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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

THIRD ROUND DETAILED ASSESSMENT REPORT

"The former Yugoslav Republic of Macedonia"[1]

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

Memorandum
prepared by the Secretariat
Directorate General of Human rights and Legal Affairs

[1] Adopted by the MONEYVAL Committee at its 27th Plenary Session (Strasbourg, 7-11 July 2008).

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LIST OF ACRONYMS USED

AML Law	Anti-Money Laundering Law
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
CFT	Combating the financing of terrorism
CSD	Central Securities Depository
CTR	Cash Transaction Reports
DNFBP	Designated Non-Financial Businesses and Professions
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
EU	European Union
FATF	Financial Action Task Force
FinPL	Law on Financial Police
FIU	Financial Intelligence Unit
IN	Interpretative Note
IT	Information Technology
LEA	Law Enforcement Agency
MAPAS	Agency for supervision of fully funded pension insurance
MBA	"Macedonian Bar Association"[2]
MEQ	Mutual Evaluation Questionnaire
MKD	"Macedonian Denar"[3] (currency of "the former Yugoslav Republic of Macedonia")
MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
MLPD	Money Laundering Prevention Directorate
NBM	"National Bank of the Republic of Macedonia"[4]
NCCT	Non-cooperative countries and territories
OG	Official Gazette
PEP	Politically Exposed Persons
PPOL	Law on the Public Prosecutor's Office
SME	Small and Medium-sized Enterprises
SRO	Self-Regulatory Organisation
STRs	Suspicious transaction reports
SWIFT	Society for Worldwide Interbank Financial Telecommunication

[2] See Para 4.

[3] See Para 4. At the time of the onsite visit, 1 EUR amounted to approx. 60 MKD.

[4] See Para 4.

I. PREFACE

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of "the former Yugoslav Republic of Macedonia" was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), together with the two Directives of the European Parliament and of the Council (91/308/EEC and 2001/97/EC), in accordance with MONEYVAL's terms of reference and Procedural rules, and was prepared using the AML/CFT Methodology 2004[5]. The evaluation was based on the laws, regulations and other materials supplied by "the former Yugoslav Republic of Macedonia", and information obtained by the evaluation team during its on-site visit to "the former Yugoslav Republic of Macedonia" from 25 to 31 March 2007, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Annex I to the mutual evaluation report.

2. The evaluation team comprised: Mr Lajos KORONA, Public Prosecutor, Budapest, Hungary (Legal Evaluator); Mr Uwe LANGENBAHN, Deputy Chief, National Police, Vaduz, Liechtenstein (Law Enforcement Evaluator); Ms Daina VASERMANE, Chief Supervision Expert, Financial Integrity Division, Supervision Department, Financial and Capital Market Commission, Riga, Latvia (Financial Evaluator); Mr Nikoloz GEGUCHADZE, CEO, Halyk Bank Georgia, Tbilisi, Georgia (Financial Evaluator); and a member of the MONEYVAL Secretariat. The examiners reviewed the institutional framework, the relevant AML/CFT Laws, regulations and guidelines and other requirements, and the regulatory and other systems in place to deter money laundering and financing of terrorism through financial institutions and designated non-financial businesses and professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all the systems.

3. This report provides a summary of the AML/CFT measures in place in "the former Yugoslav Republic of Macedonia" as at the date of the on-site visit or immediately thereafter. It describes and analyses these measures, and provides recommendations on how certain aspects of the systems could be strengthened (see Table 2). It also sets out the levels of compliance with the FATF 40 + 9 Recommendations (see Table 1). Compliance or non-compliance with the EC Directives has not been considered in the ratings in Table 1.

4. On a general note the following needs to be emphasized concerning the used reference to the country evaluated: Pending the resolution of the bilateral dispute over the name of this country, which is the subject of ongoing negotiations under the auspices of the United Nations and following the adoption by the Committee of Ministers of Resolution (95) 23[6], the provisional form of reference in Council of Europe documents remains as follows: "the former Yugoslav Republic of Macedonia". This also applies for the current document. Pieces of legislation, bilateral agreements, authorities and other terms which were given by the domestic authorities a name like the "*Law on the National Bank of the Republic of Macedonia*" are quoted in the given terms as *termini technici* in vertical commas – however, this does not change the official position. To ease the readability of the report, it was decided that whenever in the text reference is simply made to "authorities", the authorities from "the former Yugoslav Republic of Macedonia" are meant.

