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LAUNDERING MEASURES AND THE
FINANCING OF TERRORISM
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Progress report and written analysis by the
Secretariat of Core Recommendations ¹

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¹ First 3rd Round Written Progress Report Submitted to MONEYVAL

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This is the first 3rd Round written progress report submitted to MONEYVAL by the country. This document includes a written analysis by the MONEYVAL Secretariat of the information provided by Ukraine on the Core Recommendations (1,5, 10, 13, SR.II and SR.IV), in accordance with the decision taken at MONEYVAL's 32nd plenary in respect of progress reports.

UKRAINE

First 3rd Round Written Progress Report Submitted to MONEYVAL

1. *Written Analysis of Progress Made in Respect of the FATF Core Recommendations*

1.1 *Introduction*

1. The purpose of this paper is to introduce Ukraine's first progress report back to the Plenary concerning the progress that it has made to remedy the deficiencies identified in the third round mutual evaluation report (MER) on selected Recommendations.

2. Ukraine was visited under the third evaluation round from 22 September to 1 October 2008 and the mutual evaluation report (MER) was examined and adopted by MONEYVAL at its 29th Plenary meeting (16-20 March 2009). According to the procedures, Ukraine submitted its first year progress report to the Plenary in March 2010, and the Plenary invited Ukraine to resubmit a fuller progress report to the September 2010 Plenary in accordance with Rule 42 of the Rules of Procedure.

3. This paper is based on the Rules of Procedure as revised in March 2010 which require a Secretariat written analysis of progress against the core Recommendations¹. The full progress report is subject to peer review by the Plenary, assisted by the Rapporteur Country and the Secretariat (Rules 38-40). The procedure requires the Plenary to be satisfied with the information provided and the progress undertaken in order to proceed with the adoption of the progress report, as submitted by the country, and the Secretariat written analysis, both documents being subject to subsequent publication.

4. Ukraine has provided the Secretariat and Plenary with a full report on its progress, including supporting material, according to the established progress report template. The Secretariat has drafted the present report to describe and analyse the progress made for each of the core Recommendations.

5. Ukraine received the following ratings on the core Recommendations:

R.1 – Money laundering offence (PC)
SR.II - Criminalisation of terrorist financing (PC)
R.5 - Customer due diligence (PC)
R.10 – Record keeping (LC)
R.13 - Suspicious transaction reporting (PC)
SR.IV - Suspicious transaction reporting related to terrorism (PC)

6. This paper provides, a review and analysis of the measures taken by Ukraine to address the deficiencies in relation to the core Recommendations (Section II) together with a summary of the main conclusions of this review (Section II). This paper should be read in conjunction with the progress report and annexes submitted by Ukraine.

¹ The core Recommendations as defined in the FATF procedures are R.1, R.5, R.10, R.13, SR.II and SR.IV.

7. It is important to be noted that the present analysis focuses only on the core Recommendations and thus only a part of the Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) system is assessed. Furthermore, when assessing progress made, effectiveness was taken into account to the extent possible in a paper based desk review, on the basis of the information and statistics provided by Ukraine, and as such the assessment made does not confirm full effectiveness.

1.2 Detailed review of measures taken by Ukraine in relation to the Core Recommendations

1. Main changes since the adoption of the MER

8. Since its mutual evaluation in September 2008, and the adoption of the MER in March 2009, Ukraine has taken the following measures with a view to addressing the deficiencies identified in respect of the core Recommendations:

- adopted a specific AML/CFT Action Plan for 2009-2010;
- introduced amendments to the Criminal Code (hereinafter CC), in particular as regards article 209 (Money laundering), and articles 258-3 and 258-4 (specific terrorist acts) and introduced a new article 258-5 (terrorist financing) and to the Law of Ukraine on Combating Terrorism;
- adopted on 18 May 2010 the Law No. 2258-VI on Prevention and Counteraction to Legalisation (Laundering) of the Proceeds from Crime or Terrorist Financing (hereinafter the AML/CFT Law) which entered into force on 21 August 2010;
- adopted the Law of Ukraine on Liability of Legal Persons for Corruption Offences (Law no. 1787-VI as amended by Law No. 2258-VI);
- approved Procedures of Submitting Information Concerning Client Identification by State Authorities on Request of Reporting Entity (Resolution of the Cabinet of Ministers no. 746 of 25 August 2010);
- approved Procedures of Registration of Reporting Entities, Registering Financial Transactions subject to Financial Monitoring and Submission to the SCFM the Information about Mentioned and other Financial Transactions that Could be Related to the Legalization of the Proceeds from Crime or Financing of Terrorism (Resolution of the Cabinet of Ministers no. 747 of 25 August 2010);
- adopted amendments to the Statute on execution of financial monitoring by participants of the securities market (resolution of Securities and Stock Market State Commission no. 1155 of 27 July 2010);
- adopted SCFM Order 125 of 30 July 2010 abrogating SCFM Order no. 40 on Approval Of Requirements to Organization of Financial Monitoring By Entities of Initial Financial Monitoring In Prevention and Counteraction to Introduction Into the Legal Turnover Proceeds From Crime and Terrorist Financing of April 2003;
- conducted a number of trainings for the judiciary, law enforcement officials and reporting entities as explained further below.

9. Ukraine has also taken additional measures to address deficiencies identified in respect of the key and other Recommendations, as indicated in the progress report, however these fall outside of the scope of the present report and thus are not reflected therein.

2. Review of measures taken in relation to the Core Recommendations

Recommendation 1 - Money laundering offence (rated PC in the MER)

10. Deficiency 1 identified in the MER (*Actions of conversion or transfer of property do not appear to be fully covered*). Conventions requirements for criminalizing activities pertaining to *conversion and transfer of property* are reflected in the wording of Article 209 of the CC, as complemented by relevant definitions in the AML/CFT law and the Civil Code. ML is defined as an act that includes “the conduct of a financial transaction” or “the conclusion of a deal with money or other property”. The term “financial transaction” is defined in the AML/CFT Law as any action related to assets which is conducted with the assistance of a reporting entity, and in this context “assets” include ‘funds, property, property rights and non-property rights (AML/CFT law, article 1 paragraphs (4) and (17)). The Supreme Court had clarified in this respect that such a transaction could be processed not only through a reporting entity, but through any other entity of economic management, as defined in article 55 of the Commercial Code. “Deal” is defined as any legal action aimed at acquiring, changing or ending civil rights and obligations related to that money or property (Civil Code, article 202).

11. Deficiency 2 identified in the MER (*Property does not seem to cover intangible assets and legal documents or instruments evidencing title to, or interest in such assets*). The previous evaluation had expressed some concern about the scope of property captured within the ML offence (“money or other property”) of the CC, as it did not provide for legal certainty. Property is defined in the Civil Code as “separate things, aggregate of things as well as property rights and obligations (Civil Code, article 190) and in the Economic Code as “the totality of things and other values – including non material assets- which have valuable estimation, are produced or used in the business entity’s activity and are represented in the balance and accounted in other forms, prescribed by laws, or record keeping of such entities (Economic Code, article 139). While there have been no changes to the definitions of “property” in these Codes, the Ukrainian authorities had demonstrated through excerpts of seizure court orders and confiscation decisions that in practice, the courts apply such measures taking into account a wider approach.

12. Deficiency 3 identified in the MER (*There are no autonomous investigations and prosecutions of the ML offence, as well as no conviction for money laundering without prior or simultaneous conviction for a predicate offence proving that the property is the proceeds of crime*). The current system for gathering statistical data does not enable to have accurate information in this respect. However, the authorities indicated that in the second half of 2009, there was one case out of 50 convictions where there was no conviction for the predicate offence. They referred to existing jurisprudence in particular a decision of the Ivano-Frankivsk court² in an autonomous investigation and prosecution case as well as to the Kharkov court decision³ where a person was convicted for ML to 5 years imprisonment, in the absence of establishing a predicate offence. Ukraine indicated also that it is receiving technical assistance through an IMF project which includes a component for training on ML investigations and that on 28 May 2010 a specific training session on autonomous investigations and prosecutions was organised for law enforcement officials.

13. Deficiency 4 identified in the MER (*2 out of 20 designated categories of offences are not fully (insider trading and market manipulation) and financing of terrorism in all its aspects is not covered*). Law no. 801-VI of 25.12.2008 (introducing amendments to certain legal acts of Ukraine concerning the responsibility for violations on the securities market) amended article 232-1 of the CC on illicit use of

² Case no. 1-67/2008 (4 June 2008)

³ Case no. 1-11/09 (22 October 2009)

insider information. FT was introduced as a stand alone offence through an amendment of the CC by Law no. 2258-VI of 18.05.2010 and is now a predicate offence to ML (see analysis of SR.II) . Market manipulation is still not a criminal offence. The authorities indicated that they are preparing draft amendments to the CC.

14. Deficiency 5 identified in the MER (*The applied threshold for predicate offences is not in line with the requirements of Recommendation 1*). Ukraine used to determine the predicate offences by reference to a threshold linked to a minimum penalty of more than 3 years. Law no. 2258-VI of 18 May 2010 amended paragraph 1 of the Note to article 209, eliminating the 3 years threshold. Predicate offences now cover all offences for which the CC provides for a punishment in the form of imprisonment. The Note still provides that offences covered under articles 207 (Evasion to return foreign currency proceeds), 212 (Evasion of taxes, fees or other compulsory payments) and (as a new addition) 212-1 (Evasion of insurance payments for compulsory state retirement insurance) of the Criminal Code are exempted from the scope of the ML offence.

15. Deficiency 6 identified in the MER (*There appear to be difficulties in the implementation of the offence*). The evaluation team had expressed reservations on the effectiveness of the implementation of the ML offence, based on information received and discussions held during the visit with various interlocutors (see paragraphs 106-115 of the evaluation report). This is an issue which can be fully assessed only during an on-site visit.

16. As a result of the recommendations made in the MER, the authorities reported having taken action to organise several trainings and to issue guidance to support the adequate implementation of the ML offence by the law enforcement and the judiciary. The Training Centre of the SCFM, the National Academy of the General Prosecutor’s Office, the Academy of Judges have improved and established training programs to strengthen law enforcement’s capacities to investigate criminal cases under article 209 and 306 of the Criminal Code. Trainings in 2009 conducted by the SCFM were attended by 230 law enforcement officials and 230 judges, and respectively in 2010 by 94 law enforcement officials and 110 judges. The curricula of the annual training of the National Academy of the General Prosecutor’s Office also includes a permanent training on methodologies to detect, disclose and investigate criminal cases on crimes related to the legalization of the proceeds from crime. Guidance was also issued in 2009 on “Fight against money laundering: Legal and organizational bases of the law enforcement activities”, which includes a section on practical aspects of organisation of investigative sanctions and typical investigative situations.

17. The MER had stated that from 2004 and 2008 (first half), Ukraine had achieved 883 convictions: 603 convictions (out of 1358 criminal cases submitted to court, that is 44%) had been achieved based on article 209 and 280 convictions (out of 534 criminal cases submitted to court, that is 52%) on the basis of article 306. Ukraine provided the following updated statistical data related to cases based on both articles 209 and 306 of the CC, which has been combined with previously reported information:

	<i>Investigations</i>	<i>Prosecutions</i>	<i>Convictions (final)</i>
2004		498	174
2005	779	405	228
2006	764	305	177
2007	751	387	211
2008	754	383	212
2009	733	385	195
2010 (June)	425	214	110

18. Taken at face value, these statistics show that the number of investigations, prosecutions and convictions remained rather stable over the past two years. No further information is available in order to consider the type of cases or the average length of sentences/fines applied in such cases.

Special Recommendation II - Criminalisation of terrorist financing (rated PC in the MER)

19. Deficiency 1 identified in the MER (*Elements of the financing of terrorism are criminalised solely on the basis of aiding and abetting, attempt or conspiracy thus, FT is not criminalised in line with SR II requirements as an autonomous offence*). Ukraine amended the CC introducing a new article 258-5 “Terrorist financing” which criminalizes “acts committed with the aim of financial or material provision of an individual terrorist or a terrorist organisation or the organisation, preparation or commitment of a terrorist act, involvement into committing of a terrorist act, public calls to commit a terrorist act, assistance to commit a terrorist act, the creation of a terrorist organisation” (Law no. 2258-VI of 18.05.2010).

20. The AML/CFT Law (article 1) also defines terrorist financing as “*providing or collecting any funds in knowledge that they are to be used, in full or in part, for the organisation, preparation and commitment of a terrorist act, as defined in the CC, by an individual terrorist or terrorist organisation, involvement into a terrorist act, public calls to commit a terrorist act, establishment of a terrorist group or terrorist organisation, aiding in commitment of a terrorist act as well as any terrorist activity, and an attempt to commit such actions*”.

21. Article 258-5 must be read in conjunction with article 258, which defines an act of terrorism. As such, terrorist acts defined in article 258 of the CC do not appear to cover all acts specified under 2(1)a) of the Convention which refers to the offences defined in the treaties listed in the annex (e.g. theft of nuclear material, unlawful seizure of aircraft) given that they are limited to the “use of weapons, committing the explosion, arson or other actions dangerous for persons’ life or health or causing great damage or heavy consequences”. However, since Ukraine has ratified the TF Convention, the list of terrorist acts referred to in its appendix should in principle take precedence over the notion of terrorist act in article 258. All terrorist acts falling within the scope of the relevant conventions referred to in the 1999 TF Convention are covered in the Criminal Code. It would however be advisable to include an additional reference in article 258 to terrorist acts provided for in international treaties.

22. Ukraine also criminalises separately the involvement in the commission of a terrorist act (article 258-1), public calls for the commission of a terrorist act (article 258-2), the establishment of a terrorist group or terrorist organisation (article 258-3) and the assistance in the commitment of a terrorist act (article 258- 4).

23. Deficiency 2 identified in the MER (*A number of requirements do not appear or are only partly covered (i.e. application to any funds as defined in the TF Convention; II.1(c)ii; II.2, II.3, R. 2 criteria 2.2 – 2.5)*) The use of the term of ‘financial or material provision’ does not allow to preclude whether the CC offence would cover “any funds” as defined in article 1 of the TF Convention. As indicated previously, it is implied that the definition of funds and property contained in the Civil Code would apply in this context, however it remains unclear whether this would be sufficient to cover assets of every kind as defined in the Convention. The authorities however referred in this context also to the definition of “assets” set out in Article 1.1.17 of the AML/CFT Law, which covers broadly all types of funds and could be applied by the judicial authorities. Article 258-5 does not make any distinction between lawful and unlawful sources of funding, so both appear to be covered.

24. It is an offence to attempt to commit the FT offence, as set out under article 15 of the CC, as well as the other types of conduct set out in article 2(5) of the TF Convention, ie. participation as an accomplice, organisation, contribution to the commitment of the offence by a group of persons.

25. Terrorist financing offences are predicate offences for money laundering.

26. As previously mentioned in the MER in respect to ML, various types of evidence arising from objective factual circumstances may be used to infer the intentional element of the offence.

27. Criminal liability for FT extends primarily to natural persons, with one exception under the Law on Liability of Legal Entities for Committing Corruption Offences, as amended by Law no. 2258-VI of May 2010. Pursuant to this act, legal persons shall be liable for committing, for and on behalf by the head of the legal person, its founder, participant or other authorized person, corruption offences independently or in complicity with any crime as listed in the law. Article 258-5 of the CC is covered under this Act. The Law provides for various penalties: fines, prohibition to be engaged in certain activities, confiscation, liquidation of the legal persons (see article 3).

28. In addition, under the Law on the fight against terrorism, the penalty for legal persons takes the form of liquidation by a court ruling, with property being subject to confiscation.

29. Sanctions applied to natural persons for FT include imprisonment for a term ranging between 5 to 8 years, with deprivation of the right to occupy certain positions or engage in certain activities for a period up to 2 years and with confiscation of property, and in aggravating circumstances, an imprisonment term up to 12 years. An exemption is provided for persons, other than the organizer or manager of the terrorist group (organisation), if the person willingly informed the authorities about the terrorist activity or in any other way enabled to suspend or prevent the crime financed or assisted, unless the person's action contain another corpus delicti. These sanctions appear to be proportionate and dissuasive.

30. As regards terrorism offences, Ukraine reported that in 2008-2009 the Security Service initiated the investigation of 2 criminal cases under article 258, none of which revealed a connection to FT activities or evidence of use of natural or legal persons in Ukraine or abroad to finance terrorism. Naturally, no statistics are available with regard to the offence in the new article 258-5, thus it is currently too early to assess whether the recent FT provision is effectively implemented and assessed.

31. The legislative changes which are in force as of August 2010 provide Ukraine with a satisfactory criminalization of the FT offence in line with the UN Convention on TF. Some technical deficiencies appear to remain as it remains unclear, in the absence of jurisprudence, whether the form of support given would be interpreted as including all types of funds. Also it would be advisable that the terrorist acts covered under article 258 and 258-5 include explicitly all acts provided for in the international conventions annexed to the TF Convention. Actions will be required to increase the awareness of the relevant competent authorities on the application of these new offences.

Recommendation 5 - Customer due diligence (rated PC in the MER)

32. Deficiency 1 identified in the MER (*For banks, CDD measures when carrying out occasional transactions above the applicable threshold are limited to cash transactions*). This deficiency appears to be addressed. The AML/CFT law (article 9(3)) requires a reporting entity to perform CDD measures when carrying out a single financial transaction without establishing a business relationship above a designated threshold of Ukrainian Hryvnia (UAH) 150 000 (approx. 14,450 Euros).

33. Deficiency 2 identified in the MER (*The requirement to undertake CDD measures when carrying out occasional transactions that are wire transfers is not set out in law or regulation*). NBU Resolution 348 (Section V, 4(f)) sets out the procedure which requires to identify a customer initiating the transfer of an amount equal or above UAH 5,000 (approx. 482 Euros) by entering into the transfer document the following information:

- name, patronymic name (if any) and surname of the customer;
- data on the location and account number (if no account, a unique reference of the transaction);
- the name or code of the bank of the initiator;
- the place of the initiator's registration (instead of the address, a customer's taxpayer identification number or date and place of his birth can be indicated).

34. However the requirements above are not established in law or regulation (as defined in the FATF terminology) and there seems to be no obligation on ordering financial institutions to verify the identify of the originator in accordance with the requirements under R.5. The legal framework (AML/CFT Law or the Law on Banks and Banking or regulation) was not amended to set out an obligation for financial institutions to undertake CDD measures when carrying out occasional transactions that are wire transfers in the circumstances covered by the IN to SR.VII (criterion 5(2)c *)⁴.

35. Deficiency 3 identified in the MER (*Banks are not explicitly required to undertake CDD when there is a suspicion of money laundering or terrorist financing, regardless of any thresholds*). The AML/CFT law (article 9(3)) requires a reporting entity to perform CDD measures in case of suspicion that a financial transaction might be related to ML or TF. This deficiency appears to be addressed.

36. Deficiency 4 identified in the MER (*There is no explicit requirement in law or regulation for dealing with doubts about the veracity or adequacy of previously obtained customer identification data. The current requirements do not refer to undertaking CDD and do not cover the full scope of CDD*). The AML/CFT law (article 9(5)) covers instances when the reporting entity has suspicions concerning the reliability or adequacy of information provided on the customer, and requires the reporting entity to undertake measures to verify and clarify the customer (person) identity information. This deficiency appears to be addressed.

37. Deficiency 5 identified in the MER (*The definition of beneficial ownership does not cover natural persons and there is no requirement in law or regulation requiring financial institutions to determine who are the natural persons that ultimately own or control the customer*) & Deficiency 6 identified in the MER (*Securities institutions are only required to identify beneficial owners and understand the ownership and control structure of the customer in higher risk situations*). The AML/CFT law introduces several definitions: "control over natural person", "controller", "essential share", "beneficiary". The "control over a natural person" is defined as the possibility for final influence on financial transactions of such a person regardless of the actual possession of assets of the natural person. The "control over a legal person" shall mean the direct or indirect ownership by a natural person individually or jointly with immediate relatives of the shares which equal 50% or more of the statutory capital or voting rights of the legal person or, independently from formal ownership, the capacity to executive conclusive influence on the management or activity of the legal person. A "beneficiary" is a natural person for the benefit or interest of whom a financial transaction is executed.

38. The authorities referred in this context to several articles of the AML/CFT Act: article 6 - Task, duties and rights of reporting entities (part 2.25 - permanent update on information on nature of client's

⁴ To note: the third round evaluation report had taken the view that the NBU resolutions qualify as "other enforceable means" per the definition under the FATF Methodology (see the MER – MONEYVAL (2009) 4 at the following link: [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL\(2009\)4Rep-UKR3_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL(2009)4Rep-UKR3_en.pdf))

activity and financial condition) , article 9 - Identification and Verification of clients conducting financial transactions (part 11.3 - Identification of residents legal persons; part 12.2 - Identification of non-residents legal persons; part 14 – use of simplified identification procedures and part 15 – instances where the customer acts as a representative of a person, where there are doubts whether the person acts on its own behalf, or the beneficiary is another person) and article 11 - Risk Management (part 3 – measures to reduce detected risks).

39. The primary obligation on a reporting entity is to identify clients that execute financial transactions. For customer that are legal persons, reporting entities are obliged to collect information on persons who have the right to manage accounts and property, owners of significant share in the legal person and the data for identification of person's controllers conducting control. If the reporting entity doubts whether the person acts on its behalf or if the beneficiary is another person, there is a requirement to identify also the other person. Simplified identification procedures are allowed for clients which are state agencies, state enterprises, international institutions or organisations to which Ukraine participates and when conducting a financial transaction on organised securities market. These deficiencies appears to be partly addressed. There does not seem to be an explicit requirement in the law to verify the identity of the customer and of the beneficial owner, apart from cases of suspicion concerning reliability or adequacy of information provided by the customer.

40. Deficiency 7 identified in the MER (*Securities institutions are only required to obtain information on the purpose and nature of the business relationship in higher risk situations*). The AML/CFT law (article 6 part 2, subparagraph 24) requires all reporting entities to verify the purpose and nature of future business relations with clients. The deficiency appears to be addressed.

41. Deficiency 8 identified in the MER (*There is no specific requirement in law or regulation to conduct ongoing due diligence on the business relationship applicable to all financial institutions*) & Deficiency 9 identified in the MER (*There is no requirement on non-bank financial institutions that ongoing due diligence should include scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds*). The AML/CFT law (article 6 part 2, subparagraphs 25-27) requires all reporting entities to permanently update the information on the nature of the client's activity and financial condition, according to the legislation and internal procedures, and to analyse the correspondence of the client's financial transactions to the existent information on the nature of its activity and financial condition. Also, reporting entities are required to individually classify clients considering the risk criteria (article 6 part 3) and take specific measures to reduce detected risks (article 11 – Risk Management). These deficiencies appears to be addressed.

42. Deficiency 10 identified in the MER (*There is no general requirement on financial institutions to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions; the requirements on banks do not cover certain elements of EDD*). There seems to be a general requirement to perform enhanced due diligence based on risks detected.

43. Deficiency 11 identified in the MER (*There is no explicit requirement for non-bank financial institutions to apply CDD to existing customers*). There is no timeline set for obliged institutions to comply with the new requirements under the AML/CFT law. Article 9 refers generally to “clients that execute financial transactions”. The only reference to “existing customers” can be found under part 9 of article 9 which provides that a reporting entity shall have the right to refuse the execution of a financial transaction if the customer with whom a business relationship was established fails to submit the necessary information for identification and verification of the financial activity. The authorities indicated that the State Commission for Financial Market Regulation and the State Commission on Securities and

Stock Market will review the existing by-laws in order to make necessary amendments to ensure that CDD measures apply to existing customers.

44. In conclusion, while the AML/CFT law strengthened the Ukrainian regime with regard to customer identification and addresses several weaknesses identified in the MER, there appear to remain a number of issues which do not seem to be sufficiently covered (explicit requirement in the law to verify the identity of the customer and of the beneficial owner, apart from cases of suspicion concerning reliability or adequacy of information provided by the customer; requirement to undertake CDD measures when carrying out occasional transactions that are wire transfers not set out in law or regulation; requirement in the AML/CFT Law obliging financial institutions to determine for all customers whether the customer is acting on behalf of another person, comprehensive coverage of the situations under the standards regarding failure to satisfactorily complete CDD and regarding existing customers). While these may be covered in more detail under specific regulations and other enforceable means, in the absence of information on this, this matter could not be fully analysed.

Recommendation 10 - Record Keeping (rated LC in the MER)

45. Article 6 part 2 paragraph 15 of the AML/CFT Law requires reporting entities to keep “documents” on:

- the identification of persons that conducted the financial transaction subject to financial monitoring, for a period of no less than 5 years after the termination of the business relationship.
- documents related to the business relationship with the client for a period of no less than 5 years after the termination of the business relationship.
- All essential data on transactions for a period of no less than 5 years after the completion of transactions.

46. It is also provided that the record keeping period can be prolonged by the appropriate entity of state financial monitoring, in accordance with the procedure defined by law.

47. Record keeping requirements are also covered under other legislative acts. For banks, the Law on Banks and Banking (Article 65, which was not amended) requires that all documents on the financial transactions subject to financial monitoring and the results of the identification of the persons having performed such transactions shall be kept by the bank during 5 years from the date of performing these transactions. The results of the identification of the account owner and the person authorized to act in his/her name shall also be kept by the bank during 5 years from the date of closing the account. The procedure for registration by banks of a financial transaction subject to financial monitoring is set out in detail in the NBU Regulation on Implementing the Financial Monitoring by Banks (Section 4).

48. For all other reporting entities, except banks, the Resolution of the Cabinet of Ministers on Some Issues of Financial Monitoring Organisation (no. 747 of 25 August 2010) sets out in detail the record keeping procedure. The information collected, as set out under paragraphs 13-14 should be sufficient to permit reconstruction of individual transactions.

49. Deficiency 1 identified in the MER (*Non-bank financial institutions are not required to maintain records of the identification data for at least five years following the termination of the account or business relationship*). This is now covered under the AML/CFT Law as explained above.

50. Deficiency 2 identified in the MER (*No requirement that transaction records should be sufficient to permit reconstruction of individual transactions*). There is no explicit requirement that transaction records should be sufficient to permit reconstruction of individual transactions in the law. However, the list of data

to be gathered, both by banks (under the NBU Regulation) and by other reporting entities (under Resolution 747) is sufficiently comprehensive to permit reconstruction of individual transactions.

51. Article 6 part 2 paragraph 16 of the AML/CFT Law, reporting entities are required to provide unimpeded access to documents or information contained in it to relevant competent authorities (entities of state financial monitoring and law enforcement authorities) upon documentary request.

52. As outlined above, the newly introduced changes appear to address the deficiencies identified in the MER in respect of record keeping requirements for financial institutions.

Recommendation 13 – Suspicious transaction reporting (rated PC in the MER)

53. Deficiency 1 identified in the MER (*The suspicious reporting regime could not be regarded as risk-based and in line with the specifics of different sectors*). The AML/CFT Law has modified the Ukrainian reporting regime in respect of the risk indicators to be considered by a reporting entity when subjecting a financial transaction to internal financial monitoring (see article 16). The law has retained the previous approach distinguishing between 3 main categories. Financial institutions are required to subject a financial transaction to internal financial monitoring if it has one or more indicators or contains other risks:

1. complex or unusual character of the financial transaction or aggregate of connected financial transactions without apparent economic or visible lawful purpose;
2. non compliance of the financial transaction with the character and nature of the customer's activity;
- c) revealing repeated financial transactions, the nature of which gives grounds to believe that it is aimed at evading the procedures of obligatory financial monitoring or identification.

54. If the reporting entity has grounds to believe that the financial transaction is connected with ML or FT, it is required to conduct the internal financial monitoring regarding other financial transactions.

55. The previously 'list based' risk sub-criteria were eliminated from the AML/CFT law, and the reporting entities are obliged by the law to develop their own risk criteria, while they are also required to taken into account the risk criteria developed by the FIU and relevant supervisory authorities. Based on how the additional regulations and/or instructions of supervisory authorities (to be adopted) will be drafted and on how reporting entities implement their obligation of establishing own criteria, this may strengthen the risk based approach of the suspicious transaction reporting system. Furthermore the authorities indicated that numerous trainings were organized for reporting entities (e.g. In 2009, 304 training events for 7993 representatives of banking and non banking institutions, in the first half of 2010, 88 representatives of reporting entities were trained).

56. The suspicious transaction reporting obligation is set out in article 6 part 2 of the AML/CFT Law which obliges reporting entities to report to the Specially Authorized Agency (ie. SCFM) about financial transactions subject to internal financial monitoring in case of reasonable suspicion that they are connected with legalization of the proceeds from crime and to transactions related to terrorist financing. Proceeds from crime, and terrorist financing are defined in article 1 part 1 and 3 of the AML/CFT law and are in line with the requirements.

57. Deficiency 2 identified in the MER (*All types of attempted transactions are not fully covered*). The above-mentioned suspicious transactions, including attempted transactions, are to be reported regardless of the amount of the transaction.

58. Deficiency 3 identified in the MER (*No STR requirement in cases possibly involving insider trading and market manipulation*). This remains the case. As mentioned previously, amendments to the CC are underway in order to include insider trading and market manipulation as predicate offences.

59. Deficiency 4 identified in the MER (*Low numbers of STRs outside the banking sector adversely affects the effective implementation*). This deficiency was raised, considering that in 2007, 97% of the submitted STRs were from banks and that there were indications of a lack of understanding of other sectors of their reporting requirements.

60. The desk review does not allow as such to undertake a comprehensive review of effectiveness and discuss the variations and the quality of STRs received from reporting entities. Ukraine provided updated statistics, which show a decrease in the overall number of STRs in 2009 (878 803 compared with 1 061 765 in 2008). The figures do not show major changes in respect of non banking financial institutions' reporting, that is over 97% of the STRs are still generated by the banking sector, with a slight increase of reporting from financial institutions other than banks in 2009 compared to 2008. The figures provided on the number of STRs from currency exchange seem to be very low and have been decreasing (11 in 2008, 2 in 2009), which may be an issue of concern, though the authorities indicated that this could be explained by the decrease of the overall number of currency exchanges which are not bank divisions.

61. As regards the ratio of STRs and threshold reports filed by banks and non-banking institutions, the authorities indicated that this should be seen as corresponding to the ratio of transactions done by banks and non banking institutions (eg. in 2009, banks conducted 283 millions of payment transactions, and for the same period, the number of securities transactions was below half a million). Furthermore, they consider that the low number of STRs outside of the banking sector is based on objective reasons and that this cannot be conclusive as to how the non banking sector implements the reporting obligation.

62. Work on enhancing the effectiveness of the STRs system and reporting is continuously undertaken through trainings organised for reporting entities, and this is reflected by the important number of trainings organised for these entities in 2009 in order to improve their understanding of the reporting obligations and requirements under the law. The overall effectiveness of the reporting system should be thoroughly checked in the course of the 4th round on-site visit. In conclusion, while Ukraine has strengthened its suspicious reporting obligation, additional efforts will be necessary to ensure that the implementation of the reporting obligation is more effective especially for non banking financial reporting entities.

Special Recommendation IV (rated PC in the MER) – Suspicious transaction reporting related to terrorism

63. *Deficiency (No explicit mandatory obligation for financial institutions to report STRs when it suspects or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations and those who finance terrorism apart from transactions involving residents of countries which inadequately implement FATF standards)*. The evaluation team had identified that the reporting of suspicious transactions related to terrorist financing was not explicitly required in the law. This matter has been addressed by Ukraine. Article 6 part 2 c) requires reporting entities to inform the authorized agency about detected financial transactions in case of reasonable suspicion that they are connected with, related or intended for terrorist financing. Such reports should be made on the day of detection or of the day of the attempt to perform the transaction. TF is comprehensively defined in the AML/CFT Law (article 1 part 3).

64. Ukraine has addressed this deficiency by clarifying explicitly in the law the reporting obligation to transactions related to terrorist financing. As regards FT suspicious reports received, statistics show that 9

FT STRs were reported in 2008 (8 by banks and 1 by a pawnshop), 11 STRs in 2009 (10 by banks and 1 by the securities market participants), and 3 STRs as of July 2010 (2 by banks and 1 by an insurance company). 10 case referrals were disseminated to the Security Service from 2008-2010, and following investigations; no facts of FT were detected.

1.3 Main conclusions

65. Ukraine reported specific progress on all the core Recommendations, as outlined in the progress report submitted to the MONEYVAL Plenary.

66. Since its mutual evaluation, Ukraine has worked on the basis of an action plan for the period 2009-2010⁵ which was adopted by the Cabinet of Ministers and the National Bank specifically in order to implement MONEYVAL's recommendations.

67. The measures taken in respect of the FATF core Recommendations are evidence of concrete progress made by Ukraine to correct deficiencies, particularly as regards the implementation of SR.II, R.5, R.13 and SR.IV. There are a number of areas where additional efforts are underway or will undoubtedly be required in order to ensure that the provisions of the newly adopted Act on Prevention and counteraction to legalization (laundering) of the proceeds from crime or terrorist financing, which is in force only as of August 2010, as complemented by several recent resolutions of the Cabinet of Ministers, are adequately implemented and enforced.

68. Ukraine is encouraged to continue implementing the actions included in the Action Plan according to the set timelines, with a particular focus on measures aimed at enhancing the effectiveness of the law enforcement and judiciary's action in the implementation of the ML/FT offences and of the suspicious transaction regime. Furthermore Ukraine should ensure that as a result with the newly introduced AML/CFT legislation, the preventive legal framework (relevant by-laws, decisions, resolutions, orders, instructions and other) is adequately consolidated and enforced.

69. In conclusion, as a result of the discussions held in the context of the examination of this first progress report, the Plenary was satisfied with the information provided and the progress being undertaken and thus approved the progress report and the analysis of the progress on the core Recommendations. Pursuant to Rule 41 of the Rules of procedure, the progress report will be subject of an update in every two years between evaluation visit (ie. September 2012), though the Plenary may decide to fix an earlier date at which an update should be presented.

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⁵ Resolution of the Cabinet of Ministers of Ukraine and the National Bank of Ukraine no. 1119 – Action Plan 2009-2010 for prevention and counteraction to legalization of the proceeds from crime and terrorist financing considering recommendations of the MONEYVAL under the results of the 3rd round of evaluation of efficiency of Ukrainian anti-money laundering and counter terrorist financing system, (amended on 21 October 2009).

2. Information submitted by Ukraine for the first progress report

2.1 General overview of the current situation and the developments since the last evaluation relevant in the AML/CFT field

On May 18, 2010 the new AML/CFT Law of Ukraine has been adopted. The same law introduced amendments to the Criminal Code and other laws. The Law has been signed by President of Ukraine on May 21 and published on May 22, so Law is duly enacted and it will come into force in 90 days after publication, namely on 21st of August 2010.

Key features of the new AML/CFT legislation are:

- Improved definition of money laundering, all crimes punished with imprisonment are predicate offences (except tax evasion)
- Terrorism financing definition is improved, it is a separate offence
- DNFBPs become reporting entities
- Risk-based approach introduced in the AML/CFT Law
- International sanctions also make basis for reporting of transactions and freezing
- FIU received power to freeze transactions in cases of ML/TF suspicions and on request of foreign FIUs

FIU received power to request reporting entities to monitor transactions of clients and report results to FIU.

Along with the implementation of international standards the Law contains improvements of the AML/CFT system based on 7 years of experience.

To meet provisions of the AML/CFT Law following Resolutions were approved by the Government of Ukraine:

1. Resolution of the Cabinet of Ministers of Ukraine On Adopting the Procedure of Composing of the List of Persons Related to Terrorist Activities or with Regard to Whom International Sanctions are Applied as of August 18, 2010 No 745;
2. Resolution of the Cabinet of Ministers of Ukraine On approval of Procedure of Submitting Information Concerning Client Identification by State Authorities on Request of Reporting Entity as of August 25, 2010 No 746;
3. Resolution of the Cabinet of Ministers of Ukraine On Some Issues of Financial Monitoring Organization as of August 25, 2010 No 747;
4. Resolution of the Cabinet of Ministers of Ukraine On Procedure for Providing Information by State Authorities on Financial Transactions to the State Committee for Financial Monitoring as of August 25, 2010 No 759;
5. Resolution of the Cabinet of Ministers of Ukraine On Procedure of Determination of Countries (Territories) that do not Address or Improperly Address Recommendations of AML/CFT International, Intergovernmental Organizations as of August 28, 2010 No 765;
6. Resolution of the Cabinet of Ministers of Ukraine On approval of Procedure of submitting information to the State Committee for Financial Monitoring by business entities, enterprises, institutions, organizations, which are not reporting entities as of August 30, 2010 No 775.

Ukraine financial sector

Banks

The Ukrainian banking system is a two-level structure which consists of the National bank of Ukraine and commercial banks including 5 state-owned banks.

In 1991 year 76 banks were registered in Ukraine, their amount reached 196 as of 01.07.2010 with 922 operating branches. According to the amendments in the Law on On Joint Stock Companies of April 30, 2009 the joint-stock banks were converted into public companies. Banks operate according to the Law On Bank and Banking, and they are determined as «legal entities which have exceptional right on the basis of license of the National Bank of Ukraine to carry out such operations in an aggregate: bringing in deposits of money of natural and legal persons and placing of the noted money on its own behalf, on own terms and at an own risk, opening and keeping of bank accounts of natural and legal persons».

At the end of June 2010, the amount of banks with a foreign capital, which had a license to conduct bank transactions constituted 51 banks, including 18 banks with 100 % foreign capital.

Most of banks are registered in Kyiv and Kyiv region – 110 banks (62,5% from a total amount). Among other regions leaders were Dnipropetrovsk (13 banks), Donetsk (11 banks), and also the Kharkiv (10 banks) and Odesa regions (9 banks).

As of 01.07.2010 there were 18 banks in the stage of liquidation out of which 16 banks are being liquidated under decision of the National bank of Ukraine, 2 banks – under decision of economic (arbitral) courts. Total assets of the banking system as of 01.06.2010 constitutes 1 016,6 billions of UAH.

Financial Companies

As of 01.07.2010 State Register of financial institutions of the State Commission for the Financial Services Markets Regulation (SCFSMR) included:

- Insurance companies - 442, including:
 - o Non-life insurance companies - 373,
 - o Life insurance companies - 69;
- Credit institutions - 768, among them:
 - o credit unions – 702,
 - o other credit institutions - 66,
- Pawnshops – 405;
- Financial companies - 206;
- Non state pension funds - 107;
- Non state pension funds' administrators - 43;
- Other financial institutions – 3.

The most significant segment of nonbank financial services sector is insurance. Total assets of pension and investment funds constitute an insignificant share.

As of first half a year of 2010 volume of total assets of insurers constituted is UAH 4 697,7 million.

As of 31.03.2010 total volume of assets of credit unions constituted UAH 2 992,2 million.

Securities Market

Number and types of non-bank financial institutions regulated by State Securities and Stock Market Commission (as of 01.07.2010) are shown in the table

Type of financial institution	Number
Securities traders	346
Traders-Custodians	336
Traders-Custodians- Registrars	47
Registrars	355
Asset Management Companies	369
Trade organizers	10
Clearing Houses/ Depositories	3

Money laundering risks and threats

In Ukraine criminals and organized criminal groups use almost all known ways for laundering criminal proceeds, and the identified money laundering schemes are complex enough.

Illegal profits are gained mainly in a result of the following crimes:

- economic crimes (illegal manufacturing, storing and sale of excise commodities and violation of business and bank activity procedures);
- corruption;
- tax evasion and fraud (including VAT fraud);
- smuggling;
- drugs trafficking.

To launder money criminals mainly use bank institutions, real estate traders and insurance companies.

The followings instruments are used: structuring or splitting of transactions, fictitious legal entities, lost/stolen and false passports and other documents, identity theft, offshore companies.

Ukraine scrutinized a significant number of typologies detailed in typologies reports. Methods identified included:

- use of fictitious companies;
- transactions with junk securities;
- use of offshore companies;
- VAT carousel fraud;
- reinsurance transactions.

Combating financing of terrorism

Ukraine is not a “risk area” for terrorism origin and there are no objective grounds for its spread within the state. At the same time certain grounds and factors exist which increase the threat of extremist appearance including representatives of the international terrorist groups.

Ukraine fulfills its international commitments, is a party of all conventions and protocols regulating different aspects of combating terrorism.

Ukraine established the National Counter Terrorist System with the backbone made by the Antiterrorist Centre of Security Service and Anti-Crisis Centre.

In order to protect citizens, state and society from terrorism, to detect and eliminate grounds and factors facilitating its occurrence, Ukraine adopted the Law On Combating Terrorism which provides the wide range of powers to the special and law-enforcement agencies which undertake measures in the sphere of

combating terrorism. FIU of Ukraine is closely cooperating with such agencies on the issues of detection and prevention of the possible facts of financing organizations which supports terrorist activity.

It should be noted that Ukraine did not appear to suffer from international terrorism incidents, although law enforcement authorities sometimes labeled certain domestic criminal activities as terrorist acts.

