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## **Project against Economic Crime in Kosovo\* (PECK)**

**[www.coe.int/peck](http://www.coe.int/peck)**

# **QUESTIONNAIRE**

**on compliance with international standards  
in the area of anti-money laundering and  
combating the financing of terrorism (AML/CFT)**

## **CYCLE 2**

ECCU-PECK-eng-3/2013

\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

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### **NOTE TO AUTHORITIES:**

- The authorities must provide comprehensive and detailed answers to each question below, and explain to the fullest extent possible the legislative and institutional framework and/or other measures they have taken to meet each criterion of the international standards.
- In support of the responses to the questionnaire below the authorities must provide copies of legislation and other documents, which are mentioned and/or referenced in the answers to questions.
- Requested statistics must be provided (if available) in the form of a table with an annual breakdown for a period of 3 years.
- When answering questions relating to agency resources please provide detailed information on budget, staffing, structure as well as a comprehensive assessment on the sufficiency of the allocated resources.

## 1. General

### 1.1 Overview of [...] Designated Non-financial Businesses and Professions (DNFBP)

Please provide information on each of the six categories of designated non-financial businesses and professions (DNFBP) as defined in the Forty Recommendations, namely: casinos (including internet casinos); real estate agents; dealers in precious metals; dealers in precious stones; lawyers, notaries, other independent legal professionals and accountants; and trust and company service providers. The section should describe the types of activities or business that they typically engage in, or are permitted to engage in, as well as information on the number and size of these various businesses and professionals (as defined), and any recent changes of significance.

*Please fill in the table in Appendix I (structure and supervision of the DNFBPs sector).*

### 1.2 Overview of the strategy to prevent money laundering and terrorist financing and its implementation

[...]

*The institutional framework for combating money laundering and terrorist financing*

Describe briefly the roles and responsibilities of the various governmental and non-governmental authorities or organisations in detecting, preventing, and taking repressive action in relation to money laundering and terrorist financing, both at the national level and sub-national levels (e.g. state or provincial) if applicable, highlighting any recent changes. This also includes Ministries or bodies involved in setting AML/CFT policy.

[...]

#### DNFBP and other matters

- Casino supervisory body.
- Supervisor or other competent authority, or SRO, for DNFBP.
- Self-regulatory organisations (SRO) for professionals such as lawyers and accountants.
- Any other agencies or bodies that may be relevant.

## 2. *Preventive Measures - Financial Institutions*

### 2.1 Customer due diligence (R.7 & 8)

#### Recommendation 7

2.1.1 Are financial institutions required to gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action? (FATF R.7.1)
2.1.2 Are financial institutions required to assess the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective? (FATF R.7.2)
2.1.3 Are financial institutions required to obtain approval from senior management before establishing new correspondent relationships? (FATF R.7.3)
2.1.4 Are financial institutions required to document <sup>1</sup> the respective AML/CFT responsibilities of each institution? (FATF R.7.4)
2.1.5 Where a correspondent relationship involves the maintenance of "payable-through accounts", are financial institutions satisfied that: (a) their customer (the respondent financial institution) has performed all the normal CDD obligations set out in R.5 on those of its customers that have direct access to the accounts of the correspondent financial institution; and (b) the respondent financial institution is able to provide relevant customer identification data upon request to the correspondent financial institution? (FATF R.7.5)
2.1.6 Please indicate the applicability of enhanced due diligence in correspondent banking relationship and, in particular, any differences in their applicability to respondent banks in EU Member States or in other jurisdictions? (3MLD Art. 13 (3))

<sup>1</sup> It is not necessary that the two financial institutions always have to reduce the respective responsibilities into a written form provided there is a clear understanding as to which institution will perform the required measures.

## Recommendation 8

2.1.7 Are financial institutions required to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes? (FATF R.8.1)

2.1.8 Are financial institutions required to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions? Are these policies and procedures applicable when establishing customer relationships and when conducting ongoing due diligence? (FATF R.8.2)

*Examples of non-face to face operations include: business relationships concluded over the Internet or by other means such as through the post; services and transactions over the Internet including trading in securities by retail investors over the Internet or other interactive computer services; use of ATM machines; telephone banking; transmission of instructions or applications via facsimile or similar means and making payments and receiving cash withdrawals as part of electronic point of sale transaction using prepaid or reloadable or account-linked value cards.*

2.1.9 Do measures for managing the risks include specific and effective CDD procedures that apply to non-face to face customers? (FATF R.8.2.1)

*Examples of such procedures include: the certification of documents presented; the requisition of additional documents to complement those which are required for face-to-face customers; develop independent contact with the customer; rely on third party introduction (see criteria 9.1 to 9.5) and require the first payment to be carried out through an account in the customer's name with another bank subject to similar customer due diligence standards.*

*Financial institutions should refer to the CDD Paper, Section 2.2.6.*

*For electronic services, financial institutions could refer to the "Risk Management Principles for Electronic Banking" issued by the Basel Committee in July 2003.*

2.1.10 The scope of Art. 13(6) of the EU Directive 2005/60 is broader than that of FATF R. 8, because the Directive focuses on products or transactions regardless of the use of technology. How are these issues covered in your legislation? (3MLD Art. 13 (6))

2.1.11 Please indicate how ML and FT threats arising out of new products and transactions can be affected by other threats arising out of new and developing technologies? (3MLD Art. 13 (6))

## 2.2 Third parties and introduced business (R.9)<sup>2</sup>

2.2.1 Are financial institutions that rely upon a third party required to immediately obtain from the third party the necessary information <sup>3</sup> concerning certain elements of the CDD process (Criteria 5.3 to 5.6) <sup>4</sup> ? (FATF R.9.1)
2.2.2 Are financial institutions required to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay? (FATF R.9.2)
2.2.3 Are financial institutions required to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendation 23, 24 and 29), and has measures in place to comply with, the CDD requirements set out in R.5 and R.10? (FATF R.9.3)
2.2.4 In determining in which countries/jurisdictions the third party that meets the conditions can be based, do competent authorities take into account information available on whether those countries/jurisdictions adequately apply the FATF Recommendations <sup>5</sup> ? (FATF R.9.4)
2.2.5 Does the ultimate responsibility for customer identification and verification remain with the financial institution relying on the third party? (FATF R.9.5)

<sup>2</sup> The Recommendation 9 does not apply to:

(a) outsourcing or agency relationships, i.e. where the agent is acting under a contractual arrangement with the financial institution to carry out its CDD functions ;

(b) business relationships, accounts or transactions between financial institutions for their clients. These are addressed by R.5 and R.7.

<sup>3</sup> It is not necessary to obtain copies of documentation.

<sup>4</sup> In practice, this reliance on third parties often occurs through introductions made by another member of the same financial services group, or in some jurisdictions from another financial institution or third party. It may also occur in business relationships between insurance companies and insurance brokers/agents, or between mortgage providers and brokers.

<sup>5</sup> Countries could refer to reports, assessments or reviews concerning AML/CFT that are published by the FATF, FSRBs, the IMF or World Bank.

## 2.3 Record keeping and wire transfer rules (SR.VII)

### Special Recommendation VII<sup>6</sup>

2.3.1 For all wire transfers of EUR/USD 1,000 or more, are ordering financial institutions required to obtain and maintain<sup>7</sup> the following information relating to the originator of the wire transfer:

- the name of the originator;
- the originator's account number (or a unique reference number if no account number exists; and
- the originator's address (countries may permit financial institutions to substitute the address with a national identity number, customer identification number, or date and place of birth)?