[5] As updated in February 2007.

[6] CM Resolution (95) 23 adopted, on 19 October 1995, at the 547th meeting of the Ministers' Deputies is currently the rule in force for the Council of Europe.

II. EXECUTIVE SUMMARY

1. Background Information

5. This report provides a summary of the AML/CFT measures in place in "the former Yugoslav Republic of Macedonia" as at the date of the third on-site visit from 25 to 31 March 2007, or immediately thereafter. It describes and analyses the measures in place, and provides recommendations on how certain aspects of the system could be strengthened. It also sets out the level of compliance of "the former Yugoslav Republic of Macedonia" with the FATF 40 + 9 Recommendations.

6. Since the second evaluation in October 2002, "the former Yugoslav Republic of Macedonia" has taken some steps to improve its AML/CFT system. Amongst other things, it has issued a number of laws to improve its legislation concerning AML/CFT issues:
   - (new) Law on Prevention of Money Laundering and Other Proceeds of Crime (OG 46/2004; hereinafter the "AML Law");
   - Law for amendments of the Criminal Code (OG 19/2004);
   - Law for amendments of the Criminal Procedure Law (OG 74/2004);
   - Law for fast money transfer (OG 77/2003);
   - Law for amendments of the Law for public prosecution (OG 38/2004).

7. The new AML Law introduced a number of positive features, amongst others:
   - a definition of basic terms (e.g. proceeds of crime, property, financial institution, entity, client, money laundering and financing terrorism);
   - it defines in an exhaustive manner the competencies of the Financial Intelligence Unit (FIU);
   - it tries to reduce the use of cash by prohibiting cash payments above 15 000 EUR (transactions above this threshold may only be performed through a financial institution authorised to perform payment operations);
   - it permits the FIU to apply provisional measures.

8. In 2005, a National Strategy on Prevention of Money Laundering and Financing Terrorism (2005-2008) was adopted. On the basis of this National Strategy, a Council for Combat Against Money Laundering and Financing Terrorism was established, which convenes regular meetings and is obliged to submit, at least once per year a report of its operations to the Government, as well as proposals and initiatives for the improvement of the money laundering prevention system.

9. Turning to the money laundering situation, the authorities consider that tax evasion is the most prominent under the predicate offences for money laundering; apart from that also fraud, smuggling, damaging or privileging of creditors and falsifying documents were mentioned as relevant predicate offences.

10. As described below at appropriate places, the legal framework to combat money laundering and terrorist financing suffers in certain areas from quite complicated legislation. Moreover, the legislation does not use *termini technici* (e.g. freezing, seizing, confiscation) in a consistent way which makes not only its evaluation but also its application very difficult. This should be revised to make its application easier and more understandable both for governmental authorities and also for private sector.

11. The authorities are of the opinion that there is currently no risk of national terrorism in the country; as a consequence, there is no investigative activity of the Police in this respect and only

the Administration for Security and Counter-Intelligence, being a Department of the Ministry of Interior separate from the Central Police Services, as well as the Intelligence Agency (the latter being an independent body and outside the Ministry of Interior) are in charge of observations in this field. Also with regard to threats deriving from international terrorism, there seems to be not very much awareness of terrorist financing issues, e.g. the FIU did not receive any STR related to possible terrorist financing; apart from the AML Law, no other preventive law deals with terrorist financing issues; at the time of the onsite visit, there was no autonomous terrorist financing offence[7] etc. This means that the authorities will have to do more to tackle terrorist financing in a satisfactory manner.

2. Legal System and Related Institutional Measures

12. Concerning the criminalization of money laundering, an important improvement in the Law for amendments of the Criminal Code was the establishment of criminal responsibility for legal persons. Furthermore, it was a positive step that the anti-money laundering criminalisation now provides for negligent money laundering and thus exceeds the international standards. One of the most important achievements brought by the 2004 amending law was to broaden the range of predicate offences and introduce an "all crimes approach", instead of the previous model which listed certain predicate offences (trade in narcotics, trade in arms) and in addition referred to "*other punishable action*" (i.e. any criminal offences). Now all the designated categories of offences under the Glossary to the FATF Recommendations are covered.