In 2008 – 2009 Security Service of Ukraine investigated 2 criminal cases on crimes prescribed by the Article 258 of CC of Ukraine. In 2009 one case was suspended according to the Article 206 (1) of CPC of Ukraine because of search of convicted person, and one case is being continued in 2010.

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

FIU analyzed the STRs from financial intermediaries and submitted to Security Service 26 case referrals and additional materials related to terrorism, including:

- 17 – case referrals;
- 9 – additional materials.

Under consideration of such case referrals the Security Service has not detected even a single fact of the financing of terrorism.

Combating corruption

FIU of Ukraine participates in the combating corruption in Ukraine.

Considering FIU case referrals the law-enforcement agencies detect and investigate crimes including those that relate to corruption activity. According to information received from law-enforcement agencies 349 case referrals are used in investigation of criminal cases related to corruption.

FIU of Ukraine provides the realization of GRECO recommendation on coordination of trainings on detection corruption for the reporting entities. Thus, the special AML/CFT Training Course includes the line of anticorruption issues.

On June 11, 2009 the Parliament of Ukraine adopted anti-corruption laws, in particular, Laws of Ukraine “On Principles of Prevention and Counteraction to the Corruption”, “On Liability of Legal Persons for Corruption Offences”, and “On Introducing Amendments to some Legislative Acts of Ukraine on Liability for Corruption Offences”, which come in force from January 1, 2011.

Ministry of Justice of Ukraine developed Draft Laws of Ukraine “On Introducing Amendments to some Laws of Ukraine concerning Improving Principles of Prevention and Counteraction to the Corruption”, “On Introducing Amendments to some Legislative Acts of Ukraine due to Adoption of Law of Ukraine “On Principles of Prevention and Counteraction to the Corruption” and “On Introducing Amendments to the Criminal and Criminal Procedure Codes of Ukraine (On Improving Confiscation Procedures)”.

Noted drafts were approved at the meeting of National Anti-corruption Committee on April 22, 2010 and submitted to the GRECO for examination on complying with international standards in the sphere of prevention and counteraction to the corruption by specialists of this organization.

For today, the conclusions on noted drafts of GRECO experts is being proceeded in order to consider submitted remarks. Subsequently, revised drafts is planned to be submitted to President of Ukraine for further introducing them to consideration of the Parliament of Ukraine as first-priority.

2.2 Core Recommendations

Please indicate improvements which have been made in respect of the FATF Key Recommendations (Recommendations 1, 5, 10, 13; Special Recommendations II and IV) and the Recommended Action Plan (Appendix 1).

Recommendation 1 (Money Laundering offence)	
Rating: Partially compliant	
Recommendation of the MONEYVAL Report	<i>Amend article 209 of the CC to include explicitly the actions of conversion or transfer of property in the physical elements of the ML offence</i>
Measures taken to implement the Recommendation of the Report	<p>The AML/CFT Law covers the actions related to conversion or transfer of property fully. Definition of the financial transaction contained in AML/CFT Law covers any actions relating to the assets conducted with a help of a reporting entity. The assets include money, property, property and non property rights (Article 1 part 1 (4, 17) of AML/CFT Law).</p> <p>The physical elements of the ML offence (Article 209 of the CC) are characterized by the active actions: conducting a financial transaction or other deal with involving money or other property.</p> <p>Article 209. Legalization (laundering) of the proceeds from crime</p> <p>1. Conduct of a financial transaction or other deal involving money or other property obtained as the result of a socially dangerous illicit act that preceded the legalization (laundering) of proceeds, or other actions for the purpose of concealing or disguising the illegal origin of such money or other property, or their possession, or titles to such money or property, or sources of their origin, location or movement, as well as acquisition, possession or use of money or other property obtained as the result of a socially dangerous illicit act that preceded the legalization (laundering) of proceeds, – shall be punishable by imprisonment for a term of three to six years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to two years, and the confiscation of the money or property obtained illegally, and the confiscation of property.</p> <p>2. Any actions as provided for by paragraph 1 of this Article, if repeated, or committed by a group of persons upon prior conspiracy, or with regard to large amounts, – shall be punishable by imprisonment for a term of seven to twelve years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years, and the confiscation of the money or property obtained illegally, and the confiscation of property.</p> <p>3. Any actions as provided for by paragraphs 1 or 2 of this Article, if committed by an organized group of persons or with regard to especially large amounts, – shall be punishable by imprisonment for a term of eight to fifteen years with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years, and the confiscation of the money or property obtained illegally, and the confiscation of property.</p> <p>Note: 1. Socially dangerous illicit act that precedes the legalization (laundering) of proceeds from crime – shall mean the activity (except for the activity provided for by Articles 207, 212 and 212-1 of the Criminal Code of Ukraine) for which the Criminal Code of Ukraine provides the punishment in a form of imprisonment or</p>

	<p>activity conducted outside Ukraine if it is recognized as a crime by a Criminal Law of country where it was committed, and is a crime under Criminal Code of Ukraine and resulted in illegal proceeds;</p> <p>2. The legalization (laundering) of the proceeds from crime is considered committed with regard to large amounts, if it involves money or other property amounting to more than 600 untaxed minimum incomes of citizen.</p> <p>3. The legalization (laundering) of proceeds from crime is considered committed with regard to especially large amounts, if it involves money or other property amounting to more than 1800 minimum untaxed minimum incomes of citizen.”</p> <p>4. The property subject to confiscation includes the proceeds from crime or other property of the similar cost if it is impossible to confiscate the subject of crime</p>
Recommendation of the MONEYVAL Report	<i>Ensure that the scope of property encompasses assets of every kind, including intangible assets and legal documents or instruments evidencing title to, or interest in such assets</i>
Measures taken to implement the Recommendation of the Report	<p>According to the Article 4 of the AML/CFT Law <i>legalization (laundering) of proceeds</i> shall mean any acts taken to conceal or disguise the illegal origins of money or any other property, or possession thereof, titles to such money and property, their sources, location or movement, and shall also mean the acquiring, possession or use of money or any other property provided a person realizes that they were the proceeds.</p> <p>According to the Article 190 of the Civil Code of Ukraine the <i>property</i> as a special object includes a separate thing, totality of things as well as property rights and obligations.</p> <p>The Article 139 of the Economic Code of Ukraine determines <i>property</i> as the totality of things and other values (including non-material assets) which have valuable estimation, are produced or used in the business entity’s activity and are represented in the balance and accounted in other forms, prescribed by laws, of record keeping of such entities.</p> <p>Thus, the Ukrainian legislation directly determines that the <i>property</i> covers non-material assets and legal documents or documents confirming the right on assets, or part in such assets.</p> <p>According to the AML/CFT Law <i>assets</i> constitute money, property, property and non-property rights (Article 1 part 1 (17)).</p>
Recommendation of the MONEYVAL Report	<i>Criminalise market manipulation and insider trading and ensure that the range of offences set out in the CC which are predicate offences to ML include all required categories of offences in all the relevant forms</i>
Measures taken to implement the Recommendation	<p><u>Insider trading</u></p> <p>In December 2008 the Parliament adopted the Law introducing amendments to the certain legal acts of Ukraine concerning the responsibility for violations on the securities market (Law as of December 25, 2008 № 801-VI).</p> <p>The mentioned Law changed certain articles of the CC including illicit use of insider information, in particular the Article 232-1 was provided in new wording:</p> <p>«The Article 232-1. Illicit Use of Insider Information</p> <p>1. Illicit use of insider information by the person possessing it, if it caused the substantial damage, - shall be punishable by the fine of the amount from 750 up to 2000 of tax-free minimum incomes or by the imprisonment for the period up to three years with deprivation of the right to occupy certain positions or perform certain types of activities for the period up to three years or without deprivation.</p> <p>2. The same action, executed repeatedly or if it caused the severe consequences, -</p>

	<p>shall be punished by the fine on the amount from 2000 up to 3000 of tax-free minimum incomes or by the imprisonment for the period from two up to five years with deprivation of the right to occupy certain positions or perform certain types of activities for the period up to three years or without deprivation.</p> <p>Note: 1. The substantial damage in this Article, if it caused material losses, is the damage which exceeds 500 times the tax-free minimum incomes.</p> <p>2. The severe consequences in this Article, if they caused material losses, are considered hard if they exceed 1000 or more times the tax-free minimum incomes».</p> <p><u>Market manipulation</u></p> <p>The stated Law also amended the Administrative Code of Ukraine with new article on manipulating the prices while performing transactions with securities (Article 163-8).</p> <p>The Law of Ukraine on State Securities Market Regulation in Ukraine defines manipulating the prices while performing transactions with securities as an illicit influence of the official participant of the stock exchange to the market value of the securities at organizationally formed stock exchange in the interests of such participant or third parties, as a result of which purchase or sale of these securities is performed under other prices than those which would exist in the event of absence of such illicit influence (Article 1).</p> <p>Besides, the decision of the State Commission for Securities and Stock Market No. 21 on 14.01.2003 On Approval of the Concept for preventing manipulating with securities market, dishonest trade practice and violation of professional activity ethics at stock exchange, defines manipulating as intentional or willful deeds aimed at deception and trust abuse (fraud) with regard to the participants of the securities market through imposing control over prices or exerting artificial influence to the securities value.</p> <p>Ukraine authorities are drafting amendments to the Criminal Code in order to include insider trading and market manipulation as predicate offences.</p>
<p>Recommendation of the MONEYVAL Report</p>	<p><i>Review the current threshold for predicate offences to bring it in line with the requirements under FATF Recommendation 1</i></p>
<p>Measures taken to implement the Recommendation</p>	<p>The AML/CFT Law provides that socially dangerous illicit act which precedes to legalization (laundering) of the proceeds is an act for which the Criminal Code of Ukraine foresees punishment <i>by imprisonment</i> (except acts, foreseen by the Articles 207, 212 and 212-1 of Criminal Code of Ukraine) or an act committed outside Ukraine if it's recognized as socially dangerous illegal activity preceding the legalization (laundering) of the proceeds under criminal law of the country where it was committed, and under the Criminal Code of Ukraine.</p> <p>The Articles 63, 64 of the CC of Ukraine provide that imprisonment can be of the term from 1 to 15 years or a life imprisonment.</p> <p>So the effective threshold for predicate offences is one year.</p>
<p>Recommendation of the MONEYVAL Report</p>	<p><i>Place additional focus on autonomous investigation and prosecution of money laundering offences, which should entail the ability to issue a ML conviction without prior or simultaneous conviction for a predicate offence proving that the property is the proceeds of crime. In this context, authorities should address the issue of the evidence required to establish the predicate criminality in autonomous money laundering cases by testing the extent to which inferences of underlying predicate criminality can be made by courts from objective facts, with a view to obtaining authoritative court rulings</i></p>

<p>Measures taken to implement the Recommendation</p>	<p>There is no necessity to bring person to the criminal liability for predicate offence in order to prove that proceeds or property were received from crime. There is no such a requirement in the CC.</p> <p>With the purpose of correct and identical implementation of legislation on liability for money laundering by courts, the Plenum of the Supreme Court of Ukraine adopted the Resolution № 5 «On Practice of application of legislation on criminal responsibility for the legalization (laundering) of the proceeds from crime by courts» to be used by the courts and law enforcement agencies.</p> <p>According to paragraph 11 of the Plenum of the Supreme Court of Ukraine № 5(19), bringing a person to criminal liability under the Article 209 of the CC is possible on condition that the fact of receiving money or other property in the result of committing a predicate offence has been clarified by the court in appropriate procedural documents (conviction of resolutions, decisions on acquittal, on closing the case under non rehabilitating bases etc) as well as when he/she has not been held criminally liable for a predicate offence. In the latter instance a person is simultaneously brought to criminal liability for a predicate offence and for legalization (laundering) of the money or other property obtained in the result of its commitment, therefore under totality of crimes as he/she is aware that commits money laundering offence.</p> <p>An autonomous investigation and prosecution of money laundering offences do exist in Ukraine. Therefore, if the court of the country brings in any sentence it creates a precedent. There are sentences in Ukraine under which the persons have been convicted without prosecution for a predicate offence.</p> <p>An autonomous investigation and prosecution of money laundering offences do exist in Ukraine – and confirmed by the conviction of Ivano-Frankivsk court on June 4, 2008 №1-67/2008 (see also the <i>Appendix III</i>).</p> <p>On 22 Oct 2009 the Kharkov court in the case 1-11/09 convicted a person for money laundering to the 5 years of imprisonment. Conviction is based on the knowledge of illegal origin of money, no predicate offence has been established (see also <i>Appendix III</i>).</p> <p>IMF launched the AML/CFT technical assistance project for Ukraine in 2010 that has a component for training on ML investigations. The first training for law enforcement took place in Lviv on May 28th Training included the session on autonomous investigation and prosecution of ML offence.</p>
<p>Recommendation of the MONEYVAL Report</p>	<p><i>The examiners advise that, as in some other jurisdictions, it may be helpful to put beyond doubt in legislation that a conviction for money laundering can be achieved in the absence of a judicial finding of guilt for the underlying predicate criminality. Further guidance and perhaps consideration of further legislative provision to clarify some of these issues will be necessary.</i></p>
<p>Measures taken to implement the Recommendation</p>	<p>See the previous item</p>
<p>Recommendation of the MONEYVAL Report</p>	<p><i>Improve and implement adequate training programs in order to enhance the capacity of prosecutors to investigate and prosecute ML cases and of judges to effectively apply article 209, in particular on the types and levels of evidence which the courts might consider acceptable to prove the physical and mental elements of the offence.</i></p>
<p>Measures taken to implement the Recommendation</p>	<p>Training Centre of the State Committee for Financial Monitoring of Ukraine, National Academy of the General Prosecutor’s Office of Ukraine, Academy of judges improved and established training programs to reinforce capacity of investigators of the law enforcement agencies of Ukraine to investigate criminal cases opened under</p>

	<p>indicia of crime provided for by the Articles 209 and 306 of the Criminal Code of Ukraine. These programs direct prosecutors to support state accusation in criminal cases of the aforesaid category and judges to apply effectively Articles 209 and 306, particularly, with regard to types and levels of evidence which the courts might consider acceptable to prove the physical and mental elements of the offence.</p> <p>SCFMU Training Centre provided training for 602 participants in 2009, in particular have been trained 58 representatives of reporting entities, 284 entities of state financial monitoring, 230 law enforcement agencies and 230 judges. In the 1st half of 2010 there was provided training for 391 participants, in particular have been trained 88 representatives of reporting entities, 99 entities of state financial monitoring, 94 law enforcement agencies and 110 judges.</p> <p>Thus, the Program of the National Academy of the General Prosecutor’s Office of Ukraine provides holding of training programs during all the year for listeners of different categories “The Methodic for Detecting, Disclosing and Investigating Criminal Cases on Crimes Related to Legalization (Laundering) of the Proceeds from Crime and Insuring Indemnification of Losses Inflicted by the Crimes and Support of State Accusation in Criminal Cases of This Category”.</p> <p>Moreover, Kyiv National University of the Ministry of Interior with support of the European Commission/Council of Europe MOLI-UA-2 Project published guidance “Fight against Money Laundering. Legal and organizational bases of the law enforcement activities” in 2009. This guidance contains an appropriate part that considers practical aspects of organization of certain investigative actions and typical investigative situations.</p>
(Other) changes since the last evaluation	

Recommendation 5 (Customer due diligence) I. Regarding financial institutions	
Rating: Partially compliant	
Recommendation according to the MONEYVAL Report	<i>All types of financial institutions as defined in the FATF Glossary are covered by AML/CFT obligations through a combination of the Basic Law, the Law on Financial Services and State Regulation of Financial Markets and the Law of Ukraine on Securities and Stock Market. However, Ukraine would benefit from setting out clearly the definitions in the Basic Law to ensure there is a consistency in terminology.</i>
Measures taken to implement the Recommendation	<p>Terminology on the types of financial institutions is provided in the Article 5 of AML/CFT Law, and it is brought in line with the terminology of the Law of Ukraine On Financial Services and State Regulation of Financial Markets and the Law of Ukraine On Securities and Stock Exchange.</p> <p>Law of Ukraine On Financial Services and State Regulation of Financial Markets does not specify types of financial institutions, but specifies the list of financial services that can be conducted by financial institutions.</p> <p>Terminology regarding types of financial institutions depending on the types of activities undertaken is specified in special laws regulating services in appropriate spheres.</p> <p>For example, the Law of Ukraine On Securities and Stock Exchange uses the term “professional participants of the stock exchange”, as well as in AML/CFT Law the reporting entities are defined as “professional participants of the securities market”.</p>

Recommendation of the MONEYVAL Report	<i>Ukraine has a number of legislative and regulatory requirements setting out AML/CFT obligations, many of which duplicate each other and can lead to some inconsistencies in the requirements on financial institutions. Some of the financial institutions interviewed by the evaluation team felt that it would be helpful if the authorities consolidated the requirements into fewer documents which would help simplify things for them.</i>
Measures taken to implement the Recommendation	The inconsistency and duplication is removed by the new AML/CFT Law. New Law defines the basic obligations for reporting entities, supervisors can issue only regulations that define details specific for different sectors. E.g. basic requirements for the clients' identification are defined in the Article 9 of AML/CFT Law, Article 9 part 6 provides that a specific of identification is regulated by respective supervisory agencies.
Recommendation of the MONEYVAL Report	<i>Given that many of the FATF standards are intended to apply equally to all institutions, Ukraine is encouraged to rationalize its legislative and "other enforceable means" requirements to remove the duplication. In particular, Ukraine should consider bringing the asterisk FATF criteria within the Basic Law.</i>
Measures taken to implement the Recommendation	New AML/CFT Law implements FATF Recommendations into Ukrainian legislation especially asterisk FATF criteria. The structure of AML/CFT Law excludes any doubling regarding application of its provisions to all reporting entities.
Recommendation of the MONEYVAL Report	<i>In relation to Recommendation 5, Ukraine should ensure that the following requirements are clearly covered by law or regulation:</i> - <i>Banks should be required to undertake CDD when carrying out occasional transactions above the applicable designated threshold (i.e. should not be limited to cash transactions only)</i>
Measures taken to implement the Recommendation	According to the Article 6 of AML/CFT Law, reporting entity is obliged to conduct client identification and verification in cases provided by the law. Moreover, under the Article 9 part 3 of the new AML/CFT Law, identification and verification of financial activity shall be conducted in case of executing of single financial transaction without establishing business relations with clients on amount which equals or exceeds the amount provided in the Article 15 part 1 of new Law.
Recommendation of the MONEYVAL Report	- <i>Identify customers carrying out occasional transactions that are wire transfers</i>
Measures taken to implement the Recommendation	The identification and verification of financial activity shall be conducted, in particular, in case of executing of single financial transactions without establishing business relations with clients on amount which equals or exceeds the amount provided in part one of the Article 15 of the current Law (part 3 of the Article 9 of the new AML/CFT Law). As well, customer due diligence of clients conducting single transactions in form of wire transfer is foreseen by the Article 64 of the Law of Ukraine On Banks and Banking and On Approving Regulation on Functioning of Domestic and International Payment Systems in Ukraine as of September 25, 2007 No. 348. Regulation on Functioning of Domestic and International Payment Systems in Ukraine approved by Resolution of the Board of Directors of the National Bank of Ukraine as of September 25, 2007 No348 (hereinafter – Resolution of the NBU № 348) ensure activity on agreement of the rules of money transfer systems elaborated by resident banks. Particularly, these rules shall specify the procedure for ensuring in money transfer system compliance with FATF Special Recommendation VII on fight against terrorist

	<p>financing, namely:</p> <ul style="list-style-type: none"> - identification of the customer initiating a transfer to the amount, which is equal to or which exceeds UAH 5,000, or which is equal to an amount in a foreign currency equivalent to or exceeding UAH 5,000 (pursuant to NBU currency exchange on the moment of conducting transaction), which includes entering into the transfer document of name, patronymic name (if any) and surname of the customer, unique transaction registration number, name and code of the bank of the initiator, place of the initiator's registration (instead of the address, a customer's taxpayer identification number or date and place of his birth can be indicated) and filling all customer's data to money transfer document; - accompanying the money transfer with information on the initiator at all stages of the money transfer. <p>According to the Article 64 of the new Law on Banks and Banking banks shall be obliged to identify according to the legislation of Ukraine:</p> <ul style="list-style-type: none"> - customers who open accounts in bank; - customers performing the transactions subject to financial monitoring; - customers performing cash transactions without opening an account in the amounts equivalent or exceeding of UAH 150,000 or equivalent amount in foreign currency; - persons authorized to act on behalf of the above customers.
Recommendation of the MONEYVAL Report	<ul style="list-style-type: none"> - <i>Banks should be required to undertake due diligence when there is suspicion of money laundering or terrorist financing, regardless of any thresholds</i>
Measures taken to implement the Recommendation	<p>Under the Article 6 of AML/CFT Law banks shall be obliged to take CDD measures in any case of conducting financial transactions, including transactions suspected in money laundering or terrorism financing, regardless threshold.</p> <p>Under the part 3 of the Article 9 of AML/CFT Law identification and verification of financial activity shall be conducted in case of suspicion that financial transaction might be related to ML or TF.</p>
Recommendation of the MONEYVAL Report	<ul style="list-style-type: none"> - <i>Undertake CDD when there are doubts about the veracity or adequacy of previously obtained customer identification data. In particular the current requirements could be strengthened by making the requirement more explicit, ensure it refers to undertaking CDD and covers the full scope of CDD</i>
Measures taken to implement the Recommendation	<p>Part 5 of the Article 9 of AML/CFT Law stipulates that in case of suspicions in authenticity or comprehensiveness of the information provided by the customer, reporting entity shall be obliged to take measures to verify and clarify customer's identity (paragraph 23-26 of the part 2 of the Article 6, part 3 of the Article 6, part 5-8 or the Article 9, part 2 of the Article 16).</p>
Recommendation of the MONEYVAL Report	<ul style="list-style-type: none"> - <i>The definition of beneficial ownership should cover all elements of the FATF Glossary i.e. natural persons requiring financial institutions to determine who are the natural persons that ultimately own or control the customer</i>
Measures taken to implement the Recommendation	<p>AML/CFT Law provides definition of the terms "control over legal person", "control over natural person", "controller", "essential share", "beneficiary" and stipulates appropriate requirements to customer identification (paragraphs 20-24 of the part 1 of the Article 1, paragraph 25 of the part 2 of the Article 6, paragraph 3 of the part 11 of the Article 9, paragraph 2 of part 12 of the Article 9, part 14-15 of the Article 9, part 3 of the Article 11 of AML/CFT Law). Thus, AML/CFT Law stipulates provisions requiring financial institutions to identify the person who owns or exerts control over</p>

	the customer.
Recommendation of the MONEYVAL Report	<ul style="list-style-type: none"> - <i>conduct ongoing due diligence on the business relationship applicable to all financial institutions</i>
Measures taken to implement the Recommendation	<p>The Article 6 part 2 (25-27) of AML/CFT Law provides that reporting entity shall be obliged, in particular:</p> <p>according to legislation and internal procedures permanently update information on nature of client's activity and financial condition;</p> <p>conduct analysis of correspondence of client's financial transactions to existent information on nature of its activity and financial condition;</p> <p>take relevant measures to restrict risk of misuse of services provided with use of new technologies especially ensuring conduction of non-face to face transaction.</p> <p>Moreover, under the Article 11 part 1 of AML/CFT Law reporting entity shall be obliged to manage ML/TF risks considering of the results of customer identification, services provided to customer, analysis of conducted customer's transactions and their correspondence to financial condition and nature of the client's activity.</p>
Recommendation of the MONEYVAL Report	<p><i>In addition, the following should be set out in law, regulation or other enforceable means:</i></p> <ul style="list-style-type: none"> - <i>Securities institutions should be required to identify the beneficial owner and understand the ownership and control structure of the customer in all situations and not just high risk situations</i>
Measures taken to implement the Recommendation	<p>General positions of AML/CFT Law apply to the securities institutions as well. Thus, AML/CFT Law provides definition of the terms "control over legal person", "control over natural person", "controller", "essential share", "beneficiary" and stipulates appropriate requirements to customer identification (Article 1 part 1 (20-24), Article 6 part 2 (26), Article 9 part 11 (3), Article 9 the part 12 (2), Article 9 part 14-15, Article 11 part 3 of the new AML/CFT Law).</p>
Recommendation of the MONEYVAL Report	<ul style="list-style-type: none"> - <i>Securities institutions should be required to obtain information on the purpose and nature of the business relationship in all situations</i>
Measures taken to implement the Recommendation	<p>Article 6 part 2 (24) of the new AML/CFT Law stipulates that a reporting entity shall be obliged to verify purpose and nature of future business relations with clients. This applies to all reporting entities including securities institutions.</p>
Recommendation of the MONEYVAL Report	<ul style="list-style-type: none"> - <i>For non-bank financial institutions there should be a requirement that ongoing due diligence should include scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds</i>
Measures taken to implement the Recommendation	<p>Under the Article 11 part 1 of the new AML/CFT Law reporting entity is obliged to manage ML/TF risks considering of the results of customer identification, services provided to customer, analysis of conducted customer's transactions and their correspondence to financial condition and nature of the client's activity.</p> <p>Amendments to Statute On execution of Financial Monitoring by Participants of the Securities Market (<i>adopted by the Resolution of Securities and Stock Market State Commission as of July 27, 2010 №1155 Annex III</i>) provide that reporting entity shall on regular basis carry out identification of the customer – monitoring (scrutiny) of</p>

	transactions conducted during establishing business relations and their compliance with business and risk profile of the client (paragraph 4.1).
Recommendation of the MONEYVAL Report	- <i>Requirement to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions</i>
Measures taken to implement the Recommendation	<p>According to the Article 11 part 3 of the new AML/CFT Law to reduce detected risks the reporting entity shall take measures including enhanced identification of the customer and customer verification during certain period, including its owners; additional requirements to the customer when opening the account or establishing relations with this customer; increasing the frequency of customer verification, including its owners; collection of information to understand the customer's activity, nature and level of the transactions conducted; enhanced monitoring of customer transactions.</p> <p>As well, part 5 of the Article 6 of AML/CFT Law stipulates taking measures, envisaged by AML/CFT legislation, including divisions located in states, where FATF Recommendations are not applied or are applied insufficiently, in the range that do not contradict the legislation of this state. If the application of such measures is prohibited by legislation of such state, the reporting entities are obliged to inform the Specially Authorized Agency and the relevant entity of state financial monitoring on impossibility of such measures application.</p> <p>Simultaneously, reporting entity shall take relevant preventive measures directed on: enhancement of the customer identification prior to establishing business relations with persons or companies from such countries; systematical notification on financial transactions with customers from relevant countries; notification of the non-financial sector that transactions with natural or legal persons in the relevant countries could bear money laundering or terrorist financing risk.</p> <p>For banking sector following requirements shall be applied. According to the paragraph 3.12 of the Regulation on Implementing Financial Monitoring by Banks approved by the Resolution of the Board of the National Bank of Ukraine #189 as of May 14, 2003 (hereinafter – Resolution of NBU #189) banks shall to update information regarding identification and research of a client at least once a year, if the risk of performing transactions by the client to legalize (launder) the proceeds from crime is estimated by the bank as high. Mandatory update of the information on identification and study of a client is made in case of:</p> <ol style="list-style-type: none"> a) change of the essential shareholders; b) change of location (place of residence) of the account holder; c) amending the statutory documents; d) expiration of validity of the documents provided earlier. <p>If the risk of performing transactions by the client to legalize (launder) the proceeds from crime is estimated by the bank as high, transactions by such clients shall be paid special attention to.</p> <p>For non-banking sector additionally following requirements shall be applied: Amendments to Statute on execution of financial monitoring by participants of the securities market (adopted by the Resolution of Securities and Stock Market State Commission as of July 27, 2010 №1155 Annex III) foresee that in case of identification of high-risk clients reporting entity shall apply additional client identification measures: verify identification data; requirement to provide additional documents, in particular on financial profile; verify correct processing of statute documents; verify list of cofounder; verify actual owners; verify correspondence of financial transaction to financial profile of client; clarify purpose of transaction; assessment of amount and source of existing and expected incomes etc. (paragraph 4.4.)</p>

Recommendation of the MONEYVAL Report	- <i>Requirement to apply CDD to existing customers which applies to non bank financial institutions</i>
Measures taken to implement the Recommendation	Amendments to Statute on execution of financial monitoring by participants of the securities market (adopted by the Resolution of Securities and Stock Market State Commission as of July 27, 2010 №1155 Annex III) foresee that for clients which do not carry out business relations with reporting entity for a long period, identification or update of identification information shall be carried out under address of such client to reporting entity or conducting transaction.
Recommendation of the MONEYVAL Report	<i>Ukraine has some recognition of the risk-based approach within the various requirements. However, Ukraine should consider the explicit recognition of the risk-based approach within the law and other enforceable means. This would help Ukraine to make more use of the some of the requirements in the FATF standards which are not currently implemented in Ukraine including simplified and enhanced due diligence</i>
Measures taken to implement the Recommendation of the Report	There is the special Article 11 in the new AML/CFT Law regarding risks management. According to the Article 6 part 2 (4) of the new AML/CFT Law reporting entity shall ensure ML/FT risks management in its activity and develop risk criteria, take relevant measures to restrict risk of misuse of services provided with use of new technologies especially ensuring conduction of non-face to face transaction. As well, under the Article 6 part 3 of the new AML/CFT Law reporting entity shall be obliged individually execute classification of its clients considering risk criteria determined by the SCFMU and supervisory authorities, while executing financial transactions that might be related to ML/FT, and undertake preventive measures regarding clients which activity indicates high risk to carry out such transactions. Moreover, according to the Article 18 part 2 (21) of the AML/CFT Law SCFM of Ukraine according to its assignment determine and approve with the agreement of the entities of state financial monitoring the risk criteria and additional indicators of financial transactions subject to internal financial monitoring. So Ukraine established the explicit RBA in AML/CFT Law.
Recommendation of the MONEYVAL Report	<i>The Ukrainian authorities should ensure that financial institutions have greater and simpler access to the information from the State register and the State Tax Administration</i>
Measures taken to implement the Recommendation of the Report	The Article 6 part 7 AML/CFT Law provides that the reporting entity in order to perform its tasks shall have the right to request the executive power authorities, law enforcement agencies, National Bank of Ukraine, other legal persons which shall inform on the results of the consideration of such request within the procedure prescribed by the legislation. Also, under the Article 16 part 5 and the Article 20 part 3, 5 of the Law of Ukraine “On State Registration of Legal and Natural Persons - Entrepreneurs” Unified state register of legal and natural persons - entrepreneurs (hereinafter referred – Unified state register) is established and is carried out by specially authorized body on issues of state registration, that is its manager and administrator, and sets the order of providing information from this Register - the State Committee of Ukraine for regulatory policy and entrepreneurship assigned under the Resolution of the Cabinet of Ministers of Ukraine of April 26, 2007 No. 667. Such authority approved an order of the Statute on providing information from the Unified state register of legal and natural persons (hereinafter referred - Statute) (Order of November 20, 2005 No. 97). At the moment in order to provide possibility of direct (stationary) access to the Unified

	<p>state register of financial institutions and other participants of civil turnover the State Committee of Ukraine for regulatory policy and entrepreneurship elaborates new edition of Statute, concerning which stated reporting entities will be able to use information from the Register on-line under appropriate agreements. The software for access to such information is under elaboration at the time.</p> <p>Moreover, to provide efficient submission of general information on business entities from the Unified state register via Internet under the Order of the State Committee of Ukraine for Regulatory Policy and Entrepreneurship as of July 8, 2009 No. 123 the web-version of this Register was established providing free access to the information to all users.</p> <p>Resolution of the Cabinet of Ministers of Ukraine On approval of Procedure of Submitting Information Concerning Client Identification by State Authorities on Request of Reporting Entity as of August 25, 2010 No 746 was approved in the Government.</p>
Recommendation of the MONEYVAL Report	<i>The discrepancy regarding SCFM Orders which are applicable to banks but where the NBU is unable to impose sanctions for any breaches should be addressed. Although the NBU advised that most of the requirements in the SCFM Order are within NBU Resolution 189, the authorities should consider to harmonise these requirements in a consolidated manner.</i>
Measures taken to implement the Recommendation of the Report	The SCFMU elaborated an Order (No. 125 of 30.07.2010), which annuls SCFM Order No. 40. Thus, requirement to the banking institutions in stated area is regulated by the Resolution of the NBU No. 189.
Recommendation of the MONEYVAL Report	<i>The Basic Law should include a cross-reference to the definition of terrorist financing in the Criminal Code of Ukraine.</i>
Measures taken to implement the Recommendation of the Report	The AML/CFT Law provides amendments to the Criminal Code of Ukraine which criminalize financing of terrorism (Article 258 ⁵ of the CCU). The point 1 (3) of the Article 1 of AML/CFT Law provides for a cross-reference of TF definition.
(Other) changes since the last evaluation	

**Recommendation 5 (Customer due diligence)
II. Regarding DNFBP⁶**

Recommendation of the MONEYVAL Report	<i>Ukraine should review as soon as possible the AML/CFT regime to ensure that all DNFBPs are adequately brought under the AML/CFT regime and that these measures are effectively implemented</i>
Measures taken to implement the Recommendation of the Report	<p>The AML/CFT Law lists all DNFBPs such as notaries, lawyers, business entities providing intermediary services while conduction transactions on buying-selling real estate, business entities executing trading in cash of precious metals and precious stones, auditors, business entities providing legal and accounting services as reporting entities (Article 5 part 2 (8)):</p> <p>“8) <i>pecially designated reporting entities:</i></p> <p>a) <i>business entities providing intermediary services while conduction transactions on buying-selling real estate;</i></p>

⁶ i.e. part of Recommendation 12.

	<p>b) <i>business entities executing trading in cash of precious metals and precious stones and products of them if the amount of financial transaction equals or exceeds the sum defined in the part one of Article 15 of the current Law;</i></p> <p>c) <i>business entities conducting lotteries and gambling including casino, electronic (virtual) casino;</i></p> <p>d) <i>notaries, lawyers, auditors, audit firms, natural persons – business entities providing accounting services, business entities providing legal services (except persons providing services within personal management) in cases foreseen in the Articles 6 and 8 of the current Law;</i></p> <p>e) <i>natural persons – business entities and legal persons conducting financial transactions with goods (executing works, providing services) for cash if the amount of such financial transaction is equal or exceeds the amount designated by part one of Article 15 of the current Law, in cases foreseen by Articles 6 and 8 of this Law.”</i></p> <p>Under the Article 8 of the AML/CFT Law specially designated reporting entities should undertake measures foreseen by the Article 6 of this Law (act as reporting entity) in the process of:</p> <ul style="list-style-type: none"> – conducting transactions with real estate property (under condition that the amount of transaction is equal or exceed 400 000 UAH or more); – management of client assets; – management of bank accounts and securities; – involvement of funds for establishment of organizations, provide their functioning and management; – establishment of organizations, providing of their functioning or management, as well as purchase and sale of organizations; <p>As well as in the process of:</p> <ul style="list-style-type: none"> – conducting transactions with precious metals and precious stones, antiques and pieces of art (under condition that the amount of transaction is equal or exceed 150 000 UAH or more); – performing financial transactions by business entities conducting lottery and/or other gambling connected with taking amount bets or paying off winnings; – conducting cash transactions (under condition that the amount of transaction is equal or exceed 150 000 UAH or more). <p>Summarizing, all DNFBPs are adequately brought under the AML/CFT regime applying effective regime for such sector in addition.</p>
<p>Recommendation of the MONEYVAL Report</p>	<p><i>Ukraine should impose specific customer identification consistent with Recommendation 5 to real estate agents, dealers in precious metals and stones, lawyers, notaries, other independent legal professionals, company service providers and accountants as soon as possible</i></p>
<p>Measures taken to implement the Recommendation of the Report</p>	<p>Such requirements are established by the AML/CFT Law. According to the Article 5 DNFBPs are included into the list of reporting entities. By the article 6 part 2 (1) of AML/CFT Law there is established the tasks, duties and rights of reporting entity. Among other tasks DNFBPs should perform identification and examination of the client.</p>
<p>Recommendation of the MONEYVAL Report</p>	<p><i>Ukraine should review the existing framework in respect of casinos to cover all of the relevant criteria and introduce measures to remedy this situation as soon as possible</i></p>

Measures taken to implement the Recommendation of the Report	<p>The Parliament of Ukraine adopted the Law On prohibition of gambling business. This Law prohibits gambling businesses which include activity on organization of gambling games in casino, on playing-machines, in betting offices and electronic (virtual) casino until the adoption of special law.</p> <p>In its turn, the new AML/CFT Law provides that business entities conducting lottery and gambling games, in particular casinos, electronic (virtual) casinos (Article 5 part 2 (8)) are referred to as reporting entities.</p> <p>Financial transaction shall be subject to obligatory financial monitoring if its amount equals or exceeds for business entities performing gambling UAH 13,000, or equals or exceeds the amount in foreign currency equivalent UAH 13,000 and has one or more indicators, in particular, payment (handing over) to a person of winning in a lottery, purchasing of chips, tokens, payment by other methods for the right to participate in gambling, payment (handing over) of winning by the business entity providing gambling.</p>
Recommendation of the MONEYVAL Report	<i>Ukraine should also take steps to examine ways of to ensure the effectiveness of compliance with these AML/CFT requirements in these sectors</i>
Measures taken to implement the Recommendation of the Report	The AML/CFT Law specifies responsibilities of DNFBPs as well as AML/CFT regulating and supervising authorities that conduct on-site checks and apply sanctions. The efficient compliance by DNFBPs of AML/CFT requirements is provided in AML/CFT Law (Article 14 part 1 (4)).
(Other) changes since the last evaluation	

Recommendation 10 (Record keeping) I. Regarding Financial Institutions	
Rating: Largely Compliant	
Recommendation of the MONEYVAL Report	<p><i>As regards Recommendation 10, Ukraine would benefit by setting out the requirements on record keeping more clearly in law or regulation. These include:</i></p> <ul style="list-style-type: none"> - <i>Ensure record keeping requirements refers to “all necessary records on transactions” and not just documents</i>
Measures taken to implement the Recommendation of the Report	<p>The <i>AML/CFT Law (Article 6 part 2 (15))</i> has set responsibility for entities of initial financial monitoring to keep the documents on identification of the persons, who carried out the financial transaction subject to financial monitoring pursuant to this Law not less than for five years after termination of business relations with client and all necessary data on transactions not less than five years after completion of the transaction (the terms for keeping documents can be prolonged by the appropriate entity of state financial monitoring pursuant to the procedure prescribed by the legislation.</p> <p>Resolution of the Cabinet of Ministers of Ukraine On Some Issues of Financial Monitoring Organization as of August 30, 2010 No 747 foresee procedure of registration of reporting entities, registering by them financial transactions subject to financial monitoring and submission by reporting entities to the state committee for financial monitoring the information about mentioned and other financial transactions that could be related to the legalization (laundering) of the proceeds from crime or financing of terrorism. In particular, according to the paragraph 17 of the following establish that information about transaction shall be entered into the register, which shall be maintained electronically and/or in paper.</p>

Recommendation of the MONEYVAL Report	- <i>Requiring non-bank financial institutions to maintain records of identification data for at least five years following the termination of the account or business relationship</i>
Measures taken to implement the Recommendation of the Report	The AML/CFT Law (Article 6 part 2 (15)) has set the responsibility for reporting entities to keep information on identification of persons, that conducted financial transaction, which according to this Law is subjected to financial monitoring, not less than for five years after conducting of transaction and documents concerning conducting of transaction not less than five years after business relation termination, as well as necessary data on transactions not less than five years after completion of the transaction (the terms for keeping documents can be prolonged by the appropriate entity of state financial monitoring pursuant to the procedure prescribed by the legislation).
Recommendation of the MONEYVAL Report	- <i>transaction records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activities</i>
Measures taken to implement the Recommendation of the Report	According to the paragraph 14 of the Resolution of the Cabinet of Ministers of Ukraine On Some Issues of Financial Monitoring Organization as of August 30, 2010 No 747 information on performing or attempt to perform financial transaction shall be entered to the register: <ul style="list-style-type: none"> - serial number and date of registration of financial transaction; - data revealed during identification of person who performed financial transaction, person in behalf of which, or under the commission of which, or in the interests of which the financial transaction was performed, or beneficiary; - information on other persons – participants of financial transaction; - type of financial transaction; - amount of financial transaction; - currency of financial transaction; - grounds of financial transaction; - data on financial transactions related to prior registered financial transaction (if available); - indicia under which financial transaction subject to financial monitoring; - information on suspending financial transaction; - date and time of performing, attempt to perform or refusal of performing financial transaction; - additional information necessary for analyses of financial transactions by SCFM; - surname, name, patronymic and position of employee who entered information to the register.
(Other) changes since the last evaluation	
Recommendation 10 (Record keeping) II. Regarding DNFBP⁷	
Recommendation of the MONEYVAL Report	<i>Ukraine should impose specific customer identification and record keeping requirements consistent with Recommendation 10 to real estate agents, dealers in precious metals and stones, lawyers, notaries, other independent legal professionals,</i>

⁷ i.e. part of Recommendation 12.