(This set of information is referred to as full originator information).

For all wire transfers of EUR/USD 1,000 or more, ordering financial institutions should be required to verify the identity of the originator in accordance with Recommendation 5. (FATF SR.VII)

2.3.2 For cross-border wire transfers of EUR/USD 1,000 or more is the ordering financial institution required to include full originator information in the message or payment form accompanying the wire transfer?<sup>8</sup> (FATF SR.VII.2)

2.3.3 For domestic wire transfers (including transactions using a credit or debit card as a payment system to effect a money transfer), is the ordering financial institution required to either: (a) comply with Criterion VII.2 above or (b) include only the originator's account number or a unique identifier, within the message or payment form. The second option should be permitted only if full originator information can be made available to the beneficiary financial institution and to appropriate authorities within three business days of receiving a request, and domestic law enforcement authorities can compel immediate production of it? (FATF SR.VII.3)

<sup>6</sup> SR VII applies to cross-border and domestic transfers between financial institutions. However, SR VII is not intended to cover the following types of payments:

a. Any transfer that flows from a transaction carried out using a credit or debit card so long as the credit or debit card number accompanies all transfers flowing from the transaction, such as withdrawals from a bank account through an ATM machine, cash advances from a credit card, or payments for goods and services. However, when credit or debit cards are used as a payment system to effect a money transfer, they are covered by SR VII, and the necessary information should be included in the message.

b. Financial institution-to-financial institution transfers and settlements where both the originator person and the beneficiary person are financial institutions acting on their own behalf.

<sup>7</sup> Financial institutions do not have to repeatedly obtain originator information and verify originator identity every time a customer makes a wire transfer. Financial institutions could rely on the information already available if, as part of the customer due diligence process, they have obtained:

(i) the originator's name;

(ii) account number (or unique reference number if no account number exists); and

(iii) address (or national identity number, customer identification number, or date and place of birth if the country permits one of these pieces of information to substitute for the address)

and verified the originator's identity in accordance with Recommendation 5 (see, in particular, criterion 5.3). This does not apply to occasional customers.

<sup>8</sup> However, if several individual cross-border wire transfers (of EUR/USD 1,000 or more) from a single originator are bundled in a batch file for transmission to beneficiaries in another country, the ordering financial institution only needs to include the originator's account number or unique identifier on each individual cross-border wire transfer, provided that the batch file (in which the individual transfers are batched) contains full originator information that is fully traceable within the recipient country.



2.3.4 Is each intermediary and beneficiary financial institution in the payment chain required to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer? (FATF SR.VII.4)
2.3.5 Where technical limitations prevent the full originator information accompanying a cross-border wire transfer from being transmitted with a related domestic wire transfer (during the necessary time to adapt payment systems), is a record kept for five years by the receiving intermediary financial institution of all the information received from the ordering financial institution? (FATF SR.VII.4.1)
2.3.6 Are beneficiary financial institutions required to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information? The lack of complete originator information may be considered as a factor in assessing whether a wire transfer or related transactions are suspicious and, as appropriate, whether they are thus required to be reported to the financial intelligence unit or other competent authorities. In some cases, the beneficiary financial institution should consider restricting or even terminating its business relationship with financial institutions that fail to meet SR.VII standards. (FATF SR.VII.5)
2.3.7 Does Kosovo have measures in place to effectively monitor the compliance of financial institutions with rules and regulations implementing SR.VII? (FATF SR.VII.6)
2.3.8 Does Kosovo ensure that Criteria 17.1 – 17.4 (in R.17) <sup>9</sup> also apply in relation to the obligations under SR.VII? (FATF SR.VII.7)
2.3.9 Does Kosovo require that all incoming cross-border wire transfers (including those below EUR/USD 1,000) contain full and accurate originator information? (FATF SR.VII.8)
2.3.10 Does Kosovo require that all outgoing cross-border wire transfers below EUR/USD 1,000 contain full and accurate originator information? (FATF SR.VII.9)

<sup>9</sup> See section 3.11 (Sanctions) of the PECK AML/CFT Questionnaire related to Cycle 1.

## 2.4 Monitoring of transactions and relationships (R.11 & 21)

### Recommendation 11

2.4.1 Are financial institutions required to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose? (FATF R.11.1)

*Examples of such transactions or patterns of transactions include: significant transactions relative to a relationship, transactions that exceed certain limits, very high account turnover inconsistent with the size of the balance, or transactions which fall out of the regular pattern of the account's activity.*

2.4.2 Are financial institutions required to examine as far as possible the background and purpose of such transactions and to set forth their findings in writing? (FATF R.11.2)

2.4.3 Are financial institutions required to keep such findings available for competent authorities and auditors for at least five years? (FATF R.11.3)

### Recommendation 21

2.4.4 Are financial institutions required to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations? (FATF R.21.1)

2.4.5 Does Kosovo have effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries/jurisdictions? (FATF R.21.1.1)

2.4.6 If those transactions have no apparent economic or visible lawful purpose, are the background and purpose of such transactions, as far as possible, examined, and are written findings available to assist competent authorities (e.g. supervisors, law enforcement agencies and the FIU) and auditors? (FATF R.21.2)

2.4.7 Where a country/jurisdiction continues not to apply or insufficiently applies the FATF Recommendations, is Kosovo able to apply appropriate counter-measures? (FATF R.21.3)

*Examples of possible counter-measures include:*

- *Stringent requirements for identifying clients and enhancement of advisories, including jurisdiction-specific financial advisories, to financial institutions for identification of the beneficial owners before business relationships are established with individuals or companies from these countries;*
- *Enhanced relevant reporting mechanisms or systematic reporting of financial transactions on the basis that financial transactions with such countries are more likely to be suspicious;*
- *In considering requests for approving the establishment in countries applying the countermeasure of subsidiaries or branches or representative offices of financial institutions, taking into account the fact that the relevant financial institution is from a country that does not have adequate AML/CFT systems;*
- *Warning non-financial sector businesses that transactions with natural or legal persons within that country might run the risk of money laundering.*
- *Limiting business relationships or financial transactions with the identified country or persons in that country.*

## 2.5 Suspicious transaction and other reporting (R.19 & 25)

### Recommendation 25 (only feedback and guidance related to STRs)

2.5.1 Do competent authorities, and particularly the FIU, provide financial institutions and DNFBP that are required to report suspicious transactions, with adequate and appropriate feedback having regard to the FATF Best Practice Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons? (FATF R.25.2)

*Examples of appropriate feedback mechanisms (drawn from the Best Practices Paper) may include:*

*(i) general feedback - (a) statistics on the number of disclosures, with appropriate breakdowns, and on the results of the disclosures; (b) information on current techniques, methods and trends (typologies); and (c) sanitised examples of actual money laundering cases.*

*(ii) specific or case by case feedback - (a) acknowledgement of the receipt of the report; (b) subject to domestic legal principles, 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, then the institution should receive information on that decision or result.*

### Recommendation 19

2.5.2 Has Kosovo considered the feasibility and utility of implementing a system where financial institutions report all transactions in currency above a fixed threshold to a national central agency with a computerised data base? (FATF R.19.1)

