Also, it as indicated that even in criminal cases, the Customs Authority must return the frozen money which undermines the effectiveness of the system.

2.6.3. Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**PC**	• No provision to request and obtain further information in case of a false declaration/disclosure • Limited freezing capabilities of the Customs Authority • Low extent of practical enforcement on SR.IX measures in general (effectiveness issue)

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

506. The new AML/CFT Law, with the subsequent amendments, that transposed into national legislation the 3rd EU AML/CFT Directive (2005/60/EC) as well as the Implementing Directive (2006/70/EC) states that all the persons engaging in economic or professional activity, as defined at Art 3 "*Persons subject to this Law*" fall under the obligation to observe the requirements of the said law.

507. The AML/CFT Law has expanded the scope of persons subject to the AML/CFT Law, established enhanced CDD measures, increased the number of supervisory authorities and their role in preventing money laundering and terrorism financing, and introduced a risk-based approach to CDD (Art. 45)

508. In addition to the AML/CFT Law, the FCMC has issued a Regulation for Enhanced Due Diligence that is binding upon its obligors.

509. An important step ahead in supporting the reporting entities' efforts to prevent the use of the Latvian financial sector for ML/TF purposes are the provisions allowing banks and life insurance companies to access a wide range of state registers to assess their customers and the money laundering risk associated with them (Art.41).

510. Also, by the AML/CFT Law the obligation for banks and other financial institutions to appoint a board member who is responsible for the prevention of money laundering and of terrorist financing in the said bank or financial institution (Art.10 (2)) as well as the requirement that Board members of the banks have to be regularly informed about AML/CFT compliance within the bank, has been set up.

511. In the case of a person in charge of ensuring compliance with the AML/CFT Law in a bank and life insurance company – the compliance officer - the AML/CFT Law introduced a clearance requirement of not being previously convicted of crime (Art.10 (4)).

512. The obligation to set up an internal control framework was extended, by providing for more detailed requirements (Art.7 of the AML/CFT Law).

Customer Due Diligence and Record Keeping

513. Since the last mutual evaluation report, adopted in 2007, the Latvian Government has made consistent strides in remedying deficiencies with regard to improving the AML/CFT regime through the promulgation of new Laws, regulations, and other enforceable means.

Law, Regulations, or Other Enforceable Means

514. Latvia's AML/CFT legal regime has been strengthened by several significant developments since the third round mutual evaluation. Latvia has carried out most of these reforms under its obligations as an EU member state.

515. First, in August 2008 Latvia adopted the AML/CFT Law in order to implement the Third EU AML/CFT Directive (Dir/2005/60/EC) and Implementing Directive (Dir/2006/70/EC) into its national legislation. The most significant components of the Law include: institution of enhanced CDD, repeal of blanket exemptions for correspondent banking, an expansion of supervision, regulation, and monitoring to all categories of the financial/credit sector and designated non-financial professions and businesses.

516. Latvia has also adopted other significant legal acts to institute a more effective AML/CFT regime. In 2010, Latvia adopted the Law on Payment Services and Electronic Money in order to implement the EU Directives 2007/64/EC and 2009/110/EC. At the time of the on-site visit, the implementation of this Law was still in process. Another major legal change occurred with the amendments to the Commercial Law which provides new beneficial ownership provisions.

517. Latvia has also promulgated several regulations, which were in furtherance of the AML/CFT Law by the main regulatory body, the FCMC. The FCMC's major regulations adopted since 2008 include the new FCMC Regulation on Enhanced CDD, and the Regulation on Information Security. The FCMC has oversight responsibility for the financial sector entities described in section 1.3.

518. In accordance with Article 47 of the AML/CFT Law, only the FCMC is permitted to issue regulatory provisions for the supervision and control of AML/CFT regime. The authorities have also promulgated several guidelines, including the Bank of Latvia's Recommendations, which govern the activities of the obligors under their supervision, namely the currency exchange operators, and the Ministry of Transport guidance for the operation of JSC Latvijas Post.

519. The Bank of Latvia Recommendations, which govern the operations of currency exchange offices, cannot be considered as "other enforceable means". This raises questions with regard to the regulation and supervision of both sectors.

3.1. Risk of money laundering / financing of terrorism

520. The general approach to risk has been described in Section 1.5c above. The Latvian authorities have promulgated a risk-based approach based on four categories of risk that firms should consider when determining the risk of their client base and setting their own internal control procedures. These four categories of risk are: country risk, risk associated with the legal form of the customer, risk associated with the economic or personal activity of the customer, and risk associated with the products or services used by the customer. This concept is articulated in the AML/CFT Law and repeated in the FCMC Regulation on ECDD and throughout various Government regulations and guidance. Based on interviews conducted during the on-site visit, the authorities have done a commendable job of educating their obliged entities on these concepts.

521. Since the last mutual evaluation, there has been no national AML/CFT risk assessment. The evaluators note that Latvia established a working group in 2009 to draft a national risk assessment[25].

522. At the time of the on-site, a national threat assessment had not been finalized. During the on-site visit, the Latvian authorities briefed the evaluation team on the overall scope of the project, which includes a wide spectrum of Latvian Government institutions, including the FCMC, the KNAB, Ministry of Finance, and the Latvian Constitution and Protection Bureau.

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

523. Since the last MER, the Latvian authorities have established the concept of Enhanced CDD through both law and regulation - where Latvia has provided for PEPs, Correspondent banking,

[25] According to Latvian authorities, the working group has finished its work on 01.09.2011 and reported the results of the risk assessment to Financial Sector Development Council on 27.10.2011. As a result it was decided to create a new working group tasked with duty to work out plan of measures addressing the risks disclosed. Prime Minister issued Order On creating a new working group for these purposes on 03.02.2012. The Head of the Latvian FIU was appointed to lead the working group. The interim results will be reported to the Council not later than 31.08.2012.

and non face-to-face business. In addition, the authorities provide coverage for the other enhanced due diligence examples provided for in the methodology, although in a less direct manner.

524. With regards to simplified due diligence, there has been less clear progress. Although the authorities have removed some of the outright exemptions from customer due diligence, there remain some unclear issues about other provisions within the AML/CFT Law, and interviewed financial institutions continued to refer to many categories of simplified due diligence as exemptions. As the law had only recently been changed at the time of the on-site, it was difficult to judge effectiveness on this point.

3.2.1. Description and analysis

Recommendation 5 (rated PC in the 3rd round report)

525. According to the FATF methodology, customer due diligence (CDD) does not only incorporate the establishment of the identity of the customer, but also includes the monitoring of the account activity to determine those transactions that do not conform with the normal or expected transactions for that customer or type of account, and complemented by regular compliance reviews and internal audit.

526. During the 3rd round evaluation, the evaluators noted that although Latvia implemented customer identification obligations, not all of the necessary details of CDD are adequately covered. The last evaluation concluded:

- There is no explicit requirement in law or regulations for financial institutions to undertake CDD measures when establishing a business relationship (other than when opening an account).
- There is no explicit requirement in law or regulation for financial institutions to verify the customer's identity.
- In respect of business relationship that are not covered by the FCMC regulation: the requirements are unclear as regards the timing of verification.
- Measures taken to enable financial institutions to conduct full CDD on legal entities that may issue bearer shares need to be strengthened.
- There are no specific, direct requirements in law or regulation to identify the customer when there is a suspicious of terrorist financing.
- Current requirements to keep the information collected during the CDD up-to-date and relevant and to conduct review of existing records, in particular for higher risk categories of customers, need strengthening.
- There are no requirements, in law or regulation or other enforceable means, for bureau de change and the Latvian post office to identify high-risk clients or transactions and perform enhanced due diligence.
- Exemptions to the identification requirements are not in line with the standard.

Anonymous accounts and accounts in fictitious names (c.5.1)

527. According to Article 11 of the AML Law, it is a legal duty of obliged entities to identify clients before opening an account. Furthermore, Article 15 of the Latvian AML/CFT Law also directly prohibits the opening and keeping of anonymous accounts, of customers that have not been identified. The previous AML Law required that all anonymous accounts be closed on 1 January 1999 unless the account holder was identified.

528. None of the firms interviewed during the on-site visit could recall the presence of anonymous accounts or similar products.

529. According to the FCMC Letter 05.01.01/1242 of 06.05.2005, the regulator provided an overview of the practice of using coded accounts in some financial institutions, and advised the banks to stop opening such accounts. However, this instruction cannot be considered law, regulation or guidance. This instruction is not repeated in any subsequent guidance and the scope of the current AML/CFT Law does not explicitly address these types of accounts.

530. There are no specific legal provisions prohibiting fictitious names.

531. Given the money laundering threat from accounts in bearer form (i.e. anonymous accounts), by their inherent transferability and anonymity, authorities should ensure that their provisions in this regard prohibit all types of anonymous accounts identified by the international standards.

Customer due diligence

When CDD is required (c.5.2)*

532. Article 11 (1) of the AML/CFT Law requires obliged entities to identify a customer before establishing a business relationship. Article 16 (1) further clarifies the meaning of '*establishing a business relationship*', to include before opening an account and accepting money or other funds for keeping or possession.

533. The meaning of business relationship is defined in the Article 1, point 3 of the AML/CFT Law.

534. Article 11 (2) of the AML/CFT Law requires financial and credit institutions to identify a customer before each occasional transaction when not establishing a business relationship, where:

- the amount of a transaction or the total amount of several apparently linked transactions is equivalent to 15,000 EUR;
- a transaction corresponds to at least one of the indicators in the list of unusual transactions or gives rise to a suspicion of money laundering, terrorist financing or an attempt thereof;
- there are doubts about the veracity of the previously obtained identification data.

535. Article 16 of the AML/CFT Law provides the duty of a financial institution to apply customer due diligence measures in the following cases:

- before establishing a business relationship, including before opening an account and accepting money or other funds for keeping or possession; or
- when there is a suspicion of money laundering or of terrorist financing, regardless of the exemptions referred to in Articles 26 and 27; or
- when there are doubts about the veracity of previously obtained customer identification data.

536. With regards to the obligations of a financial institution to apply customer due diligence measures "carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII", the Latvian authorities informed the evaluation team that this requirement is met by implementation of EU Regulation 1781/2006.

Identification measures and verification sources (c.5.3)*

537. Article 12 of the AML/CFT Law establishes the requirements for identification of natural persons. The Law obliges that natural persons are identified on the basis of a personal

identification document in which the following information is provided for residents: the name, the surname, the personal identity number. For non-residents: the date of birth, the number of the personal identification document and the date of issue, the issuing country and the authority which issued the document is also requested.

538. The non-residents natural persons, who have personally appeared before the Latvian obliged entity, should be identified only by the document valid for immigration into Latvia. For those non-residents that do not appear before the Latvian obliged entity, they should be identified in their country of residence by using the domestic passport of the respective country, other document that evidences the person's identity and is accepted by the respective country, or a document that is valid for immigration into the country where the person is being identified.

539. Given the wide latitude that could be included within *"other document that evidences the person's identity and is accepted by the respective country"* Latvia should consider restricting this identification requirement to internationally recognised forms of identification. This blanket category would fall short of the general identification recommended in the *General Guide to Account Opening and Customer identification* issued by the Basel Committee on Banking Supervision (BCBS)

Identification of legal persons or other arrangements (c.5.4)

540. Article 13 of the AML/CFT Law establishes the procedure for the identification of Legal Persons. Legal persons are identified by producing documents evidencing their establishment or legal registration; providing the registered office address of the customer/legal person; and identifying the persons entitled to represent them in the relationship with the obliged entity subject to this Law. On this last issue, legal persons are required to provide a document evidencing the rights of the natural persons to represent the legal entity, or a copy of such document shall be obtained. This identification information for legal persons is required to be produced from a publicly available source that is reliable and independent.

541. Most reporting entities interviewed during the on-site visit indicated that they relied on the Enterprise Register. The Enterprise Register is intended to consolidate all data on registered firms. Updates to the information kept by in the Enterprise Register are mandatory, and updated information must be submitted to the Commercial Register within 14 days from the day of the changes, per Section 16 of the Commercial Code. The Commercial Code (Section 12) provides a presumption, which states that third parties can rely on data recorded in the Commercial Register. Administrative institutions and banks always ensure that information provided by entrepreneur complies with the data recorded in the Commercial Register. If the information does not match, entrepreneur must submit updated information.

542. Of note, the Enterprise Register is not an obliged entity under the AML/CFT Law.

543. During meetings with law enforcement and obliged entities, interviewed parties did note the money laundering threat from complex legal arrangements.

Requirement to identify beneficial owners (c.5.5)

544. Article 1 (1) (5) of the AML/CFT Law defines beneficial ownership as: a natural person: a) who owns or directly or indirectly controls at least 25 per cent of the share capital or voting rights of a merchant or exercises other control over the merchant's operation, b) who, directly or indirectly, is entitled to the property or exercises a direct or an indirect control over at least 25 per cent of a legal arrangement other than a merchant.

545. The definition of a merchant is provided by Section 1 of the Commercial Code: a merchant is a natural person (individual merchant) or a commercial company (partnership and capital company) registered with the Commercial Register.

546. In the case of a foundation, a beneficial owner shall be a person or a group of persons for whose benefit the foundation has been set up. In the case of political parties, societies and cooperative societies, a beneficial owner shall be the respective political party, society or cooperative society, c) for whose benefit or in whose interest a business relationship is established, or d) for whose benefit or in whose interest a separate transaction is made without establishing a business relationship in the meaning of this Law.

547. Article 17 (1) (1) of the AML/CFT Law establishes that in the course of establishing a business relationship, obliged entities should undertake customer due diligence measures based on risk assessment, including by establishing the identity the beneficial owner. For legal entities, a person subject to this Law establishes also its shareholder structure or the manner of beneficial owner's control over this legal entity. Article 18 provides further requirements for establishing the Beneficial Owner, mandating that obliged entities shall determine who the beneficial owner is in two circumstances: for customers legal persons, to which enhanced customer due diligence shall apply; or for all customers where it is known or there is a suspicion that the transaction is executed in the interest or on order of another person.

548. Article 18 (2) of the AML/CFT Law provides three mechanisms for establishing the beneficial owner/identifying the natural person with ultimate control of the legal entity. Obliged entities can either: obtain a statement signed by the customer about the beneficial owner; or use data or documents from information systems of Latvia or of other countries; or establish itself the beneficial owner in cases when data on the beneficial owner cannot be obtained otherwise.

549. After the on-site visit, Latvia amended the Commercial Law to provide for a new beneficial ownership standard in Section 17.1, Duty of Disclosure.

550. Under the Article 17.1 of the CoL a shareholder of a capital company who is a natural persona shall be deemed the beneficial owner of the company, i.e. they own 25% shares (directly or indirectly), if another persona is not deemed the beneficial owner of the capital company in accordance with Section1 (5) (a) or (b) of the AML/CFT law, i.e. the beneficial owner controls 25% of the fixed capital (a) or a group of persons who control an establishment are considered the beneficial owners (b). The Law creates an obligation on a shareholder who holds shares on behalf of/for benefit of other person, acquiring at least 25 per cent of the capital company shares to notify the capital company thereof within 14 days, indicating the person for whose benefit such shares are held. This notification shall be sent to the Commercial Register (Register of Enterprises).This notification shall be submitted to the capital company in accordance with the procedures specified in Section 6 of the Group of Companies Law. These amendments also provide for a situations where the firm is unable to establish the person who is the beneficial owner, or is not able to acquire individual data regarding the referred to person or, there is no such person. In such case a statement with reasons why information on beneficial owners of the company cannot be provided has to be submitted to the Commercial Register (Register of Enterprises). Authorities indicate that this exception was created, for example, for vertically integrated companies, in the case that they are unable to determine the ultimate beneficial owner.

551. The Commercial Law also note that law enforcement authorities and control authorities in the field of tax administration, public procurement or also public-private partnership are entitled to get acquainted with the information regarding beneficial owners of a partnership and a capital company. The discussion under Recommendation 33.4 further details the access to this information.

552. According to Section III of the BoL Recommendations, currency exchange companies shall ascertain whether the customer executes a transaction in his/her own interest or the beneficial owner's task. Where a beneficial owner is identified, the currency exchange company should make copies of the customer's and the beneficial owner's identification documents. When the customer of a currency exchange company is a legal person, the obliged entity should clarify and document the identity of the natural persons who actually owns the majority of capital shares.

Also, it must ascertain the authenticity and validity of the customer's and the beneficial owner's identification documents, as well as of other submitted documents.

553. Article 26 of the FCMC Regulation on Enhanced Due Diligence provides for the minimum requirements for establishing beneficial ownership.

Information on purpose and nature of business relationship (c.5.6)

554. Article 19 of the AML/CFT Law instructs subject persons on obtaining Information on the Purpose and Intended Nature of the Business Relationship, detailing that at inception of a business relationship, based on the money laundering and terrorist financing risk assessment, is required to obtain and make records of information on: the purpose and intended nature of the business relationship, including information on the services that the customer intends to use; the origin of the customer's funds; the intended number and volume of transactions and the customer's economic or personal activity for which the customer will use the respective services. In addition, the Association for Latvian Commercial Banks (ALCB) has provided typologies for the financial sector on determining business purpose.

On-going due diligence on business relationship (c.5.7, 5.7.1 & 5.7.2)*

555. The requirement to conduct on-going due diligence is provided in Article 20 of the AML/CFT Law. According to the law, an obliged entity should update information on the customer's economic or personal activity, and monitor transactions on a regular basis to ensure that they are not unusual or suspicious, based on a money laundering and terrorist financing risk assessment.

556. In the framework of a business relationship, according Article 17, customer due diligence is a set of measures based on risk assessment whereby the person subject to this Law ensures that the documents, data and information obtained during customer due diligence are properly kept and updated on *regular basis*. The frequency for updating customer identification is clarified in the FCMC's Manual for Assessing Banking Risks, where the regulator provides that for customers subject to CDD exemptions, the information must be updated once every three years, for customers subject to enhanced CDD information must be updated once every 3-12 months depending on the volume of transactions, and for customers subject to general due diligence, once every 1-2 years.

557. During the course of the on-site visit, many representatives of the financial system stated that the frequency of due diligence applied to existing customers is often transaction-dependant.

558. The AML/CFT Law, Article 20, requires obliged entities that when monitoring a business relationship, they should be mindful of 1) unusually large and complex transactions or mutually linked transactions, which have no apparent economic or visible lawful purpose, and are not typical for a customer; and 2) transactions involving persons from third countries that, in accordance with the opinion of international organisations, shall be considered as countries and territories where there are no effective regulatory provisions for combating money laundering and terrorist financing or that have refused to cooperate with international organisations in the area of preventing money laundering and terrorist financing.

559. Article 23 of the FCMC Regulations on ECDD provide for minimum ECDD actions during business relationship with customers, and include the obligations to: verify whether the transactions made on the customer's account comply with the economic activity declared by the customer; obtain additional information to ensure that the beneficial owner as indicated by the customer or established by the financial institution is in fact the customer's beneficial owner; establish the origin of the financial resources on the customer's account; and analyse the customer's economic or personal activity. This final point is further clarified in the subsequent article.

560. Article 24 of the FCMC Regulations prescribe that: when verifying whether the transactions made on the customer's account comply with the economic activity declared by the customer, the financial institution shall verify the following: that the transactions made by the customer are economically motivated and do not exceed notably the declared volume; that the customer's payments comply with the economic or personal activity declared by the customer; that the customer's transactions with the declared and other counterparties do not contradict the customer's economic activity; that it has underlying documents of transactions with the customer's main counterparties.

561. These requirements appear to cover the FATF requirement for ongoing due diligence to cover both the business of client and source of funds.

562. According to Section X of the BoL Recommendations, currency exchange companies shall ensure constant supervision of the transactions conducted by the customers. Taking into account the information obtained within the framework of the supervision of customers' transactions and that provided by the FIU and other law enforcement bodies, a currency exchange company shall be entitled to establish intensified supervision of the transactions conducted by the customers and impose the following restrictions: to establish that transactions with the customers are conducted only with the consent of the administrative body or the responsible employee; to establish the limits of customers' transactions; to establish supervisory measures or restrictions of any other kind.

563. The use of the phrase *"is entitled"* in this context seems to indicate that the requirements are voluntary, or at least less than required by obliged entities. According to the authorities, in practice the Bank of Latvia reviews and accepts the internal control policies and procedures of a capital company, according to the BoL Regulation, the BoL Recommendation, and the BoL Licensing Committee shall pass a decision to refuse the license where the documents presented by the capital company that state the internal control systems policies and procedures with regard to prevention of money laundering and financing of terrorism fail to be compliant with the requirements set forth by the laws and regulations (meaning also the BoL Recommendation) with regard to prevention of money laundering and financing of terrorism.

564. The BoL Recommendations do not appear to provide clear requirements for ongoing due diligence in two important areas: establishing the source of funds and nature of the business of the customer when the transaction does not qualify as an unusual or suspicious transaction or the customer is a high-risk customer or a politically exposed person.

Risk – enhanced due diligence for higher risk customers (c.5.8)

565. Since its last mutual evaluation, Latvia has introduced the concept of enhanced customer due diligence through both law and regulations. Article 22 of the AML/CFT Law contains a clear requirement to apply enhanced customer due diligence in three specific mandatory instances: at inception of a business relationship with a customer who has not been physically present during the identification procedure (non-face to face customers); at inception of a business relationship with a politically exposed person; when starting cross-border credit institution relationship with respondents from third countries.

566. As defined by the Law, enhanced CDD is based on an obligor's risk assessment in addition to customer due diligence procedures in an effort to establish the beneficial owner and to ensure enhanced monitoring of the customer's transaction.

567. Article 22, (5) of the AML/CFT Law prescribes that the Financial and Capital Market Commission is required to establish additional procedures and regulations for enhanced customer due diligence. In this regard, the FCMC has issued "Regulations on Enhanced

Customer Due Diligence" (27.08.2008., in force since 04.09.2009.) and the Regulations on Information Security. These will be further analyzed later in this section.

568. With regards to the other circumstances that the Basel Committee identifies in " Customer Due Diligence for Banks," the FCMC's ECCD Regulations addresses non-resident accounts (15.5), private banking (18.1), legal arrangements (15.3) and corporations with nominee shareholders (15.1).

Risk – application of simplified/reduced CDD measures when appropriate (c.5.9)

569. During the course of the third mutual evaluation report, the team identified the exemptions from customer due diligence as a major deficiency in the CDD regime. As of early June 2011, Latvia had established a simplified due diligence regime in Article 26 of the AML/CFT Law, and several categories for exemptions from customer due diligence in Article 27.

570. Latvia established simplified due diligence in the following cases: 1) when the customer is a credit institution or a financial institution registered in the Republic of Latvia or is registered in a third country which imposes requirements equivalent to those of the European Union; 2) an institution of the Republic of Latvia; 3) a merchant whose shares are traded on the regulated market of the European Union or an equivalent jurisdiction; 4) a person in whose name acts a notary or other independent legal professional from a member state or a third country; or 5) any other person that represents a low risk of money laundering. An additional provision (Article 26 (3)) permits simplified due diligence when the legal entities are public administrations Finally, Article 26 (4) permits simplified due diligence for subjects of the AML/CFT Law. This final provision provides for simplified due diligence to a large number of subjects, to include almost any legal person incorporated in Latvia.

571. Article 27 continues by providing exemptions from CDD in specified circumstances, to include transactions with insurance merchants, private pension funds, and e-money institutions. In addition, Article 27(4) provides an exemption from CDD in the following circumstances when providing services that comply with a series of indicators.

572. The assessors are of the opinion that the exemptions created by Article 27(4) provide a broad exemption from CDD measures.

573. While FATF recognises that simplified measure may be appropriate in circumstances where the risk of money laundering and terrorist financing is lower, it does not provide for a complete exemption from the CDD requirements or abrogation of international standards in this area. In allowing for a complete and automatic exemption from the CDD measures, the Latvian AML Law falls short of the requirement set out in Recommendation 5.

574. Exceptions are also referred to in the FCMC's the Manual for Assessing Banking Risks, and they should be removed.

Risk – simplification/ reduction of CDD measures relating to overseas residents (c.5.10)

575. The AML/CFT Law permits application of reduced CDD measures only for banks and financial institutions (except currency exchange offices and payment institutions) residents of EU member states or countries where the regulatory requirements in respect of prevention of money laundering and of terrorism financing are equivalent to those of the European Union regulatory provisions (AML/CFT Law Article 26). In this regard, the Cabinet of Ministers has issued Regulation number 966 of 25 November 2008, updated by Regulation number 413 in June 2011.

576. The Latvian authorities did not indicate that this equivalency was established by any risk assessment. This list was formed taking into consideration EU Common Understanding between

Member States on third country equivalence under the Anti-Money Laundering Directive (Directive 2005/60/EC) adopted in Brussels.

Risk – simplified/ reduced CDD measures not to apply when suspicions of ML/FT or other risk scenarios exist (c.5.11)

577. Under Article 16 of the AML/CFT Law, obliged entities are required to apply customer due diligence when there is a suspicion of money laundering or of terrorist financing. Of note, these simplified/reduced measures do not apply in situations where customer due diligence are exempted, as specified in Articles 26 and 27.

Risk-based application of CDD to be consistent with guidelines (c.5.12)

578. The Latvian authorities indicate that CDD undertaken by obliged entities is stipulated in the FCMC *"Regulation for enhanced due diligence"*. The authorities have not issued additional specific guidelines.

579. Latvia has established the framework for a risk-based approach, which it was lacking at the time of the 3rd MER.

580. According to the revised AML/CFT Law, a firm's customer due diligence process is based on an internal money laundering and terrorist financing risk assessment. Various instructions in Latvia lay out the following risk categories: country risk, risk associated with the legal form of the customer, risk associated with the economic or personal activity of the customer, and risk associated with the products or services used by the customer. For these categories, the obligor should weigh the risk characteristics and apply the appropriate CDD measures.

581. These principles are stated in the FCMC Regulations on Enhanced Customer Due Diligence, and they are repeated throughout industry-specific guidance, including in the BoL Recommendations. According to certain guidance, institutional risk assessments for ML/TF are required before a reporting entity enters into a business relationship with the customer.

Timing of verification of identity – general rule (c.5.13)

582. Article 11 of the AML/CFT Law prescribes that financial institutions have to verify the identification of a customer at the inception of business relationship (both – natural persons and legal persons).

Timing of verification of identity – treatment of exceptional circumstances (c.5.14 & 5.14.1)

583. The AML/CFT Law, Article 11 permits financial institutions to complete the verification of the identity of the customer and beneficial owner under following circumstances:-

- Where the risks associated with money laundering and terrorist financing are low and no enhanced customer due diligence is required, and so as not to interrupt the normal conduct of a transaction, a customer may be identified and the beneficial owner established at the inception of the business relationship, as soon as this becomes possible, but prior to executing the first transaction.
- Where no enhanced customer due diligence is required, an insurance agent that provides life insurance or a life insurance intermediary may identify a customer and establish the beneficial owner after the establishment of a business relationship or prior to the payment of the insurance premium.

584. Article 42 of the AML/CFT Law provides that a credit institution can open an account for a customer and delay identification of the customer and establishing the beneficial owner in

situations where enhanced CDD is not required. When read in conjunction with Article 16 on Enhanced CDD it appears that unless it is one of the specified categories where enhanced CDD is required, obligors can open an account. Article 42 though limits the activities for accounts opened in these circumstances to bar obligors from making any transactions on the account before the completion of customer due diligence.

Failure to satisfactorily complete CDD before commencing the business relationship (c.5.15) and after commencing the business relationship (c.5.16)

585. It is a legal duty of the financial institutions to identify the client before establishing the business relationship (AML/CFT Law Art. 11). Article 15 of the Law in its turn prohibits maintaining relations with the customer not being identified.

586. Furthermore, the AML/CFT Law in Article 28 prescribes the obligation to obtain information needed to perform CDD measures, including the scope of that information (beneficial owners, transactions, economic and personal activities of customers and beneficial owners, the financial standing and the origin of money or other funds). If an obliged entity cannot obtain truthful information and documents, then the obligor is required to terminate the business relationship also in respect of other customers who have the same beneficial owners or requiring these customers to meet their liabilities before maturity.

587. Under Article 4 of the FCMC Regulations on enhanced customer due diligence, when a financial institution determines that a customer meets the requirements for the minimum extent of enhanced customer due diligence, the entity has 45 days to decide that the "minimum extent of enhanced customer due diligence are met in essence," as defined of Section IV of the FCMC Regulations, or terminate the relationship. The Latvian authorities clarified that "in essence" in this context translates as 'substantiated".

588. Article 43 of the AML/CFT Law provides the conditions for discontinuing a business relationship. First, where it is not possible to identify a customer and establish the beneficial owner as set out in the Law, a credit institution and a financial institution shall be prohibited from: servicing the account of such person, establishing a business relationship or making any transactions, or they shall discontinue the business relationship and report to the Financial Intelligence Unit where the suspicion of money laundering or of terrorist financing arises. Article 43 also provides instructions on liquidating accounts and remitting remaining funds in these cases.

589. Section VIII of the BoL Recommendations provide that where a customer refuses to provide information on the origin of the financial assets involved in the transaction, information on the purpose of using the financial assets, information on the customer's business and personal activities, information on the customer's financial standing or any other information necessary or the information obtained during the customer due diligence indicates that the transaction is related or may be reasonably suspected of being related to money laundering or terrorist financing, currency exchange company shall take ***one*** of the following decisions: not to execute a suspicious transaction; to refrain from executing a suspicious transaction; to execute a suspicious transaction, where it is not possible to refrain from executing it or where refraining from executing such transaction may serve as information helping the persons involved in money laundering or terrorist financing to avert from liability.

Existing customers – (c.5.17 & 5.18)

590. Since the last mutual evaluation, with the adoption of Latvia's new AML/CFT Law, the authorities provided a requirement to cover clients at the time of the transition to the new Law, as well as establish an on-going due diligence procedure going forward.

591. Article 20 of the AML/CFT Law requires that for ongoing due diligence, an obliged entity should, based on a firm's money laundering and terrorist financing risk, update information on a customer's economic or personal activity and monitor transactions on a regular basis to ensure that they are not unusual or suspicious.

592. Furthermore, the AML/CFT Law requires that, based upon a risk assessment, a firm must update client information and monitor their transactions. An FCMC Regulation on Enhanced CDD in Section V details measures to monitor existing customers, to include procedures for verification of: beneficial ownership, economic activity of customer, financial resources/source of wealth.

593. The frequency for updating customer identification is clarified in the FCMC's Manual for Assessing Banking Risks, where the regulator provides that for customers subject to CDD exemptions, the information must be updated once every three years, for customers subject to enhanced CDD information must be updated once every 3-12 months depending on the volume of transactions, and 1-2 years for customers subject to general due diligence.

Effectiveness and efficiency

594. The possibility of using false documents has been a concern to the Latvian authorities in the recent past. During the on-site visit, authorities described a case in which corrupt officials issued at least 100 Latvian passports to non-resident citizens. An earlier scheme where approximately 100 phony passports were issued was revealed in 2007, according to press reporting.

595. Latvian officials indicated that local banks closed over 100,000 deposit accounts after the 2006 U.S. Treasury Department Patriot Act provisional ruling on VEF and Multibanka was issued. In addition, Latvian banks indicated that they are continuously closing bank accounts, if they raise questions related to ML/FT risk identified on the occasion of the controls related to CDD for establishing business relationships.

596. Latvia should adopt a more robust preventative system to minimize the threat from anonymous accounts. Latvia needs to more explicitly adopt a prohibition on anonymous accounts in law or regulation.

597. The Bank of Latvia's legal inability to issue binding guidance raises questions of effectiveness on the currency exchange sector's compliance.

598. The latitude offered in the customer identification requirements for non-resident in non-face-to-face accounts impacts the effectiveness of the customer identification regime in this regard. Under the current Latvian CDD requirements, in cases of non-residents identification where they identified in their country of residence, i.e., outside Latvia subject persons are permitted to accept a "*document that evidences the person's identity and is accepted by the respective country*."

599. Interviewed representatives of the financial sector revealed that while they are required under Article 43, part 2 to submit STR when they close an account due to failure to complete CDD, they do not always do so. The Latvian authorities confirm that there have been cases where banks have been sanctioned for not reporting in these cases. The AML/CFT Law should be reconsidered to ensure that proper CDD is initiated at the beginning of a relationship.

600. The amendments to the Commercial register impair effectiveness given the 14 day delay in notification to the register upon change of ownership. This impairs reliability of a key customer verification database.

601. While non-banking sector representatives met during the on-site visit noted problems relying on Enterprise Register's information to identify customers legal persons, after the on-site the Latvian Government adopted new requirements for declaration of beneficial ownership of a

capital company. At the time of the on-site, the beneficial ownership was connected to shareholding. The authorities reported that a system of verification and sanctioning has been in place.

602. During the on-site visit, both the insurance and investment sectors raised questions about the needs and appropriateness for AML/CFT controls with their respective financial products. Additional awareness raising is therefore necessary for both sectors.

Recommendation 6 (rated PC in the 3rd round report)

Risk management systems, senior management approval, requirement to determine source of wealth and funds and on-going monitoring (c. 6.1- c. 6.4)

603. The 3rd Round Mutual Evaluation established that for the *bureau de change* and the Latvian Post Office, there were no legal or other enforceable PEPs requirements in place and for financial institutions subject to the FCMC supervision, although customers or beneficial owners identified as PEPs were considered as higher risk, there were no requirements to obtain senior management approval for establishing the business relationship.

Risk management systems, senior management approval, requirement to determine source of wealth and funds and on-going monitoring; Requirement to determine a foreign PEP (c. 6.1)

604. Article 22 of the AML/CFT details specific enhanced CDD measures to be taken at the beginning of a relationship with a politically exposed person (PEP). According to Article 22, part 2, PEPs are one of the categories where the AML law requires obligors to apply ECDD and as such they are treated in accordance with the requirements of ECDD Regulations in addition to the requirements of the Law.

605. Article 22 part 3 of the AML/CFT defines a PEP as "*one of the following prominent public functions in another member state or a third country: the head of the state, a member of the parliament, the head of the government, a minister, a deputy minister or an assistant minister, a state secretary, a judge of the supreme court, a judge of the constitutional court, a board or a council member of the court of auditors, a member of the council or of the board of a central bank, an ambassador, a chargé d'affaires, a high-ranking officer of the armed forces, a member of the council or of the board of a state-owned capital company, as well as a person who has resigned from the position of a prominent public function within one year.*" The Article continues by extending the definition to immediate family members (paragraph 2); and persons publicly known to have a business relationship with an aforementioned person, to have a joint ownership of a commercial company, or to be the sole owner of a legal arrangement for the benefit of the PEP (paragraph 3). This appears to meet the FATF requirement for coverage of immediate family members and connected persons.

606. The AML/CFT Law's definition is limited to a defined list, and as such, it does not allow for additional interpretation. For example, some categories are not included: senior government officials and important political officials, senior non-executives of state-owned corporations, and senior members of the judiciary. Given the list-based approach, there is inadequate coverage of all of the FATF defined categories of PEPs.

607. The FCMC Regulation on ECDD provides additional requirements on the obligors under its supervision for enhanced due diligence, including recognising that risk associated with the economic or personal activity of the customer should be considered. However, no further clarification on business with PEPs is provided.

608. Article 8 of the BoL Recommendations states that an obliged entity shall check to ensure that the customer or beneficial owner is not a politically exposed person. Articles 21-23 of Section VI establishes procedures for transactions with politically exposed persons.

609. According to Article 21, a capital company shall establish the procedure whereby politically exposed persons are determined when performing the customer and beneficial owner identification. Article 22 instructs exchange offices to use information at their disposal to determine if an individual is PEP, until the EU issues a PEP List.

Senior management approval in respect of PEPs (criteria 6.2 and 6.2.1)

610. Article 25 paragraph 3 of the AML/CFT Law requires that where the client or beneficial owner is a PEP, the obliged entity should obtain approval from the board or a specially authorised member of the board before entering into a business relationship.

611. Article 25, paragraph 2 of the AML/CFT Law states that the internal control system of obliged entities must be able to determine the status of PEP of a customer acquired at a later stage, even if the customer was not a PEP at the inception of the business relationship.

612. Article 23 of the BoL Recommendations establishes procedures for unusual or suspicious transactions when a customer or the beneficial owner is identified as a PEP, which includes informing the responsible person of the capital company on executing a transaction with a politically exposed person and receive his/her consent to execute the transaction. Responsible person is not further defined, and no additional guidance has been provided for this Recommendation. According to Bank of Latvia officials, this refers either to a member of the board or a specially authorised member of the board; however, this should be explicitly clarified.

Requirement to establish the source of wealth and funds (c. 6.3)

613. The AML/CFT Law in Article 25, paragraph 3 requires that in case of PEPs customers, the credit institution should have measures to determine the origin of the money or other funds used in their transactions.

614. In practice, as was described under Section 3.1 above, obliged entities had difficulty collecting/maintaining records that adequately established the source of wealth for PEPs.

615. Article 23 of the BoL Recommendations establishes procedures for unusual or suspicious transactions when a customer or the beneficial owner is identified as a PEP, which includes taking and documenting measures to determine the origin of the funds used in the transaction of the politically exposed person.

616. The same article further clarifies this obligation in that an obliged entity should request the following information: information on the origin of the financial assets involved in the transaction (Article 25.1); information on the purpose of using the financial assets involved in the transaction (Article 25.2); information on the customer's business and personal activities (Article 25.3); information on the customer's financial standing (Article 25.4); and any other information necessary (Article 25.5).

Ongoing monitoring (c. 6.4)

617. The AML/CFT Law's Article 25 (4) also notes that an obliged entity should monitor the PEP customer's transactions on a regular basis.

618. The FCMC Regulation on ECDD Section VIII does establish that when a customer is subject to enhanced customer due diligence (as PEPs are), a financial institution shall apply enhanced monitoring, including: establishing that the transaction is executed only with the approval of an employee or a senior official of the financial institution, establish quantitative

limits for the customer's transactions; allow only particular transaction or payment types (e. g., payment of taxes etc.); allow only transactions to particular countries or with particular counterparties; and establish other types of supervision measures or restrictions.

Additional elements

Domestic PEP-s – Requirements

619. Currently, there are no direct provisions in the AML/CFT Law providing coverage for domestic PEPs. The FCMC amended its regulation in May 2006 to eliminate domestic PEPs. The Latvian Law on Prevention of Conflict of Interest in public officials' activities requires all senior public servants to file annual financial disclosure forms with the Ministry of Finance's State Revenue Service and the law enforcement verification mechanisms for said declaration. Law enforcement and FIU staff regularly examine these reports. The Corruption Prevention and Combating Bureau (KNAB) also has established a program to fight corruption in a coordinated way through prevention, investigation and education activities.

Ratification of the Merida Convention

620. Latvia signed the 2003 United Nations Convention against Corruption in May 2006 and ratified the Convention in January 2006.

Effectiveness and efficiency

621. With respect to Politically Exposed Persons (PEPs), Latvia has adopted a restrictive legal definition, therefore not covering all categories of persons in the FATF definition.

622. In practice, banks use commercially available databases as required by the FCMC to screen for PEPs while also conducting independent research on foreign clients. When asked if the banks were testing these commercially available databases to ensure that PEPs, as defined in the Latvian system, are included, most conceded that they were not.

623. It is unclear if the financial institutions were following Latvia's definition of PEPs, or relying on commercial databases for identifying these persons, their family members and connected persons. Given the extensive correspondent banking networks and role as an international financial centre, the Latvian authorities should pay attention to the treatment of PEPs.

624. According to the Latvian authorities, the FIU has received STRs on PEPs, which demonstrates effectiveness. When asked, the prosecutors could not recall receiving any cases related to PEPs; therefore, the extent to which these reports are being analyzed was not demonstrated, given the dissemination challenges described under Recommendation 26 above.

625. In the third round mutual evaluation report, PEPs were most often identified as clients of the smaller domestic banks, although some larger foreign banks did acknowledge that they had PEPs amongst their international/non-resident clients. According to authorities at the time of the fourth on-site visit, the number of PEPs as customers differs across the financial sector depending on scope of business. The number of PEPs can vary from one natural person to 20 natural persons or more in bigger market participants, plus there can be several legal entities with PEPs as ultimate beneficiaries. The authorities confirmed that the observation of the third round assessment team is largely still accurate.

Recommendation 7 (rated NC in the 3rd round report)

626. The 3rd Round Mutual Evaluation report emphasised the shortcomings of the Latvian system on correspondent banks as follows:

- Article 5 of the AML Law unduly provided a blanket exemption for correspondent banks from OECD countries.
- There was no legal, regulatory, or other enforceable obligation to obtain senior managements' approval before establishing new correspondent relationships.
- The following current measures need to be enhanced in law or regulation:
  - To gather sufficient information to understand fully the nature of the respondent's business and to determine its reputation and the quality of supervision; or
  - To document the respective AML/CFT responsibilities of each institution.

627. Since the last mutual evaluation round, Latvia has repealed the blanket exemption for correspondent banks from OECD countries. The remaining deficiencies identified in the third round MER will be discussed below.

Require to obtain information on respondent institution & Assessment of AML/CFT controls in Respondent institutions (c. 7.1 & 7.2)

628. The FATF Methodology notes that Correspondent banking is one example of a high-risk business. Therefore, it is important that firms undertake an assessment with future partners on a consistent basis, regardless of where the partner is located.

629. Article 24 of the AML/CFT Law requires credit institutions to undertake various enhanced CDD measures before initiating a correspondent banking relationship with a credit institution or with an investment brokerage firm, including gathering information on the respondent institution to fully understand the nature of its business and determining from publicly available sources its reputation and the quality of supervision.

630. While the law does not explicitly say that a financial institutions should assess whether a respondent institution's AML/CFT policy is adequate and effective, both regulators and financial institutions during the on-site explained that they do conduct a thorough analysis before beginning their relationship.

631. There is no additional guidance for the obliged entities on how to evaluate potential correspondents' AML/CFT practices. The FCMC's Regulations on ECDD do not address correspondent banking relationships. The BoL's Recommendations do not apply due to the means in which currency exchanges are operated in Latvia.

632. However, there is additional guidance in the FCMC's Manual for Assessing Banking Risks, which states that: when a financial institution or investment brokerage firm establishes a correspondent banking relationship (by opening vostro (or loro) accounts for foreign credit institutions) with a firm not listed in the Cabinet of Ministers Provision No. 966 or another EU member state, there are certain procedures to be undertaken. Cabinet of Ministers Provision No. 966, as amended by May 31 2012, establishes the list of third countries imposing requirements equivalent to those of the European Union regulatory provisions with respect to the prevention of money laundering and of terrorist financing.

633. One area stressed in the Manual for Assessing Banking Risks is that it is insufficient for an financial institution to only inquire about a prospective partners AML/CFT policy, they must also analyze transfers made, and inquire about transfers of risk.

Approval of establishing correspondent relationships (c.7.3)

634. Article 24 paragraph 1 of the AML/CFT Law requires that at the beginning of the correspondent banking relationship, approval from the bank's Board of Directors or a specially authorised member of the board is sought.

635. In practice, financial institutions interviewed during the on-site explained that they do seek management's approval when establishing new correspondent banking relationships.

Documentation of AML/CFT responsibilities for each institution (c.7.4)

636. Article 24 of the AML/CFT Law requires at the beginning of a correspondent banking relationship that a financial/credit institution document the responsibilities of each institution in respect of the prevention of money laundering and of terrorist financing.

637. Financial institutions met during the on-site state that written agreements are concluded between Latvian banks and respondent banks before commencing a relationship, as a matter of course. In practice, the Latvian authorities stated that they have not encountered FIs which have not collected this information

Payable through Accounts (c.7.5)

638. Article 24 of the AML/CFT Law requires that at the beginning of a correspondent relationship, an obliged entity shall ascertain that the identity of the customers who have direct access to the accounts of the correspondent financial institution ("payable-through accounts") is verified and the enhanced customer due diligence measures are performed, and that the respondent institution is able to provide relevant customer due diligence data upon request.

639. While Latvian banks have some U.S. correspondent banking relationships, none of the banks interviewed stated that they operated payable through accounts.

Effectiveness and efficiency

640. Correspondent banking assessment should be applied consistently regardless of where the branch is located, as correspondent banking is a high-risk business per the FATF Methodology.

641. Latvian banks maintain a significant number of foreign correspondents both with smaller or less regulated jurisdictions where less information is available on their AML/CFT oversight, as well as engaging financial institutions in larger well-known banks in larger jurisdictions, where information on supervision and the banking sector is more readily available. Latvia's location as a trading centre, its bilingual society, and its large banking sector requires extensive correspondent banking relationships and reciprocal oversight.

642. In practice, the evaluation team was satisfied with the application of correspondent banking by the obliged entities.

Recommendation 8 (rated PC in the 3rd round report)

643. The 3rd Round Mutual Evaluation established that: although the provisions of the AML Law apply equally to non face-to-face business, there were no supplementary requirements in law, regulation or other enforceable means to address the additional risk associated with new or developing technologies.

Misuse of new technology for ML/FT (c.8.1)

644. The implementation of AML/CFT preventative measures for new or developing technologies and non-face to face business in Latvia had improved since the last report.

645. Article 8 of the AML/CFT Law obligates reporting entities to assess regularly the efficiency of their internal control system to examine risks which may arise from the development of new technologies and when necessary, to take measures to improve the efficiency of the internal control system.

646. In addition, the FCMC's Regulations on Information Security provides additional details on what additional measures should be taken for oversight of new information technologies.

647. The FCMC Regulation includes requirements for effective management oversight of e-banking activities (points 23.1 and 23.2), establishment of a comprehensive security control process (points 25., 26., 30., 55.5), comprehensive due diligence and management oversight process for outsourcing relationships and other third-party dependencies (point 27), authentication of e-banking customers (point 55.2), appropriate measures to ensure segregation of duties (points 25.3., 35., 61.1), proper authorization controls within e-banking systems, databases and applications (points 46., 47), data integrity of e-banking transactions, records, and information (points 55.2., 55.5).

648. The BoL's Recommendations are silent on this issue, as the BoL Regulation purchase and sale transactions of cash foreign currencies shall be settled immediately right at the window of the cashier's booth, which by the nature of transaction limits risks related to misuse of new technologies.

Risk of non-face-to-face business relationships (c8.2)

649. Article 22, para 2, sub-para 1 in the AML/CFT Act, requires financial/credit institutions to perform enhanced customer due diligence at the inception of a business relationship with a customer who has not been physically present during the identification procedure (non-face to face customers). Furthermore, Article 23 establishes specific procedures that apply to situations where the customer is physical absent during the Identification Procedure. These procedures include: obtaining additional documents or information evidencing the customer's identity; performing additional verification or certification of submitted documents or obtaining a statement of a credit institution or a financial institution registered in another member state to the effect that the customer has a business relationship with that credit institution or financial institution; or ensuring that the first payment in the course of the business relationship is carried out through an account opened in the customer's name with a credit institution to which the requirements of this Law or of the European Union legislative provisions on the prevention of money laundering and of terrorist financing apply; or requiring that the customer is present when executing the first transaction.

650. The FCMC Regulation "*On Information System Security*" incorporates the Basel Committee's "*Risk Management Principles for Electronic Banking*" This Regulation includes requirements, e.g., for effective management oversight of e-banking activities (points 23.1 and 23.2), establishment of a comprehensive security control process (points 25., 26., 30., 55.5), comprehensive due diligence and management oversight process for outsourcing relationships and other third-party dependencies (point 27), authentication of e-banking customers (point 55.2), appropriate measures to ensure segregation of duties (points 25.3., 35., 61.1), proper authorisation controls within e-banking systems, databases and applications (points 46., 47), data integrity of e-banking transactions, records, and information (55.2., 55.5).

Effectiveness and efficiency

651. During the on-site interviews it resulted that in practice most of the Latvian banking activity takes place over the Internet. These are transactions performed by existing customers using Internet banking services. At the request of the assessment team it was indicated that all transactions are scrutinised by human element before execution and though, possible suspicions can be detected. Various interviewees stated that STRs and UTRs were filed concerning non-face-to face transactions.

652. None of the Latvian banks met on-site indicated that they would allow the opening of an account via the internet, although some banks do offer the account opening paperwork on their websites.

3.2.2. Recommendations and comments

Recommendation 5

653. Latvia should explicitly prohibit accounts in fictitious names by law.

654. The Bank of Latvia's authority should be broadened under the AML/CFT Law so that it can issue binding guidance, or the supervision of currency exchange houses should be transferred under the supervision of the FCMC.

655. The authorities should ensure that where equivalence is applied, these jurisdictions are in compliance with and have effectively implemented the FATF standards.

656. The Latvian authorities should eliminate all exemptions from customer due diligence provided in case of simplified CDD procedures.

657. Given the frequency of financial institutions closing accounts due to the inability to complete ECDD requirements, Latvia should consider conducting a risk assessment of this situation.

658. Authorities should strengthen guidance on the implementation of the origin/source of funds to all obliged entities, as it was a common error identified in FCMC on-site examinations.

659. As demonstrated in on-site inspection results, insurance and investment sectors did evidence deficiencies in proper risk management. Additional sector specific outreach is needed to the investment and insurance sectors not only to explain the AML/CFT requirements, but also to put into the broader context how their implementation will contribute to making money laundering more difficult. Guidance and quick reference tools to assist reporting entities would also be helpful in getting entities to first remember and ultimately implement due diligence measures.

660. Latvia should ensure that the BoL provides clear requirements for ongoing due diligence in two important areas: establishing the source of funds and nature of the business of the customer when the transaction does not qualify as an unusual or suspicious transaction or the customer is a high-risk customer or a politically exposed person.

661. At the time of the on-site, the evaluation team assessed that there was an effectiveness concern, given the money laundering threat evidenced by complex legal arrangements and the concerns about reliability of the Enterprise Register raised by the private sector. The authorities did introduce new provisions in this regard. However the evaluation team cannot comment on the effectiveness of the improved system.

Recommendation 6

662. Latvia should ensure that the full range of PEPs, as defined by the FATF are covered.

Recommendation 7

663. Latvia has made notable progress on establishing correspondent banking policies that are broadly in line with the FATF Recommendations.

664. The FCMC should provide additional guidance to obliged entities on how to evaluate and analyse potential correspondents' AML/CFT practices.

Recommendation 8

665. Authorities should consider strengthening the legal provisions and the guidance on non-face-to face business, given the large number of non-face-to-face transactions and customers that are serviced by Latvian banks.

