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Ukraine

Written analysis by the Secretariat of Core and Key Recommendations[1]

18 September 2015

[1] Third 3rd Round Written Progress Report Submitted to MONEYVAL

Ukraine is a member of MONEYVAL. This progress report was adopted at MONEYVAL's 48th plenary meeting (Strasbourg, 14-18 September 2015). For further information on the examination and adoption of this report, please refer to the Meeting Report of the 48th plenary meeting at http://www.coe.int/moneyval

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This is the third 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 2003 FATF Core and Key Recommendations (R. 1, R. 5, R. 10, R. 13, SR.II, SR.IV and R.3).

Ukraine

Third 3d round Written Progress Report submitted to MONEYVAL

Written Analysis of Progress made in Respect of the FATF Core and Key *Recommendations*

1. Introduction

1. The purpose of this paper is to present Ukraine's third progress report and analyse the progress made to remedy the deficiencies identified in the 3rd round mutual evaluation report (MER) on the 2003 FATF Core Recommendations[2]. This report includes also an analysis of measures taken by Ukraine to improve compliance with R3, in line with the decision taken by MONEYVAL.

2. The evaluation visit to Ukraine took place from 22 September to 1 October 2008. MONEYVAL adopted the mutual evaluation report (MER) of Ukraine under the third round of evaluation at its 29th plenary meeting on 19 March 2009. As a result of the evaluation process, Ukraine was rated Partially Compliant (PC) or Non-compliant (NC) on 32 recommendations.

3. According to MONEYVAL procedures, Ukraine submitted its first year progress report to MONEYVAL in March 2010, a fuller progress report in September 2010, in accordance with Rule 42 of the Rules of Procedure in force at that time. The first progress report was analysed and adopted at the 33rd Plenary meeting in September 2010. The second progress report was discussed and adopted in December 2012. Ukraine was excused a 4th round visit (scheduled for May 2014) due to its domestic situation. Pending the organisation of an evaluation in the 5th round, which was due to take place in the second part of 2016, MONEYVAL decided that Ukraine would remain subject to the third round follow-up procedures and submit a 3rd round progress report for examination by MONEYVAL in September 2015.

4. This paper is based on the Rules of Procedure as revised by MONEYVAL in December 2014, which require a Secretariat written analysis of progress against the core Recommendations. Ukraine's report is subject to a desk-based analysis by the Secretariat of the core Recommendations, including also an analysis of progress in addressing the issues identified as important deficiencies in the context of the NC/PC process (which Ukraine exited in December 2013) in relation to Recommendation 3.

5. The full progress report is subject to peer review by the Plenary, assisted by a Rapporteur delegation and the Secretariat (Rule 21). 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.

[2] The core 2003 Recommendations as defined in the FATF's document on Process and procedures for the third round of AML/CFT mutual evaluations (2009) are R. 1, SR II, R. 5, R. 10, R. 13 and SR IV.

6. Ukraine has provided a full report on measures taken, according to the established progress report template, together with selected excerpts of relevant provisions.

7. 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)

8. This paper provides a review and analysis of the measures taken by Ukraine to address the deficiencies in relation to the core Recommendations and Recommendation 3 together with a summary of the main conclusions of this review. This paper should be read in conjunction with the progress report and annexes submitted by Ukraine.

9. It is important to be noted that the present analysis focuses only on the core Recommendations and Recommendation 3, 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.

2. Detailed review of measures taken by Ukraine in relation to the Core and Key Recommendations

2.1. Main changes since the adoption of the MER

10. Since the adoption of the 3d round MER and the second progress report, Ukraine has taken a number of measures with a view to addressing the deficiencies identified in respect of the core Recommendations and Recommendation 3, including the following:

- Adopted on 14 October 2014 the Law "On the prevention and counteraction to legalization (laundering) of proceeds from crime or terrorism financing and the financing of proliferation of weapons of mass destruction" (hereinafter - Law 2015) .This act entered into force on 6 February 2015 and abrogates the previous AML/CFT law. This law, inter alia, provides for a national risk assessment with a view to identify ML and TF risks, as well as measures to prevent or mitigate such risks; defines measures to combat the financing of proliferation of weapons of mass destruction; introduces tax crimes as predicate offences to ML; provides for compulsory financial monitoring of financial transactions of national public officials and officials from other countries

and international organizations; improves existing procedure on the suspension of financial transactions;

- Drafted a Resolution on "Issues of organization of the national risk assessment legalization (laundering) of proceeds from crime and terrorist financing." The draft Resolution proposes a procedure for the adoption and publication of a National Risk Assessment.
- Adopted amendments to the Criminal Procedure Code (hereinafter CPC), which include inter alia modifications to the provisions related to jurisdictional issues in respect of article 209 (ML offence) and article 2091 (intentional break of AML/CFT legislation or FT) and to pre-trial investigation in ML proceedings in certain cases. .
- Adopted on 14 May 2015 Government Resolution № 299 on "Some issues of Unified Information system on prevention and counteraction to legalization (laundering) of proceeds from crime, terrorist financing and the financing of proliferation of weapons of mass destruction".
- Adopted on 14 October 2014 the Act "on Amendments to Certain Legislative Acts of Ukraine regarding the determination of the ultimate beneficial owner of legal persons and public figures" № 1701-VII. These amendments introduce the obligation to determine the final beneficial owner, regularly update this information and provide it to State registries which are responsible for registering legal persons; it also provides for administrative liability for failure to register the ultimate beneficial owner of a legal person.
- Adopted 14 October 2014 a series of laws aimed at reforming the national system on the prevention and fight against corruption, notably: the law "On principles of state anti-corruption policy in Ukraine (Anti-corruption Strategy) for 2014 - 2017", which came into force on 26 October 2014; the law on "The National Anti-Corruption Bureau of Ukraine", which entered into force on 25 January 2015; and the law on "prevention of Corruption" which entered into force on 26 April 2015.
- Adopted on 01.04.2013 Decree № 199 "On Approval of the Financial Monitoring reporting entities, state regulation and supervision of exercising Ministry of Infrastructure of Ukraine".

11. 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.

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

12. The review of measures taken in relation to the Core Recommendations should be read in conjunction with the analysis of the Core Recommendations outlined in the first[3] and second[4] 3rd round progress report. The Secretariat analysis below only focuses on new developments since the last progress report and in particular on those deficiencies that do not appear to have been fully or adequately addressed. The analysis is based on selected excerpts of provisions as set out in the document provided by the authorities.