	<i>company service providers and accountants as soon as possible</i>
Measures taken to implement the Recommendation of the Report	<p>The AML/CFT Law provides involving of such categories of reporting entities as notaries, lawyers, real estate traders, traders in precious metals and precious stones, auditors, entities of business undertakings providing legal services and accounting services (<i>Article 5 part 2 (8)</i>).</p> <p>Stated new reporting entities according to legislation are obliged under submitted official documents or properly certified copies are obliged to perform identification of client carrying out financial transaction (<i>AML/CFT Law part 1 (9)</i>).</p> <p>The <i>AML/CFT Law (Article 9 part 3)</i> provide that identification is performed in case of:</p> <ul style="list-style-type: none"> - establishment of business relations with clients; - rise of suspicion of transaction that transaction could be connected with legalization (laundering) of the proceeds from crime or terrorist financing; - conducting of financial transaction subjected to financial monitoring. <p>Moreover, the <i>AML/CFT Law (Article 6 part 2 (15))</i> has set responsibility for reporting entities, in particular for new categories of reporting entities, to keep the documents on identification of the persons, who carried out the financial transaction subject to financial monitoring pursuant to this Law not less than for five years after termination of business relations with client and document on conducting financial transaction for not less than five years after that as well as all documents concerning business relations with the client.</p> <p>The above mentioned provisions of the AML/CFT Law are applied to realtors, dealers of precious metals and precious stones, lawyers, notaries, other independent legal professionals, companies providing services and accountants as specially designated reporting entities.</p>
Recommendation of the MONEYVAL Report	<i>Ukraine should review the existing framework in respect of casinos to cover all of the relevant criteria and introduce measures to remedy this situation as soon as possible</i>
Measures taken to implement the Recommendation of the Report	<p>At presents, under the Law on prohibition of gambling business, gambling and participation in gambling games is prohibited in Ukraine. Until special law is adopted stated Law prohibits gambling business implying activity on organization of gambling games in casino, on playing-machines, in betting offices and electronic (virtual) casino aimed to obtain profits.</p> <p>At the same time, under AML/CFT Law business entities conducting lottery and gambling games, in particular casinos, electronic (virtual) casinos (<i>Article 5 part 2 (8)</i>) are referred to as reporting entities.</p> <p>Thus, after special legislation concerning regulation of gambling business activity was adopted in Ukraine casinos, in particular electronic (virtual) casinos, will be subjected to requirements of the AML/CFT Law, particularly concerning keeping documents.</p>
Recommendation of the MONEYVAL Report	<i>Ukraine should also take steps to examine ways of to ensure the effectiveness of compliance with these AML/CFT requirements in these sectors</i>
Measures taken to implement the Recommendation of the Report	The compliance of DNFBPs will be ensured by supervisors defined in Art. 14 of the AML/CFT Law, who have inspection powers as well as power to apply sanctions defined in the Art.23 of AML/CFT Law.
(Other) changes since the last evaluation	

**Recommendation 13 (Suspicious transaction reporting)
I. Regarding Financial Institutions**

Rating: Partially compliant

Recommendation of the MONEYVAL Report	<i>Authorities should consider the possibility for revising the relevant provisions and make them more suspicious based and in conformity with the nature and complexity of different types of obliged entities</i>
Measures taken to implement the Recommendation of the Report	<p>The reporting provisions were revised by FIU jointly with supervisors, representatives of Bankers Association, Securities Traders Association, Real Estate Agents Association, other financial sector professionals in the framework of workgroup established for preparation of the draft AML/CFT Law in March-April 2010.</p> <p>As a result the criteria for mandatory reporting were reviewed and updated and instead of suspicion indicators ‘hardwired’ in the Law FIU and supervisors received powers to issue specific risk criteria that are used by reporting entities to detect suspicious transactions.</p> <p>Namely, in the new AML/CFT Law Art. 6.2.4 obliges reporting entities to develop their own risk criteria and Art. 6.3. requires to take into account the risk criteria developed by the FIU and supervisors.</p> <p>So this gives FIU and supervisors enough flexibility to develop risk criteria in conformity with the nature and complexity of different types of obliged entities.</p>
Recommendation of the MONEYVAL Report	<i>Ukraine should criminalize insider trading and market manipulation, so as to enable FIUs to report STRs based on the suspicion that a transaction might involve funds generated by the required range of criminal offences.</i>
Measures taken to implement the Recommendation of the Report	Ukrainian authorities are drafting amendments to the Criminal Code in order to include insider trading and market manipulation as predicate offences.
Recommendation of the MONEYVAL Report	<i>The law or regulation should provide for a definition of the financing of terrorism, as well as for suspicious indicators in relation to financing of terrorism.</i>
Measures taken to implement the Recommendation of the Report	<p>The Article 1 of the AML/CFT Law provides definition of “terrorist financing” – providing or collection of funds or providing financial services being aware of that funds and services are aimed to organize, preparation and committing terrorist act, specified by the Criminal code of Ukraine”.</p> <p>Nevertheless it should be mentioned that according to <i>the Resolution of the Cabinet of Ministers of Ukraine On Adopting the Procedure of Composing of the List of Persons Related to Terrorist Activities or with Regard to Whom International Sanctions are Applied as of August 18, 2010 No 745</i>, SCFM of Ukraine composes the list of persons connected with terrorist activity, which is an indicator of suspicion in terrorist financing.</p> <p>According to the <i>Order of SCFM of Ukraine № 84</i>, SCFM of Ukraine must directly submit every reporting entity with stated List of terrorists.</p> <p>Stated list is one of sources of indicators of suspicion in terrorist financing.</p> <p>Meanwhile, under the <i>Article 17 part 8</i> of the AML/CFT Law SCFM of Ukraine must supply reporting entities with the List of persons connected with conducting terrorist activity or concerning which the international sanctions were applied.</p>
Recommendation of the MONEYVAL Report	<i>Although the Basic Law provides for coverage of certain forms of attempted transactions, there needs to be an explicit legal requirement that will require reporting of all types of attempted transactions, not just the one that have been</i>

	<i>refused by the obliged entities</i>
Measures taken to implement the Recommendation of the Report	<p>The <i>Article 6 of the AML/CFT Law</i> provides that reporting entity is obliged to detect financial transactions subjected to financial monitoring before, in the process, immediately after it was conducted and in attempt to conduct it or after client refused to conduct it <i>Article 6 part 2 (3, 5)</i> and must inform SCFM of Ukraine.</p> <p>Moreover, New AML/CFT Law provide that reporting entity must refuse to set business relations or conduct financial transaction in case if client identification could not be made according to the legislation, except transactions to deposit funds on account of such client. In such cases reporting entity must inform Specially authorized authority about conducting of such transactions and persons which had an intention to carry them out within one working day (<i>Article 10 part 1</i>).</p>
Recommendation of the MONEYVAL Report	<i>Authorities should reconsider harmonizing the existing regulatory framework to ensure uniform implementation of the reporting regime, especially regarding the period for submitting reports to the SCFM</i>
Measures taken to implement the Recommendation of the Report	<p>The AML/CFT Law sets unified reporting regime for all reporting entities. Thus, the <i>Article 6 of the AML/CFT Law</i> foresees that reporting entity is obliged to</p> <p>6) inform SCFM of Ukraine about:</p> <ul style="list-style-type: none"> a) financial transaction subject to compulsory financial monitoring within three working days from the moment of its registration; b) financial transaction subject to compulsory financial monitoring if concerning which are sufficient ground for suspicion that they may be connected with legalization (laundering) of the proceeds from crime or terrorist financing within ten working days from the moment of its registration; c) detected financial transactions concerning which are sufficient ground for suspicion that they may be connected, referred or aimed for terrorist financing in day of their detection and inform the designated law enforcement agency.
Recommendation of the MONEYVAL Report	<i>The predominance of STRs from compulsory financial monitoring indicates a lack of risk-based approach to monitoring and reporting of suspicious transactions to the SCFM and raises concerns as to effective implementation. The system could benefit from a higher awareness of the AML/CFT regime outside the banking sector, which could be raised through an enhanced training programme</i>
Measures taken to implement the Recommendation of the Report	<p>In order to improve coordination and methodical support of reporting entities on AML/CFT in 2009 experts of SCFM of Ukraine participated in organization and organization of 304 training events for 7993 representatives of banking and non-banking institutions and law enforcement and other state authorities. All training seminars containing issue of “Risk management of money laundering of the proceeds from crime and terrorist financing” for entities of initial financial monitoring.</p> <p>Training center of SCFM of Ukraine on June 20, 2008 elaborated and implemented training programs for reporting entities which contains the lecture on “Risk management of money laundering of the proceeds from crime and terrorist financing” for reporting entities”. The above mentioned topic is included to the Typical training program on issues of financial monitoring for professionals of financial services market.</p> <p>Training program for professionals of financial monitoring of professional participants of securities market (Decision of Commission as of 19.07.2005 No. 438) among other contain following topics: international cooperation and international standards in AML/CFT area; the FATF 40 Recommendations and FATF 9 Special Recommendation: structure and content; EU AML/CFT legislation; organization of financial monitoring by reporting entities; financial transaction subject to obligatory and internal financial monitoring; requirement to procedure of detection financial transactions subject to financial monitoring; requirement to the rules of conducting</p>

	internal financial monitoring and programs of its conducting etc.
(Other) changes since the last evaluation	
Recommendation 13 (Suspicious transaction reporting) II. Regarding DNFBP⁸	
Recommendation of the MONEYVAL Report	<i>The scope of the Basic law needs to be enhanced so as to bring all types of DNFBP under the STR regime. In the context of Recommendation 13, the reporting of DNFBP should be additionally altered by elevating the existing constrain of Article 8 of the Basic Law, which relates the suspicious reporting only with execution of financial transactions</i>
Measures taken to implement the Recommendation of the Report	<p>Under the Article 5 part 8 of the AML/CFT Law specially designated reporting entities are following:</p> <ul style="list-style-type: none"> a) real estate traders (realtors); b) business entities conducting trade of precious stones and precious stones and goods made of them; c) pawn-shops, business entities conducting lottery and gambling games, in particular casinos, electronic (virtual) casino; d) notaries, lawyers, legal entities and natural of business undertakings providing legal services (except persons providing services in the framework of labour legal relations) in cases foreseen by the Article 6 and 8 of this Law; e) auditors, auditing companies, entities of business undertakings providing accounting services concerning transactions foreseen by the Article 6 and 8 of this Law; f) natural persons of business undertakings providing and legal entities conducting financial transaction with goods for cash under condition that the sum of transaction in equal or exceed the sum defined by the part one of the Article 15 of this Law, in cases foreseen by the Article 6 and 8 of this Law». <p>Article 8 of the AMLCFT Law provides for that fulfilment of the obligations of the reporting entity shall be ensured by lawyers, notaries, legal entities undertakings providing legal services, auditors, auditing companies, business entities providing accounting services if they participate in preparing or conducting transaction on:</p> <ul style="list-style-type: none"> purchase-sale of real estate; clients' assets management; bank accounts and securities management; organization of depositing assets for establishment of legal entities, ensuring their activity or management. purchase-sale of legal entities. <p>Execution of reporting entities obligations shall be ensured by business entities providing intermediary services during execution of transactions on purchase-sale of real estate, preparation and execution of deeds on purchase and sale of real estate if the amount of such transaction equals or exceeds UAH 400 000 or equals or exceeds the amount in foreign currency equivalent to UAH 400 000.</p> <p>Execution of reporting entities obligations shall be ensured by business entities providing trading in cash of precious metals and precious stones and products of them if the amount of financial transaction equals or exceeds the amount provided in the part one of the Article 15 of the current Law while executing transactions with high value goods (especially with precious metals, antique goods, works of art etc) or</p>

⁸ i.e. part of Recommendation 16.

	<p>organization trading with such goods including auctions.</p> <p>Execution of reporting entities obligations shall be ensured by business entities providing lotteries and gambling including casino, electronic (virtual) casino, while executing financial transactions related to receiving or returning stakes or payment of wins.</p> <p>Execution of reporting entities obligations shall be ensured by natural persons - business entities providing financial transactions in cash with goods (executing works, providing services) if the amount of such financial transaction equals or exceeds the sum provided in part on of the Article 15 of the Law in cases foreseen by Articles 6 and 8 of the current Law.</p> <p>The <i>Article 1 part 1 (4) of the AML/CFT Law</i> provides for that the financial transaction shall mean any actions with regard to the assets taken with the assistance of reporting entity that includes the attempt.</p> <p>Besides, the <i>Article 6 of AML/CFT Law</i> provides for that a reporting entity shall ensure detection of financial transactions, subject to financial monitoring, prior to its execution, in the process of its execution, in the day of suspicions arise, after execution, or in attempted transaction or if the client refused its conduction (Article 6 part 2 (3, 6)) shall notify SCFM of Ukraine.</p> <p>The provisions of the Article 6 of the AML/CFT Law provides for that a reporting entity is obliged to inform SCFMU on:</p> <ul style="list-style-type: none"> a) business day after the date of such transactions registration or attempt to conduct; b) financial transactions subject to internal financial monitoring in case of reasonable suspicion that they are connected with legalization of the proceeds from crime – on the day of suspicions arise but not later than in ten business days from them moment of such transactions registration or attempt to conduct; c) detected financial transactions, subject to reasonable suspicion that they are connected with, related or intended for terrorist financing on the day of detection or attempt to conduct and inform relevant law enforcement agencies designated by the law. <p>Moreover, the AML/CFT Law provides that reporting entity must refuse to set business relations or conduct financial transaction in case if client identification could not be made according to the legislation, except transactions to deposit funds on account of such client. In such cases reporting entity must inform Specially authorized authority about conducting of such transactions and persons, which had an intention to carry them out within one working day (<i>Article 10 part 1</i>).</p> <p>Thus, the AML/CFT Law contains extended requirements, stated in the Article 8 of the AML/CFT Law concerning submitting of reports not only on financial transactions, but also concerning attempts to conduct them.</p>
<p>Recommendation of the MONEYVAL Report</p>	<p><i>More outreach to this sector is necessary, particularly by providing training and guidance</i></p>

<p>Measures taken to implement the Recommendation of the Report</p>	<p>Thus, in the 1st half year of 2010 the SCFM of Ukraine organized and held 10 working meetings in order to find out challenges connected with fulfilment of the Law by the reporting entities: real estate agents, precious stones and jewellery dealers, antiques and works of art dealers, reporting entities conducting lotteries, providing accounting services, legal and auditory services, notaries, lawyers, natural persons-entrepreneurs providing legal services, auditors (hereinafter non financial businesses). These working meetings were attended by the representatives (top rank officials) of the state agencies, particularly of the Ministry of Finance of Ukraine, the Ministry of Justice of Ukraine, the Ministry of Economics of Ukraine, the Ministry of Transport and Communication of Ukraine and public and other interested organizations, namely Union of Lawyers of Ukraine, Auditory Chamber of Ukraine, Association of Real Estates Agents and Ukrainian Notary Chamber and others.</p> <p>During these meetings a wide range of issues related to fulfillment of the Law by DNFBPs was considered.</p> <p>SCFM signed MOUs with such DNFBPs associations, as Professional association of financial companies managers (November 2008), International public organization “International Antiterrorist Unity” (February 2010), Association of real-estate professionals (realtors) of Ukraine (June 2010). During the July-August SCFM and Association of Realtors conducted 7 workshops covering all regions of Ukraine.</p> <p>The appropriate training and methodical assistance under the new AML/CFT Law will be provided for DNFBPs in the framework of IMF technical assistance project – startup training in Kyiv was conducted on May 26.</p>
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Special Recommendation II (Criminalization of terrorist financing)	
Rating: Partially compliant	
<p>Recommendation of the MONEYVAL Report</p>	<p><i>To ensure that the definition of terrorism fully covers all the terrorist acts set out in article 2(1) of the Terrorist Financing Convention</i></p>
<p>Measures taken to implement the Recommendation of the Report</p>	<p>The AML/CFT Law introduced a new definition of terrorist financing (Article 1 part 1 (3)): terrorist financing means providing or collection of any funds in knowledge that they are to be used, in full or in part, for organization, preparation and commitment of the terrorist act, defined by the Criminal Code, by a individual terrorist or terrorist organization, involvement into a terrorist act, public calls to commit a terrorist act, establishment of the terrorist group or terrorist organization, aiding in commitment of a terrorist act as well as any other terrorist activity, and an attempt to commit such actions.</p> <p>This Criminal Code of Ukraine was amended by the new (separate) Article 258⁵ “Terrorist Financing”, Namely, Article 258⁵ “Terrorist Financing”.</p> <p><i>1. Terrorist financing, namely acts committed with the aim of financial or material provision of individual terrorist or terrorist group (organization), organization, preparation or commitment of the terrorist act, involvement into commitment of the terrorist act, public calls to commit terrorist act, assistance in commitment of the terrorist act, creation of terrorist group (organization), - shall be punishable by imprisonment for a term of 5 to 8 years with deprivation of the right to occupy certain positions or engage in certain activity for a term up to 2 years and with confiscation of property.</i></p> <p><i>2. The same action repeated or conducted for mercenary reasons or in prior</i></p>

agreement by a group of persons or in large amounts or if they resulted in significant property damage, – shall be punishable by imprisonment for a term of 8 to 10 years with deprivation of the right to occupy certain positions and engage in certain activity for a term up to 3 years and with confiscation of property.

3. Actions, envisaged by part one or two of this Article, committed by an organized group or in especially large amounts, or resulted in other dangerous effects, – shall be punishable by imprisonment for a term of 10 to 12 years with deprivation of the right to occupy certain positions or engage in certain activity for a term up to 3 years with confiscation of property.

4. A person, except organizer or manager of terrorist group (organization), shall be exempted from criminal liability for the actions envisaged by this Article if before bringing to criminal liability he willingly informed on certain terrorist activity or in another way promoted its suspension or prevention of crime he financed or assisted, provided there is no other corpus delicti in his actions.

Note. 1. Terrorist financing is deemed to be committed in large amounts, if the value of financial or material provision exceeds 6000 tax-free minimum incomes of citizen.

2. Terrorist financing is committed in especially large amounts, if the value of financial or material provision exceeds 18000 tax-free minimum incomes of citizen.

According to the Article 14, part 1 of the Criminal Code of Ukraine the preparation for crime shall mean the looking out or adapting means and tools, or looking for accomplices to, or conspiring for an offense, removing of obstacles to an offense, or otherwise intended conditioning of an offense.

According to the Article 15, part 1 of this Code a criminal attempt shall mean a directly intended act (action or omission) made by a person and aimed directly at the commission of a criminal offense prescribed by the relevant article of the Special Part of this Code, where this criminal offense has not been consummated for reasons beyond that person's control.

According to the Article 16 of the Criminal Code of Ukraine the criminal liability for the preparation for crime and a criminal attempt shall rise under Article 14 or 15 and that article of the Special Part of this Code which prescribes liability for the consummated crime.

Concerning the Article 2, part 5 (a) of the Convention

According to the Article 26 of the Criminal Code of Ukraine criminal complicity is the willful co-participation of several criminal offenders in an intended criminal offense.

According to the Article 27 of this Code organizer, abettor and accessory, together with the principal offender, are deemed to be accomplices in a criminal offense.

The principal (or co-principal) is the person who, in association with other criminal offenders, has committed a criminal offense under this Code, directly or through other persons, who cannot be criminally liable, in accordance with the law, for what they have committed.

The organizer is a person who has organized a criminal offense (or criminal offenses) or supervised its (their) preparation or commission. The organizer is also a person who has created an organized group or criminal organization, or supervised it, or financed it, or organized the covering up of the criminal activity of an organized group or criminal organization.

The abettor is a person who has induced any other accomplice to a criminal offense, by way of persuasion, subornation, threat, coercion or otherwise.

The accessory is a person who has facilitated the commission of a criminal offense by other accomplices, by way of advice, or instructions, or by supplying the means or

	<p>tools, or removing obstacles, and also a person who promised in advance to conceal a criminal offender, tools or means, traces of crime or criminally obtained things, to buy or sell such things, or otherwise facilitate the covering up of a criminal offense.</p> <p>According to the Article 29 of the Criminal Code of Ukraine the principal (or co-principals) shall be criminally liable under that article of the Special Part of this Code which creates the offense he has committed.</p> <p>The organizer, abettor and accessory shall be criminally liable under the respective paragraph of Article 27 and that article (or paragraph of the article) of the Special Part of this Code which creates an offense committed by the principal.</p> <p><i>Concerning the Article 2, part 5 (b) of the Convention</i></p> <p>Part 3 of the Article 258⁵ provides the criminal responsibility for actions, envisaged by part one or two of this Article, committed by an organized group or in especially large amounts, or resulted in other dangerous effects.</p> <p>According to the Article 258³ of the Criminal Code of Ukraine the crime shall be considered establishment of a terrorist group or terrorist organization, leadership in such group or organisation or participation in it, as well as material, organisational or other assistance in establishment or activity of terrorist group or terrorist organisation.</p> <p>The property as a specific object, pursuant to the Article 190 of the Civil Code of Ukraine, shall be considered a separate thing, a set of things, as well as property rights and obligations. Ownership rights shall be a non consumable thing. Ownership rights shall be considered proprietary right.</p> <p><i>Concerning the Article 2, part 5 (c) of the Convention</i></p> <p>Part 2 of the Article 258⁵ provides the criminal responsibility for the same action repeated or conducted for mercenary reasons or in prior agreement by a group of persons or in large amounts or if they resulted in significant property damage.</p> <p>According to the Article 258⁴ of the Criminal Code of Ukraine the crime shall be considered recruiting, financing, material security, armament, training of a person with the purpose of commitment a terrorist act, as well as use of person with this purpose, and pursuant to part 2 of this article - the same actions, committed with regard to several persons or repeatedly, or by prior agreement by a group of persons, or by an official using official position.</p> <p>Explanation to paragraphs d and e is the same as the explanation to paragraph a, meaning that a person shall be held liable for attempt and participation in commission of financing of terrorism.</p>
<p>Recommendation of the MONEYVAL Report</p>	<p><i>Amend the Criminal Code and introduce an autonomous terrorist financing offence fully in line with the requirements set out in the article 2 of the Terrorist Financing Convention and with the characteristics set out in Special Recommendation II</i></p>
<p>Measures taken to implement the Recommendation of the Report</p>	<p>The AML/CFT Law provides the amendments to the CC of Ukraine with a new (separate) Article “Terrorist Financing” (258⁵).</p> <p>The AML/CFT Law also provided definition of terrorist financing (Article 1 (3)) as a cross-reference to the CC of Ukraine “Terrorist financing – providing or collection of any funds in knowledge that they are to be used, in full or in part, for organization, preparation and commitment of the terrorist act, defined by the Criminal Code, by a individual terrorist or terrorist organization, involvement into a terrorist act, public calls to commit a terrorist act, establishment of the terrorist group or terrorist organization, aiding in commitment of a terrorist act as well as any other terrorist activity, and an attempt to commit such actions”.</p>
<p>Recommendation of the MONEYVAL Report</p>	<p><i>Ensure that the terrorist financing offences are predicate offences for money laundering</i></p>

Measures taken to implement the Recommendation of the Report	The AML/CFT Law amended the CC of Ukraine with a new (separate) Article 258 ⁵ “Financing of Terrorism” and provides at least 5 years of imprisonment for the FT. As far as threshold for predicate offence is 1 year, FT is a predicate to ML.
Recommendation of the MONEYVAL Report	<i>Ensure that the TF offences would apply, regardless of whether the person alleged to have committed the offence(s) is in the same country or in a different country from the one in which the terrorist/ terrorist organization is located or the terrorist act(s) occurred/will occur</i>
Measures taken to implement the Recommendation of the Report	The AML/CFT Law provides for supplementing the CC of Ukraine with a new (separate) Article “Terrorist financing” (258 ⁵) that envisages liability of the persons for terrorist financing. There are no restriction in the Criminal Code on whether the person alleged to have committed the offence(s) is in the same country or in a different country from the one in which the terrorist/ terrorist organization is located or the terrorist act(s) occurred/will occur. Moreover, as far as TF is a severe crime against interests of Ukraine and it falls under the TF Convention, citizens of Ukraine, foreigners or persons without citizenship abroad may be brought to the responsibility in Ukraine for TF committed abroad (Articles 7, 8 of the Criminal Code of Ukraine).
Recommendation of the MONEYVAL Report	<i>Provide that the law would permit the intentional element of the offence of TF to be inferred from objective factual circumstances</i>
Measures taken to implement the Recommendation of the Report	Regarding intentional element, committed crime under the Article 258 ⁵ of the Criminal Code of Ukraine is intentional, type of intention is direct. Consequently, awareness, intention or aim as elements of <i>corpus delicti</i> may be inferred from objective factual circumstances. The AML/CFT Law supplemented the CC of Ukraine with a new (separate) Article 258 ⁵ “Financing of Terrorism” which provides for that financing of terrorism shall be actions, aimed at providing financial and material assistance of a separate terrorist or terrorist group (organization), organizing, preparation and committing of a terrorist act, involvement into commission of a terrorist act, public calls to commit terrorist act, establishment of terrorist group or terrorist organization, assistance to commit terrorist act.
Recommendation of the MONEYVAL Report	<i>Review the current approach concerning criminal liability of legal persons, and consider the possibility of amending the Criminal Code to make legal persons criminally liable for TF, or otherwise subject legal persons to civil or administrative liability for TF</i>
Measures taken to implement the Recommendation of the Report	Under the Article 2 of the Law of Ukraine on Liability of Legal Entities for Committing Corruption Offences legal entity brings responsibility set by this Law for committing the crime on behalf of and in its interest by the head of such legal entity, its founder, participant or other authorized person independently or in complicity with any of offences provided <i>inter alia</i> by the Article 209, Article 258 ⁵ of the Criminal Code of Ukraine (which are ML and TF offences).
Recommendation of the MONEYVAL Report	<i>Take measures as necessary to ensure that criminal, civil or administrative sanctions for TF applicable to natural and legal persons are effective, proportionate and dissuasive.</i>
Measures taken to implement the Recommendation of	There is established a new separate Article “Terrorist financing” (258 ⁵) that envisages liability of the persons for terrorist financing up to 12 years of imprisonment with mandatory confiscation of property.

the Report	According to the Law of Ukraine on Liability of Legal Entities for Committing Corruption Offences the legal entity may be punished for TF by fine, confiscation of illegal proceeds or money of equal value as well as being liquidated. The Law on Combating Terrorism also provides possibility of liquidation of legal entity for TF by the court decision.
(Other) changes since the last evaluation	

**Special Recommendation IV (Suspicious transaction reporting)
I. Regarding Financial Institutions**

Rating: Partially compliant

Recommendation of the MONEYVAL Report	<i>In the light of the information received during the visit, it appears that Ukraine should provide more guidance to reporting institutions on how to detect suspicious transactions related to terrorism in order to enhance the effectiveness of the system for filing TF STRs</i>
Measures taken to implement the Recommendation of the Report	All compliance officers are obliged to undergo training on regular basis (and get certified, except bankers). Such training is done based on the training program adopted by FIU and respective supervisors. This training includes also part on the detection of TF – related transactions.
Recommendation of the MONEYVAL Report	<i>The comments expressed for Recommendation 13.3 – 13.4, are also applicable for SR IV. There needs to be an explicit legal requirement that attempted transactions are subject of STRs</i>
Measures taken to implement the Recommendation of the Report	According to the Article 6, part 2 (6 (c)) of the AML/CFT Law a reporting entity shall be obliged to report transaction subject to reasonable suspicion that they are connected with, related or intended for terrorist financing on the day of detection or attempt to conduct.
(Other) changes since the last evaluation	

**Special Recommendation IV (Suspicious transaction reporting)
II. Regarding DNFBP**

Recommendation of the MONEYVAL Report	<i>In the light of the information received during the visit, it appears that Ukraine should provide more guidance to reporting institutions on how to detect suspicious transactions related to terrorism in order to enhance the effectiveness of the system for filing TF STRs</i>
Measures taken to implement the Recommendation of the Report	The Article 6, part 2, (6 (c)) of the AML/CFT Law provides for that reporting entity is obliged to inform FIU on detected financial transactions containing sufficient grounds for suspicion to be connected, related to or aimed for terrorist financing, - on the day of detection, as well as inform stated by the law enforcement agencies. Moreover, in the I half of 2010 the SCFM of Ukraine organized and held 10 working meetings in order to find out challenges connected with fulfilment of the Law by the reporting entities: real estate agents, precious stones and jewellery dealers, antiques and works of art dealers, reporting entities conducting lotteries, providing accounting services, legal and auditory services, notaries, lawyers, natural persons-entrepreneurs providing legal services, auditors (hereinafter non financial businesses). These working meetings were attended by the representatives (top rank officials) of the state agencies, particularly of the Ministry of Finance of Ukraine, the Ministry of Justice of

	<p>Ukraine, the Ministry of Economics of Ukraine, the Ministry of Transport and Communication of Ukraine and public and other interested organizations, namely Union of Lawyers of Ukraine, Auditory Chamber of Ukraine, Association of Real Estates Agents and Ukrainian Notary Chamber and others.</p> <p>During these meetings a wide range of issues related to fulfilment of the Law by DNFBPs was considered.</p> <p>After the AML/CFT Law enactment training and methodical assistance will be provided to DNFBPs.</p>
Recommendation of the MONEYVAL Report	<i>The comments expressed for Recommendation 13.3 – 13.4, are also applicable for SR IV. There needs to be an explicit legal requirement that attempted transactions are subject of STRs.</i>
Measures taken to implement the Recommendation	According to the Article 6, part 2 (6 (c)) of the AML/CFT Law a reporting entity shall be obliged to report transaction subject to reasonable suspicion that they are connected with, related or intended for terrorist financing on the day of detection or attempt to conduct.
(Other) changes since the last evaluation	

2.3 Other Recommendations

In the last report the following FATF recommendations were rated as “partially compliant” (PC) or “non compliant” (NC) (see also Appendix 1). Please, specify for each one what measures, if any, have been taken to improve the situation and implement the suggestions for improvements contained in the evaluation report.

Recommendation 2 - ML offence (mental element and corporate liability)	
Rating: Partially compliant	
Recommendation on MONEYVAL Report	<i>Review the current approach concerning criminal liability of legal persons, and consider the possibility of amending the Criminal Code to make legal persons criminally liable, in particular for money laundering offences</i>
Measures taken upon execution of Recommendation	According to the Article 2 of the Law of Ukraine On Responsibility of Legal Persons for Commitment of Corruption Offences № 1507-VI, passed on 11.06.2009, legal person brings responsibility determined by this Law for commitment on its behalf and in its interests by head of such legal person, its founder, member or by other authorized person individually or in participation of any crime provided inter alia by the Article 209, Article 258 ⁵ , of the Criminal Code of Ukraine (which are ML and TF offences).
Recommendation on MONEYVAL Report	<i>Review the legal framework in place and measures taken so far so as to ensure that legal persons are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for ML</i>
Measures taken to implement the Recommendation	According to the Law of Ukraine on Liability of Legal Entities for Committing Corruption Offences the legal entity may be punished for ML by fine, confiscation of illegal proceeds or money of equal value as well as being liquidated.
(Other) changes since the last evaluation	

Recommendation 3 (Confiscation and provisional measures)	
Rating: Partially compliant	
Recommendation on MONEYVAL Report	<i>The Ukrainian authorities should ensure that the legal framework explicitly provides for confiscation of instrumentalities, confiscation of property of corresponding value, as well as confiscation of income, profits or other benefits from the proceeds of crime, in the context of a ML offence</i>
Measures taken to implement the Recommendation	<p>The above said is stated in provisions of the Draft Law of Ukraine On Introducing Amendments to the Criminal and Criminal-Procedural Codes of Ukraine on Improvement of the Confiscation Procedures (registration number № 3642 as of 22.01.2009) submitted by the Cabinet of Ministers of Ukraine for consideration to the Parliament of Ukraine.</p> <p>The mentioned Draft Law proposes to supplement the CC of Ukraine with the new chapter, introducing the institute of the special confiscation, which consists in compulsory unpaid withdrawal of funds, valuables and other property under the decision of the court into the ownership of the state in cases defined by this Code.</p> <p>In case of adopting by the Parliament of Ukraine of indicated amendments the CC of Ukraine will clearly determine means confiscation, confiscation of property of the certain value, as well as proceeds, incomes or other benefit from criminal activity, in the context of ML offence.</p>
Recommendation on MONEYVAL Report	<i>The Ukrainian authorities should ensure that all the predicate offences to money laundering provide for possibility of confiscation of an offender's property, in line with the FATF requirements</i>
Measures taken to implement the Recommendation	Adopting by the Parliament of Ukraine of the draft Law (registration number № 3642 dated 22.01.2009) will provide implementation of the Recommendation on confiscation of property in case of performing predicate for ML offences.
Recommendation on MONEYVAL Report	<i>The Ukrainian authorities should ensure that confiscation for the property used in or intended for use in terrorist financing cases is provided for</i>
Measures taken upon execution of Recommendation	<p>Part 2 Clause 3 of Final Provisions of New AML/CFT Law amends the Criminal Code with new (separate) Article 258⁵ "Financing of Terrorism", according to which financing of terrorism considers as acts performed with purpose of financial or material provision of separate terrorist or terrorist group (organization), organization, preparing or committing terrorist act, involving in committing terrorist act, public statements for committing terrorist act, promoting to committing terrorist act, creating terrorist group (organization).</p> <p>Sanctions of new article foresee among other types of responsibility confiscation of property.</p>
Recommendation on MONEYVAL Report	<i>The Ukrainian authorities should ensure that comprehensive statistics are kept on an annual basis on the number of cases and the amounts of property frozen, seized and confiscated relating to ML, FT and criminal proceeds</i>
Measures taken to implement the Recommendation	<p>In Ukraine as of 2004 law enforcement agencies conduct quarterly statistics reports on counteraction to legalization of the proceeds from crime (form 1-LV), approved by the order of the General Prosecutor's Office of Ukraine as of 21.12.2005 № 65, by the decree of the State Tax Administration as of 16.06.2004, by the instruction of the deputy Head of Security Service of Ukraine as of 16.07.2004 № 6/4260, by the instruction of the Ministry of Interior of Ukraine as of 19.05.2004 № 406.</p> <p>In the mentioned departmental reports (form 1-LV) law enforcement agencies indicate data determined in course of pre-trial investigation, especially those that concern to:</p>

	<ul style="list-style-type: none"> - number of crimes, criminal cases on which have been conducted; - number of cases referred to the court; - determined amounts of legalized funds and property; - seized proceeds from crime; - seized property of the accused person; - confiscated proceeds from crime and other. <p>Moreover, from 2004 the State Court Administration of Ukraine has introduced the state statistical observation in form of reporting 1-L "Report on consideration by general local courts and courts of appeal of criminal cases under the Articles 209, 209¹, 306 of the CC of Ukraine".</p> <p>With the aim of improvement of the state statistical reporting on counteraction to legalization of the proceeds from crime and terrorist financing, the State Court Administration of Ukraine with the Order as of 29.04.2009 № 51 On approval of reporting form № 1-L "Reports of courts of the first instance on the state of consideration of cases on crimes, provided by the Articles 209, 209-1, 306 of the CC of Ukraine", has supplemented the state statistical reporting with indices providing detailed information on cases movement that have been under consideration in the courts of the first instance, characteristic of procedural state of persons on these cases, also with representation of the amounts of legalized proceeds (funds, property) from crime, determined by the resolution of the court.</p> <p>Furthermore, the paragraph 19 of the Action plan on prevention and counteraction to legalization (laundering) of the proceeds from crime and terrorist financing, approved by the decree of the Cabinet of Ministers of Ukraine and the National Bank of Ukraine as of 21.10.2009 № 1119 for 2010 provides elaboration in the 2010 of unified state statistical reporting on counteraction to legalization of the proceeds from crime and terrorist financing.</p> <p>The mentioned amendments provide bringing to it information on the state of investigation and consideration of cases on TF crimes, as well as number of cases of the named category in which confiscation of funds or other property from crime, and confiscation of property, as well as amounts of funds and the value of confiscated property are applicable to the convicted persons.</p>
Other) changes since the last evaluation	

Recommendation 4 (Secrecy laws consistent with the Recommendations)	
Rating: Partially compliant	
Recommendation on MONEYVAL Report	<i>Ukraine should review the current limitations which appear to inhibit the ability of law enforcement to access information in a timely manner from some of the sectors and take necessary measures to address the lack of knowledge of relevant procedures applicable in this area</i>
Measures taken upon execution of Recommendation	<p>There are two clearly prescribed procedures for Ukrainian law enforcement agencies to get information that contains banking or other commercial secrecy – administrative and by court order in the framework of the criminal case.</p> <p>During 2009 – first half 2010 in line with the administrative procedure about 1 500 written requests were sent to banks on disclosing banking secrecy according to the Article 62 Part 3 of the Law of Ukraine On Banks and Banking.</p> <p>During the same period on request of law enforcement courts issued 4400 orders on lifting the bank secrecy.</p>

	<p>Section VIII (Final Provisions) Clause 2 (6) of Law of Ukraine as of 18.05.2010 № 2258-IV «On Introducing Amendments to the Law of Ukraine On Prevention and Counteraction to the Legalization (Laundering) of the Proceeds from Crime (will set in force from 20.08.2010) amends Article 6 (Part 1) (Grounds for operative and search activity) of Law of Ukraine On Operative and Search Activity with Clause 4 which prescribes case referrals of SCFM of Ukraine as one of the grounds for operative and search activity. I.e., verification of information about financial transactions containing in case referrals can be provided with assistance of operative and search means and measures.</p>
<p>Recommendation on MONEYVAL Report</p>	<p><i>The Ukrainian authorities should streamline and simplify existing procedures and provide relevant training to law enforcement authorities so that they fully understand the requirements and how to comply with them in order to obtain court orders. This should include training on the procedures available to law enforcement</i></p>
<p>Measures taken upon execution of Recommendation</p>	<p>During 2008 the Training Centre of SCFM has taken measures on professional development of 175 representatives of law enforcement agencies and courts, accordingly during 2009 – 260 representatives of law enforcement agencies and courts, in particular in the part of following the procedures for obtaining of court resolutions.</p> <p>Representatives of the National Bank of Ukraine accordingly to the Resolution of joint session of collegiums of the Prosecutor’s office of Ukraine and the Board of the National Bank of Ukraine as of 16.05.2005 always participate in conducting of studies in the Academy of Prosecutor’s Office of Ukraine, during which prosecutors come to know about the procedure of obtaining of access to banks information.</p> <p>In Kyiv National University of Internal Affairs according to the program for professional training of “bachelor” and “magister” studying topic “Legal and Organizational Measures of Counteraction to the Legalization (Laundering) of the Proceeds from Crime” (4 hours of lectures and 4 hours of seminars) within studying discipline “Economic Safety” and topic “Revealing and Documenting the Legalization (Laundering) of the Proceeds from Crime” (4 hours of lectures and 4 hours of seminars) within studying discipline “Operative and Search Activity” are foreseen in 7-th semester of 4-th course within speciality “Counteraction to Economic Crime”.</p> <p>In 2009 25 officers of special subdivisions on combating with organized crime passed professional training on “Combating with the Legalization (Laundering) of the Proceeds from Crime” and specialization on the bases of Management Academy of MIA. In 2010 the mentioned specialization is planned on October on the bases of Kyiv National University of Internal Affairs (17 officers) and professional training on the bases of Academy – on December (20 officers). Besides, according to the topical plans of Management Academy of MIA, training workshops are held for heads of district subdivisions of Main Department of MIA, Department of MIA, inlisted to the career reserve for managing positions and officers of subdivisions on combating with organized crime on topic “Organization of operative and service activity in the sphere of combating with organized crime, corruption and counteraction to the legalization (laundering) of the proceeds from crime”, as well as there is planned training for 45 adjuncts who provide scientific studies on mentioned topics.</p> <p>For execution of Clause 2 of the Resolution of Cabinet of Ministers of Ukraine as of 13.12.2004 № 899-p relevant workshops on professional trainings for officers of internal affairs authorities are held in Training Centre of SCFM of Ukraine.</p> <p>During first half-year 2010 160 officers of territorial bodies and subdivisions including 30 officers of subdivisions on combating with organized crime passed</p>