2.5.3 Where systems for reporting large currency transactions are in place, are the reports maintained in a computerised data base, available to competent authorities for AML/CFT purposes? (FATF R.19.2)

2.5.4 Are the systems for reporting large currency transactions subject to strict safeguards to ensure proper use of the information or data that is reported or recorded? (FATF R.19.3)

2.5.5 Do competent authorities maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist financing? This should include keeping annual statistics on:

(a) suspicious transaction reports, and other reports where appropriate under domestic law, received and disseminated -

(iii) Reports filed on: (i) domestic or foreign currency transactions above a certain threshold, If maintained, please provide these statistics (FATF R.32.2)

## 2.6 Internal controls, compliance, audit and foreign branches (R.15 & 22)

### Recommendation 15

2.6.1 Are financial institutions required to establish and maintain internal procedures, policies and controls to prevent ML and FT, and to communicate these to their employees? These procedures, policies and controls should cover, inter alia, CDD, record retention, the detection of unusual and suspicious transactions and the reporting obligation. (FATF R.15.1)
2.6.2 Are financial institutions required to develop appropriate compliance management arrangements e.g. for financial institutions at a minimum the designation of an AML/CFT compliance officer at the management level? (FATF R.15.1.1)
2.6.3 Do the AML/CFT compliance officer and other appropriate staff have timely access to customer identification data and other CDD information, transaction records, and other relevant information? (FATF R.15.1.2)
2.6.4 Are financial institutions required to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with these procedures, policies and controls? (FATF R.15.2)
2.6.5 Are financial institutions required to establish ongoing employee training to ensure that employees are kept informed of new developments, including information on current ML and FT techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting? (FATF R.15.3)
2.6.6 Are financial institutions required to put in place screening procedures to ensure high standards when hiring employees? (FATF R.15.4)
2.6.7 Is the AML/CFT compliance officer able to act independently and to report to senior management above the compliance officer's next reporting level or the board of directors? (FATF R.15.5)

## Recommendation 22

2.6.8 Are financial institutions required to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home jurisdiction requirements and the FATF Recommendations, to the extent that local (i.e. host country/jurisdiction) laws and regulations permit? (FATF R.22.1)
2.6.9 Are financial institutions required to pay particular attention that this principle is observed with respect to their branches and subsidiaries in countries/jurisdictions which do not or insufficiently apply the FATF Recommendations? (FATF R.22.1.1)
2.6.10 Where the minimum AML/CFT requirements of the home and host countries/jurisdictions differ, are branches and subsidiaries in Kosovo required to apply the higher standard, to the extent that Kosovo laws and regulations permit? (FATF R.22.1.2)
2.6.11 Are financial institutions required to inform their home jurisdiction supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (i.e. host country/jurisdiction) laws, regulations or other measures? (FATF R.22.2)
2.6.12 Are financial institutions subject to the Core Principles required to apply consistent CDD measures at the group level, taking into account the activity of the customer with the various branches and majority owned subsidiaries worldwide? (FATF R.22.3)
2.6.13 Where the laws of the third country do not permit the application of equivalent AML/CFT measures, please indicate the procedures in place in Kosovo for institutions to take additional measures to handle the risk of money laundering and financing of terrorism and the type of additional measures expected to be put in place (EU Directive 2005/60/EC Article 31(3)).
2.6.14 Please indicate whether credit and financial institutions are required to communicate their internal AML and CFT policies and procedures to their branches and majority owned subsidiaries in third (non EU) countries. (3MLD Art. 34 (2))

## 2.7 Supervision and oversight (R. 25)

### Guidelines – R.25 (Guidance for financial institutions)

2.7.1 Have competent authorities established guidelines <sup>10</sup> that assist financial institutions and DNFBP to implement and comply with their respective AML/CFT requirements? For DNFBP, such guidelines may be established by SROs. (FATF R.25.1)

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<sup>10</sup> At a minimum, the guidelines should give assistance on issues covered under the relevant FATF Recommendations, including: (i) a description of ML and FT techniques and methods; and (ii) any additional measures that these institutions and DNFBP could take to ensure that their AML/CFT measures are effective.

### 3. Preventive Measures – Designated Non-Financial Businesses and Professions

#### 3.1 Customer due diligence and record-keeping (R.12)

(applying R.5, 6, 8-11 & 17 (only sanctions for these Recommendations))

3.1.1 Please give a concise overview of the scope of coverage of AML/CFT preventive measures as they apply to DNFBP i.e. what sectors are covered and to what extent.

3.1.1/1 With respect to external accountants, does Kosovo apply all the obligations to all their professional activities or are they limited to specific transactions? (see EU Directive 2005/60/EC Article 2(3)(a)).

3.1.1/2 Specify whether Kosovo applies all obligations to all natural and legal persons trading in goods where payments are made in cash in an amount of €15,000 or over (EU Directive 2005/60/EC Article 2(3) (e)).

3.1.1/3 With respect to customer identification in casinos, can Kosovo specify whether the thresholds in place follow the EU Directive and whether the buying and selling of gambling chips are also subject to identification or whether in casinos subject to state supervision all customers are registered and identified immediately on entry (see EU Directive 2005/60/EC Article 10).

3.1.2 Are DNFBP required to comply with the requirements set out in Recommendation 5 (Criteria 5.1 – 5.18) in the following circumstances<sup>11</sup> :

a) Casinos (including internet casinos<sup>12</sup>) – when their customers engage in financial transactions<sup>13</sup> equal to or above USD/€ 3,000<sup>14</sup>.

<sup>11</sup> The designated thresholds applied in these criteria are referred to in the IN of R. 5, 12 and 16.

<sup>12</sup> Countries should establish rules to determine the basis upon which internet casinos are subject to national AML/CFT requirements. This will require the country to determine the basis or set of factors upon which it will decide whether there is a sufficient nexus or connection between the internet casino and the country. Examples of such factors include incorporation or organisation under the laws of the country, or place of effective management within the country. Assessors should examine the basis for the nexus or connection, with respect to R.12, 16 and 24.

<sup>13</sup> Note to assessors: Recommendation 12 (c.12.1) requires casinos (including internet casinos) to implement Recommendation 5, including identifying and verifying the identity of customers, when their customers engage in financial transactions equal to or above USD/€ 3,000. Conducting customer identification at the entry to a casino could be, but is not necessarily, sufficient. Countries must require casinos to ensure that they are able to link customer due diligence information for a particular customer to the transactions that the customer conducts in the casino.

<sup>14</sup> The designated thresholds of USD/€ 3,000 and USD/€ 15,000 include situations where the transaction is carried out in a single operation or in several operations that appear to be linked.