13. On the other side, it should be noted that Art. 273 of the Criminal Code (the ML offence) shows some serious deficiencies in meeting the requirements of the international instruments. First of all, simple possession and the use of laundered property still appear not to be covered by Art. 273 (this was already stated by both the first and the second round evaluation teams). Another problematic point is the differentiation between offences according to whether money or other proceeds are concerned which urgently needs to be reconsidered as the different approach in criminalising the various conducts as well as the rather complicated inner structure of the offence may pose an obstacle when implementing these provisions in concrete cases.

14. Another major deficiency of the ML offence is the application of a value threshold as regards the object of money laundering. That is, the laundering activities listed in Paragraph 1 and 2 of Art. 273 would establish the offence of money laundering only if committed in relation to money/property/objects of greater value. "Greater value" is linked with the average monthly salaries and at the time of the on-site visit it amounted to 70 335 MKD (approx. 1 150 EUR). It is beyond question that application of the value threshold in Paragraphs 1 and 2 of Art. 273 is a serious shortcoming of the money laundering offence. Neither the relevant FATF Recommendations nor international Conventions provide for any exception based on such a threshold which is, in addition, set overly high for the overall economic situation in "the former Yugoslav Republic of Macedonia".

15. Furthermore there are some definitional uncertainties regarding the object of the money laundering offence (i.e. money/other property) which also may impede its practical implementation. Also self-laundering is not expressly provided for as prosecutable for all kind of offences of Art. 273 CC. Thus, it is recommended to introduce a newly-formulated provision, clearly based on the language of the Strasbourg Convention, which remedies all these shortcomings.

[7] This conceptual problem has since been remedied by the adoption of the 2008 amending law to the Criminal Code that introduced a separate criminal offence of terrorist financing.

16. As far as practical issues are concerned, the presumed backlog of money laundering cases pending at courts poses a serious deficiency and drastically reduces the efficiency of the AML legal framework. Since it was separately criminalised in 1996 until the time of the onsite visit, there had been only one case (one person convicted) that ended with a conviction for money laundering. Subsequently to the on-site visit, a second conviction took place in 2007 in which case 14 of the 21 persons involved were convicted for money laundering. Though this conviction is a positive signal, both the number of convictions and indictments compared to the number of open investigations is below what would be desirable.

17. The confiscation and provisional measures regime in force and effect at the time of the third on-site visit had undergone some significant changes since the second round evaluation. However, the result and sometimes the purpose of these changes are not always obvious. The third round evaluation team shares the opinion of the evaluators of the previous round that the current legal framework applicable to confiscation and provisional measures seems too complicated. There are parallel regimes both in terms of criminal substantive and procedural law, namely a different set of rules are applied for instrumentalities, another for the proceeds of crime etc. and the respective measures are not only inaccurately and inconsequently formulated but also their scopes often overlap. Apart from these technical difficulties, it should be noted that confiscation of instrumentalities is in most of the cases only discretionary and the same goes for instrumentalities of money laundering offences. Furthermore, only in certain situations provisional measures can be carried out *ex parte* and without prior notice. Also the requirements to postpone a transaction by the FIU with a view to further provisional measures appear too restrictive: the FIU has to provide data establishing an extremely high level of suspicion related to the given transaction in only one day. The "*existing justified suspicion for criminal offence of money laundering or financing of terrorism*" appears to be a standard set overly high. This perhaps offers an explanation as to why, according to the representatives of the MLPD, there had been only 3 cases up to the time of the on-site visit when provisional measures were finally applied in such cases.

18. As far as freezing under the UN Security Council Resolutions S/RES/1267(1999) or S/RES/1373(2001) is concerned, the evaluators found that there was practically no legislation that would specifically implement the said instruments in terms of roles, responsibilities or conditions. During the on-site visit, the various authorities had diverse opinions as to what legal basis can be, if at all, applied for freezing accounts of persons matched with names on the lists. Reference was made to either or both the current AML Law and the Criminal Procedure Code, nevertheless neither of these laws turned out to be applicable in this respect. The authorities also referred to the Law on International Restrictive Measures as solution to comply with SR III but this law is too incomplete in its present form, providing nothing more but an essential legal basis and a legislative authorisation for the issuance of *ad hoc* governmental decrees in concrete cases without any detailed rules on roles, responsibilities or procedures. The authorities are therefore advised to introduce a comprehensive set of detailed and generally applicable rules for an administrative procedure, practically on the conceptual basis that has already been provided for by the Law on International Restrictive Measures.