3.2.3. Compliance with Recommendations 5, 6, 7 and 8

	Rating	Summary of factors underlying rating
R.5	**PC**	• No explicit prohibition of accounts opened in fictitious names. • Insufficient process for establishing equivalency of jurisdictions for CDD purposes • The BoL Recommendations do not appear to provide clear requirements for ongoing due diligence in two important areas: establishing the source of funds and nature of the business of the customer when the transaction does not qualify as an unusual or suspicious transaction or the customer is a high-risk customer or a politically exposed person • CDD regime provides exemptions from customer due diligence in some cases of simplified CDD. • Weak understanding and documenting origin/source of funds in practice. (Effectiveness issue) • Limited demonstrated understanding regarding documenting origin/source of funds in practice (Effectiveness issue).
R.6	**LC**	• Not all PEP categories mentioned in FATF standards are covered.
R.7	**C**	
R.8	**LC**	• Insufficiently stringent levels of CDD are undertaken given the significant size of non-face-to-face customer client base.

3.3. Third Parties and Introduced Business (R.9)

3.3.1. Description and analysis

Recommendation 9 (rated N/A in the 3rd round report)

666. Due to the fact that the AML/CFT Law in force at the time of the previous MONEYVAL evaluation did not address the situation under which the financial institutions may rely on intermediaries and other third parties to perform elements of the CDD or to introduce business and, additionally, the FCMC introduced relevant restrictions in this regard, the evaluators stated in their evaluation report that R.9 does not apply and as a consequence it has not been rated.

667. Based on the provisions of the Art.29 (1) of the new AML/CFT Law, a subject person is entitled to recognise and accept the results of customer identification and customer due diligence performed by a credit institutions and financial institutions, other than capital companies that buy and sell foreign currency and payment institutions, in a member state and a third country provided that the requirements in respect of prevention of money laundering and of terrorist financing, as enforced in these countries, are equivalent to those of the Latvian AML/CFT Law.

668. Further, in accordance with Art.29 (2) of the AML/CFT Law, the subject persons shall be entitled to recognise and accept the results of customer identification and due diligence as it has been described in sub-paragraph 1, even if the extent of obtained information and underlying documents differs from the requirements of the above mentioned Latvian Law.

Requirement to immediately obtain certain CDD elements from third parties; availability of identification data from third parties (c.9.1 & 9.2)

669. Art 29 (4) of the AML/CFT Law states that "*upon request of a person subject to this Law that has been contacted by a customer, the credit institutions and financial institutions referred to in Paragraph 1 hereof shall, without delay, produce to the person subject to this Law all information and copies of documents obtained as a result of customer identification and customer due diligence, where after the receipt of the request the customer's agreement for passing the information and documents referred to in this Article to the person subject to this Law has been obtained*"

670. However, the assessors are of the opinion that its effectiveness is diminished by the need for the customer's agreement to pass the above mentioned, which can delay the process or even cancel it.

671. The mandatory provisions regarding the necessary steps to satisfy the subject persons that copies of the relevant data will be made available from the third party upon request, without delay, are not fully addressed by Art 29 (4) of the AML/CFT Law. This requirement is qualified by need to receive the consent of the customer which might delay the process. Additionally, there is no provision in place for the steps that financial institutions should take if the consent is not given.

672. The Latvian authorities explained that the reason for having the above mentioned requirement lies with client's data protection.

Regulation and supervision of third party & adequacy of application of FATF Recommendations (c.9.3 & 9.4)

673. Art 29 (1) of the AML/CFT Law generally addresses the issue of the third party's compliance in terms of regulation and supervision and CDD requirements, allowing recognition

as third party financial institutions (except currency exchange and payment institutions) that are from EU member states or equivalent countries and thus showing the necessity of a more thorough approach of this matter.

674. The wording of Art 29 (2) "*A person subject to this Law shall be entitled to recognise and accept the results of the identification and customer due diligence […], even if the extent of obtained information and underlying documents differ from the requirements of this Law*" gives reason to doubt the mandatory character of the provision which contemplated under Art 29 (1) in relation to the equivalence of the third party.

675. The assessment team considers that some difficulties arise in relation to the wording of the AML/CFT Law concerning equivalency. While the AML/CFT Law allows subject persons to rely on third parties in regard to customer identification and customer due diligence by recognising and accepting the results of the mentioned processes, there is no direct reference in Article 29(1) to the EU equivalence list of equivalent countries (where AML/CFT requirements are equivalent to those of Latvia and adequately apply the FATF Recommendations).

676. The Latvian authorities are of the opinion that the text of Article 29(1) is already indirectly referring to the issue of equivalency described in Article 26 (4). The Latvian authorities believe that the original language text in this regard correlates closer between Article 29 (4), 26 (1), and the Cabinet of Ministers regulation title.

677. The List of countries considered as providing requirements in respect of the prevention of money laundering and of terrorist financing, equivalent to those of Latvian AML/CFT Law, set by the Cabinet of Minister Regulation 966 "*On the List of the Third Countries Imposing Requirements Equivalent to Those of the European Union Regulatory Provisions with Respect to the Prevention of Money Laundering and of Terrorist Financing*", was issued in 2008 and updated in May 2011.

678. The said list was formed taking into consideration EU Common Understanding between Member States on third country equivalence under the Anti-Money Laundering Directive (Directive 2005/60/EC) adopted in Brussels on 18.04.2008.

Ultimate responsibility (c.9.5)

679. Art 29 (3) of the Law establishes that the ultimate responsibility for customer identification and verification, remains with the financial institution relying on the third party (only EU or equivalent states are recognised).

680. Art 29 (5) provides that "*reliance of a person subject to this Law on the results of customer identification and customer due diligence shall be without prejudice to the duty to monitor the customer's business relationship on a continuing basis*". This sub-paragraph is meant to complete (3), but in assessor's view, it is misleading, failing to clearly transpose the requirement that for ongoing monitoring of the CDD, no reliance can be placed on third party. The Latvian authorities noted that the native translation is more specific, stating that reliance on the client identification and due diligence conducted by another person does not exempt an subject persons from their duty to conduct ongoing monitoring of the customer relationship.

Effectiveness and efficiency

681. Based on the discussions with the banking industry representatives, it appears that third party introduced businesses are applied only by the foreign banks and only at the group level. In practice, the bank located in Latvia would ask for a letter of introduction from their foreign counter-parts members of the same holding.

682. During the on-site interviews, local branches and subsidiaries of foreign banks stated that when they forward a request to their parent-company never got a refusal.

683. When a suspicious of ML arises and the customer is seen as a high risk, then enhanced CDD procedure is initiated at the subsidiary/branch level and if not satisfied on the result, a decision to terminate the business and close the account is taken.

684. During the on-site interviews the evaluators were advised that in practice, the financial institutions close 2-3 *third party introduced* accounts every week based on insufficient information on the client. Such a decision is taken at different seniority level within the bank.

3.3.2. Recommendations and comments

685. The Latvian authorities should amend legislation to eliminate any doubt with regard to the reference in Article 29 (1) in relation to the Article 26 (4).

686. Legislation should be amended to ensure that financial institutions shall be provided with information and documents from the third party "without delay" and without conditioning this process by the customers' agreement.

687. Legislation should be amended to clearly reflect that no reliance can be placed on a third party for on-going monitoring.

688. A direct referral to the equivalent countries should be provided in legal acts.

3.3.3. Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**PC**	• The AML/CFT Law does not provide unconditional and immediate access to the necessary information from the third party related to the CDD process • Lack of provisions to obtain upon request, without delay, from third parties, the CDD documentation • Need for customer's approval for obtaining documentation hinders effectiveness • No direct referral to the list of equivalent countries.

3.4.Financial institution secrecy or confidentiality (R.4)

3.4.1. Description and analysis

Recommendation 4 (rated C in the 3rd round report)

Ability of competent authorities to access information they require to properly perform their functions in combating ML or FT

689. There have not been major changes made to the legislation with relation to access to information at financial institutions since the 3rd round MER.

690. As mentioned in the 3rd round assessment report, there is no impediment for the competent authorities to have access to information of financial institutions and implement AML/CFT measures.

691. With regards to banking sector, Section 63 (3¹) of the Law "*On credit institutions*" obliges credit institutions to guarantee the confidentiality of the identity, accounts, deposits and transactions of clients. Nevertheless, pursuant to Section 63, financial information may be provided to a number of authorities, including the FCMC, the LFIU, courts, investigative institutions, the Office of the Prosecutor, the Corruption Prevention and Combating Bureau. A credit institution immediately but not later than in 14 days shall submit the required information to the above mentioned.

692. Based on Section 63 (31) of the Law "*On credit institutions*" a credit institution shall submit data on customer account transaction monitoring with the purpose to prevent, stop or detect a crime to the LFIU, courts, investigative institutions, the Office of the Prosecutor, the Corruption Prevention and Combating Bureau. Also, customer account transaction monitoring procedure shall be carried out by a credit institution in accordance with time limit specified by law in order to find out and submit data (information) on transactions notified or executed in the given period and on the persons involved in the said transaction.

693. Article 131 (7) of the Law "*On the Financial Instruments Market*" foresees that an investment brokerage firm shall provide information on financial instruments accounts of legal and natural persons, the money resources of customers accounted by the investment brokerage firm and their transactions in financial instruments to the extent necessary to carry out the respective functions and exclusively to the following public institutions in due course of law: court and prosecutor's office, State Auditor's Office, State Revenue Service, LFIU in the cases and pursuant to the procedure set out in the AML/CFT Law.

694. Article 29 of the Law "*On insurance companies and supervision*" foresees that unless otherwise provided by Law, an insurer has an obligation not to disclose information on the policyholder and the insured.

695. In addition, Article 49 of the AML/CFT Law provides for exemptions from professional and banking secrecy requirements for supervisors: "*reporting to the Financial Intelligence Unit in due course of this Chapter shall not constitute the disclosure of confidential information and shall not incur legal liability on the supervisory and control authorities of the persons subject to this Law, their officials and employees, whether a criminal offence, including money laundering, terrorist financing or an attempt thereof or other criminal offence related thereto is proven in pre-trial criminal proceedings or court, or not*".

696. In addition, Section 63 (5) of the Law "*On credit institutions*" provides that confidential information at credit institution's disposal shall be submitted to a series of State institutions or officials, or other institution and officials in accordance with the procedures and to an extent as specified by the law. The law mentions the FIU, the FCMC and foreign FIUs. It also specifies that a Latvian authority shall provide information to its relevant counterparty, i.e. supervisory authority to supervisory authority, or FIU-to-FIU, on the basis of a mutual cooperation agreement or an agreement of another kind.

697. According to Section 1101 of the Law on Credit Institutions, the FCMC is allowed to exchange restricted access information with other Member State financial and capital market supervisory authorities. This request must be in connection with performance of supervisory duties and could include without being limited to information regarding a credit institution and the clients thereof, credit institutions and the operations of the clients thereof. This request should be carried out to ensure the confidentiality of the information provided. This measures are also applicable to the other sectoral laws for insurance companies (Article 107.1 Law On Insurance Companies and Supervision Thereof), for investment brokerage companies (Article 143 Law On the Financial Instruments Market), for investment management companies (Article 88 Law On Investment Management Companies)

698. Article 29 of the Law On Insurance Companies and Supervision Thereof foresees that unless otherwise provided by law, an insurer has an obligation not to disclose information on the policyholder and the insured. Article 107 states the information that the FCMC has received in

supervision can be disclosed to other state authorities upon request, and those authorities must preserve the confidentiality.

Sharing of information between competent authorities, either domestically or internationally

699. The Latvian AML/CFT Law regulates the information exchange of the FIU, which is entitled on its own initiative or on request to exchange information with authorised foreign institutions that exercise equivalent duties.

700. In addition, Section 63 (5) of the Law "*On credit institutions*" provides that confidential information at credit institution's disposal shall be submitted to a series of State institutions or officials, or other institution and officials in accordance with the procedures and to an extent as specified by the law. The law mentions the FIU, the FCMC and foreign FIUs. It also specifies that a Latvian authority relevant to a credit institution supervisory authority, shall provide information on the basis of a mutual cooperation agreement or an agreement of another kind.

Sharing of information between financial institutions where this is required by R.7, R.9 or SR. VII

701. According to Section 63 (6) of the Law "*On credit institutions*", a credit institution and other financial institutions (as they are prescribed in Article 1 of the AML/CFT Law) shall submit confidential information to another credit institution which is registered in the Republic of Latvia, an EU member state or a foreign country and with which correspondent relations are established.

702. A similar requirements are stipulated by Article 44 of the AML/CFT Law which states that in order to achieve the goals of the Law, upon a request of a correspondent bank registered in a member state, a credit institution registered in Latvia shall submit information and documents acquired during identification and due diligence of customers, beneficial owners or authorised persons in respect of the transaction made with the intermediation of the correspondent bank. The above regulation concerns not only banks but all credit and financial institutions as defined by the AML Law.

703. For AML/CFT purposes, a Latvian credit institution and a financial institution shall be entitled, directly or through the intermediation of an institution authorised by them, to exchange information about their customers or persons with whom the business relationship has not been started or has been discontinued in due course of the Law.

704. No legal, including civil, liability shall be incurred on a credit institution and a financial institution for the disclosure of such information. The data obtained in due course shall be treated as confidential.

Effectiveness and efficiency

705. During on-site visit the evaluation team did not detect any problems with effectiveness and efficiency.

3.4.2. Recommendations and comments

706. Overall, the national legislation on financial institution secrecy appears to enable the authorities to access the information that they require in order to exercise their functions in the prevention of money laundering and terrorist financing and does not inhibit the implementation of the FATF Recommendations. Furthermore, no problems have been experienced in practice.

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 PC in the 3rd round report)

707. The 3rd Round Mutual Evaluation Report had highlighted the following issues:

- Record keeping requirements thought they meet core aspects of R.10, lack the detail and clarity to oblige all financial institutions to be able to reconstruct individual data.
- No explicit requirement in law or regulation to maintain records of accounts files and business correspondence.

Record keeping & Reconstruction of Transaction Records (c.10.1 and 10.1.1)

708. Article 37 of the AML/CFT Law requires that all obliged entities shall make records of customer identification and customer due diligence measures and to maintain those records for at least 5 years after the termination of the business relationship.

709. Article 10 of the Law on Accounting to which all financial institutions are subject sets out that all *"source documents"* must be maintained. Source documents include identification data, title, number and date of the document, description and basis of the transaction, quantifiers (volumes, amounts), participants (persons directly engaged in the transaction) and signatures.

710. Article 37 of the AML/CFT Law requires among other to keep also copies of the documents evidencing customer identification data. The information that financial institution is obliged to obtain in the process of identification is set forth in Article 12 (for natural persons) and in Article 13 (for legal persons).

711. Article 37, part 2, sub point 2 prescribes keeping all information on clients and their accounts. By this obligation it is ensured that financial institutions keep information on nature and date of a transaction, type and amount of currency involved the type and identifying number of any account involved in the transaction.

712. In addition, the FCMC Regulations on ECDD in Section VII require covered institutions to maintain an electronic data base for information on customers registered in low tax or tax free countries or territories, to include the customer's name; legal address; business address; description of the type of the customer's economic activity; date of registration; the date of starting business relationship with the customer; and the full name of the beneficial owner or the name of the controlling legal person. This information must updated on a timely and regular bases. The goal of this requirement is to ensure more transparency for correspondent banks by establishing and maintaining information about customers from low tax or tax free countries. In addition to the AML/CFT Law, Article 4 of the Archives Law requires that institutions establish

documentation of their operation, create a records system; establish an internal control and supervision of records management; and adequately store to ensure their use and accessibility.

713. The FCMC Regulation on ECDD provides for several additional requirements with respect to record keeping. Article 27 requires financial institutions to maintain records of a group of customers with the same beneficial owner indicating the role of each participant in the group. Article 37 also provides further requirements to maintain records of the supervision undertaken on transactions subject to enhanced due diligence.

714. According to the Latvian authorities, the records kept by financial institutions are considered to be sufficient for reconstruction of a transaction. Examination of the client accounts during the on-site examinations in banks has proved that the chain of transactions can be reconstructed, as there were no cases when it cannot be done found out so far.

Record keeping of identification data, files and correspondence (c.10.2)

715. Article 37, paragraph 2 in the AML/CFT Law defines the scope of documents to be maintained for at least five years which includes: copies of documents evidencing customer identification data; information about customers and their accounts; statements about the beneficial owner; correspondence, including by electronic mail; and other documents, including in an electronic form, obtained during customer due diligence. It is understood that this requirement includes all business correspondence.

716. The FATF standard requires that obligors can be required by law to maintain records for at least five years following the termination of an account or business relationship, or longer if request by a competent authority in specific cases upon proper authority.

717. While obliged entities can be asked to extend the period that they hold materials (records, account files, business correspondence) beyond 5 years, the Latvian legal regime restricts the maximum time period to 6 years, whereas the FATF standard requires five years or longer without imposing a upper limit.

718. According to the BoL Recommendations Article 36, copies of the customer identification documents and information on the detected unusual and suspicious transactions, including the copy of the report sent to the Financial Intelligence Unit, shall be kept for no less than five years.

Availability of Records to competent authorities in a timely manner (c.10.3)

719. Article 37, paragraph 1 of the AML/CFT Law requires obliged entities to provide documentation to its supervisory or control institutions or submit copies of documents to the Financial Intelligence Unit upon request.

720. In addition, Article 30, prescribes that a person subject to the Law, within seven days upon receipt of a written request by the Financial Intelligence Unit shall provide additional information and documents, about the customer or the transaction, the origin and further movement of funds, that has become available to the person subject.

721. Various industry specific laws allow the authorities to compel production of, or obtain access to all records, documents, or information relevant to monitoring compliance. These include: Financial/credit institutions (Credit Institution, Art 8(1), 50.8(6), 106(2); and Law on the Financial and Capital Market Commission, Art. 7); currency exchanges (Bank of Latvia Regulation Number 36, Article 92); Private pension funds (On Private Pension Funds, Art 8 (3) 11, Art 28 (7) and (8)); Payment institutions and electronic money institutions (Payment services and Electronic Money Law, Article 48, 49); Insurance intermediary (Activities Of Insurance And Reinsurance Intermediaries Law (Section 41, paras 1 and 2); Insurance company (Law On Insurance Companies And Supervision Thereof, Articles 51 And 104; Law On The Financial

Capital Market Commission, Article 7); and Investment Brokerage Companies (Law On Financial Instruments Market Articles 138, 139).

722. Article 63 of the Law on Credit Institutions establishes that financial and credit institutions shall provide Confidential information to the Financial and Capital Market Commission – for the exercise of the supervisory functions as specified by law; to the FIU in accordance with the procedures and to an extent as specified by the Law on the Prevention of Laundering of Proceeds Derived from Criminal Activity; to the courts – within the framework of matters in adjudication on the basis of a ruling of a court (judge); to the investigation authorities – within the framework of a pre-trial criminal procedure on the basis of a decision of the investigative judge; as well as to various other State bodies as stipulated in Article 63.

723. The Latvian authorities advised the evaluation team that in practice no cases when financial institutions failed to supply FIU with the necessary documents were identified.

Effectiveness and efficiency

724. On the occasion of the on-site interviews, law enforcement and prosecutors did not indicate any difficulty in getting necessary information when requested, and full documentation is available when requested.

725. It appears that in practice the presence of electronic files significantly increases the effectiveness of these requirements.

726. The restriction on recordkeeping to a maximum of 6 years hinders effectiveness. During the on-site visit, the assessors did note that no records have ever been requested under this article, but authorities could not provide a rationale for this clause either.

727. According to Bank's of Latvia statistics, the most common fault identified in on-site examinations of currency exchange companies was the preservation of copes of identification documents which shows that the authorities are supervising the record keeping requirements and that the effectiveness of the system is subject to improvement.

728. However, the Bank of Latvia contends that the identified violations of recordkeeping would not noticeably hinder reconstruction of transactions, filing a report to the FIU, or causing difficulties in getting necessary information for supervision purposes.

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

729. The 3rd round evaluation report had concluded that other than the requirement to maintain the originator information with the wire, the Latvian laws and regulations did not specifically address the wire transfers issue. Since the last MER, as EU member state, Latvia has benefited from the introduction of European Community legislation in this area.

730. As in other EU countries, Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information accompanying transfers of funds is directly applicable in Latvia without any additional implementation requirements.

731. National implementation is therefore limited to establishing an appropriate monitoring, enforcement, and penalties regime, and to apply certain derogations allowed for in EU regulations. The Payment Services law was adopted by the Latvian Parliament to comply with EU (Directive/2007/64/EC) on Payment services regulating payment service providers and payment services users.

732. Interbank payment systems in Latvia are operated by three systems that are monitored by the BoL: real-time gross-settlement system (RTGS) known as SAMS, European Automated Real-time Gross Settlement Express Transfer System TARGET2 and an interbank retail payments system known as EKS. In all systems, data exchange is completed using SWIFT data

transmission infrastructure and all the information that accompanies a payment message is transmitted via systems.

733. The BoL's interbank automated payment system (SAMS) ensures the settlement of large-value interbank payments and the BoL's monetary policy operations, as well as the final settlement of other payment systems. The SAMS is a real-time gross settlement system with 20 banks, four branches of foreign banks and the Bank of Latvia as direct participants.

734. In November 2007 the Bank of Latvia along with other national central banks of the EU countries joined the European Automated Real-time Gross Settlement Express Transfer System TARGET2. TARGET2-Latvia is one of the 21 components of TARGET2. The Bank of Latvia along with other central banks of the EU countries incorporated TARGET2 Guidelines in the Latvian legislation to ensure uniform requirements for the participation conditions and processing of payments in all components of TARGET2. 19 banks, three branches of foreign banks, the Treasury and the Bank of Latvia are direct participants in TARGET2-Latvia.

735. The BoL's electronic clearing system (EKS), is an interbank retail payment system. The EKS is the only clearing (net settlement) system in Latvia that ensures the settlement of bulk customers' credit transfers in LVL among banks in Latvia. The EKS is an automated clearing house system, in which the processing of payments is fully automated and only electronic payment instructions are accepted and processed. The EKS also uses SWIFT message formats. The final settlement of EKS net positions takes place in SAMS. In January 2008, the Bank of Latvia started processing the euro customer payments executed by Latvian banks in the EKS. To ensure further provision of the euro settlement services in the EKS, in November 2010 the euro settlement services were updated in line with the SEPA requirements. The most important modification activities were related to the introduction of UNIFI (ISO 20022) XML standard and compliance with the requirements for interoperability and reach ability of infrastructures. There are 20 banks, four branches of foreign banks as well as the Treasury and the Bank of Latvia participating in EKS.

736. The BoL is the competent authority to monitor the payment system overall, but it does not monitor the individual transactions.

Obtain Originator Information for Wire Transfers (c.VII.1)

737. On 25 February, 2010 Saeima has adopted Payment Services law (entered into force on 31 March, 2010) to comply with Directive 2007/64/EC on payment services in the internal market and it lays down the rules which are applied to payment service providers and regulates relations between payment service providers and payment service users. The Law contains the same provisions as the Directive 2007/64/EC and provides regulation of authorization and operations of payment service providers, defines rights of payment service users to information, inclusion of certain provisions in agreements and prescribes the procedure and terms for payment execution.

738. The Payment Services law does not contain provisions on information on the payer accompanying transfers of funds, as those issues are regulated at the EU level by the Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds.

739. Regulation (EC) No 1781/2006 applies to transfers of funds, in any currency, which are sent or received by a payment service provider established in the EU, subject to certain specified exemptions which are considered as low risk.

740. Article 4 of the Regulation (EC) No 1781/2006 defines what is meant by complete information on the payer. This generally consists of the name, address, and account number but the address may be substituted with the date and place of birth of the payer, a customer identification number or national identity number. In the case that the payer does not have an

account number, the PSP has to substitute it with a unique identifier which allows the transaction to be traced back to the payer.

Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2); Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3); Maintenance of Originator Information (c.VII.4)

741. Article 5 of the EU Regulation 1781/2006 provides that the payer's PSP has to ensure that transfers of funds are accompanied by complete information on the payer, and ensure that adequate records are kept of the transaction. The PSP has to verify the complete information on the payer, before transferring the funds, from reliable and independent source in respect of wire transfers of €1,000 or more. This information is to be retained for five years.

742. Due to the concept of the single market, the EU Regulation stipulates that it is only in the case where the payer's PSP is outside the European Union, full originator information should be included in the message or payment form accompanying the wire transfer. For the purposes of the EU Regulation, transfers within the EU are considered as domestic transactions by the FATF.

743. In accordance with Article 6(1) of the EU Regulation, by way of derogation from Article 5(1), where both the payment service provider of the payer and the payment service provider of the payee are situated in the Community, transfers of funds shall be required to be accompanied only by the account number of the payer or a unique identifier allowing the transaction to be traced back to the payer. Based on the evaluation team's experience during the on-site visit, the name of the originator is usually also included.

744. However, if so requested by the payment service provider of the payee, the payment service provider of the payer shall make available to the payment service provider of the payee complete information on the payer, within three working days of receiving that request.

745. Additionally, the availability of full originator information to the beneficiary financial institution is ensured by provisions of Article 44 of the AML/CFT Law which provides that "*to achieve the goals of this Law, a credit institution, upon request of a correspondent bank registered in a member state, shall submit to it information and documents acquired during identification and due diligence of customers, beneficial owners or authorised persons in respect of the transaction made with the intermediation of the correspondent bank*."

746. Article 8 of the EU Regulation specifies that the PSP of the payee shall detect whether, in the messaging or payment and settlement system used to affect a transfer of funds, the fields relating to the information on the payer have been completed using the characters or inputs admissible within the conventions of that messaging or payment and settlement system. Such PSPs are required to have effective procedures in place in order to detect any missing required information.

747. Article 12 of the EU Regulation (Keeping information on the payer with the transfer) provides that "*Intermediary payment service providers shall ensure that all information received on the payer that accompanies a transfer of funds is kept with the transfer*".

748. Article 13 of the EU Regulation provides the retention period of five years in the event that technical limitations prevent the full originator information accompanying a cross-border wire transfer from being transmitted with a related domestic wire-transfer.

Risk-based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5)

749. Article 8 of the EU Regulation specifies that the PSP of the payee shall detect whether, in the messaging or payment and settlement system used to affect a transfer of funds, the fields relating to the information on the payer have been completed using the characters or inputs

admissible within the conventions of that messaging or payment and settlement system. Such PSPS are required to have effective procedures in place in order to detect any missing required information.

750. Also in accordance with Article 9 of the EU Regulation, if the PSP of the payee becomes aware when receiving funds that information on the payer is missing or incomplete, it shall either reject the transfer or ask for complete information on the payer.

751. Article 10 of the EU Regulation requires that the PSP of the payee shall consider missing or incomplete information on the payer as a factor in assessing whether the transfer of funds, or any related transaction, is suspicious, and whether it must be reported to the authorities responsible for combating money laundering or terrorist financing.

752. The evaluators were informed during the on-site interviews that the information on the originator of the payments is observed in practice and that the FIU received 2 STRs since 2006 from PSPs in respect of other PSPs which did not complete the required information – subsequently the contract with these other PSPs were cancelled.

Monitoring of Implementation (c. VII.6) and Application of Sanctions (c. VII.7: applying c.17.1 – 17.4)

753. Article 15(1) of the EU Regulation requires that Member States lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective, proportionate and dissuasive. Article 15(3) of the EU Regulation requires that EU Member States appoint competent authorities to effectively monitor, and take necessary measures with a view to ensuring, compliance with the requirements of the Regulation.

754. The scope of AML/CFT supervision which is conducted by the FCMC includes adequate controlling procedures in order to find out how financial institutions fulfil the requirements from EU Regulation 1781/2006. This controlling procedure involves review of the internal policies, procedures and checking a sample of wire transfers as well.

755. In accordance with Article 199 of the Law on Credit Institutions, violations of regulatory enactments issued by the EU institutions, obligors could be sanctioned as follows: the Financial and Capital Market Commission and the Bank of Latvia shall impose a fine up to 100,000 LVL on a legal person; and a natural person shall be subject to administrative or criminal liability.

756. According to EU Regulation 1781/2006, member states should establish rules on penalties applicable to infringements of the provisions of this regulation. The Latvian authorities indicate that they rely on Article 199 in this regard, and not a separate sanctioning regime in this regard.

Additional elements – Elimination of thresholds (c. VII.8 and c. VII.9)

757. Regarding the procedures in place in order to detect whether the complete information on when the payer is missing, the Latvian authorities indicate that the "Common Understanding of the obligations imposed by European Regulation 1781/2006 on the information on the payer accompanying funds transfers to payment service providers of payees" (16.10.2008) is applied. As stated in this regulation, Chapter 3 Articles 9 and10 provide for the obligations when incomplete or missing information is provided to payer.

758. For transfers of funds where the payment service provider of the payer is situated outside the EU (incoming cross-border wire transfers), the payment service provider of the payee shall have effective procedures in place in order to detect whether the complete information on the payer as referred to in Article 4 (complete information on the payer) is missing (Article 8 (b) of the Regulation). If this is not the case, the payment service provider has to follow the procedures described above, regardless of any threshold.

759. For transfers of funds where the payment service provider of the payee is situated outside the area of the EU (outgoing cross-border wire transfers), the transfer shall always be accompanied by complete information on the payer, regardless of the threshold.

Effectiveness and efficiency

760. The requirements concerning wire transfers are clearly stated in the EU Regulation, AML/CFT supervision which is conducted by the FCMC and there are administrative sanctions provided under Article 199 of the Law on Credit Institutions in this regards.

761. All representatives of providers of payment services met during the on-site visit appeared to be aware of their obligations when conducting transfers of funds.

762. Interviewed participants indicated that they would reject wire transfers where there was incomplete beneficiary information and they were the intermediary.

763. The FCMC indicated that there have been sanctions issued under this regulation. It was revealed during an on-site inspection that a bank has accepted payments from outside EU with no full information on the sender. Thus a breach of European Parliament Regulation (EC) 1781/2006 Art 9 part one was found out, bank received a warning letter and Administrative procedure was started.

764. The FCMC has not issued any additional guidelines in support of the EU regulation. Latvia makes use of *"Common Understanding of the obligations imposed by European Regulation 1781/2006 on the information on the payer accompanying funds transfers to payment service providers of payees"* (16.10.2008).

3.5.2. Recommendation and comments

Recommendation 10

765. Authorities should consider revising the legal acts in order to recall the maximum of 6 years for keeping records on transactions.

766. Given the prevalence for recordkeeping violations identified during BoL on-site inspections, authorities should consider additional outreach to the sector on record-keeping requirements.

767. Legal requirements to maintain records should be more explicit as to the purpose of maintaining those records for transaction tracing purposes

Special Recommendation VII

768. The Latvian authorities should consider issuing any additional guidelines in support of this regulation.

3.5.3. Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	• Limited ability for authorities to ask obligors to keep records beyond five years.
SR.VII	**C**	

3.6.Monitoring of Relationship (R 21)

3.6.1. Description and analysis[26]

Recommendation 21 (rated PC in the 3rd round report)

Special attention to countries not sufficiently applying FATF Recommendations (c. 21.1 & 21.1.1),

769. The shortcomings identified in the 3rd round MER, were the lack of requirements in respect to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF standards other than the situation where the customer is a resident of a country listed by FATF or included in other international lists.

770. Also, at the time of previous evaluation there was no mechanism in place in Latvia that would enable the authorities to apply counter-measures to countries that do not apply or insufficiently apply the FATF recommendations.

771. In order to address these weaknesses, FCMC has issued Regulation for Enhanced Customer Due Diligence (Regulation No.125/27 August 2008), which replaced the former Regulations No.93 of 12 May 2006[27]. The referred document is binding to all entities supervised by FCMC.

772. The new regulation, stipulates that credit institutions, private pension funds, investment brokerage firms and investment management companies, are obliged to determine the initial risk associated with the customer at the inception of or during business relationship by assessing several risk categories including country risk (point 8.1) as well as using the relevant risk characteristics as set out in the said regulations.

773. Furthermore, point 12 of Regulation No.125 describes customer residence country risk, as "*the risk for a financial institution to get involved in money laundering or terrorist financing as a result of cooperating with a customer from a country that may be used for money laundering or terrorist financing due to its economic, social, legal or political conditions*".

774. Point 13 of the said regulation states that a country or a territory shall be considered as having a high customer residence country risk, where:

- it has been included in the list of low tax or tax free countries and territories as approved by the Cabinet of Ministers;
- the United Nations Organisation or the European Union has established financial or civil legal restrictions in respect of it;
- it has been included in the list of non–cooperating countries of the Financial Action Task Force or that body has published a statement to the effect that the respective country or territory does not have regulatory provisions for combating money laundering or terrorist financing or such provisions fail to comply with international requirements due to material deficiencies. The Financial and Capital Market Commission shall notify financial institutions of such countries and territories.

[26] 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.

[27] Regulations No.93 of 12 May 2006 "*Regulations for the Formulation of an Internal Control system for the Prevention of Laundering of Proceeds derived from Criminal Activity and Financing of Terrorism"*

775. The list of low tax or tax free countries and territories is provided in Regulation of Cabinet of Ministers 276/20.06.2001 (Regulation on Low Tax or Tax Free Countries and Territories) and since then this list has been updated in 2004 and 2010.

776. There is only partial coverage across the financial sector in this regard. For the entities under the FCMC's remit, the Commission has promulgated Regulation No.125 to identify the weakness related to the lack of requirements in respect to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF standards. For the remaining financial sector participants, i.e. currency exchanges and the Latvian Post, there is no regulation issued in this regard by the appropriate supervisory and control authorities.

Examination of transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FATF Recommendations (c 21.2)

777. The requirement of monitoring a business relationship after its establishment and to examine and pay special attention to those transactions that have no apparent economic or lawful purpose is treated by the Art.20 of the AML/CFT Law.

778. In addition, Art. 37 "Keeping and Updating Customer Due Diligence Documents" prescribes the obligation for financial institutions to maintain the written findings and make them available to competent authorities.

779. In order to fulfil its supervisory function, FCMC is entitled to receive all the information required for this purpose (Art.7 paragraph (1) point 2)) of the Law on FCMC.

780. In addition to the above, FCMC Regulations on ECDD provide requirement for on going supervision of the "*Minimum Requirements for Enhanced Customer Due Diligence Performed During Business Relationship*" (See section V of the Regulations).

781. However, still financial institutions that are not subject to FCMC supervision are not covered in this respect by any provisions of the regulatory framework in force.

Ability to apply counter measures with regard to countries not sufficiently applying FATF Recommendations (c 21.3)

782. Law "*On implementation of Sanctions established by international organisations in the Republic of Latvia*" (in force since 01.01.2007.) sets forth the procedure for implementing internationally imposed sanctions. In accordance with the procedure, the Ministry of Foreign Affairs informs Cabinet of Ministers on internationally imposed sanctions, their prolongation dates, changes and expiry date.

783. Cabinet of Ministers issues regulations on such sanctions, their prolongation dates, changes and expiry and at the same time sets forth the measures for application of such sanctions in Latvia. Cabinet of Ministers can also take decisions on applying not only sanctions of international bodies but apply counter measures for other situations if such necessity rises.

784. As regards the application of financial sanctions, FCMC is the responsible authority and in practice informs the financial and capital market participants on the imposed international financial sanctions and advises them to apply enhanced due diligence for such transactions. FCMC officials report that they informs market participants on the EU and other international organisations sanctions based on the information received from Ministry of Foreign affairs on at least a monthly basis.

785. It needs to be notes that for the purpose of this matter there are still financial institutions not been supervised by FCMC not covered in this respect.

786. FCMC is the responsible authority and in practice usually inform financial and capital market participants on the imposed international financial sanctions and advises to apply enhanced due diligence for such transactions.

787. The Latvian authorities advised the evaluation team that up the on-site visit, no such sanctions have been imposed as no cases have arisen.

788. The MoT in its capacity of supervisory authority for the Latvian Post is not involved on the process of applying international sanctions.

Effectiveness and efficiency

789. The countries mentioned by the FATF public statements on jurisdictions of concern, appeared to be known by most FIs spoken to on-site. List of countries with AML/CFT weaknesses in their systems are routinely published by supervisory authorities in Latvia.

790. However, the evaluation team noted delays in updating references from the list which might negatively impact on effectiveness.

3.6.2. Recommendations and comments

Recommendation 21

791. The Latvian authorities should adopt legislation empowering the competent authorities to take counter-measures in relation to countries that do not apply or insufficiently apply FATF Recommendations.

792. Regulation on ECDD should be issued to cover all financial institutions, not only the ones supervised by FCMC.

793. The lists of countries with AML/CFT weaknesses in their systems should be updated in a timely fashion.

3.6.3. Compliance with Recommendation 21

	Rating	Summary of factors underlying rating
R.21	**PC**	• No supervision on the implementation of the sanctioning mechanism for Latvian Post. • No requirements for special attention to transaction with any apparent economic or lawful purpose for financial institutions that are not subject to FCMC supervision. • The ECDD requirements for clients from countries that do not sufficiently apply FATF Recommendations still do not apply to financial institutions that are not subject to FCMC supervision, including without being limitative Latvian Posts.

3.7.Suspicious Transaction Reports and Other Reporting (R. 13, 25 and SR.IV)

3.7.1. Description and analysis

Recommendation 13 (rated LC in the 3rd round report) & Special Recommendation IV (rated PC in the 3rd round report)

794. Latvia was rated LC in the in the 3rd round MER for Recommendation 13 as the legal requirement for reporting suspicious transactions related to terrorist financing was not fully consistent with the standard. It was stated that although the AML Law contained some measures on FT reporting, they were not sufficiently explicit, direct, and complete.

795. As a result, it was recommended to specifically require, in Latvian law or regulation, the reporting of suspicious transactions of funds suspected to be linked to or related to or to be used for terrorism, terrorist acts, or by terrorist organisations or those who finance terrorism, without limiting the scope of the requirement to designated persons.

796. In addition, the need of increasing emphasis on STR reporting in order to enhance the operational effectiveness of the FIU was expressed. For this purpose it was recommended to the FIU to provide further clarification and guidance to the reporting entities.

Requirement to Make STRs on ML/FT to FIU (c. 13.1, c.13.2 & IV.1)

797. The new AML/CFT Law sets the reporting duty as the obligation for the persons subject to the Law to report to the FIU, without delay any unusual transaction as well as any suspicious transaction. The two concepts are provided for under Art.1 16) and 17).

798. Unusual transactions are defined as transactions corresponding to at least one indicator from the list of indicators of unusual transactions. The Cabinet of Ministers issued provisions establishing the list of indicators of unusual transactions and the procedure whereby unusual and suspicious transactions are reported and approve the reporting form.

799. Regulation 1071/2008 entered into force on 01.01.2009 on "*Unusual transaction indicator list and procedure for reporting unusual and suspicious transactions*" where a comprehensive and sector specific list of indicators for unusual transactions can be found. Most of them are threshold-based. In comparison to the previous Regulation, the amended regulation includes both new reporting bodies and new unusual transaction indicators.

800. It has to be noted that transactions where one of the parties is a person suspected of committing a terrorist act or of participation therein and is included on the list of persons regarding which the FIU has informed the subjects of the Law and their supervisory and control authorities, is mentioned as first indicator of an unusual transaction at point 8.1 of Regulation 1071. According to the Latvian legislation, transactions performed by persons suspected of terrorist activities and listed under UNSCR and EU Lists are considered as triggering UTRs not STRs.

801. Regulation No.1071 is binding to all the persons subject to the AML/CFT Law: credit institutions, insurance merchants, private pension funds, insurance intermediaries, investment broker companies, organisers of lottery and gambling, capital companies that buy and sell foreign currency in cash, money remittance and transfer services providers, sworn auditors, sworn auditor companies, Sworn Notaries, Sworn Advocates and other independent legal services providers, merchant dealing with real estate trading, car traders, merchant dealing with precious metals, precious stones etc, and contains the also the reporting forms. Regulation 1071

provides for quantitative thresholds and all transactions meeting those criteria are subject to reporting on a compulsory basis disregarding any suspicious character of the transaction.

802. However, the Head of the FIU advised the evaluation team that not all the reports received are observing the form provided by the Regulation 1071 although the Regulation is compulsory.

803. A suspicious transaction is defined as a transaction that gives rise to a suspicion of laundering of proceeds from criminal activity (money laundering) or of terrorist financing or an attempt thereof, or of any other criminal offence related thereto. There is no further referral to the suspicion indicators in Regulation 1071.

804. The reporting obligation under AML/CFT does not refer to funds that are proceeds of criminal offenses, as required by the FATF standards, but to transactions that that gives rise to suspicion of laundering of proceeds from criminal activity (money laundering) or of terrorist financing or an attempt thereof, or of any other criminal offence.

805. Also, in respect of essential criterion 13.2, the reporting obligation does not cover funds suspected to be linked or related to or to be used for terrorism, terrorist acts or by terrorist organisations.

806. The suspicions elements are mentioned in an Instructions document from 19 January 2009 "*On filling the reporting form in writing*" (the reports can be submitted on paper or electronically). The instructions were issued by the FIU. Further on, a list of Indicators document pertaining to suspicious financial transactions also containing codes attached to each ground for suspicion was issued by the FIU and is up-dated whenever necessary.

807. According to the Latvian authorities those two documents are delivered to the subject persons in the process of training, electronically via e-mail to supervisory and control authorities or upon specific request, to any subject persons.

808. In the mutual evaluation questionnaire, the Latvian authorities did not mention the two documents above (Instructions on filling the reporting form in writing and Indicators for suspicion) but only the Regulation 1071 concerning the reporting system. Also, the Regulation 1071 does not refer to any other documents which would need to be considered when reporting suspicious transactions. In addition, during the on-site interviews there were no referrals to the two documents from the private sector side.

809. This poses concerns on the effectiveness of the guidance provided to financial institutions and other reporting parties regarding the manner of reporting suspicions in the reporting system.

810. During the on-site interviews, representatives of the banking sector indicated that the internal reporting procedure includes the option for the bank to terminate the relationship with the client following a suspicious transaction and that this decision is to be made by the AML/CFT commission of each bank.

811. Also, it was stated that all banks have their own list of suspicion indicators which take into consideration the client's profile as well as the ML/TF identified typologies. However, the assessors are of the opinion that leaving the suspicion indicators at the latitude of the reporting entities might run the risk of reducing the variety of possible red flags, to the typologies identified by a certain financial institution and overlook other reasons for suspicion which are part of a trend that has never been identified by the said financial institution.

812. According to provision in the AML/CFT Law, in certain circumstances, the financial institution has to refrain from executing "*one or several linked transactions or debit operations of a particular type on the customer's account <u>where the transaction is related or may be reasonably suspected of being related with money laundering or terrorist financing</u>*."

813. The term "*proceeds from criminal activity*" is defined at Art. 4 of the said Law where: 1) a person, directly or indirectly, acquires ownership or possession of them as a result of a criminal offence, 2) in other cases specified by the Criminal Procedure Law. "*Proceeds from criminal*

activity" shall mean "*criminally acquired property and financial resources*" as used in the Criminal Procedure Law.

814. All reports shall be submitted in writing or electronically in accordance with the provisions of Art. 31 (4) of the AML/CFT Law. Based on the information provided by the FIU representatives as of 19th of May 2011, the following agreements of electronic reporting there were in place: 18 with banks, 1 with insurance companies, 1 with currency exchange offices and 1 with Western Union.

815. A contact person of the Post Office is obliged to immediately report the FIU of every unusual and every suspicious transaction at Latvia Post.

816. The obligation to report terrorism related transactions is mentioned both under the Suspicious transactions reports and Unusual transactions reports requirements as explained above.

817. The distinction between the two instances appears to be related to the terrorist lists: the persons identified on various terrorist lists as described under Special Recommendation III are to be considered as unusual transactions, otherwise as suspicious.

818. The assessors are of the opinion that legal provision and guidance do not fully cover the essential criterion 13.2. The indicator 8.1 in the Regulation 1071 applies only for "*transaction where one of the parties is a person suspected of committing a terrorist act or of participation therein and is included on the list of persons regarding which the Control Office has informed the subjects of the Law and their supervisory and control authorities*". So, the indicator does not apply for financing of terrorism as such. The same goes for the indicator (AST) listed under suspicious transaction Indicators document: "*suspected being related to terrorism*". The Latvian authority's explanation to this issue was that FIU addresses every report on unusual or suspicious transaction being related to terrorism as financing of the latter, because transaction as such can not mean anything else.

No Reporting Threshold for STRs (c. 13.3 & c. SR.IV.2)

819. The Cabinet of Ministers' Regulation 1071 prescribes that the subjects of the AML/CFT Law shall report without delay to the Office for the Prevention of Laundering the Proceeds from Criminal Activity about each consulted, intended (planned), notified, initiated, delayed, executed or confirmed unusual transaction, which meets at least one of the indicators of an unusual transaction set out in these regulations or about such suspicious transaction.

820. The requirement does not consider any threshold for suspicious transaction reporting either for money laundering nor terrorism financing.

821. Concerning the "*attempted transactions*" the AML/CFT Law clearly states that those are subject to reporting obligations as the definition of "*suspicious transaction include the wording*" or "*an attempt thereof*". At the time of the on-site visit, various representatives of the private sector indicated that such transactions have been reported in practice.

Table 29: Attempted transactions reported to Latvian FIU

	2006	2007	2008	2009	2010	2011
Notified transactions	6	10	2	22	9	13
initiated transactions	2	4	0	5	0	5
delayed by institution	1	0	11	12	11	56
delayed by client	0	0	1	6	5	3
delayed by client's partner	1	0	0	1	0	0
Total	10	14	14	46	25	77

822. Also, the requirements set out in Regulation 1071 make reference to "*intended (planned), notified, initiated*" suspicious transaction (both related to money laundering and terrorism financing) which might equal "*attempted*" transaction.

Table 30: planned transactions:

	2006	2007	2008	2009	2010	2011
Planned transactions	3	1	2	27	101	142

823. As this is an asterisked criterion the need for attempted suspicious transactions to be reported should be explicitly provided for in either law or other enforceable means. These requirements are covered by means of the Regulation No.1071, which is a binding regulation for reporting entities, that are subjects of the AML/CFT Law.

824. However, the emphasis placed on threshold based UTRs (clear indicator list provided by Regulation 1071) and the lack of further assistance provided to the financial sector on STRs, might affect the reporting behaviour of the subject persons in the sense that they might look closer to the threshold related reports instead of suspicion based reports.

Making of ML/FT STRs regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2)

825. According to Latvian legal provisions there are some exemptions from the reporting obligations but they relate to tax advisors, external accountants, sworn auditors, commercial companies of sworn auditors, Sworn Notaries, Sworn Advocates and other independent legal professionals in the course of defending or representing that customer in pre-trial criminal proceedings or judicial proceedings, or providing advice on instituting or avoiding judicial proceedings.

826. There is no reference to exemptions from reporting obligations in cases involving Tax matters.

827. According to Paragraph 1 (point 1) of the Article 4 of the AML/CFT Law - the proceeds shall be recognised as derived from criminal activity where a person, directly or indirectly, acquires ownership or possession of them as result of a (any) criminal offence (including tax evasion). It should be noted once more that Latvia has "*all crimes approach*".

Additional Elements – Reporting of All Criminal Acts (c. 13.5)

828. Paragraph 2 of the Article 5 of the AML/CFT Law determines that money laundering shall be recognised as such even where the criminal offence, which is defined by the Criminal Law and results in a direct or indirect acquisition of the proceeds derived thereby, was committed outside the Republic of Latvia and according to the local legislation the person committing such criminal activity is held criminally liable. Thus, since the reporting obligations refers to suspicions of money laundering, it can be concluded that the reporting obligations as formulated in the Latvian legislation shall be extended to crimes committed outside Latvia.

829. But the same shortcoming identified in relation to the scope of reporting requirements which relates to money laundering only, not to proceeds of criminal activity also apply.

Effectiveness and efficiency

830. The Latvian AML/CFT Law sets the reporting duty of the subject persons as the obligation to report to the FIU, without delay any unusual transaction as well as any suspicious transaction.

831. The statistics regarding STRs and UTRs for ML provided by the Latvian authorities demonstrate a high level of reporting as set out below.

Table 31: Number of reports (UTRs plus STRs) and transactions contained herewith (based on unusual indicators and suspicious grounds) sent by reporting entities in Latvia

YEAR	REPORTS	ABOVE THRESHOLD (UT)	ST ML
2005	26 302	11 526	16 234
2006	27 479	15 800	13 934
2007	34 346	18 732	21 137
2008	36 418	20 514	26 437
2009	20 780	11 987	28 439
2010	16 407	11 213	26 003

832. While the indicators of "*unusual transaction*" are clearly described in Regulation 1071, the grounds for "*suspicious transaction*" given to financial sector (or to other reporting entities) were identified with difficulty by the evaluation team, even if in the 3rd round report it was recommended to the FIU to provide further clarification and guidance to the reporting entities. The Latvian authorities indicated that the progress made in respect of the guidance targeted to reporting entities, consists in updated the list of suspicion indicators.

833. The authorities explained that the changes of the lower numbers of the reports (2009-2010) were determined by the requirements of the Paragraph 2 of the Article 20 of the AML/CFT Law: "*When monitoring a business relationship, any person subject to this Law shall pay particular*

attention to the following: unusually large and complex transactions or mutually linked transactions, which have no apparent economic or visible lawful purpose, and are not typical for a customer". Pursuant to this requirement very often one report of the person subject of the AML/CFT Law consists of information on several transactions. In this regard the situation shows that changes of the number of reported transactions are not so large (2005 – 30,848; 2006 – 31,861; 2007 – 39,931; 2008 – 47,047; 2009 – 40,434 and 2010 – 37,291).

834. The above statement indicates two aspects. First that the statistics kept by the authorities contain information on the number of transactions reported within the reports and not on the number of STRs and UTRs as such. It is the assessors' understanding that there is no information on the actual number of STRs and UTRs filed by the financial sector to the FIU.

835. Secondly, it appears that the shift in reporting behaviour of the subject persons determined by newly adopted legislation is still favouring the UTRs (threshold based) and not the STRs which is hardly in line the with 3rd round evaluation recommendation on the need of increasing emphasis on STRs reporting in view to enhance the operational effectiveness of the FIU as the content of Regulation 1071 is concentrated mainly on the threshold based reports and indicators. The latest might hinder the compliance with essential criterion 13.3 in practice.

836. Coming from statistics provided by the Latvian authorities it results that the number of transactions included in STRs is higher than the number of transactions included in the threshold based reports. Nevertheless, the evaluators cannot confirm that the number of the actual STRs is higher than the number of the UTRs. Namely, according to Regulation 1071 there are only two reporting forms provided (one for electronic reporting and one for the written reporting) it is not clear how to fill the form if it should contain both indicators (unusual and suspicious) resulting that the evaluators do not know whether reports are statistically included as ST, UT or both.

837. Consequently the evaluators cannot assess if the statistics on reports (UTRs and STRs) are correct. According to the explanations provided by the Head of the FIU, in cases where a report contains both indicators or/and codes (UT and ST) only one is considered in the statistics and the decision if the report is considered a ST or an UT belongs to the FIU employee. FIU IT program does not allow inputting more than one suspicion or unusual indicator into the system nor duplicating the number of reported transactions.