	<p>training in Training Centre according to the Schedule of professional training on course “Combating with the legalization (laundering) of the proceeds from crime and financing of terrorism”. During whole 2010 320 officers will pass training in Training Centre.</p> <p>Besides, the representatives of internal affairs bodies participated in seminar – practicum on AML/CFT issues for specialists of regional subdivisions of law enforcement and judicial bodies (30.03.2010), practical workshop on the topic “National Assessment of Money Laundering Risks” (22-23.05.2010), seminar on AML/CFT issues held with assistance of TAIEX (08-09.07.2010), and on the topic “National Assessment of Money Laundering Risks” held by Training Centre together with World Bank (29-30.07.2010).</p> <p>Also, training guidance “Counteraction to money laundering in Ukraine. Legal and organizational principles of law enforcement activity”, “Counteraction to the legalization (laundering) of the proceeds from crime”, methodical recommendations “Revealing, disclosure and investigating the legalization (laundering) of the proceeds from crime (Article 209 of CC of Ukraine)”, developed by Kyiv National University of Internal Affairs, and typologies of the legalization (laundering) of the proceeds from crime “Properties and features of transactions related to money laundering through withdrawing cash. Tactical study and practical investigation”, approved by the Order of SCFM of Ukraine as of 25.12.2009 under № 182 were submitted to the territorial bodies and subdivisions of internal affairs in 2010.</p> <p>Order of STA of Ukraine On Organization of Professional Training of Officers of STA of Ukraine in 2009 – 2010 as of 31.08.09 № 467 approved Themes for training of officers of tax militia on service and special preparation in 2009 – 2010 studying year. According with mentioned Themes the following is foreseen: for operative officers of tax militia – methodical recommendations concerning procedure of banking secrecy disclosure, for investigators of tax militia – the Letter of Supreme Court of Ukraine as of 29.03.06 № 1-5/162 „On Banking Secrecy Disclosure”.</p>
Other) changes since the last evaluation	

Recommendation 6 (Politically exposed persons)	
Rating: Non compliant	
Recommendation on MONEYVAL Report	<p><i>As regards Recommendation 6, the Ukrainian authorities should implement the FATF requirements for PEPs as soon as possible. This should include:</i></p> <p style="text-align: center;"><i>- a clear and explicit definition for PEPs consistent with the FATF Glossary</i></p>
Measures taken to implement the Recommendation	<p>The AML/CFT Law (Article 1 part 1 (29)) identifies definition of politically exposed persons as natural persons, who are or were entrusted to execution of determined public functions in foreign states, especially:</p> <ul style="list-style-type: none"> - head of state, head of government, ministers and their deputies; - parliament’s representatives; - members of superior court, constitution court or other courts of high level whose resolutions don’t subject to appeal except as under exclusive circumstances; - members of court of auditors or boards of central banks; - ambassadors extraordinary and plenipotentiary, charges d’affaires and high level officials of armed forces; - members of administrative, managerial or supervisory bodies of state

	enterprises with strategic importance.
Recommendation on MONEYVAL Report	<i>- a requirements on financial institutions to put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a politically exposed person</i>
Measures taken to implement the Recommendation	The Article 6 part 4 (2) of the AML/CFT Law determines with regard to politically exposed persons or their associates – while establishing business relations with the client and in the process of customer service the reporting entity according to internal procedures ensure establishing the fact whether the client is classified as politically exposed person or associates or persons acting on their behalf (associates to politically exposed persons are members of family and other close relatives, legal persons the sufficient share or control in which belongs to politically exposed persons or their close associates). Moreover, according to the Article 11 part 1 of the AML/CFT Law, reporting entity is obliged to conduct risks management of legalization (laundering) of the proceeds from crime or terrorist financing taking into account results of identification of client, services providing to client, analysis of transactions conducted by them, and their compliance with financial state and content of client’s activity. Thus, the AML/CFT Law determines requirements for financial institutions regarding establishment of certain risks management system for identifying of belonging of prospective client, client or beneficiary owner to political exposed persons.
Recommendation on MONEYVAL Report	<i>- a requirement to obtain senior management approval for establishing business relationships with PEPs. This should also include where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP; and</i>
Measures taken to implement the Recommendation	According to the Article 6 part 4 (2) of the AML/CFT Law the entity while establishing business relationship with politically exposed persons and related to it persons shall obtain permission of head of the entity.
Recommendation on MONEYVAL Report	<i>- a requirement to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs</i>
Measures taken to implement the Recommendation	According to the AML/CFT Law the reporting entity is obliged to take measures regarding politically exposed persons or their associates, in particular for identification of sources of money of such persons (Article 6 part 4 (2) (b)).
Recommendation on MONEYVAL Report	<i>- a requirement to conduct enhanced ongoing monitoring on a business relationship with the PEP</i>
Measures taken to implement the Recommendation	The AML/CFT Law determines with regard to politically exposed persons or their associates – while establishing business relations with the client and in the process of customer service the reporting entity according to internal procedures ensure establishing the fact whether the client is classified as politically exposed person or associates or persons acting on their behalf (associates to politically exposed persons are members of family and other close relatives, legal persons the sufficient share or control in which belongs to politically exposed persons or their close associates) is obliged taking into account recommendations of relevant entity of state financial monitoring, to carry out monitoring of transactions, participants or beneficiaries of which are politically exposed persons or related to them persons, in the procedure, determined for clients of high risk (Article 6 part 4 (2) (c)).
Recommendation on MONEYVAL Report	<i>In addition, corruption causes an uneasiness, Ukraine should explicitly extending the provisions to domestic PEPs</i>

Measures taken to implement the Recommendation	In order to implement United Nations Convention against Corruption as of October 31, 2003 the Parliament of Ukraine adopted on June 11, 2009 the Law of Ukraine 'On the principles of prevention and countering of corruption', the Law of Ukraine 'On Responsibility of Legal Persons for Corruption Offences', the Law of Ukraine 'On On Introduction of Amendments to Some Legal Acts of Ukraine regarding Responsibility for Corruption Offences'. Domestic PEPs will be subject for accounting their incomes and expenses and submitting respective declarations on the annual basis. Extension of the AML/CFT regime for the domestic PEPs was considered by the Parliament and decision was to keep in line with FATF recommendations – i.e. have in AML/CFT Law only foreign PEPs.
(Other) changes since the last evaluation	

Recommendation 7 (Correspondent banking)	
Rating: Non compliant	
Recommendation on MONEYVAL Report	<i>Ukraine would benefit by making requirements on correspondent relationships more explicit in NBU Resolution No. 189 rather than just relying on the information that is required in the questionnaire. In particular this should include explicit requirements on the following:</i> <ul style="list-style-type: none"> - <i>to gather sufficient information about a respondent to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action</i>
Measures taken to implement the Recommendation	The AML/CFT Law prescribes that in order to reduce AML/CFT risks the reporting entity shall take preventive measures with regard to certain categories (types) of clients, in particular: in regard to foreign financial institutions on which the reporting entity management had taken a decision to establish business (correspondent) relations to ensure collection of information on nature of financial institution activity and its financial condition, reputation, including whether this institution has been subject to enforcement measures taken by the agency providing regulation and supervision over its activity in AML/CFT sphere (Article 6 part 4 (1)). Moreover, Regulation of the NBU № 189 (paragraph 3.9, 3.10) provide that: when entering into correspondent relations the bank shall clarify if the correspondent bank takes actions aimed at prevention and combating legalization (laundering) of the proceeds obtained from crime. The bank is not recommended to enter into correspondent relations with banks that do not take actions aimed at prevention and combating legalization (laundering) of the proceeds obtained from crime.
Recommendation on MONEYVAL Report	<ul style="list-style-type: none"> - <i>to ascertain that the respondent institutions AML/CFT systems are adequate and effective; and</i>
Measures taken to implement the Recommendation	The AML/CFT Law establish responsibility of the reporting entity to determine which measures are taken by institution for prevention and counteraction to legalization (laundering) of the proceeds from crime or terrorist financing (Article 6 part 4 (b)).
Recommendation on MONEYVAL Report	<ul style="list-style-type: none"> - <i>to obtain approval from senior management before establishing new correspondent relationships</i>

Measures taken to implement the Recommendation	The AML/CFT Law establish responsibility of the reporting entity to open correspondent accounts to foreign financial institutions and in foreign financial institutions under senior manager approval (Article 6 part 4 (d)).
Other) changes since the last evaluation	

Recommendation 8 (New technologies & non face-to-face business)

Rating: Partially compliant	
Recommendation on MONEYVAL Report	<i>Ukraine should ensure that there is an explicit requirement which requires financial institutions to have policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transactions. This is particularly important as Ukraine's financial sector grows and channels such as non-face-to-face business are begun to be used more by financial institutions</i>
Measures taken to implement the Recommendation	The AML/CFT Law establish responsibility of the reporting entity to take relevant measures to restrict risk of misuse of services provided with use of new technologies and ensure conduction of non-face to face financial transaction (Article 6 part 2 (27)).
Other) changes since the last evaluation	

Recommendation 12 (DNFBP - R. 6, 8-11)

Rating: Non compliant	
Recommendation on MONEYVAL Report	<i>Specific AML/CFT requirements relating to Recommendations 6, 8, 9 and 11 should be extended to all DNFBP sectors</i>
Measures taken to implement the Recommendation	Under the AML/CFT Law following representatives of DNFBP sectors shall be the reporting entities: notaries, lawyers, estate agents, business entities executing trading in cash of precious metals and precious stones, auditors, business entities providing legal and accounting services (Article 8 part 5). Therefore, the Article 6 tasks, duties and rights of the reporting entity extend to stated reporting entities.
Recommendation on MONEYVAL Report	<i>Ukraine should also take steps to examine ways of to ensure the effectiveness of compliance with these AML/CFT requirements in these sectors</i>
Measures taken to implement the Recommendation	The AML/CFT Law establish AML/CFT requirements in sectors of DNFBPs through carrying out of proper regulation and supervisory. Thus, Article 14 part 1 (4, 5 and 8) of the AML/CFT Law provide that AML/CFT state regulation and supervision is carried out concerning: <ul style="list-style-type: none"> - business entities that organize lotteries or any other gambling, business entities providing trade in precious metals and precious stones and articles of them, auditors, auditor companies, business entities providing accounting services, State Treasury of Ukraine, Main Control and Revision Office of Ukraine – by the Ministry of Finance of Ukraine - notaries, lawyers, and other persons providing legal services – by the Ministry of Justice of Ukraine; - other reporting entities for which the Law does not define the state

authorities regulating and supervising their activity – by the Specially Authorized Agency.

According to the AML/CFT Law these state agencies shall:

- ensure AML/CFT supervision the activity of the relevant reporting entities especially by means of conduction of scheduled and unscheduled inspections, including on-site inspections;
- ensure provision of AML/CFT methodological, methodical and other assistance to the reporting entities;
- ensure regulation and supervision considering AML/CFT policies, procedures and control systems, risk assessment in order to detect the compliance of measures taken by reporting entities and reduce risks within the activity of relevant reporting entities;
- demand from the reporting entities to executing AML/CFT legislation requirements, and if revealing cases of violation the legislation to take measures prescribed by the laws;
- conduct inspections for organization of professional training of personnel and heads of the divisions responsible for financial monitoring execution;
- take actions according to legislation in order to avoid access to the management of reporting entities, direct or indirect significant participation in such entities of persons who have a record of conviction for mercenary crime or terrorism that have not been quashed and expunged in procedure determined by the law;
- in cases prescribed by the legislation take actions on prevention forming statutory funds of the relevant reporting entities at the expense of the funds sources of which are impossible to confirm.

According to the New AML/CFT Law these state agencies shall:

- ensure supervision in the sphere of prevention and counteraction to the legalization (laundering) of the proceeds from crime or terrorist financing the activity of the relevant reporting entities including conduction of inspections, scheduled and unscheduled inspections including on-site inspections;
- ensure provision of methodological, methodical and other assistance to the reporting entities in the area of prevention and counteraction to legalization (laundering) of the proceeds or terrorist financing;
- ensure regulation and supervision considering policies, procedures and control systems, risk assessment in the sphere of prevention and counteraction to the legalization (laundering) of the proceeds from crime or terrorist financing in order to detect the compliance of measures taken by reporting entities and reduce risks within the activity of relevant reporting entities;
- demand from the reporting entities to fulfill the legislation requirements in the sphere of prevention and counteraction to the legalization (laundering) of the proceeds from crime or terrorist financing, if revealing cases of violation the legislation to take measures prescribed by the laws;
- conduct inspections for organization of professional training of personnel and heads of the divisions responsible for financial monitoring execution;
- take measures according to legislation in order to avoid access to the management of reporting entities, direct or indirect significant

	<p>participation in such entities of persons who have a record of conviction for mercenary crime or terrorism that have not been quashed and expunged in procedure determined by the law;</p> <ul style="list-style-type: none"> - in cases prescribed by the legislation take measures on prevention forming statutory funds of the relevant reporting entities at the expense of the funds sources of which are impossible to be confirmed.
Other) changes since the last evaluation	

Recommendation 15 (Internal controls, compliance & audit)	
Rating: Partially compliant	
Recommendation on MONEYVAL Report	<i>Clear provision should be made for compliance officer of the non-banking financial institutions to be designated at management level</i>
Measures taken to implement the Recommendation	<p>The Order of the SCFM of Ukraine as of 15.10.2009 № 147 On Introducing Amendments to the Requirements to Qualification of an Employee of the Reporting Entity, Responsible for Carrying Out of Financial Monitoring in the AML/CFT Area, registered by the Ministry of Justice of Ukraine dated on 22.12.2009 № 1238/17254 entered into force on January 1, 2010.</p> <p>Provisions of the Order (paragraph 5) prescribe the appointment for the position of compliance officer at the level of leadership of the reporting entity.</p> <p>Under the Article 7 part 1 of the AML/CFT Law person responsible for financial monitoring (hereinafter – compliance officer) shall be appointed at the position at the managerial level of reporting entity.</p>
Recommendation on MONEYVAL Report	<i>Authorities should alter the existing legislation, requiring financial institutions (except for banks) to maintain an adequately resourced and independent audit function to test compliance with AML/CFT rules</i>
Measures taken to implement the Recommendation	<p>The AML/CFT Law prescribes that compliance officer is obliged to perform the inspection of any reporting entity division and its personnel on compliance with the rules of internal financial monitoring and execution financial monitoring programs (Article 7 part 2 (3)).</p> <p>The Article 6 part 2 (19) of the new AML/CFT Law requires reporting entity to conduct annually internal inspections of activity for adherence AML/CFT legislation requirements.</p>
Recommendation on MONEYVAL Report	<i>Authorities, especially SCFSRM and SCSSM, should place more efforts in raising the institutions' perception on the role and the importance of the internal audit function</i>
Measures taken to implement the Recommendation	Under the new AML/CFT Law internal audit of reporting entities is obligatory.
Recommendation on MONEYVAL Report	<i>Requirements for financial institutions to put in place screening procedures to ensure high standards when hiring staff (apart from the requirements for the compliance officer and certain senior management positions)) should be implemented, through an explicit legal requirement, or through the internal acts or procedures of the financial institutions. In practice, only banks have shown to have internal screening procedures</i>
Measures taken to implement the Recommendation	According to the Article 6 part 8 of the AML/CFT Law appropriate requirements should be established in by-laws of the state regulators.

Other) changes since the last evaluation	
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Recommendation 16 (DNFBP - R.15 & 21)
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Rating: Non compliant

Recommendation on MONEYVAL Report	<i>Apart from the requirement to implement internal rules for financial monitoring, the other requirements of Recommendation 15 are not applied by the DNFBP. Ukraine should adopt the necessary measures to implement Recommendation 15 in relation to DNFBP</i>
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Measures taken to implement the Recommendation	The Articles 6 and 8 of the AML/CFT Law implement requirements of Recommendation 15 and 21 in relation to DNFBPs.
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Recommendation on MONEYVAL Report	<i>DNFBPs should be required to give special attention to business relationships or transactions with persons from countries which do not or insufficiently apply the FATF Recommendations</i>
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Measures taken to implement the Recommendation	<p>According to the Article 6 part 5(2) of the AML/CFT Law reporting entities, in particular DNFBPs, shall take relevant preventive measures directed on: enhancement of the client identification prior to establishing business relations with persons or companies from states, where FATF Recommendations are not applied or are applied insufficiently; systematical notification on financial transactions with clients from relevant countries; notification of the non-financial sector that transactions with natural or legal persons in the relevant countries could bear ML/TF risk.</p> <p>Also, the Article 14 part 5 of the AML/CFT Law provide that the entities of state financial monitoring shall compose the list of countries which do not or insufficiently apply recommendations of international, intergovernmental organization, the activity of which is directed on combating money laundering or terrorist financing, and shall define and elaborate the procedure for taking relevant preventive measures: pay special attention while coordinating the establishment of the branches, offices or subsidiaries of the reporting entities in such countries; notify non-financial sector reporting entities on ML/TF risk while conducting financial transactions with natural or legal persons in relevant country; restriction of the business relations or financial transactions with the relevant country or persons in such country.</p> <p>Elaborated by the entities of state financial monitoring Procedure of applying of relevant preventive measures regulating activity of DNFBP will be also applying in DNFBP by establishment of business relations and carrying out of financial transactions with persons, who are the citizens of countries which do not or insufficiently apply FATF Recommendation.</p>
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Other) changes since the last evaluation	
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Recommendation 17 (Sanctions)

Rating: Partially compliant

Recommendation on MONEYVAL Report	<i>The authorities should review the sanctions with a view to establishing effective, proportionate and dissuasive sanctions to deal with natural or legal persons which fail to comply with AML/CFT requirements and that the range of sanctions is broad and proportionate to the severity of the situation</i>
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Measures taken to implement the Recommendation	The Article 23 of the AML/CFT Law establish responsibly of legal persons for violation of requirements provided by the Law and considerably increases sanctions amount. Also, AML/CFT Law provide amendments to the Code of Ukraine on Administrative
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	Offences on improvement of provisions on responsibility of officials – reporting entities for violation of AML/CFT legislation.
Recommendation on MONEYVAL Report	<i>The scope of articles 73 and 74 of the Law on Banks and Banking regarding the possibility to impose fines on bank officials and managers should be harmonised</i>
Measures taken to implement the Recommendation	<p>With respect to officials of financial institutions state regulators conclude protocols on administrative offence concerning officials of financial institutions for following offences (Article 166⁹ of the Code of Ukraine on Administrative Offences).</p> <p>Under the Article 73 of the Law of Ukraine on Banks and Banking in case a bank or other persons, which can be subject to inspection of the National Bank of Ukraine in accordance with the present Law, violate banking legislation, regulatory legal acts of the National Bank of Ukraine or perform risky operations, which threaten the interests of the depositors or other creditors of the bank, the National Bank of Ukraine shall the right to take adequate enforcement measures, including:</p> <ol style="list-style-type: none"> 1) written warning to terminate violation and to take necessary measures in order to correct the situation, to reduce unjustified expenses of the bank, to limit unjustified high interest payments on the attracted funds, to reduce or alienate inefficient investment; 2) calling of the general meeting of the participants, the Supervisory Council, Management (Board of Directors) of the bank to agree the action plan for financial rehabilitation or a reorganization of the bank; 3) signing of a written agreement with the bank, under which the bank or a person determined by the agreement shall be obliged to take measures to eliminate violations and improve the financial position of the bank etc; 4) issuing of instructions on: <ol style="list-style-type: none"> a) suspension of dividends payment or the capital distribution in any other form; b) imposing for the bank of increased economic norms; c) increase of reserves for covering of possible losses with credits and other assets; d) limitation, termination or suspension of some high risk transactions performed by the bank; e) prohibiting to extend blank credits; f) imposing of fines on: <ol style="list-style-type: none"> bank managers in amount up to one hundred untaxed minimum personal incomes; banks under the provisions approved by the Board of the National Bank of Ukraine but in amount not more than 1 percent of the sum of the registered authorized fund. g) temporary prohibition to the holder of essential participation in the bank to use its voting right of acquired shares (pays) in case of gross or systemic violation by this person of the requirements of the present Law or regulatory legal acts of the National Bank of Ukraine; h) temporary removal of the bank official from his/her office until the violation is eliminated, in case of gross or systemic violation by this person of the requirements of the present Law or regulatory legal acts of the NBU; i) bank reorganization; g) appointment of provisional administration. <p>In case of violation of the present Law or regulatory legal acts of the NBU which caused a significant loss of assets or income and brought about the signs of insolvency of a bank, the NBU shall have the right to revoke the license and initiate the procedure for the bank liquidation under the provisions of the present Law.</p> <p>In case a corpus delicti was not found in actions of the manager of a bank or an individual or representative of a legal entity – holder of essential participation, which was accused of committing of a crime, but the requirements of the present Law or regulatory legal acts of the NBU were violated, or in case this person was found guilty of committing of profit-</p>

	<p>oriented crime with imposing of penalty without imprisonment, the NBU shall have the right to issue a Resolution on discharging of such a person from his/her office or prohibit him/her to use his/her voting right of acquired shares (pays).</p> <p>A person, which on the basis of the Resolution of the National Bank of Ukraine was discharged from his/her office or temporarily prohibited to use his/her voting right of acquired shares (pays), can be rehabilitated only on the basis of the preliminary permit of the NBU.</p> <p>A Resolution of the National Bank of Ukraine on appointment of a provisional administration shall be an executive document.</p> <p>Under the Article 74 of the Law of Ukraine on Banks and banking foresee fines imposed on managers and officials of a bank, individuals – holders of essential participation in accordance with the procedure envisaged by the Code of Ukraine On Administrative Offences.</p> <p>The procedure for taking of enforcement measures, envisaged by the present Law, as well as the amount of financial sanctions imposed on banks and other legal entities, subject to supervisory activity of the NBU, shall be established by laws of Ukraine and regulatory legal acts of the NBU.</p> <p>Particularly, with the purpose of improvement of the system of enforcement measures for violation of bank legislation, the Board of the NBU adopted Resolution of the NBU No. 369.</p>
Recommendation on MONEYVAL Report	<i>In addition, the Law on Banks and Banking should be adequately amended so that the withdrawal of a bank license does not only cover cases when the violations induced “a significant loss of assets or income”</i>
Measures taken to implement the Recommendation	The Article 23 part 5 of the new AML/CFT Law provide termination or cancel the license for repeated violations of the current Law requirements or AML/CFT normative-legal acts.
Recommendation on MONEYVAL Report	<i>There is no evidence for appropriate sanctioning regime and practice over the foreign exchange offices and money transfer providers. The authorities should review the situation and take necessary measures in this respect</i>
Measures taken to implement the Recommendation	<p>The procedure of application and types of enforced measures (sanctions) to the bank for violation of requirements:</p> <p>a) bank legislation and/or normative-legal acts of the NBU on financial monitoring (hereinafter – bank legislation) – is regulated by norms of the Provision on applying by the NBU of enforced measures for violation of bank legislation, approved by the Resolution of the Board of the NBU as of 28.08.2001 № 369.</p> <p>According to the Article 73 of the Law of Ukraine On Banks and Banking and Resolution of the NBU №369 for violation of the bank legislation there is provided the right of the NBU to take to equally committed violation such enforced measures as:</p> <ul style="list-style-type: none"> - written warning; - imposing a fine: <ul style="list-style-type: none"> to the bank: in the amount of 0,01 % from the sum of registered statutory capital (for each violation). The total sum of fine for the same type violations, revealed in course of inspection shall not be more than 1% from the sum of registered statutory capital of the bank; to managers of the bank: in the amount up to 100 untaxed minimum incomes of citizens; - restriction, stopping or suspension of individual kinds of conducted by the bank transactions with high level of risk;

	<ul style="list-style-type: none"> - keeping away of official of the bank from the position; <p>The procedure of application and kinds of enforced measures (sanctions) to the bank for violation of requirements of the AML/CFT Law is regulated by norms of the Resolution of the NBU as of 17.03.2003 No. 108 On the Procedure of Imposing by the NBU of Fines for Violation by Banks of Requirements of the AML/CFT Law.</p> <p>Application to the bank of such sanction is performed under the certain appeal of the NBU.</p> <p>The NBU conducts selection of adequate enforced measures applying to banks considering:</p> <ul style="list-style-type: none"> - character of performed by the bank violations; - reasons, which caused arise of revealed violations; - general financial state of the bank and the level of capital sufficiency; - volume of possible negative outcomes for creditors and depositors. <p>Moreover, the following factors are also taken into consideration:</p> <ul style="list-style-type: none"> - repeatability of committed violations (for which relevant sanctions to the bank or its officials have been earlier applied); - relation of number of branches and facts of revealing of violations in their activity to general number of branches of the bank, subjected to inspection (such relation indicates the system of revealed offences). <p>Also, in each case it is clarified:</p> <ul style="list-style-type: none"> - what negative outcomes arose or could arise as the result of commitment by the bank of such violation (violations); - how violation influenced on risks of bank application in order to legalize the proceeds from crime; - what measures are taken by the bank to avoid and not to admit such violation in the future. <p>It should be mentioned that under subparagraph 2.1 of the Instruction on the procedure of organization and carrying out of currency exchange transactions at the territory of Ukraine, No. 502 to open currency exchange offices for carrying out currency exchange have right the following:</p> <p>bank, which had obtained bank license and written permission of the NBU to conduct non-trading transactions with currency valuables;</p> <p>financial institutions, which obtained general license of the NBU for carrying out of currency exchange transactions.</p> <p>Thus, the inspection of currency exchange office is conducted in course of inspection of the bank, which had opened such exchange office.</p>
(Other) changes since the last evaluation	

Recommendation 21 (Special attention for higher risk countries)	
Rating: Non compliant	
Recommendation under MONEYVAL Report	<i>The financial institutions should be explicitly required to give special attention to business relationship and transactions with persons from or in countries which do not or insufficiently apply FATF recommendations</i>
Measures taken to implement the Recommendation of the Report	The new AML/CFT Law foresees the obligation of reporting entity to take relevant preventive measures aimed at: enhancing customer identification before establishing business relations with persons or companies from or in such countries which do not or insufficiently apply FATF recommendations; systematical reporting on financial

	<p>transactions with customers of relevant countries; warning of non-financial sector representatives about that transactions with natural or legal persons in relevant countries could contain ML/FT risk (Article 6 part 5 (2)).</p> <p>Also, the Article 14 part 5 of the new AML/CFT Law provide that the entities of state financial monitoring shall compose the list of countries which do not or insufficiently apply recommendations of international, intergovernmental organization, the activity of which is directed on combating money laundering or terrorist financing, and shall define and elaborate the procedure for taking relevant preventive measures: pay special attention while coordinating the establishment of the branches, offices or subsidiaries of the reporting entities in such countries; notify non-financial sector reporting entities on ML/TF risk while conducting financial transactions with natural or legal persons in relevant country; restriction of the business relations or financial transactions with the relevant country or persons in such country etc.</p> <p>Moreover, the Cabinet of Ministers of Ukraine approved by its Resolution as of August 28, 2010 No 765 the Procedure of determination of countries (territories) that do not address or improperly address recommendations of AML/CFT international, intergovernmental organizations.</p>
Recommendation under MONEYVAL Report	<p><i>The Ukrainian authorities should amend laws and regulations to provide for a clear obligation for examining, as far as possible, the purpose and background of financial transactions with persons from or in countries that do not implement or insufficiently implement FATF recommendations, if they have no apparent economic or visible lawful purpose</i></p>
Measures taken to implement the Recommendation of the Report	<p>Article 6 part 2 (3 and 24) of the AML/CFT Law establishes obligations for reporting entities, in particular: ensure detection of financial transactions, subjected to financial monitoring, prior to its execution, in the process of its execution, in the day of suspicions arise, after execution, or in attempted transaction or if the client refused its conduction;</p> <p>verify purpose and nature of future business relations with clients.</p> <p>Under the Article 11 part 1 of the AML/CFT Law reporting entity shall be obliged to manage ML/TF risks considering of the results of customer identification, services provided to customer, analysis of conducted customer's transactions and their correspondence to financial condition and nature of the client's activity.</p> <p>According to the Article 16 part 1 (1) of the AML/CFT Law a financial transaction shall be subjected to internal financial monitoring if it has one or more indicators designated by this Article or contains other risks, complex or unusual character of financial transaction or aggregate of connected financial transactions without apparent economic or visible lawful purpose.</p>
Recommendation under MONEYVAL Report	<p><i>Authorities should make sure that there is an appropriate legal basis which enables to apply appropriate counter measures, for all financial institutions and in all cases where transactions, businesses or other relationships involve countries that continue not to apply or insufficiently apply the FATF Recommendations</i></p>
Measures taken to implement the Recommendation of the Report	<p>Under the Article 6 part 5 (2) the reporting entity shall take relevant preventive measures directed on: enhancement of the client identification prior to establishing business relations with persons or companies from such countries; systematical notification on financial transactions with clients from relevant countries; notification of the non-financial sector that transactions with natural or legal persons in the relevant countries could bear ML/TF risk.</p> <p>Moreover, new AML/CFT Law provide that the entities of state financial monitoring shall compose the list of countries which do not or insufficiently apply recommendations of international, intergovernmental organization, the activity of</p>

	<p>which is directed on combating money laundering or terrorist financing, and shall define and elaborate the procedure for taking relevant preventive measures: pay special attention while coordinating the establishment of the branches, offices or subsidiaries of the reporting entities in such countries; notify non-financial sector reporting entities on ML/TF risk while conducting financial transactions with natural or legal persons in relevant country; restriction of the business relations or financial transactions with the relevant country or persons in such country etc (Article 14 part 5).</p> <p>As well SCFM of Ukraine adopted the Order No 110 as of 14.07.2010 On Procedure of applying preventive measures concerning countries that do not address or improperly address recommendation of international, intergovernmental organizations.</p>
(Other) changes since the last evaluation	

Recommendation 22 (Foreign branches & subsidiaries)

Rating: Partially compliant	
Recommendation under MONEYVAL Report	<i>Apart from the special situation for banks, other financial institutions are not required to pay particular attention to their subsidiaries and branches in countries which do not or insufficiently apply the FATF Recommendations and this should be addressed</i>
Measures taken to implement the Recommendation of the Report	<p>The AML/CFT Law establish that taking measures prescribed by AML/CFT legislation, shall be provided directly by reporting entity (including non-banking institutions), its affiliates, other separate subdivisions and subsidiaries, including located in countries, which do not or insufficiently apply the FATF Recommendations, in frameworks determined by legislation of such country. If applying of such measures is not allowed by legislation of such country, reporting entities shall be obliged to inform about this SCFM of Ukraine and relevant state financial monitoring entity.</p> <p>Simultaneously reporting entity shall take relevant preventive measures aimed at: enhancing customer identification before establishing business relations with persons or companies from such countries; systematical reporting on financial transactions with customers of relevant countries; warning of non-financial sector representatives that transactions with natural or legal persons in relevant countries could contain ML/FT risk (Article 6 part 5).</p>
Recommendation under MONEYVAL Report	<i>There is no requirement for all financial institutions to ensure implementation of the higher AML/CFT standard by their foreign subsidiaries and branches, to the extent that local laws and regulations permit. Authorities should take appropriate steps to alter the language of the Basic Law, accordingly</i>
Measures taken to implement the Recommendation of the Report	<p>The AML/CFT Law establish that taking measures prescribed by AML/CFT legislation, shall be provided directly by reporting entity (including non-banking institutions), its affiliates, other separate subdivisions and subsidiaries, including located in countries, which do not or insufficiently apply the FATF Recommendations, in frameworks determined by legislation of such country. If applying of such measures is not allowed by legislation of such country, reporting entities shall be obliged to inform about this ACFM of Ukraine and relevant state financial monitoring entity.</p> <p>Simultaneously reporting entity shall take relevant preventive measures aimed at: enhancing customer identification before establishing business relations with persons or companies from such countries; systematical reporting on financial transactions</p>

	with customers of relevant countries; warning of non-financial sector representatives that transactions with natural or legal persons in relevant countries could contain ML/FT risk (Article 6 part 5).
(Other) changes since the last evaluation	

Recommendation 23 (Regulation, supervision and monitoring)	
Rating: Partially compliant	
Recommendation under MONEYVAL Report	<i>The SCFSMR should start conducting AML/CFT on-site supervision of the Ukrposhta and enhance off-site supervision</i>
Measures taken to implement the Recommendation of the Report	In 2009 SCFSMR examined Ukrposhta, which provides wire transfers, on complying with AML/CFT legislation.
Recommendation under MONEYVAL Report	<i>Authorities are advised to provide for a clear definition of the term “irreproachable business reputation”, that will be apparent to all banks’ stakeholders</i>
Measures taken to implement the Recommendation of the Report	The Article 1 of AML/CFT Law of Ukraine provides for that perfect business reputation is collection of confirmed information on the person that enables to conclude regarding compliance of his/her activity with the requirements of the legislation, and for natural persons – on appropriate professional and management skills and absence of conviction for mercenary crimes and crimes in economic sphere, not quashed and not extinguished pursuant to the procedure prescribed by the law.
Recommendation under MONEYVAL Report	<i>The legal provisions for non-banking financial institutions (excluding to some extent asset management companies) do not provide for an explicit barrier of criminals, or their beneficial owner, from holding a significant or controlling interest in a securities firm</i>
Measures taken to implement the Recommendation of the Report	Article 14, part 2 (11,12) oblige the regulators to verify reputation of managers and controllers of the financial institutions and to prevent the criminal from essential share in the financial institutions.
Recommendation under MONEYVAL Report	<i>The “fit and proper” criteria for persons having a significant or controlling interest in the non-banking financial institutions (except to a certain degree the securities firms) and their senior managers are very limited.</i>
Measures taken to implement the Recommendation of the Report	Draft Law of Ukraine on Introducing Amendments to the Law of Ukraine on Financial Services Market Regulation provides for that legal or natural person, intending to purchase essential part in financial institution or to increase in the way that such persons, directly or indirectly, will own or control 10, 25, 50 and 75 percent

	<p>of statutory capital of financial institution or voting right under purchased shares (parts) in bodies of financial institution, shall be obliged to obtain written approval of agency for state regulation of financial services markets, if other is not prescribed by laws on state regulation of separate financial services markets. For obtaining such approval applicant shall submit to noted agency information prescribed by normative legal acts of such agency, including about financial status and business reputation of future owner of essential part in financial institution. Agency shall not submit written approval for purchase, increasing of essential part in financial institution in following cases:</p> <ol style="list-style-type: none"> 1) incomplete package of documents was submitted, designed by normative legal acts, or unreliable information was submitted, or submitted documents don't comply with requirements of this Law or noted acts; 2) person, who purchases essential part, has non-extinguished or non quashed conviction, or this person has been working for last 10 years as Head, member of Board or chief accountant of bankrupted financial institution, financial institution subjected to the procedure of coercive liquidation, or subjected to the enforcement measures by the agency for state regulation of financial services markets in the way of dismissal of the leadership from management of the financial institution and appointment of temporary administration. <p>If such person is a legal person, this requirement covers members of executive body and supervising council of legal person, as well as owners of essential part in financial institution, who are natural persons;</p> <ol style="list-style-type: none"> 3) business reputation or financial status of person, who purchase essential part in financial institution, are non-compliant with requirements of this Law or normative legal acts of agency for state regulation of financial services markets; 4) any person, who purchase essential part in financial institution, has no own funds in amount sufficient to purchase essential part in financial institution, and/or sources of origin of funds placed in statutory capital have no confirmation, etc. <p>After this draft Law passing by the Parliament of Ukraine, there will be legislation supported criteria for the persons owning essential share or control stock in non banking financial institutions.</p>
Recommendation under MONEYVAL Report	<i>Supervisory procedures of the SCSSM and the SCFSMR should cover risk-based analysis and supervision on consolidated basis</i>
Measures taken to implement the Recommendation of the Report	According to Article 14, part 2 (3) of AML/CFT Law the reporting entities shall ensure regulation and supervision considering AML/CFT policies, procedures and control systems, risk assessment in order to detect the compliance of measures taken by reporting entities and reduce risks within the activity of relevant reporting entities.
Recommendation under MONEYVAL Report	<i>Regardless of the possible low risk associated with the foreign exchange offices, there has to be an adequate AML/CFT framework in place that will enable AML/CFT supervision and resources allocated for this purpose.</i>
Measures taken to implement the Recommendation of the Report	<p>According to the Clause 2.1 of Instruction of NBU № 502 the followings shall have the right to open exchange offices for providing currency exchange transactions:</p> <p>Banks which obtain banking license and written permission of National Bank of Ukraine (NBU) on providing non-trade transactions with currency;</p> <p>Financial institutions which obtain general license of NBU on providing transactions with currency.</p> <p>Simultaneously, the Clause 1.1 of Instruction of NBU № 502 establish that:</p> <p>Exchange office shall be a structural unit opened by bank (financial institution), including on the basis of agent agreements with legal persons – residents, and national postal operator, where currency exchange transactions are provided for</p>

	<p>natural persons – residents and non-residents according to this Instruction and other normative legal acts of NBU;</p> <p>Agent shall be a legal person – resident listed to State Register of financial institutions or legal person, which is not financial institution and has right to provide currency exchange services under procedure established by legislation of Ukraine and which concluded agent agreement with bank according to the legislation of Ukraine on providing in the name of bank currency exchange transactions in exchange office.</p> <p>The Clause 1.3 of Instruction of NBU № 502 prescribes that transaction on amount that exceeds UAH 15 000 shall be provided only in cash desk of bank, financial institution, in operational hall of postal service after identification of person who provides cash transaction with mentioning surname, name of person in references and receipts.</p> <p>Thus, examining of exchange office is being provided during examining of financial institution which opened such exchange office.</p>
Recommendation under MONEYVAL Report	<i>The SCSSM is encouraged to continue its action aimed at decreasing the number of fictitious companies.</i>
Measures taken to implement the Recommendation of the Report	<p>Under the results of its activity in 2009, State Commission for Securities and Stock Market cancelled registration of shares issue and annulled certificates on registration of shares issue to 48 fictitious joint stock companies.</p> <p>In the 1 half of 2010 Commission took decisions on suspending of shares circulation, cancelled registration of shares issue and annulled certificates on registration of shares issue to 24 fictitious joint stock companies.</p>

Recommendation 24 (DNFBP - regulation, supervision and monitoring)

Rating: Non compliant

Recommendation under MONEYVAL Report	<i>The existing licensing regime of gambling institutions seems to draw a number of inconsistencies, which sets a risk for different implementation, misuse and unequal treatment of the members of this market. These inconsistencies should be eliminated and all necessary criteria regarding the owners and managers of gambling institutions should be introduced</i>
Measures taken to implement the Recommendation of the Report	<p>The regime for applying sanctions to gambling institutions was regulated by the Law of Ukraine On Licensing of Certain Business Activities.</p> <p>From the day of enactment of the Law of Ukraine On Prohibition of Gambling business entities that may undertake the activity on organization and conducting gambling are absent in Ukraine.</p>
Recommendation under MONEYVAL Report	<i>Ukraine is urged to review the current regulatory and supervisory regime applicable to gambling institutions and take legislative and other measures as relevant in order to ensure that casinos are subject to and effectively implementing the AML/CFT measures required under the FATF recommendations</i>
Measures taken to implement the Recommendation of the Report	<p>From the day of enactment of the Law of Ukraine On Prohibition of Gambling business entities that may undertake the activity on organization and conducting gambling are absent in Ukraine.</p> <p>AML/CFT Law obliged Ministry of Finance of Ukraine to provide regulation and supervision over AML/CFT sphere, in particular, over business entities which hold gambling including virtual casinos (Article 14).</p> <p>Under AML/CFT Law Ministry of Finance of Ukraine as entity of state financial monitoring shall be obliged, in particular, to impose sanctions.</p>

Recommendation under MONEYVAL Report	<i>Despite the positive trend in the last 2 years, the sanctioning regime over gambling institutions cannot be regarded as proportionate and dissuasive. This situation should be addressed through relevant changes to the legal framework</i>
Measures taken to implement the Recommendation of the Report	Article 23 of AML/CFT Law provides for responsibility for violation of the requirement of this Law, including for DNFBP.
Recommendation under MONEYVAL Report	<i>Ukraine should also develop plans to deal efficiently with unlicensed gambling. It should also take measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in or being an operator of a casino</i>
Measures taken to implement the Recommendation of the Report	The regime for applying sanctions to gambling institutions was regulated by the Law of Ukraine On Licensing of Certain Business Activities. From the day of enactment of the Law of Ukraine On Prohibition of Gambling business entities that may undertake the activity on organization and conducting gambling are absent in Ukraine. Besides, the Article 14 of AML/CFT Law provides for the obligation of state regulators: take according to legislation actions on verification irreproachable business reputation of persons conducting management and control over reporting entities; take actions according to legislation in order to avoid access to the management of reporting entities, direct or indirect significant participation in such entities of persons who have a record of conviction for mercenary crime or terrorism that have not been quashed and expunged in procedure designated by the law; in cases prescribed by the legislation take actions on prevention forming statutory funds of the relevant reporting entities at the expense of the funds sources of which are impossible to confirm.
Recommendation under MONEYVAL Report	<i>As regards the other categories of DNFBP, once the relevant AML/CFT requirements are introduced, Ukraine should also ensure that DNFBP are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements in line with Recommendation 24.</i>
Measures taken to implement the Recommendation of the Report	After AML/CFT Law Ukraine entering into force SCFM of Ukraine regulatory and supervisory agencies will ensure efficient monitoring of DNFBPs and compliance with provisions of Recommendation 24.
(Other) changes since the last evaluation	

Recommendation 27 (Law enforcement authorities)

Rating: Partially compliant

Recommendation under MONEYVAL Report	<i>Ukraine should review the current situation in the light of the specific concerns raised by the law enforcement agencies, evaluate the existing practical implementation problems related to the procedures applicable to ML/TF investigations and take necessary measures in order to address these concerns and prevent risks of duplication of efforts.</i>
Measures taken to implement the Recommendation of	With purpose of improving procedure for submitting and efficiency of consideration of case referrals, including establishment of cooperation between regional subdivisions of SCFM of Ukraine and law enforcement authorities, the amendment to

the Report	the Procedure of Submitting and Consideration of Case Referrals approved on 28.11.2006 were introduced by joint Order of SCFM of Ukraine, STA, MIA and SS of Ukraine dated 29.01.09 under No. 11/33/24/53.
Recommendation under MONEYVAL Report	<i>The procedures for obtaining documents and information to be used in investigations should be carefully examined and modified.</i>
Measures taken to implement the Recommendation of the Report	see the answer to R. 4
(Other) changes since the last evaluation	

Recommendation 29 (Supervisors)	
Rating: Partially compliant	
Recommendation under MONEYVAL Report	<i>Apart from the NBU, the extent to which sample testing is included as part of the on-site supervisory actions of SCFSMR and the SCSSM is not clear. The supervisory authorities should ensure that sample testing is included as part of their on-site supervisory action</i>
Measures taken to implement the Recommendation of the Report	The Article 14 of the AML/CFT Law provides for the obligation of the entities of state financial monitoring to ensure AML/CFT supervision and regulation taking into account AML/CFT policy, procedures, controls, and risks assessment in order to define the compliance of measures taken by the reporting entities and to reduce risks within the activity of relevant reporting entities.
Recommendation under MONEYVAL Report	<i>There are no explicit provisions that specify the scope of the AML/CFT supervision and the power of enforcement of foreign exchange offices</i>
Measures taken to implement the Recommendation of the Report	<p>According to the Clause 2.1 of Instruction of National Bank of Ukraine № 502 the followings shall have the right to open exchange offices for providing currency exchange transactions:</p> <p>Banks which obtain banking license and written permission of NBU on providing non-trade transactions with currency;</p> <p>Financial institutions which obtain general license of NBU on providing transactions with currency.</p> <p>Simultaneously, the Clause 1.1 of Instruction of NBU № 502 establish that:</p> <ul style="list-style-type: none"> - Exchange office shall be a structural unit opened by bank (financial institution), including on the basis of agent agreements with legal persons – residents, and national postal operator, where currency exchange transactions are provided for natural persons – residents and non-residents according to this Instruction and other normative legal acts of NBU; - Agent shall be a legal person – resident listed to State Register of financial institutions or legal person, which is not financial institution and has right to provide currency exchange services under procedure established by legislation of Ukraine and which concluded agent agreement with bank according to the legislation of Ukraine on providing in the name of bank currency exchange transactions in exchange office.