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

13. *Deficiency 1*: (Actions of conversion or transfer of property do not appear to be fully covered)

[3] See MONEYVAL(2010)1
[4] See MONEYVAL(2012)31

14. The first and second progress reports concluded that the acts of conversion and transfer were criminalized under the CC in line with the Vienna and Palermo Conventions. In the meantime, Article 209 of the CC has been amended by Law 2015(1) and now defines ML as:

"1. Making a financial transaction or concluding a deal with funds or other property obtained as a result of committing a socially dangerous illegal act that preceded the legalization (laundering) as well as actions aimed at concealing or disguising the illicit origin of such funds or other property to, rights to such property or funds, their sources, location, movement, change their shape (conversion), as well as the acquisition, possession or use of money or other property derived from the commission of a socially dangerous illegal act that preceded the legalization (laundering)" –(…). and is punishable by imprisonment for a term of three to six years, with disqualification to hold certain positions or engage in certain activities for up to two years with confiscation of funds or other assets from crime and forfeiture of property.

15. The concept of conversion is now explicitly set out in Article 209. The current formulation, though not entirely harmonized with the Vienna and Palermo Conventions, appears to cover the conversion of funds or other property for the purpose of concealing or disguising their illicit origin. In the absence of case-law exemplifying how the provision as amended is applied, however, it is not clear whether its practical implementation may create difficulties. The concept of transfer of property with the purpose of concealing or disguising the illicit origin of the property is still not explicitly provided for under the law.

16. *Deficiency 2*: (Property does not seem to cover intangible assets and legal documents or instruments evidencing title to, or interest in such assets) The 3d round MER had expressed some concerns about the scope of property in the context of the ML offence as it did not appear to encompass intangible assets and legal documents or instruments evidencing title to, or interest in such assets. The first progress report clarified that, in addition to its definition under the Civil Code (article 190), property is also defined under Article 139 of 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". It appears therefore that the concept of property also covers intangible assets. Nonetheless, no other legislative changes were reported as regards the definition of property, and legal documents or instruments evidencing title to intangible assets or interest in such assets are not explicitly provided for. However, it should be recalled that previous progress reports had stressed that the Ukrainian courts have adopted a broad interpretation of the concept of "property" when applying provisional measures and confiscation.

17. *Deficiency 3:* (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).

18. The authorities reiterated, as noted in previous progress reports, that they consider prosecutions to be possible without the need to ascertain the predicate offence at the moment of taking a decision to initiate an investigation, on the basis of the CPC provisions. A few examples had been provided previously to illustrate changes in the investigative approach of the ML offence, with cases of successful autonomous prosecutions of ML offences. Article 216 of the Criminal Procedure Code, as amended[5], provides that pre-trial investigations in ML cases can be initiated

[5] The amendment entered into force in February 2015

without holding prior or simultaneously a person responsible for the commission of a socially dangerous illegal act that preceded the laundering of the proceeds in criminal proceedings under article 209 of the CC in certain instances, including when the predicate offence was committed outside of Ukraine, while the laundering of proceeds took place on the territory of Ukraine[6]. The authorities have indicated that these instances are not exhaustive and that autonomous ML investigations can be initiated in other cases as well. Guidelines were also issued by the National Academy of Internal Affairs in 2012 covering aspects related to the detection and investigation of ML offences. While the above-mentioned amendment can be considered a step forward, it remains to be verified during an onsite visit whether the initiation of autonomous ML investigations is possible in all cases and whether there the judicial practice is well-established that convictions can be achieved without the need of a prior or simultaneous conviction for the predicate offence.

19. The amendments of Article 216 of the CPC have entered into force only recently, and no recent case examples of investigations or convictions of autonomous ML have been provided by the authorities in relation to the time-frame under review.

20. *Deficiency 4*: out of 20 designated categories of offences (insider trading and market manipulation) and financing of terrorism in all its aspects are not covered.

21. The gaps in the incrimination of insider trading, market manipulation and financing of terrorism as predicate offences to ML had been addressed and the recommendation has been implemented, as indicated in the second progress report.

22. *Deficiency 5*: the applied threshold for predicate offences is not in line with the requirements of R 1.

23. The analysis made in the second progress report remains valid, and the shortcoming has been addressed.

24. *Deficiency 6*: there appear to be difficulties in the implementation of the offence

25. The information provided in relation to the number of investigations, prosecutions and convictions in ML cases appears to show a consistent decrease in 2013 and in 2014 when compared to the statistics provided in the first and second progress reports.

	Investigations (cases)	Prosecutions (cases)	Final convictions (cases/persons)
2012	410	218	195(182)
2013	408	227	150(131)
2014	296	182	91(73)

[6] According to the translation provided by the authorities, the other instance in which is "fact of committing publicly of dangerous illegal act, that was preceded to legalization(to washing) of the profits got a criminal way, set by a court in corresponding judicial decisions".

April 2015	77	42	10(4)

26. Nonetheless, the authorities have indicated that the State Financial Monitoring Service of Ukraine (SFMS) Training Centre has continued its training programmes for law enforcement officials and the judiciary in order to strengthen their capacity to investigate and handle cases of ML. In 2013, 428 LEAs and judges were trained, and respectively 376 in 2014 and 207 in the first five months of 2015. Furthermore, 22 prosecutors were trained in 2013, five were trained in 2014 and 4 were trained in the first half of 2015.

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

27. The majority of shortcomings identified in respect of the TF offence were rectified at the time of the first progress report, as TF was criminalized as a stand-alone offence under Article 258-5 of the CC. The analysis made in the context of the first and second progress report are thus still valid and are recalled in this progress report, along with two positive developments which have occurred in the meantime.

28. *Deficiency 1*: Elements of the financing of terrorism are criminalized 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.

29. As indicated earlier, terrorist financing is now criminalized as an autonomous offence and is largely in line with the definition provided under the TF Convention. Nonetheless, as already recalled in the first and second progress reports, the terrorism offence as defined under Article 258 of the CC still does not refer to all of the offences defined in the treaties listed in the Annex to the TF Convention[7]. As a result, the new Financing of Terrorism offence does not explicitly refer to all of the acts which constitute a terrorism offence as per Article 2(1)(a) of the TF Convention. It would thus be advisable to include a reference in Article 258 CC to terrorist acts provided for in international treaties.