838. In terms of the quality of the reports, the Latvian authorities stated that the new regulation has had a positive impact and although the number of reports received in 2009 and 2010 has largely decreased comparing to previous years, the quality was considered to be improving. According to the explanations provided by the Latvian authorities the improvement was noticed in the number of reports including large and complex transactions or mutually linked transactions.

Special Recommendation IV

839. Latvia was rated PC in the 3rd round report mainly because of provisions of the AML/CFT Law related to reporting of suspicious transactions concerning terrorist financing were not sufficiently explicit, direct, and complete.

840. As noted above, in connection with the findings for criterion 13.2, by the adoptions of the new AML/CFT Law terrorist financing is now covered in suspicious transactions reporting. Moreover, the requirement is stated by the Cabinet of Ministers Regulation and as a consequence it is a direct mandatory obligation.

841. The obligation to send reports on terrorist financing to the FIU is provided for in the Latvian legislation in two different articles of the AML/CFT Law and of the Cabinet of Ministers' Regulation 1071 respectively.

842. Firstly, the transactions where one of the parties is a person suspected of committing a terrorist act or of participation therein and is included on the list of persons regarding which the FIU has informed the subjects of the Law and their supervisory and control authorities, is mentioned as indicator of an unusual transaction (point 8.1 of Regulation 1071). It is the assessors understanding that according to the Latvian legislation, transactions performed by persons suspected of terrorist activities and listed under UNSCRs and EU Lists are considered as triggering UTRs not STRs.

843. The reporting obligation does not cover funds suspected to be linked or related to or to be used for terrorism, terrorist acts or by terrorist organisations.

844. Further on, the Indicators list document issued by the FIU provides a suspicion indicator related to terrorism, therefore triggering an STR, namely the fact that the customer is suspected as being related to terrorism. No suspicion grounds or explanations are included in the indicators list document. Also, there is no indicator present to report suspicions of financing of terrorism.

845. Secondly, the AML/CFT Law mentions the obligation of the subject persons to report to the Financial Intelligence Unit any suspicious transaction without delay.

846. Article 1 of the AML/CFT Law defines the suspicious transaction as a transaction that gives rise to suspicion of laundering of proceeds from criminal activity (money laundering) or of terrorist financing or an attempt thereof, or of any other criminal offence related thereto.

847. Further more, terrorism financing is defined in the Latvian Criminal Lam as the act of "*a person who commits the direct or indirect collection or transfer of any type of acquired funds or other property for the purposes of using such or knowing that such will be fully or partially used in order to commit one or several acts of terror or in order to transfer such to the disposal of terrorist groups or individual terrorists*".

848. The shortcomings identified under SRII might affect the reporting obligations under SRIV.

849. There is no threshold mentioned in any of the two provisions in relation to the level of the transaction for reporting purposes and therefore they are in line with c.IV.1.

850. As explained under Recommendation 13 above, the reporting obligations in the AML/CFT Law cover the attempted terrorism financing.

851. The reporting obligation provided by the Latvian legislation refers to "*transactions*" and not to "*funds*" which are suspected to be linked or related to or are used for terrorism, terrorist acts of by terrorism organisations. This is clearly not in line with essential criterion IV.1 as limits the obligation of reporting and does not cover assets (including funds) which are in the possession of terrorists or used for terrorism or terrorist organisations but which are not subject to transactions.

Table 32: Number of reports received by the FIU on terrorism financing

YEAR	Number of REPORTS
2006	6 (UTRs)
2007	3 UTR
2008	7 (by banks) 6 UTRs and 1 STR
2009	20 (by banks) UTRs
2010	10 (currency exchange office, insurance company and 8 by banks) 9 UTRs and 1 STR
2011 (MAY)	7 (by banks) 6 UTRs an 1 STR

852. It is not clear to the evaluators how the Latvian authorities achieved the above numbers as there is no indicator present as unusual or suspicious transaction of financing of terrorism. The explanations provided by the Latvian authorities indicated that every transaction related to terrorism as such already contains the financing of terrorism.

853. According to FIU letter nr.1-9/3 from 08.01.2009 reporting entities should report unusual transactions if that transaction is performed by a person included in an OFAC list with marks on terrorism as a part of the consolidated list, otherwise they should report as a suspicious transaction.

854. During the on-site interviews, the financial sector representatives advised the assessment team that monitoring of transactions by using terrorist lists is regularly carried out and in case of a hit, a report is immediately forwarded to the FIU. Also, they confirmed that the FIU up-dates monthly the terrorists list, but no hit was identified up to the on-site visit. A confusion between the obligation resulting from SRIII and SRIV requirements was thus apparent.

855. The authorities explained that as a rule, the reports received for TF suspicions were based on the "terrorist lists" in the sense that the names of the persons involved in the reported transaction were similar to the names of some persons on the lists. Other suspicious TF were seldom identified.

856. The evaluators noted at the on-site interviews that several interlocutors were not clear about the distinction between the reporting obligations under SR IV and under SR III. Although authorities stated that training has been provided to inform reporting entities of known red-flag and indicators on FT, based on FATF translated guidance.

857. No investigations or prosecutions have been initiated in Latvia and thus there are no convictions for terrorism financing.

Effectiveness and efficiency

858. In the absence of a national risk/threat assessment the effectiveness of the reporting is difficult to assess. If compared with other jurisdictions the level of reporting suspicions of terrorism financing seems to be satisfactory.

859. Questions arise in relation to the quality of the reports given that none was used by law enforcement authorities to start an investigation.

860. In addition, the evaluation team expresses concerns regarding the ability of the financial institutions to properly identify suspicious cases and transactions in the absence of any guidance on terrorism financing indicators except those connected to the terrorist list. This issue affects both the quality and the quantity of the reports.

Recommendation 25 (c. 25.2 – feedback to financial institutions on STRs/ rated NC in the 3rd round report)

861. The FIU provides once a year specific feedback (on paper) to supervisory and control institutions. This feedback consists in the number of reports, freezing (refraining), number of reported transactions (both suspicious and unusual) involved in materials to LEA are sent supervised Person subject to this Law).

862. General feedback in provided to persons subject to the AML/CFT Law during training sessions. According to the Latvian authorities such feedback contains information on current techniques, ML typologies, methods and trends. Sanitised actual ML cases are included. The FI and part of the DNFBP confirmed the reception of such feedback.

863. General information on statistics on the number of disclosures, with some breakdowns and general results of the disclosures were provided in the 2010 Report published by the FIU. Not all categories of subject persons were aware of the content of the report.

864. No specific or case by case feedback is provided (for ML nor FT related reports) by the FIU to subject persons in relation to the outcome of each individual report. The Latvian authorities explained that taking into account the number of reports, the FIU only provides mandatory feedback on the reports concerning TF and on all transactions included in the materials submitted to LEA. It has been explained to the persons subject to the AML/CFT Law in the training processes that "no feedback" means "no materials to LEA ".

865. Insufficient FT general feedback was provided to subject persons. The shortcoming was identified by the evaluation team especially in relation to DNFBP. The Latvian authorities explained that this situation applies because their reports very seldom have been included in materials disseminated to LEA (except sworn advocates).

866. The level of feedback and guidance provided to supervised entities is differentiating among supervisory authorities.

3.7.2. Recommendations and comments

Recommendation 13 and Special Recommendation IV

867. A general assessment of the reporting behaviour of the subject persons should be undertaken by the Latvian authorities to clarify the impact of the new legal provisions in relation to the amount of UTRs vs. STRs received by the FIU.

868. The authorities are strongly encouraged to clarify the issue of statistics kept on the number of STRs and UTRs and the individual transactions contained herein.

869. Sector specific guidance on money laundering and financing of terrorism indicators should be issued by the authorities to assist the reporting entities in properly identifying such transactions, including red flags/indicators of suspicion and case studies.

870. The scope of the reporting obligations should be extended to all funds that are suspected to be generated by criminal activity.

871. The reporting obligation should extend to terrorism financing suspicions not only to terrorism suspicions thus it does not fully cover essential criterion IV.1.

Recommendation 25/c. 25.2 [Financial institutions and DNFBP]

872. The Latvian authorities are encouraged to provide case by case feedback to reporting entities.

873. Feedback on TF containing information on current techniques, typologies, methods and trends should be provided to subject persons. Sanitised TF cases should be included.

3.7.3. Compliance with Recommendations 13, 25 and Special Recommendation SR.IV

	Rating	Summary of factors underlying rating
R.13	**PC**	• The reporting obligation does not refer to funds that are proceeds of criminal offenses but to suspicion of laundering of proceeds • Reporting obligation does not cover funds suspected to be linked or related to or to be used for terrorism, terrorist acts or by terrorist organisations

		• Suspicion indicators not mentioned in Regulation 1071 but in subsequent guidance documents undermines the suspicion based reporting system vs. threshold reporting system • Guidance limited to terrorism not to financing of terrorism • Closed list of indicators for suspicion limits the possibilities for reporting • Deficiencies in the incrimination of TF might limit the reporting obligations • Effectiveness concerns in connection to the unclear distinction between unusual transaction reports and suspicious transaction reports
R.25	**LC**	• Insufficient general feedback on TF reports
SR.IV	**PC**	• Deficiencies in the incrimination of TF might limit the reporting obligations, especially in relation to the list of acts that are defines as *"terrorist"* by the Law • Reporting obligation not covering funds suspected to be linked or related to or to be used for terrorism, terrorist acts or by terrorist organisations • Reporting obligation refers to terrorism not to financing of terrorism • Reporting obligation refers to *"transactions"* and not to *"funds"* • Insufficient guidance on suspicions of terrorism financing impacts effectiveness • Confusion amongst FI between UT related reports and suspicion based reports (effectiveness concern)

Other measures

3.8.Foreign Branches (R.22)

3.8.1. Description and analysis

Recommendation 22 (rated PC in the 3rd round report)

874. In the 3rd round report it was emphasized that the AML measures in Latvia do not apply to foreign branches or subsidiaries and there were no specific requirements in respect of branches or subsidiaries in countries that do not or insufficiently apply the FATF Recommendations, or in cases where the AML/CFT minimum standard differs.

875. Also, the financial institutions were not required to inform their Latvian supervisor when a foreign branch or a subsidiary is unable to observe appropriate AML/CFT measures.

Consistency of the AML/CFT measures with home country requirements and the FATF recommendations (c. 22.1 & 22.2)

876. According to essential criterion 22.1, financial institutions should be required to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations.

877. Article 3 (2) of the AML/CFT Law requires obligors to "ensure that its structural unites, branches, representatives offices and subsidiaries in the Member States and in third countries, when providing financial services, comply with the requirements equivalent to the requirements established in this Law, as to *customer identification, due diligence and record keeping* without prejudice to the legal norms and generally accepted practices of the respective country.".

878. In addition, while maintaining the observations above, Art 3 (3) of the AML/CFT Law states that where the regulatory provisions of a third country prevent from observing the requirements that are equivalent to those of this Law as to customer identification, due diligence and record keeping, the subject to person shall notify to this effect the supervisory and control authority in the Republic of Latvia and ensure that additional measures are taken to mitigate the risks related to the prevention of laundering the proceeds from criminal activity (money laundering) and of terrorist financing. This is not entirely covering the requirements of the standard due to the fact that the foreign branches and subsidiaries should follow not only the Latvian Law, but to also observe appropriate AML/CFT measures.

879. There is no requirement to apply the higher standard where AML/CFT provisions differ between Latvia and the country of residence of the branch/subsidiary.

Additional elements (c. 22.3)

880. The AML/CFT Law does not have specific provisions regarding the obligation of financial institutions subject to the Core Principles, to apply consistent CDD measures at the group level, taking into account the activity of the customer with the various branches and majority owned subsidiaries worldwide.

881. When referring to answering to Rec.22.3, only the financial institutions that are regulated by FCMC are covered through the FCMC ECDD Regulation.

Effectiveness and efficiency

882. Based on the discussions with the representatives of the reporting entities at the on-site visit, it appears to the evaluators that in practice the level of awareness is differentiated. Particularly, the foreign branch banks' and large banks' representatives seems to be more familiarised with these particular requirements.

3.8.2. Recommendation and comments

Recommendation 22

883. The Latvian authorities are invited to amend the legislation to ensure that foreign branches and subsidiaries of Latvian financial institutions observe AML/CFT measures consistent with FATF Recommendations in general by including a specific requirement to apply the higher standard where AML/CFT provisions differ.

884. The terminology used in the laws and regulations should also be accommodated with the widest scope of the FATF standards, by making reference to all AML/CFT requirements, not only *customer identification, due diligence and record keeping*.

885. The Latvian AML/CFT Law should be completed with appropriate provisions with regard to applying consistent CDD measures at the group level, while taking into account the activity of the customer with the various branches and majority owned subsidiaries abroad.

3.8.3. Compliance with Recommendations 22

	Rating	Summary of factors underlying rating
R.22	**LC**	• Limited requirements (to a list of activities) to ensure that foreign branches and subsidiaries observe AML/CFT measures. • No requirement to apply the higher standard

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

886. The 3rd evaluation report emphasised the lack of a designated supervisory authority in respect of AML/CFT matters for Latvian Post Office.

887. At the time of the present report, according to The Law On Financial and Capital market Commission, the FCMC is the sole competent supervisory authority for: banks, credit unions, insurance undertakings and insurance intermediaries, investment management companies, as well as private pension funds, Riga Stock Exchange and Latvian Central Depository (Law On Financial and Capital market Commission Art.2, 4, 6 and 7).

888. The exceptions are the bureaux de change that are licensed and supervised by the Bank of Latvia (BoL) and Latvian Post that is supervised by the Ministry of Transport.

889. Based on the framework introduced by the new AML/CFT legal, almost all financial institutions and their relative activities have a designated supervisory authority and are supervised as a consequence.

Authorities/SROs roles and duties & Structure and resources

Recommendation 23 (23.1, 23.2) (rated LC in the 3rd round report)

Regulation and Supervision of Financial Institutions (c. 23.1); Designation of Competent Authority (c. 23.2)

890. The AML/CFT Law has added to the above statutory powers of FCMC, competencies with regard to the implementation of AML/CFT measures, monitoring and supervision. The FCMC has the power to apply sanctions in cases of violation of the provision of the said Law, for: credit institutions, electronic money institutions, insurance merchants that provide life insurance, private pension funds, life insurance intermediaries, investment brokerage firms, investment management companies and payment institutions (Article 45 and Article 46).

891. The Law on FCMC stipulates that the Commission shall enjoy full rights of an independent/autonomous public institution and, in compliance with its goals and objectives shall regulate and monitor the functioning of the financial and capital market and its participants.

892. According to the provisions contemplated under the Law, the FCMC shall have the following functions: to issue binding rules and take decisions setting out requirements for the functioning of financial and capital market participants; to control compliance with laws, regulations, rules and decisions adopted by the Commission; to set conformity requirement for financial and capital market participants and their officials; to establish the procedure for licensing and registration of financial and capital market participants; and to cooperate with foreign financial and capital market supervision authorities.

893. Under the new AML/CFT legal framework, almost all financial institutions have a designated supervisory authority. However, one inconsistency remains in the AML/CFT Law between the subjects defined as "*persons providing money collection services*" (Art.3(1), 8) and the defined supervisory and control authorities in the same law (Art. 45).

894. Shortly before the on-site 25 e-money institutions had been registered by the Bank of Latvia and subject to the Credit Institutions Law until April 30, 2011, and on the same day amendments to the Payment Institutions and E-Money Law came into force and the e-money institutions became subject to FCMC oversight, and the status of these entities changed from credit institutions to financial institutions. Since 2008, based on the Credit Institutions Law, these entities were subject to Bank of Latvia supervision. At the time of the on-site visit, the new amendments had entered into force, and these entities were beginning to be subject to the FCMC supervision.

895. Although Art.1 (7)) of the Law on Insurance Companies and Supervision thereof recognises *companies providing reinsurance*, the AML/CFT Law (Art.3) combined with (Art.45) does not cover these institutions for AML/CFT supervision purposes. As a consequence, it appears that the shortcoming revealed in the 3rd evaluation report with regard to the lack of a supervisory authority in case of re-insurance business for AML/CFT purposes, is still valid. However, it has to be said that the Latvian authorities confirmed to the evaluators that no companies providing reinsurance services are operating in the Latvian financial market.

896. In connection with the statutory powers of the supervisory authorities of the financial institutions for AML/CFT purposes it must also be underlined that in the State Joint Stock Company Latvia Post *Regulations for the Monitoring System of the Laundering of Proceeds from Criminal Activity and Financing of Terrorism*, approved in August 2010, (Pct.5.4.2) – (Pct.5.4.6) - "*Provision of cash collection services*" and "Provision of reinsurance services, except for the cases when the service provider has an appropriate licence and its activity is supervised or it has been granted an assessment in investment category by international rating agencies", are included in the commercial activities that shall be considered as having a high risk of the laundering of proceeds from criminal activity or financing of terrorism.

897. The FCMC has supervisory powers and responsibilities, in line with international standards including licensing, off-site supervision, on-site supervision, enforcement and access to all documents. The AML/CFT Law provides the legal duty of the supervisory authorities to perform inspections in order to assess the fulfilment of the requirements of the AML/CFT Law, take a decision to prepare an inspection statement and apply sanctions where violations are detected (Art.46 (1)).

898. The Bank of Latvia (BoL) is the competent supervisor in respect of the capital companies that have a licence issued by it for buying and selling cash foreign currency.

899. The BoL is the competent authority to issue licenses for the purchase and sale of foreign currency (as a commercial activity) to legal persons other than credit institutions (currency exchange companies) (Article 11 paragraph 1 of the Law on the BoL). The BoL has a mandate to assess compliance with its own regulations (Article 10 of the law on the BoL) and to monitor

and control compliance of the capital companies that have a license for buying and selling foreign currencies with the requirements of the AML/CFT Law. For compliance purposes, the BoL can conduct both on-site visits and perform off-site analysis (since 2010). Therefore, the Until 2010, the BoL was mainly performing its supervisory function through the on-site visits, effectiveness of its supervision was limited to the findings from on-sites.

900. To comply with the recommendations prescribed in the 3rd round MER, the Ministry of Transport has been designated as the AML/CFT regulator for the Latvian Post. In addition to the provisions contemplated under the Law on Post a *Regulation on order how postal operators provide postal payment system* has been issued. However, no guidance on key provisions and requirements of the AML/CFT Law are available.

901. In 2011 the Ministry of Transport issued Internal rules Nr.01-02/1 (03.01.2011) on "*Regulation on Supervision and Monitoring of State Joint Stock Company Latvijas Pasts in the Field of the Prevention of Laundering of Proceeds from Criminal Activity and Financing of Terrorism*".

902. To ensure the supervision of Latvijas Pasts, the MoT within its competence shall carry out the following activities: develop a temporary supervision and monitoring system for the supervision of Latvijas Pasts; perform inspections assessing the compliance of the internal monitoring system of the prevention of laundering of proceeds from criminal activity and financing of terrorism of Latvijas Pasts; monitor the measures for eliminating the violations detected during the inspections and report to the Office of the Prevention of Laundering of Proceeds Derived from Criminal Activity on the unusual and suspicious transactions. Also, the Regulation describes the inspection and monitoring procedures.

Recommendation 30 (all supervisory authorities) (rated LC in the 3rd round report)

Adequacy of Resources (c. 30.1); Professional Standards and Integrity (c. 30.2); Adequate Training (c. 30.3)

FCMC

903. The FCMC is established and operates under the requirements of the "*Law on Financial and Capital Market Commission*" since July 1, 2001. Section VII of the "*Law on Financial and Capital Market Commission*" describes the financing of the Commission providing that its shall be financed from payments of the participants of the financial and capital market made in the amounts specified by the Council and not exceeding the amount set by law.

904. With regard to the source of financing the FCMC activities it is to be noted that for the first time, in 2007, its activities were financed solely by payments from participants of the financial and capital markets. Until 2007, the activities performed by the FCMC were also financed by payments from the national State budget and from the Bank of Latvia.

905. The FCMC is governed by its Board, which consists of five members, including Chairman and Deputy Chairman.

906. There are 16 Divisions in FCMC and total staff is 111 employees. The Financial Integrity Division (FID) was established in 2006 within the Supervision Department, to deal with AML/CFT issues and to be responsible for overall supervision for this matter.

907. At the time of the on-site visit, the FID comprised four persons including the Head of Division.

908. Together with the FID, another 3 divisions (Bank and Institutional Investors Division, Financial Instrument Market Division and Insurance Division) are part of the Supervision Department. The FID employees have university or Master degrees in economics. All FID staff members are experienced experts in AML and come from the private sector and other public

institution. While the FID employs are both experienced and educated AML practitioners, given the future scope of duties, the resources are not commensurate with the responsibilities to provide regulatory oversight to the covered entities.

909. During the on-site interviews it resulted that there are certain requirements with regard to the hiring process of new staff, where FCMC evaluates the education, professional skills and previous work experience of the each candidate. Current employees improve their professionalism attending different types of courses.

910. To keep high integrity standards and confidentiality of employees, the FCMC has issued an internal code of ethics and internal rules of conduct. The staff turnover rate in 2009 was 3.6% while in 2010 it was 5,4%. The employees of the FCMC have legal responsibility which prohibits from disclosure of the information.

911. It is the evaluators' view that FCMC is adequately resourced in terms of the number of supervisory staff and budget for the level of activity undertaken at the time of the on-site visit.

912. The AML/CFT law prescribes that obligors should ensure training for staff under Article 6 paragraph 2.

913. Experts from FCMC took part in training courses as well as conferences that were provided in the area of AML/CFT in Latvia and abroad. It should be noted that after formation of the special unit dealing with AML/CFT issues training courses, seminars, conferences and other events providing training were attended by staff of this unit (FID).

Table 33: Training session attended by FCMC staff

Year	N	Topic of training	Provider of training	Venue of training	Duration of training	Number of staff
2006	1	A Comprehensive AML/CFT Training. A New Approach	World Bank	Cyprus	3 days	1
	2	Prevention of money laundering - a practical approach	ATTF	Luxembourg	10 days	1
	3	Recent tendencies in development of EU legislation Jaunākās attīstības tendences Eiropas Savienības tiesībās	Riga Graduate School of Law	Riga Graduate School of Law	1 day	1
2007	1	AML seminar for public authorities, financial market participants and FCMC employees	FCMC	Riga, Latvia	2 days	3
	2	Seminar on Workshop for Regulators on Internal Controls and On-site Inspections in Financial Institutions for AML/CFT	Joint Vienna Institution	Austria, Vienna	5 days	1
	3	Prevention of Money Laundering - a Practical Approach	ATTF	Luxembourg	10 days	1
	4	Association of Certified Anti-Money Laundering Specialists /conference	ACAMS	Netherlands	2 days	1
	5	International tax management & offshore taxation: shifting paradigms	Riga Graduate School of Law	Riga Graduate School of Law	2 days	1

	6	Experts Meeting on Money Laundering and Terrorist Financing Typologies	Council of Europe	Montenegro	3 days	1
	7	EU-US Workshop on Financial Sanctions to Combat Terrorism	Portugal MoF	Lisbon, Portugal	2 days	1
2008	1	Anti Money Laundering: the Role of Financial Institutions and Preparation for the ACAMS Exam	Association of Commercial Banks of Latvia	Association training centre	3 days	2
	2	6th Offshore Alert Financial Due Diligence Conference	Offshore Alert	USA	3 days	1
	3	Conference on public and private sector cooperation to combat terrorism	EDSO	Austria	2 days	1
	4	U.S. – Baltic Banking Conference on Combating Money Laundering and Terrorist Financing	Commercial bank Association of Lithuania	Lithuania	2 days	3
	5	Enforcement and Supervision of Anti-Money Laundering and Counter Terrorist Financing	BaFIN	Germany	2 days	1
	6	Experts Meeting on Money Laundering and Terrorist Financing Typologies	Council of Europe	Strasbourg, France	3 days	1
2009	1	Conference/ Anti-Money Laundering Countering the Financing of Terrorism (AML/CFT)	Commercial bank Association of Estonia	Tallinn, Estonia	2 days	2
	2	Experts Meeting on Money Laundering and Terrorist Financing Typologies	Council of Europe	Cyprus	3 days	1
2010	1	Regional Seminar on Anti-Money Laundering & Countering the Financing of Terrorism (AML/CFT) Current Issues and Integrity Supervision	ATML	Cyprus	3 days	1
	2	EU-US Workshop on Terrorism Finance	EU	Spain	1 day	1
	3	Anti money laundering and counter terrorism financing (enhanced programme)	Association of Commercial Banks of Latvia	Association Training Centre	3 days	1
	4	Financial Services Investigations and Enforcement 2010 /conference	FSI	United Kingdom	1 day	1

914. In case of the Ministry of Transport, no training has been provided by the Ministry to the Latvian Post. However, Latvian Post staff have participated in an annual seminar offered by the Association of Latvian Commercial Banks.

Bank of Latvia

915. The BoL Licensing Committee is comprised of five members. In addition, a total of six staff members have been assigned to carry out off-site and on-site inspections of currency exchange companies on behalf of the BoL including with respect to AML/CFT matters.

916. The BoL has internal procedures on hiring process of new staff, where the education, professional skills and previous work experience of the candidates is evaluated. For each position the BoL has approved a set of qualification requirements. Although there is no separate structural unit dealing with AML/CFT issues, for certain positions qualification requirements include knowledge of AML/CFT principles and legislation. However, the BoL failed to provide a copy of these procedures to the evaluation team upon request. In addition, the evaluation team had some concerns with regard to the adequate structuring of Bank of Latvia's supervision- while there is no specified unit, there are in practice BoL staff that monitor day-to-day compliance by obligors with the BoL recommendations.

917. The assessors are of the opinion that the BoL is adequately resourced, including appropriately skilled staff, to conduct its supervisory role in relation to the currency exchange companies.

Table 34: Training session attended by BoL staff

Year	N	Topic of training	Provider of training	Venue of training	Duration of training	Number of staff having participated in training
2006	1	Supervision of financial institutions in AML area	Deutsche Bundesbank	Frankfurt	5 days	1
	2	How to Combat Money Laundering, Financial Crime and the Abuse of Electronic Payments	Central Banking Publications Ltd	London	4 days	1
2007	1	Forthcoming changes to the AML legislation	Bank of Latvia	Riga	0.5 days	6
2008	1	AML typologies	FIU	Riga	0.5 days	6
	2	Changes to the AML legislation	FIU	Riga	2 days	1
	3	Combating Money Laundering, TF ad Misuse of Payment Systems: International Developments and National Perspectives	Bank of Italy	Rome	5 days	1
2009	1	Recommendations for Developing an Internal Control System	Bank of Latvia	Riga	0.5 days	6
	2	AML typologies	FIU	Riga	0.5 days	1
	3	AML/CTF Conference	US Treasury Dept. and Associations of Commercial Banks of the Baltic States	Tallinn	2 days	1
2012	1	Prevention of Laundering Proceeds from Criminal Activity	Association of Latvian Commercial Banks	Riga	4 days	1

	2	AML/CTF Conference	US Treasury Dept. and Associations of Commercial Banks of the Baltic States	Riga	2 days	2

Ministry of Transport

918. In relation to the Latvian Post, the supervisory function is performed by the Communications Department of the Ministry of Transport which has in 11 employees (including the head of the department) out of which 6 people are working within the Unit of Electronic Communications and Post and the remaining 4 in the Communications Development Unit.

Table 35: Training State Joint Stock Company Latvijas Pasts

Year	N	Topic of training	Provider of training	Venue of training	Duration of training	Number of staff
2008	1	Seminar The Prevention of Laundering the Proceeds from Criminal Activity and of Terrorist Financing	Association of Latvian Commercial Banks	Consultation and Training centre of the Association of Latvian Commercial Banks	1 day	1
2009	1	Seminar The Prevention of Laundering the Proceeds from Criminal Activity and of Terrorist Financing	Association of Latvian Commercial Banks	Consultation and Training centre of the Association of Latvian Commercial Banks	1 day	1
2010	1	Seminar The Prevention of Laundering the Proceeds from Criminal Activity and of Terrorist Financing	Association of Latvian Commercial Banks	Consultation and Training centre of the Association of Latvian Commercial Banks	1 day	1

919. In case of Ministry of Transport, based on the information provided to the evaluation team, there are no requirements for the professional skills and knowledge for AML purposes and there are only minimal fit-and-proper requirements with regard to hiring processes for new staff.

920. Departments and units of the Ministry of Transport are established for the performing the tasks provided by the regulations of The Cabinet Nr. 242 “Regulations of Ministry of Transport” (29.04.2003). The MoT is financed from the State budget and has no operational independence. There is no unit dealing with AML/CFT issues and no special staff positions dedicated to AML/CFT issues, and therefore there are no specific requirements for the professional skills and knowledge for AML purposes. Within the MoT, there are no appropriately skilled financial analysts for AML/CFT purposes. While every employee has a computer, there is no specialized software for AML/CFT purposes. Employees of the MoT are civil servants and they are appointed in accordance with the State Civil Service Law. The MoT staff is appointed in accordance with the tender procedure and candidates to civil service positions must comply with the specific requirements of professional skills and work experience in the transport or communication fields mentioned in the job description.

Authorities' powers and sanctions

Recommendation 29 (rated LC in the 3rd round report)

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1); Authority to Conduct AML/CFT Inspections by Supervisors (c. 29.2); Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1); Powers of Enforcement & Sanction (c. 29.4)

FCMC

921. The findings of the 3rd evaluation report related to the FCMC statutory power to examine the compliance of the financial institutions which operate under its supervision with the legislation issued by FCMC and with the secondary legislation accordingly, by performing on-site inspections and off-site analysis, are applicable.

922. The supervisory process starts by designing the annual on-site program (set up annually in January and revised in June) which is linked to the risk profile of each supervised institution as well as to the reaction of the institution on the measures set up by the FCMC in previous examinations, conducting the examination, at the end of the process a report of the examination being issued, where the institution has a statutory power to appeal against the findings.

923. The FCMC can perform full scope (including AML/CFT issues) or targeted inspections. The length of the inspections differs (depending upon scope of visit, severity of breaches identified during on-going monitoring and the risks the institutions face). Depending on the risk profile of a bank, the Supervision Department staff can take part in the Board of Directors meetings of banks.

924. The on-site supervision is complemented by the off-site analysis as an on-going process of monitoring the evolving risks that the supervised institutions identified. Through off-site supervision the FCMC assesses the appropriateness of the measures taken by the management of the entities in order to address the identified weaknesses and to meet the requirements.

925. Off-site monitoring is focused on quarterly risk analysis based on the assessment of the financial and prudential reports. Based on the output of this activity, the Board of FCMC decides on further supervisory actions and measures.

926. A benefit of the off-site analysis is the identification of the priorities connected to the scope of the on-site activity. Effective coordination and information sharing between the on-site and off-site functions is ensured in the supervision of banks and banking groups. The FCMC may rely on the internal auditors' work. The FCMC takes internal audit findings into account in supervision of the bank and in planning supervisory actions and measures required.

927. Taking into account results of both off-site and on-site supervision, the FCMC applies a range of supervisory measures and sanctions that are set forth in CIL (Articles 24-26, 27, 101^3, 113 and Chapter XV).

928. Due to the impact of the financial crisis, and the problems arising in the real estate market, in 2009 the FCMC increased the number of staff involved in the AML off-site analysis allowing the supervisory authority to quickly react to the identified risks.

929. Article 45 of the AML/CFT Law states that the compliance of the subject persons with the requirements of the AML/CFT Law shall be monitored and controlled by the FCMC in respect of credit institutions, insurance merchants that provide life insurance, private pension funds, life insurance intermediaries, investment brokerage firms, investment management companies and other providers of money transmission and remittance services.

930. It is a legal duty of the supervisory authorities to perform regular inspections to assess the compliance with the requirements of the AML/CFT Law, take a decision to prepare an inspection statement and apply sanctions where violations are detected.

931. According to Article 7 of the FCMC Law, when executing its functions, the FCMC shall have authority to issue regulations and take decisions governing activities of financial and capital market participants; request and receive information necessary for the execution of its functions from financial and capital market participants; set forth restrictions on the activities of financial and capital market participants; examine compliance of the activities of financial and capital market participants with the legislation, and regulations and decisions of the FCMC; and apply sanctions set forth by the regulatory requirement to financial and capital market participants and their officials in case said requirements are violated.

932. These prerogatives are further underlined by Art.47 (2) of the AML/CFT Law which states that FCMC is entitled to issue regulatory provisions in this field in order to support its activity, which are binding ones for the entities it supervises.

933. The supervisory statutory powers of the FCMC in respect of banks are shown in the table below and the correspondent act.

Table 36: FCMC statutory powers on banks

		Title of relevant act	Specific provisions of relevant act
1	Monitor and ensure compliance of obligor with AML/CFT requirements	AML/CFT Law	Art. 45, part 1, point 1
2	Conduct (on-site) inspections, including the review of policies, procedures, books and records, and sample testing	Credit Institution Law Law on the Financial and Capital Market Commission	Art. 101.3; 106(1); 112.12(2) Art. 7
3	Compel production of or to obtain access to all records, documents or information relevant to monitoring compliance	Credit Institution Law Law on the Financial and Capital Market Commission	Art. 8(1); 50.8 (6); 106(2) Art. 7
4	Take enforcement measures and impose sanctions for the failure to comply with or properly implement AML/CFT requirements on:		
4.1	Obligor	Credit Institution Law	Art. 198 (4)
4.2	Its directors or senior management	Credit Institution Law	Art. 24; 113(1)

Table 37: FCMC statutory powers on insurers

		Title of relevant act	Specific provisions of relevant act
1	Monitor and ensure compliance of obligor with AML/CFT requirements	AML/CFT Law	Article 45, part 1, point 1
2	Conduct (on-site) inspections, including the review of policies, procedures, books and records, and sample testing	Law on Insurance Companies and Supervision Thereof Law on the Financial and Capital Market Commission	Article 105 Article 7

3	Compel production of or to obtain access to all records, documents or information relevant to monitoring compliance	Law on Insurance Companies and Supervision Thereof Law on the Financial and Capital Market Commission	Article 51 and Article 104 Article 7
4	Take enforcement measures and impose sanctions for the failure to comply with or properly implement AML/CFT requirements on:		
4.1	Obligor	Law on Insurance Companies and Supervision Thereof	Article 109, Paragraph one
4.2	Its directors or senior management	Law on Insurance Companies and Supervision Thereof	Article 20, Paragraph three, Article 21, Paragraph two and Article 22, Paragraph two

Table 38: FCMC statutory powers on insuring intermediaries

		Title of relevant act	Specific provisions of relevant act
1	Monitor and ensure compliance of obligor with AML/CFT requirements	AML/CFT Law	Article 45, part 1, point 1
2	Conduct (on-site) inspections, including the review of policies, procedures, books and records, and sample testing	Activities of Insurance and Reinsurance Intermediaries Law	Section 41 Paragraph two
3	Compel production of or to obtain access to all records, documents or information relevant to monitoring compliance	Activities of Insurance and Reinsurance Intermediaries Law	Section 41 Paragraph one and two
4	Take enforcement measures and impose sanctions for the failure to comply with or properly implement AML/CFT requirements on:		
4.1	Obligor	Activities of Insurance and Reinsurance Intermediaries Law	Section 45, Paragraph one and two, Section 20, Paragraph three 2nd point, Section 11 Paragraph one 2nd point and Paragraph two 4th point, Paragraph three
4.2	Its directors or senior management	Activities of Insurance and Reinsurance Intermediaries Law	Section 20, Paragraph three 2nd point, Section 21 [1] Paragraph one 2nd point, Section 18 Paragraph one 3rd point, Paragraph two

Table 39: FCMC statutory powers on payment institutions and electronic money institutions

N		Title of relevant act	Specific provisions of relevant act
1	Monitor and ensure compliance of obligor with AML/CFT requirements	AML/CFT Law	Article 45, part 1, point 1
2	Conduct (on-site) inspections, including the review of policies, procedures, books and records, and sample testing	Payment services and electronic money law	Article 49
3	Compel production of or to obtain access to all records, documents or information relevant to monitoring compliance	Payment services and electronic money law	Article 48 and Article 49
4	Take enforcement measures and impose sanctions for the failure to comply with or properly implement AML/CFT requirements on:		
4.1	Obligor	Payment services and electronic money law	Article 56, part 1 and 2
4.2	Its directors or senior management	Payment services and electronic money law	Article 56, part 2, point 4; Article 20, part 3; Article 21, part 2.

934. In the case of the FCMC, the supervisory powers of enforcement and sanction against financial institutions are prescribed in article 7 of the Law "*On the Financial and Capital Market Commission*". According to the said Law, it has adequate powers of enforcement and sanction against the financial institutions it supervises.

935. In executing its duties, the FCMC is entitled among others to apply sanctions set out by the regulatory requirement to financial and capital market participants and their officials in case violations (Law on FCMC, Article. 7 (1)).

936. The FCMC has also the power to participate in the general meeting of financial and capital market participants to initiate convening of meetings of financial and capital market participants' management bodies, specify items for their agenda, and participate therein.

937. The Law on Credit Institution provides in Article 33 that FCMC has the right to remove from the institutions board or executive board its members for not being able to fulfil their duties including those in AML/CFT area. A similar right can be found in other sector laws, e.g., Law On Insurance Companies and Supervision Thereof Article 16, Law on the Investment Management Companies Article 84, Law On Payment Services and Electronic Money Article 25.

938. In order to better perform on-site inspections, the FCMC has developed an examination manual for on-site examiners, which describes the procedures for reviewing policies, procedures, books and records, and extend to sample testing in the area of AML.

939. At the end of the process a report of the examination being issued, where the institution has a statutory power to appeal against the findings.

Bank of Latvia

940. Based on the Article 47) of the AML/CFT Law, the BoL has similar powers over the entities under its supervision: to visit the premises of the currency exchange company; to request information related to the fulfilment of the requirements of the AML/CFT Law, to request to produce original documents, to get relevant explanations and perform activities to prevent or

reduce the possibility of money laundering or terrorist financing; to prepare statements evidencing the violations of the requirements of the Law and the facts related thereto; and to establish the deadline by which the currency exchange company shall remedy the detected violations of the requirements of this Law and control the fulfilment of the remedial measures.

941. Furthermore, the BoL Regulation (Section XII) lays down that the BoL may inspect a currency exchange company as to its compliance with the laws and regulations with regard to purchasing and selling cash foreign currencies. The inspection may be carried out at the registered address of the company, on the site for purchasing and selling cash foreign currencies, or remotely by checking the documents. The persons authorised by the BoL shall be entitled to request any documents or information related to the company's operation in purchasing and selling cash foreign currency and the company shall have an obligation to provide the documents and information requested by the authorised persons.

942. The BoL inspections include an examination of book records (cash register data) and as well as a review of the internal control system and the procedure for customer identification and detecting suspicious transactions.

943. According to the BoL Regulation the BoL is entitled to suspend (Section IX) for a limited period of time or revoke (Section X) the license granted for the buying and selling of foreign currencies if a currency exchange company fails to comply with the requirements set out in the laws and regulations, including the failure to comply with the requirements set out in the AML/CFT Law. The BoL has no powers to impose financial sanctions to supervised entities for failure to observe AML/CFT legal requirements.

944. During the on-site interviews, the evaluation team was advised that the on-site examinations were focused to assess the adequacy of internal control systems of the currency exchangers as well as on how the requirements of the AML/CFT framework are observed at the institution level.

Ministry of Transport

945. The same powers provided under Art.47 of the AML/CFT Law are applicable in case of the Ministry of Transport.

946. In practice, the Ministry of Transport has limited resources to fulfil its obligations as supervisory and control authority effectively for AML/CFT purposes. Its core functions are to elaborate state policy and legal acts regulating transport and communications sectors and coordinate its implementation.

947. The Ministry of Transport is an authority empowered to apply sanctions according to the Latvian Administrative Violations Code regional (city) and subsequently, court judges have a responsibility to decide upon the existence of violations. It is the assessors' understanding that the Ministry of Transport has no legal powers to apply financial sanctions or to withdraw licenses for failure to comply with AML/CFT requirements on Latvian Post, but they can ask to do so to entities empowered by law in this regard.

948. According to the AML/CFT Law (Article 46 paragraph 1.6) the MoT can propose that other competent authorities (which are empowered to apply sanctions according to the national laws) apply financial sanctions: Courts, State Revenue Service.

949. According to Section 213 of the Latvian Administrative Violations Code regional (city) court judges are empowered to impose sanctions for violations regulated in Section 1654 (Failure to report about unusual and suspicious financial transactions). According to Section 2151 sanctions prescribed for administrative offences regulated in Section 1657 (Violations of requirements towards client identification) and 1658 (Failure to comply with the procedure established for prevention of legalization of proceeds from crime and terrorist financing) are imposed by the State Revenue Service.

950. Based on discussion held on-site it appeared that the MoT has the right to issue written notices when breaches are identified, powers which have been used up to the date of the on-site visit. No delegation of duties in order to apply financial sanctions was exercised.

Effectiveness and efficiency (R. 23 [c. 23.1, c. 23.2]; R. 29, and R. 30 (all supervisors))

951. FCMC is the main prudential supervisory authority in Latvia and in this framework is directly responsible for the compliance of most of the financial sector and the application of the AML/CFT Law and regulations as well as other rules which may be laid down as a result thereof.

952. FCMC has the power to supervise and to apply sanctions in case of violation of the provision of the said Law, for: credit institutions, electronic money institutions, insurance merchants that provide life insurance, private pension funds, life insurance intermediaries, investment brokerage firms, investment management companies and payment institutions.

953. The Bank of Latvia is the competent supervisor in respect of the capital companies that have a licence issued by it for buying and selling cash foreign currency but effectiveness is diminished by the lack of powers to impose financial sanctions to supervised entities for failure to observe AML/CFT legal requirements.

954. The Ministry of Transport is the competent authority of compliance supervision for the Latvian Post. However, there is no sanctioning mechanism in place for the Ministry of Transport to assess the Latvian Post's compliance with the International Sanctions Law.

955. There are major differences among supervisory authorities in terms of statutory sanctioning prerogatives for AML/CFT purposes in the Latvian financial system.

956. While the FCMC is well regulated and equipped to assume and exercise its supervisory powers, the BoL can only suspend the licenses for a limited period of time or withdraw the license in case of major breaches of AML/CFT regulations (sanction which in practice has been exercised).

957. It appeared to the evaluators that the Ministry of Transport has limited resources (both in term of number of staff, statutory supervisory power and expertise) to fulfil obligations as supervisory and control authority effectively of the AML/CFT Law. The evaluation team was advised that the Ministry of Transport has put forward the proposal to amend the legislation in order to transfer the supervisory competences for SJSC "Latvijas Pasts" to the Financial and Capital Market Commission[28].

Recommendation 17 (rated PC in the 3rd round report)

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1); Range of Sanctions—Scope and Proportionality (c. 17.4)

958. The applicable laws in terms of AML/CFT sanctioning regime are:

- The Criminal Law (adopted by Saeima on June 17, 1998);
- Latvian Administrative Violations Code (adopted by Code (adopted by Supreme Council on December 7, 1984);
- Law on the Prevention of Laundering the Proceeds from Criminal Activity (Money Laundering) and of Terrorist Financing (adopted by Saeima on July 17, 2008);

[28] Since the time of the on-site, this proposal was withdrawn by the MOT.

- Sectoral laws, for example, Credit Institution Law (adopted by Saeima on October, 1995).

959. The sanctioning regime related to financial institutions in Latvia in case of non-compliance with AML/CFT legal framework consists in:

- criminal sanctions **(**Articles 195 and 195[1] of Criminal Law);
- administrative sanctions (Articles 165.[4], 165.[7]and 165.[8] of Latvian Administrative Violations Code);
- fines and other penalties applied to legal persons, according to sector specific Laws (Law On Credit Institutions, Law On Insurance Companies and Supervision Thereof-Art.109, Law On Payment Services and Electronic Money, Law on Investment Management Companies, Law On Activities of Insurance and Reinsurance Intermediaries, Reinsurance Law and Law on Financial Instruments Market)

960. According to Latvian legislation a natural person could also be subject to administrative or criminal liability for AML/CFT compliance failure.

961. The findings of the 3rd evaluation report highlighted that sanctions can be imposed under the Latvian Administrative Violations Code and, the Criminal Law is applicable as well in case of failure to comply with reporting and customer identification requirements.

962. General criminal sanctions are provided by Article 1951 of Criminal Law: Knowingly Providing False Information regarding Ownership of Resources "(*1) For a person who commits knowingly providing false information to a natural or legal person who is not a State institution and who is authorised by law to request information regarding transactions and the financial resources involved therein or the true owner of other property or the true beneficiary, the applicable sentence is custodial arrest or community service, or a fine not exceeding forty times the minimum monthly wage. (2) For a person who commits the same acts, if commission thereof is repeated, or by them harm is caused to the State or business, or to the rights and interests of other persons protected by law, the applicable sentence is deprivation of liberty for a term not exceeding three years, or a fine not exceeding one hundred times the minimum monthly wage*."

963. The general administrative sanctions are established by Articles 165.4,165.7and 165.8 of Latvian Administrative Violations Code:

Article 165[4]. Failure to report about unusual and suspicious financial transactions

"For failure to report to the Prevention of Money Laundering Unit about an unusual or suspicious financial transaction – a fine shall be imposed on the employee who is in charge of reporting from in the amount of up to two hundred fifty LVL."

Article 165[7]. Violations of requirements towards client identification

"For violation of the client identification or investigation requirements - a fine shall be imposed on individuals from a hundred to four hundred LVL, whereas on legal entities – from a hundred and fifty up to five hundred LVL."

Article 165[8]. Failure to comply with the procedure established for prevention of legalization of proceeds from crime and terrorist financing

"For failure to introduce an internal control system for prevention of legalization of proceeds from crime and terrorist financing – a fine shall be imposed on legal entities from a hundred up to five hundred LVL.

For failure to appoint employees in charge of prevention of legalization of proceeds from crime and terrorist financing – a fine shall be imposed on legal entities from a hundred up to five hundred LVL.

For failure to ensure anti-money laundering an anti-terrorist financing training of the employees – a fine shall be imposed on legal entities from a hundred up to five hundred LVL.

For failure to submit information referred to in anti-money laundering and anti-terrorist financing laws and regulations to the State Revenue Service within the set term – a fine shall be imposed upon individuals up to two hundred fifty LVL, whereas on legal entities – up to five hundred LVL."

964. The Latvian authorities explained that the sanctions are imposed on the basis of the type of a prohibited conduct taking into account the factual circumstances.

965. For the purposes of application the existing sanctioning regime FCMC has adopted Policy for Taking Prompt Corrective Measures and Imposing Sanctions on Banks and Credit Unions. The Latvian authorities stated that similar documents were issued for insurance and investment sector. These documents are in force since 2009 and have been reviewed once year.

Designation of Authority to Impose Sanctions (c. 17.2)

966. As described before the designation of the supervisory authority for AML/CFT purposes is provided by Article 45 of the Latvian AML/CFT Law.

967. According to Article 46 of the same Law, all supervisory and control authorities (FCMC, BoL and MoT for the financial sector) shall have the duty to perform regular inspections to assess the compliance of persons subject to the Law, take a decision to prepare an inspection statement and apply sanctions where violations are detected. Also, the designated authorities shall apply or urge other competent authorities to apply sanctions, as set out in other regulatory provisions, for the violation of such provisions and control the measures taken to remedy the violations.

FCMC

968. The FCMC enjoys the general authority under Art.7 of the FCMC Law to apply sanctions set forth by the regulatory requirement to financial and capital market participants and their officials in case said requirements are violated.

969. The Law "*On Credit Institutions*" (Section 198 part one point 4) provides that "*for activities as a result of which the requirements of the normative acts in anti money laundering and countering financing terrorist area have been violated, the Financial and Capital Market Commission shall impose a fine on the credit institution of from 5000 up to 100,000 LVL*".

970. The Law On Credit Institutions Section 199, states that: "*For other activities as a result of which violations have occurred of the requirements of this Law or of the regulatory enactments arising from it or directly applicable regulatory enactments issued by European Union institutions: the Financial and Capital Market Commission and the Bank of Latvia shall impose a fine up to 100,000 LVL on a legal person; and natural person shall be subject to administrative or criminal liability*." In addition, the FCMC has the legal right to withdraw a licence if a supervised financial institution fails to observe requirements of legislative acts (including the AML/CFT Law).

971. The Law On Insurance Companies and Supervision Thereof (Article 109) entitles the FCMC to impose a penalty on the insurers for not complying with the requirements of the AML/CFT Law "*if the requirements of... and of the Law on the Prevention of Laundering of Proceeds Derived from Criminal Activity and Terrorist Financing are not complied with, the Financial and Capital Market Commission has the right to impose on the insurer a penalty not exceeding 10,000 LVL*."

972. Insurance intermediaries can be punished under the Law On Activities of Insurance and Reinsurance Intermediaries. According to Article 46, part 1 of this law the Financial and Capital Market Commission has the right to impose on the insurer a penalty for failure to comply with AML/CFT requirements not exceeding 100,000 LVL.

973. Similar provisions are also contemplated under the Law on the Investment Management Companies, Law On Payment Services and Electronic Money and Law on Financial Instruments Market. Pursuant the Law on the Investment Management Companies (Article 87 section 12) and Financial Instruments Market (Article 148 section 12) penalty would be larger than 5,000 LVL and up to 100,000 LVL. In line with Law On Payment Services and Electronic Money (Article 56 section 2) penalty would be up to 100,000 LVL.

974. According to the provisions of the Law On Credit Institutions (Section 113), in addition to the sanctions described above, the FCMC is entitled to impose a range of other measures, both for legal entities as well as natural persons, as follows:

- to require that the credit institution without delay take the necessary steps to remedy such situation or submit its action plan to the Financial and Capital Market Commission by a set deadline;
- issue a warning to the credit institution;
- give credit institution supervisory institutions, their managers and members binding written instructions required to remedy such situation;
- establish restrictions on the rights and actions of the credit institution, including entirely or partially suspending the provision of financial services, as well as restrictions on fulfilment of obligations, except for the restrictions on fulfilment of obligations referred to in Sub-paragraph 5 of Paragraph hereof;
- impose upon the bank restrictions on execution of deposit liabilities (hereafter - decision to impose deposit restrictions);
- appoint to the credit institution one or more authorised persons from the Financial and Capital Market Commission (hereafter - decision on appointment of authorised person);
- impose upon the credit institution the responsibility of mitigating risk related to its transactions, services and settlement systems;
- remove from the institutions board or executive board its members for not being able to fulfil their duties including those in AML/CFT area.