	<p>The Clause 1.3 of Instruction of NBU № 502 prescribes that transaction on amount that exceeds UAH 15 000 shall be provided only in cash desk of bank, financial institution, in operational hall of postal service after identification of person who provides cash transaction with mentioning surname, name of person in references and receipts.</p> <p>Thus, examining of exchange office is being provided during examining of financial institution which opened such exchange office.</p>
Recommendation under MONEYVAL Report	<i>All sectoral laws, apart from the specific situation for banks, do not enable removal of directors and senior managers as a result of non-compliance with legislation. This issue should be revisited as recommended in the report</i>
Measures taken to implement the Recommendation of the Report	The Article 23, part 6 of AML/CFT Law empowers the regulators to dismiss an official of the reporting entity for gross violation of AML/CFT requirements.
Recommendation under MONEYVAL Report	<i>According to the Law on Banks and Banking, NBU can impose sanctions if it detects violation of the banking legislation. There is no clear reference that the Basic Law is considered as part of the banking legislation, which could constrain its efficient implementation. This issue should be adequately addressed by the authorities</i>
Measures taken to implement the Recommendation of the Report	- AML/CFT Law (Art 23) explicitly gives supervisors (including NBU) power to apply sanctions for the violation of AML/CFT Law
Recommendation under MONEYVAL Report	<i>In addition, the authorities are advised to reconsider the provisions of the Law on Banks and Banking with regard to the possibility to remove managers from office.</i>
Measures taken to implement the Recommendation of the Report	<p>According to the Article 73 of Law On Banks and Banking and Resolution of NBU № 369 National Bank of Ukraine appropriately to committed violation shall have the right to apply such influence measures, in particular, as removal official of bank from position, in 2009 2 persons were removed.</p> <p>Art 23 Part 6 of the new AML/CFT Law explicitly gives supervisors (including NBU) power to remove managers from office for the severe non-compliance with AML/CFT Law or regulations.</p>
Recommendation under MONEYVAL Report	<i>The sanctioning regime implemented with the existing AML/CFT legislation allow for imposing different sanctions, depending on the type of non-compliance (with the Basic Law or with the sectoral laws). Since this situation could create uncertainty, the system could benefit from clearer provisions in terms of the sanctions that should be imposed.</i>
Measures taken to implement the Recommendation of the Report	- Art 23 of the new AML/CFT Law provides range of sanctions that should be applied by supervisor agencies.
(Other) changes since the last evaluation	

Recommendation 30 (Resources, integrity and training)

Rating: Partially compliant	
Recommendation under MONEYVAL	<i>Improve and implement adequate training programs in order to enhance the capacity of prosecutors to investigate and prosecute ML cases and of judges to effectively apply</i>

Report	<i>article 209, in particular on the types and levels of evidence which the court might consider acceptable to prove the physical and mental elements of the offence</i>
Measures taken to implement the Recommendation of the Report	<p>The training program of the National Prosecutor’s Academy of Ukraine foresees during whole training year studies for listeners of all categories on the topic: “Methodic of revealing, disclosure and investigating criminal cases on ML crimes and providing repayment of damages from crime, as well as features of supporting state case in criminal cases of mentioned category”.</p> <p>Moreover, the National Prosecutor’s Academy of Ukraine published training guidance “Detecting, disclosing and investigating of the legalization (laundering) of the proceeds from crime (Article 209 of Criminal Code of Ukraine)”.</p> <p>According to the Article 1 of the Law judicial authorities fulfill their powers exceptionally on grounds, in frameworks and procedure provided for by the Constitution of Ukraine and laws. According to the Article 47 of the Law powers of the Supreme Court of Ukraine cover providing courts with explanations on application of the legislation on the base of generalizing of judicial opinion and analyzing of judicial statistics.</p> <p>On the ground of carried out by the Supreme Court of Ukraine generalizing of judicial opinion of consideration of criminal cases on crimes related to legalization (laundering) of the proceeds from crime (Article 209 of the Criminal Code of Ukraine) on April 15, 2005 there was adopted the resolution of Plenum of the Supreme Court of Ukraine No. 5 “On Practice of applying by courts of the legislation on criminal responsibility for legalization (laundering) of the proceeds from crime (hereinafter referred as to the resolution), which properly explain courts on the same and correct applying of the legislation while considering cases of the mentioned category. In particular, in paragraph 11 of the resolution courts are explained on that bringing of the person to criminal responsibility under the Article 209 of the Criminal Code of Ukraine is possible on condition that the fact of obtaining by him of the proceeds or other property as a result of commitment of predicate offence is determined by court in relevant procedural documents (resolution, verdict, judicial decision etc.) as well as in case, when he hasn’t been brought to criminal responsibility for predicate offence. In the final case the person is simultaneously brought to criminal responsibility for predicate offence as well as for legalization (laundering) of the proceeds or other property obtained from its commitment, that is under the amount of these crimes, realizing that he commits legalization of such proceeds (property).</p> <p>In 2007 the Supreme Court of Ukraine has repeatedly generalized judicial opinion of criminal cases consideration of this category, which showed that courts basically follow requirements of the legislation and explanations of the resolution, in particular, and stated in paragraph 11. In overwhelming majority of cases guilty persons are convicted under amount of committed crimes: as a rule, for crime against ownership or official crime and crime the structure of which is provided for by Article 209 of the Criminal Code of Ukraine, that is for commitment of predicate act as well as for legalization of illegal proceed. The above mentioned concludes that courts of Ukraine take into consideration Recommendations of the experts of the Committee stated in part 2 of Questionnaire (Recommendation 1).</p> <p>Also, in 2008 the Supreme Court of Ukraine generalized judicial opinion of consideration of cases on administrative responsibility for violation of requirements of the Law of Ukraine dated 5.10.1995 № 356/95-BP “On Fight Against Corruption” and criminal cases on official crimes with features of corruption acts. Generalizing showed that between entities violations or criminal offence of politicians or persons, who occupied especially high official positions were absent.</p> <p>Kyiv National University of Interior according to the program of training specialists of</p>

education and qualification levels such as “bachelor” and “specialist” under occupation “Fight with economic crime in 7th semester of 4th course of study provides for studying of the topic “Legal and organizational bases of counteraction to legalization (laundering) of the proceeds from crime” (per 4 hours of lecture and seminar studies) on subject matter “Economic safety” and topics “Revealing and documenting of legalization (laundering) of the proceeds from crime (per 4 hours of lecture and seminar studies) on subject matter “Operative and search activity”.

25 officials of special subdivisions on fight against organized crime were professionally developed on “Fight against legalization (laundering) of the proceeds from crime” on the base of the Academy of the Ministry of Interior of Ukraine in 2009. In 2010 specialization on the mentioned direction is planned on October on the base of Kyiv National University of Interior (17 officials) and professional development on the base of the Academy - on December (20 officials). Moreover, according to thematic plans of the Academy the Ministry of Interior of Ukraine training meetings of managers of district divisions of the Main Board of the Ministry of Interior of Ukraine, the Board of the Ministry of Interior of Ukraine included in reserve of the staff for nomination to leading positions, as well as officials of special subdivisions on fight against organized crime on the topic: “Organization of operative and official activity in the area of fight against organized crime, corruption and counteraction to legalization (laundering) of the proceeds from crime” and also admission of 45 adjuncts for full-time study under the state order performing scientific researches on the mentioned topic.

On execution of paragraph 2 of the directive of the Cabinet of Ministers of Ukraine dated 13.12.2004 № 899-p the State training institution of post-graduate education “Training - Methodical Center of SCFM” holds relevant trainings on professional development of officials of agencies of internal affairs.

During I half a year according to the Schedule of training on professional development on the course “Fight against legalization (laundering) of the proceeds from crime and terrorist financing” 160 officials of territorial entities and subdivisions of interior, including 30 officials of subdivisions on fight against organized crime were trained in Training-Methodical Center of SCFM. In general, Training-Methodical Center of SCFM will conduct training of 320 officials during 2010.

Moreover, the representatives of agencies of internal affairs participated in seminar-practical training on prevention and counteraction to legalization (laundering) of the proceeds from crime and terrorist financing for specialists of regional subdivisions of law enforcement and judicial agencies (30.03.2010), practical seminar on the topic: “National assessment of money laundering risks” (22-23.05.2010), seminar on fight against money laundering and financial crimes, which was held by the Instrument of technical assistance and information exchange (TAIEX) of European Commission (08-09.07.2010), as well as on the topic: “National assessment of money laundering risks”, which was held by the Training-Methodical Center of SCFM jointly with the World bank (29-30.07.2010).

In 2010 training guidance “Counteraction to money laundering in Ukraine. Legal and organizational bases of law enforcement activity”, “Counteraction to legalization (laundering) of the proceeds from crime, methodical recommendations “Revealing, disclosure and investigation of legalization (laundering) of the proceeds from crime (Article 209 of the Criminal Code of Ukraine)” developed by Kyiv National University of Interior, and typologies of legalization (laundering) of the proceeds from crime “Peculiarities and features of transactions related to money laundering through withdrawal of cash. Tactical research and practical investigating”, approved by the order of the SCFM of Ukraine dated 25.12.2009 № 182 were also submitted to

	territorial entities and subdivisions of internal affairs.
Recommendation under MONEYVAL Report	<i>Also, relevant training should be provided to the personnel of law enforcement authorities in the regions which will enable them to obtain more easily documents and information to be used in investigations</i>
Measures taken to implement the Recommendation of the Report	<p>Training - Methodical Center for Retraining and Professional Development of Experts on Financial Monitoring Issues in the Sphere of Combating Legalization (Laundering) of Criminal Proceeds and Terrorist Financing of SCFM, National Academy of Prosecutor's Office of Ukraine, Academy of Judges of Ukraine improved and introduced relevant training programs for enhancing of investigators capability of law enforcement agencies of Ukraine in investigating of criminal cases initiated under crimes indicia, provided by the articles 209 and 306 of the Criminal Code of Ukraine. These programs aim prosecutors at supporting of state accusation in criminal cases of the mentioned category and judges, in the part of effective application of the articles 209 and 306, in particular, regarding types and levels of evidences, which might be acceptable by court for proof of mental and physical elements of crime.</p> <p>Training program of the National Prosecutor's Academy of Ukraine foresees for listeners of various categories during whole training year studies on the topic: "Methodic of revealing, disclosure and investigating criminal cases on ML crimes and providing repayment of damages from crime, as well as features of supporting state case in criminal cases of mentioned category".</p> <p>Moreover, the National Prosecutor's Academy of Ukraine published training guidance "Detecting, disclosing and investigating of the legalization (laundering) of the proceeds from crime (Article 209 of Criminal Code of Ukraine)".</p> <p>Also, in 2009 Kyiv National University of Interior by the instrumentality of Project of Council of Europe (MOLI-UA2) published training guidance "Counteraction to the money laundering in Ukraine. Legal and organizational principles of law enforcement activity". This guidance contains relevant section, in which practical aspect of tactics for concrete investigating actions and typical investigating situations are considered.</p> <p>The order of the State Tax Administration of Ukraine dated 30.12.2009 № 740 "On organization of professional development of officials of authorities of State Tax Service of Ukraine in 2010" approved Plan-schedule of carrying out of trainings of managers and specialists of authorities of state tax service in Center of retraining and professional development of leading staff of authorities of state tax service of Ukraine.</p> <p>On March 2010, the SCFM organized and held practical seminar on prevention and counteraction to legalization (laundering) of the proceeds from crime and terrorist financing for specialists of district subdivisions of law enforcement agencies and judges. The same practical seminars were organized and held in regions of Ukraine by 20 regional subdivisions of the SCFM during February and March.</p> <p>25 officials of special subdivisions on fight against organized crime were professionally developed on "Fight against legalization (laundering) of the proceeds from crime" on the base of the Academy of the Ministry of Interior of Ukraine in 2009. In 2010 specialization on the mentioned direction is planed on October on the base of Kyiv National University of Interior (17 officials) and professional development on the base of the Academy - on December (20 officials).</p> <p>Moreover, according to thematic plans of the Academy the Ministry of Interior of Ukraine training meetings of managers of district divisions of the Main Board of the Ministry of Interior of Ukraine, the Board of the Ministry of Interior of Ukraine included in reserve of the staff for nomination to leading positions, as well as officials of special subdivisions on fight against organized crime on the topic: "Organization of operative and official activity in the area of fight against organized crime, corruption and counteraction to legalization (laundering) of the proceeds from crime" and also</p>

	<p>admission of 45 adjuncts for full-time study under the state order performing scientific researches on the mentioned topic.</p> <p>During 1-st half a year according to the Schedule of training on professional development on the course “Fight against legalization (laundering) of the proceeds from crime and terrorist financing” 160 officials of territorial entities and subdivisions of interior, including 30 officials of subdivisions on fight against organized crime were trained in Training-Methodical Center of SCFM. In general, Training-Methodical Center of SCFM will conduct training of 320 officials during 2010.</p> <p>The order of the State Tax Administration of Ukraine dated 31.08.09 № 467 “On organization of professional training of officials of tax Militia of the State Tax administration of Ukraine in 2009-2010 training year” approves the Topic of trainings together with officials of tax militia on official and special training in 2009-2010 training year. According to the above mentioned Topic of training the following studying is provided: for operative officials of tax militia – methodical recommendations on the procedure of disclosure bank secrecy, for investigators of tax militia – the letter of the Supreme Court of Ukraine dated 29.03.06 № 1-5/162 On Disclosure of Bank Secrecy.</p>
Recommendation under MONEYVAL Report	<i>Despite existing policy efforts to eliminate corruption, it is recommended to pursue current efforts in this area to ensure that they do not impede law enforcement authorities’ action.</i>
Measures taken to implement the Recommendation of the Report	<p>On June 2010 the Parliament adopted the Law On Responsibility of Legal Persons for Commitment of Corruption Offences, that is for commitment them by the leadership or by other authorized persons on behalf of and for the benefit of legal person of a set of criminal offences. In particular, responsibility of legal persons is provided for legalization (laundering) of the proceeds from crime, abuse of power or official position, superiority of power or official powers, obtaining or giving of bribe as well as interference in operation of judicial authorities. For such offences court may inflict a penalty on legal persons in the form of fine, prohibition to conduct relevant type of activity, confiscation of property or liquidation of legal person. Also, the Law determines the procedure of consideration in court of cases on the mentioned offences committed by legal persons.</p> <p>Moreover, responsibility for corruption actions are established for persons, who aren’t state officials but fulfill functions of power. In particular, responsibility is established for private auditors and notaries, experts, lawyers as well as other persons carrying out professional activity related to providing of public services for application of their powers in order to obtain illegal benefit for themselves or for other persons for the purpose of doing harm to rights and interests of individual citizens, legal persons, interests of society and state. If these actions did essentially harm to, in this case responsibility in the form of corrective works for the period up to 2 years or arrest up to 6 months or an imprisonment up to 3 years with deprivation of right to occupy some positions or to carry out certain activity up to 3 years is established. If such actions caused serious consequences, responsibility in the form of imprisonment from 5 up to 8 years with confiscation of property is foreseen.</p>
Recommendation under MONEYVAL Report	<i>Furthermore, given that the evaluation team was not in a position to review the relevant framework covering requirements of professional standards and ethics of conduct, the authorities are recommended to review the current situation and take all necessary measures to ensure that staff of law enforcement authorities are required to maintain high professional and ethic standards</i>
Measures taken to implement the	December 22, 2009 became the day of presentation of guidance for carrying out preventive and consulting measures among officials of state tax service regarding

<p>Recommendation of the Report</p>	<p>prevention of corruptive acts that has been prepared by Anti-corruptive units of state tax service agencies together with the Committee of the Parliament of Ukraine on Combating Organized Crime and Corruption, public organization All-Ukrainian Special Collegium on Combating Corruption and Organized Crime, and US Department of Justice.</p> <p>In 2009 State Security Service of Ukraine together with the General Prosecutor's Office of Ukraine organized and held 4 meetings of Interagency Working Group on Combating Corruption.</p> <p>State Security Service of Ukraine together with General Prosecutor's Office and other interested law enforcement agencies has taken the following measures:</p> <ul style="list-style-type: none"> - Draft Law on establishing special anti-corruptive agency with the powers for conducting pretrial investigation, fight against corruption and coordination of the activities in this sphere – On State (National) Service of Investigation of Ukraine was being processed; - under the results of generalization of international experience the opportunity for implementing in Ukraine appropriate functional model of unified anti-corruptive law enforcement agency has been scrutinized; - with participation of the Supreme Court of Ukraine generalization of court practice for consideration of criminal matters on official crimes with the signs of corruptive acts (Articles 364, 365 and 368 of the Criminal Code of Ukraine), and matters on administrative responsibility for violation of the requirements of the Law of Ukraine dated 5.10.1995 On Fight Against Corruption published in the official site of the Supreme Court of Ukraine has been prepared; - application of the requirements of Articles 10, 11 of the Law of Ukraine on Fight Against Corruption on responsibility of heads and other officials for the failure to take measures against corruption was examined. With the purpose of improving law enforcement activity State Security Service of Ukraine directed regional units to correcting plans of operative and official activities for the second half of 2009 in part of reinforcement measures aimed at detection and registration of appropriate non legal acts of officials; - compliance with the requirements of the legislation at investigation of the crimes with the signs of corruption, provided for by the Article 191 of CC of Ukraine, and on June 26, 2009 has been examined and discussed in General Prosecutor's Office during Joint Interagency Meeting of the law enforcement agencies, under the results of which organizational and practical measures have been taken and notified to the regional prosecutors; - counteraction to corruption in State Tax Administration of Ukraine has been examined and appropriate recommendations aimed at development of these activities have been adopted and forwarded to the leadership of STA of Ukraine; - Main Department of Civil Service of Ukraine in the interaction with the law enforcement agencies of Ukraine ensured systematic conducting of complex examination of state agencies regarding their compliance with the requirements of the Laws of Ukraine on Civil Service of Ukraine, On Fight Against Corruption and other regulations on civil service; - there has been organized round tables "Corruption in Education" in all Ukrainian regions with aim of engaging public, law enforcement and other state agencies of Ukraine to this issue; - efficiency of selection and appointment system of the officials with practical experience in financial control agencies has been increased; - methodical recommendations have been studied by the educational institutions (Yaroslav Mudryi National Academy of Security Service of Ukraine), and other law
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	enforcement agencies with the purpose of explaining the provisions of new anti-corruptive legislation.
Recommendation under MONEYVAL Report	<i>The authorities should also pursue training efforts and provide guidance so as to increase the level of expertise on ML/TF and financial crimes more generally.</i>
Measures taken to implement the Recommendation of the Report	<p>SCFM Training Centre jointly with specialists of SCFM of Ukraine prepared and submitted to Academy for Judges of Ukraine, National Prosecutor's Academy of Ukraine, Kyiv National University of Interior on agreement training program for representatives of law enforcement authorities and courts, in which themes about requirements and procedure complying for obtaining judicial decisions by law enforcement agencies are included.</p> <p>During 2008 Training Centre provided measures on raising skills of 175 representatives of law enforcement and judicial agencies, in accordance during 2009 – 260 representatives of law enforcement and judicial agencies.</p> <p>Training program of National Prosecutor's Academy of Ukraine foresees during whole training year studies (lections, "round tables", science and practical, science and methodical seminars) on the topic: "Methodic of revealing, disclosure and investigating criminal cases on ML crimes and providing repayment of damages from crime, as well as features of supporting state case in criminal cases of mentioned category".</p> <p>In December of 2009 General Prosecutor's Office of Ukraine published scientific and practical guidance "Detecting, disclosing and investigating of the legalization (laundering) of the proceeds from crime (Article 209 of Criminal Code of Ukraine)".</p> <p>On the bases of theoretical analyses and generalized materials of law enforcement practical activity, in theoretical and practical guidance disclosed in complex the main spheres of counteraction to money laundering. Problems of practical fulfillment of current norm in sphere of criminal and criminal procedure law are considered.</p> <p>Special attention is paid to the following issues: problems of qualification of ML crimes, criminal – legal characteristics of such crimes, and features of initiating criminal cases, problems in investigation, and prosecutor's supervision over compliance with legislation while executing investigation actions and submitting criminal case to court, etc.</p> <p>This guidance address for use by specialists in the sphere of law enforcement activity and financial monitoring.</p> <p>On 10.12.2009 scientific and methodical seminar was held on topic "Training and skills raising of operative agents and investigators concerning methodic of detecting, disclosing and investigating criminal cases on crimes with indicators of corruption", on which issues of legalization (laundering) of the proceeds from crime were considered. This seminar was held on the bases of National Academy of Security Service of Ukraine with participating of representatives of law enforcement and supervising agencies.</p> <p>In 2009 Kyiv National University of Interior by the instrumentality of Project of Council of Europe (MOLI-UA2) published training guidance "Counteraction to the money laundering in Ukraine. Legal and organizational principles of law enforcement activity". This guidance contains relevant section, in which practical aspect of tactics for concrete investigating actions and typical investigating situations are considered.</p> <p>Kyiv National University of Interior according to the program of training specialists of education and qualification levels such as "bachelor" and "specialist" under occupation "Fight with economic crime in 7th semester of 4th course of study provides for studying of the topic "Legal and organizational bases of counteraction to legalization (laundering) of the proceeds from crime" (per 4 hours of lecture and</p>

	<p>seminar studies) on subject matter “Economic safety” and topics “Revealing and documenting of legalization (laundering) of the proceeds from crime (per 4 hours of lecture and seminar studies) on subject matter “Operative and search activity”.</p> <p>25 officials of special subdivisions on fight against organized crime were professionally developed on “Fight against legalization (laundering) of the proceeds from crime” on the base of the Academy of the Ministry of Interior of Ukraine in 2009.</p> <p>In 2010 specialization on the mentioned direction is planed on October on the base of Kyiv National University of Interior (17 officials) and professional development on the base of the Academy - on December (20 officials).</p> <p>Moreover, according to thematic plans of the Academy the Ministry of Interior of Ukraine training meetings of managers of district divisions of the Main Board of the Ministry of Interior of Ukraine, the Board of the Ministry of Interior of Ukraine included in reserve of the staff for nomination to leading positions, as well as officials of special subdivisions on fight against organized crime on the topic: “Organization of operative and official activity in the area of fight against organized crime, corruption and counteraction to legalization (laundering) of the proceeds from crime” and also admission of 45 adjuncts for full-time study under the state order performing scientific researches on the mentioned topic.</p> <p>On execution of paragraph 2 of the directive of the Cabinet of Ministers of Ukraine dated 13.12.2004 № 899-p the State training institution of post-graduate education “Training - Methodical Center of SCFM” holds relevant trainings on professional development of officials of agencies of internal affairs.</p> <p>During I half a year according to the Schedule of training on professional development on the course “Fight against legalization (laundering) of the proceeds from crime and terrorist financing” 160 officials of territorial entities and subdivisions of interior, including 30 officials of subdivisions on fight against organized crime were trained in Training-Methodical Center of SCFM. In general, Training-Methodical Center of SCFM will conduct training of 320 officials during 2010.</p> <p>Moreover, the representatives of agencies of internal affairs participated in seminar-practical training on prevention and counteraction to legalization (laundering) of the proceeds from crime and terrorist financing for specialists of regional subdivisions of law enforcement and judicial agencies (30.03.2010), practical seminar on the topic: “National assessment of money laundering risks” (22-23.05.2010), seminar on fight against money laundering and financial crimes, which was held by the Instrument of technical assistance and information exchange (TAIEX) of European Commission (08-09.07.2010), as well as on the topic: “National assessment of money laundering risks”, which was held by the Training-Methodical Center of SCFM jointly with the World bank (29-30.07.2010).</p> <p>In 2010 training guidance “Counteraction to money laundering in Ukraine. Legal and organizational bases of law enforcement activity”, “Counteraction to legalization (laundering) of the proceeds from crime, methodical recommendations “Revealing, disclosure and investigation of legalization (laundering) of the proceeds from crime (Article 209 of the Criminal Code of Ukraine)” developed by Kyiv National University of Interior, and typologies of legalization (laundering) of the proceeds from crime “Peculiarities and features of transactions related to money laundering through withdrawal of cash. Tactical research and practical investigating”, approved by the order of the SCFM of Ukraine dated 25.12.2009 № 182 were also submitted to territorial entities and subdivisions of internal affairs.</p>
Recommendation	<i>The law enforcement and judicial authorities’ competencies in AML/CFT should</i>

under MONEYVAL Report	<i>definitely be strengthened, particularly in the regions, in particular through training developed and/or continued, placing an emphasis on the systematic recourse to financial investigations, the use of existing tools and investigative techniques, analysis and use of computer techniques, and by providing relevant guidance</i>
Measures taken to implement the Recommendation of the Report	<p>According to the order of the State Tax Administration of Ukraine dated 30.12.2009 № 740 “On organization of professional development of officials of authorities of State Tax Service of Ukraine in 2010” , which approves Plan-schedule of carrying out of trainings of managers and specialists of authorities of state tax service in Center of retraining and professional development of leading staff of authorities of State Tax Service of Ukraine in Center of retraining and professional development of leading staff of authorities of State Tax Service of Ukraine (Kyiv) and according to the order of the State Tax Administration of Ukraine dated 05.05.10 № 295, a training for 27 specialists of financial investigations of regional subdivisions of the Department for combating with money laundering under the professional program “Organization of combating with money laundering” is planned to be held from 15.11. up to 27.11.10.</p> <p>Kyiv National University of Interior according to the program of training specialists of education and qualification levels such as “bachelor” and “specialist” under occupation “Fight with economic crime in 7th semester of 4th course of study provides for studying of the topic “Legal and organizational bases of counteraction to legalization (laundering) of the proceeds from crime” (per 4 hours of lecture and seminar studies) on subject matter “Economic safety” and topics “Revealing and documenting of legalization (laundering) of the proceeds from crime (per 4 hours of lecture and seminar studies) on subject matter “Operative and search activity”.</p> <p>25 officials of special subdivisions on fight against organized crime were professionally developed on “Fight against legalization (laundering) of the proceeds from crime” on the base of the Academy of the Ministry of Interior of Ukraine in 2009. In 2010 specialization on the mentioned direction is planned on October on the base of Kyiv National University of Interior (17 officials) and professional development on the base of the Academy - on December (20 officials).</p> <p>Moreover, according to thematic plans of the Academy the Ministry of Interior of Ukraine training meetings of managers of district divisions of the Main Board of the Ministry of Interior of Ukraine, the Board of the Ministry of Interior of Ukraine included in reserve of the staff for nomination to leading positions, as well as officials of special subdivisions on fight against organized crime on the topic: “Organization of operative and official activity in the area of fight against organized crime, corruption and counteraction to legalization (laundering) of the proceeds from crime” and also admission of 45 adjuncts for full-time study under the state order performing scientific researches on the mentioned topic.</p> <p>On execution of paragraph 2 of the directive of the Cabinet of Ministers of Ukraine dated 13.12.2004 № 899-p the State training institution of post-graduate education “Training - Methodical Center of SCFM” holds relevant trainings on professional development of officials of agencies of internal affairs.</p> <p>During I half a year according to the Schedule of training on professional development on the course “Fight against legalization (laundering) of the proceeds from crime and terrorist financing” 160 officials of territorial entities and subdivisions of interior, including 30 officials of subdivisions on fight against organized crime were trained in Training-Methodical Center of SCFM. In general, Training-Methodical Center of SCFM will conduct training of 320 officials during 2010.</p> <p>Moreover, the representatives of agencies of internal affairs participated in seminar-practical training on prevention and counteraction to legalization (laundering) of the proceeds from crime and terrorist financing for specialists of regional subdivisions of</p>

	<p>law enforcement and judicial agencies (30.03.2010), practical seminar on the topic: “National assessment of money laundering risks” (22-23.05.2010), seminar on fight against money laundering and financial crimes, which was held by the Instrument of technical assistance and information exchange (TAIEX) of European Commission (08-09.07.2010), as well as on the topic: “National assessment of money laundering risks”, which was held by the Training-Methodical Center of SCFM jointly with the World bank (29-30.07.2010).</p> <p>In 2010 training guidances “Counteraction to money laundering in Ukraine. Legal and organizational bases of law enforcement activity”, “Counteraction to legalization (laundering) of the proceeds from crime, methodical recommendations “Revealing, disclosure and investigation of legalization (laundering) of the proceeds from crime (Article 209 of the Criminal Code of Ukraine)” developed by Kyiv National University of Interior, and typologies of legalization (laundering) of the proceeds from crime “Peculiarities and features of transactions related to money laundering through withdrawal of cash. Tactical research and practical investigating”, approved by the order of the SCFM of Ukraine dated 25.12.2009 № 182 were also submitted to territorial entities and subdivisions of internal affairs.</p>
Recommendation under MONEYVAL Report	<i>The authorities are recommended to undertake a review of the human and financial capacities of the SCS to ensure that it can adequately take necessary measures to detect and prevent cross border movements of currency and bearer negotiable instruments</i>
Measures taken to implement the Recommendation of the Report	<p>The sector on the issues of counteraction to legalization (laundering) of the proceeds from crime with 9 persons, whose functional tasks cover organization and coordination of activity of customs authorities on counteraction to the proceeds from crime and terrorist financing, providing customs authorities of Ukraine and other state authorities with analytical information on possible complicity of persons in proceeds from crime is created in the State Custom’s Service of Ukraine.</p> <p>In the 2010 by the final court decision two persons were convicted for cash smuggling and \$2mln confiscated as a result of FIU case – see <i>Appendix IV</i> for more details.</p>
Recommendation under MONEYVAL Report	<i>Furthermore, additional efforts should be made to cover through relevant guidance and training issues related to cross border cash and bearer negotiable instruments movements and related ML methods involving the movement of cash to and from Ukraine and raise awareness of customs bodies on ML issues</i>
Measures taken to implement the Recommendation of the Report	<p>Training plans of customs authorities of Ukraine cover issues on carrying out of events on the issues of cross border cash and bearer negotiable instruments movements and related ML methods involving the movement of cash from Ukraine and raise awareness of customs authorities on ML issues, officials of customs authorities of Ukraine on permanent base participate in training and thematic courses, which are conducted by the State Committee for Financial Monitoring of Ukraine.</p>
Recommendation under MONEYVAL Report	<i>Efforts to prevent and sanction corruption within the Customs Service should be pursued</i>
Measures taken to implement the Recommendation of the Report	<p>State Custom’s Service of Ukraine on permanent base applies preventive measures on fight corruption. Thus, the Law of Ukraine dated 06.09.05№ 2805-IV On Disciplinary Statute of Custom’s Service of Ukraine provides for main bases of official discipline, rights and duties of officials of Custom’s Service of Ukraine. Also, the above issues are regulated by Laws of Ukraine On State Service of Ukraine, On Fight against Corruption.</p> <p>One of the priority trends of the State Customs service of Ukraine activity for 2009 approved by the order of the State Customs service of Ukraine dated 28.10.2008 № 1205 shall be ensuring of an effective counteraction to sings of corruption, bribery,</p>

other power abuses, as well as adoption of measures aimed at minimizing of capabilities to commit corruption by officials of the customs authorities.

According to these tasks, the work on execution of the Complex program of adoption measures for the prevention of offences for 2007-2009 approved by the resolution of the Cabinet of Ministers of Ukraine dated 20.12.2006 № 1767, the Action plan on implementation of the Convention of overcoming of corruption in Ukraine On the way to the morality for the period till 2010 approved by the decree of the Cabinet of Ministers of Ukraine dated 15.08.2007 № 657-p was continued in the past year.

The state of following of the anticorruption legislation, counteraction to power abuses and preventive measures in the Customs Service was considered at the meeting of the State Customs of Ukraine Collegium dated 28.07.2009.

In order to reveal and eliminate causes and conditions assisting to commitment of corruption offences, as well as enhancing of warning and preventive measures between officials of customs authorities an analysis of the state of following by the Customs Service of the Law of Ukraine On Fight against Corruption, the results of which were considered while organizing of preventive measures, improvement of interaction with law enforcement agencies regarding issues of counteraction to corruption on the frontier, as well as while identifying main corruption risks of the official activity of the staff was performed.

To execute the decree of the President of Ukraine dated 15.09.2005 № 1276 On providing participation of the community in establishment and implementation of state policy for the purpose of impartial assessment of effective activity of the customs authorities, revealing and preventing of possible abuses their officials, as well as considering of public opinion on the state of following legislation in customs service, the quarterly express opinion poll of citizens, the representatives of the entities of foreign economic activity (carriers) crossing the Customs of Ukraine, as well as declarants after the procedures of customs examination and customs clearance was held.

During the past year the effective operation of confidential telephone of the Customs, which obtained 832 notifications from citizens, representatives of carriers and entities of foreign economic activity on problem issues, which appeared during customs examination and clearance, including 94 – on possible corruption offences and other power abuses of the Customs officials was performed. Under results of examinations of the above mentioned notifications the customs authorities formed minutes on violation of customs rules, for taking decision according to the current legislation 42 information on possible features of commitment by officials of customs authorities of crimes or corruption were submitted to the law enforcement agencies, enforcement measures for committed offences were applied to 124 persons.

For ensuring of frankness and transparency in activity of the Customs Service materials on measures of counteraction to corruption signs and the state of following legislation in State Customs service of Ukraine, on the state of following requirements of the Law of Ukraine On Fight against Corruption, as well as on results of the confidential telephone operation of the State Customs of Ukraine were being regularly publishing on Web-site of the State Customs of Ukraine.

In order to optimize the structure of subdivisions of internal security of the Customs, which tasks are to counteract to corruption, further implementation of forms and methods their operation provisions on Management of internal security of the State Customs of Ukraine approved by the order of the State Customs of Ukraine dated 03.04.2009 № 301 and Exemplary Provision on subdivision of internal security of the Customs, specialized customs institution and organization approved by the order of the Customs dated 08.05.2009 № 432 were developed.

	<p>Also, measures on implementation the system of revealing, preventing and nonadmitting of corruption offences and other power abuses in customs authorities, first of all, through enhancing of control effectiveness for following the legislation by the staff, which directly participates in customs examination and customs clearance of goods and vehicles are adopted.</p> <p>Official investigations and examinations were performed on each revealed fact of offences, reacting measures provided by the Disciplinary Statute of the State Customs Service of Ukraine were applied persons guilty in commitment of offences.</p> <p>In order to clarify conditions of commitment of corruption offences and power abuses 219 official investigations and 1664 examinations were performed in customs authorities during the year.</p> <p>Under results of this work 913 officials of customs authorities were brought to disciplinary responsibility.</p> <p>230 information on possible signs of commitment by officials of customs authorities of official crimes or corruption, including for taking decision in the procedure of the Article 97 of the Criminal-Procedural Code of Ukraine -170, according to the Article 10 of the Law of Ukraine On Fight against Corruption – 60 were initiatively submitted to law enforcement agencies by Customs Offices.</p> <p>Under information received by the Customs from law enforcement agencies under the signs of commitment by Customs officials of official crimes they initiated 77 criminal cases under which 59 officers were accused, also 21 cases were initiated under materials of customs authorities (27,2 % from total amount of initiated cases).</p> <p>102 administrative protocols on corruption or violation of special limitations identified by the Law of Ukraine On Fight against Corruption, which according to materials of customs authorities constitute 28 (27,4 % from the total amount of the formed minutes) were formed by authorized law enforcement agencies in the reporting period.</p> <p>14 officials of the Customs were brought to administrative responsibility for violation of requirements of the Law of Ukraine On Fight against Corruption. According to the Article 30 paragraph 2 of the Law of Ukraine On Civil Service 7 officials were removed from the service in customs authorities.</p> <p>In order to prevent commitment of corruption and other official offences according to the Provision on prevention of offences related to performing of official activity by officials of the Customs of Ukraine, 1105 individual preventive measures with the staff were conducted in customs authorities.</p>
<p>Recommendation under MONEYVAL Report</p>	<p><i>The number of supervisory staff in all three supervisory authorities should be increased in order to provide for efficient AML/CFT supervision over the obliged financial institutions</i></p>
<p>Measures taken to implement the Recommendation of the Report</p>	<p>In order to ensure an effective supervision of banks activity in sphere of prevention to application of bank system for legalization of the proceeds from crime and terrorist financing the resolution of the National Bank of Ukraine dated 29.04.2008 No. 119 fulfilled improvement of organization of the structure of the Department on prevention ML/TF in the banking system with increase of its staff (approximately 35).</p> <p>Also, the State Commission on Securities and Stock Market as well as the State Commission on Financial Services Markets Regulation reviewed personnel and prepared proposals to the Cabinet of Ministers of Ukraine to increase the number of officials of central board and territorial agencies (approximately 5).</p>
<p>Recommendation under MONEYVAL Report</p>	<p><i>There are some doubts related with the independence and autonomy of the SCFSMR. In addition, this supervisory body experience a high turnover of its staff, which adversely affects its possibility for attracting and sustaining competent staff. The authorities should take necessary measures to address these concerns</i></p>

Measures taken to implement the Recommendation of the Report	<p>With New AML/CFT Law entering into force the supervisory authorities will review their resources and prepared proposals to increase a number of officials, who will engage in issue of prevention to money laundering.</p> <p>State Commission on Financial Services Markets Regulation of Ukraine, according to the Law of Ukraine On Financial Services and State Regulation of Financial Services Markets, Decrees of the President of Ukraine dated 11.12.02 № 1153 On State Commission on Financial Services Markets Regulation of Ukraine and dated 04.04.03 № 292 On Approving of the Statute on State Commission on Financial Services Markets Regulation of Ukraine, is a central agency of executive power with a special status, authorized to undertake state regulation and supervision over the activities of financial services markets.</p> <p>According to the Constitution of Ukraine and the Law of Ukraine On the Cabinet of Ministers of Ukraine, the activities of this Commission is directed and coordinated by the Cabinet of Ministers of Ukraine. Consequently, Commission is an agency of executive power therefore in line with Constitution it is subordinated to the Government.</p>
Recommendation under MONEYVAL Report	<i>According to the Law on Civil servants the training should be made at least once per every 5 years. This period seems too long and should be adequately altered</i>
Measures taken to implement the Recommendation of the Report	<p>To execute the Decrees of the President of Ukraine dated 20.02.2006 № 140 On Concept for Development of the Legislation on Civil Service in Ukraine, dated 20.01.2006 №39 On Action Plan for Executing Obligations of Ukraine that Arouse from its Membership in Council of Europe and dated 20.09.2007 № 900 On Measures Aimed at Reforming Civil Service in Ukraine and Insuring of Civil Servants Rights Protection Main Department of Civil Service of Ukraine elaborated the Draft Law of Ukraine On Civil Service (new version).</p> <p>Paragraph 6 of the Article 53 of the aforesaid draft law provided for that civil servants of the first and second category shall undergo professional development not rarer than once for three years, and civil servants of the third - seventh category – not rarer than once for five years, and also in the case of necessity. The necessity on professional development of the civil servant shall be determined by his/her direct manager under the results of his/her official activity assessment.</p> <p>In June 2009 Draft Law of Ukraine On Civil Service (new version) was submitted by Main Department of Civil Service of Ukraine to the Cabinet of Ministers of Ukraine pursuant to the prescribed procedure.</p>
Recommendation under MONEYVAL Report	<i>SCSSM and SCFSMR should continue their efforts for providing its supervisors with adequate AML/ CFT trainings</i>
Measures taken to implement the Recommendation of the Report	During 2009 1417 persons have undergone training and obtained qualification certificate in the FIU training center. During the first half 2010 428 persons have undergone training and obtained qualification certificate.
Recommendation under MONEYVAL Report	<i>The resources of the Ministry of Finance should be reviewed in order to enable it to cope with its now competencies in terms of AML/CFT supervision over gambling institutions, and measures should be made to ensure that the staff undertaking such supervision are adequately trained.</i>
Measures taken to implement the Recommendation of the Report	<p>In Ukraine activity of casino is prohibited by the Law.</p> <p>With New AML/CFT Law entering into force the Ministry of Finance of Ukraine will review its resources and prepare proposals on increase the number of officials of central apparatus and territorial authorities of the Ministry of Finance of Ukraine.</p>

Recommendation under MONEYVAL Report	<i>Furthermore, the Ukrainian authorities should conduct an assessment of the staffing levels in authorities responsible for sending/receiving MLA and extradition requests as well as the level of workload and take any measures to ensure that they are adequately funded and staffed in order for them to be able to fully and effectively perform their functions.</i>
Measures taken to implement the Recommendation of the Report	<p>International and Legal Department of the General Prosecutor's Office of Ukraine is divided into three units: extradition unit, legal assistance unit and international cooperation unit – all in all 23 prosecutors that have a significant experience of practical prosecuting activity and high professional level in international law area. Besides, regional prosecutor's offices provide for, among other officials, special prosecutor to the duties of whom belong processing of requests on international legal assistance in criminal matters.</p> <p>These prosecutors have an appropriate level of qualification, high moral characteristics and significant experience of practical prosecuting activity.</p> <p>Besides, these prosecutors pass training in the Institute for professional development of prosecutors. Training programs contain the course devoted to general issues on providing legal assistance in criminal matters and specialized topics, for example, AML issue.</p> <p>Both Ministry of Justice and General Prosecutor's Office benefitted from the European Commission / Council of Europe UPIC project in the areas of staff training and getting special software for MLA.</p>
Recommendation under MONEYVAL Report	Also, it is recommended to develop effective training and guidance for staff handling MLA requests, with a view to foster and raise the quality of the execution of MLA requests.
Measures taken to implement the Recommendation of the Report	There is a National Academy of the General Prosecutor's Office that contains Institute for professional development of prosecutors. This institution provides short-term training for the prosecutors of all levels from all regions of the state. Training programs contain the topics devoted to general issues on providing legal assistance in criminal matters and specialized topics, for example AML issue.