30. *Deficiency 2*: 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(a)ii; II.2, II.3, R. 2 criteria 2.2 – 2.5).

31. As concerns compliance with the definition of funds as defined in the TF Convention, as previously noted, it remains unclear whether the TF offence under Article 258-5 of the CC would cover "any funds" as defined under Article 1 of the TF Convention. TF is punished with a term of imprisonment of at least five years, whereas the threshold for an offence to be a predicate crime to ML is one year of imprisonment – thus FT is now a predicate offence to ML. Article 258-5 does not restrict criminal liability to cases where the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist/terrorist organization is located or the terrorist act occurred; as indicated in the previous progress report, the intentional element of the offence of TF can be inferred from objective factual circumstances and the sanctions applied to natural persons for FT have been assessed as being proportionate and dissuasive.

32. Article 96-3 of the CC on the "grounds for the application of criminal law measures to legal persons" has been amended and now provides that the commission of a terrorist act or of an FT

[7] Which have been ratified by Ukraine and criminalized under the Criminal Code.

offence (under Article 258 and 258-5 of the CC), by an authorized person on behalf of a legal person, is now a ground to apply a fine, confiscation of property or liquidation of legal persons. Legal persons are therefore now criminally liable for TF.

33. Ukraine has initiated, on the basis of article 258-5 of the CC, 4 criminal proceedings in 2013, 77 criminal proceedings in 2014 and respectively 90 as of April 2015. Prosecutions were initiated for FT offences in 5 cases involving 11 persons in 2014 and 2015, which resulted in three convictions.

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

34. *Deficiency 1*: (For banks, CDD measures when carrying out occasional transactions above the applicable threshold are limited to cash transactions).

35. The deficiency has been addressed. As indicated in the first progress report, this deficiency was addressed by article 9(3) of the AML/CFT law. As indicated earlier in this report, Law 2015, which came into force on 6 February 2015, has abrogated and replaced the AML/CFT law. According to Article 9 of Law 2015, reporting entities are required to identify and verify the customer or customer representative on the basis of submitted client official documents or duly certified copies of them, unless otherwise provided in Law 2015. According to Article 9 (5) the identification of the client is not mandatory if the financial transaction is performed by the persons who were previously identified or verified in accordance with the requirements of the Law. Also neither identification nor verification of the client are performed if transactions are performed between the banks registered in Ukraine. Reporting entities should also ensure that all transfers of amounts that equals or exceeds UAH 15,000 (approximately 610 euros) or an amount equivalent to the amount indicated (including in foreign currency, precious metals and other assets) are accompanied by information about transfer originator (payer) and information about the recipient (receiver). The obligation to take measures to understand the ownership and control structure of the customer for customers that are legal persons or legal arrangements are covered by Article 9 (7).

36. *Deficiency 2*: (The requirement to undertake CDD measures when carrying out occasional transactions that are wire transfers is not set out in law or regulation).

37. In the 2nd progress report, the authorities indicated that this matter had been addressed by the NBU Resolution 198 adopted in 2011. The view adopted in the mutual evaluation report was however that the NBU Resolution could not be qualified as law or regulation as defined in the FATF 2004 Methodology. 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 SR.VII (criterion 5(2)c)).

38. The updated report indicates that according to Article 64 of the Law of Ukraine "On banks and banking" and Article 9 (3) of Law 2015, banks must identify and verify customers who conduct transfers without opening an account in an amount that equals or exceeds UAH 15,000 (approximately 610 euros), or the equivalent amount specified, including foreign currency, precious metals and other assets, units of value. At the same time both provisions indicate the

possibility to not apply identification and verification measures if the amount is above UAH 150,000 (approximately 6104 euros) or the equivalent amount specified, including foreign currency, precious metals and other assets or units of value. According to Article 9 (3), based on the level of risk of the financial transaction, the identification and verification of the client are also performed if the amount of the financial transaction equals the amount provided in Part 1 Article 15 of this Law 2015 (UAH 150,000 (approximately 6104euros)), regardless of whether such financial operation is one-time, or multiple financial transactions may be related to such person. The authorities consider that this provision addresses the matter. It remains however unclear in which cases the UAH 150,000 (approximately 6104 Euros) threshold is applied in practice, hence the deficiency is considered to be only partially addressed.

39. The authorities have referred to Regulation 43 approved by the National Bank of Ukraine on 04.02.2014 which sets the requirement to submit to the National Bank information about the transfer and its initiator (e.g. transfers carried out for an amount not exceeding UAH 10,000 (approximately 407 euros) or the amount in foreign currency equivalent of not exceeding UAH 10,000 (approximately 407 euros). Furthermore, according to the authorities, the requirement to undertake CDD measures when carrying out occasional transactions that are wire transfers is provided for under the Order of the Ministry of Infrastructure 01.04.2013 number 199 "On approval the Regulation on implementation of financial monitoring by subjects of primary financial monitoring, state regulation and supervision of which activities performs the Ministry of infrastructure of Ukraine" (hereinafter Order of the Ministry of Infrastructure number 199). This Order sets out the details on how and when the identification and verification of the clients must be carried out.

40. Ukraine has also indicated that under Article 166-9 of the Code of Ukraine on Administrative Offences, breach of obligations on identification, verification of the client (client representative) (…) entails administrative liability. Assuming that these administrative penalties can be applied in case of breach of Regulation number 43 and the Order of the Ministry of Infrastructure number 199, it can be concluded that Regulation number 43 and Order of the Ministry of Infrastructure number 199 can be qualified as law or regulation as defined in the FATF 2004 Methodology.

41. It is thus concluded that this deficiency has been partially addressed, by applying the basic measures of identification and verification of the customer. The authorities need to address the shortcoming with respect to the threshold of UAH 150,000 (approximately 6104 Euros) in Article 64 of the Law of Ukraine "On banks and banking". In particular, clearer requirements of identification and verification of the customers where the transaction is carried out occasionally (without opening the banking account) in a single operation or in several operations that appear to be linked should be introduced

42. *Deficiency 3* (Banks are not explicitly required to undertake CDD when there is a suspicion of money laundering or terrorist financing, regardless of any thresholds).

43. This deficiency was previously addressed, at the time of the first progress report, in article 9(3) of the AML/CFT law and is also provided under the new Law 2015, under the same article.