<p>b) Real estate agents – when they are involved in transactions for a client concerning the buying and selling of real estate<sup>15</sup>.</p> <p>c) Dealers in precious metals and dealers in precious stones – when they engage in any cash transaction with a customer equal to or above USD/€ 15,000.</p> <p>d) Lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for a client in relation to the following activities:</p> <ul style="list-style-type: none"> <li>• buying and selling of real estate;</li> <li>• managing of client money, securities or other assets<sup>16</sup>;</li> <li>• management of bank, savings or securities accounts;</li> <li>• organisation of contributions for the creation, operation or management of companies;</li> <li>• creation, operation or management of legal persons or arrangements, and buying and selling of business entities.</li> </ul> <p>e) Trust and Company Service Providers when they prepare for and when they carry out transactions for a client in relation to the following activities:</p> <ul style="list-style-type: none"> <li>• acting as a formation agent of legal persons;</li> <li>• acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;</li> <li>• providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;</li> <li>• acting as (or arranging for another person to act as) a trustee of an express trust;</li> <li>• acting as (or arranging for another person to act as) a nominee shareholder for another person.</li> </ul> <p>DNFBP should especially comply with the CDD measures set out in Criteria 5.3 to 5.7 but may determine the extent of such measures on a risk sensitive basis depending on the type of customer, business relationship or transaction.</p> <p>(FATF R.12.1)</p>
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<p>3.1.2/1 Are DNFBPs permitted to keep anonymous accounts or accounts in fictitious names? (FATF R.5.1)</p>
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<p>3.1.2/2 Are DNFBPs required to undertake customer due diligence (CDD) measures when:</p> <p>a) establishing business relations;</p> <p>b) carrying out occasional transactions above the applicable designated threshold (USD/€ 15,000);</p> <p>c) carrying out occasional transactions that are wire transfers;</p> <p>d) there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds; or</p> <p>e) the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data? (FATF R.5.2)</p>
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Examples of financial transactions in casinos include: the purchase or cashing in of casinos chips or tokens, the opening of accounts, wire transfers and currency exchanges. Financial transactions do not refer to gambling transactions that involve only casino chips or tokens.

<sup>15</sup> This means that real estate agents should comply with R.5 with respect to both the purchasers and the vendors of the property.

<sup>16</sup> Where the lawyer, notary, other independent legal professional or accountant is conducting financial activity as a business and meets the definition of “financial institution” then that person or firm should comply with the requirements applicable to financial institutions.

3.1.2/3 Are DNFBPs required to identify the customer (whether permanent or occasional, and whether natural or legal persons or legal arrangements) and verify that customer's identity using reliable, independent source documents, data or information (identification data)? (FATF R.5.3)
3.1.2/4 For customers that are legal persons or legal arrangements, is the DNFBP required to: (a) verify that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person; and (b) verify the legal status of the legal person or legal arrangement <sup>17</sup> ? (FATF R.5.4)
3.1.2/5 Are DNFBPs required to identify the beneficial owner <sup>18</sup> , and take reasonable measures to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source such that the financial institution is satisfied that it knows who the beneficial owner is? (FATF R.5.5)
3.1.2/6 For all customers, does the DNFBP have to determine whether the customer is acting on behalf of another person, and then take reasonable steps to obtain sufficient identification data to verify the identity of that other person? (FATF R.5.5.1)
3.1.2/7 For customers that are legal persons or legal arrangements, is the DNFBP required to take reasonable measures to: (a) understand the ownership and control structure of the customer; (b) determine who are the natural persons that ultimately own or control the customer. (FATF R.5.5.2)
3.1.2/8 Are DNFBPs required to obtain information on the purpose and intended nature of the business relationship? (FATF R.5.6)
3.1.2/9 Are DNFBPs required to conduct ongoing due diligence on the business relationship? (FATF R.5.7)

<sup>17</sup> Verification can be carried out by obtaining proof of incorporation or similar evidence of establishment or existence, and obtain information concerning the customer's name, the names of trustees (for trusts), legal form, address, directors (for legal persons), and provisions regulating the power to bind the legal person or arrangement.

<sup>18</sup> *Beneficial owner* refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.

3.1.2/10 Does ongoing due diligence 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? (FATF R.5.7.1)
3.1.2/11 Are DNFBPs required to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships? (FATF R.5.7.2)
3.1.2/12 Are DNFBPs required to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction? (FATF R.5.8)
3.1.2/13 Where there are low risks, can DNFBPs apply reduced or simplified measures? (FATF R.5.9)
3.1.2/14 Are DNFBPs permitted to apply simplified or reduced CDD measures to customers resident in another jurisdiction? (FATF R.5.10)
3.1.2/15 If there is a suspicion of money laundering or terrorist financing or specific higher risk scenarios apply, are simplified CDD measures acceptable? (FATF R.5.11)
3.1.2/16 Where DNFBPs are permitted to determine the extent of the CDD measures on a risk sensitive basis, are there requirements to follow guidelines issued by the competent authorities? (FATF R.5.12)
3.1.2/17 Are DNFBPs required to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers? (FATF R.5.13)

<p>3.1.2/18 Are DNFBPs in Kosovo permitted to complete the verification of the identity of the customer and beneficial owner following the establishment of the business relationship, provided that:</p> <p>(a) This occurs as soon as reasonably practicable.</p> <p>(b) This is essential not to interrupt the normal conduct of business.</p> <p>(c) The money laundering risks are effectively managed? (FATF R.5.14)</p>
<p>3.1.2/19 Where a customer is permitted to utilise the business relationship prior to verification, are DNFBPs required to adopt risk management procedures concerning the conditions under which this may occur?<sup>19</sup> (FATF R.5.14.1)</p>
<p>3.1.2/20 If the DNFBP is unable to comply with Criteria (FATF R.5.3 to 5.6) above:</p> <p>a) is it permitted to open the account, commence business relations or perform the transaction?</p> <p>b) is it required to consider making a suspicious transaction report? (FATF R.5.15)</p>
<p>3.1.2/21 If the DNFBP has already commenced the business relationship, are there any requirements to terminate the business relationship and to consider making a suspicious transaction report? (FATF R.5.16)</p>
<p>3.1.2/22 Are DNFBPs required to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times? (FATF R.5.17)</p>
<p>3.1.2/23 Are DNFBPs required to perform CDD measures on existing customers if they are customers to whom Criterion 5.1 applies? (FATF R.5.18)</p>
<p>3.1.3 In the circumstances set out in Criterion 12.1, are DNFBPs required to comply with the criteria set out under Recommendations 6 and 8-11? (FATF R.12.2)</p>

<sup>19</sup> These procedures should include a set of measures such as a limitation of the number, types and/or amount of transactions that can be performed and the monitoring of large or complex transactions being carried out outside of expected norms for that type of relationship.

3.1.3/1 Are DNFBPs required 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? (FATF R.6.1)
3.1.3/2 Are DNFBPs required to obtain senior management approval for establishing business relationships with a PEP? (FATF R.6.2)
3.1.3/3 Where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP, are DNFBPs required to obtain senior management approval to continue the business relationship? (FATF R.6.2.1)
3.1.3/4 Are DNFBPs required to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs? (FATF R.6.3)
3.1.3/5 Where DNFBPs are in a business relationship with a PEP, are they required to conduct enhanced ongoing monitoring on that relationship? (FATF R.6.4)
3.1.3/6 Are the above requirements extended to PEPs who hold prominent public functions domestically? (FATF R.6.5)
3.1.3/7 Are DNFBPs required to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes? (FATF R.8.1)
3.1.3/8 Are DNFBPs required to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions? Are these policies and procedures applicable when establishing customer relationships and when conducting ongoing due diligence? (FATF R.8.2)
<i>Examples of non-face to face operations include: business relationships concluded over the Internet or by other means such as through the post; services and transactions over the Internet including trading in securities by retail investors over the Internet or other interactive computer services; use of ATM machines; telephone banking; transmission of instructions or applications via facsimile or similar means and making</i>

payments and receiving cash withdrawals as part of electronic point of sale transaction using prepaid or reloadable or account-linked value cards.