Recommendation 33 (Legal persons – beneficial owners)

Rating: Partially compliant

Recommendation of the MONEYVAL Report	<i>Ukraine should make the necessary legislative changes to set up a system which ensures adequate transparency of legal persons concerning their beneficial ownership and control either through registration procedures or other means</i>
Measures taken to implement the Recommendation of the Report	<p>According to part 2 of the Article 17 of the Law of Ukraine on State Registration of Legal and Natural Persons-Entrepreneurs (hereinafter referred to as the Law on registration), Unified State Register of legal and natural persons-entrepreneurs (hereinafter referred to as Unified state register), namely registration file of a legal person, formed electronically in this Register on every legal person in the process of its state registration and conducting further registration actions, contains 33 types of data, among which there are data on the list of founders (stockholders) of a legal person, including name, place of residence, identification number of a natural person – tax payer if a founder is a natural person; denomination, address and identification code if a founder is a legal person; data on size of statutory fund (statute or consolidated capital), etc.</p> <p>According to the requirements of the Law on registration information on all amendments in data on legal persons and natural persons-entrepreneurs (amendments to the statutory documents, founders, manager, address, size of statutory fund,</p>

	<p>activities, information on taking decision by the founders to liquidate this legal person or to transform it, etc) are included on-line to Unified state register.</p> <p>Therefore, for the present moment existent in Ukraine automatic system for collecting, accumulating, protecting, registering and providing information on legal persons and natural persons-entrepreneurs that operates on electronic data carrier pursuant to the state standards that ensure its correspondence and interaction with other information systems and networks, gives a real opportunity to get comprehensive and up-to-date information on the founders (stockholders) of legal persons, including the information on beneficiaries (except stockholders of joint stock companies and foreign persons-founders of legal persons of Ukraine).</p> <p>Additionally, late legislative changes, namely the Law of Ukraine on Introducing Amendments to Some Legislative Acts of Ukraine on Counteraction to Illicit Takeover and Merge of Enterprises dated 17.11.2009 № 1720-VI introduced amendments to the Law on registration, pursuant to which since 17.03.2010 Unified State Register, apart from other data provided for by the Law, shall contain the data on opening and closing accounts of legal persons and natural persons-entrepreneurs in banks and other financial institutions and also the information on imposition and lifting of arrests of the accounts of legal persons and natural persons-entrepreneurs and their property (including the one belonging to separated divisions of the legal person), the data on instituting of executive proceedings etc.</p>
<p>Recommendation of the MONEYVAL Report</p>	<p><i>Competent authorities should be able to obtain or have timely access to such information</i></p>
<p>Measures taken to implement the Recommendation of the Report</p>	<p>According to paragraph b, part 1 of the Article 3 of the Law of Ukraine On Organizational and Legal Principles of Fight Against Organized Crime, special units on fight against organized crime of the Ministry of Interior and Security Service of Ukraine are authorized to receive on the base of written requirement of Heads of such units from banks, credit, custom, financial and other institutions, entities, organizations (irrespective of form of ownership) the information and documents on the transactions, accounts, deposits, domestic and foreign economic agreements of natural and legal persons.</p> <p>According to paragraph 17, part 1 of the Article 11 of the Law of Ukraine On Militia, militia for executing its obligations shall have the right to obtain without obstruction and free of charge from enterprises, institutions and organizations irrespective of their ownership forms and from associations of citizens under the written request information (including information containing commercial and banking secrecy), necessary in cases on crimes investigated by militia. Obtaining from banks information containing banking secrecy shall be performed under the procedure and in scope prescribed by the Law of Ukraine “On Banks and Banking”.</p> <p>State agencies, pursuant to paragraph 11, part 2 of the Article 7 of the Law on registration are provided with the data from Unified State Register by specially authorized agency on state registration according to prescribed procedure, and pursuant to paragraph 8 of the Article 20 of this Law, they are exempted from payment for receiving under their request the data from Unified State Register, provided that such request is related to execution of their duties prescribed by the law.</p> <p>Such agency, pursuant to the Resolution of the Cabinet of Ministers of Ukraine dated 26.04.2007 № 667, is State Committee of Regulatory Policy and Entrepreneurship.</p> <p>To execute the aforesaid requirements and other requirements of the Law on registration, the Order of State Committee of Regulatory Policy and Entrepreneurship dated 20.10.2005 № 97 approved the Statute on the procedure for providing data from Unified State Register of legal persons and natural persons-entrepreneurs (hereinafter</p>

	<p>referred to as Statute).</p> <p>For the present moment, to ensure the possibility of direct (stationary) access of state agencies to Unified State Register, State Committee of Regulatory Policy and Entrepreneurship elaborates a new edition of the Statute, pursuant to which these agencies will be able to use the data from this Register on-line. Appropriate software is being devised.</p> <p>Taking into account an urgent need to provide as soon as possible key financial and tax institutions with the access to State Unified Register in the framework of AML/CFT program, State Committee of Regulatory Policy and Entrepreneurship has already provided access to the National Bank of Ukraine and State Tax Administration of Ukraine.</p> <p>Besides, to provide the opportunity for operative obtaining of data on economic entities from Unified State Register in electronic form through Internet, pursuant to the Order of State Committee of Regulatory Policy and Entrepreneurship dated 08.07.2009 № 123, website of this register has been formed, and the data can be received free of charge.</p>
<p>Recommendation of the MONEYVAL Report</p>	<p><i>Ukraine should strengthen preventative measures for deterring from the practice of setting up fictitious companies</i></p>
<p>Measures taken to implement the Recommendation of the Report</p>	<p>The Government of Ukraine pays special attention to this issue. Thus, paragraph 5¹ of AML/CFT Action Plan for 2009, approved by the Resolution of the Cabinet of Ministers of Ukraine and the National Bank of Ukraine dated 10.12.2008 № 1077 (with amendments introduced by the Resolution of the Cabinet of Ministers of Ukraine and the National Bank of Ukraine dated 21.10.2009 № 1119), provides for that in IV quarter 2009 it is required to take measures aimed at detecting fictitious enterprises and suspending their activities.</p> <p>In 2009 State Tax Administration of Ukraine detected 846 fictitious economic entities regarding to which the courts took decisions to find their registration documents invalid. Under the results of examination of such entities 641 criminal cases have been initiated, including 407 - for intentional tax evasion in especially significant size (p.3 of the Article 212 of the Criminal Code of Ukraine) and 49 – fictitious entrepreneurship (p.5 of the Article 205 of CC of Ukraine).</p> <p>Moreover, there has been suspended illicit activities of 224 criminal groups that rendered services on illicit conversion of cashless money into cash. Under the results of the law enforcement measures taken 115 organizers and 136 accomplices of the abovementioned conversion centers have been brought to criminal liability.</p> <p>Under the results of examination of economic entities – legal tax payers that used the services of the above mentioned enterprises the budget has been additionally replenished by the amount of UAH 701, 9 million due to taxes and other obligatory duties.</p> <p>To inform the reporting entities State Securities and Stock Market Commission keeps and updates on a regular basis the list of securities issuers regarding which there is information on the absence of a legal person under the address or absence of confirmation of the data on legal person. Besides, in IV quarter of 2009 the Decision of the Commission suspended amending registration system of nominal securities owners and systems of depository registration of securities issued by 24 joint stock companies the activities of which have the signs of fictitiousness.</p> <p>In 2009 the Ministry of Interior discovered 467 fictitious entities used in 179 instances related to minimization of taxes, in 14 instances related to illegal VAT reimbursement, 7 instances – to undertaking foreign economic activities, 64 instances related to acquisition of goods, execution of works or rendering services using public funds, 6</p>

	<p>instances related to credits. There has been revealed 71 facts of illicit transfer of public funds to the accounts of fictitious entities. There has been disclosed 42 facts of legalization of the proceeds acquired through activity of fictitious firms and conversion centers.</p> <p>There were registered 654 crimes related to fictitious entrepreneurship and money conversion. 467 criminal cases have been initiated under the Article 205 of CC of Ukraine. There has been revealed 115 crimes the amount of losses of every of them constitutes UAH 100 thousand.</p> <p>Investigative agencies investigate 645 criminal cases under which total amount of losses constitutes UAH 304,5 million. In the process of investigation of these cases it has been confiscated UAH 30,7 million. The funds and property to total amount of UAH 10 million have been arrested.</p> <p>Besides, paragraph 11 of Action Plan for 2010 № 1119 provides for taking complex measures aimed at disclosing fictitious entities and suspending their activities.</p> <p>To reinforce preventive measures in order to counteract to establishment and operation of fictitious companies, State Committee of Regulatory Policy and Entrepreneurship elaborated draft Law on Introducing Amendments to Some Legislative Acts of Ukraine on Counteraction to Illicit Takeover and Merge of Enterprises dated 17.11.2009 № 1720-VI that will envisage prohibition to provide extract from Unified State Register to the legal person that failed to provide to the state register prescribed by the law accounting on its economic activities. On January 27, 2010 this draft law was considered and approved during the sitting of the Cabinet of Ministers of Ukraine.</p>
Recommendation of the MONEYVAL Report	<i>The authorities should also consider measures to facilitate access to the data contained in the USR, in particular to the private sector</i>
Measures taken to implement the Recommendation of the Report	<p>According to part 5 of the Article 16 and part 3, 5 of the Article 20 of the Law of Ukraine on State Registration of Legal and Natural Persons-Entrepreneurs (hereinafter referred to as the Law on registration), Unified State Register is established and managed by specially authorized agency on state registration issues which is its administrator and which specifies the procedure for providing data from this Register.</p> <p>Such agency, pursuant to the Resolution of the Cabinet of Ministers of Ukraine dated 26.04.2007 № 667, is State Committee of Regulatory Policy and Entrepreneurship.</p> <p>To execute the aforesaid requirements and other requirements of the Law on registration, the Order of State Committee of Regulatory Policy and Entrepreneurship dated 20.10.2005 № 97 approved the Statute on the procedure for providing data from Unified State Register of legal persons and natural persons-entrepreneurs (hereinafter referred to as Statute).</p> <p>For the present moment, to ensure the possibility of direct (stationary) access of state agencies to Unified State Register, State Committee of Regulatory Policy and Entrepreneurship elaborates a new edition of the Statute, pursuant to which these agencies will be able to use the data from this Register on-line. Appropriate software is being devised.</p> <p>Besides, to provide the opportunity for operative obtaining of data on economic entities from Unified State Register in electronic form through Internet, pursuant to the Order of State Committee of Regulatory Policy and Entrepreneurship dated 08.07.2009 № 123, website of this register has been formed, and the data can be received free of charge.</p>
(Other) changes since the last evaluation	

Recommendation 35 (Conventions) & Special Recommendation I (Implementation of United Nations instruments)	
Rating: Partially compliant & Non Compliant	
Recommendation of the MONEYVAL Report	<i>The same recommendations with regard to certain aspects of criminalisation of the money laundering offence, as well as the application of provisional measures and confiscation. Ukraine should also institute criminal liability of legal persons</i>
Measures taken to implement the Recommendation of the Report	The liability of legal persons for money laundering stipulated by the Law of Ukraine “On Liability of Legal Persons For Commitment of Corruption Offenses” № 1507-VI, adopted on June 11, 2009 (Article 2 of the Law) with amendments introduced by New AML/CFT Law, corresponds with Palermo Convention. Amounts of fines are essentially increased (Article 23 of New AML/CFT Law).
Recommendation of the MONEYVAL Report	<i>The same recommendations on criminalisation of terrorist financing offence, as well as on further improvement of freezing mechanisms of terrorist funds are reiterated in this context. Ukraine should take measures to fully implement the provisions of UNSCR 1267, 1373 and successor resolutions</i>
Measures taken to implement the Recommendation of the Report	The legislation of Ukraine considers key provisions on implementation of Convention On Financing of Terrorism and Resolutions of UN Security Council 1267, 1373 and further resolutions. The amendments to Criminal Code of Ukraine were introduced which criminalized the crime of financing of terrorism (Article 258 ⁵ of Criminal Code of Ukraine).
(Other) changes since the last evaluation	

Recommendation 36 (Mutual legal assistance) & Special Recommendation V (International co-operation)	
Rating: Partially compliant	
Recommendation of the MONEYVAL Report	<i>Ukraine should speed up the adoption of the new Criminal Procedure Code, as it is understood that it would provide for a more comprehensive framework and elaborate further detailed procedures for provision of various types of MLA as well as related guidance for all staff working on these matters. Such procedures should also stipulate timeframes for responses of MLA requests</i>
Measures taken to implement the Recommendation of the Report	Since November 23, 2009 the project of new Criminal Procedural Code of Ukraine is being processed by the Cabinet of Ministers of Ukraine in order to be forwarded for further consideration to the Parliament of Ukraine. Besides, for the present moment Draft Law on Introducing Amendments to the Criminal Procedural Code of Ukraine concerning legislative provision of the procedure for giving legal assistance in extradition of offenders has been elaborated and forwarded for consideration of the Parliament of Ukraine. In January, 2010 this Draft Law was adopted by the Ukrainian Parliament in the first reading. After law in proposed version will be adopted by the Parliament of Ukraine, it will solve the majority of challenges faced by appropriate state agencies engaged in extradition of offenders and will ensure observance of rights and legal interests of the persons regarding to whom extradition is being solved.
Recommendation of the MONEYVAL Report	<i>The Ukrainian authorities should enable rendering MLA in the absence of dual criminality, in particular for less intrusive and non compulsory measures</i>
Measures taken to implement the	It should be mentioned that the term “dual criminality” is not available in the international treaties of Ukraine. We consider that for the present moment mutual legal

Recommendation of the Report	<p>assistance system in the criminal matters fully complies with European standards, as for it is based on European Convention on Mutual Legal Assistance in Criminal Matters, 1959.</p> <p>Any international treaty does not contain the obstacles for giving international legal assistance in criminal matters to the request of international court or other competent agencies in the instance when the matter is not subject to jurisdiction of Ukraine. When dual criminality as the condition for giving legal assistance is implied, then the majority of international treaties precisely stipulates that legal assistance shall be given irrespective of the fact whether an act is recognized as a crime under the law of the requested party. At the same time, at executing extradition requests, requests of convicts transfer, property confiscation requests dual criminality is obligatory condition.</p>
Recommendation of the MONEYVAL Report	<i>The authorities should keep annual statistics on all MLA and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offence and FT, including the nature of the request, whether it was granted or refused and the time required to respond.</i>
Measures taken to implement the Recommendation of the Report	<p>The Ministry of Justice keeps registration of statistical data on the requests, obtained and forwarded under different types of international assistance: mutual legal assistance, extradition, execution of court rulings on confiscation and others. Requests related to money laundering, predicated offences and terrorism financing are absent in 2009.</p> <p>The General Prosecutor's Office keeps registration of statistical data on the requests, obtained and forwarded to be executed by the GPO, including the requests in criminal matters related to money laundering, and arrest of funds and property of accused persons. Registration reporting reflects the data on the nature of the request, its actual execution and the time for execution.</p> <p>With regard to the statistics on AML/CFT issues please see the attached <i>Appendix V</i>.</p>
(Other) changes since the last evaluation	

Special Recommendation III (Freezing and confiscating terrorist assets)

Rating: Partially compliant	
Recommendation of the MONEYVAL Report	<i>The Basic Law should envisage the power for executing initial suspension (freezing) of financial transactions not only for the designated financial and non-financial entities, but also for authorized state agencies (the SCFM or other)</i>
Measures taken to implement the Recommendation of the Report	Article 17 of New AML/CFT Law introduces the right of FIU to suspend financial transactions subject to reasonable suspicion to be connected to money laundering or terrorist financing or internationally sanctioned. Moreover, the Resolution of the Cabinet of Ministers of Ukraine On Adopting the Procedure of Composing of the List of Persons Related to Terrorist Activities or with Regard to Whom International Sanctions are Applied was adopted as of August 18, 2010 No 745.
Recommendation of the MONEYVAL Report	<i>Ukraine should prescribe in an evident manner that suspension (freezing) of terrorist funds extends to the cases where no national court decision or appropriate foreign decision are existent, but the funds are disclosed to be owned or controlled by persons who commit, or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts</i>
Measures taken to implement the	According to the Article 17 of New AML/CFT Law reporting entity has the right to suspend carrying out of financial transaction for a period up to two business days, and SCFM as FIU – up to 5 business days. Besides, in case of submitting case referrals to

Recommendation of the Report	<p>the law enforcement authorities New AML/CFT Law prescribes automatic prolonging of suspension for 7 business days more.</p> <p>Thus, the legislation of Ukraine prescribes the right of FIU to suspend performing suspicious financial transactions without relevant court decision.</p> <p>The paragraph 6 of the Resolution of the Cabinet of Ministers of Ukraine On adopting the procedure of composing of the list of persons related to terrorist activities or with regard to whom international sanctions are applied as of August 18, 2010 No 745, foresees the procedure of seizure of terrorist funds.</p>
Recommendation of the MONEYVAL Report	<p><i>Freezing mechanisms of other jurisdictions are undertaken through the Security Service of Ukraine, which provides to the SCFM the submitted court decisions and other decision of foreign competent authorities. It is recommended to enable prompt determination and suspension (freezing) of terrorist funds also on the basis of appropriate foreign requests, received by the SCFM or other competent authorities</i></p>
Measures taken to implement the Recommendation of the Report	<p>According to the Article 22 Part 5 of New AML/CFT Law according the request was received from the relevant foreign authority on suspension of relevant financial transaction as such that can be related to legalization of the proceeds from crime or terrorist financing, FIU shall have the right to assign the reporting entity to suspend or to renew or to monitor the conduction of financial transaction during the period stated in the request. The procedure for suspension and renewal of such financial transaction shall be designated by the entity of state financial monitoring regulating and supervising over the reporting entities within its competence.</p>
Recommendation of the MONEYVAL Report	<p><i>The AML/CFT legal framework of Ukraine should enable suspension (freezing) of funds or other assets not connected with financial transactions</i></p>
Measures taken to implement the Recommendation of the Report	<p>The Part 3 of the Article 17 of New AML/CFT Law provides that FIU can take a decision to suspend the expense transactions under customer's (person's) account, if such transaction contains indicators provided in the Articles 15, 16 of the current Law, up to ten business days, and is obliged to inform immediately about it the reporting entity, as well as law enforcement authorities, authorized to take decision according to Criminal Procedure legislation.</p> <p>If the decision has been taken to suspend the expense transactions under customer's (person's) account, FIU performs analytical activity, collects necessary additional information, processes, verifies and analyses such information.</p> <p>While confirming reasonable suspicion FIU prepares and submits relevant case referrals within term of suspension of such transaction to the law enforcement authorities authorized to take decision according to Criminal Procedural Code.</p> <p>At that the term for financial transaction suspension is prolonged on seven business days from the date of submitting such case referrals if the overall term would not exceed fourteen business days, Part 5 of the Article 17 of New AML/CFT Law.</p> <p>Article 126 of Criminal Procedure Code of Ukraine establishes that securing civil action and possible confiscation of property shall be performed by arresting deposits, values and other property of accused or suspected or persons who shall be responsible under the law for his actions independently on location of such property as well as by seizure of arrested property. Arresting deposits of mentioned persons shall be provided only under court decision.</p>
Recommendation of the MONEYVAL Report	<p><i>Ukraine should review and complete the existing procedures for considering de-listing requests, develop procedures for unfreezing the funds or other assets of delisted persons or entities in a timely manner and take necessary measures to ensure that such procedures are effective and publicly known</i></p>
	<p>Part 11 of the Article 17 of New AML/CFT Law provides for that procedure for</p>

Measures taken to implement the Recommendation of the Report	<p>delisting of persons related to terrorist activity or which are internationally sanctioned is defined by the Cabinet of Ministers of Ukraine. At the present moment, relevant draft of normative act was submitted to Cabinet of Ministers for adoption.</p> <p>Mentioned draft act foresees procedures of considering requests on delisting and unfreezing funds and other assets of delisted persons.</p> <p>The paragraph 9 of the Resolution of the Cabinet of Ministers of Ukraine On adopting the procedure of composing of the list of persons related to terrorist activities or with regard to whom international sanctions are applied as of August 18, 2010 No 745, foresees procedure for de-listing requests.</p>
Recommendation of the MONEYVAL Report	<i>Ukraine should establish procedure for authorising access to funds or other assets that were frozen and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses</i>
Measures taken to implement the Recommendation of the Report	New Basic Law (part 9 of the Article 17) provides that the procedure for authorization access to the funds related to terrorist financing and which relates to financial transactions suspended according to the decision taken under resolutions of UN Security Council shall be defined by the law. Such access is executed for covering basic or extraordinary expenses.
Recommendation of the MONEYVAL Report	<i>It is recommended to review existing provisions to enable confiscation of terrorist related funds in the course of criminal proceedings on terrorist related offences (specified under Articles 258, 258.1-258.4 of the CC)</i>
Measures taken to implement the Recommendation of the Report	Article 258-5 of Criminal Code of Ukraine prescribes the confiscation of property in the result of financing of terrorism crime.

Special Recommendation VI (AML requirements for money/value transfer services)

Rating: Partially compliant	
Recommendation on MONEYVAL Report	<i>MVT service operators (whether they are registered to transfer national or foreign currency) should be required to maintain a current list of agents which they use</i>
Measures taken to implement the Recommendation	<p>According to the Provision № 348 the members/participants of international payment systems may be banks, non-banking financial institutions, national postal services operator.</p> <p>Banks, non-banking financial institutions, national postal services operator are obliged to register the contracts on membership/participation in the international payment systems before providing services of the relevant international payment system.</p> <p>Banks - payment organizations of money transfer systems are obliged to coordinate with the NBU the rules of these systems before providing services of systems.</p> <p>In order to register contracts on membership/participation in the international payment systems non-bank financial institutions are obliged to provide:</p> <p>certificate on registration of financial institution and license on carrying out of money transfer issued by the State Commission on Regulation of Financial Services Market of Ukraine;</p> <p>license of the NBU to carrying out of individual banking transactions (in case of money transfer from current accounts, opened in non-banking financial institution);</p> <p>general license of the NBU to carrying out of currency transactions. National postal services operators submit the document confirming its registration by the State</p>

	Commission on Financial Services Market Regulation of Ukraine in the part of providing financial services of postal transfer, and general license of the NBU to carry out of currency transactions. The NBU conducts electronic register of payment systems and its members/participants.
Recommendation on MONEYVAL Report	<i>In relation to MVT services, Ukraine should implement requirements in relation Recommendations 5, 6, 7, 9, 10, 13, 15, and 22, as discussed earlier in section 3 of this report</i>
Measures taken to implement the Recommendation	Payment organizations, members of payment systems, national postal services operators, other institutions which provide financial transactions on money transfer are reporting entities. Accordingly, requirements of AML/CFT Law are expand on these MVT services providers.
(Other) changes since the last valuation	

Special Recommendation VII (Wire transfer rules)	
Rating: Partially compliant	
Recommendation on MONEYVAL Report	<i>Ukraine should implement the detailed criteria required by FATF Special Recommendation VII, that is a) apply the exemptions that exist</i>
Measures taken to implement the Recommendation	<p>The Provision № 348 of the NBU prescribes coordination of rules of the money transfer system established by banks-residents. In particular, the indicated rules shall contain the procedure of ensuring in the money transfer system of execution of the FATF Special Recommendation VII regarding CFT, especially:</p> <ul style="list-style-type: none"> - identification of client – originator of transfer at the amount that is equally or exceeds UAH 5000 or is equally or exceeds the amount in foreign currency equally to UAH 5000 (pursuant to rate of exchange of the NBU at the moment of carrying out of transaction) including point out in the document on transfer of family name and name (if it is available) of client, unique registration number of transaction, name or code of originator’s bank, place of originator’s registration (it is possible instead of his identification number of taxpayer of client or date and place of his birth to point out his address), as well as fixing in the document for transfer of all date of transfer originator; - accompaniment of money with information on originator at all stages of carrying out of money transfer. <p>According to the Article 64 of the Law on Banks and Banking, banks are prohibited:</p> <ul style="list-style-type: none"> to open or keep anonymous (numbered) accounts; to establish contractual relations with clients-legal or natural persons in case, if there is suspicion that a person acts on behalf of other person; bank is obliged to identify pursuant to the legislation of Ukraine: opening accounts by clients in bank; carrying out by clients of cash transactions without opening account at the amount that equals or exceeds UAH 150 000 or equals amount in foreign currency equivalent to UAH 150 000 (pursuant to rate of exchange of the NBU at the moment of carrying out of transaction), persons authorized to act on behalf of the mentioned clients; client’s account is opened and the mentioned transactions are carried out solely after client identification and taking measures pursuant to the legislation, which regulates relationships in AML/CFT area;

	bank is entitled to demand, and client – to provide documents and information necessary for identification of his identity, activity and financial state.
Recommendation on MONEYVAL Report	<i>b) Ensure the requirements in Order No. 211 are consistent with those under NBU Resolution No. 348 and FATF SR. VII</i>
Measures taken to implement the Recommendation	<p>On August 13, 2009 on the base of the Order of the Ukrainian state enterprise of postal communication “Ukrposta” № 732 has been amended the Provision on postal remittance in order to coordinate with requirements of the Provision on activity in Ukraine of national and international payment systems, approved by the Resolution of the Board of the NBU as of 25.09.2007 № 348, as well as considering provisions of VII FATF Recommendation in the part of identification of client’s identity, accompanying of postal transfer with information on its remitter at all stages of money transfer.</p> <p>For the present, activity of “Ukrposta” in the part of providing of money transfer services is regulated by the Rules of payment system “Postal money transfer” approved by the Order as of 30.10.2009 № 887 (amended pursuant to the Order as of 11.12.2009 № 960).</p> <p>The Rules of payment system “Postal money transfer” coordinated with requirements of the Provision on activity of the national and international payment system in Ukraine, approved by the Resolution of the Board of the NBU as of 25.09.2007 №348 solution of the Board of the NBU as of 25.09.2007 № 348.</p>
Recommendation on MONEYVAL Report	<i>c) Requirement to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information</i>
Measures taken to implement the Recommendation	<p>Pursuant to the Provision № 348 and Order of the Ukrainian state enterprise of postal communication “Ukrposta” № 732 the members/participants of international payment systems may be banks, non-banking financial institutions, national postal services operator.</p> <p>All the mentioned participants shall be reporting entities. Accordingly, requirements of the New AML/CFT Law are applicable to these money transfer and valuables providers. According to the Article 11 the reporting entity shall be obliged to manage the risks of the legalization (laundering) of the proceeds from crime or terrorist financing considering of the results of customer identification, services provided to customer, analysis of conducted customer’s transactions and their correspondence to financial condition and nature of the client’s activity.</p> <p>The Article 11 Part 3 of the New AML/CFT Law prescribes that the reporting entity shall take measures to reduce detected risks, especially it concerns carrying out of money transfer, in case of absence of full information on originator.</p>
Recommendation on MONEYVAL Report	<i>The Ukrainian authorities should as a matter of urgency effectively supervise non-banking financial institutions and Ukrposhta ‘s compliance with the rules and regulations relating to SR. VII</i>
Measures taken to implement the Recommendation	<p>The Article 10 the AML/CFT Law defines that the State Commission on Financial Services Market Regulation of Ukraine supervises non-banking financial institutions.</p> <p>The Article 14 of the New AML/CFT Law prescribes that state regulation and supervision in the area of prevention and counteraction to the legalization (laundering) of the proceeds or terrorist financing are carried out concerning insurance companies, pawn shops and other financial institutions, as well as legal persons, which according to legislation provide financial services (except financial institutions and other legal persons the regulation and supervision of which in AML sphere is conducted by other entities of state financial monitoring), payment organizations and members of payment systems which are non-bank institutions – by</p>

	<p>the State Commission on Financial Services Markets Regulation of Ukraine; postal services operators (in the part of conducting by them of money transfer) – by the Ministry of Transport and Communication of Ukraine.</p> <p>In 2009 the State Commission on Financial Services Markets Regulation of Ukraine has carried out inspections of “Ukrposta” performing wire money transfer regarding compliance of the mentioned financial institution of the legislation in AML/CFT area.</p> <p>In general, during 2009 the State Commission on Financial Services Markets Regulation of Ukraine has inspected two reporting entities performing wire money transfer regarding compliance of the mentioned financial institution of the legislation in AML/CFT area.</p>
Recommendation on MONEYVAL Report	<i>Ukraine should introduce mechanisms for the enforcement of specific breaches for non-banking financial institutions and Ukrposhta by competent authorities and ensure that sanctions are adequate, proportionate and effective for specific breaches under NBU Resolution No. 348</i>
Measures taken to implement the Recommendation	<p>According to the Article 14 of the New AML/CFT Law state regulation and supervision in the area of prevention and counteraction to the legalization (laundering) of the proceeds or terrorist financing are carried out concerning: stock exchanges, assets managing companies and other professional participants of the securities markets (except banks) – by the State Securities and Stock Market Commission;</p> <p>postal services operators (in part of conducting of money transfers) – by the Ministry of Transport and Communication of Ukraine.</p> <p>Article 23 of New AML/CFT Law establishes sufficient list of enforcement measures or AML/CFT regime violations – from fine up to imprisonment.</p>
Recommendation on MONEYVAL Report	<i>Ukraine should put in places measures to ensure that Ukrposhta is effectively monitored for AML/CFT purposes</i>
Measures taken to implement the Recommendation	<p>Pursuant to the AML/CFT Law Ukrposta shall be the reporting entity.</p> <p>Accordingly, the AML/CFT Law identifies that Ukrposta is wholly responsible as other reporting entities.</p> <p>Under inspection results of the State Commission on Financial Services Markets Regulation of Ukraine, Ukrposta activity complies with the current legislation.</p> <p>Moreover, the New AML/CFT Law prescribes that postal services providers, other institutions carrying out financial transactions on money transfer and all defined by this Law for reporting entities obligations are applicable to them.</p> <p>Herewith, according to the Article 14 of the New AML/CFT Law state regulation and supervision in the area of prevention and counteraction to the legalization (laundering) of the proceeds or terrorist financing are carried out concerning: payment organizations and members of payment systems which are non-banking institutions, - by the State Commission on Regulation of Financial Services Markets of Ukraine;</p> <p>postal services operators (in part of conducting of money transfers) – by the Ministry of Transport and Communication of Ukraine.</p>
(Other) changes since the last valuation	

Special Recommendation VIII (Non-profit organisations)

Rating: Partially compliant	
Recommendation on MONEYVAL Report	<i>Considering the concerns expressed by certain authorities about the risks for misuse of such entities, the evaluators urge the authorities to undertake a comprehensive review of the system aiming at reviewing the adequacy of the legal framework, identifying the activities, size and other relevant features of the sector and assessing possible vulnerabilities related to its misuse for terrorist financing</i>
Measures taken to implement the Recommendation	The Security Service of Ukraine within its competence takes measures on detection of facts of non-profit organizations application for the purposes of terrorist financing, as well as persons involved in its activity (directors and founders). For today, Ukraine counts 173 political parties and over 2,5 thousands of founds, public institutions and associations 20 of which were established involving money flowing from countries of radically aimed groups. Information on contribution to terrorist financing by the mentioned organizations has been not obtained.
Recommendation on MONEYVAL Report	<i>An extensive and proactive outreach to the NPO sector should be carried out for the purpose of protecting the sector from the terrorist financing abuse.</i>
Measures taken to implement the Recommendation	In accordance with the Resolution of the Cabinet of Ministers of Ukraine On Adopting the Procedure of Composing of the List of Persons Related to Terrorist Activities or with Regard to Whom International Sanctions are Applied as of August 18, 2010 No 745, the SCFM composes the list of persons related to terrorist activity, which data may be used in order to identify risks of terrorist financing by non-profit organizations. The named list is published at the official web-site of the SCFM, the access to which is absolutely open, in particular for the use by non-profit organizations. Also, the official web-site of the SCFM contains for application by organizations references to the List of US State Treasury and the List of persons, who have been imposed with financial sanctions (according to the information, published at the official web-site of the Council of Europe) which data may be applied to identify risks of terrorist financing by non-profit organizations. On June 2010 FIU prepared and placed on official web-site of SCFM the recommendations for NPOs on risk to be used for terrorist financing.
Recommendation on MONEYVAL Report	<i>Legal requirements should also be introduced to ensure that NPOs maintain information on the identity of person(s) who own, control or direct NPOs activities, including senior officers, board members and trustees and that such information, as well as data on the purpose and objectives of the NPOs activities should be publicly available</i>
Measures taken to implement the Recommendation	1. The Final Provisions of the Law of Ukraine On Introducing amendments to the Law of Ukraine On prevention and counteraction to the legalization (laundering) of the proceeds from crime introduced amendments to the Law of Ukraine On Charity and Charitable Organizations concerning disclosure of information about founders and structure of their ownership in cheritable organization. 2. The Article 15 of the Law of Ukraine On Associations of Citizens as of 16.06.1992 № 2460-XII prescribes that in order to register public associations its founder shall submit an application. To the application the following documents are attached : the statute (provision), the minutes of founders meeting (conference) or general meeting, data on leadership structure of central statutory agencies, information on local cores, documents on payment of registration fee except cases, where according to the Ukrainian legislation public organization is delivered from registration fee. Amendments to statutory documents of registered public associations subject to

obligatory registration.

3. According to the Article 2 of the Law of Ukraine On Political Parties in Ukraine as of 05.04.2001 № 2365-III political party shall be registered pursuant to the Law willing association of citizens – adherents of relevant national program of social development, which purpose is to assist to create and express political will of citizens, takes part in election and other political events.

The Article 11 of the above Law provides that political parties registration is carried out by the Ministry of Justice of Ukraine. For the registration of political party to the Ministry of Justice of Ukraine the following documents together with the application shall be submitted:

- the statute and program of political party;
- data on authorities structure of political party.

4. On the base of the Resolution of the Parliament of Ukraine On the Procedure of Entering into Force of the Law of Ukraine On Public Associations as of 16.06.1992 № 2461-XII the Cabinet of Ministers of Ukraine is entrusted to approve the provision on the procedure of the legalization of public associations, registration of public associations symbol, registration of branches of public associations of foreign countries, to determine the procedure of charge and the rate of fees for registration.

The paragraph 3 of the Provision on the procedure of the legalization of public associations, approved by the Resolution of the Cabinet of Ministers of Ukraine as of 26.02.1993 № 140 defines that in order to register citizens association an application signed no less than by three founders of public association or by their authorized representatives shall be submitted to the registration agency .

The following documents are attached to the application:

- the statute (provision) in duplicate;
- information on leadership structure of central statutory agencies (pointing out family names, name, birth year, domicile, position (activity), place of employment);
- information on founders of public association or unions of public associations (for citizens – pointing out family names, name, birth year, domicile; for unions of public associations – title of association, location of high statutory agencies, as well as copies of document on the legalization).

The paragraph 9 of the named Provision provides that family names, name of founders of public association or their authorized representatives, birth year, domicile, title of organization and location of central statutory agencies, main purpose of public association activity shall be indicated in the application. Signatures in the application shall be certified in the procedure established by the Law.

On order to register amendments to statutory documents of public association the following documents are submitted to the registration agency:

- the application on the mentioned above amendments, signed by the authorized representative;
- the statute (provision) in duplicate with amendments (the Clause 12 of the Provision).

5. The Law of Ukraine On Charity and Charitable Organization, in particular the Article 8 defines that the state registration of all-Ukrainian and international charitable organizations is performed by the Ministry of Justice of Ukraine, and the registration of local charitable organizations, as well as departments (branches, representations) of all-Ukrainian and international charitable organizations is performed by the relevant local agencies of executive power.

For the state registration of charitable organization the following documents are submitted: the application of founders (founder) for their authorized representatives, the statute (provision), the minutes of founders meeting (congress, conference),

information on founders (founder) and the authorities of charitable organization, information on local departments (branches, representations) of charitable organization, the document certifying payment for the state registration.

According to the Article 12 of the mentioned Law in the statute (provision) of charitable organization the following is indicated :

- the procedure of establishment and activity of the authorities of charitable organization;
- conditions and the procedure of admission to the members of charitable organization and leaving it.

On implementation of the Law of Ukraine On Charity and Charitable Organizations the Cabinet of Ministers of Ukraine on the base of the Resolution as of 30.03.1998 № 382 has approved the Provision on the procedure of the state registration of charitable organizations.

The paragraph 3 of the above Provision prescribes that for the state registration of charitable organization the application of founders (founder) or their authorized representative is submitted to the relevant registration agency mentioned in the paragraph 2 of this Provision.

To the application the following is attached:

- the statute (provision) of charitable organization in duplicate;
- information on founders (founder) of charitable organization:
 - for natural persons - surname, name, birth year, residence, place of employment, position;
 - for legal persons – title, legal address, copy of the statute (provision) and copy of the registration document, certified in the procedure established by the law, decision of the leading organ or minutes of general meeting of the staff, which confirms the consent for establishment of charitable organization;
- information on authorities of charitable organization and members of executive agency (surname, name, birth year, residence, place of employment, position) as well as configuration of legal address (letter of indemnity of the apartment owner, lease treaty etc).

The paragraph 16 of the Provision defines, if the certificate on the state registration of charitable organization (department of all-Ukrainian, international charitable organization) or its statute (provision) has been lost to the registration agency in order to obtain its duplicate the following is submitted:

- application of the head of charitable organization, resolution of its authority with the request to issue duplicate of the certificate on the state registration of charitable organization (department) or its statute (provision);
- confirmation in mass media on its loss;
- document certifying payment for issue of duplicate of certificate or statute (provision).