975. With regard to the implementation in practice the above mentioned regime, based on the statistics provided, since last evaluation (2006) FCMC performed a number of examinations, full scope including AML/CFT compliance and targeted AML/CFT as follows:

Table 40: FCMC supervisory activity on banks

Year	Nr of FI visited	Nr of inspections	Nr of FI sanctioned	Value of fines (EUR)
2006	11 banks	13	4 banks	189.323
2007	11banks	15	5 banks	56.912
2008	7 banks	19 (banks, life insurance intermediaries, Investment service company)	2 banks	149.394
2009	8 banks	11	2 banks	85.368
2010	10 banks	14	3 banks	85.368

976. Article 15(1) of the EU Regulation 1781/2006 requires that Member States lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective,

proportionate and dissuasive. Article 15(3) of the EU Regulation requires that EU Member States appoint competent authorities to effectively monitor, and take necessary measures with a view to ensuring, compliance with the requirements of the Regulation.

977. The scope of AML/CFT supervision which is conducted by FCMC includes adequate controlling procedures in order to find out how financial institutions fulfil the requirements from EU Regulation 1781/2006. This controlling procedure involves a review of the internal policies, procedures and checking a sample of wire transfers as well.

978. In accordance with Article 199 of the Law on Credit Institutions, violations of regulatory enactments issued by the EU institutions, obligors could be sanctioned as follows: the Financial and Capital Market Commission and the Bank of Latvia shall impose a fine up to 100,000 LVL on a legal person; and a natural person shall be subject to administrative or criminal liability.

979. According to EU Regulation 1781/2006, member states should establish rules on penalties applicable to infringements of the provisions of this regulation. The Latvian authorities indicate that they rely on Article 199, and not a separate sanctioning regime in this regard.

Bank of Latvia

980. No changes since 3rd evaluation report have been noted with regard to the sanctioning powers of the BoL.

981. However, the findings related to its limited powers, mentioned at R 29 are applicable to the sanctioning regime, in the sense that according to the BoL Regulation, the BoL is entitled to suspend (Section IX) for a limited period of time or revoke (Section X) the license granted for the buying and selling of foreign currencies if a currency exchange company fails to comply with the requirements set out in the laws and regulations, including the failure to comply with the requirements set out in the AML/CFT Law. The BoL cannot impose financial sanctions.

982. With regard to the effectiveness of the sanctioning regime, it must be underlined that in order to improve it, starting with 2009 the number of visits was increased and since 2010, the BoL performs off-site analysis (23 in 2010). Also, in the period 2006-2010 6 licenses were withdrawn and in 9 cases the license has been suspended. It must be underlined that in the same period (2006-2010) the number of exchange offices decreased from 85 to 68 and as well the number of the locations from 199 to 136.

Table 41: Sanctions imposed by the BoL

	2006	2007	2008	2009	2010
Number of on-site inspections	101	118	88	81	87, incl. 12 in-depth inspections
Number of off-site inspections	–	–	–	–	23
AML/CFT violations					
Type of measure/sanction					
Written warnings	**11**	**6**	**3**	**9**	**10**
Decision not to impose sanctions due to immateriality or elimination of shortages				**8**	**9**
Withdrawal of license	**3**	**0**	**1**	**1**	**1**
Suspension of licence	**1**	**1**	**0**	**3**	**4**

Ministry of Transport

983. The Ministry of Transport is empowered to impose sanctions on the Latvian Post according to Article 46 of the AML/CFT Law. However at the time of the on-site visit the evaluators were told that this never happens in practice. According to the AML/CFT Law (Article 46 paragraph 1.6) the MoT can propose that other competent authorities apply sanctions - which are empowered to apply sanctions according to the national laws - Court, State Revenue Service).

984. However, in general, the Ministries have no powers and authority to impose any sanctions.

Other Financial Institutions

985. Article 3 (1) 8 of the AML/CFT Law defines persons providing money collecting services as an obligor to this law. This category of obligors does not have dedicated supervisory and control authorities as described under Article 45 of the said Law. In practice, there is no supervisory authority to impose sanctions on these entities under the AML/CFT Law.

986. In addition, while the AML/CFT Law does not include reinsurance as an obliged entity, the Reinsurance Law provides for such activity to be licensed and supervised by prudential purposes and does provide some AML/CFT controls, including a requirement to maintain internal AML/CFT procedures in order to obtain a license. Furthermore, the Reinsurance Law also provides for sanctions in case of violations of the AML/CFT Law by FCMC despite not being subject to the AML/CFT Law or subject to supervision by a dedicated supervisory authority.

987. Lastly, there are micro-credit lending services available through both banks and other firms licensed by the Consumer Rights Protection Centre. While when this financial service is provided through a bank, it would be subject to FCMC supervision, the other micro-lending services would not be covered by any designated supervisory authority. In practice, there is no supervisory authority to impose sanctions on these entities under the AML/CFT Law.

Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3)

988. As described in the tables provided for Recommendation 29, the FCMC can impose sanctions on directors and senior management of financial institutions under its supervision. No such sanctions have been imposed in practice.

989. Assessors noted that in respect of the *bureaux de change* only legal persons can be sanctioned, the directors and senior management not being covered in this respect).

990. The Ministry of Transport as state shareholder of SJSC Latvijas Pasts appoints the members of the board, evaluates their adequacy and can recall the members of the board, also can initiate to change persons of senior management.

991. Ministry of Transport is unable to impose other sanctions on natural persons.

Market entry

Recommendation 23 (rated LC in the 3rd round report)

Recommendation 23 (c. 23.3, c. 23.3.1, c. 23.5, c. 23.7, licensing/registration elements only)

Prevention of Criminals from Controlling Institutions, Fit and Proper Criteria (c. 23.3 & 23.3.1)

992. The legislative acts (Law on Credit Institutions, Law on the Financial Instruments Market, Law on the Investment Management Companies, Law On Payment Services and Electronic Money) regulating the licensing procedure of the credit and financial institutions in Latvia provide the necessary steps to prevent criminals and their associates from being involved in owning, controlling or managing the relevant institution. In this respect, the situation related to R

23.3 described in the third mutual evaluation report is applicable. In addition to above mentioned legislative acts, the FCMC has issued several regulatory acts providing requirements for the information needed for obtaining the license from the FCMC, as follows:

- Regulations on the Issue of Credit Institution and Credit Union Operating Licenses, Obtaining Permits Regulating the Operation of Credit Institutions and Credit Unions, Settlement of Documents and Provision of Information
- List of Information Required for the Notification of Acquisition or Increasing of a Qualifying Holding in a Credit Institution, Insurance Undertaking, Reinsurance Undertaking, Regulated Market Organiser, Investment Management Companies, Latvian Central Depository or Investment Firm
- Regulations for Obtaining Permits of the Financial and Capital Market Commission Regulating the Operation of Insurers and Foreign Reinsurers, for Making Notifications, Document Coordination and Providing Information (available in Latvian)
- Regulations on the Issue of Payment Institution Licences, Procedure for Payment Institution Registration and Submission of Documents and Information (available in Latvian)

993. The Law on Credit Institutions provides the necessary steps for licensing a credit institution. The FCMC Regulations for Obtaining Permits of the Financial and Capital Market Commission Regulating the Operation of Credit Institutions outlines the licensing procedure; the procedure for evaluation of the credit institution's officials. Accordingly, a credit institution may be founded in Latvia by a natural person who is of the age of majority and have the capacity to act, but who also has an unimpeachable reputation and free capital, as well as by legal person and by State and local government.

994. In evaluating a persons' reputation and free capital, the FCMC has the right to examine the identity, criminal record and documents, which will allow FCMC to be convinced regarding the sufficiency of free capital for the amount of investment made to the capital and reserves of the credit institution, as well as regarding the fact whether the invested funds have not been acquired in unusual or suspicious transactions.

995. The founders of a credit institution may not be natural persons, as well as legal persons to which founders (stockholders (shareholders)) and owners (actual beneficiaries), members of the board of directors or council of credit institution or financial institution, which has been recognised as insolvent during the period of fulfilling the relevant duties, or who have fulfilled the duties of a member of the board of directors or council of another commercial company and due to their negligence or intentionally have brought such commercial company to criminally convicted insolvency or bankruptcy.

996. The chairperson of the board of directors, the members of the board of directors, head of the internal audit service, company controller, head of a branch of a foreign credit institution, as well as such persons who in the name of the credit institution take essential decisions and create for the credit institution civil legal obligations, may not be persons:

- who have been convicted of the commission of an intentional crime, including bankruptcy in bad faith;
- who have been convicted of the intentional commission of a crime, even though released from serving the sentence because of a limitation period, clemency or amnesty; or
- against whom criminal proceedings for the intentional commission of a crime have been terminated due to a limitation period or amnesty.

997. The FCMC has the right to request additional information regarding such persons in order to evaluate their financial condition and reputation.

998. The insurance companies are licensed in accordance to the Law "On Insurance Companies and Supervision Thereof". The FCMC Regulations for Obtaining Permits of the Financial and Capital Market Commission Regulating the Operation of Insurers and Foreign Reinsurers, for

Making Notifications, Document Coordination and Providing Information outlines the licensing procedure; the procedure for evaluation of the companies officials.

999. A shareholder of a newly-established insurance company and a member of a newly-established mutual insurance cooperative society may be a natural person, a legal person or State or local government with an impeccable reputation and free assets at least in the amount of the full prospective investment (share or unit acquisition transaction).

1000. When assessing the reputation of a person and the availability of free assets, the FCMC is entitled to verify the identity and the record of conviction of the persons and the necessary documents regarding free assets which enable to ascertain the availability of free assets in the amount of investments made as well as to verifying whether the invested assets have not been acquired as a result of unusual and suspicious transactions.

1001. Similar provisions as in the case of the credit institutions in relation to another commercial company that by negligence or intentionally have been brought to criminally convicted insolvency or bankruptcy are provided for insurers.

1002. The FCMC has the right to verify the identity of shareholders of a newly-established insurance company and members of a newly-established mutual insurance cooperative society, but where the shareholders of the newly-established insurance company and members of the newly-established mutual insurance cooperative society are legal persons, information regarding their shareholders (members) and owners (actual beneficiaries) until ultimate owners (actual beneficiaries) – natural persons – are to be clarified. The said persons have a duty to provide the FCMC with this information if such information is not available in public registers wherefrom the Financial and Capital Market Commission is entitled to receive such information. Similar conditions apply for other financial institutions as well.

1003. The chairperson, members of the executive board, the head of the internal audit (inspection) service (company controller) and chief actuary of an insurance company, the manager and chief actuary of a branch of a non-Member State insurer, as well as a person who, when taking essential decisions on behalf of the insurance company or the branch of the non-Member State insurer, causes civil liabilities for an insurance company or a branch of a non-Member State insurer may not be a person who:

- has been convicted of committing an intentional a criminal offence, also of reckless bankruptcy;
- has been convicted of committing an intentional criminal offence, although the person has been released from serving the sentence because of a limitation period, clemency or amnesty;
- against whom the criminal case initiated regarding the committing of an intentional criminal offence has been terminated due to a limitation period or amnesty;
- has been held to criminal liability for committing an intentional criminal offence, but the criminal matter against him or her has been terminated on the basis of non-rehabilitation.

1004. According to the Law on Insurance Companies and Supervision Thereof FCMC is entitled not to issue a licence if one or more of the natural persons do not comply with the requirements prescribed by law, if the FCMC determines that the financial resources invested in the share capital have been acquired through unusual or suspicious transactions, or the legal acquisition of such financial resources has not been proved documentarily or if it is impossible to ascertain the identity, impeccable reputation of the applicant's shareholders (members) and their owners (actual beneficiaries). Similar conditions apply for other financial institutions as well.

1005. To receive a licence for the provision of investment services and ancillary (non-core) investment services, the investment firm is obliged to submit to the FCMC an application wherein it lists the investment services and ancillary (non-core) investment services it intends to provide and the documents referred to in Article 107 of the Law on the Financial Instruments Market.

1006. An investment brokerage firm shall submit documents along with the application to identify the members of its executive board or council (name, surname, identity number or year and date of birth, citizenship) together with certificates demonstrating education (academic degree) and professional training and information on the criminal record if any and other information stated in Article 107 (4) of the Law of Financial Instrument Market. Article 106 of the Law on the Financial Instruments Market describes the criteria for board and council members and owners.

1007. In order to obtain a licence, an investment management company needs to submit to the FCMC an application for receipt of a licence. The application is supposed to be accompanied by the information and documents referred to in Section 10 of the Law on the Investment Management Companies including a document certifying the initial capital payment; a list of the shareholders of the company and information on the shareholders as follows:

- regarding natural persons – a copy of the passport or another identity document, indicating personal identification data [name, surname, year and date of birth, identity number (if any)],
- regarding legal persons – the firm name, registered office, registration number and place. Legal persons registered abroad shall submit also copies of registration documents,
- documents certifying the existence and origin of financial resources of the company's shareholders (who have a qualifying holding in the company) in order that they may make investments in the company's capital;
    - information regarding owners of the company's shareholders (who have a qualifying holding in the company) ultimate beneficial owners on whom information shall be provided in compliance with Sub-clause a) of this Clause).

1008. Documents and information regarding the company's supervisory board members and officials shall be also submitted to the FCMC including whether he/she has ever been convicted and whether he/she has ever been deprived of the right to engage in business. Article 9 of the Law on the Investment Management Companies describes the criteria for board members and officials of the company.

1009. The FCMC is entitled to request the company to update the submitted documents and information.

1010. "*Fit and proper*" criteria are also applicable to directors and senior management of credit institutions, in accordance with the Law on Credit institutions. Similar conditions are set up in Law on the Financial Instruments Market, Law on the Investment Management Companies, Law On Payment Services and Electronic Money, Law On Insurance Companies and Supervision Thereof, Reinsurance Law, Activities of Insurance and Reinsurance Intermediaries Law.

1011. With regard to the measures taken by the BoL in order to prevent criminals from owning or holding management functions of the *bureaux de change*, (Article 26) of the BoL Regulation sets out the requirements to be met by an applicant for a license for purchasing and selling cash foreign currencies and by a licensed capital company (currency exchange companies).

1012. The said Regulation includes conditions related to the reputation of the capital company, of the participant of the capital company down to a natural person who has acquired, directly or indirectly, a qualifying holding representing 10% or more of the capital company's share capital, a representative of the executive bodies or of the proxy (to have no criminal record, or the criminal record has been expunged or sealed).

1013. Additionally, the participant of a capital company down to a natural person having a qualifying holding in the company, a representative of the executive bodies or a proxy must have not been subject to sanctions for administrative offence committed in business activities twice during the last year nor has been prohibited from conducting business activities.

1014. Currency exchange companies have to submit to the BoL certifications disclosing the criminal and administrative records on the persons mentioned above that have been issued by the Offences Register and an equivalent authority of the country where the company is incorporated.

1015. Prior to changing a participant having a qualifying holding in the currency exchange company, a representative of the executive bodies or a proxy, an approval shall be obtained from the Licensing Committee of the Bank of Latvia (BoL Regulation, Article 52).

1016. In May 2009 the BoL adopted a new version of "*Regulation for Purchasing and Selling Cash Foreign Currencies*". This regulation outlines the procedure establishing how the BoL shall issue, re-register, rewrite, suspend and revoke licenses for purchasing and selling cash foreign currencies; the requirements for capital companies purchasing and selling cash foreign currencies; the procedure for carrying out control of the licensed capital companies; the operational procedures for the BoL Licensing Committee.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5)

1017. A payment institution is a commercial company providing payment services as stated in Article 1, part one of the Law On Payment Services and Electronic Money (entered into force in April 2011) which has received a FCMC licence for payment institution operations, or a person (natural or legal) that does not require a licence but that has informed the FCMC about starting its operations.

1018. A payment institution may not need a FCMC licence and may launch its operations after it has been entered in the Commercial Register and informed FCMC in writing about the planned start of operations and the following requirements have been met:

1) the payment institution, or the agent under its full responsibility, average payment amount made in the last 12 months or in the future 12 months as stated in its business plan would not exceed three million euro per month;

2) no person of the payment institution has been convicted for money laundering or terrorist financing, or other economic crime.

1019. In order to obtain a licence for payment services operations, a candidate company shall submit to the FCMC an application for receipt of a licence which shall be accompanied by information on payment institution board and council members, persons entitled to make significant decisions in the name of institution, create civil liability for payment institution, as well as on persons directly responsible for management of the payment services operations of the payment institution, proving their good reputation and proving that they have not been deprived of the right to engage in commercial activities.

1020. In the process of the evaluation the FCMC shall consider the reputation of the person and compliance with the requirements of the shareholders of the payment institution and the reputation and professional experience of the person that shall be managing the operations of the payment institution after the planned interest is obtained.

1021. Due to the recent adoption of the Law assessing effectiveness was difficult. But the licensing procedure and the criteria for board and council members and shareholders are the same for financial institutions (credit institutions, insurance companies, investment brokerage companies, investment management companies) where that framework has been applied for a long time.

1022. As described above, the BoL is the competent authority to issue licenses for the purchase and sale of foreign currency (as a commercial activity) to legal persons other than credit institutions (currency exchange companies) (Article 11 paragraph 1 of the Law on the BoL). The BoL has a mandate to assess compliance with its own regulations (Article 10 of the law on the BoL) and to monitor and control compliance of the capital companies that have a license for buying and selling foreign currencies with the requirements of the AML/CFT Law.

Licensing of other Financial Institutions (c. 23.7)

1023. Article 3 (1) 8 defines persons providing money collecting services as an obligor to this law. However, this category of obligors does not have dedicated supervisory and control authorities as described under Article 45 of the said Law. Authorities indicated that these firms would be licensed by the Ministry of the Interior

1024. In addition, while the AML/CFT Law does not include reinsurance as an obliged entity, the Reinsurance Law provide for such activity to be licensed and supervised by prudential purposes and does provide some AML/CFT controls, including a requirement to maintain internal AML/CFT procedures in order to obtain a license.

1025. Lastly, there are micro-credit lending services available through both banks and other firms. For the entities not covered by the FCMC, they are licensed by the Consumer Rights Protection Centre.

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); Statistics on On-Site Examinations (c. 32.2(d))

1026. The findings on this Rec. of the 3rd round report are still valid in case of the FCMC and the BoL related to their powers to collect and analyze information on the supervised entities and to publish it.

1027. Financial institutions subject to Core Principles are subject to licensing and ongoing supervision of the FCMC. Supervisory duties also apply to AML/CFT matters. The Law on Credit Institutions contains the regulatory and supervisory measures that apply for prudential purposes and which are also relevant to money laundering. Information provided in 23.1., 23.2., 23.3., 23.3.1. is also applicable.

1028. In the case of the FCMC, statistics maintained refers to number of inspection, type of supervised entities, scope of examination, sanctions imposed/measures applied. (see table under Recommendation 17)

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6)

1029. The BoL Regulation (Section XII) lies down that the BoL may inspect a currency exchange company as to its compliance with the laws and regulations with regard to purchasing and selling cash foreign currencies. The inspection may be carried out at the registered address of the company, on the site for purchasing and selling cash foreign currencies, or remotely by checking the documents. The persons authorised by the BoL shall be entitled to request any documents or information related to the company's operation in purchasing and selling cash foreign currency, and the company shall have an obligation to provide the documents and information requested by the authorised persons.

1030. The BoL inspections include examination of books and records (cash register data) and also a review of the internal control system and the procedure for customer identification and detecting suspicious transactions. The chart under Recommendation 17.2 describes the on-going supervision and AML/CFT violations detected by the by the BoL.

1031. The activities of the money transfer service providers (payment institutions) are regulated by the Law on Payment Services and Electronic Money. All such entities are licensed or registered by the FCMC.

1032. A payment institution is commercial company providing services under the requirements of Article 1 part one of the Law on Payment Services and Electronic Money and has obtained from the FCMC payment institution licence. It can also be a person (legal or natural) that has notified FCMC about initiating activity of payment institution activities where there is no need to acquire a licence. Under Article 5 (3) of the Law on Payment Services and Electronic Money, the FCMC shall assess compliance with the required conditions to be a payment services company.

1033. Based on the interviews with the representatives of the Latvian authorities the payment services are only registered with the FCMC, but no on-site examinations have yet been performed. Great emphasis in the process of monitoring this activity is put on the bank. To date no sanctions were applied in connection to AML/CFT for this particular services performed by FCMC Further explanations can be found under section 3.9.1.

1034. In addition, regarding money remitters, it must be underlined that the Latvian Post and some banking institutions operate money value transfer system (MVTs) as a supplementary service for their customers.

1035. Since the last mutual evaluation report, the Ministry of Transport has been designated as the AML/CFT supervisor for the Latvian Post in its capacity as an MVT, while the FCMC regulates bank-based MVTs. The FCMC maintain a list of operators on their website.

1036. However, it is unclear for the evaluators if a list of agents is registered with both regulators. The MVT services in the Post and banks are guided in respect of AML/CFT issues by either the international MVT parent, or by lateral agreement with adaptations for Latvian Law, where it is more stringent. These operations seem to be in line with FATF standards, although some discrepancies were identified.

1037. Latvia Post has licence P10042/2 of postal operator to provide services described in Postal law and other normative documents.

1038. According to Article 8 “Client Transaction Monitoring” of the State Joint Stock Company Latvia Post Regulations for the Monitoring System of the Laundering of Proceeds from Criminal Activity and Financing of Terrorism, internal Control System is developed and internal procedures of Latvia Post are set out.

1039. The electronic money institutions services (Art.1 (7)) were registered by the Bank of Latvia until just before the on-site visit, however no supervision had been undertaken in practice from 2008 until April 30, 2011. At the time of the on-site visit, the FCMC was just beginning to implement its supervision of these institutions since April 30, 2011.

Supervision of other Financial Institutions (c. 23.7)

1040. Article 3 (1) 8 defines persons providing money collecting services as an obligor to this law. However, this category of obligors does not have a dedicated supervisory and control authorities as described under Article 45 of the said Law.

1041. In addition, while the AML/CFT Law does not include reinsurance as an obliged entity, the Reinsurance Law provides for such activity to be licensed and supervised by prudential purposes and does provide some AML/CFT controls. It is not supervised by the FCMC.

1042. Lastly, there are micro-credit lending services available through both banks and other firms licensed by the Consumer Rights Protection Centre. While when this financial service is provided through a bank, it would be subject to FCMC supervision, the other micro-lending services would not be covered by any designated supervisory authority.

Statistics on On-Site Examinations (c. 32.2(d), all supervisors)

1043. Comprehensive and detailed statistics on on-site examination as well as on the results hereof are dully maintained by the FCMC.

1044. The statistics for financial institutions supervised by FCMC are broken-up on category of such intermediaries (securities intermediaries, MTS, etc.) and reflect the findings of every control performed.

1045. Statistics on on-site supervision on bureaux de change are maintained by the BoL.

1046. During the period of 2006-2010 one on-site inspection was performed by the MoT.

Table 42: Statistics on MoT AML/CFT inspections of Latvian Post

Year	No. of on-site inspections	No. of off-site inspections	No. of Inspection staff involved	Reference to the legislative provision [3]	Sanctions imposed (other than pecuniary sanctions)	Pecuniary sanctions imposed (EUR)
2006	Not required	Not required	-	-	-	-
2007	Not required	Not required	-	-	-	-
2008	1	-	2	AML (1998) Article 2, 11	Written warnings and instruction to ensure compliance with legal acts	
2009	0	1	1	-	-	-
2010	0	1	1	-	-	-

Statistics on Formal Requests for Assistance (c. 32.2(d), all supervisors)

1047. The FCMC maintains to keeps statistics on requests for assistance.

- In 2006 for information exchange purposes FCMC received one letter from central Bank of Cyprus and sent two information requests to the supervisory authorities in Cyprus and Danish FSA.
- In 2007 for information exchange purposes FCMC received two letters from foreign supervisory authorities — one from Switzerland and the other from Ireland and sent information requests to the supervisory authority in Switzerland, Ireland and Russia.
- In 2008 for information exchange purposes FCMC received two letters from foreign supervisory authorities — one from Germany and the other from the USA — and sent two information requests to the supervisory authority of Estonia.
- In 2009 for information exchange purposes FCMC received 11 letters from foreign supervisory authorities – three from Russia, three from USA and five from other countries (France, Kazakhstan, Panama a.o). Five information requests were sent to supervisory authorities in USA (three) and other countries.
- In 2010 for information exchange purposes FCMC received four letters from foreign supervisory authorities – three from Russia, one from USA and one from Estonia. Four

information requests were sent to supervisory authorities in Switzerland, Cyprus, Estonia and Lithuania (one to each country).

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])

1048. Legislative acts regulating licensing of the credit and financial institutions under FCMC supervision provide the effective requirements to prevent criminals and their associates from being involved in owning, controlling or managing the relevant institution.

1049. Requirements in this field can be found in the regulatory framework governing the BoL authorisation process and supervision of regulated entities.

1050. With regard to the sanctioning regime, the statutory powers differs among supervisory authorities as well as which kind of sanctions that may be applied to the regulated entities. While the FCMC enjoy full sanctioning powers, the BoL cannot apply financial sanctions and the MoT has only the right to issue warning notices.

1051. The full effectiveness of the sanctioning regime is questionable: the BoL cannot apply financial sanctions, the sanctioning powers of the MoT are missing, while FCMC did not impose sanctions on directors and management of the financial institutions under its supervision.

1052. According to the AML/CFT Law (Article 46 paragraph 1.6) the MoT can propose that other competent authorities apply sanctions - which are empowered to apply sanctions according to the national laws - Court, State Revenue Service.

1053. The evaluators are of the opinion that the level of financial fines applied by the FCMC seems not to be fully proportionate and dissuasive.

1054. There are not comprehensive statistics on the off-site activity performed by FCMC.

1055. Until 2010, the BoL was mainly performing its supervisory function through the on-site visits, its effectiveness been correlated to this only way of conducting supervision.

1056. Taking into consideration the narrow statutory supervisory powers of the MoT and low capacity to performing supervisory tasks in practice (lack of expertise of personnel), its effectiveness as supervisor for Latvian Posts is questionable.

Guidelines

Recommendation 25 (c. 25.1 – guidance for financial institutions other than feedback on STR-s)

1057. The FCMC has issued Regulation for Enhanced Customer Due diligence (Regulation No.125/27 august 2008), which is binding to all supervised entities.

1058. No specific guidelines have been issued so far for financial institutions under FCMC supervision, except an advisory letter drawing financial institutions attention to the document prepared by The Committee of European Banking Supervisors (CEBS) on the "*Common understanding of the obligations imposed by European Regulation 1781/2006 on the information on the payer accompanying funds transfers to payment service providers of payees*" (published on 16.10.2008.). In addition to that, the FCMC provides guidance for applying several Articles of the EU Regulation.

1059. The BoL as a supervisory authority for foreign currency exchange offices has issued "*Recommendations to Capital Companies that Have Received a Licence Issued by the Bank of Latvia for Purchasing and Selling Cash Foreign Currencies for Developing an Internal Control System for the Prevention of Laundering the Proceeds from Criminal Activity (Money Laundering) and of Terrorist Financing*".

1060. These recommendations were adopted on May 13, 2009 and took effect on June 1, 2009. This document contains recommendations for currency exchange offices concerning establishing internal control system, identification of clients and their beneficiaries, PEP identification, reporting obligation, and describes risk-based approach for evaluating the AML/CFT risk of their clients.

1061. No guidelines on AML/CFT issues have been issued by the MoT.

Effectiveness and efficiency (R. 25)

1062. Steps have been taken by the Latvian authorities to provide guidelines to the financial institutions to assist them in complying with AML/CFT requirements. The FI are generally aware of their duties in relation to the AML/CFT Law.

1063. However, little guidance has been provided in relation to suspicion indicators both for ML/ and TF cases.

3.9.2. Recommendations and comments

Recommendation 23

1064. The Latvian authorities should consider designating a supervisory authority in respect of AML/CFT compliance empowered to impose sanctions for companies providing reinsurance.

1065. Latvian financial institutions report that they are closing accounts on a regular basis for clients where they are unable to complete CDD. The Latvian authorities are encouraged to conduct a risk assessment and to take action to ascertain whether this issue could impact the supervisory regime.

1066. Latvia should amend the AML/CFT Law to cover the reinsurance sector.

Recommendation 17

1067. Legal provisions should be amended in order to provide the BoL with adequate sanctioning powers over the natural persons.

1068. The range of sanctions under the BoL Act, should be broaden to become more effective, proportionate and dissuasive.

1069. The MoT should be invested with adequate legal sanctioning powers or the supervision of the Latvian Post as money remitter should be entrusted to FCMC.

Recommendation 25(c. 25.1 [Financial institutions])

1070. The Latvian authorities should draft and approve dedicated guidelines which should include description of sector specific ML/FT techniques and methods and any additional measures that financial institutions and DNFBP should take to ensure that their AML/CFT measures are effective.

1071. Guidance on suspicion grounds including red flags and indicators for ML and FT related reports are highly recommended to improve reporting entities capacity to detect and report STRs.

1072. Insufficient feedback on FT cases.

Recommendation 29

1073. The Latvian authorities should amend legislation to provide adequate supervisory power to the MoT to monitor and ensure compliance of regulated entities with AML/CFT requirements or they should consider shifting the entire supervisory duties to the FCMC. Authorities should consider an appropriate regulator for the Latvian Post, as a Ministry is unable to impose sanctions. The Latvian authorities should reconsider the inherent conflict of interest between the MOT as a supervisor under Article 45 as well as a MOT is a significant shareholder of the Latvian Post

1074. The FCMC should enhance their on-site examinations on the insurance companies as in all of the 4 years analyzed; no deficiencies and no breaches in the AML/CFT field were identified on the sector.

Recommendation 30 (all supervisory authorities)

1075. The FCMC and the BoL appear to be fully equipped in terms of staff and other resources to adequately perform their supervisory powers. Having in mind the new supervisory activities and other financial institutions which might fall under the FCMC supervision, additional resources should be allocated.

1076. The assessment team is of the opinion that the MoT has limited expertise in applying the risk-based approach requirements which in the context of limited AML/CFT qualified human resources and low number of inspections negatively impacts on effectiveness.

Recommendation 32

1077. Comprehensive statistics are maintained by the Latvian authorities for the on-site supervisory activity. The evaluation team encourages the Latvian authorities to keep comprehensive statistics on off-site supervision as well.

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 BoL has no sanctioning powers over natural persons; range of sanctions under the BoL act are not effective, proportionate and dissuasive; • The MoT is not invested with adequate legal sanctioning powers; • No sanctioning regime for unsupervised financial institutions; • Limited effectiveness of the sanctioning regime (i.e. no sanctions on management of the supervised entities);
R.23	**LC**	• Reinsurance companies unsupervised for AML/CFT purposes Effectiveness issues: o The effectiveness of the AML/CFT supervisory activity is diminished by the uneven degree of application of AML/CFT requirements in some sectors (insurers, Latvian Post, bureaux de change) o Effectiveness of the e-money supervisory regime

		could not be assessed while their supervision was only implemented by FCMC in April 2011 o No financial sanctions applied to directors and board members of supervised entities
R.25	**LC**	• No FI sector specific guidelines on ML/FT techniques and methods • No specific guidelines on suspicion grounds including red flags and indicators (ML and TF)
R.29	**LC**	• Insufficient supervisory power of the MoT to monitor and ensure compliance of regulated entities with AML/CFT • Limited expertise and conflict of interest in applying the risk-based approach requirements by the MoT in the context of limited AML/CFT qualified human resources and low number of inspections (effectiveness issue) • Not enough emphasis of the FCMC AML/CFT supervision of the insurance sector (effectiveness issue)

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)

1078. During the 3rd round evaluation, the evaluators noted that remittance services were adequately monitored and supervised when they are provided by banks and electronic money institutions, although they recommended a closer review of Private Money. The IMF also recommended that the Post Office be subject to monitoring and supervision by a competent authority to ensure AML compliance of its money transfer business.

1079. Since the last Mutual Evaluation, the banks continue to be supervised by FCMC, and the Latvian Post has become subject to monitoring for AML/CFT by the Ministry of Transport. Thus, all MVTs are now subject to the AML/CFT Law.

1080. At the time of the 4th round on-site visit, the AML/CFT Law, Law on Payment Services and Electronic Money, FCMC Regulations on the Issue of Payment Institution Licences, Procedure for Payment Institution Registration and Submission of Documents and Information were regulating the alternative remittance systems.

Designation of registration or licensing authority (c. VI.1), adequacy of resources – MVT registration, licensing and supervisory authority (R. 30)

1081. As described in the third round report, money remitting services can only be operated by either the Latvian Post or financial/credit institutions. Those banks that do operate money value transfer systems (MVTs) do so as one of the financial services they provide.

1082. At the time of the on-site visit there were MVT services provided by MoneyGram through 4 banks and by Western Union through 3 banks.

1083. According to Article 1 of the AML/CFT Law, "other payment service provider" is a type of financial institution. According to Article 2, Section 2 of the Law on Payment Services and

Electronic Money, the postal operator credit institutions, electronic money institutions and payment institutions are payment service providers.

1084. All MVTs are supervised for AML/CFT purposes (Article 45, AML/CFT Law). The FCMC is listed as a Supervisory and Control Authorities for the financial institutions (payment service providers). Since the last mutual evaluation report, the Ministry of Transport (MOT) has been designated as the AML/CFT regulator for the State joint-stock company "Latvijas Pasts" (Post).

1085. The Latvian Post Office had 602 branches at the time of the on-site, with approximately 700 customer service agents providing MVT services. The Post Office offers an MVT service through two systems: Western Union and the Universal Postal Union (UPU) service.

1086. The UPU is an MVT service operating on bilateral bases with other postal administrations in the members of the same Union. Latvian Post has 22 agreements in place with other postal administrations.

1087. When the Post conducts a transaction through the Western Union, it is covered by the Law on Payment Services and Electronic Money as an "other payment service provider" whereas, when it conducts a transaction through the Universal Postal Union, it is not covered under the Law Payment Services and Electronic Money, but by the bilateral agreement, which has far less stringent controls.

1088. According to Article 4 of the Law on Payment Service and Electronic Money, an institution may commence operations only after it has been granted a license by the FCMC. Article 11 of the same law establishes the requirements for obtaining a license. In addition, according to Article 22, the Law on Post, a postal operator shall receive monetary funds from a customer (with or without opening a current account) and pay the sum of money to the recipient in cash or by deposit to the account of the recipient in accordance with the instructions of the customer (part 1) and payment services in the postal network shall be provided in accordance with the requirements of regulatory enactments in the field of payment services (part 4).

1089. According to the experts interviewed on-site, the Post Services' Western Union transfers are primarily incoming from Great Britain/Ireland and outgoing to Russia/Eurasia. The UPU services are generally the most diverse offering, including substantial payments to Africa, Central Asia, and Eurasia.

1090. While hawalas are not explicitly made illegal by law, all unregistered business is criminalised by Art. 207 of Criminal Law, which is described in section 1of the report.

1091. The evaluation team was not provided with an estimated annual volume of remittances to and from Latvia.

1092. The Latvian Post representatives indicated that most of its transfers are outbound, as the Post sends a significant number of social services payments, to include civil servant pay and pension payments. Over the past 5 years, the Post has conducted approximately 125,000-140,000 transactions per annum with a monthly average between 11 -20 Mln LVL (15-28 Million Euros).

1093. There have been reports of financial activity of illegal/unregistered remitters, which undermines effectiveness of the MVT legal regime. According to the FIU, the authorities are analyzing STRs concerning illegal remitters, i.e. clients without a license or registration with the register of enterprises. While there are no reports of hawalas operating in Latvia, there remains the possibility of unregistered money service businesses operating in the economy.

1094. As subjects to the AML/CFT Law under Article 2, the aforementioned comments on the strength and shortcomings of the CDD framework cited in section 3.1 apply also the MVT services provided by banks, as these products are treated as products offered by the banks and not separate from core financial services.

1095. MVT services provided through the Post Offices are regulated by the Postal Law, as well as by the Post Office's Internal Procedure for MVT. The Post Office's internal procedures provide for customer identification, controlling transactions, submitting CTRs/STRs, and FIU collaboration.

1096. The MoT Internal Rules 02/1 namely "Regulation on Supervision and monitoring of State Joint Stock Company Latvia Pasts in the Field of the Prevention of Laundering of Proceeds from Criminal Activity and Financing of Terrorism" provide additional guidance on AML/CFT controls to be applied by the Post.

1097. Article 3.1 of the Rules instructs the Ministry of Transport to develop a *temporary* supervision and monitoring system for the supervision of *Latvijas Pasts*. Article 5.5 of the Rules state that if an employee of the monitoring system knows or suspects that a transaction in a post is made on behalf of a third party, they are required to take appropriate measures, wherever practicable, to determine the beneficial owner, including requesting the client to submit a written information on the person on behalf of whom the transaction is made. According to provision 5.7 of the MOT internal rules, the Post also conducts business surveillance; however this is not further defined elsewhere.

1098. The experts met on-site indicated that they perform CDD regardless of the size of the transaction or whether it is recurring or not. The Post Office requires ID with its financial services products, including occasional ones, regardless of the size of transaction. According to the authorities, the Post office was the first MVT operator to require ID for occasional transactions in Latvia.

1099. The authorities note that they are required to keep records for 10 years, and that these records include payment orders, including sender and receiver information, as well as the point of sale records of the transaction but do not maintain copies of the identification documentation. The Latvian Post indicated that they maintain an adequate scope of records, except for customer ID documentation, for the appropriate length of time. When asked if they would complete a transaction where there are questions regarding the customer documentation, the Post indicates that they would refuse to conduct such a transaction.

1100. The MVT services in the Post and Bank are guided in respect of AML/CFT issues by either the international MVT parent (Western Union, Moneygram) or bilateral agreement with adaptations for Latvian law, where it is more stringent.

Monitoring MVT services operators (c. VI.3)

1101. Since 2008, the MoT has been designated for supervision, including off and on-site inspection of the Latvian Post. Before 2008, they Post was not subject to any AML/CFT supervision, as noted in the last MER.

1102. Authorities indicated that the Ministry of Transportation has a wide ambit of responsibility, and as such, the MOT's oversight of the Latvian Post is limited to reviewing the Post's internal rules of procedure, and some undefined sanctioning powers. The MOT has only conducted one on-site inspection of the Post in 2008 that found, insufficient control of transaction, non-actualized instruction on CDD procedures, and risks of cash operations.

1103. After written warnings and instruction to ensure compliance with legal acts performance of internal control system is improved, irregularities are eliminated, new procedures are approved. The recent inspection included a 2-person team to check back office business, including

recordkeeping and documentation. The result of this onside included an analysis provided to the post with identified deficiencies and action plan. The MOT also conducts off-site controls.

1104. According to the Article 105 of the Law on Payment Services and Electronic Money Institutions the Consumer Rights Protection Centre shall in accordance with the regulatory provisions monitor compliance with Chapters VII, VIII, IX, X, XI, XII, XIII and XIV hereof in respect of payment service users or electronic money holders that are deemed to be consumers in the meaning of the Consumer Rights Protection Law.

1105. FCMC responded that they have registered the MVT service operators, but they have yet to conduct any on-site examinations. The FCMC does include an examination of MVT service operators' procedures during their on-site examinations, but they are heavily reliant on the existing supervision of banks.

Lists of agents (c. VI.4)

1106. A list of MVT agents registered in Latvia is not maintained. The Latvian Postal authorities indicated that they do maintain list of customer service employees, i.e. all the possible agents, but these have not been sent to regulator (Ministry of Transport).

1107. Banks interviewed during the on-site visit confirmed that they have not been asked for lists of their agents to be sent to the regulator either. An MVT agent can begin servicing requests prior to notification to the FCMC, as the FCMC rarely, if ever, requests list of agents, according to interviews conducted during the on-site visit. According to the Law on Payment Services and Electronic Money in Article 10, operators of money value transfer systems register with the FCMC. However, in practice the Post has yet to do so.

Sanctions (applying c.17 – 1 – 17.4 & R. 17 (c. VI.5))

1108. The Law On Payment Services and Electronic Money in Article 56 part two requires that in all situations when payment services provider fail to comply with requirements of legislative acts of Latvia and those issued by FCMC or directly applicable acts of the European authorities FCMC is entitled to:

1) issue warning to payment institution;

2) apply restrictive measures to operations of the payment institution;

3) stop payment services providing operations in part or in whole;

4) issue grounded written statements to payment institution supervisory and executive bodies, as well as the managers and members of those bodies necessary to restrict or suspend payment institutions operations endangering or that could possibly endanger payment institution's stability, solvency or reputation;

5) apply fine up to 1,000 LVL.

1109. In addition, Articles 195 and 196 of the Criminal Law provides for sanctions, which have already been described in Section 3.8 above.

1110. No financial institution has been supervised or sanctioned for MVT related reasons.

1111. In respect of the Latvian Post, when the MOT detects a potential violation, they are limited to only written warnings, according to A.26 of the Postal Law. In 2008, the MoT imposed an administrative penalty/warning on the Post Office's management, which included a written warning of breaches identified by an on-site inspection team.

Adequacy of resources – MVT registration, licensing and supervisory authority (R. 30)

1112. The FCMC has 1 staff member dedicated to payment institution supervision.

1113. The MOT has only 147 employees in total, two of whom are dedicated for supervision of the Latvian Post as state shareholder of Latvian Post, which includes inter alia AML/CFT issues.

1114. There are no employees of the MoT who have dedicated AML/CFT tasks in their job description. There is no special unit dealing directly with AML/CFT issues, and no specialized personnel to oversee the Post for AML/CFT issues. Therefore, there are no requirements for the professional skills and knowledge for AML purposes.

1115. The Ministry of Transport has no special software or appropriately skilled staff in financial analysis. None of the MoT employees has responsibility for exclusively supervising the Post with regards to the AML/CFT law. The MOT indicated that they lack sufficient resources to fully control the institution; in particular there are insufficient resources to monitor the quality of STR and UTR reporting. The MoT does not provide any training to the Latvian Post, the Post is responsible for its own training.

1116. Based on the statistics provided to the assessors, one Latvian Post employee has participated in an annual training offered by the ALCB.

Additional elements – applying Best Practices paper for SR. VI (c. VI.6)

1117. Latvian Post and Ministry of Transport authorities indicated that no additional scrutiny is applied to agents, beyond the standard background check undertaken for civil servants.

1118. According to Section 7 of the State Civil Service Law, civil servants are subject to certain mandatory background checks, including an express exclusion for persons convicted for a deliberate criminal offense, or persons dismissed from a civil service position by a court judgment in a criminal matter.

1119. For those MVT services operating through banks, some level of background check is performed by the private sector, however authorities did not specific what these checks involve.

1120. The business addresses for all operators of MVT services are available in a limited/indirect extent. The FCMC's website lists the address of all banks and the 46 MVT operators; however, this information is not correlated, and no centralized list of operators can be found for the financial sector. Section 9 of the Postal Law requires Public Utilities Commission to create and maintain a register of postal operators that is publicly accessible. The Public Utilities Commission's website publishes list of the postal operators with their address.

Effectiveness and efficiency

1121. The evaluators welcome the adoption by the Latvian authorities of the new legal provision allowing for all money and value remitters to be regulated and supervised.

1122. Overall, there are indirect registration controls in place within Latvia. For operators, there is no distinct registration requirement for MVTs, but this is handled by larger financial and postal registration processes.

1123. Even though partial lists of registered operators exist with the two regulators (FCMC and Public Utilities Commission), given the commingling of MVT services with financial/credit institutions and postal services, it may be difficult for authorities to have a clear accounting of the number of agents.

1124. It is also unclear if payment institutions provide list of agents upon request, the authorities should ensure that more discrete records are kept with related to lists of agents.

1125. There is no unique, robust MVT supervision being carried out by regulators in Latvia.

1126. The FCMC is providing indirect supervision, as the FCMC is conducting its reviews of the financial market participants.

1127. The MOT appears to only monitor the activities of MVT operators under its remit.

1128. The FCMC admitted though that they are not uniquely scrutinizing the activities the MVT services provided by financial/credit institutions.

1129. During on-site interviews, Post officials noted that they do not to maintain all the required records (e.g. copies of identification documents) and they do not conduct customer identification verification in all circumstances.

1130. With regards to the AML/CFT controls in place in the Post compared to the banking system, the Post officials acknowledge more general weaker systems, however the limitation of only accepting the Lat, and not USD/EUR, hedges the risk overall for them.

1131. Given the significantly different answers provided by the Ministry of Transport and the Latvian Post on the number of Post Offices and potentially the number of employees offering MVT services, the level of supervision of operators and agents is questionable.

1132. Given that the MoT's rules for Postal supervision are temporary, there are some questions as to their effectiveness on longer term.

1133. There is no clear interdiction to provide MVT services in Latvian legislation and the evaluators were informed that several parallel, unregistered operators activate in Latvia which undermines the entire system

3.10.2 Recommendations and comments

1134. The Latvian authorities should maintain a consolidated and complete list of agents providing MVT services. The main operators indicated that they have never been asked for a list of designated agents by either the FCMC or Ministry of Transport.

1135. The Latvian authorities should ensure that the complete customer identification and verification mechanisms are in place within the Latvian Post, and that an adequate scope of records is maintained for the appropriate period.

1136. While the Ministry of Transport has been designated as the supervisory authority since the last mutual evaluation report, they are not empowered to issue binding regulations, and they do not appear to have the technical and the human resources and capacity to conduct an appropriate oversight on the Latvian Post. Authorities should reconsider the oversight mechanisms in place for the Latvian Post's MVT services, and consider transferring the Latvian Post's MVT services in to the FCMC obliged entities, or expanding the legal remit and resources of the Ministry of Transport to conduct supervision.

3.10.3 Compliance with Special Recommendations VI

	Rating	Summary of factors relevant
SR. VI	**PC**	• Lack of a consolidated list of agents. • Lack of complete customer verification and record keeping being conducted by the Latvian Post. • The MoT lacks effective supervisory powers, authorities and resources to supervise the Post.

4. PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

4.1. Customer due diligence and record-keeping (R.12)

(Applying R.5 to R.10)

4.1.1. Description and analysis

1137. Since the last Mutual Evaluation Report, there have been several major developments in the preventive measures for DNFBP. The amendments to the AML/CFT Law were brought into force in August 2008, which brought the two noted remaining categories of obliged entities into the AML/CFT regime, namely the independent lawyers and independent accountants, while expanding the existing AML/CFT requirements to the remaining obliged entities. Latvia has also designated the Ministry of Finance's State Revenue Service as a supervisory body for most DNFBP.

Recommendation 12 (rated PC in the 3rd round report)

1138. On the 3rd round MER, the evaluators noted that the preventive measures for designated non-financial businesses and professions were largely inadequate.

1139. The evaluation team observed that there was incomplete specification of the scope and detail of circumstances in which CDD is required; that PEP identification was not generally required; there was no requirement for DNFBP to monitor transactions for CDD compliance; there were no steps taken to implement CDD requirements on important segments of DNFBP (independent lawyers who are not Sworn Advocates, independent accountants who are not sworn auditors).

1140. Overall, the team noted that there was a lack of effective systems for monitoring and ensuring compliance with CDD requirements across most of the DNFBP sectors, as well as indications of gaps in CDD practices among DNFBP. The team recommended a comprehensive program of outreach to DNFBP sectors to raise awareness of CDD requirements and to introduce effective compliance practices.

1141. At the time of the 4th round report, DNFBP are subject to the AML/CFT Law and the requirements described under Recommendations 5, 6 and 8-11 apply also to non-financial sector.

Applying Recommendation 5(c. 12.1)

1142. According to the FATF Methodology, DNFBP should be required to comply with the requirements set out in Recommendation 5 (Criteria 5.1 – 5.18) for circumstances specific to casinos, real estate agents, dealers, lawyers, and trust and company service providers (TCSPs). DNFBP should especially comply with the CDD measures set out in Criteria 5.3 to 5.7 but may determine the extent of such measures on a risk sensitive basis depending on the type of customer, business relationship or transaction.

1143. Under Article 3 of the AML/CFT Law, DNFBP are included as obliged entities. In addition, a number of additional laws apply to several categories of DNFBP.

Casinos (Internet casinos / Land based casinos)

1144. Under Article 3 (1) of the AML/CFT Law, organisers of lotteries and gambling are covered entities. Article 45 (7) establishes that the Lotteries and Gambling Supervisory Inspection is responsible for the supervising the organisers of lotteries and gambling.

1145. The types of gambling activity licensed in Latvia include: automatic slot machine games; roulette (cylindrical game); games of cards; dices; bets; totalizator; bingo games; and interactive gambling. The Gambling and Lotteries Law further defines the scope of where these activities can be undertaken as a casino hall, a gambling hall or a bingo hall. In addition, the lottery, or games of chance by telephone, can be undertaken anywhere due to their nature. There have been instances of unlicensed gambling activity reported in the press.

1146. According to the authorities, there are 6 firms operating 16 casinos, which are mainly roulette and card tables. Of the 16 casinos, 7 are majority foreign-owned, 9 are majority Latvian owned. Foreign ownership is mainly from Austria, Cyprus, Estonia, Czech Republic, Peru, and neighbouring EU states.

1147. There are 330 gambling halls, which offer only gambling machines. In total, there are 8,000 gambling machines operating in Latvia.

1148. There is 1 state-run lottery, 1 company offering games of chance by telephone, which is a televised gambling program. 1 company operates a bingo hall.

1149. According to interviewed participants, the total turn-over for the sector is 134 Million EUR per annum, of which the lottery accounts for 10% of profits, and the remainder from gambling halls and casinos. In 2008, at the height of the sector, there were 16,000 machines, 500 halls, 17 casinos, with a turnover of 240 Million EUR.

1150. The Latvian authorities indicated that AML/CFT measures apply to all gambling organisers operating casinos, lotteries and gambling halls and all other kinds of gambling. According to Section 36 of the 2005 Latvian Gambling and Lotteries Law, a gambling organiser when selling or exchange 1000 Euros worth of funds (chips, counters, etc.) shall identify the person by name, identification number, date of issue for personal document, and name of the issuing authority for the document attesting the person. In practice AML/CFT measures apply to gambling organisers operating casinos, and less focus is placed on lotteries, and gambling halls and all other kinds of gambling.

1151. In addition, Section 39 of the Lotteries and Gambling Law provides for the procedure of registration of visitors of the casino establishing that the identity of all the visitors of the casino shall be checked, in order to prevent visits of under-aged persons and to avoid laundering of the proceeds obtained from crime. Visitors are registered upon every visit, and casinos are obliged to require persons to present their identity documents and record the following in the visitors' register: name and surname; identity number (persons to whom identity number is not issued, title, number, issuing date and name of issuing authority of the identity document); and date and time, when person entered into premises, where gambling is organised. In the case of reiterative visits, a casino offers a special casino visitor's card.