3.1.3/9 Do measures for managing the risks include specific and effective CDD procedures that apply to non-face to face customers? (FATF R.8.2.1)

*Examples of such procedures include: the certification of documents presented; the requisition of additional documents to complement those which are required for face-to-face customers; develop independent contact with the customer; rely on third party introduction (see criteria 9.1 to 9.5) and require the first payment to be carried out through an account in the customer's name with another bank subject to similar customer due diligence standards.*

*Financial institutions should refer to the CDD Paper, Section 2.2.6.*

*For electronic services, financial institutions could refer to the "Risk Management Principles for Electronic Banking" issued by the Basel Committee in July 2003.*

3.1.3/10 The scope of Art. 13(6) of the EU Directive 2005/60 is broader than that of FATF R. 8, because the Directive focuses on products or transactions regardless of the use of technology. How does Kosovo cover these issues in its legislation? (3MLD Art. 13 (6))

3.1.3/11 Are DNFBPs that rely upon a third party required to immediately obtain from the third party the necessary information<sup>20</sup> concerning certain elements of the CDD process (Criteria 5.3 to 5.6)<sup>21</sup>? (FATF R.9.1)

3.1.3/12 Are DNFBPs required to take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay? (FATF R.9.2)

3.1.3/13 Are DNFBPs required to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendation 23, 24 and 29), and has measures in place to comply with, the CDD requirements set out in R.5 and R.10? (FATF R.9.3)

<sup>20</sup> It is not necessary to obtain copies of documentation.

<sup>21</sup> In practice, this reliance on third parties often occurs through introductions made by another member of the same financial services group, or in some jurisdictions from another financial institution or third party. It may also occur in business relationships between insurance companies and insurance brokers/agents, or between mortgage providers and brokers.

3.1.3/14 In determining in which countries/jurisdictions the third party that meets the conditions can be based, do competent authorities take into account information available on whether those countries/jurisdictions adequately apply the FATF Recommendations <sup>22</sup> ? (FATF R.9.4)
3.1.3/15 Does the ultimate responsibility for customer identification and verification remain with the DNFBP relying on the third party? (FATF R.9.5)
3.1.3/16 Are DNFBPs required to maintain all necessary records on transactions, both domestic and international, for at least five years following completion of the transaction (or longer if requested by a competent authority in specific cases and upon proper authority)? (FATF R.10.1)
3.1.3/17 Are transaction records sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity? (FATF R.10.1.1)
3.1.3/18 Are DNFBPs required to maintain records of the identification data, account files and business correspondence for at least five years following the termination of an account or business relationship (or longer if requested by a competent authority in specific cases upon proper authority)? (FATF R.10.2)
3.1.3/19 Are DNFBPs required to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority? (FATF R.10.3)
3.1.3/20 Are DNFBPs required to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose? (FATF R.11.1)
<i>Examples of such transactions or patterns of transactions include: significant transactions relative to a relationship, transactions that exceed certain limits, very high account turnover inconsistent with the size of the balance, or transactions which fall out of the regular pattern of the account's activity.</i>

<sup>22</sup> Countries could refer to reports, assessments or reviews concerning AML/CFT that are published by the FATF, FSRBs, the IMF or World Bank.

3.1.3/21 Are DNFBPs required to examine as far as possible the background and purpose of such transactions and to set forth their findings in writing? (FATF R.11.2)
3.1.3/22 Are DNFBPs required to keep such findings available for competent authorities and auditors for at least five years? (FATF R.11.3)

## 3.2 Suspicious transaction reporting (R.16)

(applying R.13-15, 17 & 21)

<p>3.2.1 Are DNFBP required to comply with the requirements set out in Recommendation 13 (Criteria 13.1 – 13.4)<sup>23</sup> in the following circumstances:</p> <p>a) Casinos (which includes internet casinos) and real estate agents – in the circumstances set out in R.13.</p> <p>b) Dealers in precious metals or stones - when they engage in any cash transaction equal to or above USD/€ 15,000<sup>24</sup>.</p> <p>c) Lawyers, notaries, other independent legal professionals and accountants - when, on behalf of or for a client, they engage in a financial transaction in relation to the following activities:</p> <ul style="list-style-type: none"> <li>• buying and selling of real estate;</li> <li>• managing of client money, securities or other assets;</li> <li>• management of bank, savings or securities accounts;</li> <li>• organisation of contributions for the creation, operation or management of companies;</li> <li>• creation, operation or management of legal persons or arrangements, and buying and selling of business entities.</li> </ul>
<p><i>Note on legal professional privilege or legal professional secrecy.</i></p> <p>Lawyers, notaries, other independent legal professionals, and accountants acting as independent legal professionals, are not required to report suspicious transactions if the relevant information was obtained in circumstances where they are subject to legal professional privilege or legal professional secrecy. It is for each jurisdiction to determine the matters that would fall under legal professional privilege or legal professional secrecy. This would normally cover information lawyers, notaries or other independent legal professionals receive from or obtain through one of their clients: (a) in the course of ascertaining the legal position of their client, or (b) in performing their task of defending or representing that client in, or concerning judicial, administrative, arbitration or mediation proceedings. Where accountants are subject to the same obligations of secrecy or privilege, then they are also not required to report suspicious transactions.</p>
<p>d) Trust and Company Service Providers - when they prepare for or carry out a transaction on behalf of a client, in relation to the following activities:</p> <ul style="list-style-type: none"> <li>• acting as a formation agent of legal persons;</li> </ul>

<sup>23</sup> DNFBP should comply with all the criteria in Recommendation 13 with two exceptions. First, dealers in precious metals and stones must comply with criteria 13.3, but would only be required to report transactions (or attempted transactions) above the cash threshold of USD/€ 15,000. Second, as detailed in criteria 16.1, countries may allow lawyers, notaries, other independent legal professionals, and accountants acting as independent legal professionals to send their STR to self-regulatory organizations, and they do not always need to send STR to the FIU.

<sup>24</sup> The designated threshold includes situations where the transaction is carried out in a single operation or in several operations that appear to be linked (cases of “smurfing”/“structuring”).