44. The authorities have indicated that this matter is addressed by Article 64 of the Law of Ukraine on Banks and Banking, according to which a bank has the obligation to identify and verify clients (persons) in the event their financial operations are suspected of being associated with terrorist financing or the financing of the proliferation of weapons of mass destruction. The bank may request, and the customer has the obligation to provide, documents and details required for the

identification and/or verification (including the establishment of identification details of ultimate beneficial owners), the analysis and the uncovering of financial operations that are subject to financial monitoring. The Bank may also request other legally required documents to comply with requirements under the laws in the area ML, terrorist financing and the financing of the proliferation of weapons of mass destruction. Thus, there is an obligation to undertake identification and verification of the client when there is a suspicion of money laundering or terrorist financing, regardless of any thresholds. According to the explanation provided by the authorities, under Article 9 (7) of Law 2015 there is also an obligation to establish the ultimate beneficiary owner (controller), including when there is suspicion of money laundering or terrorism financing, regardless of any thresholds. The deficiency is thus considered to be addressed.

45. *Deficiency 4* (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).

46. This deficiency was previously addressed by Article 9(5) of the AML/CFT law at the time of the first progress report. This deficiency is now addressed by Article 9(4) of the Law 2015. According to this provision, if there is reason to doubt the authenticity or completeness of the information provided on the client, the reporting entity is obliged to conduct in-depth verification of the client. Detail client verification means that reporting entity must take measures to obtain (in particular from governmental authorities, civil registrars, official or public sources) the information on the client (the client's representative) to confirm or refute the information which the client has submitted and which seems questionable.

47. Item 2 part 2 of Article 9 of Law 2015 sets out a general obligation for the reporting entity to clarify the information on the client. Clarifying information on the client covers updating the data on the client, including identification data by obtaining documentary confirmation of changes (if any) in them.

48. Relevant due diligence measures are also provided for in Section V of Regulation n° 25 on the implementation of financial monitoring by financial institutions approved by the State Commission for Regulation of Financial Services Markets of Ukraine on 05.08.2003 (registered with the Ministry of Justice of Ukraine on 15.08.2003 number 715/8036). Paragraph 5.2 of the Regulation provides that the identification and verification of the clients includes, among other things, of measures to check information on customer identification, including if there are doubts about its accuracy and completeness. There is also an obligation to clarify information on identification in case of change of information or the expiry of the documents on which it was carried out.

49. *Deficiency 5*: (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).

50. Law 2015 provides the definitions of the terms "beneficiary" and "ultimate beneficial owner (controller)". Article 9 of Law 2015 provides the requirements for the identification, verification and study of the customer, including the requirement that financial institutions identify an individual who has the ability to exercise decisive influence on the management or business activities of the client, or who has the ability to exercise influence through share ownership of the

customer of 25 or more % of the share capital or voting rights in entity. Thus, it can be concluded based on desk review of provided information, that the matter has been addressed.

51. *Deficiency 6*: (Securities institutions are only required to identify beneficial owners and understand the ownership and control structure of the customer in higher risk situations)

52. This issue is now addressed by Law 2015 which identifies in Article 5. 2.(4) professional participants of the stock market (security market) as reporting entities. Article 9 of Law 2015 requires reporting entities to establish during the identification and verification of customers, in particular for legal persons, residents and non-residents, data and information concerning beneficial owners (controllers). This measure is not limited to customer(s) in higher risk situations and therefore applies in all cases.

53. Law 2015 also defines the information that allows to establish the final beneficial owners (controllers), namely this is the information about an individual, including name and patronymic (if any) of person (natural persons), the country of its (their) residence and date of birth. According to part 7 Article 9 of the Law 2015, in order to establish the ultimate beneficial owner (controller) the primary financial monitoring entity shall ask for "information and/or documents confirming the ownership structure of the legal person. Thus, it can be concluded based on desk review that the matter has been addressed.

54. *Deficiency 7*: (Securities institutions are only required to obtain information on the purpose and nature of the business relationship in higher risk situations).

55. This deficiency was previously addressed by Article 6 part 2, subparagraph 24 of the AML/CFT Law, as indicated at the time of the first progress report.

56. The authorities have now indicated that the matter is addressed by paragraph 2 of Section IV of Regulation SSMNC № 995, which determines that during the customer identification reporting entities must clarify following:

    a) the purpose of business relationships with reporting entities (profit through investment in securities, retirement savings, for services or goods for the housing bonds, the purchase of shares that allows you to participate in the control entity, issuer repurchase own shares etc.);
    b) the nature of business relationships with reporting entities (the list of services that the customer wishing to obtain, a one-time operation, permanent relationship, etc.).

57. The information regarding the purpose and nature of business relationships is obtained from the client (representative, in case the client is a legal entity) by written survey in the manner prescribed by the rule on financial monitoring (an internal documents of reporting entities according to the Article 6 (1) of Law 2015). This deficiency appears to be addressed.

58. *Deficiency 8* (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 (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).

59. These deficiencies were addressed by Article 6 part 2, subparagraphs 25-27 of the AML/CFT Law, as indicated in the first progress report. Under Article 6 point 22 part 2 of Law 2015, reporting entities are obliged to analyze financial transactions carried out by the client and assess whether they are in line with existing information on its activities and financial status, in order to detect the financial transactions which should be subject to financial monitoring. Also, under part 1 Article 11 of Law 2015, reporting entities are under the obligation to manage risks taking into account the results of identification, verification and examination of the client, the services provided to the client, the analysis of the operations carried out, and determine if they are in line with the financial status and activity of the client.

60. Reporting entities while managing risks must also take into account the recommendations made by the respective state financial monitoring entities which according to Law 2015 perform the functions of state regulation and supervision over such primary financial monitoring entities.

61. The Regulation of the Financial Monitoring financial institutions approved by the State Commission for Regulation of Financial Services Markets of Ukraine dated 05.08.2003 number 25 (hereinafter Regulation number 25) obligates financial institution to implement customer due diligence, depending on the degree of risk. Paragraph 6.2 of Regulation number 25 defines that risks are identified based on the results of the identification and review of the financial activities of the client taking into account the range of services provided to the client, analyzing operations conducted by him, and their compliance with the financial condition and the content of the client.

62. Financial institutions must develop their own risk criteria on the basis of risk criteria defined by the SFMS of Ukraine. The risk assessment performed must encompass the type of customer, geographical location of the country of registration of the client or agency through which it transmits (receiving) the assets, and type of goods and services (item 6.3 of the Regulation number 25). The institution shall take measures in order to control risk management, taking into account risk criteria defined by the SFMS (…).