6. The Ministry of Justice of Ukraine and its territorial agencies pursuant to the Article 3 Part 4 of the Law of Ukraine On State Registration of Legal Persons and Natural Persons – Entrepreneurs as of 15.05.2003 № 755-IV (here and after referred to the Law) carry out registration (legalization) of citizens association (including trade unions and its associations), charitable organizations, political parties, creative unions and its territorial centres, lawyer associations, commercial and industrial chambers, other institutions and organizations defined by the law, as well as issue certificate on state registration drew up by state registrar in the relevant executive committee of provincial local board or in regional, regional state administration in Kyiv and Sevastopol under the location of legal person.

At the same time, the direct registration of public association, charitable

organizations is performed by state registrars pursuant to requirements of the Law after obtaining of documents from justice agencies (the order and the procedure defined by the Regulation of submission to state registrars by the Ministry of Justice and its territorial agencies of information on legal persons approved by the Order of the State Committee for Regulator Policy and Entrepreneurship and the Ministry of Justice of Ukraine as of 27.02.2007 № 23/74/5).

Thus, according to the Article 17 of the Law information on legal person or natural person – entrepreneur is included to the Single state register by means of records listing on the base of information from relevant registration cards and information, which is provided by legal person to state registrar under location of registration affair pursuant to the legislation of Ukraine.

The Single state register contains information on legal person, in particular:

- the list of founders (participants) of legal person, including name, residence, identification code of natural person – tax payer, if founder s natural person; title, location and identification code, if founder is legal person;
- surname, name and identification codes of natural persons – tax payer being constituted to the board of legal person, authorized to represent legal person in legal relationships with third parties, or persons, who are entitled to commit actions on behalf of legal person without warrant, as well as to sign treaties;
- information on available restrictions regarding representation on behalf of legal person.

In case of introducing amendments to statutory documents related to change of founders (participants) structure of legal person, except documents provided for by the Article 29 part 1 of this Law the copy of the resolution on getting out of the structure of founders (participants), certified in the established procedure, or the copy of the state of natural person on getting out of the structure of founder (participants) certified by notary, or the copy of document on transition of participant's share in statutory capital of company certified by notary, or the document on transferring rights of founder (participant) to another person certified by notary, or the resolution of authorized agency of legal person regarding compulsory excluding of founder (participant) from the structure of founders (participants of legal persons if it is prescribed by the law or constitute documents of legal person (the Article 29 Part 3 of the Law) is additionally submitted).

The Article 1 of the Law provides that registration affair shall be a folder of organization and registration type containing documents or computer files for permanent saving, which are submitted to state registrar pursuant to the law.

State registrar establishes, holds and ensures saving of registration affairs at the territory of the relevant administrative-territorial unit (exempt registration affairs of legal persons, registered in accordance with the Article 3 part 4 of this Law).

Additionally: pursuant to the Article 15 of the Law from the date of listing by state registrar of notation on suspension of legal person or notation on suspension of entrepreneurship by natural person – entrepreneur to the Single state register, the registration affair shall be saving by state registrar during 3 years. After expiration of this period state registrar shall submit registration affair for saving to state archival institution in the procedure, established by the law.

Registration affair shall be saving in state archival institution within 75 years from the date it was submitted to state archival institution.

7. According to the Article 24 of the Law of Ukraine On the National Backlog and Archival Institutions as of 24.12.1993 № 3814-XII the Specially Authorized Central Agency of executive power in sphere of archival affair and record keeping (central agency of executive power in sphere of archival affair and record keeping) in the

	<p>scope of its authorities identified by the law performs normative-legal regulation of relations in sphere of archival affair and record keeping.</p> <p>On the base of the Order of the General archival department of the Cabinet of Ministers of Ukraine as of July 20, 1998 p. N 41 the List of typical documents is created in course of activity of state power agencies and agencies of self-government, other enterprises, institutions and organizations indicating terms of documents saving (here and after referred to the List).</p> <p>The List includes documents being created by documenting of the same type (general for all) management functions executed by enterprises, institutions and organizations regardless of functional and targeted assignment, level and scale of activity, form of ownership.</p> <p>In accordance with the List on public association and charitable organizations the following requirements are identified:</p> <ul style="list-style-type: none"> - statutes and provisions of enterprises, institutions, organizations (including public) are saved to the moment of replacement with new (the paragraph 32); - statutory documents (statute, articles of incorporation; amendments to them, minutes of statutory assembly of private organization founders, lists of founders (participants) are saved to the moment of replacement with new (the paragraph 54); - articles of incorporation on mutual relationships of state organization founders are permanently saved (the paragraph 1322); - lists of documents necessary for approval and agreement of statutes of enterprises, organizations of national, municipal and all forms of private ownership (including joint enterprises) are saved to the moment of replacement with new (the paragraph 1300); - information on participation of organization in form of founder in other organizations is saved to the moment of participation annulment(the paragraph 27 Д). <p>Under the paragraph 3.8 of the List an annulment of documents without approval of cases descriptions of permanent saving by commission of experts of state archives, as well as violation of determined by this List terms of saving of documents shall be illegal and brings to responsibility pursuant to the current legislation (extracts are attached).</p> <p>Thus, it may be concluded that the legislation of Ukraine identified legal requirements prescribing saving by non-profit organizations of personal data of persons that possess, control or deal with activity of non-profit organizations and saving notations during 5 years and ensuring its availability for authorized agencies (the paragraph 5.5.3) and provisions requiring information updating, in case of changes in possession or control for all forms of legal persons (the paragraph 849).</p>
<p>Recommendation on MONEYVAL Report</p>	<p><i>The authorities should also consider reviewing the effectiveness of measures in place to sanction violations of oversight measures or rules</i></p>
<p>Measures taken to implement the Recommendation</p>	<p>According to the Article 22 of the Law of Ukraine On Charity and Charitable Organizations supervision over charitable organizations including procedure of using property and funds appointed for charity shall be provided by the authorities of executive power according to their competence.</p> <p>Supervisory authorities of executive power within their competence shall have the right to demand from benefactors and their managing bodies necessary documents and to receive necessary explanations.</p> <p>Benefactors transferred their property, funds and other material values to charitable organizations receive under their request report on usage of such property, funds and values. If property, funds and other material values transferred for target using, report</p>

	on their usage shall be obligatory submitted to benefactor by charitable organization.
Recommendation on MONEYVAL Report	<i>The Ukrainian authorities should ensure that there are legal requirements in place for NPOs to maintain for a period of at least 5 years records of domestic and international transactions that are sufficiently detailed to verify that funds have been spend in a consistent manner with the purpose and objectives of the organisation and to make them available to appropriate authorities</i>
Measures taken to implement the Recommendation	<p>According to the Article 24 of the Law of Ukraine On the National Backlog and Archival Institutions as of 24.12.1993 № 3814-XII the Special authorized central agency of executive power in sphere of archival affair and record keeping (central agency of executive power in sphere of archival affair and record keeping) in the scope of its authorities identified by the law performs normative-legal regulation of relations in sphere of archival affair and record keeping.</p> <p>On the base of the Order of the General archival department of the Cabinet of Ministers of Ukraine as of July 20, 1998 p. N 41 the List of typical documents is created in course of activity of state power agencies and agencies of self-government, other enterprises, institutions and organizations indicating terms of documents saving (here and after referred to the List).</p> <p>The List includes documents being created by documenting of the same type (general for all) management functions executed by enterprise, institutions and organizations regardless of functional and targeted assignment, level and scale of activity, form of ownership.</p> <p>In accordance with the List on public association and charitable organizations the following requirements are identified:</p> <ul style="list-style-type: none"> - statutes and provisions of enterprises, institutions, organizations (including public) are saved to the moment of replacement with new (the paragraph 32); - constitutive documents (statute, articles of incorporation; amendments to them, minutes of constituent assembly of private organization founders, lists of founders (participants) are saved to the moment of replacement with new (the paragraph 54); - articles of incorporation on mutual relationships of state organization founders are permanently saved (the paragraph 1322); - lists of documents necessary for approval and agreement of statutes of enterprises, organizations of national, municipal and all forms of private ownership (including joint enterprises) are saved to the moment of replacement with new (the paragraph 1300); - information on participation of organization in form of founder in other organizations is saved to the moment of participation annulment(the paragraph 27 Д). <p>Under the paragraph 3.8 of the List an annulment of documents without approval of cases descriptions of permanent saving by commission of experts of state archives, as well as violation of determined by this List terms of saving of documents shall be illegal and brings to responsibility pursuant to the current legislation (extracts are attached).</p> <p>Thus, it may be concluded that the legislation of Ukraine identified legal requirements prescribing saving by non-profit organizations of personal data of persons that possess, control or deal with activity of non-profit organizations and saving notations during 5 years and ensuring its availability for authorized agencies (the paragraph 5.5.3) and provisions requiring information updating, in case of changes in possession or control for all forms of legal persons (the paragraph 849).</p>
(Other) changes since the last valuation	

Special Recommendation IX (Cross Border Declaration & Disclosure)	
Rating: Partially compliant	
Recommendation on MONEYVAL Report	<i>Ukraine should make the necessary amendments in order that the resolution of the NBU and the explanatory form provided with the declaration form of the SCS also refer to all bearer negotiable instruments and not only to traveller's cheques.</i>
Measures taken to implement the Recommendation	The Article 1 Clause 1 of the Decree of Cabinet of Ministers of Ukraine On System of Currency Regulation and Currency Supervision as of February 19, 1993 under №15-93 determines the definition of "currency values", in particular, the definition of "payment documents and other securities", including the definition of "cheque".
Recommendation on MONEYVAL Report	<i>The SCS should have the authority to restrain currency or bearer negotiable instruments when there is a suspicion of ML or FT.</i>
Measures taken to implement the Recommendation	The current legislation prescribes that confiscation of goods including currency valuables may be performed by customs agencies solely under the condition of identification in actions of person of offence indicia and its setting in the proper way.
Recommendation on MONEYVAL Report	<i>The authorities should review the current framework and ensure that it covers fully either all suspicious cross-border transportation incidents or enables the FIU to have direct information on all declarations made according to the declaration system. Information contained in customs declarations is not retained by the SCS. A system should be developed for storing this information.</i>
Measures taken to implement the Recommendation	<p>For the present the submission of data between the State Customs Office of Ukraine and the State Committee for Financial Monitoring of Ukraine is carried out pursuant to the Agreement on cooperation between the State Customs Office of Ukraine and the State Committee for Financial Monitoring of Ukraine № 37/6 as of 10.09.2009 and its minutes.</p> <p>The Minutes № 3 prescribes submission by the State Customs Office of Ukraine to the State Committee for Financial Monitoring of Ukraine of information on the list of persons (residents and non-residents of Ukraine) that violated customs rules by import or export of foreign or national currency or other currency valuables (including violation by currency declaring) at the amount that equals or exceeds UAH 15 000 (equals or exceeds amount in foreign currency equivalent to UAH 15 000) monthly to the 10th instant of the following month.</p> <p>The Minutes № 2 on the procedure of submission of information to the Agreement prescribes that the State Customs Office of Ukraine submits information from the central data base of electronic copies of the Ministry of Interior of Ukraine (forms МД-2, МД-3, МД-6) regarding foreign trade transactions with relevant limitations regarding the list of the Ministry of Interior register on the properties "Type of declaring" and "Character of agreement" to the State Committee for Financial Monitoring of Ukraine.</p> <p>Information containing in customs declarations is saved by the State Customs Office of Ukraine. The system of saving, accumulation and processing of this information, the Unified Automated Information System of the State Customs Office of Ukraine is elaborated and put into permanent operation.</p> <p>Electronic copies of unified customs receipts МД-1 and its additional papers, certificates on registration of vehicles, loading customs declarations, paper scripts of which are submitted in stitched sets of duplications of the unified administrative</p>

	<p>document of the form МД-2, its additional papers of the form МД-3, specifications of the form МД-8 and supplement of the form МД-6 are saved in this system.</p> <p>Customs inspection, customs registration and inspection of delivery of citizens vehicles has been performed using forms МД-4 and МД-7 before entering into force of the provisions of the Order of the State Customs Office of Ukraine as of 17.11.2005 № 1118 On Approval of the Rules of Customs Inspection and Customs Registration of Vehicles Being Transported by Citizens through the State Customs Office of Ukraine. Information regarding these transactions is also saved in the Unified Automated Information System of the State Customs Service of Ukraine. For the present, customs inspection and customs registration of citizens vehicles is carried out with the use of cargo customs declarations.</p>
Recommendation on MONEYVAL Report	<i>The administrative penalties for false or non declarations should be raised considerably.</i>
Measures taken to implement the Recommendation	<p>According to the Article 352 of the Customs Code of Ukraine the actions aimed at transportation of goods through the customs boundary of Ukraine concealing it from customs inspection, especially submission to the customs agency as the base for transportation of goods of documents containing fictitious information cause to imposing fine <u>at the rate from 500 to 1000 untaxed minimum incomes of citizens</u> or confiscation of these goods, as well as confiscation of goods with specially established depots (secret places) and vehicles using for transportation of goods through customs boundary of Ukraine.</p> <p>The State Customs Service of Ukraine has prepared the draft of the new version of the Customs Code of Ukraine, where it has been provided to determine for the above mentioned offence sanction in form of fine <u>at the rate from 100 to 300 % of value of direct things of violation of customs rules</u> or confiscation of these goods, as well as confiscation of goods with specially established depots (secret places) and vehicles using for transportation of goods – direct things of violation of customs rules through customs boundary of Ukraine.</p>
(Other) changes since the last valuation	

2.4 Specific Questions

<p>1) <i>At the time of the assessment, there was no provision prohibiting financial institutions from tipping off. Were there any changes in the legislation to address this deficiency?</i></p>
<p>Article 12 Parts 6 and 7 of New AML/CFT Law establish that the reporting entity personnel submitted to the Specially Authorized Agency information on financial transaction is prohibited to inform about it the persons that conduct (conducted) it or any other third persons.</p> <p>The reporting entity personnel who receive the request from Specially Authorized Agency and/or responded such request to this agency shall be prohibited to inform participants of financial transaction mentioned in the request or in the respond as well as to inform any other third party.</p>
<p>2) <i>How many onsite inspections of financial institutions have been undertaken by the relevant supervisory authorities since the adoption of the MER:</i></p> <ul style="list-style-type: none"> • <i>solely for AML/CFT supervisory issues;</i> • <i>which include an AML/CFT component as part of general supervisory activity?</i> <p><i>(NB: please provide figures with a breakdown per supervisory authority/ institutions).</i></p>

Inspections of the State Commission on Securities and Stock Market of professional participants of securities market on the issues of financial monitoring

Supervisory sphere of the SCSSM	2008	2009	First half-year of 2010
Unscheduled inspections	19	10	5
Scheduled inspections	231	241	99

Inspections of the National Bank of Ukraine on the issues of financial monitoring

Supervisory sphere of the NBU	2008	2009	First half-year of 2010
Banks	190	210	44
Affiliates	132	49	15

Inspections of the State Commission for Financial Services Market Regulation of Ukraine of financial institutions on the issues of financial monitoring during January-June 2010

Financial institution	Number of on-site inspections performed	
	scheduled	unscheduled
Insurance companies	343	61
Pawn shops	95	22
Financial companies	40	26
Leasing providers	12	1
Credit institutions	101	7
Administrators of the National Pension Fund	43	0
Total number in 2008	634	117
Insurance companies	149	88
Pawn shops	50	10
Financial companies	37	24
Leasing providers	10	63
Trusts	0	0
Credit institutions	132	12
Administrators of the National Pension Fund	21	0
Total number in 2009	399	197
Insurance companies	69	82
Pawn shops	36	
Financial companies	24	2
Leasing providers		32
Credit institutions	73	8
Administrators of the National Pension Fund	5	
Total number in first half-year 2010	207	124

3) *Have the supervisory authorities imposed any sanctions for breaches of AML/CFT legislation by financial institutions or DNFBPs since the adoption of the 3rd report? If so, please, indicate the main types of AML/CFT infringement detected by supervisors.*

(NB: It is not necessary for these purposes to provide full detailed statistics, but an overview)

In 2009 the State Commission on Securities and Stock Market posed 193 influence measures, including 47 fines in the amount of UAH 101 830, 109 sanctions in form of warning, 25 resolutions on eliminations of violations. Also 12 minutes on administrative offences were composed.

In first and second quarters of 2010 the State Commission on Securities and Stock Market posed 13 sanctions, 43 sanctions in form of warning, 11 resolutions on eliminations of violations, and 5 minutes on administrative offences.

In 2009 SCFSMR, in particular according to materials of SCFM of Ukraine, carried out 399 planned and 197 non-scheduled revisions. According to results of examinations and supervisory measures Commission posed on reporting entities 228 fines and applied 122 resolutions on elimination of violations.

During first half-year of 2010 SCFSMR, including according to materials of SCFM of Ukraine, carried out 207 planned and 124 non-scheduled revisions. According to results of examinations and supervisory measures Commission posed on reporting entities 167 fines and applied 215 resolutions on elimination of violations.

Main types of violations are following: violation of requirement of the AML/CFT Law concerning providing detection and timely registration of financial transactions subject to financial monitoring according to the Law; submitting authorized body with information on financial transaction subject to financial monitoring within three working day from the moment of registration; carrying out of identification of person conducting financial transaction subject to financial monitoring according to the Law; violation of requirements concerning submitting authorized body with notification concerning appointing or dismiss of compliance officer (or person temporary appointed on his place) within three working days from the date of signing of appropriate decree; compliance of programmes and rules of conducting financial monitoring.

4) *Has there been any action taken to develop further the strategic and collective review or the performance of the AML/CFT system as a whole ? (see recommendation in paragraph 921 of the report)*

Decision of 48-th meeting of Interdepartmental working group on investigating methods and tendencies of money laundering of the proceeds from crime as of March 31, 2008 approved the List of indexes showing efficiency of national AML system. Interdepartmental working group made decision to carry out annual evaluation of efficiency of national system.

Decision of the Interdepartmental working group was approved by the Cabinet of Ministers of Ukraine and appropriate order was made to the state authorities.

Under the Order of the First Vice Prime Minister of Ukraine SCFM of Ukraine submitted state authorities with case referrals and evaluation of efficiency of activity of national AML/CFT system was made.

In the 1st quarter of 2009 appropriate analysis of efficiency of the national AML/CFT system for 2007-2008 was performed.

National AML/CFT system efficiency report was submitted to the Cabinet of Ministers of Ukraine.

Results of evaluation showed the efficiency of national AML/CFT system and determined certain problems of the functioning.

It should be mentioned that revealed problems during the analysis of the national system coincide with conclusions of experts, submitted in the 3rd Round Evaluation Report on Ukraine.

In 2007-2008 state bodies of Ukraine on permanent grounds performed actions aimed to improve legal provision of AML/CFT national system.

At the same time, due to the complex of implemented practical measures in mentioned period firm positive tendencies concerning conducting AML/CFT actions by reporting entities were observed.

Meanwhile, because of absence in 2008 of submitted to SCFM of Ukraine STRs by certain categories of

reporting entities, such as commodity exchange, fiduciary partnerships, providers of financial leasing services; factoring services providers and depository – clearing institutions, SCFSMR and State Commission on Securities and Stock Market under results of conducted revisions are recommended to ascertain the reasons for that.

Submitted to the SCFM of Ukraine reports of reporting entities concerning financial transactions containing indicators of obligatory financial monitoring prevailed. To enhance efficiency of measures taken by reporting entities to increase the number of reports on financial transactions containing indicators of initial financial monitoring submitted by them SCFSMR, SCFM of Ukraine and NBU of Ukraine are recommended to carry out appropriate organizational and explanatory actions and elaborate methodological recommendations on indication of such transactions.

Moreover, positive tendencies concerning extend of carried of examinations of reporting entities – financial institutions and adequacy of taken measures according to results of examinations of taken measures were detected.

Analysis of regulating and supervision efficiency of privileges of reporting entity, providing the AML/CFT Law show the positive tendencies concerning the scope of carried out examinations of reporting entities – financial institutions and measures taken according to results of examinations.

At the same time, Ministry of Finance of Ukraine is recommended to carry out regular supervisions of compliance of AML/CFT legislation by providers of gambling games in gambling institutions.

Analysis of quantitative and qualitative indexes of submitted case referrals by SCFM of Ukraine to the law enforcement agency in 2008 shows positive tendencies comparing with 2007.

In general, performed examination shows proper use of mechanisms of interdepartmental cooperation and coordinated activity between state authorities and their dynamic development in 2007-2008 and proper level of organization international cooperation in 2007-2008 by state authorities of Ukraine.

During evaluation of the national system main goals for the future are enhancing efficiency of investigation of cases by law enforcement agencies under the Article 209, 306 and 209-1 of the Criminal Code of Ukraine, which will assisted by, in particular:

- measures of providing enhanced efficiency of operative and search and other activity concerning detection and stop of activity of organized groups or criminal organizations providing legalization (laundering) of the proceeds from crime;
- generalization by the Supreme Court of Ukraine of practice of applying by courts of legislation on criminal responsibility for legalization (laundering) of the proceeds from crime.

As well stated necessity to concentrate on implementation of unified state statistics reporting based on administrative statistics of law enforcement agency, Ministry of Justice of Ukraine and State Court Administration of Ukraine.

Besides, Ministry of Justice of Ukraine is recommended to form on regular basis administrative data on total amount of assets, property seized under the court decision in criminal cases under the Article 209, 209-1, 306 of the CC of Ukraine.

In the second quarter 2010 analysis of efficiency of functioning national system in 2009 is planned to be carried out.

Moreover, in order to elaborate draft laws necessary to implement recommendations provided by MONEYVAL experts under the III Round Evaluation of Ukraine the SCFM of Ukraine jointly with other state authorities worked out Recommended Action Plan for enhancement of Ukrainian anti-money laundering and counter terrorist financing system, provided by MONEYVAL experts.

Under results of processing the Plan SCFM of Ukraine submitted the Cabinet of Ministers with Draft Resolution of the Parliament and NBU of Ukraine on approval of Action Plan in order to comply requirements of experts.

On October 21, 2009 on the session of the Cabinet of Ministers of Ukraine the Resolution of the Cabinet of Ministers On “Approval of the Action Plan for 2010 on prevention and counteraction to legalization (laundering) of the proceeds from crime and terrorist financing” was adopted. As long as implementation of requirements require taking significant legal and practical actions that demand time for realization the Action Plan was divided into two calendar years 2009-2010.

Part of actions on implementation of recommendations was implemented as amendments to the Action Plan 2009 on prevention and counteraction to legalization (laundering) of the proceeds from crime and terrorist financing approved by the Resolution of the Cabinet of Ministers and NBU of Ukraine as of December 10, 2008 № 1077.

Other part of the Plan is separated into the Action Plan for 2010 on prevention and counteraction to legalization (laundering) of the proceeds from crime and terrorist financing.

In July 2010 World Bank jointly with SCFM conducted in Ukraine 2-day workshop on National ML/TF Risks Assessment where the second-generation risk-assessment tool was presented by World Bank.

So, Ukraine is taking measures to enhance performance of the system of prevention and counteraction to legalization (laundering) of the proceeds from crime and terrorist financing.

2.5 Questions related to the Third Directive (2005/60/EC) and the Implementation Directive (2006/70/EC)⁹

Implementation / Application of the provisions in the Third Directive and the Implementation Directive

Please indicate whether the Third Directive and the Implementation Directive have been fully implemented / or are fully applied and since when.	Norms of the AML/CFT Law provide implementation of provisions of the Third Directive.
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Beneficial Owner

Please indicate whether your legal definition of beneficial owner corresponds to the definition of beneficial owner in the 3 rd Directive ¹⁰ (please also provide the legal text with your reply)	Definition of “beneficial owner” in the context of implementation of Council of Europe Convention is provided by the New AML/CFT Law, considering beneficial owner as a person for benefit or in interest of which financial transaction is conducted (Article 1 Part 1(24)). Moreover, Resolution of the NBU as of March 28, 2007 № 98, adopting Methodical recommendations on enhancing corporate governance in the banks of Ukraine provide definition of “beneficial owner” – person, which obtains benefit out of securities or other property despite the formal ownership. In particular, beneficial owner is a person, with is directly or indirectly, personally or with other persons, through agreements, personal relations or in other way has the right to vote, right to purchase or sell property or right to collect dividends.
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Risk-Based Approach

Please indicate the extent to which financial institutions have been permitted to use a risk-based approach to discharging certain of their AML/CFT obligations.	Art.9 of AML/CFT Law allows financial institutions to conduct simplified CDD measures on certain categories of clients: government agencies, state-owned enterprises and participants of stock exchanges.
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Politically Exposed Persons

Please indicate whether criteria for identifying PEPs	New AML/CFT Law (Article 1 Part 1(29)) provide definition of politically exposed persons as natural person entrusted to carry out designed public functions, in particular:
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⁹ For relevant legal texts from the EU standards see Appendix II

¹⁰ Please see Article 3(6) of the 3rd Directive reproduced in Appendix II

<p>in accordance with the provisions in the Third Directive and the Implementation Directive¹¹ are provided for in your domestic legislation (please also provide the legal text with your reply).</p>	<ul style="list-style-type: none"> - Head of State, Head of Government, Ministers and their Deputy Heads; - Deputies of the Parliament; - Members of Supreme Court, Constitutional Court or other higher judicial authorities whose decisions can not be litigated, unless exceptional cases; - members of the court of auditors or central banks governors; - ambassadors, chargé d'affaires and high officials of armed forces; - members of administrative, managerial or supervising authorities of strategic public enterprises.
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“Disclosure”	
<p>Please indicate whether the prohibition is limited to the transaction report or also covers ongoing ML or TF investigations.</p>	<p>Reporting entities are prohibited to disclose information about transaction report and requests received from FIU. Moreover, CC of Ukraine provides responsibility for disclosure of data of pre-trial investigation or inquest (Article 387).</p>
<p>With respect to the prohibition of “disclosure” please indicate whether there are circumstances where the prohibition is lifted and, if so, the details of such circumstances.</p>	<p>According to the Article 121 of the Criminal Procedural Code of Ukraine information concerning pre-trial investigation may be disclosed only under permission of investigator or prosecutor and in amount they consider to be possible. As appropriate, investigator advises witnesses, victim, civil plaintiff, civil defendant, defense counsel, expert, specialist, translator, attesting witnesses, as well as other persons present during the conduct of investigative actions of their duty not to disclose information relating to pre-trial investigation without his/her consent. Those guilty of disclosure of information relating to pre-trial investigation are criminally liable under Article 387 of the Criminal Code of Ukraine.</p>

“Corporate liability”	
<p>Please indicate whether corporate liability can be applied where an infringement is committed for the benefit of that legal person by a person who occupies a leading position within that legal person.</p>	<p>According to the Article 2 of the Law of Ukraine “On Combating Corruption” legal entities bear amenability for corruptive actions. Responsibility of legal persons for committing corruptive actions by their authorized persons and procedure of bringing them to responsibility are set by the Law of Ukraine “On Responsibility of Legal Persons for Corruption Offences”. Under the Article 2 of the Law of Ukraine “On Responsibility of Legal Persons for Corruption Offences” № 1507-VI legal person shall bear responsibility, prescribed by this Law, for committing for and on its behalf by the head of this legal person, its founder, participant or other authorized person independently or in privity of any crimes, specified inter alia in the Articles 209 and 258-5 of the Criminal Code of Ukraine (which are ML and TF). Thus, Ukraine provide responsibility of legal entities for offences committed for</p>

¹¹ Please see Article 3(8) of the 3rd Directive and Article 2 of Commission Directive 2006/70/EC reproduced in Appendix II.

	this legal entity by the person holding governing position in such legal entity.
Can corporate liability be applied where the infringement is committed for the benefit of that legal person as a result of lack of supervision or control by persons who occupy a leading position within that legal person.	The AML/CFT Law provides responsibility of legal entities for violation of its requirements. Such responsibility of legal entities shall be applied despite of insufficient supervision or control by the person on charge of such legal entity (Article 23).
DNFBPs	
Please specify whether the obligations apply to all natural and legal persons trading in all goods where payments are made in cash in an amount of € 15 000 or over.	Under the Article 5 Part 2 (8) of the New AML/CFT Law a specially assigned reporting entities are natural persons – business entities and legal entities, conducting financial transactions with goods for cash, under condition that the sum of transaction is equal or exceed the sum defined by the part one of the Article 15 of this Law (UAH 150 000, equals approx. Eur 15 000), in cases provided by the Article 6 and 8 of this Law.

2.6 Statistics

a. Please complete - to the extent possible - the following tables:

2005												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML ¹	779	231	404	591	228	231	Not available	1 619 242	Not available	1 203 781	Not available	1 237 173
FT	0	0	0	0	0	0	0	0	0	0	0	0

¹ ML on the basis of Articles 209,306 of the CC of Ukraine

2006												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML ¹	764	159	390	496	177	159	Not available	1 917 537	Not available	3 281 079	Not available	1 285 013
FT	0	0	0	0	0	0	0	0	0	0	0	0

¹ ML on the basis of Articles 209,306 of the CC of Ukraine

2007												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML ¹	751	228	387	550	211	228	Not available	2 270 442	Not available	1 497 609	Not available	1 715 561
FT	0	0	0	0	0	0	0	0	0	0	0	0

¹ ML on the basis of Articles 209,306 of the CC of Ukraine

2008												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML ¹	754	208	383	495	212	208	Not available	4 791 833	Not available	7 601 706	Not available	1 956 249
FT	0	0	0	0	0	0	0	0	0	0	0	0

¹ML on the basis of Articles 209,306 of the CC of Ukraine

2009													
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated		
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)	
ML ¹	733	204	385	565	195	204	Not available	2 775 468	Not available	23 717 958	Not available	3 264 620	
FT	0	0	0	0	0	0	0	0	0	0	0	0	

¹ML on the basis of Articles 209,306 of the CC of Ukraine

June 2010													
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated		
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)	
ML ¹	425	-	214	320	110	120	Not available	14 556 793	Not available	12 205 077	Not available	4 689 848	
FT													

¹ML on the basis of Articles 209,306 of the CC of Ukraine

b. STR/CTR

Explanatory note:

The statistics under this section should provide an overview of the work of the FIU.

The list of entities under the heading “*monitoring entities*” is not intended to be exhaustive. If your jurisdiction covers more types of monitoring entities than are listed (e.g. dealers in real estate, supervisory authorities etc.), please add further rows to these tables. If some listed entities are not covered as monitoring entities, please also indicate this in the table.

The information requested under the heading “*Judicial proceedings*” refers to those cases which were initiated due to information from the FIU. It is not supposed to cover judicial cases where the FIU only contributed to cases which have been generated by other bodies, e.g. the police.

“*Cases opened*” refers only to those cases where an FIU does more than simply register a report or undertakes only an IT-based analysis. As this classification is not common in all countries, please clarify how the term “cases open” is understood in your jurisdiction (if this system is not used in your jurisdiction, please adapt the table to your country specific system).

Note: according to the Ukrainian regulations within one case FIU may submit several notifications (case referrals) to law enforcement – initial case referral and additional materials. Additional case referrals may be also sent based on cases of previous years.

2005															
Statistical Information on reports received by the FIU								Judicial proceedings							
Monitoring entities, e.g.	reports about transactions above threshold	reports about suspicious transactions		cases opened by FIU		notifications to law enforcement/prosecutors		indictments				convictions			
		ML	FT	ML	FT	ML	FT	ML		FT		ML		FT	
		cases	persons	cases	persons	cases	persons	cases	persons	cases	persons	cases	persons	cases	persons
Banks	417608	348821	17	922	3	319	3	13	N	0	0	9	N	0	0
Insurance companies	12011	1310	0					5	A				A		
Credit union	5	1	0												
Pawnshop	656	0	0												
Administrator of non-state pension fund (activity for administration of non-state pension)	0	0	0												

funds)																	
Other financial institutions	0	0	0														
Enterprises and communication unions	2	2	0														
Currency-exchange		0	0														
Persons, providing separate types of financial services		0	0														
Professional Securities Market Participants	3764	338	0														
Commodity exchange and other exchange		0	0														
Gambling institution	1	0	0														
Other legal entities, which conduct financial transactions according to the legislation	1428	35	0														
Notaries		N/A	N/A														
Lawyers		N/A	N/A														
Accountants/auditors		N/A	N/A														
Legal persons conducting any kind of lottery	90	0	0														
Total	435565	350507	17														

2006																
Statistical Information on reports received by the FIU										Judicial proceedings						
Monitoring entities, e.g.	reports about transactions above threshold	reports about suspicious transactions		cases opened by FIU		notifications to law enforcement/prosecutors		indictments				convictions				
		ML	FT	ML	FT	ML	FT	ML		FT		ML		FT		
		cases	persons	cases	persons	cases	persons	cases	persons	cases	persons	cases	persons	cases	persons	
Banks	491771	311299	12	905	0	446	0	16	N	0	0	8	N	0	0	
Insurance companies	11489	1421	0					4	/				/			
Credit union	3	0	0						A				A			

Pawnshop	265	0	0																
Administrator of non-state pension fund (activity for administration of non-state pension funds)	0	0	0																
Other financial institutions	0	0	0																
Enterprises and communication unions	1	2	0																
Currency-exchange		0	0																
Persons, providing separate types of financial services		0	0																
Professional Securities Market Participants	4652	352	0																
Commodity exchange and other exchange		0	0																
Gambling institution		0	0																
Other legal entities, which conduct financial transactions according to the legislation	85	0	0																
Notaries		N/A	N/A																
Lawyers		N/A	N/A																
Accountants/auditors		N/A	N/A																
Legal persons conducting any kind of lottery	134	0	0																
Total	508400	313074	12																

2007																				
Statistical Information on reports received by the FIU								Judicial proceedings												
Monitoring entities, e.g.	reports about transactions above threshold	reports about suspicious transactions		cases opened by FIU		notifications to law enforcement/prosecutors		indictments				convictions								
		ML	FT	ML	FT	ML	FT	ML		FT		ML		FT						
		cases	persons	cases	persons	cases	persons	cases	persons	cases	persons	cases	persons	cases	persons					

Banks	654936	320189	13	1331	1	520	3	24 4	N / A	0	0	4 0	N/ A	0	0
Insurance companies	16961	2154	0												
Credit union	216	5	0												
Pawnshop	358	0	0												
Administrator of non-state pension fund (activity for administration of non-state pension funds)	1	0	0												
Other financial institutions	41	0	0												
Enterprises and communication unions	0	4	0												
Currency-exchange	3	0	0												
Persons, providing separate types of financial services	7	0	0												
Professional Securities Market Participants	7560	609	0												
Commodity exchange and other exchange	11	0	0												
Gambling institution		0	0												
Other legal entities, which conduct financial transactions according to the legislation	43	22	0												
Notaries		N/A	N/A												
Lawyers		N/A	N/A												
Accountants/auditors		N/A	N/A												
Legal persons conducting any kind of lottery	219	0	0												
Total	680356	322966	13												

2008															
Statistical Information on reports received by the FIU								Judicial proceedings							
Monitoring entities, e.g.	reports about transactions above threshold	reports about suspicious transactions		cases opened by FIU		notifications to law enforcement / prosecutors		indictments				convictions			
		ML	FT	ML	FT	ML	FT	ML		FT		ML		FT	
		cases	persons	cases	persons	cases	persons	cases	persons	cases	persons	cases	persons	cases	persons
Banks	748235	287387	8	167	3	642	7	32	N	0	0	11	N/A	0	0
Insurance companies	21794	2007	0	5				6	/			6			
Credit union	92	2	0						A						
Pawnshop	237	4	1												
Administrator of non-state pension fund (activity for administration of non-state pension funds)	21	1	0												
Other financial institutions	61	0	0												
Enterprises and communication unions	0	5	0												
Currency-exchange	11	0	0												
Persons, providing separate types of financial services	39	0	0												
Professional Securities Market Participants	6053	972	0												
Commodity exchange and other exchange	7	0	0												
Gambling institution	33	7	0												
Other legal entities, which conduct financial transactions according to the legislation	3	33	0												
Notaries		N/A	N/A												
Lawyers		N/A	N/A												
Accountants/auditors		N/A	N/A												

Legal persons conducting any kind of lottery	264	0	0												
Total	776850	290418	9												

2009															
Statistical Information on reports received by the FIU								Judicial proceedings							
Monitoring entities, e.g.	reports about transactions above threshold	reports about suspicious transactions		cases opened by FIU		notifications to law enforcement/prosecutors		indictments				convictions			
		ML	FT	ML	FT	ML	FT	ML		FT		ML		FT	
		cases	ns	cases	ns	cases	ns	cases	ns	cases	persons	cases	ns	cases	ns
Banks	628300	22374	10	168	0	626	1	35	N	0	0	1	N/A	0	0
Insurance companies	17877	2462	0	2				4	/			5	A		
Credit union	1	33	0						A			0			
Pawnshop	191	4	0									0			
Administrator of non-state pension fund (activity for administration of non-state pension funds)		0	0									0			
Other financial institutions	129	0	0									0			
Enterprises and communication unions	1	0	0									0			
Currency-exchange	2	0	0									0			
Persons, providing separate types of financial services	222	0	0									0			
Professional Securities Market Participants	3265	946	1									0			
Commodity exchange and other exchange	2	0	0									0			
Gambling institution	22	4	0									0			
Other legal entities, which conduct financial transactions according to the legislation	0	2	0									0			

Notaries		N/A	N/A														
Lawyers		N/A	N/A														
Accountants/auditors		N/A	N/A														
Legal persons conducting any kind of lottery	359	0	0														
Total	650371	227192	11														

January – July 2010																	
Statistical Information on reports received by the FIU										Judicial proceedings							
Monitoring entities, e.g.	reports about transactions above threshold	reports about suspicious transactions		cases opened by FIU		notifications to law enforcement/prosecutors		indictments				convictions					
		ML	FT	ML	FT	ML	FT	ML		FT		ML		FT			
								cases	persons	cases	persons	cases	persons	cases	persons		
Banks	293 036	95 570	2	832	2	257	2	1	N	0	0	4	65	0	0		
Insurance companies	8 846	247	1					7	/			0					
Credit union	0	4	0					6	A								
Pawnshop	26	4	0														
Administrator of non-state pension fund (activity for administration of non-state pension funds)	0	1	0														
Other financial institutions	6	0	0														
Enterprises and communication unions	0	3	0														
Currency-exchange	0	0	0														
Persons, providing separate types of financial services	0	182	0														
Professional Securities Market Participants	1 069	174	0														
Commodity exchange and other exchange/	146	0	0														

Stock exchange, trade and information systems (activity on organisation of trade on securities market)																		
Assets management companies (activity on asset management of joint investment institutions, activity on assets management of non-state pension funds)	261	36	0															
Gambling institution																		
Other legal entities, which conduct financial transactions according to the legislation	381	0	0															
Notaries	-	-	-															
Lawyers	-	-	-															
Accountants/auditors	-	-	-															
Legal persons conducting any kind of lottery	208	0	0															
Total	303 979	96 221	3															

Statistics of transaction reports contained in case referrals

Year	Threshold reports/STRs submitted to law enforcement agency
2008	228 577
2009	180 768
January- July 2010	111 745

3. Appendices

3.1 Appendix I - Recommended Action Plan to Improve the AML / CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	No text required
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	<ul style="list-style-type: none"> • Amend article 209 of the CC to include explicitly the actions of conversion or transfer of property in the physical elements of the ML offence. • Ensure that the scope of property encompasses assets of every kind, including intangible assets and legal documents or instruments evidencing title to, or interest in such assets. • Criminalise market manipulation and insider trading and ensure that the range of offences set out in the CC which are predicate offences to ML include all required categories of offences in all the relevant forms. • Review the current threshold for predicate offences to bring it in line with the requirements under FATF Recommendation 1. • Place additional focus on autonomous investigation and prosecution of money laundering offences, which should entail the ability to issue a ML conviction without prior or simultaneous conviction for a predicate offence proving that the property is the proceeds of crime. In this context, authorities should address the issue of the evidence required to establish the predicate criminality in autonomous money laundering cases by testing the extent to which inferences of underlying predicate criminality can be made by courts from objective facts, with a view to obtaining authoritative court rulings. The examiners advise that, as in some other jurisdictions, it may be helpful to put beyond doubt in legislation that a conviction for money laundering can be achieved in the absence of a judicial finding of guilt for the underlying predicate criminality. Further guidance and perhaps consideration of further legislative provision to clarify some of these issues will be necessary. • Review the current approach concerning criminal liability of legal persons, and consider the possibility of amending the Criminal Code to make legal persons criminally liable, in particular for money laundering offences. • Review the legal framework in place and measures taken so far so as to ensure that legal persons are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for ML. • Improve and implement adequate training programmes in order to enhance the capacity of prosecutors to investigate and prosecute ML cases and of judges to effectively apply article 209, in particular on the types and levels of evidence which the courts might consider acceptable to prove the physical and mental elements of the offence.
2.2 Criminalisation of	<ul style="list-style-type: none"> • To ensure that the definition of terrorism fully covers all the terrorist acts set out in article 2(1) of the Terrorist Financing Convention; • Amend the Criminal Code and introduce an autonomous terrorist financing offence

<p>Terrorist Financing (SR.II)</p>	<p>fully in line with the requirements set out in the article 2 of the Terrorist Financing Convention and with the characteristics set out in Special Recommendation II;</p> <ul style="list-style-type: none"> • Ensure that the terrorist financing offences are predicate offences for money laundering; • Ensure that the TF offences would apply, regardless of whether the person alleged to have committed the offence(s) is in the same country or in a different country from the one in which the terrorist/ terrorist organisation is located or the terrorist act(s) occurred/will occur; • Provide that the law would permit the intentional element of the offence of TF to be inferred from objective factual circumstances; • Review the current approach concerning criminal liability of legal persons, and consider the possibility of amending the Criminal Code to make legal persons criminally liable for TF, or otherwise subject legal persons to civil or administrative liability for TF; • Take measures as necessary to ensure that criminal, civil or administrative sanctions for TF applicable to natural and legal persons are effective, proportionate and dissuasive.
<p>2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)</p>	<p>The Ukrainian authorities should ensure that:</p> <ul style="list-style-type: none"> • the legal framework explicitly provides for confiscation of instrumentalities, confiscation of property of corresponding value, as well as confiscation of income, profits or other benefits from the proceeds of crime, in the context of a ML offence; • all the predicate offences to money laundering provide for possibility of confiscation of an offender's property, in line with the FATF requirements; • confiscation for the property used in or intended for use in terrorist financing cases is provided for; • comprehensive statistics are kept on an annual basis on the number of cases and the amounts of property frozen, seized and confiscated relating to ML, FT and criminal proceeds.
<p>2.4 Freezing of funds used for terrorist financing (SR.III)</p>	<ul style="list-style-type: none"> • The Basic Law should envisage the power for executing initial suspension (freezing) of financial transactions not only for the designated financial and non-financial entities, but also for authorized state agencies (the SCFM or other). • Ukraine should prescribe in an evident manner that suspension (freezing) of terrorist funds extends to the cases where no national court decision or appropriate foreign decision are existent, but the funds are disclosed to be owned or controlled by persons who commit, or attempt to commit terrorist acts or participate in or facilitate the commission of terrorist acts. • Freezing mechanisms of other jurisdictions are undertaken through the Security Service of Ukraine, which provides to the SCFM the submitted court decisions and other decision of foreign competent authorities. It is recommended to enable prompt determination and suspension (freezing) of terrorist funds also on the basis of appropriate foreign requests, received by the SCFM or other competent authorities. • The AML/CFT legal framework of Ukraine should enable suspension (freezing) of funds or other assets not connected with financial transactions. • Ukraine should review and complete the existing procedures for considering de-listing requests, develop procedures for unfreezing the funds or other assets of delisted persons or entities in a timely manner and take necessary measures to ensure that such procedures are effective and publicly known. • Ukraine should establish procedure for authorising access to funds or other assets that were frozen and that have been determined to be necessary for basic expenses, the

	<p>payment of certain types of fees, expenses and service charges or for extraordinary expenses.</p> <ul style="list-style-type: none"> • It is recommended to review existing provisions to enable confiscation of terrorist related funds in the course of criminal proceedings on terrorist related offences (specified under Articles 258, 258.1-258.4 of the CC).
2.5 The Financial Intelligence Unit and its functions (R.26)	<ul style="list-style-type: none"> • The SCFM meets Recommendation 26. The evaluation team nevertheless recommends that the SCFM should continue their efforts in increasing the quality of case referrals submitted to all law enforcement authorities, with special attention to the issue of timeliness of such referrals, and in reviewing the dissemination process to ensure that case referrals are submitted to the appropriate law enforcement agency.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	<ul style="list-style-type: none"> • Ukraine should review the current situation in the light of the specific concerns raised by the law enforcement agencies, evaluate the existing practical implementation problems related to the procedures applicable to ML/TF investigations and take necessary measures in order to address these concerns and prevent risks of duplication of efforts. • The procedures for obtaining documents and information to be used in investigations should be carefully examined and modified. • Also, relevant training should be provided to the personnel of authorities in the regions which will enable them to obtain this information more easily. • Despite existing policy efforts to eliminate corruption, it is recommended to pursue current efforts in this area to ensure that they do not impede law enforcement authorities' action. • Furthermore, given that the evaluation team was not in a position to review the relevant framework covering requirements of professional standards and ethics of conduct, the authorities are recommended to review the current situation and take all necessary measures to ensure that staff of law enforcement authorities are required to maintain high professional and ethic standards. • The authorities should also pursue training efforts and provide guidance so as to increase the level of expertise on ML/TF and financial crimes more generally. • The law enforcement and judicial authorities' competencies in AML/CFT should definitely be strengthened, particularly in the regions, in particular through training developed and/or continued, placing an emphasis on the systematic recourse to financial investigations, the use of existing tools and investigative techniques, analysis and use of computer techniques, and by providing relevant guidance.
2.7 Cross Border Declaration & Disclosure (SR.IX)	<ul style="list-style-type: none"> • Ukraine should make the necessary amendments in order that the resolution of the NBU and the explanatory form provided with the declaration form of the SCS also refer to all bearer negotiable instruments and not only to traveller's cheques. • The SCS should have the authority to restrain currency or bearer negotiable instruments when there is a suspicion of ML or FT. • The authorities should review the current and ensure that it covers fully either all suspicious cross-border transportation incidents or enables the FIU to have direct information on all declarations made according to the declaration system. Information contained in customs declarations is not retained by the SCS. A system should be developed for storing this information. • The administrative penalties for false or non declarations should be raised considerably. • The authorities are recommended to undertake a review of the human and financial capacities of the SCS to ensure that it can adequately take necessary measures to detect and prevent cross border movements of currency and bearer negotiable instruments.