<ul style="list-style-type: none"> <li>• acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;</li> <li>• providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;</li> <li>• acting as (or arranging for another person to act as) a trustee of an express trust;</li> <li>• acting as (or arranging for another person to act as) a nominee shareholder for another person.</li> </ul> <p>(FATF R.16.1)</p>
<p>3.2.1/1 Are DNFBPs required by law or regulation to report to the FIU (a suspicious transaction report – STR) when they suspect or have reasonable grounds to suspect that funds are the proceeds of a criminal activity? (FATF R.13.1)</p>
<p>3.2.1/2 Does the obligation to make a STR also apply to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism? (FATF R.13.2)</p>
<p>3.2.1/3 Are all suspicious transactions related to ML or FT, including attempted transactions, reported regardless of the amount of the transaction? (FATF R.13.3 and SR.IV.2)</p>
<p>3.2.1/4 Does the requirement to report suspicious transactions apply regardless of whether they are thought, among other things, to involve tax matters? (FATF R.13.4 and SR.IV.2)</p>
<p>3.2.2 Where countries/jurisdictions allow lawyers, notaries, other independent legal professionals and accountants to send their STR to their appropriate self-regulatory organisations (SRO), are there appropriate forms of co-operation between these organisations and the FIU? Has Kosovo determined the details of how the SRO could co-operate with the FIU? (FATF R.16.2)</p>
<p>3.2.3 In the circumstances set out in criterion 16.1, are the criteria set out under Recommendations 14, 15 and 21 applicable in relation to DNFBPs? (FATF R.16.3)</p>

3.2.3/1 Are DNFBPs and their directors, officers and employees (permanent and temporary) protected by law from both criminal and civil liability for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, if they report their suspicions in good faith to the FIU? (FATF R.14.1)

3.2.3/2 Are DNFBPs and their directors, officers and employees (permanent and temporary) prohibited by law from disclosing (“tipping off”) the fact that a STR or related information is being reported or provided to the FIU? (FATF R.14.2)

3.2.3/3 Are DNFBPs required to establish and maintain internal procedures, policies and controls to prevent ML and FT, and to communicate these to their employees? These procedures, policies and controls should cover, inter alia, CDD, record retention, the detection of unusual and suspicious transactions and the reporting obligation. (FATF R.15.1)

3.2.3/4 Are DNFBPs required to develop appropriate compliance management arrangements e.g. at a minimum the designation of an AML/CFT compliance officer at the management level? (FATF R.15.1.1)

3.2.3/5 Do the AML/CFT compliance officer and other appropriate staff have timely access to customer identification data and other CDD information, transaction records, and other relevant information? (FATF R.15.1.2)

3.2.3/6 Are DNFBPs required to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with these procedures, policies and controls? (FATF R.15.2)

3.2.3/7 Are DNFBPs required to establish ongoing employee training to ensure that employees are kept informed of new developments, including information on current ML and FT techniques, methods and trends; and that there is a clear explanation of all aspects of AML/CFT laws and obligations, and in particular, requirements concerning CDD and suspicious transaction reporting? (FATF R.15.3)

3.2.3/8 Are DNFBPs required to put in place screening procedures to ensure high standards when hiring employees? (FATF R.15.4)
3.2.3/9 Is the AML/CFT compliance officer able to act independently and to report to senior management above the compliance officer's next reporting level or the board of directors? (FATF R.15.5)
3.2.3/10 Are DNFBPs required to give special attention to business relationships and transactions with persons (including legal persons and other DNFBPs and financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations? (FATF R.21.1)
3.2.3/11 Does Kosovo have effective measures in place to ensure that DNFBPs are advised of concerns about weaknesses in the AML/CFT systems of other countries/jurisdictions? (FATF R.21.1.1)
3.2.3/12 If those transactions have no apparent economic or visible lawful purpose, are the background and purpose of such transactions, as far as possible, examined, and are written findings available to assist competent authorities (e.g. supervisors, law enforcement agencies and the FIU) and auditors? (FATF R.21.2)
3.2.3/13 Where a country/jurisdiction continues not to apply or insufficiently applies the FATF Recommendations, is Kosovo able to apply appropriate counter-measures? (FATF R.21.3)
<p><i>Examples of possible counter-measures include:</i></p> <ul style="list-style-type: none"> <li>- <i>Stringent requirements for identifying clients and enhancement of advisories, including jurisdiction-specific financial advisories, to financial institutions for identification of the beneficial owners before business relationships are established with individuals or companies from these countries;</i></li> <li>- <i>Enhanced relevant reporting mechanisms or systematic reporting of financial transactions on the basis that financial transactions with such countries are more likely to be suspicious;</i></li> <li>- <i>In considering requests for approving the establishment in countries applying the countermeasure of subsidiaries or branches or representative offices of financial institutions, taking into account the fact that the relevant financial institution is from a country that does not have adequate AML/CFT systems;</i></li> <li>- <i>Warning non-financial sector businesses that transactions with natural or legal persons within that country might run the risk of money laundering.</i></li> <li>- <i>Limiting business relationships or financial transactions with the identified country or persons in that country.</i></li> </ul>

3.2.4 Is the reporting requirement extended to the rest of the professional activities of accountants, including auditing? (FATF R.16.5)
3.2.5 Are DNFBP required to report to the FIU when they suspect or have reasonable grounds to suspect that funds are the proceeds of all criminal acts that would constitute a predicate offence for money laundering domestically? (FATF R.16.6)
3.2.6 Please provide detailed statistics as regards suspicious transaction reports filed by DNFBPs to the FIU for 2010-2013. (FATF R.32)
3.2.7 Please indicate whether Kosovo requires that obliged persons must refrain from carrying out transactions which they know or suspect to be related to money-laundering or terrorist financing until they have reported to the FIU (EU Directive 2005/60/EC Article 24(1))
3.2.8 Please also indicate whether the Kosovo authorities (FIU for example) may stop the execution of a transaction that has been so brought to their attention (EU Directive 2005/60/EC Article 24(1)).
3.2.9 Moreover, please indicate whether, if the transaction is carried out for justifiable reasons or because it could frustrate efforts of an investigation, Kosovo imposes a requirement that the FIU be informed immediately after (EU Directive 2005/60/EC Article 24(2)).
3.2.10 Further to 3.2.4 (FATF R. 16.5) please indicate whether Kosovo requires that the prohibition on tipping off; and the requirement to develop internal AML/CFT measures with respect to countries that do not apply AML/CFT standards are also applicable to auditors, accountants and tax advisors when acting in the exercise of their professional activities (EU Directive 2005/60/EC Article 2(3)(a)).
3.2.11 Likewise, please indicate whether Kosovo requires the applicability of 3.2.7/4 above to all natural and legal persons trading in goods where payments are made in cash in an amount of €15,000 or over (EU Directive 2005/60/EC Article 2(3)(e)).

### 3.3 Regulation, supervision and monitoring (R. 24-25)

#### Recommendation 24

3.3.1 Does Kosovo ensure that casinos (including Internet casinos) are subject to a comprehensive regulatory and supervisory regime that ensures they are effectively implementing the AML/CFT measures required under the FATF Recommendations? (FATF R.24.1)
3.3.2 Does Kosovo ensure that a designated competent authority has responsibility for the AML/CFT regulatory and supervisory regime of casinos? Does the competent authority have adequate powers to perform its functions, including powers to monitor and sanction (it should be ensured that criteria 17.1-17.4 apply to the obligations under R.12 and R.16)? (FATF R.24.1.1)
3.3.2/1 Does Kosovo have effective, proportionate and dissuasive criminal, civil or administrative sanctions available to deal with natural or legal persons (with respect to casinos) that fail to comply with Kosovo's AML/CFT requirements? (FATF R.17.1)
3.3.2/2 Has Kosovo designated an authority (e.g. supervisors or the FIU) empowered to apply sanctions with respect to casinos? (FATF R.17.2)
3.3.2/3 Are sanctions available in relation not only to the legal persons that are DNFBPs (with respect to casinos) but also to their directors and senior management? (FATF R.17.3)
3.3.2/4 Is the range of sanctions available broad and proportionate to the severity of a situation? Do the sanctions include the power to impose disciplinary and financial sanctions and the power to withdraw, restrict or suspend the DNFBP's license (with respect to casinos), where applicable? (FATF R.17.4)
3.3.3 Are casinos licensed by a designated competent authority? (FATF R.24.1.2)