63. Taking into consideration the above provisions and the fact that financial institutions are reporting entities within the meaning of the Law 2015, it can be concluded based on desk review that the deficiencies have been addressed.

64. *Deficiency 10* (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).

65. The 2nd progress report concluded that there appeared to be a general requirement to perform enhanced due diligence based on risks detected. The newly adopted Law 2015 also provides for a general requirement to perform enhanced due diligence based on risks detected and therefore addresses the deficiency. According to parts 3-5 of Article 6 of Law 2015 reporting entities are required to conduct a risk assessment of their clients on the basis of risk criteria established by the Ministry of Finance and the relevant supervisor and take preventive measures with respect to higher-risk clients.

66. Under Article 6 of Law 2015 reporting entities, among others, are obliged to determine a high risk in the following cases: clients residing in States which do no use or do not adequately use the FATF recommendations and other international organizations which conduct activities in the field of AML/CFT; foreign financial institutions (except for the financial institutions which are registered in the Member States of the European Union, the Member States of the group for

developing financial measures to combat money-laundering (FATF) with which correspondent relations are established); national and foreign public persons and persons who perform political functions in international organizations, or related entities; and clients which are included in the list of persons who carry out terrorist activity, or on which international sanctions are imposed.

66. With respect to high-risk customers, reporting entities are obliged to carry out the following additional measures:
1) in respect of foreign financial institutions:
a) ensure the collection of information about its reputation and whether the foreign financial institution has been the subject of enforcement (sanctions) by the authority which performs state regulation and supervision of its activities on prevention and counteraction to legalization (laundering) the proceeds from crime and terrorist financing;
b) establish what activities are carried out in a foreign financial institution for the prevention and counteraction to legalization (laundering) of proceeds from crime, terrorist financing and the financing of proliferation of weapons of mass destruction;
c) to ascertain on the basis of information received adequacy and effectiveness of the measures implemented by foreign financial institutions to combat the legalization (laundering) of proceeds from crime, terrorist financing and the financing of proliferation of weapons of mass destruction;
d) open correspondent accounts of foreign financial institutions and foreign financial institutions with the permission of the subject of initial financial monitoring;

2) concerning national, foreign public officials and officials performing political functions in international organizations, their close persons or related persons (related persons are persons with whom the family members of national and foreign public figures and figures performing political functions in international organizations have business or personal relationships, as well as legal entities trailer ultimate shareholders (controllers) by such figures or their family members or persons with whom such figures are business or personal connection):
a) to exercise according to internal documents on financial monitoring fact of belonging Customer or a person acting on his behalf to the said categories of customers during the identification and verification in the course of their service, and whether they are ultimate shareholders (controllers) or managers of legal entities;
b) establish with permission of initial financial monitoring entity doing business with them;
c) before or during a business relationship take measures to ascertain the source of funds of persons on the basis of documents obtained from them and / or information from other sources, if such information is a public (open), confirming the sources of their assets, rights to such assets, etc;
d) to carry out the recommendations of the subject of state financial monitoring pursuant to The Law 2015 [1] performs functions of state regulation and supervision of reporting entities, the primary financial monitoring financial transactions participants or beneficiaries of which are the following persons in the manner prescribed for high-risk customers;
e) carry out at least once a year refinement of customer information.

67. Furthermore, under paragraph 4 of section IV Regulation number 995 additional measures must be taken with respect to customers who are characterized by elevated (high) risk during the identification of customers:
a) the verification of identity;
b) requesting additional documents, including the financial condition;
c) check the validity of the constituent documents (including all registered changes);
d) establishment of the founders of a legal entity;
e) comparison of the size of the registered and authorized capital;
d) verification of compliance of financial transaction usual customer activity;

e) establish whether a financial transaction financial situation of the client;
g) setting objectives operations;
i) assess the size and sources of existing and expected revenues;
c) establish the source of origin and methods of transfer (making) money used in transactions;
a) the establishment of related parties.

68. *Deficiency 11* (There is no explicit requirement for non-bank financial institutions to apply CDD to existing customers).

69. In 2nd follow up concluded that there was no timeline set for obliged institutions to comply with the new requirements under the AML/CFT law. Article 9 of AML/CFT Law referred generally to "clients that execute financial transactions". The only reference to "existing customers" was under part 9 of Article 9 of AML/CFT law which provided 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 had previously clarified that the State Commission for Financial Market Regulation and the State Commission on Securities and Stock Market would review the existing by-laws in order to make necessary amendments to ensure that CDD measures apply to existing customers. Subsequently, reference was made to the Directive of the National Financial Services Market Regulation Commission dated 05.08.2003 number 25 (hereinafter Regulation number 25) which would set out requirements to apply CDD to existing customers and to the acting Regulation number 955 which provides that " with regard to customers that do not establish business relationships with the reporting entities during lasting period of time, identification and updating of the identification information shall be carried out when the customer addresses the reporting entity or while conducting the transaction". It was found in 2nd round follow up report that from a desk review perspective, this issue needed further verification to ensure that requirements to apply CDD to existing customers are adequate.

70. In the context of the 3rd follow up report the authorities have indicated that under the fifth part of Article 6 of Law 2015 the requirement for non-bank institutions to apply due diligence to existing customers of the Law has been further strengthened. However, this provision does not seem to be relevant as it provides for the obligation for reporting entities to take additional measures with respect to certain types of high-risk clients. As in the second progress report, the authorities have once again referred to paragraphs 4.8 and 5.5 of Regulation number 25, however these provision do not address the matter explicitly. Paragraph 10 of Chapter IV Provisions SSMNC number 995 requires the identification or update of information on identification of clients who have not addressed the institution for more than three years, if such client wants to perform a transaction.

71. According to Article 11 of Law 2015 entities shall also reassess the risk of clients with established business relationship and in other cases established by law, at least once a year. At the same, as concerns risk management, reporting entities must take into account recommendations made by the relevant supervisory authorities.

72. From a desk review perspective, this issue still needs further verification to ensure that requirements to apply CDD to existing customers are adequate.

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

73. *Deficiency 1* (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) & Deficiency 2 (No requirement that transaction records should be sufficient to permit reconstruction of individual transactions)

74. The first and second progress reports had indicated that these deficiencies were addressed through the revision of the provisions of the AML/CFT Law (see Article 6 part 2 paragraph 15 of the AML/CFT Law) and the application of the banking legislation provisions. The list of data to be gathered, both by banks (under the NBU Regulation) and by other reporting entities (under Resolution 552) was assessed as being sufficiently comprehensive to permit reconstruction of individual transactions.