1152. The Cabinet of Ministers' Regulation 771, "Procedure for Registration of Casino Visitors and Processing of Information to be included in the Casino Visitors' Register" provides additional requirements for customer identification and recordkeeping.

1153. During the on-site visit, authorities and casino operators stated that CDD is applied irrespective of whether the customer will engage in financial transactions and regardless of amount of gambling chips purchases. The identification requirement occurs at the entrance of the casino, where a customer will present a state-issued identification card or passport for non-residents. The customer's information is entered into a database, and a photo is taken. The customer is issued a frequent customer card with a unique identifier number that is either plastic or paper, but it does not include a photo on the card. Customers are identified every time that they come to the casino based on the initial photo. There appear to be no mechanisms in place to conduct customer verification, and there are no requirements for verification of CDD by casinos.

1154. Once customers have entered the casino, they can engage in four types of transactions: purchasing/cashing out chips at a table, or purchasing/cashing out chips at a window (the cage).

Pay-outs occur either through cash or bank transfer. Upon cashing-out, customers are only identified if they receive more than 100 EUR, in which case a UTR is filed.

1155. There are no requirements for the registration of visitors in gambling halls (to include the non-live gaming area of casinos) or bingo halls. There are no registration requirements for the national lottery, and there are no registration requirements for games of chance by telephone.

Internet casinos

1156. The Lotteries and Gambling Law's Chapter VII provides for requirements on the organisation of gambling via electronic communication services. Section 43 specifies that the organisation of gambling via electronic communication services is considered an organisation of gambling where participants thereto in the game use or can use instrumentality of electronic communication services to complete some of the required operations.

1157. The types of gambling organised via electronic communication services via electronic communication services include: automatic slot machine games, roulette (cylindrical games), cards, dibs, bingo, totalisator, interactive games, and games of chance on the telephone, and totalisator.

1158. Authorities did indicate that they lack the authority to block illegal unlicensed internet gambling.

1159. There appear to be no specific requirements in place to cover identification for internet gambling.

1160. There are no Latvian-flagged ship-based casinos, however, there is one Swedish-licensed casino operating on an Estonian ferry, but casino operations are barred while in port.

Real estate agents

1161. The Latvian AML/CFT Law in Article 3 (1) (6) establishes that persons acting in the capacity of agents or intermediaries in real estate transactions are subject to the law. In addition, other legal or natural persons involved in trading real estate, acting as intermediaries in transactions or providers of services, where the payment is made in cash in LVL or another currency in the amount equivalent to or exceeding 15,000 EUR, are also subject to the AML/CFT Law.

1162. In fact the real estate intermediaries are mentioned twice in the Latvian AML/CFT Law. Once they seem to be obliged to apply CDD measures regardless of any threshold, the second time the Law provides for obligations in relation to AML/CFT matters only if the transaction is performed in cash and it is above the threshold of 15.000 EUR, thus, for any other instances, CDD measures are not compulsory.

1163. The two provisions create a gap for those involved in real estate transactions and create confusion in relation to the AML/CFT obligations in the industry.

1164. In one of the provisions Latvian legislation imposes a standard for reporting that limits the FATF recommendation in this regard, as transactions below 15,000 EUR and all non-cash transactions are not subject to CDD. Given that the average transaction is 40,000 EUR, this would limit the coverage for smaller properties. The law does not specifically apply to both purchaser and vendor dealers.

1165. The Latvian real estate market is highly fragmented. There are two Latvian real estate associations, although neither trade associations have the legal authority to monitor the activities of members. Although the professional associations have certification rights, these are not obligatory. Anyone can serve as a broker and there is no licensing system. The Commercial Law is silent in this regard, as there are no national regulations on real estate brokerage and no national standards on real estate transactions.

1166. According to the real estate agents interviewed by the assessment team, the majority of the transactions occur with no involvement of a professional broker.

1167. Regarding customer due diligence, the real estate agents met on-site seemed to be aware of the need for customer identification, but in practice they are reliant on other sectors to perform CDD and other obligations (financial institutions for transaction monitoring and notaries for customer identification).

1168. The real estate practitioners appeared not to have enough AML/CFT awareness. When asked about beneficial ownership, the agents indicated that they are reliant on the notaries to conduct those checks; however, notaries detailed the flawed system for beneficial ownership.

1169. The real estate agents indicated a sufficient level of understanding of record keeping requirements.

1170. The real estate agents appear also to acknowledge the money laundering threat posed by the Latvian Residency Law and indicated that there is continuous interest from non- residents to benefit from the above mentioned legal provisions. The agents noted that only 150 successful applications for residency permits had occurred under the law through the provisions described in Section 1.3.

Dealers in precious metals and dealers in precious stones

1171. According to the FATF Methodology, dealers in precious metals and dealers in precious stones should be covered by the AML/CFT Law when they engage in customers' transactions in cash, equal to or above USD/€ 15,000. Since the last mutual evaluation, the supervision of the dealers in precious metals and dealers in precious stones in Latvia has been transferred from the State Assay Inspectorate to the State Revenue Service.

1172. The Latvian AML/CFT Law in Article 3 (1) (9) does cover legal or natural persons when involved in trading precious metals or precious stones, where the payment is made in cash in the amount equivalent to or exceeding 15,000 EUR, whether the transaction is executed in a single operation or several linked operations.

1173. According to the professionals met during the on-site visit, dealers must sign a document stating that they are aware of the provisions of the AML/CFT Law, and that they acknowledge their have responsibilities to meet its requirements. The liability of this declaration is unclear.

1174. Within the Ministry of Finance, the Latvian Government has established the State Assay Inspectorate. This office is responsible for the development of the market of precious metals, precious stones and the products thereof, the protection of consumers' interests, and the support of fair competition and entrepreneurship. The major functions of the State Assay Inspectorate include the supervision of these dealers, quality assessments of the precious metals/alloys, registration of dealers in these products, and to perform certain control functions specified in the AML/CFT Law.

1175. According to the State Assay Inspectorate, there are 400 companies active as dealers in precious metals, and all are required to register. The authorities acknowledged that some unregistered businesses have been detected.

1176. At the time of the on-site visit, there were approximately 700,000 articles available for sale on the Latvian precious metals stones market: 400 kilos gold, 200 kilos silver, and 25-35,000 precious stones, equivalent to approximately 25 Million LVL.

1177. Interviewed market participants explained that most transactions are in cash (70%), and the rest is by bank transfer. Often, the more expensive items are paid via bank transfer. The average transaction is a few hundred LVL with the higher level transactions reaching 3,000 EUR. None of the interviewed industry representatives were aware of any transactions above 10,000 Euros in practice. Therefore, few transactions reach the FATF threshold.

1178. The dealers in precious metals and stones articulated a good understanding of customer due diligence and enhanced customer due diligence policies; although it appears that very few transactions meet the threshold for reporting. The companies that the team met with had an internal control system that provided policies for unusual transaction reporting, determining origin of customer's funds, determining beneficial ownership, and provided indicators for suspicious transactions.

1179. Some representatives indicated that if they failed to complete satisfactory CDD, they would refuse the deal, while others stated that they would still complete the deal with as much information that they could get.

1180. The requirements for dealers in precious metals and stones appear to meet the FATF requirements on CDD.

Lawyers, notaries and other independent legal professionals and accountants

1181. According to the FATF Methodology, Lawyers, notaries, other independent legal professionals and accountants are obliged entities when they prepare for or carry out transactions for a client in relation to 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.

1182. This particular category of DNFBP in Latvia has a wide number of entities operating with varying levels of AML/CFT procedures in place.

1183. Article 3 of the AML/CFT Law defines the scope of obliged entities in this area as: tax advisors, external accountants, sworn auditors, and commercial companies of sworn auditors regardless of the type of activity they are involved in. Other independent legal professions are also included when they engage in certain transactions: Sworn Notaries, Sworn Advocates, and other independent legal professionals. These transactions, including preparation thereof, includes: buying or selling of real estate, shares in the capital of a commercial company; managing a customer's money, financial instruments and other funds; opening or managing all kinds of accounts with credit institutions or financial institutions; and creating, managing or ensuring the operation of legal arrangements, making investments necessary for creating, managing or ensuring the operation of legal arrangements. These categories appear to meet the scope of the FATF requirement.

1184. Since the last mutual evaluation, Latvia has expanded the scope of DNFBP coverage to include two previously non-covered professions, independent accountants and independent advocates. Since the last mutual evaluation report, The Latvian Council of Sworn Notaries, the Latvian Council of Sworn Advocates and the Latvian Association of Certified Auditors have all been designated as supervisory and control authorities for their respective professions under the Article 45 of the AML/CFT Law.

Sworn Auditors

1185. In December 2010, the Latvian Association of Certified Auditors adopted guidelines on AML/CFT entitled, "*The Procedure of Implementing the Law on Preventing Money Laundering and Terrorist Financing*". These guidelines risk, customer identification /verification, unusual/suspicious transaction reporting, and recordkeeping.

1186. Auditors are required to be licensed, and the Association provides certificates to Sworn Auditors. The Auditors Association has issued procedures for AML/CFT that provide for customer identification, risk related to country risk and legal form, simplified due diligence, beneficial ownership, recordkeeping, and unusual/suspicious transaction reporting.

1187. The Guidelines provides the assistance for auditors on a risk assessment related to the customer's country of residency, legal form and operational or personal activities. On this basis, the scope of the customer due diligence shall be determined by the internal control system, which enables auditors to pay more attention to customers with a higher money laundering and terrorist financing risk, but less attention to the lower-risk cases.

1188. The representatives of the auditors met on the occasion of the on-site visit, indicated that for customer identification and verification purposes, auditors use the commercially available Lursoft database and other public information systems. In some instances, they also require the customer to submit additional information and documents.

1189. The auditors also indicated that the majority of their clients are legal persons, and they are reliant on the Enterprise Register for customer verification and legal person identification. Auditors are able to test a sample of transactions in advance before accepting a client. Currently, all firms with a turnover greater than ((712,000 EUR per year) per year are audited, however a new EU Directive will increase the threshold to 8million Euro per year, which will greatly impact effectiveness.

1190. Auditors indicated that there was a consistent money laundering threat from trade-related transactions associated with banks/financial institutions working with Russian investors. Market participants interviewed stated that the size of the grey economy has expanded with the financial crisis.

Independent Accountants

1191. The newly formed Association of Independent Accounting Services is comprised of 60 companies, in a market that includes over1800 companies. There is no licensing of independent accountants in Latvia.

1192. In accordance with the Cabinet of Ministers' Regulation No. 243, entitled Regulations on the Conduct and Organisation of Accounting and issued pursuant to Section 15 of the Law on Accounting, each accounting company has developed its own Methodology/Internal Control Systems. The most common types of transactions that the independent accounts monitor for reporting purposes are cash transactions over 15,000 LVL (approx 21,000 EUR) and non-cash transactions over 40,000 LVL (57,000 EUR).

1193. Given that most accountants' clients are small/medium-sized enterprises, and they are reviewing files where the transaction has already taken place and they are processing it one month later, it appears that adequate measures are in place.

Tax Advisors

1194. According to individuals interviewed during the on-site visit, there are 140 independent professionals, some of whom represent audit firms. All audit firms are members of the Tax Advisor Association. However, there are a number of independent tax advisors operating outside the association.

1195. The tax advisors are a new obliged entity, and AML/CFT Law's Article 3 is the only instance establishing the role of the tax advisor in Latvian legislation and regulation as there are no other requirements or guidance in law or regulation.

1196. There is no requirement for registration of tax advisors; however the association has begun an internal licensing program.

1197. To this purpose, the Association has established an Examination Commission, which is comprised of Ministry of Finance officials. Once the written tests are successfully passed, license is issued by the association, which is not required by law. However, given the lack of registration not all tax advisors operate within the AML/CFT regime.

1198. There are no sector-specific AML guidelines available, but the association has published a tax authority methodology.

1199. The tax advisors met by the assessment team during the on-site visit indicated that they do not engage in transactions about 10,000 LVL generally, and they are required to report transactions about 3,000 LVL. Most companies have no cash transactions. The most common clients are generally low risk legal persons, legal persons: auditors, advocates, banks, and other accounting companies. For CDD purposes the tax advisors are reliant on the Enterprise Register. With riskier clients, they attempt to determine legalized clients of documents, asking for group structure, and they will decline to accept a client if determined to be too high risk.

1200. Since the last mutual evaluation report, the Latvian Tax Advisors have made commendable gains in developing the AML/CFT knowledge of the membership through an informal licensing procedure. Without a specific licensing requirement and inclusion under Article 45 of the AML/CFT Law, there will be a gap with respect to this obligor in the Latvian AML/CFT regime.

Independent Lawyers, Sworn Advocates

1201. The Latvian Council of Sworn Advocates is an administrative, supervisory and executive institution of the Latvian Collegium of Sworn Advocates, which is an independent professional corporation of Latvian sworn advocates and which unites all sworn advocates practising in Latvia (about 1300).

1202. The Council of Sworn Advocates, which includes 9 members, is an administrative, supervisory and executive institution of the Latvian Collegium of Sworn Advocates, which is an independent professional corporation of Latvian sworn advocates and which unites all sworn advocates practising in Latvia composed of 1333 members and 11 advocates of EU member states. The Sworn Advocates promulgated an Instruction in December 2009 entitled, "*Procedure for performance a set of measures to ensure the fulfilment of requirements of the Law on the Prevention of Laundering of Proceeds from Criminal Activity and Financing of Terrorism*", which covers customer due diligence, customer identification, risk, and unusual/suspicious transaction reporting.

1203. The advocates indicated that most clients are EU citizens, so customer ID is done by EU identity card.

1204. For CDD and verification purposes, most law firms are able to draw upon an attorney network with international liaison partners to conduct additional scrutiny of foreign clients.

1205. When identifying and verifying, the advocates stated that they referenced registration documents, certificates of incorporation, as well as conducting additional due diligence research. While being obliged entities under the AML/CFT Law, Sworn Advocates are also governed by the Advocacy Law.

Sworn Notaries

1206. Sworn Notaries are covered only when engaging in certain types of transactions, as set out above.

1207. Sworn Notaries in the Republic of Latvia are persons belonging to the court system, who are assigned to regional courts and perform duties prescribed to them by law.

1208. The professional and corporate activities of Sworn Notaries are governed by the Notariate Law (Section 1 – 3 of the Notariate Law). According to Section 65 of the Notariate Law, a sworn notary has jurisdiction to: make notarial deeds; make certifications; accept money, securities and documents for bailment; conduct inheritance matters; draw up property division drafts in cases provided for by law; and perform other activities provided for by laws.

1209. In accordance with the section 66 of the Notariate Law, a sworn notary is permitted: to ensure the fixing of rights and security of rights in land registers; to secure permits, certificates and other documents required for the closure or fixing of deeds to be notarially made or certified, from State, local government and private institutions, as well as from officials and private persons; to draw up draft deeds, draft contracts and drafts of other documents related to the activity of a sworn notary, as well as make copies and translations; and to provide any other legal assistance.

1210. With respect to the types of actions that sworn notaries are performing with regards to contracts, they either may prepare a contract in a form of notarial deed or they can certify signatures on a contract. The main difference in these two actions is the liability of the sworn notary – in case of a notarial deed the sworn notary is responsible for the content of the contract whereas in case of the certification of signatures on the contract the sworn notary is responsible for identification of parties of the contract.

1211. The sworn notary is required by the Notariate Law to ascertain the identity of a person according to the passport. If the person referred to cannot present a passport, the sworn notary ascertains his or her identity according to identity documents which have been issued to the person in the State or local government service by his or her management or according to other reliable documents, if necessary supplementing the information lacking from the testimonies of two witnesses. The manner how the identity of a person was ascertained should be indicated in the deed or certification.

1212. The Law on Notaries Article 76 provides that if the Sworn Notary does not know the person for whom the deed or certifications is to be made or who must be identified for another purpose, he or she shall ascertain the identity of such person according to the passport or identity card. However, no time limit is given in this provision. If the person referred to cannot present a passport, the Sworn Notary shall ascertain his or her identity according to other reliable documents, if necessary supplementing the information lacking from the testimonies of two witnesses. The manner how the identity of a person was ascertained shall be indicated in the deed or certification. Witnesses who certify the identity of an unknown person to the sworn notary shall sign with their signature regarding criminal liability in respect of knowingly false testimony.

1213. To establish beneficial ownership, the Law on Notaries Article 83 Paragraph one provides that a sworn notary shall verify the identity, capacity to act and the right of representation of the participants of the notarial deed.

1214. In addition, the Council on Sworn Notaries has provided two guidelines to its membership: Procedure for Compliance of Sworn Notary with the Requirements of the Law on the Prevention of Laundering the Proceeds from Criminal Activity (Money Laundering) and of Terrorist Financing; and Regulation on the Reporting Procedure of Unusual and Suspicious Transaction.

1215. Notaries interviewed during the on-site visit revealed that they do conduct customer identification and verification of the parties for a contract that they are notarizing. When two parties agree to the transfer of real estate ownership rights, they draw up a contract, and then obtain a Request for the Land registry from a notary, and finally deposit both documents with the Office of the Land Registry. The contract concerning change of the ownership over a real estate has to be attached to request for corroboration according to Article 82 of the Law on Land registries. However, in practice the system has a shortcoming in that the notarization is detached from the contract in a separate document, the Request for the Land Registry. Therefore, two clients could come to a notary with pre-draft contract for transfer of real estate ownership rights, obtain the necessary notarization in a Request for the Land registry, and then change the conditions of the contract being presented to the notary, as neither the price of the contract nor the way of payment is indicated in the authenticated document Request for the Land Registry. The notaries met on-site clearly stated that this could lead to misuse of the contracts, concluded by parties in a private manner, only those concluded as notarial acts cannot become altered by

parties after notarization. Examples were given to the assessment team in relation to real estate contracts, where the document presented to the land registrar can be different from the document presented to a the notary for authorization of the separate document – Request for the Land registry.

1216. According to the Latvian authorities, judges of the Land registry in year 2010 have taken 99,274 decisions about change of the ownership over the real estate, whereas in year 2011 – 100,815. Only 0,34 % (346) in year 2010 and 0,3% (303) out of all these decisions have been challenged before the court. Importantly, that in case if a person cheats by attaching a new contract to the request of collaboration to the Land registry, the liability for such actions is determined by the Article 275 of the Criminal law. Besides that a person can voluntary choose to prepare a contract in a form of notarial deed.

Trust and company service providers

1217. Latvia does not have a separate profession of Trust and Company Service Providers; however, the Latvian AML/CFT regime captures these professions, as they are performed by other obliged entities, according to Article 3, legal arrangement and company service providers are obliged entities29. These services are defined as a legal or a natural person who provides the following services: assists in establishing a legal arrangement; acts as or arranges for another person to act as a director or a secretary of a merchant or other legal arrangement, a partner of a partnership or in a similar position; provides a registered office address, a correspondence address, a business address, and other similar services to a legal arrangement; acts or arranges for another person to act as a trustee in accordance with an express authorization or a similar legal document; or who represents or arranges for another person to represent a shareholder or a member of a commercial company whose financial instruments are not listed on a regulated market, and who is subject to disclosure requirements in conformity with the European Union legislative provisions or equivalent international standards.

Other Obliged Entities

1218. Latvia has also included additional professionals outside the FATF categories of designated non-financial businesses and professions, including the auto retail sector and State Inspection for Heritage Protection.

State Inspection for Heritage Protection

1219. According to Article 45 of the AML/CFT Law the State Inspection for Heritage Protection was included as a supervisory authority or transactions with the items included in the list of state protected cultural heritage monuments. As such, the State Inspection for Heritage Protection's promulgated Order No. 1/3 "*On Control Processing of Transactions involving Cultural Monuments*," provides the guidelines for recording transaction recording, grounds for submitting unusual transaction reporting, and suspicious transaction reporting. The Order also provides for records to be kept for 5 years.

1220. The State Inspection for Heritage Protection has a unique status in the AML/CFT area as they are reporting entity and supervisors in the same time. The State Inspection for Heritage Protection is currently cooperating with the Ministry of Interior to register antiquities and cultural monuments, which should help to identify and register these goods of significant value.

[29] Recommendation 34 was rated N/A under 3rd round report, so the team did not reassess it during the course of the fourth on-site visit.

Auto sector

1221. The auto sector is highly fragmented, and there are no formal guidelines or supervision governing these activities for AML/CFT purposes. There is a Latvian auto association, but it has no legal authority to monitor the activities of members.

1222. During the course of the on-site visit, interviewed parties discussed the threat from laundering both used and new automobiles. Given the potential scope of this money laundering activity, the lack of integration into the AML/CFT regime presents a unique money laundering threat.

Applying Recommendations 6

1223. For PEP customers, casinos do not appear to have access to databases in order to verify if a customer is a PEP, nor do they seem aware of the need for enhanced due diligence.

1224. Dealers in precious metals and precious stones recognise the need for enhanced due diligence in case of PEPs, and they have access to commercial databases in order to verify if a customer is a PEP.

1225. When asked about business with PEPs, the real estate sector indicated that they have no special controls in place.

1226. It is unclear if the notaries, advocates, accountants and legal professionals understand their obligations with respects to PEPs.

Applying Recommendation 8 (c. 12.2)

1227. The State Assay Inspectorate indicated that only a few dealers in precious metals and stones handle internet-based transactions. This side business usually accompanies a physical shop, and there are only 4-5 shops within Latvia.

1228. The notaries indicated that there are no on-line services available.

1229. Authorities indicated during the on-site visit that a significant vulnerability came from unlicensed internet sites offering internet gambling. The Latvian authorities were considering additional supervisory controls for internet games, including introduction for a new licensing regime, as well as the capability to block illegal gambling sites and block bank transactions for illegal internet gambling.

Applying Recommendation 9 (c. 12.2)

1230. Neither the dealers in precious metals & stones nor the real estate sector or casinos relay on foreign introduced business. There does not appear to be a high prevalence for foreign introduced business among notaries, advocates, accountants and legal professionals.

Applying Recommendation 10

1231. According to the AML/CFT Law the same requirements in terms of record keeping applicable for financial institutions concern equally the DNFBP.

1232. According to Section 36 of the Law on Lotteries and Gambling, obligors are required to keep the necessary documentation of visitor registration for at least five years. The register of casino visitors must be stored electronically and given to the Lotteries and Gambling Supervisory Inspection on a monthly basis. The supervisors ensure storage of this information for five years.

1233. On the occasion of the on-site visit, the assessors were advised that in practice, dealers in precious metals and precious stones maintain an adequate scope of records for a sufficient period of time.

1234. The Law on Notaries Article 58 provides that a Sworn Notary shall keep deeds, books, seals, files and valuables in a safe place and take care of the storage thereof in an undamaged condition.

1235. The Archives Law provides that the institution (Council of Sworn Notaries) has an obligation to co-ordinate record classification schemes of the National Archives of Latvia, time periods for storage of records, reference systems, as well as deeds regarding destruction of records prior to destruction of records. The Cabinet shall determine the procedures for public records and archives management in institutions, criteria for determination of the time period for record storage and technical requirements for record preservation in the archives of institutions (Article 4). The documents (deeds, books) referred to in Article 58 (Notariate law) are records of permanent retention (documents which shall be stored forever in accordance with the Law).

1236. The Law on Notaries Article 58 provides that a Sworn Notary shall keep deeds, books, seals, files and valuables in a safe place and take care of the storage thereof in an undamaged condition. The documents (deeds, books, seals) referred to in Article 58 (Notariate law) are records of permanent retention (documents which shall be stored forever in accordance with the Law). The Archives law classifies these documents and provides the schedule for submission to the national archives. For deeds, books, seals, these documents are submitted to the Archives at the conclusion of one's career. For Contracts, these are submitted to the Archives every 15 years.

1237. Auditors keep and hold identification and CDD documentation at least for five years after the termination of business relationship and present it during the quality control inspections to the LACA quality inspectors, upon their request.

1238. The FATF standard requires that obligors can be required by law to maintain records for at least five years following the termination of an account or business relationship, or longer if request by a competent authority in specific cases upon proper authority. While obliged entities can be asked to extend the period that they hold materials (records, account files, business correspondence) beyond 5 years, the Latvian legal regime restricts the maximum time period to 6 years, whereas the FATF standard requires five years or longer.

Effectiveness and efficiency

1239. Unregistered real estate dealers impairs the effectiveness of the overall AML/CFT regime.

1240. In terms of DNFBP supervision, the Ministry of Finance authorities are predominantly focused on casinos whereas, it is unclear the level of supervision over gambling houses and other games of chance. Given the large number of gambling houses and the availability of electronic games of chance, additional focus should be placed to ensure the appropriate risk is accounted for in supervising all forms of gambling.

1241. The decoupling of the Sworn Notaries statement (so called – request for the Land registry) and contracts themselves in practice significantly erodes the reliability and effectiveness of facts established within contracts concluded in private manner. However, authorities noted that in practice this is not a significant issue, and adequately penalties are in place, and alternative mechanisms are available.

1242. The Latvian Residency Law causes an heightened money laundering risk to Latvia by attracting non-resident investors with limited/no AML/CFT controls. The FATF Methodology defines non-resident investors as a high-money laundering risk however, it is unclear how this risk is accounted for with this new program.

1243. The restriction on recordkeeping to maximum 6 years hinders effectiveness, although no records have ever been requested under this article. During the on-site visit the assessors did note that no records have ever been requested under this article, but authorities could not provide a rationale for this clause either.

1244. Authorities should clarify the timeframe for notaries to maintain records under Article 58 of the Law on Notaries.

1245. Lack of uniform understanding on the importance of customer identification and verification across the dealers in precious metals/stones sector.

4.1.2. Recommendations and comments

Recommendation 5

1246. Latvia should amend legislation to ensure that all persons providing real estate services are registered and licensed so that the level of compliance on the proper application of the CDD measures and other AML/CFT requirements of both parties in a transaction could be monitored and supervised.

1247. The Latvian authorities should ensure uniform application of AML/CFT requirements across the entire field of organisers of lotteries and gambling houses.

1248. Additional sector specific outreach is needed to the auditors, real estate, and tax advisor/accountancy sectors to explain in the AML/CFT requirements, but also on putting into the broader context how their implementation will contribute to making money laundering more difficult. Guidance and quick reference tools to assist reporting entities would also be helpful in getting entities to first remember and ultimately implement due diligence measures. Additional sector specific outreach, to include the categories of enhanced due diligence would be welcome.

1249. Authorities should raise awareness on the importance of customer identification and verification with dealers in the precious metals/stones sector.

1250. Efforts should be made to integrate both the used and new automobile sectors into the AML/CFT regime, given the identified money laundering threat.

1251. The State Inspection for Heritage Protection's cooperation with the Ministry of Interior to register all cultural monuments should be encouraged and strengthened.

1252. Consider strengthening AML/CFT controls over Latvian Residency Law.

1253. Given the unique modalities of tax crimes with money laundering, the lack of specialized AML/CFT legal guidelines for tax consultants should be considered. Consideration should be given to creating an SRO for tax advisors, given the level of activity in the sector and recent inclusion into the AML/CFT obliged entity.

Recommendation 6

1254. The evaluators recommend conducting outreach to casinos and real estate sector to raise awareness of PEPs.

Recommendation 8

1255. The Latvian authorities should enact legal provision to ensure a more stringent control on unlicensed internet gambling sites.

Recommendation 9

1256. This recommendation is fully implemented.

Recommendation 10

1257. The Latvian authorities should clarify the ability for authorities to ask obligors to hold records beyond five years or longer, as required by the FATF standard.

4.1.3. Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	PC	• The same concerns in the implementation of Recommendations 5 and 10 apply equally to DNFBP. **Recommendation 5** • Lack of licensed Real estate brokerage agents hinders effectiveness. • Uneven application of AML/CFT requirements across the entire field of organisers of lotteries and gambling houses. • Lack of awareness on the importance of customer identification across the dealers in precious metals & stones sector. **Recommendation 6** • Lack of awareness of PEPs requirements for some DNFBP, especially the real estate and casino sectors. **Recommendation 8 and 9** • Internet gambling negatively impact effectiveness.

4.2. Suspicious transaction reporting (R. 16)

(Applying R.13 to 15 and 21)

4.2.1. Description and analysis

1258. Under the provisions of the new AML/CFT Latvian Law, the all categories of DNFBP are covered. The requirements provided for the financial institutions in terms of reporting suspicious transactions, CDD measures and record keeping also apply to DNFBP as no segregation is made between them.

1259. The difference is made in relation to the unusual transactions requirements where specific indicators are provided for each category of DNFBP.

1260. The relevant Latvian legal documents on DNFBP's obligation in the AML/CFT field are: the Law on the Prevention of Laundering the Proceeds from Criminal Activity (Money Laundering) and of Terrorist Financing; the Cabinet of Ministers Regulation No 1071 "*Regulation on List of Unusual Transactions and Procedure for Reporting about Unusual or Suspicious Transactions*"; Advocacy Law; Criminal Procedure Law; Instruction of the Latvian Collegium of Sworn Advocates on the „*Procedure for performance a set of measures to ensure the fulfilment of requirements of the Law on the Prevention of Laundering of Proceeds from Criminal Activity and Financing of Terrorism*"; the Code of Ethics of the Latvian Sworn Advocates; The Procedure of Implementing the Law on Preventing Money Laundering and

Terrorist Financing dedicated to auditors; Notariate Law; Procedure for Compliance of Sworn Notary with the Requirements of the Law on the Prevention of Laundering the Proceeds from Criminal Activity (Money Laundering) and of Terrorist Financing (Approved by the March 6, 2009 Meeting of The Council of the Sworn Notaries of Latvia); Regulation on the Reporting Procedure of Unusual and Suspicious Transaction (Approved by the March 6, 2009 Meeting of The Council of the Sworn Notaries of Latvia).

Recommendation 16 (rated NC in the 3rd round report)

(Applying Recommendations 13& SRIV)

Requirement to Make STRs on ML/FT to FIU (c. 16.1; applying c. 13.1 & c.13.2 and SR. IV to DNFBP)

1261. According to the art. 30 of the AML/CFT Law subjects to the Law have the duty to report to the FIU, without delay, any unusual transaction and suspicious transaction, and to provide additional information when requested by the FIU, within a specified period of time (7 days).

1262. The Cabinet of the Ministers issued provisions establishing the list of indicators of unusual transactions and the procedure whereby the two kinds of transactions which must be reported as well as the reporting form.

1263. No restrictions exist to the reporting obligations for DNFBP and no different approach is provided for the definition of "*suspicious transaction*" and therefore such reporting is mandatory for both ML and FT.

1264. Based on the provisions of the AML/CFT Law and in accordance with the Cabinet of Ministers Regulation No 1071, categories of DNFBP that are subject to the AML/CFT requirement are defined as well as the circumstances that brought them under the obligation to report to the FIU:

- organisers of lottery and gambling
- sworn auditors, sworn auditor companies, tax advisors, external accountants
- Sworn Notaries
- Sworn Advocates and other independent legal services providers
- merchants dealing with real estate trading or intermediation in such trading
- merchants dealing with car trading or intermediation in such trading
- merchants dealing with precious metals, precious stones and articles thereof

1265. In practice, DNFBP's level of reporting is considered by the Latvian authorities to be low if compared with the financial system.

Table 43: Reports received by the FIU from DNFBP

Statistical Information on reports received by the FIU									
	2006			2007			2008		
Monitoring entities, e.g.	Above threshold	STR		Above threshold	STR		Above threshold	STR	
		ML	FT		ML	FT		ML	FT
Notaries	23	4	0	15	7	0	7	5	0
Lawyers	0	0	0	0	23	0	0	3	0
Accountants/auditors	0	0	0	0	1	0	0	0	0
Casino	40	0	0	142	0	0	204	0	0
Dealers in precious metals and stones	0	0/2***	0	0	0/3***	0	0	0/2***	0
Real estate agents	0	0	0	0	0	0	0	0	0
Company service providers	0	0	0	0	0	0	0	0	0
Others (State institutions, LEA, Private persons)	187	918	0	413	3 837	0	839	4 557	0
Total									

Statistical Information on reports received by the FIU									
	2009			2010			31.5.2011		
Monitoring entities, e.g.	Above threshold	STR		Above threshold	STR		Above threshold	STR	
		ML	FT		ML	FT		ML	FT
Notaries	10	2	0	11	0	0	3	7	0
Lawyers	0	13	0	0	26	0	0	1	0
Accountants/auditors	3	0	0	1	0	0	1	0	0
Casino	197	0	0	96	1	0	48	0	0
Dealers in precious metals and stones	5	0/0***	0	2	0/0***	0	3	0/0***	0
Real estate agents	0	0	0	0	0	0	0	0	0
Company service providers	0	0	0	0	0	0	0	0	0
Others	838	4921	0	342	3446	0	361 (incl. MTS – 222)	580 (incl FIU`s- 235)	0
Total									

*** The second figure shows the number of reports reported by State Assay Office of Latvia.

Casinos

1266. According to Regulation No.1071 "*On the List of Indicators of Unusual Transactions and the Procedure according to which Reports on Unusual and Suspicious Transactions shall be made*", organisers of lottery and gambling are supposed to report to FIU directly any transaction (UTR) where :

- a client wins 5,000 LVL and more;
- a client obtains the means for participation in a game in the amount of 5,000 LVL and more;
- in order to obtain the means for participation in a game a client exchanges currency equivalent to the amount of 5,000 LVL and more.

1267. The Recommendations issued by the Lotteries and Gambling Supervisory Inspection in 2009 describe the suspicious transaction as *"a transaction which indicators do not conform to the indicators provided by the Regulations No 1071, though due to other conditions, raises suspicion of laundering the proceeds from criminal activity or a laundering attempt thereof"*.

1268. No specific guidance on *"other conditions"* for reporting suspicious transactions both on ML and FT was provided by the authorities to the casinos.

1269. From statistical data provided by the Latvian authorities it resulted that from 2007 to 2011 687 UTRs have been submitted to the FIU by casinos but only one STR in relation to ML suspicions. No STR on suspected terrorist financing was filed.

1270. From the on-site interviews it was apparent to the evaluation team that the casino representatives are not entirely clear on the difference between UTRs and STRs. In the absence of any guidance to clearly describe the latter, they prefer to fill in the UTRs and do not pay special attention to the STRs. This poses effectiveness problems in relation to FATF standards, as UTRs are threshold-based.

Real estate agents

1271. The Latvian AML/CFT Law in Article 3 (1) (6) establishes that persons acting in the capacity of agents or intermediaries in real estate transactions are subject to the law. In addition, other legal or natural persons involved in trading real estate, acting as intermediaries in transactions or providers of services, where the payment is made in cash in LVL or another currency in the amount equivalent to or exceeding 15,000 EUR, are also subject to the MAL/CFT Law.

1272. The two provisions create a gap for those involved in real estate transactions and create confusion in relation to the AML/CFT obligations in the industry.

1273. Regarding merchants dealing with real estate trading or intermediation in such trading Regulation 1071 provides the obligation to submit an UTR to the FIU where:

- a client purchasing real estate concludes an agreement that foresees payment in one or several instalments in cash in the amount of 15,000 LVL and more;
- a client concluding agreement on cooperation for real estate purchase pays to the merchants cashier cash in the amount of 20,000 LVL and more.

1274. The "*Methodical Material*" issued on the application of the AML Law for the subjects supervised by the SRS provide detailed and comprehensive suspicion indicators that can be used by reporting entities to identify a potential STR.

1275. Various interlocutors met on-site by the evaluation team considered the real estate sector as a potential risk for ML due to attractive market and favourable legislation for residence permit.

1276. The general awareness on AML/CFT requirements, including the obligation to submit STRs to the FIU appeared to be low. The real estates representatives met on-site had no knowledge on suspicions indicators for ML or TF and they were not aware that the SRS is their supervisory authority in the field.

1277. No STRs on ML of FT or UTRs have been submitted to the Latvian FIU by real estate agents in the evaluated interval.

Dealers in precious metals and dealers in precious stones

1278. Dealers in precious metals and stones are subject to the AML/CFT legislation only where the payment is made in cash in LVL or another currency in the amount equivalent to or exceeding 15,000 EUR at the exchange rate set by the Bank of Latvia on the transaction day, whether the transaction is executed in a single operation or several linked operations.

1279. According to Cabinet of Ministers' Regulation 1071 merchants dealing with precious metals, precious stones and articles thereof are supposed to report to FIU directly any transaction (UTRs) where:

- a client purchasing precious metals, precious stones and articles thereof pays cash in the amount of 10,000 LVL and more;
- a client sells or offers for sale precious metals, precious stones and articles thereof for the price not exceeding 50% of the market value determined according to the rate named by the Bank of Latvia.

1280. Guidance on suspicion indicators has been issued by the SRS for ML cases. No suspicion indicators for TF have been provided for the industry.

1281. Based on discussions with the representatives of dealers in this field, at the time of the visit there were registered and operational about 400 companies, having 1,600 locations. They deal with 700,000 articles, implying 400 kilos of gold, 200 kilos of silver, and 25-35,000 stones, together representing a value of LVL 25 millions.

1282. All the stores must be registered and all of them have a register of the transactions performed.

1283. With regard to the payment manner, in accordance with the Assay representatives, 60-70 % of payments are performed through banking system, only 30-40% are done in cash, with the average payment in cash is up to LVL 3,000 which is below the threshold for reporting indicated in the Law.

1284. The representatives of the precious metal sector underlined on the occasion of the on-site interviews that once one has registered a business it means that it have become aware of the requirements of the AML/CFT Law.

1285. The representatives of the industry also stated that in the process of checking the ID of the customers they may decide that is the case to do STRs and UTRs. Moreover, they would also take into account in the reporting process the linked transactions when the amount of transaction exceeds the threshold.

1286. However, in practice no STRs on ML or TF and no UTRs have been submitted by the dealers in precious metals and stones to the FIU in the evaluated interval.

1287. The representatives of the industry with whom the evaluation team met during the on-site visit stated that in practice they do not have transactions over 15.000 EUR cash or non-cash compensated.

Lawyers, notaries and other independent legal professionals and accountants

1288. According to the AML/CFT Law the tax advisors, external accountants, sworn auditors and commercial companies of sworn auditors are subject to the law.

1289. Also, Sworn Notaries, Sworn Advocates, other independent legal professionals when they act in the name and for the benefit of their customers to assist in the planning and execution of a transaction, to participate in any transaction or to perform other professional activity related to transactions for the benefit of their customer in the following cases:

- buying or selling of real estate, shares in the capital of a commercial company,
- managing a customer's money, financial instruments and other funds,
- opening or managing all kinds of accounts with credit institutions or financial institutions,
- creating, managing or ensuring the operation of legal arrangements, making investments necessary for creating, managing or ensuring the operation of legal arrangements;

1290. Further on, according to Regulation No.1071 the sworn auditors, sworn auditor companies, tax advisors, external accountants shall submit an UTR to the FIU when in the accountable period the client has received a loan from natural persons (including capital company owner) 40,000 LVL or more in cash (for owner of the capital company – when loans to the capital company in cash exceeds the amount of dividends received for 40,000 LVL or more).

1291. The same legal provision states that Sworn Notaries shall submit an UTR to the FIU when a client deposits cash in the amount of 10,000 LVL and more or when a consultation is given or a verification of a transaction complying with at least one indicator of the unusual transactions named in the regulations is made, and it refers to the actions named in the point 4 of the first part of Article 3 of the AML/CFT Law.

1292. Sworn Advocates and other independent legal services providers shall submit an UTR to the FIU when a client deposits or receives cash in the amount of 10,000 LVL and more, authorizing to perform financial intermediation or a consultation is given in regard to the transaction complying with at least one indicator of the unusual transactions named in the Regulations and referring to the actions named in the point 4 of the first part of Article 3 of the Law.

1293. Further guidance on AML/CFT procedures is provided for these categories of DNFBP.

1294. Regulation on the Reporting Procedure of Unusual and Suspicious Transactions was adopted by the Council of Sworn Notaries of Latvia on March 6, 2009 (in accordance with the Notariate law, its section 230).

1295. The purpose of this regulation is to ensure the identification of unusual or suspicious financial transaction and to determine how the Sworn Notaries comply with the requirements of the AML/CFT Law (Article 30) and of the Cabinet of Ministers Regulation No.1071.

1296. Similarly, Procedure of Implementing the Law on Preventing Money Laundering and Terrorist Financing was adopted by the Board of the Latvian Association of Certified Auditors.

1297. However it has to be said that none of the two documents contain additional information guidance, red flags or indicators on suspicious transactions or suspicion grounds, only further detail the general provisions contemplated by Regulation No.1071.

1298. In practice the notaries sent 46 UTRs and 21 STRs to the FIU in the evaluated interval. The lawyers submitted 66 STRs and no UTR which place them in a unique position amongst all subject persons (whit more STRs than UTRs). The higher degree of awareness on AML/CFT matters and on reporting obligations was confirmed by the on-site interviews. The notaries and the lawyers are by far the most educated categories of DNFBP on AML/CFT area in Latvia.

1299. Accountants and auditors submitted only 1 STR and 5 UTRs between 2007 and 2011. However, during the on-site interviews they also seemed well oriented in the AML/CFT issues due to training seminars organised by the FIU and the SRS.

Legal Privilege

1300. For tax advisors, external accountants, sworn auditors, commercial companies of sworn auditors, Sworn Notaries, Sworn Advocates and other independent legal professionals, Article 30 (3) provides an exemption from the requirements of reporting obligations (Article 3) and from obligations to refrain from executing/suspending a transactions (Chapter V) in the following circumstances: in the course of defending or representing that customer in pre-trial criminal proceedings or judicial proceedings; or providing advice on instituting or avoiding judicial proceedings.

1301. Typically defined as "*attorney-client privilege*" those interviewed during the on-site visit confirmed that their professional privilege would prevail when representing a client in litigation, but when conducting a transaction that privilege would not prevent them from submitting a suspicious transaction report.

1302. Furthermore, advocates interviewed clarified that when their client is an advisor, trusteeship, settler in a transaction, then they are not covered by any exemption/privilege.

No Reporting Threshold for STRs (c. 16.1; applying c. 13.3 to DNFBP)

1303. As described under Recommendation 13 above there is no threshold for reporting suspicious transactions as such under the Latvian AML/CFT Law. However, in practice, the lack of guidance, red flags, indicators in relation to suspicious transactions and very clear indicators on unusual (but threshold based) transactions have a negative impact on reporting behaviour of all DNFBP (with the exception of lawyers).

1304. During the on-site interviews it was visible to the evaluators that subject persons heavily rely on the UTRs indicators and content themselves with submitting threshold reports described in Regulation 1071 and pay less attention to suspicion based reports as defined by the FATF standards.

Making of ML/FT STRs Regardless of Possible Involvement of Tax Matters (c. 16.1; applying c. 13.4 to DNFBP)

1305. There is no reference to exemptions from reporting obligations in case on Tax matters involvement.

Reporting through Self-Regulatory Organisations (c.16.2)

1306. STRs and UTRs are reported directly to the FIU and not necessarily to be submitted before to the SROs

Additional Elements – Reporting Requirement Extended to Auditors (c. 16.5)

1307. According to the AML/CFT Law the reporting requirement also applies to auditors and tax advisors.

Additional Elements – Reporting of All Criminal Acts (c. 16.6)

1308. The reporting obligation under AML/CFT does not refer to funds that are proceeds of criminal offenses, as required by the FATF standards, but to transactions that that gives rise to suspicion of laundering of proceeds from criminal activity (money laundering) or of terrorist financing or an attempt thereof, or of any other criminal offence. This legal provision might limit the ability of DNFBP to detect and report all instances where funds are proceeds of criminal activity.

Applying Recommendation 21

1309. Under Recommendation 21 for the DNFBP the 3rd round report mentioned that there were no binding requirement to pay special attention to business relationship and transactions from countries which do not or insufficiently apply FATF Recommendations. Some guidelines provided the requirement to report transactions with persons mentioned in the FATF NCCT list and from countries which in accordance with the US Patriot Act have been included in the list of countries in relation to whom there were concerns on ML. However it was noted that these guidelines/regulations do not qualify as "other enforceable means".

Special Attention to Persons from Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.1 & 21.1.1 to DNFBP)

Casinos

1310. "*Recommendations to Capital Companies that Have Received a License*", issued by the Lotteries and Gambling Supervisory Inspection for casinos in 2009 provide that a company (casino) shall establish the money laundering and terrorist financing risk assessment procedure taking into consideration a number of factors i.e. the state risk.

1311. The risk related to a customer's country of residence (registration) shall be deemed the risk that a capital company could be involved in money laundering and terrorist financing when executing a transaction with a customer from a country whose economical, social, legal or political conditions can facilitate its involvement in money laundering and terrorist financing.

1312. Also, the following country or territory shall be deemed a high-risk customers' country of residence (registration):

- the one being imposed financial or civil restrictions by the United Nations or the European Union;
- the one included in the list of non-cooperating countries as established by the Financial Action Task Force, or which has been announced by the said organisation as a country or a territory which lacks laws and regulations to prevent money laundering or terrorist financing or in which these laws and regulations contain material deficiencies thus not complying with the international requirements.

1313. At the time of the on-site visit it appeared that the interviewees (both casino representatives and the supervisors) were relatively aware of the existence of the higher risk jurisdictions, however, the identification in practice of such a country seemed to be not entirely clear.

Real estate agents, dealers in precious metals and dealers in precious stones, lawyers and other independent legal professionals and accountants

1314. The "*Methodical Material*" issued by the SRS for the entities under their supervision provides that when establishing a business relationships with a customer, the subject shall define the initial customer risk, assessing i.e. the country risk.

1315. The **country risk** of the customer's relates to the state of residence of a customer from the state whose economic, social, legal or political situation may facilitate use of the country for legalisation of criminal proceeds or financing of terrorism.

1316. In addition, high risk customer registration (residence) countries are the countries or territories:

- which are included in the list of low tax or non-tax countries and territories approved by the Cabinet of Ministers;
- against which UNO or EU have defined financial or civil restrictions;
- which is included into the list of non-cooperating countries of the Financial Action Task Force or against which this organisation has published a statement as against the country or a territory which has no legal acts for combating legalization of criminal proceeds or financing of terrorism or where these acts are with significant inconsistencies and therefore do not comply with international requirements. The information about such countries and territories included into the list of non-cooperating countries is posted on the home page of http://www.fatf-gafi.org/.

1317. From the on-site interviews resulted that not all the supervised entities were fully aware of the above mentioned recommendations and that not all the interviewees were conscientious of the existence of an actual list of such countries and jurisdictions.

1318. The representatives of the notaries indicated that non-resident clients are quite common, (usually EU internals and Russians) and that special attention is paid to off-shore companies.

Advocates

1319. Similarly to the above mentioned, the "Instruction" paper issued by the Latvian Collegium of Sworn Advocates in 2009, on "Procedure for performance a set of measures to ensure the fulfilment of requirements of the Law on the Prevention of Laundering of Proceeds from Criminal Activity and Financing of Terrorism" prescribe that a country or a territory shall be considered as having a high customer residence country risk where:

- it has been included in the list of low tax or tax free countries and territories as approved by the Cabinet of Ministers;
- the United Nations Organisation or the European Union has established financial or civil legal restrictions in respect of it;
- it has been included in the list of non–cooperating countries of the FATF or mentioned organisation has published a statement to the effect that the respective country or territory does not have regulatory provisions for combating the laundering of proceeds from the criminal activity and financing of terrorism or such provisions fail to comply with international requirements due to material deficiencies.

1320. During the on-site meetings the representatives of the legal profession stated that 80% of their clients are Latvians and therefore little attention is paid to the foreign customers as a whole. The interviewees had little awareness of the high risk jurisdictions and of the FATF statements in this matter.

Notaries

1321. The "Regulation on the Reporting Procedure of Unusual and Suspicious Transaction" issued by The Council of the Sworn Notaries of Latvia makes no reference to the high risk jurisdictions or to risk assessment of the clients in general.

Auditors

1322. Chapter III, of the "*Procedure of Implementing the Law on Preventing Money Laundering and Terrorist Financing*" dedicated to Sworn Auditors, provide that when entering into business relationship with the customer, the auditor shall determine the customer's risk by evaluating 3 risk categories. Amongst these categories the country risk is mentioned.

1323. Article 9.1.4 states as a risk factor a country which "*is included in the list of non-collaborative countries prepared by the Financial Action Task Force or is in the process of being published in the report prepared by the mentioned organisation as a state or territory not having implemented any regulations on preventing money laundering or terrorist financing or as a state or territory having implemented such regulations with substantial drawbacks and thus not complying with international requirements*."

1324. As in the case of other DNFBP, the auditors were not sufficiently aware of the actual list of countries which do not or insufficiently apply FATF Recommendations.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.2 to DNFBP)

1325. The issue of lack of binding requirements to pay special attention to business relationships and transactions from countries which do not or insufficiently apply FATF Recommendations revealed as well in the 3rd round MER, with regard to **DNFBP**, is applicable. Although the AML/CFT Law now covers new DNFBP categories, the requirements emphasized by essential criterion 21.2 are still not binding.

1326. According to the AML/CFT Law, after establishing a business relationship, all subjects of the law shall update the information on the customer's economic or personal activity and monitors transactions on regular basis to ensure that they are not unusual or suspicious.

1327. When monitoring a business relationship, subject persons shall pay particular attention to the unusually large and complex transactions or mutually linked transactions, which have an apparent economic or visibly lawful purpose, and are atypical for a customer.

1328. This provision applies to all reporting entities including DNFBP.

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.3 to DNFBP)

1329. The situation described under FI is valid for DNFBP.

Effectiveness and efficiency

Applying Recommendation 13

1330. Latvia was rated NC in the 3rd evaluation round on grounds of gaps in the legal framework and other deficiencies.

1331. The evaluation team welcomes the amendments of the AML/CFT Law designed to include all the DNFBP under the reporting regime and the further guidance issued by the SRS and other supervisors to assist the reporting entities under their supervision in the correct application of the AML/CFT Law.

1332. The preventive regime for DNFBP is relatively still new but there has been progress in Latvia on this matter. A number of reports have been received by the FIU from some of the designated categories, especially from the legal professions (notaries and lawyers).

1333. The evaluators are of the opinion that a degree of awareness within the DNFBP sector is noticeable, open conversations and consultations have been organised, although more are still needed.

1334. The FIU has undertaken some training activities to familiarize DNFBP with their obligations under the AML Law, including their responsibility to establish effective internal controls to ensure that these responsibilities are met, and that reports of unusual and suspicious transactions must filed with the Control Service.

1335. However, the low number of STRs from the sector raises concerns about the effectiveness of the implementation of the AML/CFT regime by DNFBP. Lack of guidance on suspicion grounds for TF in general and no sector specific guidance on red flags and indicators for some DNFBP might be a cause for this shortcoming.

1336. Some categories have submitted low number of reports (accountants) others have submitted only UTRs (casinos), while the real estate sector has no reports. No reports on FT suspicions have been submitted by any DNFBP.