19. The United Nations Convention on the Suppression of Terrorist Financing has been ratified. Financing of terrorism is not provided for as an autonomous offence and there are still several shortcomings with respect to the implementation of the penal provisions of this Convention in the criminal substantive law. The *sui generis* criminalisation of the establishment of a terrorist organisation comprising, inter alia, the provision of financial means to the creation and presumably also to the maintaining of such an organisation was an important step. On the other hand, essential parts of the core offence in Art. 2 of the Terrorist Financing Convention are not yet implemented in the domestic law, such as the notion of collecting of means as well as the financing of an individual terrorist or that of the perpetration of a terrorist act. As there is no autonomous terrorist financing offence, the evaluators have doubts that the aiding and abetting approach would sufficiently cover attempt and the other ancillary offences as requested by the

international standards. So far, these provisions have never been tested before the court (no criminal proceedings, indictments or convictions) and there have not been even investigations. As a result, there is no case-law or practice on the exact scope of the current provisions.

20. The FIU, so-called the Money Laundering Prevention Department (hereinafter the MLPD), is an administrative FIU and was established in September 2001 as a body within the Ministry of Finance[8]. It has no investigative powers and its main task is to gather information on transactions with a view to submitting reports to the authorized bodies (State Attorney's Office and law enforcement bodies). It is operating on the basis of the AML Law and has a central role in the anti-money laundering system of "the former Yugoslav Republic of Macedonia". However, some parts of the AML Law refer only to money laundering and do not provide a clear legal mandate for the MLPD to deal with terrorist financing issues[9]. Also in practice the MLPD's role in combating financing of terrorism is currently very limited.

21. The AML Law does not require the MLPD to issue guidance. The MLPD is only obliged to determine a list of indicators for the recognition of suspicious transactions by the obliged entities. The MLPD is of the opinion that the respective supervisory bodies are responsible for providing guidance and also for special programmes and trainings. Nonetheless, the MLPD issued in 2006 a guidance manual and sent it to most of the supervisory bodies (the NBM, the Public Revenue Office, the Securities Commission, the Insurance Supervisory Unit, the Bar Association and the Notaries' Commission) for further dissemination among the entities they are responsible for.

22. The MLPD is a member of the Egmont Group and exchanges data via the EGMONT Secure Web. The examiners noted that the FIU does not have its own separate budget and is treated in this regard as any other department within the Ministry of Finance. Though this does not appear to be a problem at present, in the examiners' view a separate budget may strengthen its independence[10].

23. Since MONEYVAL's second round evaluation report (which was adopted in September 2003), the number of staff of the MLPD has increased from 4 to 11. The MLPD's staff is composed of the Director and 10 staff members organised in three units, the Analytical Unit, the Unit for Suspicious Transactions and the Unit for System Development and International Cooperation. Nonetheless there are doubts whether the number of staff is able to comply with the tasks dedicated to the MLPD: particularly the number of CTRs being submitted on hardcopies put a huge workload on the MLPD. The lack of resources may also be a reason that so far guidance to the obliged entities is very limited. Also the number of pending cases raises serious doubts about the sufficiency of human resources.

24. The MLPD has a database of all CTRs which have been submitted in electronic form from banks so far. Apart from this database, there is no other database available except some access to very basic data of the Public Revenue Office. The MLPD has no timely access to a police database, criminal register or a court register; in such cases, it has to submit written requests to such authorities. This may unnecessarily prolong the process to gather information[11].

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[8] The new AML/CFT Law changed the name of the FIU into "Office for Prevention of Money Laundering and Financing Terrorism" (OPMLFT). It also made the FIU a legal entity (while remaining a body within the Ministry of Finance).

[9] The new AML/CFT Law now addresses explicitly "financing terrorism" and provides in its Art. 2 item 2) a definition for it.