3.3.4 Are the necessary legal or regulatory measures taken by a competent authority 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? (FATF R.24.1.3)

3.3.5 Does Kosovo ensure that the other categories of DNFBP are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements? In determining whether the system for monitoring and ensuring compliance is appropriate, regard may be had to the risk of money laundering or terrorist financing in that sector i.e. if there is a proven low risk then the extent of the required measures may be less. (FATF R.24.2)

3.3.6 Is there a designated competent authority or SRO responsible for monitoring and ensuring compliance of other categories of DNFBPs with AML/CFT requirements? Does such an authority or SRO have:

- a) Adequate powers to perform its functions, including powers to monitor and sanction (countries should ensure that criteria 17.1-17.4 apply to the obligations under R.12 and R.16);
- b) Sufficient technical and other resources to perform its functions<sup>25</sup>? (FATF R.24.2.1)

3.3.6/1 Does Kosovo have effective, proportionate and dissuasive criminal, civil or administrative sanctions available to deal with natural or legal persons (being other categories of DNFBPs), that fail to comply with Kosovo's AML/CFT requirements? (FATF R.17.1)

3.3.6/2 Has Kosovo designated an authority (e.g. supervisors or the FIU) empowered to apply sanctions to other categories of DNFBPs? (FATF R.17.2)

3.3.6/3 Are sanctions available in relation not only to the legal persons that are considered as other categories of DNFBPs but also to their directors and senior management? (FATF R.17.3)

<sup>25</sup> In assessing compliance with this criterion, assessors should have regard to Criteria 30.1 to 30.4 where it is appropriate to do so (i.e. depending on the type of the designated competent authority or SRO, its size, its responsibilities, etc.).

3.3.6/4 Is the range of sanctions available broad and proportionate to the severity of a situation? Do the sanctions include the power to impose disciplinary and financial sanctions and the power to withdraw, restrict or suspend the DNFBP's license, where applicable (with respect to other categories of DNFBPs)? (FATF R.17.4)
3.3.6/5 Are supervisors of all categories of DNFBPs adequately structured, funded, staffed, and provided with sufficient technical and other resources to fully and effectively perform their functions? Adequate structuring includes the need for sufficient operational independence and autonomy to ensure freedom from undue influence or interference. <sup>26</sup> (FATF R.30.1)
3.3.6/6 Are staff of supervisors of all categories of DNFBPs required to maintain high professional standards, including standards concerning confidentiality, and should be of high integrity and be appropriately skilled? (FATF R.30.2)
3.3.6/7 Are staff of supervisors of all categories of DNFBPs provided with adequate and relevant training for combating ML and FT? (FATF R.30.3)
3.3.6/8 Are supervisory bodies obliged to inform the authorities responsible for combating money laundering if, in the course of their supervisory inspections, they discover facts that could constitute evidence of money laundering? (EU Directive 2005/60/EC Article 25(1)).

#### **Recommendation 25 (Guidance for DNFBPs other than guidance on STRs)**

3.3.7 Have competent authorities established guidelines <sup>27</sup> that assist financial institutions and DNFBP to implement and comply with their respective AML/CFT requirements? For DNFBP, such guidelines may be established by SROs. (FATF R.25.1)

<sup>26</sup> If a country's FIU does not comply with the requirement to have sufficient operational independence and autonomy (Criterion 26.6), the country should only be rated down in Recommendation 26.

<sup>27</sup> At a minimum, the guidelines should give assistance on issues covered under the relevant FATF Recommendations, including: (i) a description of ML and FT techniques and methods; and (ii) any additional measures that these institutions and DNFBP could take to ensure that their AML/CFT measures are effective.

### 3.4 Other non-financial businesses and professions - Modern secure transaction techniques (R.20.1)

3.4.1 Has Kosovo considered applying Recommendations 5, 6, 8-11, 13-15, 17 and 21 to non-financial businesses and professions (other than DNFBP) that are at risk of being misused for money laundering or terrorist financing? (FATF R.20.1)

*Examples of businesses or professions that may be at risk include: dealers in high value and luxury goods, pawnshops, gambling, auction houses and investment advisers.*

3.4.2 Has Kosovo implemented the mandatory requirement in Art. 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes? Has a risk assessment been undertaken in this regard? (EU Directive 2005/60/EC Article 4(1))



#### **4. Legal Arrangements – Access to beneficial ownership and control information (R. 34)**

4.1 Has Kosovo taken measures to prevent the unlawful use of legal arrangements in relation to money laundering and terrorist financing by ensuring that its commercial, trust and other laws require adequate transparency concerning the beneficial ownership and control of trusts and other legal arrangements? (FATF R.34.1)

*Examples of mechanisms that could be used in seeking to ensure that there is adequate transparency may include:*

*1. A system of central registration (or up front disclosure system) where a national registry records details on trusts (i.e. settlors, trustees, beneficiaries and protectors) and other legal arrangements registered in that country. The relevant information could be either publicly available or only available to competent authorities. Changes in ownership and control information would need to be kept up to date.*

*2. Requiring trust service providers to obtain, verify and retain records of the details of the trust or other similar legal arrangements.*

*3. Relying on the investigative and other powers of law enforcement, regulatory, supervisory, or other competent authorities in a jurisdiction to obtain or have access to the information.*

*These mechanisms are, to a large degree, complementary and countries may find it highly desirable and beneficial to use a combination of them.*

*To the extent that countries rely on the investigative powers of their competent authorities, these authorities should have sufficiently strong compulsory powers for the purpose of obtaining the relevant information.*

*Whatever mechanism is used it is essential that: (a) competent authorities are able to obtain or have access in a timely fashion to the beneficial ownership and control information, (b) the information is adequate, accurate and timely (see Criterion 34.2) and (c) competent authorities are able to share such information with other competent authorities domestically or internationally.*

4.2 Are competent authorities able to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal arrangements, and in particular the settlor, the trustee, and the beneficiaries of express trusts? (FATF R.34.2)

4.3 Are measures in place to facilitate access by financial institutions to beneficial ownership and control information, so as to allow them to more easily verify the customer identification data? (FATF R.34.3)

## 5. *International co-operation*<sup>28</sup>

### 5.1 Mutual legal assistance (R. 36, R. 37, SR.V & R.32)

#### Recommendation 36<sup>29</sup> (Mutual legal assistance)

5.1.1 Please provide a list of treaty based multilateral obligations concerning legal assistance in criminal matters (including ML/FT offences) that apply in your jurisdiction.
5.1.2 Is Kosovo able to provide the widest possible range of mutual legal assistance in AML/CFT investigations, prosecutions and related proceedings <sup>30</sup> ? (FATF R.36.1)
5.1.3 Is Kosovo able to provide such assistance in a timely, constructive and effective manner? (FATF R.36.1.1)
5.1.4 Are there any constraints on providing mutual legal assistance? (FATF R.36.2)
5.1.5 Does Kosovo have clear and efficient processes for the execution of mutual legal assistance requests in a timely way and without undue delays? (FATF R.36.3)
5.1.6 Can a request for mutual legal assistance be refused on the sole ground that the offence is also considered to involve fiscal matters? (FATF R.36.4)

<sup>28</sup> R.35 and SR.I, which *inter alia* set requirements for the signing and ratification of relevant UN instruments, have been excluded from the assessment due to their inapplicability in the case of Kosovo.