1337. A deficiency has been identified in relation to the confusion to the significance of UTRs vs. STRs. Most sectors clearly rely on UTRs indicators and ignore the notion of "*suspicion*" which undermines the essential criterion 13.3 in practice.

Applying Recommendation 21

1338. The Latvian authorities took significant measures to ensure that regulation, instructions, guidelines provide the obligation for DNFBP to give special attention to business relationship and transactions with clients from countries which do not or insufficiently apply FATF Recommendations.

1339. However, the practical application the provisions of the regulations/guidelines/instructions is an area for improvement. Not all of the DNFBP are aware of the existence of a FATF list of such countries/jurisdictions and some confusion exists with the off-shore jurisdictions.

4.2.2. Recommendations and comments

Applying Recommendation 13

1340. The level of awareness seemed to be uneven amongst different categories of DNFBP. While legal professions appeared to be aware of their ML/FT responsibilities including to report unusual or suspicious transaction to the FIU, others (real estates, dealers in precious metal and stones) were less diligent.

1341. Overall, DNFBP are presenting extremely low level of reporting. Guidelines provided to the reporting entities are mainly general based and not adapted to the specific sectors of the financial and non – financial industry. More emphasis needs to be placed on guidelines and training in order to explain the content of suspicious transactions reports as opposed to threshold based reports.

1342. There is also a need for targeted guidance on CTF measures as reporting entities appear to be focused only on lists of persons suspected of being involved in terrorist activity.

1343. The Latvian authorities should take continued and more focused measures in order to increase the number of STRs submitted by DNFBP.

Applying Recommendation 21

1344. Authorities are invited to put more emphasis in awareness rising amongst DNFBP in relation to the persons from countries which do not or insufficiently apply FATF Recommendations.

4.2.3. Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**PC**	**Applying Recommendation 13** • Difficulties identified in distinguishing between UTRs (threshold based) and STRs, undermines criterion 13.3 in practice. • The reporting obligation does not refer to funds that are proceeds of criminal offenses but to suspicion of laundering of proceeds. • Reporting obligation not covering funds suspected to be linked or related to or to be used for terrorism, terrorist acts or by terrorist organisations. • Deficiencies in the incrimination of TF might limit the reporting obligations • General lack of sector specific guidance and low notion of "suspicion". • Closed list of indicators for suspicion limits the possibilities for reporting. • Effectiveness concerns in connection to the unclear distinction between unusual transaction reports and suspicious transaction reports. • Low level of reporting in general; no reports from real estate agents (effectiveness issue). **Applying Recommendation 21** • No requirements for special attention to transaction with no apparent economic or lawful purpose. • Not enough awareness of DNFBP on recognising the high risk jurisdictions (effectiveness issue).

4.3. Regulation, supervision and monitoring (R. 24-25)

4.3.1. Description and analysis

Recommendation 24 (rated PC in the 3rd round report)

Regulation and Supervision of Casinos (c. 24.1, c.24.1.1, 24.1.2 & 24.1.3)

Lotteries and Gambling Supervisory Inspection

1345. According to Article 45 of the AML/CFT Law, the Lotteries and Gambling Supervisory Inspection is the supervisory authority in respect of the organisers of lotteries and gambling for AML/CFT purposes.

1346. In addition, Section 81 "*Providers of control and supervision*" of the Gambling and Lotteries Law (adopted by Parliament on 17.11.2005) stipulates that the control and supervision over the manner in which the gambling and lottery organisers are following the relevant laws and regulations and the rules of gambling or lottery, is being provided by:

- the Lotteries and Gambling Supervisory Inspection under procedure established by the Cabinet of the Ministers,
- the State Revenue Service under procedure established by the *"Law on State Revenue Service"*,
- the State Police under procedure established by the law *"On Police"*.

1347. The procedure for supervision and control over arrangement and maintenance of gambling and lotteries is prescribed by the Regulation of the Cabinet of Ministers No.512/27.06.2006.

1348. Based on discussions held at the on-site visit with the supervised entities and as well with the supervisory authority they have the power to impose sanctions and they exercised these statutory prerogatives.

1349. Based on discussions with the supervisory authority during the on-site visit, it resulted that they can impose sanctions in accordance with the Administrative Penal Code which can be amounted between 700 EUR to 1.500 EUR but only sanctions were applied due to the fact that it is very difficult to get a licence and that why there were only few violations of the AML/CFT requirements. Based on statistics provided by the Lottery and Gambling Supervisory Inspection, there were performed the following AML-CFT controls: 2009- 7 casinos; 2010 – 6 casinos: 2011 – 6 casinos.

Monitoring and Enforcement Systems for Other DNFBP-s (c. 24.2 & 24.2.1)

1350. At the time of the 3rd round MER, not all the DNFBP had a dedicated supervisory authority in respect of AML/CFT.

1351. Once the new AML-CFT Law entered into force, new categories of reporting entities were covered in terms of AML-CFT supervision by a designated authority.

State Revenue Service

1352. Art. 45 (2) of the said Law describes the entities which come under State Revenue Service's (SRS) control in this respect, including among other: tax advisors (certified), external accountants, dealers in precious metals and stones, auto dealers, real estate dealers.

1353. The AML/CFT monitoring activity under the responsibility of the SRS is performed through the Tax Control Department based on the provisions of the AML/CFT Law and Regulations of the Cabinet of Ministers No.1071 "*Regulation on unusual transaction indicator list and procedure for reporting unusual and suspicious transactions*".

1354. The thematic checks of the SRS related to AML/CFT, named "Legalization of Resources", are governed by the newly developed "*Recommendations Concerning the Control over Compliance with the Law on the Prevention of Legalization of Illegal Proceeds and Financing of Terrorism*" (approved 31.03.2010, amended on 31.08.2010).

1355. The legal framework for applying financial sanctions is Article 1658 of the Administrative Violations Code of Latvia.

1356. In 2010 the SRS Tax Control Department has carried out 13 thematic checks in respect of the compliance with the requirements of the AML/CFT Law and found violations in 11 cases. During these checks, the following breaches were detected:

- failure of the tax payer to inform the SRS about line of business – 6 cases;
- lack of the internal control system over the prevention of legalization of illegal proceeds and financing of terrorism - 5 cases;
- failure to notify the SRS about the unit or official authorised to make decisions and responsible for the compliance with the AML/CFT Law - four cases;
- other violations of the AML/CFT Law – four cases.

1357. In accordance with Article 1658 of the Administrative Violations Code of Latvia a fine for failing to comply with the procedure of prevention of illegal proceeds and financing of terrorism was applied in three cases in the amount of 300 LVL.

1358. In addition, in six cases, the SRS established a certain deadline until which the breaches identified in connection to the requirements of the AML/CFT Law to be solved. Moreover, Tax Control Department of the SRS carried out in 2010 15 audits of taxpayers who are subjects of the said Law under Art 3 of the law During the audit it was found that one of the taxpayers had not informed the state revenue Service at the start of business activities about the type of business.

1359. Regarding the general sanctioning regime, it is worth to be underlined that, based on the discussion with outsourced accountant, there is one type of potential administrative penalty, a fine ranging between 250 LVL-500 LVL, according to 165[8] of the Administrative Violations Code of Latvia. The law states that the maximum fine for natural persons is 250 LVL and for legal persons 500 LVL. These penalties are specific to address AML/CFT identified deficiencies.

1360. There are no specific financial sanctions provided by legislation specifically for AML/CFT breaches and thus no such sanctions have been imposed in practice.

1361. The table below shows the frequency of the inspections performed by the SRS for its original purpose, out of which there are the targeted examinations related to AML/CFT issues.

Table 44: Inspections of the SRS Tax Control Board to check compliance with requirements of the AML/CFT Law

Inspections of the SRS Tax Control Board to check compliance with requirements of the AML/CFT Law				
Indicators		**2008***	**2009**	**2010**
Number of inspections		X	70	28
Number of inspections where violations were found (number)		X	32	11
Nature of violations found (number of cases)	Taxpayer has failed to inform the SRS on the type of activity	X	14	6
	No internal control system established	X	20	5
	Failure to inform the SRS on the responsible structural unit or employee who is responsible for compliance with laws	X	16	4
	Failure to document customer due diligence and identification measures	X	6	
	No storage of customer identification and due diligence documents ensured	X	4	
	Taxpayer has failed to inform the FIU on refraining from execution of a suspicious transaction	X	1	
	Other violation	X	4	4
Number of cases when in accordance with the Latvian Administrative Violations Code pecuniary sanctions were imposed**		X	X	3
Amount of pecuniary sanction imposed in accordance with the Latvian Administrative Violations Code (LVL thousand.)		X	X	0,3

* The SRS Tax Control Board started to conduct inspections on compliance with the requirements of the AML/CFT Law in 2009, for the Cabinet Regulation of 22.12.2008 No 1071 "Regulations regarding List of Elements of Unusual Transactions and Procedures for Reporting" came into effect as of 1 January 2009.

** Amendments to the Latvian Administrative Violations Code on pecuniary sanctions regarding non-compliance with requirements of the AML/CFT Law were adopted on 20 May 2010, therefore pecuniary sanctions on violations found are being applied after amendments became effective.

Thematic inspections of the SRS Tax Control Board to check accounting records

Indicators	**2008**	**2009**	**2010**
Number of inspections	10424	9438	2724
Number of inspections where violations were found (number)	5217	4382	1200
Failure to comply with record keeping requirements	1121	814	155
Violations in record keeping	1827	1562	309

Failure to comply with cash operation record regulations	921	718	128
Violations in processing inventory documents	155	128	33
Use of unlicensed accounting software	37	22	5
Use of unlicensed computer software	14	10	2
Other violation	2668	2527	821
Number of cases when in accordance with the Latvian Administrative Violations Code pecuniary sanctions were imposed**	1688	1151	260
Amount of pecuniary sanction imposed in accordance with the Latvian Administrative Violations Code (LVL thousand.)	163.3	110.4	92.5

Thematic inspections of the SRS Tax Control Board to check declaration of cash transactions			
Indicators	**2008**	**2009**	**2010**
Number of inspections	88	83	94
Number of inspections where violations were found (number)	52	52	81
Number of cases when in accordance with the Latvian Administrative Violations Code pecuniary sanctions were imposed**	31	18	69
Amount of pecuniary sanction imposed in accordance with the Latvian Administrative Violations Code (LVL thousand)	45.9	6,4	2,259.0

1362. During the on-site interviews it was indicated by SRS officials that most supervisory activities conducted by the SRS are carried out off-site. However, the State Revenue Service has also developed recommendations to perform thematic on-site checks to assess that the SRS' obliged entities are meeting the obligation of the AML/CFT Law.

1363. Based on the discussion with the representatives of accounting firms, the supervision performed by the SRS consists in checking the registration of the firm, asking about the existence of methodological rules and in finding out if there is a person responsible for AML/CFT.

1364. The only way the SRS exercises its sanctioning powers with respect to AML/CFT is sending warning letters.

1365. The SRS must carry out the supervision of the subjects mentioned in Section 2, Art 45 of the AML/CFT Law. In order to support its duties with regard to the AML/CFT Law, the **Tax Control Department of the SRS** has developed a new version of recommendations "*Recommendations Concerning the Control over Compliance with the Law on the Prevention of Legalization of Illegal Proceeds and Financing of Terrorism*" (approved 31.03.2010, amended on 31.08.2010) for the use in thematic checks ""Legalization of „Resources".

Table 45: Information provided by the SRS to the FIU

Indicators	**2008**	**2009**	**2010**
Number of taxpayers	385	777	199
Transaction volume (LVL mln)	177,8	247,4	71,0

1366. Dealers in precious metals and stones are controlled in accordance with the provisions of the same Article 45 (2) of the AML/CFT Law by the State Revenue Service.

1367. Related to the supervision performed by the SRS, both precious metals and precious stones dealers indicated that the SRS checks ML, but mostly tax related matters,

1368. The SRS is equally the supervisory authority in respect of the real estate intermediaries.

1369. Based on the discussions with the representatives of these reporting entities, there is not regulation in Latvia on real estate brokerage. Some of the brokerage companies are organised into a professional association (consisting in about 25-30 companies) having 50-150 members, but there are few thousands brokers operating in the market.

1370. According to the national standards, no certification for real estate agents is required, while the association has the right to issue certificates only for its members.

1371. During the on-site interviews it was stated that the financial crisis brought significant changes in the landscape of the real estate business in Latvia. Since the inception of the crisis the prices dropped by 70% and the Russian clients became more interested about investments in this market (around 150 clients in case of one brokerage company).

1372. This trend has been supported by the new residency law which encourages the investments both in properties and in immovable assets in order to get a Latvian residency. Even so the evaluators were told that 90% of the transactions goes through banks and only the remaining part is done in cash, since only the Association provide for internal control systems of its members, being at the same time responsible for monitoring the observance by its members with the code of conduct and with penalizing the breaches of its provisions, and considering in the market there are other few thousands brokers outside, the effectiveness of AML/CFT control regime is very questionable.

1373. Various representatives of the industry were not aware of the supervisory authority of the SRS in AML/CFT matters, based on the interviewed brokers the only control activity performed by the SRS refers to the obligation to monthly submit the tax report.

1374. The AML/CFT law at Art.45 (2) sets as a supervisory authority for the tax advisors and external (outsourced) accountant, the SRS.

1375. The certified tax advisors are around 140, some of them are representing audit firms, and are organised into an Association. Within the association, there is necessary to get a license, granted by a specialized commission set up for this purpose which examines the level of knowledge, including by written tests and, if the case, issues the license.

1376. With regard to outsourced accountant, in accordance with the legal framework in force, there are no requirements to be certified, but the evaluation team learned that discussions with the Ministry of Finance were started in order to amend the existing law in this respect.

1377. Following the on-site interviews it appeared to the evaluation team that the representatives of the industry were largely aware of the requirements under the AML/CFT Law, such as to have in place internal control systems and a designated person.

1378. Within 10 days from the moment of registering as providing services that qualify them as subjects of the AML/CFT Law persons supervised by the SRS have to register themselves with the SRS for AML.CFT purposes.

Latvian Council of Sworn Advocates

1379. Art 45 2) of the AML/CFT Law empowered the Latvian Council of Sworn Advocates to monitor the observance by the Sworn Advocates of the provisions of the said law.

1380. In practice, the Council is focused on two main areas which are: the educational side and the provision of guidance with regard to AML/CFT reporting.

1381. The risked based approach was not adopted by the advocates. The Council set up a form, which is compulsory to be filled in by all the members on how to collect information for being able to meet with reporting requirements (consisting in a minimum of required information: the ID information of the client, the beneficiary of the transaction).

1382. As a matter of practice, up to the time of the visit there were no cases where a member of the Council of Sworn Advocates was found not to be observing AML/CFT requirements and thus, no sanctions have been imposed.

1383. However, the assessment team was informed that if there is a complaint with regard to a violation of the internal rules, this is to be judged by the Disciplinary Committee within the Council. During the on-site interviews the Council approach on identification on potential breaches is that it is FIU's responsibility to inform them with regard to any violation concerning the AML/CFT Law which is hardly in line with the responsibilities of a supervisory authority. Thus, the AML/CFT supervisory regime of advocates appears to be inadequate.

Latvian Council of Sworn Notaries

1384. In accordance with Art.45 (1) 3) of the AML/CFT Law, the Latvian Council of Sworn Notaries is entrusted with the duty to assure compliance of the Sworn Notaries with the requirements of the said Law.

1385. The Sworn Notaries activity is governed by the Notarial Law and as well by the internal rules setting up requirements on hoe to act with regard to AML/CFT issues.

1386. The verification of the regular activity of notaries, due to time constraints is given in the responsibility of the Council of Sworn Notaries by the Chamber of Notaries, the frequency of inspections being one per year. During these regular inspections, the Council of Sworn Notaries is checking if the internal procedure of each notary has been observed The Internal Control Commission (carrying out the control over professional activities of sworn notaries) shall verify the official duties of a sworn notary, documentation, the working time and reception organisations. The internal control commission shall verify the correctness of tax collection. During the check the auditor shall check a certain number of transactions or documents.

1387. For the AML/CFT supervisory purposes The Council of Sworn Notaries shall approve the methodology of risk assessment of sworn notaries official duties for internal control. The purpose of the risk assessment is to specify the degree of risk, determining the frequency of inspections that are done not on a regular basis at least once every 5 years, depending on the risk assessment and previous review results

1388. The procedure of assigning a certain risk rating is based on different items as previous information about a member or the existence of complaints regarding its activity addressed by the governmental institutions or from the clients.

1389. At the date of the visits there were 119 sworn notaries out of which less than 10 were rated with as a high profile. Based on the activity of the Commission in the previous years, 3 members decided to close the practice of sworn notaries due to serious breaches of the Notarial Law out of 10, while the remaining 7 are under a very strict monitoring process..

1390. From the on-site interviews it resulted that the Sworn Notaries have the appropriate level of awareness with regard to AML/CFT requirements and their supervisory body has the understanding of the risk-based approach, while their activity is based on specific internal procedures.

1391. The Council of Sworn Notaries also have a specific procedure on how to perform their supervisory duties with regard to AML/CFT. For the purpose of supervision and monitoring it is relevant to be pointed out that all the notaries are among the members of the association.

1392. Article 230 of The Notariate law provides that The Council of Sworn Notaries shall establish a permanent internal control commission for the official duties of sworn notaries and determine the agenda thereof. In case of violation of duties to report are identified the Internal Control Commission will inform the Council of Sworn notaries. The internal control commission shall compile the information regarding the results of the review and submit it for assessment to the Council. The Internal Control Commission performs a review. If the reviews revealed serious violations, the Council may initiate a disciplinary matter. Disciplinary procedures will be applied for the notary who fails to perform accordingly, the strongest measures could lead to decision to retrain do business.

1393. Article 180 of The Notariate law provides that for violation of laws and other regulatory enactments, of the articles of association of the Chamber of Sworn Notaries of Latvia, decisions and instructions regulating the activity of sworn notaries, the provisions regarding remuneration for work and the professional ethics norms of sworn notaries, or if a sworn notary in his or her activity is negligent or fails to fulfil his or her duties, or allows reprehensible conduct which discredits the position and dignity of a sworn notary or which is incompatible with his or her remaining in the office or the former place of practice, irrespective of the fact whether the violation has been committed during performance of the duties of office or is not related to the performance of such duties, the Council of Sworn Notaries of Latvia or the Minister for Justice may initiate a disciplinary matter pursuant to a proposal from a court or prosecutor, or pursuant to complaints from persons or on its own initiative.

Latvian Association of Certified Auditors

1394. In accordance with Art.45 (1) 4) of the AML/CFT Law, the Latvian Association of certified auditors is entrusted with the duty to assure compliance of the Certified auditors with the requirements of the said Law.

1395. In accordance of the provisions of the legal framework in place any entity greater than 500,000 LVL per year has the duty to be audited. In accordance with the special law the association can issue certificates for its members and a licensing procedure is to be followed.

1396. At the time of the on-site visit, according to information received during the interviews, less then 3% of the Latvian companies fall under the duty to audit their financial statements. If the turn over threshold will be increased in accordance with the new EU Directive (up to 8 million EUR criteria) the number will decrease.

1397. In December 2010 the LACA (Latvian Association of Certified Auditors) Board Meeting approved the "Procedure of Implementing the Law on Preventing Money Laundering and Terrorist Financing" document describing responsibilities of the certified auditor and of the supervisory authority in AML/CFT area.

1398. According to the document, LACA shall ensure training of certified auditors in the field of money laundering and terrorist financing risks and changes in the respective regulations.

1399. The monitoring of the auditors shall be implemented by the Quality Committee of the LACA (hereinafter — the Quality Committee) according to its statutes. In case of conflicting requirements of the Law and the statues of the Quality Committee, the members of the Quality Committee shall follow the requirements stated in the Law.

1400. In addition, the "Procedures" provides that in case of any breach of regulations on preventing money laundering and terrorist financing, the Quality Committee shall have the right to request immediate resolution of such breach if it is related to non-issuance of the report on unusual or suspicious transactions.

1401. If the Quality Commission discovers that such a breach is not resolved during the defined period, depending on the severity of the breach, shall impose appropriate sanctions and institute a disciplinary case according to the LACA Regulation on Disciplinary Cases.

1402. Each year not later than on February 1 of the respective year the LACA shall collect and submit to the Control Service the statistical information on the measures related to monitoring and control of the Auditor performed during the previous year.

1403. The LACA shall ensure safe custody of any information it has obtained related to the requirements of the Law and this Procedure in the LACA's archive together with the materials on quality control inspection for the time period of at least five years. The general manager of LACA shall be responsible for access to such information.

1404. Based on the discussions with the representatives of the Council of sworn auditors, the number of on-site visits for AML/CFT purposes evolved as follows: 14 visits in 2010, 42 visits in 2009 and 34 visits in 2008.

1405. The examinations were based on the assessment of samples and they were focused on verifying the compliance with CDD, and KYC requirements and on potential unreported transactions. The designation of a person in charge with AML/CFT issues was also checked. In practice, the verifications did not identify any un-reported transaction.

1406. During the on-site interviews the evaluators were advised that no such breaches have been identified and no sanctions have been imposed to auditors for failure to comply with AML/CFT requirements.

State Inspection for Heritage Protection

1407. In accordance with the provisions of the Art.45 (11) of the AML/CFT Law, the responsibility to supervise and control the transactions with the items included in the list of state protected cultural heritage monuments was given to the State Inspection for Heritage Protection. Its activity is performed based on a special law, in the field of AML/CFT being governed by the provisions of the said law.

1408. The activity in respect of AML/CFT is as well governed by special procedures issued on the basis of the special law. When applying AML/CFT supervision the State Inspection for Heritage Protection is observing the Cabinet of Ministers Regulation No 1071.

1409. The special law sets up two categories of cultural heritage moments: movable and immovable. As a consequence, in view of AML/CFT, they are supervising the transactions with those ones included in the movable list.

1410. The checking procedure is differentiated. While in case of buying transactions only the value of objects is subject to monitoring, in case of selling transactions, there are different steps performed.

1411. For *natural persons*, the identity of customers is verified by consulting the Register of Population as well as the checking with the terrorist list issued and provided by the FIU. With regard to the *legal persons*, they are checking the incorporation with the Register of commerce. A warning signal is considered when an off-shore incorporated company is involved in the transaction.

1412. Once a year the inspectors are verifying all the movable monuments and if a changes in the ownership rights is found in comparison with their list, it should be decided whether an administrative violation and the administrative liability is applicable or if is the case of an criminal procedure.

1413. The representatives of the State Inspection for Heritage Protection informed the evaluators they applied the risk-based approach in performing its supervisory tasks with respect to AML/CFT regime but in fact their activity is mainly focused on the scope set up through the special law.

1414. Authorities explained that the overall economical and social situation in the country had influenced the number of reports from Inspection, due to the decrease in overall number of transactions involving the cultural monuments

Recommendation 25 (rated PC in the 3rd round report)

Guidance for DNFBP other than feedback on STRs (c. 25.1)

1415. The Lotteries and Gambling Supervisory Inspection issued in 2009 "*Recommendations to Capital Companies that Have Received a Licence Issued by the Lotteries and Gambling Supervisory Inspection for Organisation and Maintenance of Gambling for Developing an Internal Control System for the Prevention of Laundering the Proceeds from Criminal Activity (Money Laundering) and of Terrorist Financing*" to assist gambling operations in complying with the AML/CF Law.

1416. According to the document, in order to reduce the possibility for a capital company to get involved in money laundering and terrorist financing and provide services to customers that could be involved in transactions of money laundering and terrorist financing, the capital company shall develop and document an internal control system (policies and procedures) approved by its administrative body.

1417. The Recommendations contain the items necessary to be included in the internal control system documents, procedure for customer and beneficial owner identification, customer risk assessment procedures, and guidance in detecting unusual and suspicious transactions. The document describes grounds for suspicion specific for gambling and casino industry.

1418. In case of the certified auditors, the LACA issued on December 9, 2010, "*The Procedure of Implementing the Law on Preventing Money Laundering and Terrorist Financing*" which defines the process according to which certified auditors and firms of certified auditors are to design and implement the system of internal control in order to ensure compliance with the AML/CFT Law.

1419. However it has to be mentioned that no further guidance in relation to suspicious grounds, red flags, indicators or explanations of the concept is provided in those Procedures. Industry representatives stated that they are required to develop guidance for their respective firm in relation to suspicious grounds, red flags, indicators, according to AML/CFT Article 7(1). It is also unclear if this is done in practice.

1420. Also, in order to support the reporting process for AML/CFT issues, the Council of Sworn Notaries adopted on March 6, 2009, "*The Regulation on the Reporting of Unusual and Suspicious Transaction*" (in accordance with the Notariate law, its section 230).

1421. The purpose of this regulation is to support the notaries to identify unusual or suspicious financial transaction and to determine how the Sworn Notaries comply with the requirements of the AML/CFT Law (Article 30) and of the Cabinet of Ministers Regulation No.1071 of 22. December 2008.

1422. Similarly as in the case of the auditors, no further guidance in relation to suspicious grounds, red flags, indicators or explanations of the concept is provided in the Regulation.

1423. The SRS, the main supervisory authority for DNFBP, issued guidance for the reporting entities under their supervision (real estates, dealers in precious metals and stones or accountants). The Methodical Material describe the obligations of the subjects of the Law (notifications to the FIU, appointment of responsible person, internal control systems, CDD obligations, customer risk assessment and UTRs/STRs reporting duty), a list of indicators for unusual transactions and a list of indicators for suspicious transactions.

1424. However, the guidelines/methodological material/instructions issued for the DNFBP and their control authorities are advisory, and do not constitute other enforceable means.

Feedback (applying c. 25.2)

1425. The Latvian authorities confirmed that there is no specific feedback for DNFBP. The issues noted under Section 3.9 above apply equally to DNFBP.

Adequacy of resources supervisory authorities for DNFBP (R. 30)

1426. The supervision of the casinos on AML/CFT matters is ensured by the Supervisory Department, Law and Control Division of the Lotteries and Gambling Supervisory Inspection.

1427. The SRS has no specific section or division dedicated to AML/CFT compliance supervision. The monitoring activity and controls are performed within the general fiscal control system.

1428. The on-site interviews indicated that the level of training and knowledge on AML/CFT matters (including risk-based approach) for SRS professionals is an area for improvement. No action has been undertaken in order to determine the level of awareness and compliance of various supervised sectors.

Effectiveness and efficiency (R. 24-25)

1429. The assessors' general conclusion with regard to the effectiveness of the supervision for DNFBP sector it is that the supervision provided for some of the categories is still weak in a number of respects and requires efforts to be brought in line with FATF requirements.

1430. The level of AML/CFT awareness among the three self-regulatory organisations is uneven. While the Latvian Council of Sworn Notaries and the Latvian Association of Certified Auditors appear to have a relatively adequate degree of understanding of their AML/CFT supervisory role and functions, the Latvian Council of Sworn Advocates did not appear to be fully preoccupied and sensitive about their role as concerns the supervised members.

1431. As regards the SRS even it is aware about the extension of its prerogatives over new supervised entities, this is primarily connected to the function of tax collection.

1432. The indication that the main way of performing AML/CFT supervision is off-site monitoring could not be supported by the existence of internal procedures on how this process is performed.

1433. The supervision performed by the SRS is clearly fiscal-oriented and the penalties are imposed for fiscal matters under the principle of the proportionality in relation to the damage generated to the state budget. Under this principle (as in case of AML/CFT breaches), no damage will result in no penalty.

1434. The dissemination of the general guidance issued by the SRS among the supervised entities is insufficient.

1435. The discussions with the auto sector reveals that they get only confusing guidelines; precious metal sector answers that they get from Assay a document where to sign that they know the AML/CFT Law, but not get guidelines; Investment gold companies answer that they do get some guidelines.

1436. As a conclusion this part of DNFBP is rather confused on AML/CFT issues and the level of awareness on the threat of AML/CFT and how to be protected and pro-active in the fight with AML/CFT risk is uneven among reporting entities.

1437. With regard to the Lotteries and Gambling Supervision Inspection it maintains a regular contact with the casinos and it is equipped with supervisory and sanctioning powers(but cannot issue binding regulations).

4.3.2. Recommendations and comments

Recommendation 24

1438. Authorities should consider implementing an AML/CFT specific dissuasive, effective and proportionate sanctioning regime for DNFBP.

1439. The SRS should introduce clear distinction between procedures for off-site and on-site supervision.

1440. The evaluators encourage the SRS to increase the on-site supervision.

1441. The supervision performed by SRO and sanctions applied to subject persons should be enhanced on AML/CFT issues.

Recommendation 25 (c.25.1 [DNFBP])

1442. The Latvian authorities should issuing sector specific guidance for all DNFBP.

1443. Existing guidance for auditors and notaries should include grounds for suspicion for FT and ML cases.

1444. Similarly, as in the case of FIs, the Latvian authorities should issue guidance on TF indicators.

4.3.3. Compliance with Recommendations 24 and 25 (Criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.17	**NC**	• No specific AML/CFT sanctioning regime for DNFBP • General sanctions of DNFBP are not dissuasive for AML/CFT violations • Low incidence of sanctions imposed in practice using general sanctioning regime (composite rating)
R.24	**PC**	• On-site supervision performed by the SRS is weak • No procedures for off-site supervision performed by the SRS • Sanctions imposed in practice not sufficiently dissuasive, effective and proportionate • Weak supervision performed by the SROs • Confusion in performing supervisory powers between Council of Sworn Notaries and the FIU
R.25	**PC**	• No guidance on TF suspicions • The guidance for auditors and notaries do not provide assistance on suspicious transactions reporting • Insufficient awareness of the SRS supervised DNFBP on the content of the specific guidance

5. LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1. Legal persons – Access to beneficial ownership and control information (R.33)

Recommendation 33 (rated NC in the 3rd round report)

5.1.1. Description and analysis

1445. In the 3rd round evaluation report, Latvia was rated non compliant with the requirements of Recommendation 33 as: i) there were no effective measures in place to ensure that competent authorities were able to obtain or have access in a timely fashion to the beneficial ownership and control information, in particular with respect to the legal persons that had issued bearer shares and ii) there were no effective measures to ensure that the information provided to the Registrar of Companies was current and adequate.

Legal framework

1446. The scope of R.33 is regulated in Latvia by the Civil Law, the CoL and the AML/CFT Law. Major changes had taken place since the 3rd round evaluation in this field. The relevant legislative amendment had been carried out in the CoL and other related legislation to amend the main provisions that are subject to evaluation under R.33.

1447. The definition of "*beneficial owner*" as prescribed by the FATF Recommendations was introduced into the AML/CFT Law in 2008. Thus, Article 1 (5) of the AML/CFT Law provides that a beneficial owner is a natural person: a) who owns or directly or indirectly controls at least 25 percent of the share capital or voting rights of a merchant or exercises other control over the merchant's operation; b) who, directly or indirectly, is entitled to the property or exercises a direct or an indirect control over at least 25 percent of a legal arrangement other than a merchant. In the case of a foundation, a beneficial owner shall be a person or a group of persons for whose benefit the foundation has been set up. In the case of political parties, societies and cooperative societies, a beneficial owner shall be the respective political party, society or cooperative society; c) for whose benefit or in whose interest a business relationship is established; d) for whose benefit or in whose interest a separate transaction is made without establishing a business relationship in the meaning of the AML/CFT Law.

1448. There is an explicit requirement for FIs and DNFBP to identify the beneficial owners of the legal persons. Article 17 (1) of the AML/CFT Law defines that in the framework of a business relationship, the obliged entities shall gather information on the beneficial owner. For the legal entities its shareholders' structure needs to be established and the manner of beneficial owner's control over the legal entity.

1449. According to Article 18 the AML/CFT Law, subject persons shall establish the beneficial owner of their customers, legal persons, to which enhanced customer due diligence shall apply; for all customers where it is known or there is a suspicion that the transaction is executed in the interest or on order of another person. In order to establish the identity of the beneficial owner, a statement signed by the customer shall be obtained, data or documents from information systems of Latvia or of other countries shall be used, or the identification elements shall be obtained otherwise where necessary.

1450. During the on-site visit there was no obligation in place to register in the Commercial Register (Register of Enterprises) the beneficial ownership as defined in the FATF Recommendations, and beneficial ownership information was not required to be retained by

legal entities. As the evaluation team was advised by the Latvian authorities, amendments to the CoL regarding the obligation to disclose the information on the beneficial ownership of the company was under review. Nevertheless the particular amendments to the CoL which require the disclosure of the beneficial owner of companies (Article 17.1) were enacted on 13 July, 2011. The particular legal norm provides that a shareholder of a capital company who is a natural person shall be deemed the beneficial owner of the company, i.e. they own 25% shares (directly or indirectly), if another persona is not deemed the beneficial owner of the capital company in accordance with Section1 (5) (a) or (b) of the AML/CFT law. The Law creates an obligation on a shareholder who holds shares on behalf of/for benefit of other person, acquiring at least 25 per cent of the capital company shares to notify the capital company thereof within 14 days, indicating the person for whose benefit such shares are held. This notification shall be sent to the Commercial Register (Register of Enterprises).This notification shall be submitted to the capital company in accordance with the procedures specified in Section 6 of the Group of Companies Law.

Measures to prevent unlawful use of legal persons (c. 33.1)

1451. There is one mechanism on which Latvia relies to ensure control of legal persons – the system of central registration. Information and the documents as specified by CoL shall be recorded and stored in the Commercial Register. The Commercial Register shall be maintained by a state institution – Commercial Register Office.

1452. Section 8 of the CoL (lastly amended in July 2011) provides for the specific content of the records in the Commercial Register.

1453. In respect of a partnership the under mentioned information shall be recorded in the Commercial Register: company name; type of partnership; amount of contribution by each limited partner and the total amount of limited partner contributions; ID30 information of the members and limited partners personally liable for the partnership (for legal persons – name, registration number and legal address); the extent of the right of members of the partnership to represent the partnership individually or jointly, indicating the ID information of each member of the partnership authorised for representation (for legal persons – firm name, registration number and legal address); legal address; if the partnership has been established for a specific time period or for achievement of a specific objective – the time period for which it was established or the objective; branch firm name, if it is different from the firm name of the partnership, and its legal address.

1454. In respect of a capital company[31] the following information shall be recorded in the Commercial Register: firm name; type of capital company; ID information and office held of the members of the board of directors, members of the council (if the capital company has formed a council); the right of the members of the board to represent the capital company individually or jointly; amount of equity capital, separately indicating the subscribed and paid-up amounts of equity capital; legal address; if the capital company has been established for a specific time period – the time period for which it was established; branch firm name, if it is different from the firm name of the capital company, and its legal address.

1455. In respect of a branch of a foreign trade, the following information shall be recorded in the Commercial Register: branch firm name, if it is different from the firm name of the foreign merchant, and the firm name of the foreign merchant; legal address of the branch and the location of the foreign merchant (legal address); the register where the foreign merchant is

[30] Given name, surname, personal identity number (if the person does not have a personal identity number – the date of birth, the number and date of issue of a personal identification document, the state and authority, which issued the document) and residential address

[31] A commercial company, the equity capital of which consists of the total sum of the par value of equity capital shares or stock

registered, and registration number, if the law of the state of the location of the foreign merchant provides for the recording of a merchant in a register; the type of foreign merchant; amount of equity capital of the foreign merchant, separately indicating the subscribed and paid-up amounts of equity capital, if the foreign merchant is a capital company and this information is recorded in the state register in which the foreign merchant is recorded.

1456. In addition to the information mentioned above, the following information shall be recorded in the Commercial Register: ID information of the proctor and guardian or trustee of an individual merchant; ID information and scope of authorisation of those persons who are authorised to represent a merchant (foreign merchant) in activities related to a branch; information regarding the re-organisation of the activities of a merchant (foreign merchant); information regarding the appointment of an administrator of insolvency proceedings indicating the ID information; information regarding suspension or renewal of economic activity of a merchant; information regarding termination and liquidation of operation of a merchant (foreign merchant), as well as regarding appointment of a liquidator indicating the ID information (if the liquidator of the foreign merchant is a legal person – the firm name, registration number and legal address); information regarding entering into a group of companies agreement, amending or termination thereof, indicating the dominant and dependent company, registration number and date of entering into agreement; date of the entry of each record.

1457. For the registration of shares, a company register of shareholders shall be kept where the following information shall be recorded: for natural persons – ID information of the shareholder; for legal persons – name, registration number and legal address; the par value of a share; the number of shares owned by each shareholder; the date when a shareholder has fully paid-up their shares or, if an increase in the equity capital has occurred – also the time period for the payment of shares. Further entries in the company register of shareholders shall be made not later than on the next day after the board of directors has received information about changes which have occurred in the information referred to in Paragraph two of this Section. Entries in the company register of shareholders shall be certified by the chairperson of the board of directors or an authorised representative of the board of directors with his or her signature. The board of directors shall submit an updated copy of the company register of shareholders to the Commercial Register in respect of changes to the records in the company register of shareholders (CoL, Section 186).

1458. In order to keep the records of the Commercial Register up-to-date and accurate, the legal persons are obliged to inform the Commercial Register about changes in information which is fixed as of the beginning in registries.

1459. The Commercial Register has concluded agreements with other public authorities to have the possibility to verify the information submitted by legal persons. There are several verification steps need to be undergo during the registration procedure (consideration of submitted registration documents) concerning verification of the personal data with the database of the Office of Citizenship and Migration Affairs, and verification of passport or other documents with the database of the Ministry of Interior Affairs' Information Centre.

1460. In addition, the Commercial Register updates existing records based on the information receiving from the State Revenue Service, Population Register and State Address Register. Moreover, due to Article 4 (3) of the Law "On the Commercial Register", the Register fixes all decisions of competent authorities regarding the registration restrictions.

1461. Through Article 14 (2) of the Law "On the Commercial Register", the Register is authorised to examine submitted documents for their compliance with the legislation, but not to check obstacles or circumstances under which the particular document was prepared. Pursuant to Article 4 (4) of the Law "On the Commercial Register", the Register shall inform competent public authorities about revealed law violations (e.g. if any signature on submitted documents is falsified, the Register informs competent public authorities in purpose to start investigation procedure). This legal provision on the competence of the Commercial Register has been

reaffirmed by the Supreme Court of the Republic of Latvia (case # SKC-31, from 15 January 2004): "The Commercial Register has no powers to examine factual obstacles under which a particular decision of company has been taken".

1462. Latvia has amended the CoL with Article 17.1 which ensures that information on beneficial ownership which exceeds 25 percent direct or indirect shareholding in a company shall be provided to the Commercial Register. The particular legal norm is in force since 13 July of 2011. In addition, a transition period till 31 December, 2011 has been introduced to the CoL, in order to ensure that all companies established prior to the date of enactment of Article 17.1 provided the information on beneficial ownership to the Commercial Register.

1463. Article 166.3 of AVC stipulates that if there is a failure submission of information or documents to the Commercial Register information within the time period specified in the regulatory enactments, or failure to comply with lawful decisions of the officials of the Commercial Register in the specified time period or its partial completion – a fine shall be imposed from LVL 20 up to LVL 100. If the same violations take place within a year after the imposition of an administrative sanction a fine increase to LVL 100 up to LVL 200.

1464. Under the Section 314, Clause 1, Sub-clause 3 of the Commercial Code, the operations of a company may be terminated based upon an adjudication of a court if the company has not submitted to the Commercial Register the information or documents required by law. An action in a court may be brought by the board of directors, the council, a member of the board of directors, a shareholder, the Commercial Register, as well as other persons specified by law.

1465. Section 272 of the LCL provides for the criminal liability of a person who fails to timely provide requested information to the Commercial Register if commission thereof is repeated within a one year period and the applicable sentence is custodial arrest, or community service, or a fine not exceeding thirty times the minimum monthly wage. However this sanction have never been applied yet.

Table 46: Sanctions for a failure submission of information or documents to the Register of Enterprises

Legal act	Legal norm	Applied sanctions (imposed penalties)				
		2007	2008	2009	2010	2011
Administrative violation code, Article 166.3	If there is a failure submission of information or documents to the Commercial Register information within the time period specified in the regulatory enactments, or failure to comply with lawful decisions of the officials of the Commercial Register in the specified time period or its partial completion – a warning or **a fine shall be imposed from LVL 20 up to LVL 100.**	328	430	258	193	80
Commercial law, Article 314, paragraph 1, sub-paragraph 3	The operations of a company **may be terminated** based upon an adjudication of a court if the company has not submitted to the Commercial Register the information or documents required by law. An action in a court may be brought by the board of directors, the council, a member of the board of directors, a shareholder, the Commercial Register, as well as other persons specified by law.	68	339	357	394	268

Timely access to adequate, accurate and current information on beneficial owners of legal persons (c. 33.2)

1466. The information on the ownership of the legal persons provided by board of directors of each company is publicly available (including online) in the Commercial Register. If a board of directors fails to provide the Commercial register with amended information, the Commercial register may hold information on ownership of the legal body which is different from the one in fact. Following submission of a written request and payment of a state fee, the information regarding records of the Commercial Register, extracts and copies of documents are accessible (CoL, Section 7).

1467. Latvia already has disclosure requirements for the members of a general partnership and the shareholders of a limited liability company and a joint stock company and the listed information is publicly available, including availability to the competent authorities. Shareholders, members of the board of directors and council, the auditor, as well as competent state institutions are entitled to become acquainted with the company register of shareholders (CoL, Section 186, Section 236).

1468. Pursuant to Section 190 of the LCPL, a person directing the proceedings is entitled to request from natural or legal persons, in writing, objects, documents and information regarding the facts that are significant to criminal proceedings, including in the form of electronic information and document that is processed, stored or transmitted using electronic information systems. If natural or legal persons do not submit the requested objects and documents during the specified term, the person directing the proceedings shall conduct a seizure or search.

1469. Notwithstanding the mentioned facts, the evaluation team was informed by authorities during the on-site visit that the database of the Commercial Register was under the process of restructuring and currently all interested parties are able to obtain or have access in a timely fashion to adequate, accurate and current information on the control of legal persons.

1470. Article 54 of the AML/CFT Law makes obligatory to all public and government institutions to provide the LFIU with the requested information that is necessary to fulfil its functions.

1471. There has been a significant improvement since the 3rd MER as to the access to information on the beneficial ownership of companies. This information is required by Law for the Commercial Register. As the evaluation team was advised by the Latvian authorities, amendments to CoL regarding the obligation to disclose the information on the beneficial ownership of the company were under review during the on-site visit. The particular amendments in CoL are in force since 13 July, 2011.

Prevention of misuse of bearer shares (c. 33.3)

1472. At the time of the 3rd round visit, the CoL (Sections 235 and 238) allowed bearer shares to be issued by a joint stock company.

1473. At the time of the 4th round evaluation on-site visit the legal framework had been improved. Following the amendments to Article 229 (2) of the CoL in April 2008, the bearer shares may be issued only in dematerialized form, so any paper format is prohibited. According to the Financial Instrument Market Law, the board of directors shall ensure the record of bearer stocks in the Latvian Central Depository. A stockholder has the right to transfer bearer stock recorded in the Latvian Central Depository to his or her financial instruments account.

1474. According to Article 236-2 of the CoL, the company and competent authorities are entitled to request the information from the Latvian Central Depository regarding the holders of bearer shares. In line with Article 94 (3) of the Financial market instrument law (the particular legal norm came in force in June 2008) the Latvian Central Depositary has issued Regulation No.2 "On book-entry of financial instruments and execution of corporate actions", providing that the

full scope of information on bearer shares holders need to be submitted to the Latvian Central Depositary. The obligation to submit the notification on beneficial owners to the Commercial Register relates to the holders of bearer shares (Article 17.1, CoL), so it is possible to identify the persons who have opened financial instrument accounts. Until now in the Commercial Register, 39 companies have been registered which have issued bearer shares.

1475. Transitional provisions No.11 of CoL which was enacted in May 2008 states that if a stock company has bearer stocks, which have not been recorded in the Latvian Central Depository in accordance with the provisions of the Financial Instrument Market Law, the stock company shall, not later than until 31 December 2009, take a decision regarding the conversion of bearer stocks to recorded stocks or shall ensure the record of bearer stocks in the Latvian Central Depository. The relevant amendments of CoL ensure that bearer shares are not misused for ML. In case if a company has not converted its bearer shares by the end 2009, its operations can be terminated according to the Article 314 (1) (3) of the CoL.

Additional element - Access to information on beneficial owners of legal persons by financial institutions (c. 33.4)

1476. As was mentioned by the Latvian authorities, the information on the ownership of the legal persons is available for FIs. Pursuant to Section 7 of the CoL, following submission of a written request and payment of a state fee, the information regarding records of the Commercial Register, extracts and copies of documents are accessible. The information on the ownership of the legal persons is publicly available (including online) in the Commercial Register. Also FIs as well as other obliged entities under the AML/CFT Law may identify and verify beneficial owners according to established internal control system independently. Based on the Article 17.1 (10) of the CoL the information on beneficial owners is available for law enforcement authorities and control authorities in the field of tax administration, public procurement or public-private partnership.

5.1.2. Recommendations and comments

1477. The electronic collection of data on commercial companies has substantially improved the transparency of the Commercial Registry and the access to data concerning legal persons.

1478. The definition of "*beneficial owner*" as prescribed by the FATF Recommendations was introduced into the AML/CFT Law in 2008. There is an explicit requirement for FIs and DNFBP to identify the beneficial owners of the legal persons (Articles 17 (1) and 18 of the AML/CFT Law).

1479. Nevertheless, the statutory administrative sanctions for not providing full information to the Registry are low and may be seen as not enough effective measure on the preventive side. In evaluator's view, those constitute shortcomings that may affect the reliability/accuracy of the information maintained by the Commercial Registry. At the same time there is a risk to be liquidated if a company does not provide information to the Register of Enterprises (Article 314 of the CoL). Increasing the existing administrative sanctions for non-compliance with the requirements to provide information to the Commercial Registry is also recommendable.

1480. The Latvian authorities have adopted amendments in CoL which ensure that information on beneficial ownership which exceeds 25 percent of direct or indirect shareholding in a company is provided to the Register of Enterprises. The particular legal norms are in force since 13 July, 2011. In order to ensure that all companies established prior to 13 July, 2011 make available information on beneficial ownership to the Register of Enterprises a transition period till 31 December, 2011 is introduced by the CoL. The Latvian authorities are encouraged to review the compliance with this legal norm.

5.1.3. Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**C**	

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 LC in the 3rd round report)

Effective mechanisms in place for domestic cooperation and coordination in AML/CFT (c.31.1)

1481. The Latvian authorities consider that the main body for domestic cooperation and coordination in AML/CFT area is the Advisory Board of the Financial Intelligence Unit. The legal status of the Advisory Board is determined by Article 59 of the AML/CFT Law:

> "*1) to coordinate the cooperation of public institutions, the persons subject to this Law and their supervisory and control authorities for the fulfilment of the requirements of this Law;*
>
> *2) to develop proposals for the needs of the Financial Intelligence Unit to perform its tasks as set out in this Law;*
>
> *3) to prepare and submit to the Financial Intelligence Unit proposals on amendments to the list of indicators of unusual transactions;*
>
> *4) on request by the Prosecutor General or on its own initiative, to notify the Prosecutor General on the performance of the Financial Intelligence Unit and submit proposals for its improvement."*

1482. The composition of the Advisory Board is determined by Article 60 of the AML/CFT Law: two representatives appointed by the Minister of Finance, of which one shall be from the State Revenue Service and one representative appointed by each of the following: the Minister of Interior, the Minister of Justice, the Bank of Latvia, the Financial and Capital Market Commission, the Association of Latvian Commercial Banks, the Latvian Insurers Association, the Latvian Association of Certified Auditors, the Latvian Council of Sworn Notaries, the Latvian Council of Sworn Advocates and the Supreme Court.

1483. Meetings of the Advisory Board are chaired by the Prosecutor General and FIU ensure the record keeping of the Advisory Board.

1484. According to the FIU Head, during the on-site visit, the Advisory Board is a first-level review mechanism, reviewing reports of the FIU's workload and discussing effectiveness of its operations.

1485. The legal framework for the cooperation between the FIU and Supervisory and Control institutions is provided for under Paragraph 1 of the Article 51 of the AML Law. The FIU has the duty to provide supervisory and control authorities with information on the general ML/FT techniques and trends to enhance the measures that would reduce the possibility of money laundering and of terrorist financing and ensure specific training for the employees of supervisory and control authorities.

1486. Similarly, according to the AML/CFT Law, all public and local government institutions a duty to provide the FIU with the requested information that is necessary to fulfil its functions.

1487. The evaluation team was advised that a working group on risk assessment have been created between FIU, FCMC and law enforcement. At the time of the visit the working groups was at the data collection stage the goal being to assess the risks and to provide the policy makers with suggestions for improvement.

1488. During the on-site interviews it was stated that the operational co-operation between the FIU and the Economic Police and the Organised Crime Department of the State Police is well functioning. They can require spontaneous and additional information from the FIU with the approval of the prosecutor. The answer is provided by the FIU in a timely fashion directly to police forces.

1489. However, various interviewees from police forces underlined the need for further training and analysing financial information and the need to foster co-operation with other internal institutions in order to get expertise in economic and financial matters.

1490. The overall co-operation between different police-forces appeared to be good, and over time, joint investigation teams have been constituted.

1491. Various police forces have access to a common data base on all convicted persons. Also, CRASS law enforcement data base providing data on on-going investigations is maintained by the Ministry of Justice since 2010.

Additional element – Mechanisms for consultation between competent authorities and the financial sector and other sectors (including DNFBP)(c. 31.2)

1492. The responsibility for the general coordination of Latvia's anti-money laundering efforts is with the Financial Sector Development Council (FSDC). The membership of the Council includes the Prime Minister, Minister of Justice, Minister of Interior, the Prosecutor General, the President of the Banka of Latvia and others.

1493. The legal bases for the operation of the Council are article 61 of the AML/CFT Law which states that the FSDC is the coordinating body and shall coordinate and improve the cooperation of public institutions and the private sector in the prevention of money laundering and terrorist financing and Cabinet of Ministers Regulation 233 of April 3, 2007. The Cabinet of Ministers determine the composition, functions, tasks, rights, the decision-making procedure and the work organisation of the Financial Sector Development Council.

1494. The Council's responsibility is to develop the coordination of different state institutions including FIU and private sector. The composition of the Council ensures that this is done at the highest policy level in Latvia. The fact that the Prime Minister chairs this Council is an indication of the political will of the state authorities and how seriously the issue of AML/CFT is being taken in Latvia.

1495. According to the authorities interviewed during the on-site visit, the FSDC has helped to prioritize the work of AML/CFT authorities. The FSDC also plays a role in drafting legislative amendments. Underneath the FSDC, the FIU chairs a working group drafting a national threat assessment, as described in Section 3 above.