75. Law 2015 covers the record keeping requirements (article 6 paragraph 15 part 2) and provides that primary monitoring entities should keep the relevant official documents, other documents and relevant copies for a period of no less than 5 years after the completion of the financial transaction, the closure of the account and termination of the business relationship. Further to the entry into force of Law 2015, the implementing legislation on record-keeping procedures has been amended. For banks, this is set out under Regulation 417 of 26 June 2015 and for other reporting entities, under Resolution of the Government 552 of 5 August 2015. The list of data to be gathered under Law 2015, as well as under the above-mentioned regulations appears to be sufficiently comprehensive to permit the reconstruction of individual transactions with respect to banks and other reporting entities.

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

76. *Deficiency 1* (The suspicious reporting regime could not be regarded as risk-based and in line with the specifics of different sectors)

77. Ukraine amended the AML/CFT Law and modified the reporting regime by eliminating the previous "list-based" risk criteria and requiring obliged entities to develop their own risk criteria, while taking into account the risk criteria developed by the SFMS and relevant supervisory authorities. Pursuant to Articles 15 and 16 of the AML/CFT Law, the reporting obligation, as previously, consists of "mandatory" and "internal" reporting. Whilst "mandatory" reporting is to be undertaken in conditions precisely set by the AML/CFT Law, "internal" reporting is set out in a more general provision which gives scope to formulating suspicions on a subjective basis.

78. With regard to the provision of guidelines to reporting entities on identifying ML and TF suspicions, the authorities referred to Order no. 126 "on approval of money laundering and terrorist financing risk criteria", issued on 3 August 2010. Whilst this document principally provides reporting entities with criteria for the assessment of clients based on the risks they pose, it also includes indicators for the recognition of suspicious transactions. The criteria/indicators are divided in three sections, based on risk connected to the customer, geographical location and type of business. This Order is applicable to all obliged entities, without providing any sectorial specific guidance.

79. Ukraine has reported that numerous trainings have been carried out for reporting entities on a regular basis and that a large number of representatives from reporting entities have been trained with a view to enhance the implementation of the reporting obligation. Article 6 of Law 2015 provides that obliged entities must ensure that their compliance officers participate in trainings at least once every three years and must take measures for other personnel to be trained on detection of financial transactions. The Training Centre of the SFMS provides training for professionals of the stock market, financial services market participants and for compliance officers of reporting entities under the SFMS's supervision, as well as those under the supervision of the Ministry of Economic Development and Trade of Ukraine (for the latter the training programme was launched in 2012).

80. The National Bank of Ukraine (NBU) reported having organized since 2013, nine seminars and roundtables on the AML/CFT framework for board members and compliance officers of banks. In addition, the State Commission for Regulation of Financial Services Markets of Ukraine concluded in 2012-2014 agreements with six universities in order to provide trainings for staff of obliged entities (the numbers of trained persons are as follows: 2012 – 364, 2013 – 565, 2014 – 809, Jan-March 2015 – 98).

81. The authorities informed that the trainings were focused on familiarising the staff of obliged entities with international AML/CFT requirements and Ukrainian legal framework, with focus on their obligations emanating thereof. According to the information provided, substantial parts of these trainings were designated to enhance the understanding of the responsible staff of obliged entities concerning the reporting obligation and to share expertise on identified typologies, methods and trends.

82. The authorities further reported that the SFMS also publishes on its website information on obligations emanating from the UN sanctions regime, which is further published on the website of the National Securities and Stock Market Commission and transmitted to self-regulatory organisations. The NBU provides explanatory statements on its website related to the reporting obligation, some as a result of prior queries by obliged entities. Similar guidance is also provided on its website by the SFMS, focusing above all on provision of assistance in relation to the procedures of reporting.

83. Finally, the SFMS established a telephone "hot-line" designated to respond to questions of obliged entities in respect of their AML/CFT obligations. The authorities reported that in the period 2010-2014, more than 15.000 consultations were undertaken via this "hot-line" and more than 5.000 additional queries were responded by mail.

84. The authorities provided the following statistical data in relation to the reports filed by obliged entities in the period under review.

Table 1 – Suspicious transaction reports filed by financial institutions since the adoption of the MER

	Banks	Insu-rance	Credit unions	Non-state pension funds	Professional securities market participants	Com-modity ex-change and stock ex-change	Persons providing separate types of financial services	Currency exchange	Other legal entities which conduct financial transactions	Other financial institutions
2009	223.751	2.462	33	0	941	0	0	0	2	0
2010	219.063	877	9	1	38	4	274	0	1.068	23
2011	489.374	845	0	0	1	0	-	0	2.320	103
2012	273.662	1.870	4	0	1.548	0	0	0	138	201
2013	309.524	2.394	31	0	702	0	0	0	93	33
2014	486.564	2.462	126	0	1.135	0	0	0	274	0
2015 (Jan-March)	143.966	209	72	0	338	0	0	0	53	0

85. The data above does not show any significant changes in the past years nor enables to identify specific trends. The number of reports filed by the banking sector remains significantly predominant, with reporting by other financial institutions being rather low. In addition, the numbers of STRs filed by other sectors vary significantly amongst the years, with some years presenting peaks in reporting. The authorities were not in a position to explain all the variations in reporting.

Table 2 – Reports received by the FIU and related action

	Reports about transactions above threshold	Reports about suspicious transactions		Cases analysed by the FIU		Notifications to law enforcement/ prosecutors		Indictments		Convictions (cases/persons)	
		ML	**TF**	**ML**	**TF**	**ML**	**TF**	**ML**	**TF**	**ML**	**TF**
2009	650.371	227.192	11	1.682	0	626	1	354	0	150/NA	0/0
2010	583.702	221.409	4	1.706	1	667	5	106	0	65/NA	0/0
2011	586.263	493.188	4	1.841	8	580	4	142	0	37/NA	0/0
2012	620.974	277.795	4	1.892	4	714	5	195	0	130/150	0/0

2013	653.635	312.897	6	1.995	4	818	4	209	0	138/175	0/0
2014	780.234	490.617	1	1.968	2	762	12	83	0	171/228	0/0
2015 (Jan-March)	519.399	144.737	1	653	0	142	0	32	1/1	38/58	0/0

86. The data in Table 2 shows that despite the varying values of STRs filed by obliged entities (some years presenting double values then others), the number of cases analysed by the FIU remains constant. While it was not possible to draw substantiated conclusions on the basis of the information provided for this desk review, this issue could be better assessed in the course of an on-site visit.