<sup>29</sup> Although this Recommendation was part of cycle 1 of PECK assessment, it has been included in this section of the questionnaire for the sake of coherence as it refers to same subject matter.

<sup>30</sup> Mutual legal assistance should include assistance of the following nature: (a) the production, search and seizure of information, documents, or evidence (including financial records) from financial institutions, or other natural or legal persons; (b) the taking of evidence or statements from persons; (c) providing originals or copies of relevant documents and records as well as any other information and evidentiary items, (d) effecting service of judicial documents; (e) facilitating the voluntary appearance of persons for the purpose of providing information or testimony to the requesting jurisdiction and (f) identification, freezing, seizure, or confiscation of assets laundered or intended to be laundered, the proceeds of ML and assets used for or intended to be used for FT, as well as the instrumentalities of such offences, and assets of corresponding value.

5.1.7 Can a request for mutual legal assistance refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP, except where the relevant information was obtained in circumstances where legal professional privilege or legal professional secrecy applies? (FATF R.36.5)

5.1.8 Are the powers of competent authorities available for use in response to requests for mutual legal assistance? (FATF R.36.6)

5.1.9 Has Kosovo, in order to avoid conflicts of jurisdiction, considered devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one jurisdiction? (FATF R.36.7)

5.1.10 Are the powers of competent authorities required under R.28 available for use when there is a direct request from foreign judicial or law enforcement authorities to domestic counterparts? (FATF R.36.8)

5.1.11 Does your jurisdiction allow for extradition of nationals in ML/FT cases? If not, under which conditions do the competent authorities of your jurisdiction prosecute them?

5.1.12 Please indicate which international AML/CFT conventions and treaties are planned to be signed and/or ratified in the future.

**Recommendation 37 (dual criminality relating to mutual legal assistance)**

5.1.13 Is mutual legal assistance rendered in the absence of dual criminality, in particular, for less intrusive and non-compulsory measures? (FATF R.37.1)

5.1.14 For those forms of mutual legal assistance where dual criminality is required, does Kosovo as the requested party (that is rendering the assistance) have any legal or practical impediment to rendering assistance where the conduct underlying the offence is criminalised in both jurisdictions? Do technical differences between the laws in the requesting and requested parties, such as differences in the manner in which each jurisdiction categorises or denominates the offence pose any impediment to the provision of mutual legal assistance? (FATF R.37.2)

**Recommendation 32 (relating to mutual legal assistance)**

5.1.15 Please provide annual statistics on:

(c) Mutual legal assistance or other international requests for co-operation;

o All mutual legal assistance requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused, and the time required to respond. (FATF R. 32.2)

5.1.16 Please provide comprehensive statistics on:

c) other formal requests for assistance made or received by law enforcement authorities relating to ML or FT, including whether the request was granted or refused. (FATF R. 32.3)

## 5.2 Mutual legal assistance on confiscation and freezing (R. 38)

5.2.1 Are there appropriate laws and procedures to provide an effective and timely response to mutual legal assistance requests by foreign countries related to the identification, freezing, seizure, or confiscation of: (a) laundered property from, (b) proceeds from, (c) instrumentalities used in, or (d) instrumentalities intended for use in, the commission of any ML, FT or other predicate offences? (FATF R.38.1)
5.2.2 Are the above requirements also met where the request relates to property of corresponding value? (FATF R.38.2)
5.2.3 Has Kosovo had arrangements for coordinating seizure and confiscation actions with other countries? (FATF R.38.3)
5.2.4 Has Kosovo considered establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes? (FATF R.38.4)
5.2.5 Has Kosovo considered authorising the sharing of confiscated assets between them when confiscation is direct or indirect result of coordinated law enforcement actions? (FATF R.38.5)
5.2.6 Are foreign non-criminal confiscation orders recognised and enforced? (FATF R.38.6)

### 5.3 Extradition (R.39, R.37, SR.V & R.32)

5.3.1 Is money laundering an extraditable offence? Please indicate applicable laws and procedures to extradite individuals charged with a money laundering offence. (FATF R.39.1)
5.3.2 a) Are own nationals extradited? b) In case where own nationals are not extradited solely on the grounds of nationality, does Kosovo, at the request of the jurisdiction seeking extradition, submit the case without undue delay to its competent authorities for the purpose of prosecution of the offences set forth in the request? In such cases, do the competent authorities take their decision and conduct their proceedings in the same manner as in the case of any other offence of a serious nature under the domestic law of that jurisdiction? (FATF R.39.2)
5.3.3 In the case referred to in criterion 39.2(b), does Kosovo cooperate with other jurisdictions, in particular on procedural and evidentiary aspects, to ensure the efficiency of the prosecution? (FATF R.39.3)
5.3.4 Consistent with the principles of domestic law, has Kosovo adopted measures or procedures that allow extradition requests and proceedings relating to ML to be handled without undue delay? (FATF R.39.4)
5.3.5 Are simplified procedures of extradition in place by allowing direct transmission of extradition requests between appropriate ministries? Can persons be extradited based only on warrants of arrests or judgments? Is there a simplified procedure of extradition of consenting persons who waive formal extradition proceedings in place? (FATF R.39.5)

#### Recommendation 37 (dual criminality relating to extradition)

5.3.6 For extradition where dual criminality is required, does Kosovo as the requested party (that is rendering the assistance) have any legal or practical impediment to rendering assistance where the conduct underlying the offence is criminalised in both jurisdictions? Do technical differences between the laws in the requesting and requested parties, such as differences in the manner in which each jurisdiction categorises or denominates the offence pose any impediment to the provision of mutual legal assistance? (FATF R.37.2)

**Recommendation 32 (relating to extradition)**

5.3.7 Please provide annual statistics on:

(c) All extradition requests that are made or received, relating to ML, the predicate offences and FT, including whether it was granted or refused, and the time required to respond. (FATF R. 32.2)

## 6. Appendices

### 6.1 Appendix I – Structure and supervision of the DNFBP sector

Type of business	Supervisor	No. of Registered Institutions
1. Casinos (which also includes internet casinos)		
2. Real estate agents		
3. Dealers in precious metals and precious stones		
4. Dealers in precious stones		
5. Lawyers, notaries, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to internal professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering		
6. Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere		

### 6.2 Appendix 2: Abbreviations

Abbreviation	Description
3MLD	Third Money Laundering Directive 2005/60/EC
AML/CFT	Anti-Money Laundering/Counteracting (or Combating) the Financing of Terrorism
BNI	Bearer-Negotiable Instrument
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
DNFBP	Designated Non-Financial Business or Profession
ETS	European Treaty Series
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
MER	Mutual Evaluation Report
ML	Money Laundering
MLA	Mutual Legal Assistance
MVT	Money or Value Transfer
NPO	Non-Profit Organisation(s)
PECK	Project against Economic Crime in Kosovo
PEPs	Politically Exposed Persons
S/RES	United Nations Security Council Resolution
SR	FATF Special Recommendation(s)
SROs	Self-Regulatory Organisations
STR	Suspicious Transaction Report