1496. In addition, the Head of the FIU reported that the FSDC sets major priorities for FIU operations: freezing of assets, analyzing and providing the Financial Police and Economic Police with analysis on large, complex money-laundering schemes, and, more generally, providing law enforcement with information. According to the Head of the FIU, the work of the FSDC also includes a review of FIU effectiveness. Given the high number of STRs filed and the individual analysis paid to each report, the FSDC reviewed the FIU's operations.

Review of the effectiveness of the AML/CFT system on a regular basis (Recommendation 32.1)

1497. The Finance Sector Development Council, chaired by the Prime Minister is the coordinating body for the harmonization and improvement of cooperation between state authorities and the private sector in order to prevent money laundering and terrorist financing.

1498. Among the most important decisions of the Council are:

- The creation of a comprehensive plan in order to improve correspondent banking relationships with US banks.
- Entrusting the State Revenue Service with the task to supervise non-financial institutions, which has also been incorporated into the regulations of the AML law.

1499. Since its creation, there were two meetings of the Council held in 2008 and one meeting in 2009. The agenda of the meetings contained also AML/CFT issues (e.g., increasing the role of the Company Register in preventing money laundering and terrorist financing, money laundering issues in Post Office).

Recommendation 30 (Policy makers – Resources, professional standards and training)

1500. The resources of the Advisory Board of the FIU and of the FSDC seemed adequate at the time of the on-site, as the most significant members of the AML/CFT supervisory system were present and active in the decision-making.

1501. Regarding standards and training of the FSDC, it is unclear to what extent these exist in practice. These issues are handled through participant's representative body.

1502. At law enforcement level, more investigators focused to ML cases in the police forces would be welcome. There is a need for a specialized continuous training for police officers in AML/CFT matters, in economic and financial analysis. More specialized investigators and equipment is needed for the law enforcement authorities (especially financial police).

Effectiveness and efficiency

1503. The authorities have a variety of mechanisms in place to facilitate co-operation and policy development. There are also effective mechanisms to facilitate co-operation between the agencies involved in investigating ML and TF.

6.1.2. Recommendations and Comments

Recommendation 31

1504. More involvement of the Finance Sector Development Council in national risk assessment and in the creation of a national AML/CFT strategy should be advisable.

1505. The Council should organise regular meetings to address current AML/CFT policy and overall coordination needs.

Review of the effectiveness of the AML/CFT systems on a regular basis (Recommendation 32.1)

1506. The Latvian authorities are encouraged to review the effectiveness of the AML/CFT system on a regular basis and scrutinise the collected statistics in the light of the effectiveness.

1507. It is recommended to further exploit the Finance Sector Development Council and the Advisory Board of the FIU in the national risk assessment and in the analyses of the effectiveness of the AML/CFT system as a whole.

Recommendation 30 (Policy makers – Resources, professional standards and training)

1508. More investigators focused to ML cases in the police forces would be welcome. There is a need for a specialized continuous training for police officers in AML/CFT matters, in economic and financial analysis. More specialized investigators and equipment is needed for the law enforcement authorities (especially financial police).

6.1.3. Compliance with Recommendations 31 and 32 (criterion 32.1 only)

	Rating	Summary of factors underlying rating
R.31	**LC**	• No cooperation mechanism to involve DNFBP's supervisory authorities or respective SROs • No regular review of the effectiveness of the AML/CFT system at policy level

6.2. The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

6.2.1. Description and analysis

Recommendation 35 (rated LC in the 3rd round report)& Special Recommendation I (rated LC in the 3rd round report)

Ratification of AML Related UN Conventions (c. R.35.1 and of CFT Related UN Conventions (c. SR I.1)

1509. Latvia has signed and ratified the 1988 UN Convention on Illicit Drugs and Psychotropic Substances (Vienna Convention) in 1994 and the 2000 UN Convention against Transnational Organised Crime (Palermo Convention) in 2001. The 1999 International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention) was signed by Latvia on 14th November, 2002.

1510. Latvia was rated largely compliant for R.35 in the 3rd round mutual evaluation and the following deficiencies were noted:

- Property has not been defined for the purposes of the LCL and CPL;
- The definition of proceeds of crime/illegally acquired property does not include property obtained indirectly;
- Forfeiture does not include property that is intended for use in the commission of an offence.

Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1) and Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c.35.1)

1511. The ML offence has been criminalised in the LCL since 1998. In general the definition of ML offence is in line with the elements listed in the Vienna and Palermo Conventions.

1512. As noted in Section 2.2 above, the TF offence (in all its elements as provided under the FATF SR II) is not covered as predicate offences for ML.

1513. The trafficking in narcotics and other drug related offences are criminalised by virtue of the LCL.

1514. The confiscation procedure in respect of proceeds from crime is provided by Chapter 27 (Sections 355–360) of the CPL. Section 355 (1) provides that property shall be recognised as criminally acquired, if such property has come directly or indirectly into the property or possession of a person as a result of a criminal offence. Section 358 (1) states that criminally acquired property shall be confiscated, if the further storage of such property is not necessary for the achievement of the purpose of criminal proceedings and if such property does not need to be returned to the owner of lawful possessor. An acquired financial resource shall be transferred to the state budget. If criminally acquired property has been alienated, destroyed, hidden or masked, and the confiscation of such property is not possible, other property, also financial resources, at the value of the property being confiscated may be subjected to confiscation or recovery.

1515. Concerning "*instrumentalities*", Section 240 (1) paragraph 6 of the CPL provides that instrumentalities which were intended or have been used for commission of a criminal offence shall be confiscated, but if they do not have any value – destroyed.

1516. Natural persons acting on behalf of legal persons can be liable for money laundering under the LCL. In addition, criminal liability measures may be applied to legal persons.

1517. The specific rules with respect to the disposal of confiscated assets are stated in the Regulation of the Cabinet of Ministers, on the procedures for the division of money or property acquired as a result of a confiscation of property with foreign states, and the procedures for the transfer of money to foreign states – adopted on May 18, 2010.

1518. Law enforcement agencies have a full range of investigative techniques at their disposal.

Implementation of the Terrorist Financing Convention (Articles 2-18, c.35.1 & c. SR. I.1)

1519. Latvia has criminalised the TF offence by virtue of Section 88¹1 of the LCL. This offence can be committed by both natural and legal persons. For the terrorism financing offence, the applicable punishment is life imprisonment or imprisonment for a term of not less than 8 and not exceeding 20 years, with confiscation of property. Moreover, for activities specified in Section 88¹1 (2) of the LCL, the applicable punishment is life imprisonment or imprisonment for a term of not less than 15 and not exceeding 20 years, with confiscation of property.

1520. However, there are still some shortcomings that need to be addressed with respect to the full implementation of the TF Convention concerning the additional element required by the Latvian law in relation to acts that can be qualified as "*acts of terror*". Article 2 (1)(a) of the TF Convention requires countries to criminalise an act which constitutes an offence within the scope of and as defined in one of the treaties listed in the Annex without any additional mental element.

Implementation of UNSCRs relating to Prevention and Suppression (c. SR.I.2)

1521. The UNSCRs 1267 and 1373 relating to the prevention and suppression of the financing of terrorism are implemented in Latvia within the EU framework by means of Council Regulations and Common Positions, as well as under the AML/CFT Law and other national legislation. However, as noted above, Latvian domestic mechanism for giving effect to UNSCRs 1267 and 1373 needs further development.

Additional element – Ratification or Implementation of other relevant international conventions

1522. Latvia signed the 1990 Council of Europe Convention on Money Laundering, Search, Seizure and Confiscation of the proceeds from Crime in 1998 and ratified it in 1998.

1523. Latvia has ratified twelve Universal Anti-terrorism instruments, and is party to eight Multilateral Conventions on terrorism.

1524. In May 2006 Latvia signed the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198) and ratified this on 1 June 2010.

6.2.2. Recommendations and comments

1525. Latvia has ratified the Vienna and Palermo conventions and the TF Convention. The legislation has been amended in order to implement the conventions, but still does not cover the full scope of them as described above and in the specific section on SR. II. Therefore, it is recommended that Latvia amend its legal framework to entirely cover the TF offence and thus fully implement the TF Convention.

1526. Measures still need to be taken in order to properly implement UNSCRs 1267 and 1373. The evaluators have concerns about the effectiveness of the procedures in place to freeze assets of designated persons (UNSCR 1267). Notwithstanding the administrative freezing up to 9 months, the system relies on criminal proceedings to ensure freezing of assets until the person is de-listed. The mechanism does not cover EU internals. Moreover, there is no national mechanism in place to consider freezing requests under UNSCR 1373 or by third country request that are outside the EU and NATO.

6.2.3. Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**LC**	• The TF offence (in all its elements as provided under the FATF SR II) is not covered as predicate offences for ML
SR.I	**LC**	• The criminalisation of TF offence not fully in line with the TF Convention regarding the additional mental element required as explained under SRII • Measures still need to be taken in order to properly implement UNSCRs 1267 and 1373.

6.3. Mutual legal assistance (R. 36, SR. V)

6.3.1. Description and analysis

Recommendation 36 (rated C in the 3rd round report)
Legal framework

1527. As set out in the 3rd round MER, Latvia is a party to international agreements, such as the 1959 European Convention on Mutual Legal Assistance in Criminal Matters and its Additional Protocols, and the 1990 Strasbourg Convention and 2005 Warsaw Convention. It is a party to several bilateral mutual legal assistance agreements.

1528. International co-operation in the area of criminal law is regulated by Part C of the LCPL. International co-operation in the area of criminal law at the request of foreign countries and ensured: 1) in extradition of a person for criminal prosecution, conviction or execution of a judgment, or for determining enforcement means of medical nature; 2) in transfer of criminal procedure; 3) in surrender of the convict for execution of confinement penalty; 4) in execution of process; 5) in recognition and execution of a judgment; 6) in other cases pursuant to international treaties.

1529. MLA is provided on the basis of international, bilateral, or multilateral agreements, where available. Where there is no agreement on MLA, the CPL provides that, if there is no treaty or agreement with the respective country, MLA is provided on the basis of reciprocity (Section 675 (3)).

1530. Apart from the issues raised in sections 2.1 and 2.2 above regarding the incomplete criminalisation of ML and TF, the MLA framework in ML and TF cases is comprehensive and meets the requirements of the Methodology. In practice, the incomplete criminalisation of terrorist financing has not been an issue.

Widest possible range of mutual assistance (c.36.1)

1531. The Latvian competent authorities may provide a wide range of mutual assistance, similar to the points listed under essential criteria 36.1:

- the production, search and seizure of information, documents, or evidence including financial records from financial institutions, or other natural or legal persons (LCPL, Sections 121 (5), 159, 169, 179, 186, 190-192, 219);
- the taking of evidence or statements from persons (CPL, Sections 145, 147, 183);
- providing originals or copies of relevant documents and records as well as any other information and evidentiary items (CPL, Sections 127, 134, 135, 136);
- effecting service of judicial documents (CPL, Sections 824, 825);
- facilitating the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country (CPL, Section 813);
- 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 (CPL, Sections 179, 186, 240, 355, 360 (1), 361 (1, 11), 362 (3)).

Provision of assistance in timely, constructive and effective manner (c. 36.1.1)

1532. Section 814 of the CPL provides procedural deadlines for execution of MLA requests. The competent authority (State Police, General Prosecutor Office and Ministry of Justice) decides whether to accept or not the MLA request immediately, but not later than within a term of 10 days after the receipt thereof.

1533. In adjudicating a request of a foreign state, a competent authority shall take one of the following decisions: if the request is admissible, to determine the institution that will fulfil the request, terms, and other conditions; if it is the case of a refusal to execute the request or a part thereof, to substantiate the refusal.

Provision of assistance should not be impeded by of unreasonable, disproportionate or unduly restrictive conditions (c. 36.2)

1534. Section 816 of the CPL provides very limited grounds for refusal of MLA. No ground for refusal for offences involving fiscal matters is regulated in Latvia. The execution of a request of a foreign state may be refused, if:

- the request is related to a political offence, except for the case when a request applies to terrorism or financing of terrorism;
- the execution of the request may harm the sovereignty, security, social order, or other substantial interests of the State of Latvia;
- sufficient information has not been submitted and the acquisition of additional information is not possible.

Clear and efficient processes (c. 36.3)

1535. Section 814 of the LCPL indicates that in adjudicating a request received from a foreign state, a competent authority shall take one of the following decisions: regarding the possibility of the execution of the request, determining the institution that will fulfil the request, terms, and other conditions; regarding a refusal to fulfil the request or a part thereof, substantiating the refusal.

1536. Moreover, Section 815 of the LCPL stipulates that the institution fulfilling a request from a foreign state shall, in a timely manner, inform the foreign state, on the basis of an order of a competent authority, regarding the time and place of the performance of a procedural action, and send the materials obtained as a result of the execution of the request. If a procedural action has not been performed or has been performed partially, a foreign state shall be notified regarding it.

Provision of assistance regardless of possible involvement of fiscal matters (c. 36.4)

1537. No ground for refusal for offences involving fiscal matters is regulated in Latvia.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 36.5)

1538. As it was mentioned in the analysis of Recommendation 4, overall, the national legislation on financial institution secrecy appears to enable the authorities to access necessary information in order to exercise their functions in the AML/CFT field. According to the interviewees met on-site, no difficulties have been experienced in practice.

Availability of powers of competent authorities (applying R.28, c. 36.6)

1539. The powers of competent authorities required under Recommendation 28 are also available for responses to MLA requests. Pursuant to Section 813 of the CPL a request of a foreign state regarding assistance in the performance of a procedural action shall be fulfilled in accordance with the specified procedures. In the pre-trial proceedings, the General Prosecutor Office shall examine and decide upon a request of a foreign state and up to the beginning of criminal prosecution, the State Police shall also examine and decide upon such request; following the transfer of a case to a court, the Ministry of Justice shall examine and decide upon a request from a foreign state.

Avoiding conflicts of jurisdiction (c. 36.7)

1540. Latvia ratified the Council of Europe Convention on Transfer of Proceedings in Criminal Matters in 1997. The mechanism in place for determining the best venue for prosecution is provided in CPL. Article 723 deals with the Content and Condition of Takeover of Criminal Proceedings and Article 741 deals with Content and Conditions of a Transfer of Criminal Proceedings. It has to be read in conjunction with Article 2 and 4 of LCL which deals with matters of jurisdiction.

1541. Common investigation teams may be established in Latvia based on Chapter 75 of the CPL. Apart from that, the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (2002/187/JHA) is binding upon Latvia as the EU Member State.

Additional element – Availability of powers of competent authorities required under R. 28 (c. 36.8)

1542. Section 675 of the CPL provides the possibility of direct contacts. The Latvian competent authority may agree, in criminal-legal co-operation, with a foreign competent authority regarding the direct communication between courts, Prosecutor's Offices, and investigating institutions. If an agreement with a foreign state regarding criminal-legal co-operation does not exist, the Minister for Justice and the Prosecutor General have the right to submit to the foreign state a relevant request or to receive a request from the foreign state.

1543. In addition, between the EU member states there is closer co-operation based on the EU instruments, which enable the usage of direct contacts.

Recommendation 38 (rated PC on the 3rd round report)

International Co-operation under SR. V (applying 36.1 – 36.6 in R.36, c.V.1)

1544. National authorities responsible for identification, freezing, seizure and confiscation have the same powers to execute MLA as if the activity would be performed in national case. Section 813 of the CPL defines that a request of a foreign state regarding the provision of assistance in the performance of a procedural action shall be fulfilled in accordance with the procedures specified in the CPL (as described under on Recommendation 3 – essential Criteria 3.2 and 3.4).

1545. The competent authority (State Police, General Prosecutor Office or Ministry of Justice) decides whether to accept or not the MLA request immediately, but not later than within a term of 10 days after the receipt thereof. Also, competent authorities determine the institution that will fulfil the MLA requests and the terms for the execution. Moreover, on the basis of a request of a foreign state, a competent authority may permit a representative of the foreign state to participate to a procedural action, or to personally perform such operation in the presence of a representative of the institution fulfilling the request.

1546. Acceptance of the execution of forfeiture of assets, confiscation or other punishment or measure of the same effect is one of types of legal assistance that Latvia provides.

1547. Notwithstanding the fact that Article 785 of the CPL stipulates the execution of confiscation requests, that confiscation of property to be executed in Latvia shall be determined, if such confiscation has been imposed in a foreign state and if the LCL provides for such confiscation as a basic or additional punishment regarding the same offence, or if property would be confiscated in criminal proceedings taking place in Latvia on other grounds provided for in the law.

1548. With regards to requests relating to property of corresponding value, LCPL Section 358 (2) provides that in cases where the property obtained by criminal means is alienated, destroyed or concealed, and cannot be confiscated, a different property, including financial funds, may be seized or collected to the amount of the value of the property to be seized. So, the Criterion 38.1 is met where the requests relate to property of corresponding value (conjunction of Sections 813 and 358).

1549. The procedure for coordinating seizure and confiscation actions with other countries is regulated by the CPL provisions (Sections 675 and 830–838).

1550. Enforceable sentences of foreign courts as to the execution of forfeiture of assets or confiscation are accepted pursuant to Section 7851 (5) and Section 80116 (6) of the CPL. Latvia possesses a mechanism for sharing of confiscated assets with other states, including EU member states. In addition, Regulation Nr. 457 "On procedures for the division of money or property acquired as a result of a confiscation of property with foreign states, and the procedures for the transfer of money to foreign states" was adopted by the Cabinet of Ministers on May 18, 2010.

1551. The LCPL or other relevant legislative act do not provide the possibility of establishing an asset forfeiture fund into which all or a portion of confiscated property would be deposited and

used for law enforcement, health, education or other appropriate purposes. The sharing of confiscated assets between jurisdictions when confiscation is direct or indirect result of coordinated law enforcement actions, shall be decided by the Ministry of Justice in each particular case.

Additional element under SR V (applying c. 36.7 & 36.8 in R. 36, c.V.6)

1552. Foreign non-criminal confiscation orders (as described in criterion 3.7) are recognised and enforced in the Republic of Latvia. Section 785 of the CPL provides that confiscation of property executed in Latvia shall be determined: a) if such confiscation has been imposed in a foreign state; b) if the LCL provides for such confiscation as a basic punishment or additional punishment regarding the same offence; c) or if property would be confiscated in criminal proceedings taking place in Latvia on other grounds provided for in the law.

1553. Otherwise, confiscation shall be applied only in the amount, determined in the judgment of the foreign state, that the object to be confiscated is an instrumentality of the committing of the offence or has been obtained by criminal means. The amount of a confiscation of property determined in the judgment of the foreign state shall be calculated according to the currency exchange rate specified by the Bank of Latvia which was in force on the day of announcement of the judgment of conviction.

1554. If several judgments of the foreign state have been received at the same time, a court shall take a decision taking into account the gravity of a criminal offence, attachment imposed on the property and succession of receiving of the judgments.

1555. Special Regulation for the division of money or property acquired as a result of a confiscation of property with foreign states, and for the transfer of money to foreign states was adopted in 18 May 2010 and the mandate to issue the regulation is provided in Article 785 of CPL.

1556. The Regulation prescribes the procedures by which money or property acquired as a result of a confiscation of property shall be divided with foreign states or be transferred to foreign states, including European Union Member States.

1557. In accordance with Item 6 of the Regulation if the amount of money acquired as a result of confiscation of property does not exceed the equivalent of EUR 10,000 in LVL, the decision on refusal to transfer money to a foreign state shall be taken.

1558. Item 10 of the Regulation provides that if the amount of money obtained as a result of confiscation of property exceeds the equivalent of EUR 10,000 in LVL, one of the following decisions shall be taken:

- if a European Union Member State is requesting the division of money – to transfer half of the money or more to the relevant European Union Member State;
- if the division of money is requested by a foreign state which is not a European Union Member State – to transfer not more than half of the money to the foreign state or the amount specified in the request of the foreign state.

International Co-operation under SR. V (applying 36.1 – 36.6 in R.36, c.V.1)

1559. The provisions described in Criteria 36.1–36.6 (in R.36) above apply equally to the obligations under SR.V. It should be noted, however, that the deficiencies described under SR II impact Latvia's ability to provide MLA.

Additional element under SR V (applying c. 36.7 & 36.8 in R. 36, c.V.6)

1560. The provisions described in Criteria 36.7–36.8 (in R.36) above apply equally to the obligations under SR.V.

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

1561. The provisions described in Criteria 36.1–36.6 (in R.36) above apply equally to the obligations under SR.V. It should be noted, however, that the deficiencies described under SR II impact Latvia's ability to provide MLA in financing of terrorism cases.

Recommendation 30 (Resources – Central authority for sending/receiving mutual legal assistance/extradition requests)

1562. The State Police, General Prosecutor Office (PGO) and Ministry of Justice act as the central authorities for a wide range of MLA requests.

1563. The International Cooperation Bureau of the Central Criminal Police Department consists of Interpol National Unit, Legal Assistance Request Unit, Europol National Unit, SIRENE Latvia National Unit, Operational Coordination and Informative Provision Unit. The Bureau is leaded by the head and staffed 61 officers. The International Cooperation Bureau also includes 11 civil servants.

1564. As of January 2011, 7 prosecutorial positions were staffed in the International Cooperation Division of the General Prosecutor's Office. All prosecutors of the International Cooperation Division are specialised in MLA, extradition and transfer of the proceedings in criminal matters.

1565. The Department of Judicial Cooperation of the Ministry of Justice ensures the implementation of judicial cooperation in the field of international legal assistance in judicial system. Department of Judicial Cooperation is a unit that subordinate directly to the Deputy Secretary of State of the Ministry of Justice in judicial matters. The Division of Courts Cooperation is subordinate under Department of Judicial Cooperation, and consists of 1 head and 5 legal advisors, where 2 of them are responsible for international judicial cooperation in criminal matters.

Recommendation 32 (Statistics – c. 32.2)

1566. The Latvian authorities provided the following statistics concerning mutual legal assistance:

Table 47: Mutual legal assistance (PGO)

Requests sent															
	2006			**2007**			**2008**			**2009**			**2010**		
	ML	TF	Other	ML	TF	Other	ML	TF	Other	ML	TF	Other	ML	TF	Other
Executed	13		230	18		233	27		270	21		360	42		213
Refused															
Total	13		230	18		233	27		270	21		360	42		213
Requests received															
	2006			**2007**			**2008**			**2009**			**2010**		
	ML	TF	Other	ML	TF	Other	ML	TF	Other	ML	TF	Other	ML	TF	Other
Executed	33		549	25		486	23		391	34		314	40		451
Refused				1*									1**		
Total	33		549	26		486	23		391	34		314	41		451

* Refusal was based on Article 2, paragraph „a" of the European Convention on Mutual Assistance in Criminal Matters (request concerns an offence which the requested Party considers a political offence).

** Swiss Confederation refused the execution of the request because of the absence of double criminality.

Table 48: Transfer of the proceedings (PGO)

Requests sent															
	2006			2007			2008			2009			2010		
	ML	TF	Other	ML	TF	Other	ML	TF	Other	ML	TF	Other	ML	TF	Other
Executed			8			10			10	2		17	2		11
Refused															
Total			8			10			10	2		17	2		11

Requests received															
	2006			2007			2008			2009			2010		
	ML	TF	Other	ML	TF	Other	ML	TF	Other	ML	TF	Other	ML	TF	Other
Executed			13			16			20			29	6		26
Refused															
Total			13			16			20			29	6		26

Table 49: Foreign requests for legal assistance in criminal matters

	Ministry of Justice	Courts of Latvia
2006	67	100
2007	146	162
2008	67	201
2009	205	136
2010	116	113

1567. From 2006 to 2010 the Latvian Ministry of Justice sent and received requests on 2 ML case to and from foreign counterparts which was executed.

1568. Each authority such as the State Police, General Prosecutor Office and Ministry of Justice maintains its own statistics relating to MLA on separate databases. Thus, there is no any central database for this purpose.

1569. Statistics on State Police MLA requests are available only for 2009 and 2010. Furthermore there is no classification of such information according the type of offence. Therefore the authorities have informed the evaluators that the State Police received 369 MLA requests in 2009 and 362 in 2010. However, the evaluators were not informed of how many of these requests were relating to each type of international cooperation, how many of those were refused, executed or pending or how long it took to respond. With relation to outgoing requests authorities informed that in 2009 there were 421 requests and in 2010 – 382.

Effectiveness and efficiency

1570. The evaluators welcome the establishment of an asset sharing mechanism with other jurisdictions.

1571. The evaluators encourage the authorities to take further steps to set up a central database for maintaining information on MLA requests.

1572. Deficiencies in the criminalisation of the TF offence might provide an obstacle to effective co-operation with foreign states.

1573. The Latvian authorities maintained that MLA requests are normally complied within two months and are dealt with more quickly in urgent cases.

6.3.2. Recommendations and comments

Recommendation 36

1574. The Latvian authorities should put in place a system enabling them to monitor the quality and speed of executing requests.

Recommendation 38

1575. The Latvian authorities should maintain centralized annual statistics on all MLA requests, including requests relating to freezing, seizing and confiscation that are sent or received, relating to ML, the predicate offences and TF, including the nature of the request, whether it was granted or refused and the time required to respond.

1576. The Latvian authorities should take measures to ensure the enforcement of foreign confiscation orders for property, other than instrumentalities and property obtained illegally in all cases.

1577. The Latvian authorities should consider establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes.

Special Recommendation V

1578. The Latvian authorities should clarify whether the identified deficiency with respect to the TF offence as outlined under SR. II may limit its ability to provide international cooperation in certain situations.

Recommendation 32

1579. Centralises statistics on MLA would assists the Latvian authorities to evaluate the effectiveness of the system as a whole.

1580. Statistics on the average time of dealing with the foreign requests should be also kept by the Latvian authorities.

6.3.3. Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3. underlying overall rating
R.36	**C**	
R.38	**PC**	• Enforcement of foreign confiscation orders for property, other than instrumentalities and property obtained illegally is only available if confiscation is a penalty for the same offence in Latvia. • It is unclear whether request for confiscation of property can extend to enforcement of confiscation of all proceeds of crime, intended instrumentalities and terrorist property due to deficiencies already identified. • No provisions to meet the requirements of the essential criterion 38.4.
SR.V	**LC**	• The shortcomings in the criminalisation TF offence might provide an obstacle to effective co-operation with foreign states.

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)

1581. The deficiencies identified in the 3rd round report were related to the lack of statistics on cooperation which undetermined the assessment for effectiveness.

Legal framework

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), Spontaneous exchange of information (c. 40.3)

FIU

1582. The legal ground for international cooperation of the FIU is provided by Article 62 of the AML/CFT Law, which regulates the issue of international cooperation.

1583. The Financial Intelligence Unit is be entitled on its own initiative or on request to exchange information with authorised foreign institutions that exercise equivalent duties and with foreign or international institutions combating terrorist financing on the issues of the control of the movement of terrorist-related funds, under the condition that data confidentiality is ensured and data is used only for preventing and detecting offences that are subject to criminal punishment in Latvia.

1584. For exchange of information purposes, the Financial Intelligence Unit shall be entitled to sign cooperation contracts and agree on the procedure for the exchange of information and the content of information. In addition, the Financial Intelligence Unit shall be entitled to set other

restrictions and conditions for using the information provided by it to the authorised foreign institutions and international institutions, and request information on the use of such information. Information is provided for analysis, and the consent of the Financial Intelligence Unit shall be necessary in accordance with the requirements of Paragraph 1 hereof to pass it further.

1585. According to the legal provisions, the Financial Intelligence Unit shall be entitled to refuse, fully or in part, from the exchange of information or from giving its consent to passing information further if:

- *this may harm the sovereignty, security, public order or other national interests of Latvia;*
- *There are reasonable grounds to believe that a person will be prosecuted or punished because of his/her race, religion, citizenship, ethnic origin or political opinions;*
- *This would be explicitly incommensurate in respect of the legal interests of the Latvian state or of a person;*
- *a person that is included in the list of persons suspected for involvement in terrorist activities that is compiled by the countries or international organisations recognised by the Cabinet of Ministers, and has committed a criminal offence in the territory of the country that has requested exchanging or passing further of information, is the citizen of that country and has not committed a criminally punishable offence in Latvia.*

1586. Similarly, the Financial Intelligence Unit may request foreign institutions other than FIUs to submit information that is needed to analyse the received reports on unusual or suspicious transactions. For example, the Latvian authorities pointed to a case where they have established a relationship with foreign police service and the second where the CFT capabilities were born with another body than the FIU.

1587. The Latvian FIU may issue postponement of transactions orders at the request of authorised institutions of other countries or international institutions preventing terrorism. The Latvian authorities stated that they keep statistics on refraining from executing transactions at the request of a third party.

1588. During the on-site interviews experts from law Enforcement agencies advised the evaluators that information needed from abroad (mainly Estonia and Lithuania) is provided by the FIU upon police's request.

Supervisory authorities

1589. The FCMC is empowered under Article 6.10 of the Law on the FCMC to cooperate with foreign financial and capital market supervision authorities and to participate in relevant international organisations including for purposes of consolidated supervision and exchange information.

1590. As there is significant foreign ownership among the financial institutions in Latvia, the FCMC has developed a basis for cooperation with the appropriate home supervisory authorities. These contacts are more active in some cases than others, and can include cooperation in the area of on-site inspections. At the international level, Latvia's membership of the EU results in its participation in a range of committees and structures that provide a firm basis for supervisor to supervisor cooperation.

Law enforcement authorities

1591. Apart from extradition of a person and rendering assistance in process, pursuant to Chapters 67-68 of the CPL, Prosecutor's General Office (PGO) also requests and ensures international co-

operation in criminal matters on transfer of the criminal proceedings at the stage of pre-trial investigation.

Prosecutor General Office

1592. Pursuant to Section 727(1), (3) and (4) of the CPL, the decision on request for transfer of criminal procedure shall be taken within 10 days, and in cases where the scope of materials is especially large – within 30 days.

1593. In cases where additional information is required to take the decision, competent authorities request it from the requesting country.

1594. In cases where process concerning an offence shall only be initiated on the basis of the victim's complaint, and the same fails to be enclosed to the received materials, the competence authority notifies the victim immediately and takes the decision after the victim's consent or rejection is received. In cases where the victim fails to give his/her reply within 30 days, process shall be terminated.

1595. Pursuant to Section 728 of the CPL, after the request of a foreign country, the required documents and additional information are considered, the competent authority shall take one of the following decisions on:

1) transfer of criminal procedure for process;

2) refusal of the request for transfer of criminal procedure.

1596. The competent authority sends the decision taken thereby and its translation to the requesting country immediately.

1597. Pursuant to Section 730(1), (2) and (4) of the CPL, in cases where a person is charged, brought before trial or convicted in another country, the competent authority shall transfer continuation of criminal procedure to the public prosecutor's office of such person's residence or location in Latvia.

1598. The public prosecutor decides whether evidence is sufficient for institution of criminal proceedings against the person pursuant to the Criminal Law of Latvia, and brings a charge or transfers criminal procedure to be continued from the investigation stage, within 10 days.

1599. Further criminal procedure continues according to general procedures.

1600. Pursuant to Section 740 of the CPL, the initiator of procedure shall notify the competent authority, which has decided on the request for transfer of criminal procedure, about the final decision taken in the transferred criminal procedure. After the procedure is transferred, such institution may instruct the initiator of procedure to notify it about other decisions taken, if required pursuant to international liabilities of Latvia.

1601. The competent authority notifies the requesting country about the final decision taken, as well as about other procedural actions, if provided for by treaties or mutual arrangements

State police

1602. Among many cooperation activities, in 2009 Latvia launched participation in the newly created Analysis Workfile "Cyborg" (fight against cybercrime; competent authority – Economic Crime Enforcement Department of the Central Criminal Police Department of the State Police).

1603. Also, Organised Crime Enforcement Department of the Central Criminal Police Department of the State Police continued to perform activities under the Analysis Workfile "Phoenix" (Trafficking in human beings).

R.40.1.1

The FIU

1604. During the on-site interviews, no impediments for the provision of rapid constructive and effective assistance from LFIU to international requests were identified.

1605. The counterparts in information exchange described the international cooperation with Latvian FIU as of a high standard in quality. The responses to foreign requests fully answer the demands by providing financial information (detailed transactions described in the existing reports' database), law enforcement data (such as police records), exhaustive business data including identity of directors, owners (extracts from local registers for instance), as well as personal data and various open source data. Also, feedback from the State revenue service was provided.

1606. The answers were provided in due time and often below the average time (Egmont best practices) of 1 month delay.

Financial Police Department (FP)

1607. After receiving from Prosecutor General's Office the request of legal assistance the FP appoints the competent authority which will execute the international legal assistance request. The request is forwarded to the competent authority as soon as possible for providing of the necessary information. A term is set for the execution of information request thus ensuring quick response to the assistance request. In order to provide full information of good quality and in conformity with the request we contact the author of the request by telephone, inform him about the progress and concretise the details.

1608. The Latvian authorities stated that the level of efficiency must be evaluated in several positions as they do not always learn about the judgement made in the requesting country, about the progress of the criminal proceedings, about the confiscation of a seized proceeds etc.

R.40.2

FIU

1609. The Latvian FIU has been a member of the Egmont Group since 1999 and working according the principles of this Group.

1610. The Latvian FIU is also subject to the EU Council decision of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information (2000/642/JHA)

1611. The Latvian FIU has signed MOUs with the FIUs of Lithuania, Czech Republic, Belgium, Bulgaria, Finland, Estonia, Slovenia, Italy, Poland, Malta, Guernsey, Russia, Canada, Aruba, Romania, Australia, Antilles, Ukraine, Georgia, Moldova, Macedonia, San Marino.

1612. The Latvian FIU has signed FIU.NET User Protocol Statement.

PGO

1613. Latvia participates in Eurojust, which is set up by the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (2002/187/JHA). It is one of the tools to cooperate with competent authorities of other EU Member States.

Financial Police Department

1614. Examples of gateways, mechanisms or channels used in international cooperation and exchanges of information (other than MLA or extradition) include laws allowing exchanges of information on a reciprocal basis; bilateral or multilateral agreements or arrangements such as Memorandum of Understanding (MOU); and exchanges through appropriate international or regional organisations or bodies such as Interpol or the Egmont Group of FIUs.

1615. Awareness and development of clear and effective mechanisms of cooperation is an integral part of external cooperation that will facilitate high quality investigation of criminal offences within the competence of the FP.

1616. During the interviews, the FP representatives expressed the belief that the mechanisms and channels identified for international cooperation are used in an appropriate form.

1617. Information exchange with international law enforcement institutions takes place at domestic institutional level as it must be noted that Latvian National Central Office of Interpol is incorporated in the structure of the Department for International Cooperation of the Chief Criminal Police Department of State Police as a separate structural unit. The Europol National unit and "Sirena", the National Office of Schengen Treaty Countries are functioning under the same department, and international cooperation with the headquarters is developing and improving.

1618. In order to enhance international cooperation, the conclusion of series of agreements between institutions is in progress, including the cooperation of the SRS FPD with similar structures in Estonia (signed), Lithuania, Russian Federation, Ukraine, Belorussia, Netherlands and Poland etc.

Customs Authority

1619. Exchange of information with foreign customs services is carried out based on the concluded agreements between the governments on mutual assistance in customs affairs and upon the implementation memoranda to these agreements which include attachments with the list of representatives of customs services authorised to request and receive the necessary information. The agreements provide that all kinds of information is requested and sent by the central customs administrations.

1620. Cooperation between the Member States of the European Union is carried out basing upon the Naples II Convention (law "On Convention prepared basing upon Article K3 of the Treaty of European Union concerning mutual assistance and cooperation between Customs Departments" in force as of 1 may 2004) and Council Regulation EC Nr. 515/97 of 13 May 1997 on mutual assistance and cooperation between administrations of the Member countries and European Commission to achieve correct application of legal acts in the area of customs and agriculture.

1621. Exchange of information takes place in accordance with the provisions of the EU Directives 77/799/EEC, 79/1070/EEC and in conformity with OECD Tax Conventions "on mutual administrative cooperation between tax administrations" exchange of information is carried out as of 2006 also within the framework of the Savings Directive 2003/48/CE.

R.40.3

The FIU

1622. Information exchange is possible spontaneously and upon request, for ML and predicate offences (Article 62 of the AML/CFT Law).

Financial Police Department

1623. In cases of mutual administrative assistance in accordance with European community legal acts, exchange of information is possible both spontaneously and upon request. The form of request is legally determined and represented in the form of ensuring of the information exchange.

1624. The scope of administrative and legal information that can be obtained within the framework of bilateral or multilateral cooperation is strictly agreed and limited both in national and international law. Therefore, each case of information exchange must be evaluated individually, objectively and without overstepping the acceptable limits of the legal use of information and/or intelligence.

1625. In investigation the exchange of information is regulated by the CPL. The exchange of information may take place spontaneously, upon request and in relation with any crime described in the CL. In order for any action to be taken, the information exchange request must be correctly documented legally so that the actions of the officials are legitimate and the acquired information can be used in a concrete case.

Making inquiries on behalf of foreign counterparts (c.40.4), FIU authorised to make inquiries on behalf of foreign counterparts (c. 40.4.1), Conducting of investigation on behalf of foreign counterparts (c. 40.5)

FIU

1626. The Latvian FIU is authorised to conduct inquiries on behalf of foreign counterparts in accordance with requirements of Paragraph 1 (point 3) of the Article 30 of the AML/CFT Law. The Article provides the obligation of the persons subject to the AML/CFT Law to provide additional information to the FIU (within seven days upon receipt of the written request) if such request is the result of a report submitted by foreign FIUs or by foreign or international institutions combating terrorist financing on the issues of the control of the movement of terrorist-related funds.

Supervisory authorities

1627. The FCMC, as a general rule, has access to all relevant information which may be important in any way in conducting their supervision (i.e. on the basis of Article 7.2 of the Law on the FCMC). There are no legal impediments for the FCMC to request any information (on the basis of the provisions of Latvian legislative acts), when the foreign counterpart requests so (there are also specific provisions for this matter, e.g., in the Credit Institutions Law).

Financial Police Department

1628. Investigation activities requested by foreign counterparts must be conducted in accordance with Part C of the CPL.

1629. Also, the gain and the verification of information and/or intelligence is carried out in accordance with legal acts adopted at the European Union level and which are binding to all member states.

1630. Mutual administrative assistance and exchange of information on issues related to the protection of financial interests of the European Community, including administrative and/or criminal offences in the area of state revenue, detection and fighting of which in reference to Article 14 of the law "On State Revenue Service", is also the task of the SRS Financial Police Department, including the fight against the legalisation of illegal proceeds.

1631. The legal acts regulating administrative and/or legal cooperation between competent authorities of the Member States in the area of state revenue are the following:

- Chapter 2 "Tax Provisions" of the Treaty on European Union;
- Art 280 of the Treaty on European Union concerning the fight of the European community and member states against fraud and any other illegal activities endangering financial interests of the Community;
- Law of the Republic of Latvia "On the Convention Protecting the Financial Interests of the European communities";
- Council Regulation Nr.1789/2003 of 7 October 2003 on administrative cooperation in the area of VAT amending the Regulation of Council and Parliament Nr. 218/92. Commission Regulation Nr.1925/2004 of 29 October 200 sets out the procedure of application for several provisions of the Council Regulation Nr.1789/ 2003;
- EC Council Directive Nr.77/799/EEC of 19 December 1977 on mutual assistance of competent authorities of Member States in the area of direct and indirect taxes;
- EC Council Directive 2004/106/EC of 16 November 2004 on mutual assistance of competent authorities of Member States regarding direct taxes, certain excise taxes and taxation of insurance premiums, and Directive 92/12/EEC on general regime for goods taxable with excise tax and about storage, moving and monitoring of such goods amending Council Directive Nr.77/799/EEK;
- EC Council Regulation Nr.2988/95 of 18 December 1995 concerning the protection of financial interests of the European communities;
- EC Parliament and Council Directive Nr.2001/97/EC of 4 December 2001 concerning protection of financial system against money laundering amending Council Directive Nr.91/308/EEC, and also other binding legal acts.

R.40.4.1

1632. As described above, the Latvian FIU is empowered to make inquiries on behalf of foreign counter part by searching its own databases containing information on submitted STRs, by searching other databases it has access to and by making case by case enquiries to the public authorities and private sector.

1633. In accordance with Article 54 of the AML/CFT Law, all public and local government institutions shall have a duty to provide the FIU, in due course established by the Cabinet of Ministers, with the requested information that is necessary to fulfil its functions. When exchanging information with the FIU, the person who processes data shall be prohibited from disclosing to other natural or legal persons the fact of information exchange and the content of information, except in the cases when information is provided to pre-trial investigation institutions, the Office of the Prosecutor or the court.

1634. In addition, Cabinet of Ministers Regulation No 1092 (in force since 1 January 2009) State and Municipal Authorities shall provide requested information the FIU.

R.40.5

Financial Police Department

1635. Interpreting the word "investigation" in the sense of activities to be conducted in accordance with domestic legislation fighting against and preventing crime, in Latvia, investigation upon the request of competent foreign authorities is conducted in accordance with the CPL providing the legal basis of cooperation, the form and contents of the request for such cooperation and

appointing the competent authority (Chapter 64 of the Latvian law on Criminal Proceedings "General Rules of Cooperation").

1636. However, administrative procedure of "investigation" upon the request of a foreign competent authority may be carried out by national law enforcement agencies within the framework of their competence in accordance with domestic and/or international legislation setting out the procedure of providing mutual administrative assistance.

1637. If the investigation is conducted in Latvia, it is carried out by a person authorised by law. It is possible to conduct investigative activities upon a legally formalised request of a foreign counterpart, but not on behalf of foreign counterpart.

No unreasonable or unduly restrictive conditions on exchange of information (c.40.6)

FIU

1638. According to the legal provisions, the Financial Intelligence Unit shall be entitled to refuse, fully or in part, from the exchange of information or from giving its consent to passing information further if:

- *this may harm the sovereignty, security, public order or other national interests of Latvia;*
- *There are reasonable grounds to believe that a person will be prosecuted or punished because of his/her race, religion, citizenship, ethnic origin or political opinions;*
- *This would be explicitly incommensurate in respect of the legal interests of the Latvian state or of a person;*
- *a person that is included in the list of persons suspected for involvement in terrorist activities that is compiled by the countries or international organisations recognised by the Cabinet of Ministers, and has committed a criminal offence in the territory of the country that has requested exchanging or passing further of information, is the citizen of that country and has not committed a criminally punishable offence in Latvia.*

Supervisory authorities

1639. There are no legal provisions in existence in Latvia that would prevent or unduly restrict exchange of information by the FCMC.

Financial Police Department

1640. The conditions of information exchange are set out in domestic (within the framework of criminal procedure the exchange of information takes place in accordance with the CPL) and/or international legal acts regulating and determining the procedure of information exchanges. The violation of the rules set for the exchange of information, for example disclosure of information depending on the degree of classification is regarded as a criminal offence for which the person in accordance with the domestic legislation must be called to justice.

Provision of assistance regardless of possible involvement of fiscal matters (c.40.7)

FIU

1641. The involvement of a fiscal matter is not listed in Article 62 (3) as a ground for refusal to provide information.

PGO

1642. The CPL with regards to takeover of criminal proceedings does not provide ground for refusal in case of fiscal matters (Section 726 of the CPL).

Financial Police Department

1643. Grounds for refusal of an assistance request within the framework of mutual administrative assistance depends mostly upon the nature of the requested information which must correspond to the set legal basis determining legal limitations of the requested information in this way separating administrative assistance from criminal and legal assistance. In some cases, such a problem is detected in matters related to tax evasion.

Supervisory authorities

1644. There are no provisions in law, or in any of the MoUs signed by the FCMC, which could be interpreted as prohibiting assistance in the case of possible involvement of fiscal matters.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c.40.8)

FIU

1645. There is no explicit provision in the Latvian AML/CFT Law requiring the lifting of the professional or banking secrecy obligations in case of information destined or requested by the FIU. The AML/CFT Law only provides the particular situations (exceptions) where the reporting requirements shall not apply, namely to tax advisors, external accountants, sworn auditors, commercial companies of sworn auditors, Sworn Notaries, Sworn Advocates and other independent legal professionals in the course of defending or representing that customer in pre-trial criminal proceedings or judicial proceedings, or providing advice on instituting or avoiding judicial proceedings.

1646. The exception from secrecy Laws in case of ML/FT related information in provided in the specific laws governing the activity of financial institutions as explained under Recommendation 4.

1647. Also, amongst the grounds for refusal of provision of assistance, the secrecy and confidentiality of information is not mentioned (listed).

1648. During the on-site visit no indications that the exchange of information would be impeded in practice for secrecy Laws reasons were identified.

Supervisory authorities

1649. There are also no provisions in the Latvian legislation or in any of the binding MoUs signed by the FCMC, which could be interpreted as prohibiting assistance on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions.

Safeguards in use of exchanged information (c.40.9)

FIU

1650. The safeguards to ensure that information received by competent authorities is used only in an authorised manner are regulated by the Articles 53-54 and 62 of the AML/CFT Law.

1651. Information available to the Financial Intelligence Unit may be used only in due course and for the purposes of the AML/CFT Law. An employee of the FIU who has used such information for other purposes or disclosed it to the persons who are not entitled to receive that information shall be held criminally liable in due course of the Criminal Law.

1652. Furthermore, information obtained at the Financial Intelligence Unit as a result of the procedure supervised by the Prosecutor General or by specially authorised prosecutors, shall not be disclosed to the bodies performing investigatory operations, pre-trial investigation institutions, the Office of the Prosecutor or the court or used for their needs.

1653. The Financial Intelligence Unit shall take the necessary administrative, technical and organisational measures to ensure that information is protected, prevent unauthorised access to information and protect it from modification, dissemination or damage. The Financial Intelligence Unit shall keep information on transactions for at least five years. Processing of the information received by the Financial Intelligence Unit is not included in the personal data processing register of the Data State Inspectorate.

1654. According to the law, when Public and Local Government Institutions exchange information with the Financial Intelligence Unit, the person who processes data shall be prohibited from disclosing to other natural or legal persons the fact of information exchange and the content of information, except in the cases when information is provided to pre-trial investigation institutions, the Office of the Prosecutor or the court.

Financial Police Department

1655. The controls and safeguards are established and observed in accordance with the legal acts regulating mutual cooperation compliance with which is mandatory and no breach is permissible.

1656. The SRS Financial Police Department as a structural unit of the SRS and a law enforcement institution at national level is authorised by State Security Institution to work with classified information.

Supervisory authorities

1657. All of the MoUs signed by FCMC contain emphasis on the issue of safeguards to ensure that information received by competent authorities is used only in authorised manner.

Additional elements – Exchange of information with non counterparts (c.40.10 and c.40.40.1); Exchange of information to FIU by other competent authorities pursuant to request from foreign FIU (c.40.11)

FIU

1658. According to the Article 62 of the AML/CFT Law (Paragraphs 1, 4 and 5), Latvian FIU has the legal ground to permit exchange of information with non-counterparts on financing of

terrorism-related issues *("…and with foreign or international institutions combating terrorist financing on the issues of the control of the movement of terrorist-related funds")*.

PGO

1659. Pursuant to Section 675(2) – (4) of the CPL, within the co-operation in the area of criminal law, a Latvian competent authority may agree with a foreign competent authority on direct communication between courts, public prosecutor's offices and investigation authorities.

1660. In cases where there is no treaty on co-operation in the area of criminal law, the Minister of Justice and the Prosecutor General are entitled to make a request to another country for co-operation in the area of criminal law or to receive a request of another country for co-operation in the area of criminal law, within the competence pursuant to this part of the Law.

1661. The above executives may issue certification to a foreign country that reciprocity will be observed in co-operation in the area of criminal law, i.e. the co-operation partner will continue rendering assistance on the same principles.

Financial Police Department

1662. Information exchange with competent authorities of foreign countries is carried out in a direct way and within the framework of legal cooperation on bilateral issues.

1663. The above mentioned is explained by nature and sufficiency of information in certain criminal cases.

R.40.10.1

1664. The Latvian FIU does not disclose the purpose of the (foreign) request to the requested authority and requesting information on his (Latvia) own behalf.

Financial Police Department

1665. The discloser depends on the scope of information provided by the initiator of the request, the degree of confidentiality allocated to the information and on the legal conditions regulating the justification of requesting and receiving of this information.

1666. In the legal assistance requests which were received, justification and purpose, way of using of the received information and the name of the requesting institution of the request are described. The notion "a matter of practice" does not exist in legal relations as every investigative activity is regulated by CPL. However in order to achieve higher quality of international mutual assistance, it is acceptable to provide some additional verbal information to the counterpart.

R.40.11

1667. In accordance with Article 54 of the AML/CFT Law all public and local government institutions shall have a duty to provide the Financial Intelligence Unit, in due course established by the Cabinet of Ministers, with the requested information that is necessary to fulfil its functions.

1668. In addition, Cabinet of Ministers Regulation No 1092 allows the FIU to request information held in the databases maintained by state institutions and municipalities.

1669. At the time of the on-site visit the Latvian authorities indicated that in practice, searches in different data bases are performed and case by case requests are initiated at the request of foreign counter-parts. The searches and the requests are no different as for the domestic cases.