87. In conclusion, steps have been taken to introduce a more suspicion-based approach to the reporting obligation, though its impact cannot be fully grasped in the context of a desk based review. The authorities have taken numerous measures to enhance awareness and understanding among obliged entities of their overall AML/CFT obligations, and in particular as regards their reporting obligation as amended since the third evaluation round.

88. Deficiency 2 (No STR requirement in cases possibly involving insider trading and market manipulation) This deficiency has been fully addressed, as indicated in the first progress report.

89. *Deficiency 3* (All types of attempted transactions are not fully covered). This deficiency has been fully addressed. At the time of the first progress report, this deficiency was considered as fully addressed. This analysis has been reconsidered in the current assessment due to the adoption of the 2015 Law and it appears that attempted transactions remain covered under the reporting obligation (reading together articles 6, 10, 15 and 16 of the AML/CFT Law.

90. *Deficiency 4* (Low numbers of STRs outside the banking sector adversely affects the effective implementation).The numbers of STRs filed by the non-banking sectors remain low, as can be observed from the tables above. Nevertheless, the authorities have taken measures aimed at strengthening the implementation of the STR obligations by the non-banking financial institutions, notably through training, as noted in the analysis under Deficiency 1.

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

91. *Deficiency 1 (Shortcoming in the criminalization of terrorist financing limits the reporting obligation).* At the time of the 3rd round assessment, the evaluation team identified a number of shortcomings with regard to the criminalization of financing of terrorism, which impacted negatively on the obligation to report TF related suspicious transactions. A large number of these deficiencies were addressed by amendments to the CC. For detailed information in this respect, the reader is referred to the analysis under SR.II.

92. In the context of providing guidance to reporting entities in respect of the reporting obligation, the authorities referred to Order no. 126 "on approval of money laundering and terrorist financing risk criteria", issued by the SFMS on 3 August 2010. As discussed above in the analysis under Recommendation 13. This Order provides obliged entities with indicators relevant for the identification of suspicious transactions, including indicators related to TF.

93. In addition, on the basis 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, of 18 August 2010, the SFMS establishes a list of persons connected with terrorist activities. According to Article 17 of the AML/CFT Law, the SFMS transmits this list to reporting entities through publication of the list on the website of the SFMS. The authorities informed that inclusion on this list shall be considered as an indicator of TF activities for the purposes of filing STRs.

94. The table below presents the statistics on the numbers of TF related STRs filed by the reporting entities in the period since the 3rd round evaluation.

2009	2010	2011	2012	2013	2014	2015 (Jan-March)
11	4	4	4	6	1	1

95. The statistics indicate a decreasing trend. All TF related STRs, except two, were received from the banking sector. The FIU opened in total 19 cases, and 31 cases were referred to the law enforcement[8].

96. <u>*Deficiency 2*</u> *(All types of attempted transactions are not fully covered)* This deficiency has been fully addressed. For further information in this respect, the reader is referred to the analysis under Deficiency 3 of Recommendation 13.

97. <u>*Deficiency 3*</u> *(The practice illustrates a lack of understanding of TF STR obligation and overall lack of effectiveness of the system)* For further information with regard to the guidance provided by the authorities on TF reporting obligations, the reader is referred to the analysis under Deficiency 1 of Special Recommendation IV. As regards provision of trainings and awareness raising activities, the authorities reported that issues related to TF have been part of the general AML/CFT training initiatives provided by the authorities to obliged entities. These are discussed in further detail in the analysis of Deficiency 1 under Recommendation 13. The understanding by FI of their TF reporting obligation could only be fully assessed in the context of an on-site visit.

98. In conclusion, the legal shortcomings of the TF offence and therefore also of the obligation to report TF related suspicious transactions have been largely remedied by the amendments introduced. The indicators for reporting of suspicious transactions include several indicators related to TF. In addition, issues related to TF were included in the awareness raising initiatives undertaken by the authorities.

[8] The FIU receives case-by-case feedback on the outcome of each referral to the LEAs.

2.3. Review of measures taken in relation to Key Recommendations

Recommendation 3 – Confiscation and provisional measures (rated PC in the MER)

99. Ukraine has been subject to MONEYVAL's monitoring processes as a result of the third evaluation round, under the so called "NC/PC process", which reviewed progress in respect of selected important deficiencies. A detailed analysis of the progress made with respect to the identified deficiencies, was adopted by Moneyval at its 43d Plenary. This analysis was largely based on the amendments to the CC and the CPC which were published on 15 June 2013 and which were due to enter into force on 16 December 2013. The analysis concluded that it appeared that in the light of the amendments which had been presented Ukraine had taken measures to improve its compliance with R3, though these were not yet in force. The Ukrainian authorities informed MONEYVAL that these amendments came into force on 16 December 2013. Thus, as agreed by MONEYVAL at its 43d plenary meeting, it was decided that the review of the 3d round deficiencies under the NC/PC process would be terminated. Since then, the Secretariat notes that further changes to these provisions appear to have been made which call in to question the previous findings in respect of compliance with the requirements of R3. The Secretariat's previous analysis remains valid with respect to the provisions that have remained unchanged.

100. *Deficiency 1*: 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. As recalled in the analysis of the 3d round MER, under Article 209 of the CC – both confiscation of property[9] and confiscation of money or other property obtained as proceeds of crime (special confiscation) are available and mandatory sanctions of ML. Confiscation of property that has been laundered or which constitutes proceeds from the commission of money laundering offence are thus still considered to be covered under article 209 of the CC.

101. The authorities have informed MONEYVAL that further to amendments to the CC in 2013, new provisions on special confiscation detailing the scope of property subject to special confiscation have entered into force.

102. Under Article 96-2 paragraph 1 of the CC, special confiscation is applied with respect to money, valuables and other property (1) obtained as a result of a crime and/or which is the proceeds of property obtained as a result of a crime (2) used to induce a person to commit a crime or used to finance or provide financial support for a crime or used to compensate a person for the commission of a crime (3) which is the subject of a crime (7) which constitutes instrumentalities. Under Article 96-2 paragraph 2, if special confiscation of the property indicated under Article 96-2 paragraph 1 is not possible, the court will order the confiscation of a sum of money corresponding to the value of such property.