	<ul style="list-style-type: none"> • Furthermore, additional efforts should be made to cover through relevant guidance and training issues related to cross border cash and bearer negotiable instruments movements and related ML methods involving the movement of cash to and from Ukraine and raise awareness of customs bodies on ML issues. • Efforts to prevent and sanction corruption within the Customs Service should be pursued.
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<ul style="list-style-type: none"> • All types of financial institutions as defined in the FATF Glossary are covered by AML/CFT obligations through a combination of the Basic Law, the Law on Financial Services and State Regulation of Financial Markets and the Law of Ukraine on Securities and Stock Market. However, Ukraine would benefit from setting out clearly the definitions in the Basic Law to ensure there is a consistency in terminology. • Ukraine has a number of legislative and regulatory requirements setting out AML/CFT obligations, many of which duplicate each other and can lead to some inconsistencies in the requirements on financial institutions. Some of the financial institutions interviewed by the evaluation team felt that it would be helpful if the authorities consolidated the requirements into fewer documents which would help simplify things for them. • Given that many of the FATF standards are intended to apply equally to all institutions, Ukraine is encouraged to rationalise its legislative and “other enforceable means” requirements to remove the duplication. In particular, Ukraine should consider bringing the asterisk FATF criteria within the Basic Law. <p>Recommendation 5</p> <ul style="list-style-type: none"> • In relation to Recommendation 5, Ukraine should ensure that the following requirements are clearly covered by law or regulation: <ul style="list-style-type: none"> - Banks should be required to undertake CDD when carrying out occasional transactions above the applicable designated threshold (ie. should not be limited to cash transactions only) - Identify customers carrying out occasional transactions that are wire transfers - Banks should be required to undertake due diligence when there is suspicion of money laundering or terrorist financing, regardless of any thresholds - Undertake CDD when there are doubts about the veracity or adequacy of previously obtained customer identification data. In particular the current requirements could be strengthened by making the requirement more explicit, ensure it refers to undertaking CDD and covers the full scope of CDD - The definition of beneficial ownership should cover all elements of the FATF Glossary i.e. natural persons requiring financial institutions to determine who are the natural persons that ultimately own or control the

	<p style="padding-left: 40px;">customer</p> <ul style="list-style-type: none"> - conduct ongoing due diligence on the business relationship applicable to all financial institutions. <ul style="list-style-type: none"> • In addition, the following should be set out in law, regulation or other enforceable means: <ul style="list-style-type: none"> - Securities institutions should be required to identify the beneficial owner and understand the ownership and control structure of the customer in all situations and not just high risk situations - Securities institutions should be required to obtain information on the purpose and nature of the business relationship in all situations. - For non-bank financial institutions there should be a requirement that ongoing due diligence should include scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution’s knowledge of the customer, their business and risk profile, and where necessary, the source of funds. - Requirement to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions. - Requirement to apply CDD to existing customers which applies to non bank financial institutions. • Ukraine has some recognition of the risk-based approach within the various requirements. However, Ukraine should consider the explicit recognition of the risk-based approach within the law and other enforceable means. This would help Ukraine to make more use of the some of the requirements in the FATF standards which are not currently implemented in Ukraine including simplified and enhanced due diligence. • The Ukrainian authorities should ensure that financial institutions have greater and simpler access to the information from the State register and the State Tax Administration • The discrepancy regarding SCFM Orders which are applicable to banks but where the NBU is unable to impose sanctions for any breaches should be addressed. Although the NBU advised that most of the requirements in the SCFM Order are within NBU Resolution 189, the authorities should consider to harmonise these requirements in a consolidated manner . • The Basic Law should include a cross-reference to the definition of terrorist financing in the Criminal Code of Ukraine. <p>Recommendation 6</p> <ul style="list-style-type: none"> • As regards Recommendation 6, the Ukrainian authorities should implement the FATF requirements for PEPs as soon as possible. This should include: <ul style="list-style-type: none"> - a clear and explicit definition for PEPs consistent with the FATF Glossary; - requirements on financial institutions to put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a politically exposed person; - a requirement to obtain senior management approval for establishing business relationships with PEPs. This should also include where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently
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	<p>becomes a PEP; and</p> <ul style="list-style-type: none"> - a requirement to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs - A requirement to conduct enhanced ongoing monitoring on a business relationship with the PEP. <ul style="list-style-type: none"> • In addition, given the concerns the authorities have regarding corruption, Ukraine should consider explicitly extending the provisions to include domestic PEPs. <p>Recommendation 7</p> <ul style="list-style-type: none"> • Ukraine would benefit by making requirements on correspondent relationships more explicit in NBU Resolution No. 189 rather than just relying on the information that is required in the questionnaire. In particular this should include explicit requirements on the following: <ul style="list-style-type: none"> - to gather sufficient information about a respondent to understand fully the nature of the respondent’s business and to determine from publicly available information the reputation of the and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action; - to ascertain that the respondent institutions AML/CFT systems are adequate and effective; and - to obtain approval from senior management before establishing new correspondent relationships. <p>Recommendation 8</p> <ul style="list-style-type: none"> • Ukraine should ensure that there is an explicit requirement which requires financial institutions to have policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transactions. This is particularly important as Ukraine’s financial sector grows and channels such as non-face-to-face business are begun to be used more by financial institutions.
3.3 Third parties and introduced business (R.9)	<ul style="list-style-type: none"> • Recommendation 9 does not appear to apply to the Ukrainian system. Considering nevertheless that the law does not explicitly prohibit the use of third parties, it is recommended that the relevant legislation be amended to provide clearly that financial institutions are not permitted to rely on third party verification of identity or introduction of business.
3.4 Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> • Ukraine should review the current limitations which appear to inhibit the ability of law enforcement to access information in a timely manner from some of the sectors and take necessary measures to address the lack of knowledge of relevant procedures applicable in this area. • The Ukrainian authorities should streamline and simplify existing procedures and provide relevant training to law enforcement authorities so that they fully understand the requirements and how to comply with them in order to obtain court orders. This should include training on the procedures available to law enforcement.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	<p>Recommendation 10</p> <ul style="list-style-type: none"> • As regards Recommendation 10, Ukraine would benefit by setting out the requirements on record keeping more clearly in law or regulation. These include: <ul style="list-style-type: none"> - Ensure record keeping requirements refers to “all necessary records on transactions” and not just documents.

	<ul style="list-style-type: none"> - Requiring non-bank financial institutions to maintain records of identification data for at least five years following the termination of the account or business relationship. - transaction records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activities. <p>Special Recommendation VII</p> <ul style="list-style-type: none"> • Ukraine should implement the detailed criteria required by FATF Special Recommendation VII: <ul style="list-style-type: none"> - Apply the exemptions that exist - Ensure the requirements in Order No. 211 are consistent with those under NBU Resolution No. 348 and FATF SR. VII; - Requirement to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. • The Ukrainian authorities should as a matter of urgency effectively supervise non-banking financial institutions and Ukrposhta 's compliance with the rules and regulations relating to SR.VII. • Ukraine should introduce mechanisms for the enforcement of specific breaches for non-banking financial institutions and Ukrposhta by competent authorities and ensure that sanctions are adequate, proportionate and effective for specific breaches under NBU Resolution no. 348. • Ukraine should put in places measures to ensure that Ukrposhta is effectively monitored for AML/CFT purposes.
3.6 Monitoring of transactions and relationships (R.11 & 21)	<ul style="list-style-type: none"> • Ukraine's legislation should explicitly require financial institutions to examine the background and purpose of all the unusual financial transactions • Authorities should compel more efforts to ensure that non-banking financial institutions are aware of existing requirements and that there is a consistent implementation of the prescribed scope of data included in the register of financial transactions subject of financial monitoring for the different sectors. • The financial institutions should be explicitly required to give special attention to business relationship and transactions with persons from or in countries which do not or insufficiently apply FATF recommendations. • The Ukrainian authorities should amend laws and regulations to provide for a clear obligation for examining, as far as possible, the purpose and background of financial transactions with persons from or in countries that do not implement or insufficiently implement FATF recommendations, if they have no apparent economic or visible lawful purpose. • Authorities should make sure that there is an appropriate legal basis which enables to apply appropriate counter measures, for all financial institutions and in all cases where transactions, businesses or other relationships involve countries that continue not to apply or insufficiently apply the FATF Recommendations.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	<p>Recommendation 13</p> <ul style="list-style-type: none"> • Authorities should consider the possibility for revising the relevant provisions and make them more suspicious based and in conformity with the nature and complexity of different types of obliged entities. • Ukraine should criminalise insider trading and market manipulation, so as to enable FIs to report STRs based on the suspicion that a transaction might involve funds generated by the required range of criminal offences. • The law or regulation should provide for a definition of the financing of terrorism, as

	<p>well as for suspicious indicators in relation to financing of terrorism.</p> <ul style="list-style-type: none"> • Although the Basic Law provides for coverage of certain forms of attempted transactions, there needs to be an explicit legal requirement that will require reporting of all types of attempted transactions, not just the one that have been refused by the obliged entities. • Authorities should reconsider harmonising the existing regulatory framework to ensure uniform implementation of the reporting regime, especially regarding the period for submitting reports to the SCFM. • The predominance of STRs from compulsory financial monitoring indicates a lack of risk-based approach to monitoring and reporting of suspicious transactions to the SCFM and raises concerns as to effective implementation. The system could benefit from a higher awareness of the AML/CFT regime outside the banking sector, which could be raised through an enhanced training programme. <p>Special Recommendation IV</p> <ul style="list-style-type: none"> • In the light of the information received during the visit, it appears that Ukraine should provide more guidance to reporting institutions on how to detect suspicious transactions related to terrorism in order to enhance the effectiveness of the system for filing TF STRs. • The comments expressed for Recommendation 13.3 – 13.4, are also applicable for SR IV. There needs to be an explicit legal requirement that attempted transactions are subject of STRs. <p>Recommendation 14</p> <ul style="list-style-type: none"> • Authorities should reconsider the wording of Article 8 of the Basic Law, so that it provides for a “good faith” prerequisite associated with the reporting requirement as well as protection of entities, even if they did not know what underlying criminal activity was, and regardless of whether illegal activity occurred. • There should be a clear tipping off provisions in relation with financial institutions, not just directors and other employees of the financial institutions. . <p>Recommendation 25</p> <ul style="list-style-type: none"> • The SCFM should be required to provide case by case feedback to obliged entities on information on the decision or result if a case is closed or completed, whether because of a concluded prosecution, because the report was found to relate to a legitimate transaction or for other reasons, and if the information is available. • SCFM should consider the possibility of making the reports submitted to the supervisory authorities public, with more general analysis, for ex. by type of entities (without stating the names of the institutions). • SCFSRM and SCSSM should enhance their feedback activities, especially with providing the private sector with best practice techniques, methods and trends, as well as more comprehensive statistics. This could positively influence the reporting behaviour of the non-banking sector.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	<p>Recommendation 15</p> <ul style="list-style-type: none"> • Clear provision should be made for compliance officer of the non-banking financial institutions to be designated at management level. • Authorities should alter the existing legislation, requiring financial institutions (except for banks) to maintain an adequately resourced and independent audit function to test compliance with AML/CFT rules. Authorities, especially SCFSRM and SCSSM, should place more efforts in raising the institutions’ perception on the role and the importance of the internal audit function.

	<ul style="list-style-type: none"> Requirements for financial institutions to put in place screening procedures to ensure high standards when hiring staff (apart from the requirements for the compliance officer and certain senior management positions)) should be implemented, through an explicit legal requirement, or through the internal acts or procedures of the financial institutions. In practice, only banks have shown to have internal screening procedures. <p>Recommendation 22</p> <ul style="list-style-type: none"> Apart from the special situation for banks, other financial institutions are not required to pay particular attention to their subsidiaries and branches in countries which do not or insufficiently apply the FATF Recommendations and this should be addressed. There is no requirement for all financial institutions to ensure implementation of the higher AML/CFT standard by their foreign subsidiaries and branches, to the extent that local laws and regulations permit. Authorities should take appropriate steps to alter the language of the Basic Law, accordingly.
3.9 Shell banks (R.18)	<ul style="list-style-type: none"> The established safety measures for preventing correspondent relationship with shell banks could benefit from a specific provision that will explicitly prohibit financial institutions from entering into or continuing correspondent banking relationship with shell banks. There should also be an explicit obligation placed on financial institutions to satisfy themselves that respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	<p>Recommendation 17</p> <ul style="list-style-type: none"> The authorities should review the sanctions with a view to establishing effective, proportionate and dissuasive sanctions to deal with natural or legal persons which fail to comply with AML/CFT requirements and that the range of sanctions is broad and proportionate to the severity of the situation. The scope of articles 73 and 74 of the Law on Banks and Banking regarding the possibility to impose fines on bank officials and managers should be harmonised. In addition, this Law should be adequately amended so that the withdrawal of a bank license does not only cover cases when the violations induced “a significant loss of assets or income”. There is no evidence for appropriate sanctioning regime and practice over the foreign exchange offices and money transfer providers. The authorities should review the situation and take necessary measures in this respect. <p>Recommendation 23</p> <ul style="list-style-type: none"> The SCFSMR should start conducting AML/CFT on-site supervision of the Ukrposhta and enhance off-site supervision. Authorities are advised to provide for a clear definition of the term “irreproachable business reputation”, that will be apparent to all banks’ stakeholders. The legal provisions for non-banking financial instructions (excluding to some extent asset management companies) do not provide for an explicit barrier of criminals, or their beneficial owner, from holding a significant or controlling interest in a securities firm. The “fit and proper” criteria for persons having a significant or controlling interest in the non-banking financial institutions (except to a certain degree the securities firms) and their senior managers are very limited. Supervisory procedures of the SCSSM and the SCFSMR should cover risk-based analysis and supervision on consolidated basis Regardless of the possible low risk associated with the foreign exchange offices, there has to be an adequate AML/CFT framework in place that will enable AML/CFT supervision and resources allocated for this purpose.

	<ul style="list-style-type: none"> • The SCSSM is encouraged to continue its action aimed at decreasing the number of fictitious companies. <p>Recommendation 25</p> <ul style="list-style-type: none"> • The SCFSMR and SCSSM should develop further guidance to cover more adequately the various sectors supervised by them. <p>Recommendation 29</p> <ul style="list-style-type: none"> • Apart from the NBU, the extent to which sample testing is included as part of the on-site supervisory actions of SCFSMR and the SCSSM is not clear. The supervisory authorities should ensure that sample testing is included as part of their on-site supervisory action. • There are no explicit provisions that specify the scope of the AML/CFT supervision and the power of enforcement of foreign exchange offices. • All sectoral laws, apart from the specific situation for banks, do not enable removal of directors and senior managers as a result of non-compliance with legislation. This issue should be revisited as recommended in the report. • According to the Law on Banks and Banking, NBU can impose sanctions if it detects violation of the banking legislation. There is no clear reference that the Basic Law is considered as part of the banking legislation, which could constrain its efficient implementation. This issue should be adequately addressed by the authorities. In addition, the authorities are advised to reconsider the provisions of the Law on Banks and Banking with regard to the possibility to remove managers from office. • The sanctioning regime implemented with the existing AML/CFT legislation allow for imposing different sanctions, depending on the type of non-compliance (with the Basic Law or with the sectoral laws). Since this situation could create uncertainty, the system could benefit from clearer provisions in terms of the sanctions that should be imposed. <p>Recommendation 30</p> <ul style="list-style-type: none"> • The number of supervisory staff in all three supervisory authorities should be increased in order to provide for efficient AML/CFT supervision over the obliged financial institutions. • There are some doubts related with the independence and autonomy of the SCFSMR. In addition, this supervisory body experience a high turnover of its staff, which adversely affects its possibility for attracting and sustaining competent staff. The authorities should take necessary measures to address these concerns. • According to the Law on Civil servants the training should be made at least once per every 5 years. This period seems too long and should be adequately altered. • SCSSM and SCFSMR should continue their efforts for providing its supervisors with adequate AML/ CFT trainings.
3.11 Money value transfer services (SR.VI)	<ul style="list-style-type: none"> • MVT service operators (whether they are registered to transfer national or foreign currency) should be required to maintain a current list of agents which they use • In relation to MVT services, Ukraine should implement requirements in relation Recommendations 5, 6, 7, 9, 10, 13, 15, and 22, as discussed earlier in section 3 of this report.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and	<ul style="list-style-type: none"> • Ukraine should review as soon as possible the AML/CFT regime to ensure that all DNFBPs are adequately brought under the AML/CFT regime and that these measures

<p>record-keeping (R.12)</p>	<p>are effectively implemented.</p> <ul style="list-style-type: none"> • Ukraine should impose specific customer identification and record keeping requirements consistent with Recommendations 5 and 10 to real estate agents, dealers in precious metals and stones, lawyers, notaries, other independent legal professionals, company service providers and accountants as soon as possible. • Therefore, Ukraine should review the existing framework in respect of casinos to cover all of the relevant criteria and introduce measures to remedy this situation as soon as possible. • Specific AML/CFT requirements relating to Recommendations 6, 8, 9 and 11 should be extended to all DNFBP sectors. • Ukraine should also take steps to examine ways of to ensure the effectiveness of compliance with these AML/CFT requirements in these sectors.
<p>4.2 Suspicious transaction reporting (R.16)</p>	<ul style="list-style-type: none"> • The scope of the Basic law needs to be enhanced so as to bring all types of DNFBP under the STR regime. In the context of Recommendation 13, the reporting of DNFBP should be additionally altered by elevating the existing constrain of Article 8 of the Basic Law, which relates the suspicious reporting only with execution of financial transactions. • More outreach to this sector is necessary, particularly by providing training and guidance. • Apart from the requirement to implement internal rules for financial monitoring, the other requirements of Recommendation 15 are not applied by the DNFBP. Ukraine should adopt the necessary measures to implement Recommendation 15 in relation to DNFBP. • DNFBPs should be required to give special attention to business relationships or transactions with persons from countries which do not or insufficiently apply the FATF Recommendations.
<p>4.3 Regulation, supervision and monitoring (R.24-25)</p>	<ul style="list-style-type: none"> • The existing licensing regime of gambling institutions seems to draw a number of inconsistencies, which sets a risk for different implementation, misuse and unequal treatment of the members of this market. These inconsistencies should be eliminated and all necessary criteria regarding the owners and managers of gambling institutions should be introduced. • Ukraine is urged to review the current regulatory and supervisory regime applicable to gambling institutions and take legislative and other measures as relevant in order to ensure that casinos are subject to and effectively implementing the AML/CFT measures required under the FATF recommendations. • Despite the positive trend in the last 2 years, the sanctioning regime over gambling institutions cannot be regarded as proportionate and dissuasive. This situation should be addressed through relevant changes to the legal framework. • Ukraine should also develop plans to deal efficiently with unlicensed gambling. It should also take measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in or being an operator of a casino. • As regards the other categories of DNFBP, once the relevant AML/CFT requirements are introduced, Ukraine should also ensure that DNFBP are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements in line with Recommendation 24. • There is a need for the competent authorities to consider taking additional measures to assist DNFBPs to implement and comply with their respective AML/CFT requirements, such as developing sector specific guidance explaining and supplementing those requirements (on issues other than transaction reporting) and putting resources towards communication and outreach with DNFBP in order to eliminate the existing low level of awareness of this sector regarding AML/CFT issues

	<p>and provide guidance related to the specific professions' needs and circumstances.</p> <ul style="list-style-type: none"> • The resources of the Ministry of Finance should be reviewed in order to enable it to cope with its now competencies in terms of AML/CFT supervision over gambling institutions, and measures should be made to ensure that the staff undertaking such supervision are adequately trained.
4.4 Other non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> • Ukrainian authorities should consider undertaking a risk assessment to review the current non financial businesses and professions which are subject to AML/CFT obligations.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> • Ukraine should make the necessary legislative changes to set up a system which ensures adequate transparency of legal persons concerning their beneficial ownership and control either through registration procedures or other means. Competent authorities should be able to obtain or have timely access to such information. • Ukraine should strengthen preventative measures for deterring from the practice of setting up fictitious companies. • The authorities should also consider measures to facilitate access to the data contained in the USR, in particular to the private sector.
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	No recommendations
5.3 Non-profit organisations (SR.VIII)	<ul style="list-style-type: none"> • Considering the concerns expressed by certain authorities about the risks for misuse of such entities, the evaluators urge the authorities to undertake a comprehensive review of the system aiming at reviewing the adequacy of the legal framework, identifying the activities, size and other relevant features of the sector and assessing possible vulnerabilities related to its misuse for terrorist financing. • An extensive and proactive outreach to the NPO sector should be carried out for the purpose of protecting the sector from the terrorist financing abuse. • Legal requirements should also be introduced to ensure that NPOs maintain information on the identity of person(s) who own, control or direct NPOs activities, including senior officers, board members and trustees and that such information, as well as data on the purpose and objectives of the NPOs activities should be publicly available. • The authorities should also consider reviewing the effectiveness of measures in place to sanction violations of oversight measures or rules. • The Ukrainian authorities should ensure that there are legal requirements in place for NPOs to maintain for a period of at least 5 years records of domestic and international transactions that are sufficiently detailed to verify that funds have been spend in a consistent manner with the purpose and objectives of the organisation and to make them available to appropriate authorities.

6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	<ul style="list-style-type: none"> • These efforts should be pursued and current mechanisms should be further enhanced by considering the following improvements: <ul style="list-style-type: none"> – developing further the strategic and collective review of the performance of the AML/CFT system as a whole and providing explicitly for a mechanism which is responsible for following up the implementation of the annual action plan; – considering that the IWG appears to be a high-level policy mechanism, it would assist to put in place a mid-management expert level working group which could meet on a regular basis so as to discuss more in-depth specific policy issues before they are taken up and agreed upon at a higher level by the IWG; – ensuring that the IWG meetings enhances its feedback/reporting mechanism which would enable that there is a regular follow up at following meetings on the issues of concern which have been raised previously by an agency and on the solutions which have been found at bilateral/inter-agency level to address these issues in order to enhance accountability; • More emphasis also needs to be given to consultation and feedback to the financial sector and involving other reporting entities.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> • The same recommendations with regard to certain aspects of criminalisation of the money laundering offence, as well as the application of provisional measures and confiscation. Ukraine should also institute criminal liability of legal persons (see sections 2.1 and 2.3). • The same recommendations on criminalisation of terrorist financing offence, as well as on further improvement of freezing mechanisms of terrorist funds are reiterated in this context. Ukraine should take measures to fully implement the provisions of UNSCR 1267, 1373 and successor resolutions (see section 2.4 of this report).
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	<ul style="list-style-type: none"> • Ukraine should speed up the adoption of the new Criminal Procedure Code, as it is understood that it would provide for a more comprehensive framework and elaborate further detailed procedures for provision of various types of MLA as well as related guidance for all staff working on these matters. Such procedures should also stipulate timeframes for responses of MLA requests. • The Ukrainian authorities should enable rendering MLA in the absence of dual criminality, in particular for less intrusive and non compulsory measures. • The legal impediments in rendering extradition related assistance, except those contradicting fundamental principles of domestic law should be eliminated. • Ukraine should amend the loopholes and inconsistencies in identifying, freezing, seizing and confiscating relevant property, as reflected in sections 2.3 and 2.4 for enabling such actions to be used in provision of MLA. • Ukraine should consider the concerns raised above which stem from the experience of bilateral co- operation and take any measures, as necessary to address these concerns. • The authorities should keep annual statistics on all MLA and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offence and FT, including the nature of the request, whether it was granted or refused and the time required to respond. • Furthermore, the Ukrainian authorities should conduct an assessment of the staffing levels in authorities responsible for sending/receiving MLA and extradition requests as well as the level of workload and take any measures to ensure that they are adequately funded and staffed in order for them to be able to fully and effectively perform their functions. • Also, it is recommended to develop effective training and guidance for staff handling

	MLA requests, with a view to foster and raise the quality of the execution of MLA requests.
6.4 Extradition (R.39, 37 & SR.V)	<ul style="list-style-type: none"> • Ukraine should eliminate the legal impediments posed in rendering extradition, except those contradicting fundamental principles of domestic law. • Ukraine should address the missing elements of the ML/TF offences to ensure that dual criminality requirements do not represent an obstacle for extradition in such cases (see also sections 2.1 and 2.2). • It is also advised to further develop further guidance for practitioners working at central level and in the regions on procedural and evidentiary aspects. • As recommended earlier, the Ukrainian authorities should also conduct an assessment of the staffing levels in authorities responsible for sending/receiving extradition requests as well as the level of workload and take any measures to ensure that they are adequately funded and staffed in order for them to be able to fully and effectively perform their functions. • Ukraine should also maintain comprehensive statistics in relation to ML/TF and predicate offences which should cover all details of the extradition process.
6.5 Other Forms of Co-operation (R.40 & SR.V)	<ul style="list-style-type: none"> • In order to provide the widest possible range of international co-operation to their foreign counterparts, the Ukrainian authorities should review the current legal framework and make necessary amendments so that competent authorities are authorised to exchange spontaneously information.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	<ul style="list-style-type: none"> • See the recommendations relating to the other recommendations
7.2 Other relevant AML/CFT measures or issues	<ul style="list-style-type: none"> • No recommendations
7.3 General framework – structural issues	<ul style="list-style-type: none"> • No recommendations

3.2 Appendix II – Excerpts from relevant EU directives

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.

3.3 Appendix III – Additional information and statistics submitted by Ukraine

On autonomous prosecution of money laundering

Case 1

On October 2009 the Chervonozavodskiy district Court of Kharkov city in Ukraine sentenced Mrs L to 5 years of imprisonment for the money laundering in the case 1-11/09.

It was proven that Mrs L bought two companies "Nuklon" and "Dolok" with intent to facilitate money laundering.

Persons A and B were appointed as directors of the mentioned companies. Then persons A and B transferred seals of the companies to Mrs L. Mrs L further was signing all deals of companies "Nuklon" and "Dolok".

Two companies pretended to buy computer equipment and office equipment from clients and provided them with relevant documentation.

Total turnover of companies was 1 200 thousand hryvnas.

Source of money laundered was not established as well there was no conviction for the predicate offence.

Case 2

On June 2008 the Bogorodchanskiy district Court of Ivano-Frankivsk region in Ukraine sentenced Mrs R to 3 years of imprisonment for the money laundering in the case 1-67/08

Mr R being a director of the private company acquired spare parts of military equipment worth 31 thousand hryvnas from Mr Y knowing that this equipment constitutes the crimes proceeds. Further Mr R committed actions, directed on concealing of illegal origin of acquired property (he produced fictitious documents on the purchase of equipment).

The person who originally committed the predicate offence has not been identified and there was no conviction for the predicate offence.

AML/CFT Cases

Case 1

SCFM received report from **Bank A** on purchase of securities and wire transfers by **Company X** in the total amount of UAH 2,4 mln.

The State Customs Service submitted to SCFM information on risky export transactions by **Company X** from Ukraine to the **Company Y** and **Company Z**.

According to information of National Interpol Bureau in Netherlands and FIU of Germany mentioned companies were not registered and were not located at the mentioned addresses.

Companies – actual goods receivers had no relations with **Company Y** and **Company Z**.

SCFM prepared and submitted to the General Prosecutor's Office of Ukraine and Tax Police of Ukraine case referral and additional materials.

Criminal case was opened. Court sentenced **Citizen X** to 1.5 years of imprisonment with confiscation of smuggling objects.

The State Executive Service confiscated property and sold it, funds in the amount of UAH 186 000 were transferred to the State Budget of Ukraine.

Case 2

SCFM of Ukraine received from FIU of Moldova information concerning regular import of large cash amounts from Ukraine to Moldova by **Citizens of Ukraine I and K**.

During the period from 12.01.2004 to 31.12.2006 they moved through state border of Ukraine cash in the total amount of **USD 2,8 mln**.

SCFM prepared and submitted to the Security Service of Ukraine case referrals on transporting cash through customs border of Ukraine with concealing from customs control.

Criminal case was opened, Citizens I and K were arrested when tried to move **USD 1,9 mln** cash in the special secret place in the car through state border of Ukraine.

Court of Appeal sentenced mentioned citizens on imprisonment for 5 years and confiscation of all personal property and smuggling objects.

State Executive Service confiscated funds in the amount of **USD 1,9 mln** and the car used for cash smuggling.

Case 3

SCFM received reports on withdrawing cash by number of citizens during the period from 29.10.2009 up to 11.05.2010 in the local branch of **Bank Y** in the total amount of **UAH 398,38 mln**.

SCFM prepared case referrals and additional materials, and submitted them to the Tax Police.

Pre-trial investigation discovered the illegal providers of financial services ("converting centre") that conducted transfers to the accounts of fictitious enterprises as payment for goods, works services during 2009 – 2010. These funds were converted into cash in short period, and at the same time, no goods were sold, no services were provided and no works were executed.

During investigation the cash courier X was apprehended and cash was seized in the amount of 400 000 UAH, which was to be transferred to the customers of converting centre, also investigators seized the seals of fictitious enterprises, documents certified with such seals, and computers. Investigation is under way as of August 2010.

AML/CFT international cooperation- General Prosecutor's Office of Ukraine

During 2009 General Prosecutor's Office of Ukraine submitted to the foreign competent authorities of 6 countries **6 international requests** on mutual legal assistance in criminal cases, investigated under the facts of the legalization (laundering) of the proceeds from crime, thus under the indicia of crimes foreseen by the Article 209 of Criminal Code of Ukraine.

Among noted requests 2 of them concern extradition of offenders (Switzerland and Russian Federation), and 4 – on providing procedural actions (Germany, USA, Great Britain, Georgia).

During the mentioned period General Prosecutor's Office received **18 requests** from foreign competent authorities of 10 countries on mutual legal assistance in criminal cases investigated under facts of the legalization of the proceeds.

Among them 15 – on providing procedural actions (Lithuania – 4 requests, USA – 2 requests, Latvia – 2 requests, Belgium – 2 requests, Belarus – 1 request, Switzerland – 1 request, Kazakhstan – 1 request, Hungary – 1 request, Bulgaria – 1 request), 1 – on acceptance of criminal prosecuting concerning citizen of Ukraine (Slovakia), 2 – on extradition of offenders (Kazakhstan and Russian Federation).

During 6 months of 2010 General Prosecutor's Office of Ukraine **submitted** to competent authorities of Germany and Russian Federation **one intercession to each** from Ukrainian bodies of pre-trial investigation on mutual legal assistance in criminal cases investigated under the facts of the legalization (laundering) of the proceeds from crime.

During noted period General Prosecutor's Office of Ukraine **received 11 commissions** from foreign competent authorities on providing procedural actions **and 1 request** on extradition of person in criminal cases investigated under the facts of the legalization of the proceeds from crime.

Noted commissions were submitted by the law enforcement authorities of Belgium (2), Latvia (2), Lithuania, Bulgaria, Hungary and Portugal, Italy, Switzerland, Kazakhstan, Kyrgyzstan.

It should be noted that on June 17, 2010 the Law of Ukraine “On Introducing Amendments to Criminal Procedure Code of Ukraine on Extradition” as of May 21, 2010 set in force, initiator and developer of which was General Prosecutor's Office of Ukraine.

Besides, General Prosecutor's Office of Ukraine developed the Draft Law of Ukraine “On Introducing Amendments to Criminal Procedure Code of Ukraine” on international cooperation in criminal cases in the part of execution of international investigative commissions and transferring of criminal prosecuting.

At the present time noted draft law was submitted to the Ministry of Justice of Ukraine for further introducing to the Parliament of Ukraine.

Ministry of Justice of Ukraine

Statistics on Received and Submitted MLA Requests

Year	Legal assistance requests	
	received	forwarded
2009	560	16
6 months of 2010	259	7

All submitted and received requests were proceeded. Average time for response is 2 months.

Cooperation on tax issues

During 2009 subdivisions of tax police authorities submitted **562** and received **90** requests from competent authorities of foreign countries, all of which were executed. During 6 months of 2010 385 requests were submitted and 30 requests were received, among which **154** and **25** accordingly are executed as of 01.07.10.

Ministry of Interior

During 6 months of 2010 within international cooperation 118 incoming and 137 outgoing documents were proceeded through Interpol channels in the AML sphere, on FT issues – accordingly 68 and 66. The most

active cooperation was provided with law enforcement authorities of Germany (28 documents), Great Britain (20), Cyprus (16), USA (13), China (6), Italy (5), Latvia (5), and Lithuania (4).

FIU

FIU of Ukraine jointly with foreign counterparts actively cooperates on detection of ML schemes. Also, FIU of Ukraine is actively participating in typologies researches within international organizations and solely develops and publishes typologies on detected ML methods and schemes which are available in Ukrainian and English and submits them for consideration of foreign FIUs.

With assistance of MOLI-UA-2 Project the FIU experts elaborated and published the AML/CTF Manual (available in Ukrainian and English). Such Manual is used by all Ukrainian universities which provide trainings of law-enforcement officers, prosecutors and judges, as well by the financial sector.

During 28th MONEYVAL Plenary the electronic version of the current Manual was provided to all member-states. Also, the current AML/CTF Manual was provided to representatives of NATO, European Commission Instrument TAIEX, representatives of foreign delegation hosted by Ukrainian FIU.

Besides, FIU experts permanently participate in the activities of the Egmont Working Groups. The FIU representative was elected as a Vice-Chair of the Operational Working Group.

In October 2007 FIU of Ukraine hosted 3 days Egmont Working Groups Meeting in Kyiv, with participation of 125 representatives of FIUs and international experts from 56 countries.

FIU of Ukraine is a co-sponsor of three FIUs (Tajikistan, Kazakhstan, Iran) for obtaining membership in Egmont Group. Four FIUs sponsored by Ukraine became full members of this organization: Belarus and Armenia – 2007, Moldova – 2008 and Kyrgyzstan – 2009.

Also, FIU of Ukraine has signed **52 MOUs** with foreign countries:

- **Europe:** Spain, Italy, Bulgaria, Russian Federation, Georgia, Albania, Cyprus, Serbia, Macedonia, Croatia, Armenia, Moldova, Belarus, Belgium, Portugal, Poland, France, Czech Republic, Liechtenstein, Netherlands, Lithuania, Great Britain, Latvia, Slovakia, Estonia, Slovenia, Romania, Montenegro, Island of Man, San Marino, Monaco, Andorra, Turkey.
- **America:** USA, Canada, Panama, Brazil, Columbia, Peru, Guatemala, Mexico, Bermuda.
- **Asia:** Thailand, Korea, China, Philippines, Kyrgyzstan, Syria, Mongolia.
- **Africa:** Nigeria.
- **Australia and Cook Islands.**

MOUs with FIUs of UAE, Japan, Hungary, Aruba, Luxemburg, and New Zealand are on the signing stage. The signing of such MOUs provides widest range for information exchange and use of the information received as a legal authority considering the ML/TF cases.

Statistics on International Cooperation of SCFM

Indicator	Total from the activity beginning	During 6 months of 2010
Requests submitted to foreign FIUs	3272	242
Number of FIUs	97	39
Among them information letters	141	6
Requests through FIU.net	87	0

Responses received	2933	242
Number of FIUs	92	41
Responses through FIU.net	81	0
Requests received from foreign FIUs	891	63
Number of FIUs	71	29
Requests through FIU.net	12	0
Responses submitted	889	65
Number of FIUs	71	29
Responses through FIU.net	12	0

The most active information exchange is being carried out with FIUs of Cyprus, Poland, Great Britain, Latvia, Lithuania, Russian Federation, Portugal, Netherlands, Germany, British Virgin Islands and the USA.

3.4 Appendix IV – Relevant legislation (excerpts)

See MONEYVAL(2010)1 Rev ANN