Supervisory authorities

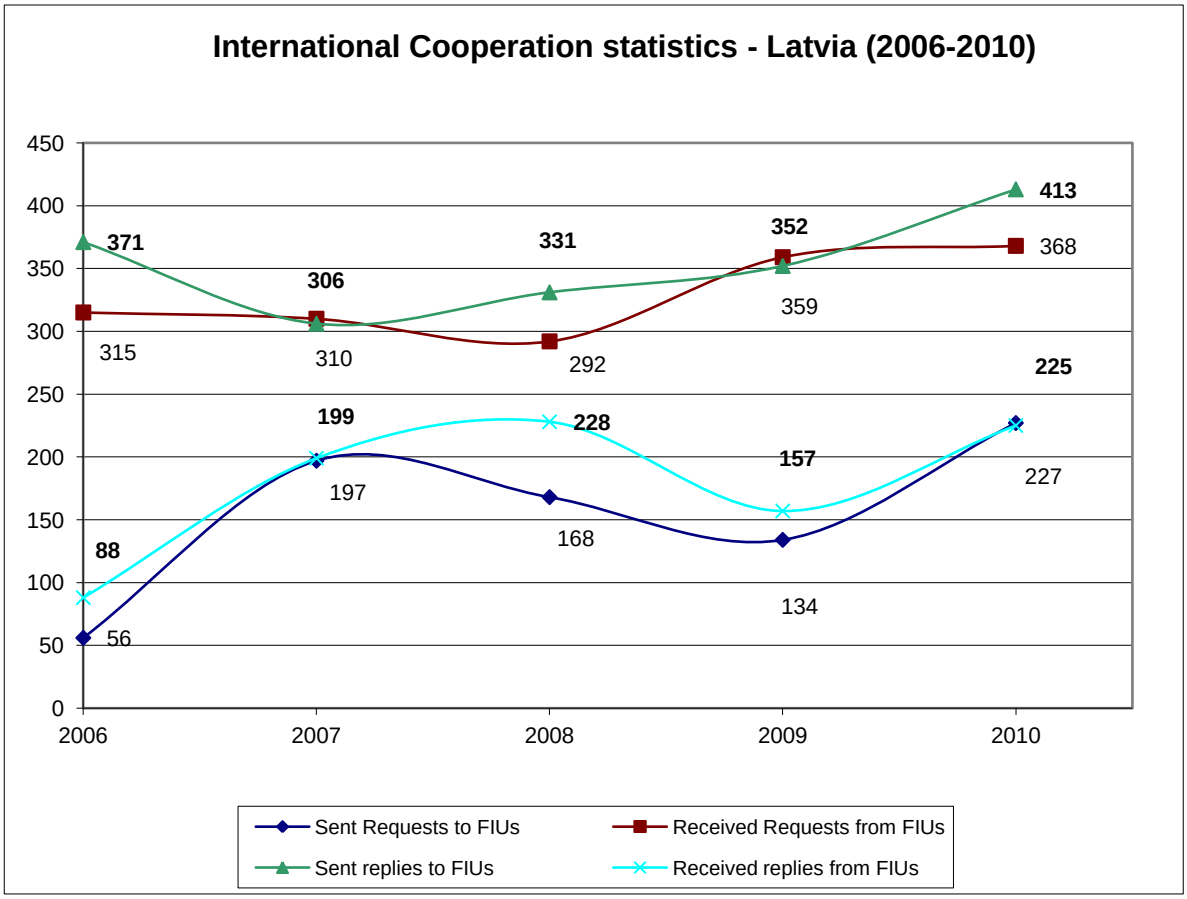
1670. As mentioned above there are provisions in law which allow the FCMC to exchange information with supervisors, which are not party to any of the signed bilateral or multilateral MoUs. For example, the Credit Institutions Law in Article 63.5 provides that "a Latvian authority relevant to a credit institution supervisory authority shall provide information on the basis of a mutual cooperation agreement or an agreement of another kind. The relevant authority of the Republic of Latvia shall obtain the confidential information as specified by paragraphs one and two of this Section. This authority must verify that the protection is ensured against the divulging of the respective information before submitting information to a Member State or foreign authority". Information exchange with non-counterparts is also possible in indirect manner (and is provided actually in practice), but only after ensuring data protection and non-disclosure of information.

International co-operation under SR.V (applying 40.1-40.9 in R.40, c.V.5) (rated PC in the 3rd round report)

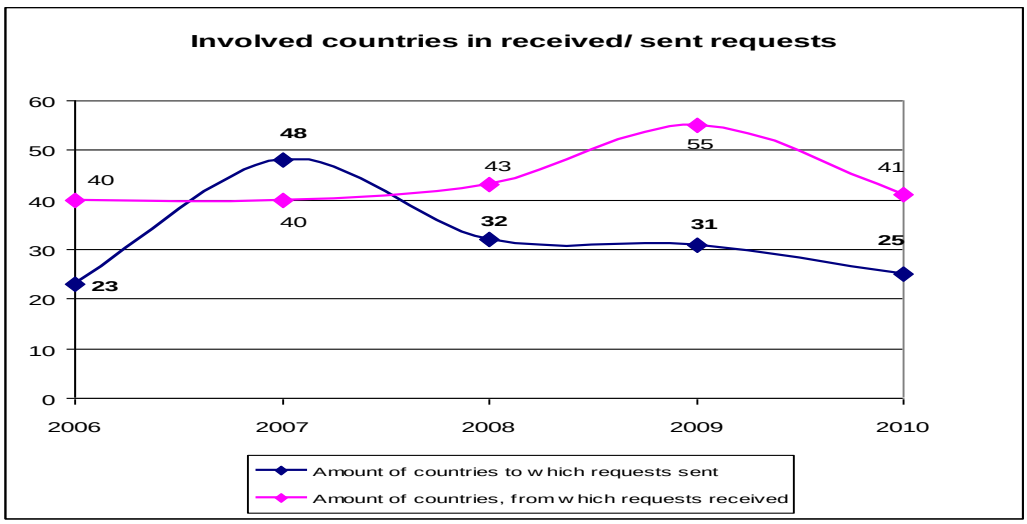
1671. All the provisions and practice applicable under Recommendation 40 also apply for financing of terrorism.

Recommendation 32 (Statistics – other requests made or received by the FIU, spontaneous referrals, requests made or received by supervisors)

1672. The Latvian FIU keeps statistics on the international information exchange.



1673. The difference between requests sent and received was explained by fact that in some years Latvia have received many requests in the last days of the year and replies were forwarded in the beginning of next year. In other circumstances, the Latvian FIU received updated information for the same request. Similarly depending on the complexity of the case and the difficulty in obtaining the requested information, the Latvian FIU might provide more than one reply to one received request.

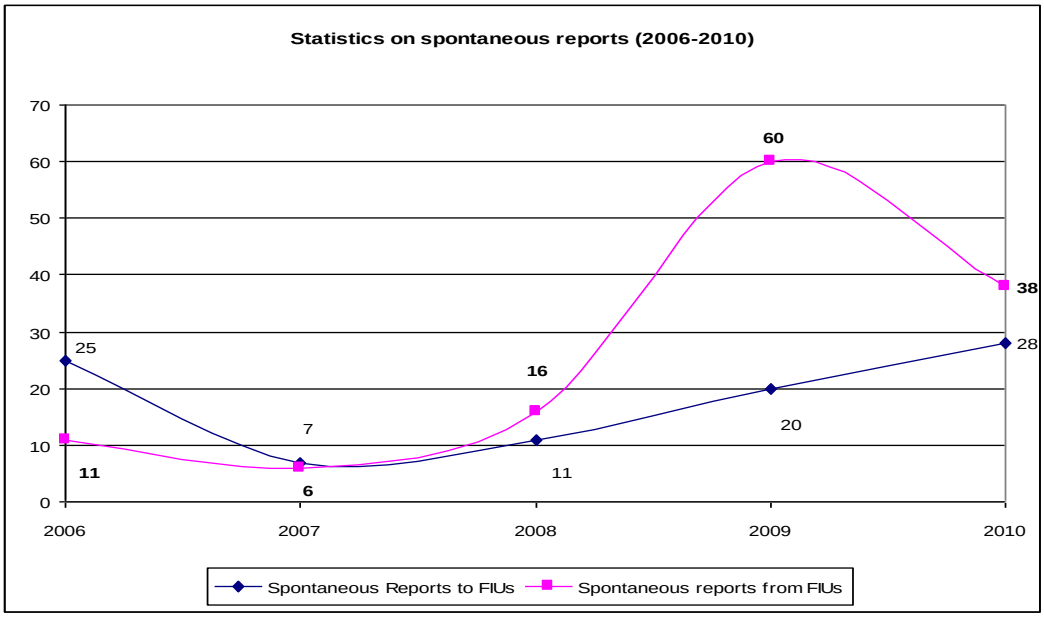


1674. The increase in the number of countries involved in information requests in 2009 was explained by the Latvian authorities by the analysis of one particular case where requests were sent to more than one country.

1675. As a general rule, the requests are sent and received to/from EU countries, former CIS countries and USA.

1676. The Latvian authorities informed the evaluation team that since 2006, there were 4 cases where the requests for information were refused by the Latvian FIU: 2 in 2010 and 2 in 2011.

1677. The next scheme illustrate the evolution of the spontaneously provided information to other FIU if there is assumption that data could be useful for other Egmont group members.



1678. The Latvian authorities mentioned that all spontaneous reports received are processed as requests via data input in a database, comparing with existing information and after it is received back in International Cooperation Sector (consists of 2 employees – transaction analyst and junior transaction analyst) – analyzed if the obtained information could assist in already existing case or could act as beginning of new material (case).

1679. In the last two years the Latvian FIU analysed all received requests for information to check if they could act as ground for a case. After receiving permission from respective FIU or FIUs, and adding necessary information from available databases and/or obtaining additional information from banks, all information have been submitted to Deputy Head of FIU for further evaluation in accordance with the Instruction "Registration, processing, storage and destruction of information received and destruction of information received by the Office for Prevention of Laundering of Proceeds Derived from Criminal Activity". The evaluators were not informed on the results of a such evaluation.

1680. The Latvian authorities do not keep statistics on the time of reply to international requests.

1681. In 2010 mutual assistance in criminal matters was executed in cases relating to ML as follows:

- 1 MLA request was received from Hungary during pre-trial investigation stage, which was sent to the Prosecutor-General's Office;
- 1 MLA request was received from Hungary on information from conviction Register on citizen of Latvia, it was sent to the Punishment Register of the Ministry of Interior;
- 1 request was received from Austria during pre-trial stage, which was sent to the Prosecutor-General's Office.
- 1 MLA request was sent from Latvian court to Italy on recognition of judgment.

Effectiveness and efficiency

1682. The Latvian FIU can obtain financial, law enforcement and administrative information on behalf of foreign counterparts. Also, it is able to provide the same range of information to foreign FIUs.

1683. The Latvian FIU may issue postponement of transactions orders at the request of authorised institutions of other countries or international institutions preventing terrorism.

1684. During the on-site interviews, no impediments for the provision of rapid constructive and effective assistance from LFIU to international requests were identified. The counterparts in information exchange described the international cooperation with Latvian FIU as of a high standard in quality.

1685. The statistics on requests sent by foreign FIUs and the requests received by the FIAU from foreign counterparts describe the activity on international cooperation.

1686. The FIU shall be entitled to refuse, fully or in part, from the exchange of information or from giving its consent to passing information in certain cases which do not conflict with FATF standards.

1687. The Latvian authorities do not keep statistics on the time of reply to international requests.

1688. On the law enforcement side (other than FIU) different gateways, mechanisms and channels are used in international cooperation and exchanges of information and include laws allowing exchanges of information on a reciprocal basis; bilateral or multilateral agreements or arrangements such as Memorandum of Understanding (MOU); and exchanges through appropriate international or regional organisations or bodies such as Interpol.

1689. Awareness and development of clear and effective mechanisms of cooperation is an integral part of external cooperation that will facilitate high quality investigation of criminal offences within the competence of the Financial Police. During the interviews, the FP representatives expressed the belief that the mechanisms and channels identified for international cooperation are used in an appropriate form.

1690. Information exchange with international law enforcement institutions takes place at domestic institutional level as it must be noted that Latvian National Central Office of Interpol is incorporated in the structure of the Department for International Cooperation of the Chief Criminal Police Department of State Police as a separate structural unit. The Europol National unit and "Sirena", the National Office of Schengen Treaty Countries are functioning under the same department, and international cooperation with the headquarters is developing and improving.

6.4.2. Recommendation and comments

1691. The Latvian authorities are encouraged to keep statistics on the time of reply to international requests.

1692. It appears that the human and technical resources are sufficient for effective application of the recommendation.

6.4.3. Compliance with Recommendation 40 and SR.V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**C**	
SR.V	**C**	

7.1. Resources and Statistics

1693. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report contains only the box showing the ratings and the factors underlying the rating.

	Rating	Summary of factors underlying rating
R.30	**LC**	• Human resources of the FIU not adequate to the high number of reports • IT software of the FIU not adequate to ensure automatic data processing • Limited AML/CFT qualified human resources of the MoT • Insufficient equipment and training for law enforcement dedicated to ML/FT
R.32	**PC**	• Statistics do not contain sufficient information on the number of police/prosecution generated cases, FIU generated cases and autonomous laundering cases. • Lack of detailed statistics on confiscations • Statistics received on confiscations from different authorities inconsistent • No statistics on STRs and UTRs • No statistics on the relation FIUs disseminations – LEA investigations/prosecutions/convictions are routinely maintained • No detailed statistics are available on the number of cases regarding the failure to comply with the obligation to declare and no statistics are available on information exchange with foreign counterparts regarding SR.IX. • Insufficient scrutiny of the collected statistics in the light of assessing AML/CFT system as a whole. • No comprehensive central database for MLA requests • No statistics on the average time of response for MLA requests • No statistics on time to reply to international requests under Recommendation 40

7.2. Other Relevant AML/CFT Measures or Issues

Not applicable

7.3. General Framework for AML/CFT System (see also section 1.1)

Not applicable

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system

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 Latvia. *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[32]
Legal systems		
1. Money laundering offence	**LC**	• The financing of terrorism is not fully in line with requirements of the TF Convention • Demanding proof level for the predicate offence impact effectiveness. • Autonomous ML investigations and prosecutions constitute a challenge for the judiciary
2. Money laundering offence - Mental element and corporate liability	*Compliant*	
3. Confiscation and provisional measures	**LC**	• Deficiencies in criminalisation FT (noted in SR. II) limit the power to confiscate. • Effectiveness could not be fully demonstrated
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**C**	
5. Customer due diligence	**PC**	• No explicit prohibition of accounts opened in fictitious names. • Insufficient process for establishing equivalency of jurisdictions for CDD purposes

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

		• The BoL Recommendations do not appear to provide clear requirements for ongoing due diligence in two important areas: establishing the source of funds and nature of the business of the customer when the transaction does not qualify as an unusual or suspicious transaction or the customer is a high-risk customer or a politically exposed person • CDD regime provides exemptions from customer due diligence in some cases of simplified CDD. • Weak understanding and documenting origin/source of funds in practice. (Effectiveness issue) • Limited demonstrated understanding regarding documenting origin/source of funds in practice (Effectiveness issue).
6. Politically exposed persons	**LC**	• Not all PEP categories mentioned in FATF standards are covered.
7. Correspondent banking	**C**	
8. New technologies and non face-to-face business	**LC**	• Insufficiently stringent levels of CDD are undertaken given the significant size of non-face-to-face customer client base.
9. Third parties and introducers	**PC**	• The AML/CFT Law does not provide unconditional and immediate access to the necessary information from the third party related to the CDD process • Lack of provisions to obtain upon request, without delay, from third parties, the CDD documentation • Need for customer's approval for obtaining documentation hinders effectiveness • No direct referral to the list of equivalent countries.
10. Record keeping	**LC**	• Limited ability for authorities to ask obligors to keep records beyond five years.
11. Unusual transactions	*Largely Compliant*	*AML Law seems to limit access to information to supervisory authorities, rather than provide that the information should be made available to all relevant authorities.*
12. DNFBP – R.5, 6, 8-11	**PC**	• The same concerns in the implementation of Recommendations 5 and 10 apply equally to DNFBP. **Recommendation 5** • Lack of licensed Real estate brokerage agents hinders effectiveness. • Uneven application of AML/CFT

		requirements across the entire field of organisers of lotteries and gambling houses. • Lack of awareness on the importance of customer identification across the dealers in precious metals & stones sector. **Recommendation 6** • Lack of awareness of PEPs requirements for some DNFBP, especially the real estate and casinos. **Recommendation 8 and 9** • Internet gambling negatively impact effectiveness
13. Suspicious transaction reporting	**PC**	• The reporting obligation does not refer to funds that are proceeds of criminal offenses but to suspicion of laundering of proceeds • Reporting obligation does not cover funds suspected to be linked or related to or to be used for terrorism, terrorist acts or by terrorist organisations • Suspicion indicators not mentioned in Regulation 1071 but in subsequent guidance documents undermines the suspicion based reporting system vs. threshold reporting system • Guidance limited to terrorism not to financing of terrorism • Closed list of indicators for suspicion limits the possibilities for reporting • Deficiencies in the incrimination of TF might limit the reporting obligations • Effectiveness concerns in connection to the unclear distinction between unusual transaction reports and suspicious transaction reports
14. Protection and no tipping-off	*Compliant*	
15. Internal controls, compliance and audit	*Largely Compliant*	• *There are no legal or regulatory requirements to establish an adequately resourced and independent audit function for financial institutions other than banks, electronic money institutions, and insurance companies, even where warranted by size and risk.* • *There is no explicit requirement that the compliance officer should be at management level.* • *Only bureaux de change are required to introduce screening procedures to ensure high standards when hiring employees.*

16. DNFBP – R.13-15 & 21	**PC**	**Applying Recommendation 13** • Difficulties identified in distinguishing between UTRs (threshold based) and STRs, undermines criterion 13.3 in practice • The reporting obligation does not refer to funds that are proceeds of criminal offenses but to suspicion of laundering of proceeds • Reporting obligation not covering funds suspected to be linked or related to or to be used for terrorism, terrorist acts or by terrorist organisations • Deficiencies in the incrimination of TF might limit the reporting obligations • General lack of sector specific guidance and low notion of "suspicion" • Closed list of indicators for suspicion limits the possibilities for reporting • Effectiveness concerns in connection to the unclear distinction between unusual transaction reports and suspicious transaction reports • Low level of reporting in general; no reports from real estate agents (effectiveness issue) **Applying Recommendation 21** • No requirements for special attention to transaction with no apparent economic or lawful purpose • Not enough awareness of DNFBP on recognising the high risk jurisdictions (effectiveness issue)
17. Sanctions	**PC**	• The BoL has no sanctioning powers over natural persons; range of sanctions under the BoL act are not effective, proportionate and dissuasive; • The MoT is not invested with adequate legal sanctioning powers; • No sanctioning regime for unsupervised financial institutions; • Limited effectiveness of the sanctioning regime (i.e. no sanctions on management of the supervised entities); • No specific AML/CFT sanctioning regime for DNFBP; • General sanctions of DNFBP are not dissuasive for AML/CFT violations; • Low incidence of sanctions imposed in practice using general sanctioning regime (DNFBP)

18. Shell banks	*Largely Compliant*	• *Measures to prevent the establishment of shell banks are not sufficiently explicit.* • *No specific requirement to check that foreign respondents ensure that they are not used by shell banks.*
19. Other forms of reporting	*Compliant*	
20. Other DNFBP and secure transaction techniques	*Compliant*	
21. Special attention for higher risk countries	**PC**	• No supervision on the implementation of the sanctioning mechanism for Latvian Post. • No requirements for special attention to transaction with any apparent economic or lawful purpose for financial institutions that are not subject to FCMC supervision. • The ECDD requirements for clients from countries that do not sufficiently apply FATF Recommendations still do not apply to financial institutions that are not subject to FCMC supervision, including without being limitative Latvian Posts.
22. Foreign branches and subsidiaries	**LC**	• Limited requirements (to a list of activities) to ensure that foreign branches and subsidiaries observe AML/CFT measures. • No requirement to apply the higher standard
23. Regulation, supervision and monitoring	**LC**	• Reinsurance companies unsupervised for AML/CFT purposes Effectiveness issues: • The effectiveness of the AML/CFT supervisory activity is diminished by the uneven degree of application of AML/CFT requirements in different sectors by reporting entities (insurers, Latvian Post, bureaux de change) • Effectiveness of the e-money supervisory regime could not be assessed while their supervision was only implemented by FCMC in April 2011 • No financial sanctions applied to directors and board members of supervised entities
24. DNFBP - Regulation, supervision and monitoring	**PC**	• On-site supervision performed by the SRS is weak • No procedures for off-site supervision performed by the SRS • Sanctions imposed in practice not sufficiently dissuasive, effective and proportionate • Weak supervision performed by the SROs • Confusion in performing supervisory powers between Council of Sworn Notaries and the FIU

25. Guidelines and Feedback	**LC**	• Insufficient general feedback on TF reports • No FI sector specific guidelines on ML/FT techniques and methods • No specific guidelines on suspicion grounds including red flags and indicators (ML and TF) • No guidance on TF suspicions (DNFBP) • The guidance for auditors and notaries do not provide assistance on suspicious transactions reporting • Insufficient awareness of the SRS supervised DNFBP on the content of the specific guidance
Institutional and other measures		
26. The FIU	**LC**	• Guidelines provided to the reporting entities concerning the manner of reporting STs are set out in various documents which could lead to confusion over the reporting obligation • Guidance on the manner of reporting limited to terrorism not to financing of terrorism • The content of the FIUs disseminations are not a part of FIUs IT protected system against arbitrary modification and/or deletion. • FIU access to additional financial information requires prosecutor's approval • Effectiveness could not been fully proved
27. Law enforcement authorities	*Compliant*	
28. Powers of competent authorities	*Compliant*	
29. Supervisors	**LC**	• Insufficient supervisory power of the MoT to monitor and ensure compliance of regulated entities with AML/CFT • Limited expertise and conflict on interest in applying the risk-based approach requirements by the MoT in the context of limited AML/CFT qualified human resources and low number of inspections (effectiveness issue) • Not enough emphasis of the FCMC AML/CFT supervision of the insurance sector (effectiveness issue)
30. Resources, integrity and training	**LC**	• Human resources of the FIU not adequate to the high number of reports

		• IT software of the FIU not adequate to ensure automatic data processing • Limited AML/CFT qualified human resources of the MoT • Insufficient equipment and training for law enforcement dedicated to ML/FT
31. National co-operation	**LC**	• No cooperation mechanism to involve DNFBP's supervisory authorities or respective SROs • No regular review of the effectiveness of the AML/CFT system at policy level
32. Statistics	**PC**	• Statistics do not contain sufficient information on the number of police/prosecution generated cases, FIU generated cases and autonomous laundering cases. • Lack of detailed statistics on confiscations • Statistics received on confiscations from different authorities inconsistent • No statistics on STRs and UTRs • No statistics on the relation FIUs disseminations – LEA investigations/prosecutions/convictions are routinely maintained • No detailed statistics are available on the number of cases regarding the failure to comply with the obligation to declare and no statistics are available on information exchange with foreign counterparts regarding SR.IX. • Insufficient scrutiny of the collected statistics in the light of assessing AML/CFT system as a whole. • No comprehensive central database for MLA requests • No statistics on the average time of response for MLA requests • No statistics on time to reply to international requests under Recommendation 40
33. Legal persons – beneficial owners	**C**	
34. Legal arrangements – beneficial owners	*N/A*	

International Co-operation		
35. Conventions	**LC**	• The TF offence (in all its elements as provided under the FATF SR II) is not covered as predicate offences for ML
36. Mutual legal assistance (MLA)	**C**	
37. Dual criminality	*Compliant*	
38. MLA on confiscation and freezing	**PC**	• Enforcement of foreign confiscation orders for property, other than instrumentalities and property obtained illegally is only available if confiscation is a penalty for the same offence in Latvia. • It is unclear whether request for confiscation of property can extend to enforcement of confiscation of all proceeds of crime, intended instrumentalities and terrorist property due to deficiencies already identified. • No provisions to meet the requirements of the essential criterion 38.4.
39. Extradition	*Compliant*	
40. Other forms of co-operation	**C**	
Nine Special Recommendations		
SR.I Implement UN instruments	**LC**	• The criminalisation of TF offence not fully in line with the TF Convention regarding the additional mental element required as explained under SRII • Measures still need to be taken in order to properly implement UNSCRs 1267 and 1373.
SR.II Criminalise terrorist financing	**LC**	• Some of the financing of the offences covered in the Annex to the TF Convention have in Latvian legislation an additional mental element which is not required under A 2 (1) (a). • In the absence of investigations or convictions, effectiveness is challenged by various views expressed by practitioners in relation to the understanding of "State" mentioned under the LCL as to whether it refers to acts of terror against all the international community or only against the Latvian State.

SR.III Freeze and confiscate terrorist assets	**PC**	• Within the context of UNSCR 1373, Latvia does not have a national mechanism to consider requests for freezing from other countries (outside the EU mechanisms) or to freeze the funds of EU internals (citizens or residents). No evidence that designation of EU internals have been converted into the Latvian legal framework. • The scope of EU Regulation 881/2002 does not extend to funds or other assets that are owned or controlled jointly by designated persons or entities and to those funds or other assets neither that are derived or are generated from funds or other assets owned or controlled by such persons or entities. • Concerns over effectiveness of freezing system at the request of another party that relies on judicial proceedings. • There is not any clear and publicly known procedure for de-listing and unfreezing. • Lack of awareness in a part of DNFBP sector of the UN and EU lists raise effectiveness concerns. • There is no specific national legislation to meet the requirements in relation to access to frozen funds for basic expenses and other purposes. • National freezing system which has not yet been tested in practice relies only on judicial-based mechanism to ensure freezing of assets of designated persons
SR.IV Suspicious transaction reporting	**PC**	• Deficiencies in the incrimination of TF might limit the reporting obligations, especially in relation to the list of acts that are defines as *"terrorist"* by the Law • Reporting obligation not covering funds suspected to be linked or related to or to be used for terrorism, terrorist acts or by terrorist organisations • Reporting obligation refers to terrorism not to financing of terrorism • Reporting obligation refers to *"transactions"* and not to *"funds"* • Insufficient guidance on suspicions of terrorism financing impacts effectiveness • Confusion amongst FI between UT related reports and suspicion based reports (effectiveness concern)
SR.V International co-operation	**LC**	• The shortcomings in the criminalisation TF offence might provide an obstacle to effective co-operation with foreign states.

SR.VI AML requirements for money/value transfer services	**PC**	• Lack of a consolidated list of agents • Lack of complete customer verification and record keeping being conducted by the Latvian Post • The MoT lacks effective supervisory powers, authorities and resources to supervise the Post.
SR.VII Wire transfer rules	**C**	
SR.VIII Non-profit organisations	*Compliant*	
SR.IX Cross Border declaration and disclosure	**PC**	• No provision to request and obtain further information in case of a false declaration/disclosure • Limited freezing capabilities of the Customs Authority • Low extend of practical enforcement on SR.IX measures in general (effectiveness issue)

TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1)	• The Latvian authorities should provide further training for judiciary and law enforcement authorities, in particular with regard to ML investigation and prosecution techniques and methods. • Further guidance is needed to enable prosecutors and law enforcement to have a common understanding as to how the underlying predicate offence should be proven, without the need to prove that property originated from a particular predicate offence committed on a particular date. • Efforts should be initiated by the national authorities to ensure that the issue of no requirement of a prior conviction for the predicate offence in order to convict a person for ML is fully understood and accepted by judiciary. • The FT offence should be fully aligned with the TF Convention.
2.2 Criminalisation of Terrorist Financing (SR.II)	• The LCL should be revised to enlarge the scope of financing of terrorism in relation to all offences covered by the treaties that are listed in the annex to the TF Convention without any additional mental element required.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• The authorities are encouraged to use in practice the legal provisions on provisional measures for the recovery of assets of equivalent value.
2.4 Freezing of funds used for terrorist financing (SR.III)	• Latvian legislation should provide clear procedures for freezing of funds and other assets held by listed EU-internals in all instances set forth by SR.III. • The scope of SRIII related measures should be extended to cover funds or other assets that are owned or controlled jointly by designated persons or entities and to those funds or other assets neither that are derived or are generated from funds or other assets owned or controlled by such persons or entities.

	• Assess the effectiveness of the freezing system at the request of another country which relies on judicial procedures. • Clarify what measures can be taken by authorities in cases of funds and other assets that are simply held by listed persons, without any transaction involved. • Authorities should provide an effective and publicly known national procedure for the purposes of de-listing and un-freezing in appropriate cases in a timely manner. • A national mechanism should be put in place to consider freezing requests under UNSCR 1373 or by third country request that are outside the EU and NATO. • Specific national legislation should be adopted to meet the requirements in relation on access to frozen funds for expenses and other purposes. • The competence of all supervisory and control authorities on monitoring effectively the compliance of persons subject to the AML/CFT Law and imposing sanctions for failure to comply with the relevant requirements should be made clear in the AML/CFT Law. • Take additional steps in order to raise the awareness on the obligations deriving from UNSCRs amongst DNFBP.
2.5 The Financial Intelligence Unit and its functions (R.26)	• The FIU should carry out a more in-depth analysis of the reports, adding more value to the STRs received, with the view of improving the quality of the disseminations. • The IT analytical tool of the FIU should be improved to increase effectiveness in the context of high level of reports and transactions manually analysed by a limited number of employees. • The disseminations should be part of the FIUs IT protection system against arbitrary modification and deletion and should be easy accessible. • Sector-specific guidelines to the financial and DNFBP should be made available. More guidance on CTF measures is needed. • Guidance on the manner of reporting suspicious transactions should be made clearer. • Legislation should be amended to exclude any doubts on FIU's unconditional access to financial information.

2.6 Cross Border Declaration or Disclosure (SR.IX)	• Legal provisions should be adopted in order to allow Custom authorities to request and obtain further information in case of false declaration/disclosure. • The Customs authority should increase its capacity to detect (such as a more appropriate risk matrix for performing random checks), freeze and sanction the non-declared amounts. Increasing the level of the administrative sanctions is recommended. • In order to be able to evaluate the overall effectiveness of the system, the Latvian authorities should maintain more detailed statistics. • The authorities are encouraged to initiate a thorough review of effectiveness SR.IX measures, including a risk assessment. That review should also aim in identifying grounds for establishment of an operational system to targeting illicit cash couriers. • The Latvian authorities should pay more attention on the unusual cross-border movement of gold, precious metals or precious stones. • The Latvian authorities should take steps to increase the awareness on the declaration of cash obligations for arriving and departing travellers by making SR.IX requirements at border point more visible.
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	• The authorities are encouraged to finalise the national AML/CFT risk assessment.
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	***Recommendation 5*** • Latvia should explicitly prohibit accounts in fictitious names • The Bank of Latvia's authority should be broadened under the AML/CFT Law so that it can issue binding guidance, or the supervision of currency exchange houses should be transferred under the supervision of the FCMC. • Authorities should ensure that where equivalence is applied, these jurisdictions are in compliance with and have effectively implemented the FATF standards. • The Latvian authorities should eliminate all exemptions from customer due diligence provided in case of simplified CDD procedures. • Latvia should consider conducting a risk assessment of the cases of the closure of the accounts due to the inability to complete ECDD requirements.

	• Authorities should strengthen guidance on the implementation of the origin/source of funds to all obliged entities, as it was a common error identified in FCMC on-site examinations. • Additional sector specific outreach is needed to the investment and insurance sectors to explain not only the national AML/CFT requirements, but also to put these efforts into the broader context of combating illicit finance • Latvia should ensure that the BoL provides clear requirements for ongoing due diligence in two important areas: establishing the source of funds and nature of the business of the customer when the transaction does not qualify as an unusual or suspicious transaction or the customer is a high-risk customer or a politically exposed person. ***Recommendation 6*** • Latvia should ensure that the full range of PEPs, as defined by the FATF are covered. ***Recommendation 7*** • The FCMC should provide additional guidance to obliged entities on how to evaluate potential correspondents' AML/CFT practices. ***Recommendation 8*** • Authorities should consider strengthening the legal provisions and the guidance on non-face-to face business given the large number of non-face-to-face transactions and customers that are serviced by Latvian banks.
3.3 Third Parties and Introduced Business (R.9)	• The Latvian authorities should amend legislation to eliminate any doubt with regard to the reference in Article 29 (1) in relation to the Article 26 (4). • Legislation should be amended to ensure that financial institutions shall be provided with information and documents from the third party *"without delay"* and without conditioning this process by the customers' agreement. • Legislation should be amended to clearly reflect that no reliance can be placed on third party for ongoing monitoring. • A direct referral to the equivalent countries should be provided in legal acts. •
3.4 Financial institution secrecy or confidentiality (R.4)	No actions recommended

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	***Recommendation 10*** • Authorities should consider revising the legal acts in order to recall the maximum of 6 years for keeping records on transactions. • Given the prevalence for recordkeeping violations identified during BoL on-site inspections, authorities should consider additional outreach to the sector on record-keeping requirements. • Legal requirements to maintain records should be more explicit as to the purpose of maintaining those records for transaction tracing purposes ***Special Recommendation VII*** • No actions recommended
3.6 Monitoring of Relationship (R 21)	• The Latvian authorities should adopt legislation empowering the competent authorities to take counter-measures in relation to countries that do not apply or insufficiently apply FATF Recommendations. • Regulation on ECDD should be issued to cover all financial institutions, not only the ones supervised by FCMC. • The lists of countries with AML/CFT weaknesses in their systems should be updated in a timely fashion.
3.7 Suspicious transaction reports and other reporting (R.13, 25 & SR.IV)	***Recommendation 13 and Special Recommendation IV*** • A general assessment of the reporting behaviour of the subject persons should be undertaken by the Latvian authorities to clarify the impact of the new legal provisions in relation to the amount of UTRs vs. STRs received by the FIU. • The list of suspicious indicators and the codes attached should be opened to *"any other suspicious grounds"* • The authorities are strongly encouraged to clarify the issue of statistics kept on the number of STRs and UTRs and the individual transactions contained herein. • Sector specific guidance on money laundering and financing of terrorism indicators should be issued by the authorities to assist the reporting entities in properly identifying such transactions, including red flags/indicators of suspicion and case studies. • The scope of the reporting obligations should be extended to all funds that are suspected to be generated by criminal activity. • The reporting obligation should extend to terrorism financing suspicions not only to terrorism suspicions

	thus it does not fully cover essential criterion IV.1. ***Recommendation 25/c. 25.2 [Financial institutions and DNFBP]*** • The Latvian authorities are encouraged to provide more case by case feedback to reporting entities. • Feedback on TF containing information on current techniques, typologies, methods and trends should be provided to subject persons. Sanitised TF cases should be included.
3.8 Internal controls, compliance, audit (R.22)	• The Latvian authorities are invited to amend the legislation to ensure that foreign branches and subsidiaries of Latvian financial institutions observe AML/CFT measures consistent with FATF Recommendations in general by including a specific requirement to apply the higher standard where AML/CFT provisions differ. • The terminology used in the laws and regulations should also be accommodated with the widest scope of the FATF standards, by making reference to all AML/CFT requirements, not only *customer identification, due diligence and record keeping*. • The Latvian AML/CFT Law should be completed with appropriate provisions with regard to applying consistent CDD measures at the group level, while taking into account the activity of the customer with the various branches and majority owned subsidiaries abroad.
3.9 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	***Recommendation 23*** • The Latvian authorities should consider designating a supervisory authority in respect of AML/CFT compliance empowered to impose sanctions for persons providing money collection services (secure transport services) and companies providing reinsurance. • The Latvian authorities are encouraged to conduct a risk assessment and to take action to ascertain whether the closure of account due to impossibility to perform CDD issue could impact the supervisory regime. • Latvia should amend the AML/CFT Law to cover the reinsurance sector. ***Recommendation 17*** • Legal provisions should be amended in order to provide the BoL with adequate sanctioning powers over the natural persons. • The range of sanctions under the BoL act, should be broaden to become more effective, proportionate and dissuasive.

	• The MoT should be invested with adequate legal sanctioning powers or the supervision of the Latvian Post as money remitter should be entrusted to FCMC. ***Recommendation 25(c. 25.1 [Financial institutions])*** • The Latvian authorities should draft and approve dedicated guidelines to include description of sector specific ML/FT techniques and methods and any additional measures that financial institutions should take to ensure that their AML/CFT measures are effective. • Guidance on suspicion grounds including red flags and indicators for ML and FT related reports are highly recommended to improve reporting entities capacity to detect and report STRs. • Insufficient feedback on FT cases. ***Recommendation 29*** • The Latvian authorities should amend legislation to provide adequate supervisory power to the MoT to monitor and ensure compliance of regulated entities with AML/CFT requirements or they should consider shifting the entire supervisory duties to the FCMC. • The FCMC should enhance their on-site examinations on the insurance companies as in all of the 4 years analyzed, no deficiencies and no breaches in the AML/CFT field were identified on the sector.
3.10 Money or value transfer services (SR. VI)	• The Latvian authorities should maintain a consolidated and complete list of agents providing MVT services. • The Latvian authorities should ensure that the complete customer identification and verification mechanisms are in place within the Latvian Post, and that adequate records are maintained for the appropriate period. • Authorities should reconsider the oversight mechanisms in place for the Latvian Post's MVT services, and consider transferring the Latvian Post's MVT services in to the FCMC obliged entities, or expanding the legal remit and resources of the Ministry of Transport to conduct supervision.
4. Preventive Measures – Non-Financial Businesses and Professions	

4.1 Customer due diligence and record-keeping (R.12)	***Recommendation 5*** • Latvia should amend legislation to ensure that all persons providing real estate services are registered and licensed so that the level of compliance on the proper application of the CDD measures and other AML/CFT requirements of both parties in a transaction could be monitored and supervised. • The Latvian authorities should ensure uniform application of AML/CFT requirements across the entire field of organisers of lotteries and gambling houses. • Additional sector specific outreach is needed to the auditors, real estate, and tax advisor/accountancy sectors to explain in the AML/CFT requirements. • Guidance and quick reference tools to assist reporting entities would also be helpful in getting entities to first remember and ultimately implement due diligence measures. • Authorities should raise awareness on the importance of customer identification and verification with dealers in the precious metals/stones sector. • Efforts should be made to integrate both the used and new automobile sectors into the AML/CFT regime, given the identified money laundering threat. • The State Inspection for Heritage Protection's cooperation with the Ministry of Interior to register all cultural monuments should be encouraged and strengthened. • Consider strengthening AML/CFT controls over Latvian Residency Law. • Given the unique modalities of tax crimes with money laundering, the lack of specialized AML/CFT legal guidelines for tax consultants should be considered. Consideration should be given to creating an SRO for tax advisors, given the level of activity in the sector and recent inclusion into the AML/CFT obliged entity. ***Recommendation 6*** • The evaluators recommend conducting outreach to casinos and real estate sector to raise awareness of PEPs. ***Recommendation 8*** • The Latvian authorities should enact legal provision to ensure a more stringent control on unlicensed internet gambling sites. ***Recommendation 10***

	• The Latvian authorities should clarify the ability for authorities to ask obligors to hold records beyond five years or longer, as required by the FATF standard.
4.2 Suspicious transaction reporting (R.16)	***Recommendation 13*** • Awareness raising programs should be put in place to address the difficulties identified in distinguishing between UTRs (threshold based) and STRs • Actions under Recommendation 13 apply. ***Recommendation 21*** • Requirements for special attention to transaction with no apparent economic or lawful purpose should be implemented • Awareness programs should be available for DNFBP to recognise the high risk jurisdictions (effectiveness issue)
4.3 Regulation, supervision and monitoring (R.24-25)	***Recommendation 24*** • Authorities should consider implementing an AML/CFT specific dissuasive, effective and proportionate sanctioning regime for DNFBP. • The SRS should introduce clear distinction between procedures for off-site and on-site supervision. • The evaluators encourage the SRS to increase the on-site supervision. • The supervision performed by SRO should be enhanced on AML/CFT issues. ***Recommendation 25 (c.25.1 [DNFBP])*** • The Latvian authorities should issuing sector specific guidance for all DNFBP. • Existing guidance for auditors and notaries should include grounds for suspicion for FT and ML cases. • Similarly, as in the case of FIs, the Latvian authorities should issue guidance on TF indicators.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal persons – Access to beneficial ownership and control information (R.33)	• Authorities are encourage to review the new implemented legal procedures
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	• More involvement of the Finance Sector Development Council in national risk assessment and in the creation of a national AML/CFT strategy should be advisable.

	• The Council should organise regular meetings to address current AML/CFT policy and overall coordination needs.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• It is recommended that Latvia amends its legal framework to entirely cover TF offence and thus fully implement the TF Convention.
6.3 Mutual Legal Assistance (R.36, 38 & SR.V)	***Recommendation 36*** • The Latvian authorities should put in place a system enabling them to monitor the quality and speed of executing requests. ***Recommendation 38*** • The Latvian authorities should maintain centralized annual statistics on all MLA requests, including requests relating to freezing, seizing and confiscation that are sent or received, relating to ML, the predicate offences and TF, including the nature of the request, whether it was granted or refused and the time required to respond. • The Latvian authorities should take measures to ensure the enforcement of foreign confiscation orders for property, other than instrumentalities and property obtained illegally, in all cases. • The Latvian authorities should consider establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes. ***Special Recommendation V*** • The Latvian authorities should clarify whether the identified deficiency with respect to the TF offence as outlined under SR. II may limit its ability to provide international cooperation in certain situations.
6.4 Other Forms of Co-operation (R.40 & SR.V)	No recommended actions
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	***Recommendation 30*** • Having in mind the new supervisory activities and other financial institutions which might fall under the FCMC supervision, additional resources should be allocated. • Increasing the FIU operational staff is recommended. • The introduction of more a elaborated IT tool to automate the FIU's analytical activity is recommended in the context of high number of

	reports. • More investigators focused to ML cases in the police forces would be welcome. There is a need for a specialized continuous training for police officers in AML/CFT matters, in economic and financial analysis. More specialized investigators and equipment is needed for the law enforcement authorities (especially financial police). ***Recommendation 32*** • In order to effectively assess the implementation of ML legal provisions, authorities should maintain and develop more comprehensive statistics in order to cover: underlying criminal offences, number of police/prosecution generated cases, FIU generated cases, self-laundering and third party laundering and autonomous laundering cases. • The Latvian authorities should routinely maintain statistics on STRs resulting in prosecution and conviction for ML. • Improving the system of maintained statistics to include the number of STRs and UTRs is recommended. • The evaluation team encourages the Latvian authorities to keep comprehensive statistics on off-site supervision as well. • The Latvian authorities are encouraged to review the effectiveness of the AML/CFT system as a whole on a regular basis and scrutinise the collected statistics in the light of the effectiveness. • It is recommended to further exploit the Finance Sector Development Council and the Advisory Board of the FIU in the national risk assessment and in the analyses of the effectiveness of the AML/CFT system as a whole. • Statistics on the average time of dealing with the foreign requests should be also kept by the Latvian authorities.
7.2 Other relevant AML/CFT measures or issues	
7.3 General framework – structural issues	

TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

RELEVANT SECTIONS AND PARAGRAPHS	COUNTRY COMMENTS
R 30, adequacy of resources to FIU	Regarding Recommendation 30, and the adequacy of resources available to the FIU (page 78, Article 377), the Latvian FIU considers that the words concerning AML software "..... cannot perform a number of analytical functions typical for an AML software as: data mining, social network analysis, clustering, links analysis, event analysis, activities analysis or pattern analysis. Thus, it cannot be used for more than for the preliminary analysis for prioritisation purposes. All further analytical work is performed manually by the FIU employees." do not correspond with reality. Even more - in the document "Latvia 4th round on-site visit key findings" on the page 3 there is the text "... While there is no analytical software in place, the FIU uses visualisation software with the report transactions database." The Latvian delegation, with the intention of helping the experts, immediately after the visit, provided letters with description of the analytical tools (signed by the Head, Dr.sc.comp., of the production group of software). Such a situation creates difficulties to understand what in the concrete case is recommended and possibly several of these analytical tools already are in place since year 1998
R.32 (page 251, table of ratings)	"No statistics on STRs and UTRs" Latvian side like to draw up attention to the fact that international standards and practice uses indicators of suspicious and unusual transactions, but not such indicators of the reports. Report could be defined as the activity of the person subject of the AML/CFT Law or the map (or case covers) and cannot be suspicious or unusual. For example - the Article 3 of AML/CFT Law also states that not only regular reporters but all natural and legal persons in Latvia "…shall also have a duty to comply with the requirements of this Law as to reporting unusual or suspicious transactions". These other persons with the aim at preventing money laundering provides the FIU with letters and attached documents consisting information on much more than one single unusual or suspicious transaction. Each letter has own reports number and each reported transactions another number of, for example, suspicious transaction. It is clear that it is not possible to train all natural and legal persons in Latvia how to work with reporting form with the purpose to realize the principle - one report on transaction. Pursuant to the requirement of the AML/CFT Law and adequate practice of registration of the reports and reported transactions such recommendation shows the misunderstanding of the situation and creates the difficulties for Latvian side what and how shall be changed in well working national situation.

V. COMPLIANCE WITH THE 3RD EU AML/CFT DIRECTIVE

Latvia has been a member country of the European Union since 2004. It has implemented **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**.

The following sections describe the major differences between the Directive and the relevant FATF 40 Recommendations plus 9 Special Recommendations.

7.	**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 Law of the Republic of Latvia provides for corporate criminal liability for money laundering. In pursuant with Section 70.[1] for the criminal offences provided for in the Special Part of this Law, coercive measures may be applied to a legal person, if the criminal offence has been committed in the interests of the legal person by a natural person. In determining of coercive measures, a court shall take into account the nature of the criminal offence and the harm caused.
Conclusion	Criminal liability for money laundering extends to legal persons.
Recommendations and Comments	

8.	**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	Art 15 AML Law "*Credit institutions and financial institutions shall be prohibited from opening and keeping anonymous accounts (of customers that have not been identified)*"

Conclusion	The text of the Law introduces an indirect interdiction of opening and keeping anonymous accounts by requiring credit and financial institutions to identify the customers beforehand.
Recommendations and Comments	Introduce a direct obligation in the Law.

9.	**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	AML/CFT Law Art 11 (2) 1) "*The person subject to this Law shall also identify a customer before each occasional transaction, when not establishing the business relationship within the meaning of this Law: where the amount of transaction or the total amount of several apparently linked transactions is equivalent to 15.000 Euros or more at the exchange rate set by the Bank of Latvia on the transaction day* "
Conclusion	The Law implemented the Directive accordingly
Recommendations and Comments	

10.	**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	Art 1 5) of the AML/CFT Law
Conclusion	The Law implemented the approach of the Directive
Recommendations and Comments	

11.	**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	N/A
Conclusion	The Latvian authorities have not implemented Art 4 of the Directive.
Recommendations and Comments	

12.	**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	Art 26 of the AML/CFT Law
Conclusion	The framework related to Simplified Customer Due Diligence has been recently (31 March 2011) reviewed and follows the approach of the Directive.
Recommendations and Comments	

13.	**Politically Exposed Persons (PEPs)**
Art. 3 (8), 13 (4) of the Directive *(see Annex)*	The Directive defines PEPs broadly in line with FATF 40 (Art. 3(8)). 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	Art 22 AML/CFT Law
Conclusion	The Latvian authorities have implemented the Directive approach.
Recommendations and Comments	

14.	**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	Art 22 (2) 3) and Art 24 (1) and (2) AML/CFT Law
Conclusion	Art 13 of the Directive was implemented in the AML/CFT Law
Recommendations and Comments	

15.	**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	Art 8, 22 and 23 AML/CFT Law
Conclusion	If by **business relationship**, one can also understand **products and transactions**, then the Latvian Law addresses Art 13 of the Directive
Recommendations and Comments	Also mention procedures specifically referring to products or transactions in case of non-face to face situations (as stated in the Directive).

16.	**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	Art 29 (1) and (2) AML/CFT Law
Conclusion	Art 15 of the Directive was implemented in the AML/CFT Law
Recommendations and Comments	

17.	**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	Art 3 (1) 3) AML/CFT Law
Conclusion	The Latvian Law follows the approach of the Directive
Recommendations and Comments	

18.	**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	Art 3 (1) 9) AML/CFT Law
Conclusion	The Latvian Law follows the approach of the Directive
Recommendations and Comments	

19.	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	Art 36 (2) and Art 39 (1) AML/CFT Law
Conclusion	The Latvian Law is stricter than both the Directive and FATF Recommendation.
Recommendations and Comments	

20.	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	Art 30 (1) AML/CFT Law
Conclusion	The Latvian Law follows the FATF Recommendation
Recommendations and Comments	

21.	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	Art 32 (1), combined with Art 33, 33-1, 33-3, 34, 35 and 36 AML/CFT Law
Conclusion	The Latvian Authorities have followed the approach of the Directive

Recommendations and Comments	

22.	**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	Art 10 (3) and (4), 40 AML/CFT Law
Conclusion	The Latvian Law follows the FATF recommendation
Recommendations and Comments	The Latvian Authorities may wish to consider as well, the provision of Art 27 of the Directive.

23.	**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	Art 38 (1) and 39 AML/CFT Law
Conclusion	The Law follows the approach of Art 28 of the Directive
Recommendations and Comments	The Latvian Authorities are invited to review and redraft the provisions of the Law regarding the tipping off (2) in order to express in a more transparent and coherent way the approach of the Directive. In addition, supporting this statement is the layout of the information used by the authorities in the questionnaire, indicating irrelevant, as well as incomplete information, given the questions.

24.	**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	Art 3 (2) AML/CFT
Conclusion	The Law follows Art 34 (2) of the Directive. However, by limiting

	the provisions of the Law only to customer identification, due diligence and record keeping, the scope of the Directive has been narrowed down.
Recommendations and Comments	Authorities are invited to review the provisions of the Law and amend it in order to be fully in line with the Directive.

25.	**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	Art 3 (3) AML/CFT Law
Conclusion	The Law follows the FATF Recommendation.
Recommendations and Comments	The findings from the above recommendation are also applicable in this case.

	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	Art 46 (1) 4) AML/CFT Law
Conclusion	Art 25 (1) of the Directive is implemented in the Latvian Law.
Recommendations and Comments	

26.	**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	Art 30 and Art 37 (2) and (3)AML/CFT Law
Conclusion	The Law follows the approach of the Directive.

Recommendations and Comments	

27.	**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	Art 3 (4) AML/CFT Law
Conclusion	The Law follows the approach of the Directive.
Recommendations and Comments	

28.	**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	Latvia implemented requirement of the EU Directive through Cabinet of Ministers Regulation taking into consideration EU Common Understanding between Member States on third country equivalence under the Anti-Money Laundering Directive (Directive 2005/60/EC) adopted in Brussels on 18.04.2008.
Conclusion	Latvian AML/CFT provisions on equivalent third countries are broadly in line with those in the Third Directive
Recommendations and Comments	The Latvian authorities are invited to mention such a list in the Law and also to regulate its maintenance updated.

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 1

Latvia	
Designated categories of offences based on the FATF Methodology	**Offence in domestic legislation- Articles of Criminal Law**
Participation in an organised criminal group and racketeering;	21, 89-1, 183, 184
Terrorism, including terrorist financing	88, 88-1, 88-2, 88-3
Trafficking in human beings and migrant smuggling; Sexual exploitation, including sexual exploitation of children;	154-1, 154-2 159 – 163, 163-1,164, 165,165-1
Illicit trafficking in narcotic drugs and psychotropic substances;	249 – 253, 253-1, 253-2, 254-256
Illicit arms trafficking	346
Illicit trafficking in stolen and other goods	313 – 314,308
Corruption and bribery	316 – 326, 326- 1, 326-2
Fraud	177,177-1, 178, 210
Counterfeiting currency	192
Counterfeiting and piracy of products	206
Environmental crime	96 -115
Murder, grievous bodily injury	116 - 129
Kidnapping, illegal restraint and hostage-taking	152 – 154,154-1, 154-2,155
Robbery or theft;	175 - 176
Smuggling	190
Extortion	183 - 184
Forgery	275
Piracy	Paragraph 3 of the Article 176
Insider trading and market manipulation	200 – 207, 211-216

ANNEXES I-XXI - see MONEYVAL (2012)16ANN