103. Under these provisions as amended, instrumentalities can be confiscated. Article 96-2 also appears to cover the confiscation of property of corresponding value. In the context of the NC/PC process, a minor reservation was however expressed in respect of corresponding value of property that has been laundered, that analysis is still valid and is thus recalled in this progress report.

104. As concerns income, profits or other benefits, in the above-mentioned report the authorities had explained that this would be covered under proceeds of property obtained as a result of a crime. In

[9] That is, forceful seizure of all, or a part of, the property of a convicted person without compensation in favour of the State.

this respect, the Secretariat analysis had concluded that further analysis of this requirement and the court practice would need to be carried out during the next evaluation visit before confirming whether this deficiency is indeed addressed. No supplementary information has been provided by the authorities to demonstrate that indeed that property that is derived indirectly or indirectly from proceeds of crime would be covered.

105. Under Article 96-1, the measure of special confiscation applies to a limited number of offences included in the Special Part of the CC[10] Article 96-1 of the CC provides that: "special confiscation is the compulsory uncompensated seizure by a court decision to state ownership of money, valuables and other property in cases stipulated by this Code, defined by Article 354 and Articles 364, 364-1, 365-2, 368 – 369-2[11] of the Section XVII of Special Part of this Code, or socially dangerous act that falls under the signs of offense under these articles."

106. According to this provision, special confiscation would thus be applicable in respect of the offences of Section XVII of the Special Part of the CC (criminal offences in service activities and professional activities related to the provision of public services). ML does not figure amongst such offences, thus, confiscation would be possible only within the limited scope provided for under Article 209 of the CC.

107. *Deficiency 2*: Property from the commission of certain predicate offences cannot be confiscated.

108. As indicated in the analysis of deficiency 1, the new provisions on special confiscation which largely address and meet the FATF requirements under R3, do not apply to all designated categories of predicate offences.

109. *Deficiency 3:* Ukrainian legislation is deficient in ensuring confiscation of property used in or intended for use in TF.

110. Article 258-5 which criminalises terrorist financing as an autonomous offence provides for property confiscation as a possible sanction. However, such confiscation extends only to all or part of the defendant's personal property. Special confiscation as provided for under 96-1 of the CC does not apply to TF, therefore confiscation of property used in or intended for use in TF would in principle not be covered.

111. *Deficiency 4*: The effective application of confiscation measures with regard to ML or predicate offences cannot be assessed in the absence of relevant statistics.

112. The authorities have provided the following statistics on the number of investigations, prosecutions, final convictions, as well as the proceeds which have been frozen or seized and the proceeds which have been ultimately confiscated.

[10] At the time of the previous analysis under Article 96-1 in its draft form, special confiscation was provided for in respect of all offences listed in the Special Part of the CC.

[11] Art. 354. Bribery of officials of enterprise, authority of entity; Art. 364. Abuse of power or official position; Art. 365-2. Abuse of authority of person who are providing public services; Art. 368. Acceptance of the offer, promise or receipt of undue advantage by an official; Art. 368-2. Unlawful enrichment; Art. 368-3. Abuse of officials legal person of private law independent from business legal structure; Art. 368-4. Abuse of the person who providing public services; Art. 369. Offer, promise or receipt of undue advantage to official; Art. 369-2. Undue influence.

2013												
	Investigations		**Prosecutions**		**Convictions (final)**		**Proceeds frozen**		**Proceeds seized**		**Proceeds confiscated[2]**	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	408		227		150	131		18,742,338		7,040,486		18,2 million

2014												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated[2]	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	296		182		91	73		711,622		426,954		1,085 million

April 1, 2015												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated[2]	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	77		42		10	4		905,254		78,468		25,000 Euros

113. The amounts confiscated in the period 2013-2014 in relation to ML cases show a good record. No final convictions have been handed down in respect of TF and no related proceeds have been confiscated. According to various pieces of legislation cited by the authorities, both the SFMS and law enforcement agencies maintain statistics on these issues.

3. Main conclusions

114. As indicated above, Ukraine has made progress by taking a number of measures aimed at improving its level of compliance with the FATF standards, and in particular the 2003 FATF core recommendations. The adoption in 2014 of a new AML/CFT Law which introduces key elements

of the 2012 FATF standards is also a signal that the Ukrainian authorities remain committed to the implementation of the global standards.

115. The amendments which have been made to the Criminal Code and the Criminal Procedure Code have improved the legal framework, though certain gaps remain with respect to the ML offence, and the results reported raise questions as to the level of implementation in practice. All the identified deficiencies in relation to SRII appear to have been addressed, including the issue on corporate criminal liability with respect to FT.

116. As regards CDD obligations and record keeping requirements, almost all of the deficiencies identified in the 3d round MER have been remedied. Nonetheless, clearer requirements of identification and verification of the customers where the transaction is carried out occasionally (without opening a bank account) should be introduced.

117. With respect to R.13, Ukraine has continued to address the shortcomings previously identified and steps have been taken to introduce a more suspicion-based approach to the reporting obligation. Nevertheless the adequate implementation by the non-banking sector of its reporting obligation has yet to be demonstrated, despite the authorities' efforts and awareness raising activities.

118. In relation to SR. IV, the gaps identified in respect of the criminalisation of the TF offence and the obligation to report TF related suspicious transactions have been largely remedied. The indicators for reporting suspicious transactions include several TF related indicators and awareness raising initiatives have been implemented by the authorities.

119. As concerns R3, progress has also been noted. Nonetheless, confiscation appears to be possible with respect to ML only within the limited scope provided for under Article 209 of the CC (with respect to criminal proceeds and laundered property). The more extensive provisions on special confiscation do not appear to be available for ML nor for all categories of predicate offences, including TF. It is thus proposed that in the context of the fifth round evaluation of Ukraine by MONEYVAL, the evaluators consider under their scoping exercise whether enhanced scrutiny should be given to the confiscation of proceeds and instrumentalities of crime.

120. As a result of the discussions held in the context of the examination of this third 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 should be subject to an update every two years between evaluation visits (i.e. September 2017). However, it is to be noted that the Plenary will retain discretion in this respect, given that this date falls within the one year period before the scheduled 5th round on-site visit in March 2017.