[10] The new AML/CFT Law now addresses explicitly the issue of a budget for the FIU (Art. 3 para 4).

[11] From the second half of 2007 on, the MLPD has established a system which allows to access via contact officers data of the criminal register, the register on vehicles and the register on personal data (covering the following data of persons: names, place and date of birth, address, unique ID-number, citizenship) of the Ministry of Interior. The MLPD has since that time also direct (online) access to the Central Register and to the Register of the Stock Exchange (containing all the movements of the market but no names).

25. The AML Law provides the legal basis for the obligations of the reporting entities to file a report to the MLPD if one or both of the following provisions exist a) a transaction raises a suspicion of money laundering or terrorist financing; b) the amount of the transaction or linked transactions exceeds 15 000 EUR. Reporting of transactions for legalising illicit income covers all offences required to be included as predicate offences under Recommendation 1 including also tax matters, but with the exception of financing of terrorism in all its forms (as the latter is not covered in a sufficient way by the domestic legislation).

26. Apart from banks no other financial institution submitted any STR. The total lack of an STR related to financing of terrorism raises concerns of effective implementation. Thus, more outreach and guidance to financial institutions is necessary to better explain them their reporting obligations under the AML Law.

3. Preventive Measures – financial institutions

27. Turning to the preventive side, most of the provisions dealing with AML/CFT issues can be found in the AML Law. Based on the "Law on the National Bank of the Republic of Macedonia"[12] which designated the "National Bank of the Republic of Macedonia"[13] (hereinafter NBM) as the supervisory body for banks and savings houses, the NBM issued so-called "Supervisory Circulars". In April 2005, the NBM issued Supervisory Circular No. 7 "*Anti-Money Laundering Systems of the Banks"*, which contains recommendations for establishing AML systems in banks; combating terrorist financing issues are not explicitly addressed by this circular. These circulars in general and also the Supervisory Circular No. 7 serve as (non-binding) guidelines for banks and savings houses; the representatives of commercial banks with which the evaluators met understand these circulars as recommendations which they should follow. Representatives of savings houses explained they consider Circular No. 7 as "practically mandatory" and that they use it in application of the AML Law. However, these circulars cannot be regarded as "other enforceable means" in the sense of the Methodology because breaches of these circulars cannot be sanctioned.

28. It should be noted that numerous key elements of FATF Recommendation 5 which need to be covered either in Law or Regulation (marked with an asterisk in the 2004 Methodology) or otherwise by other enforceable means are not provided for in laws, regulations or enforceable guidance (however, some of them are at least addressed by the non-binding Supervisory Circular No. 7).

29. The AML/CFT framework of "the former Yugoslav Republic of Macedonia" is not based on a risk assessment. Neither the AML Law nor other regulations provide for financial institutions measures based on the degree of risk attached to particular types of customer; business relationship; transaction and product[14]. Only the (non-binding and only for banks and savings houses applicable) Supervisory Circular No. 7 includes some additional measures which banks should apply in certain higher risk situations (including PEPs; private banking, correspondent banking, electronic banking).

30. The basic obligations under the AML Law cover some aspects of:
    - Customer identification (Articles 7 - 11);

[12] See Para 4 of the report.

[13] See Para 4 of the report.

[14] The new AML/CFT Law now also provides for both simplified and enhanced customer due diligence to address various levels of risk.

- Record keeping (Article 20);
- Monitoring of certain transactions (Article 14)
- Reporting suspicious transactions (Articles 22 - 24);
- Keeping information confidential (Article 21);
- Establishment of internal procedures and units for AML/CFT control (Articles 5, 38 - 40).

31. On a general point it should be noted that several provisions of the AML Law only contain a reference to money laundering but not to terrorist financing. This could be misunderstood by the obliged entities that their obligations are limited to money laundering only. It should be clarified in the AML Law which obligations relate both to the prevention of money laundering and terrorist financing (unless this cannot be done with a clear catch-all provision).

32. A certain deficiency is that there are no laws or regulations which would prohibit the opening of anonymous accounts, numbered accounts or accounts in fictitious names[15]. It is also unclear whether such accounts (still) exist and to which extent.

33. Moreover concerning implementation of Recommendation 5, there is a long list of deficiencies and the following can be seen as the most severe shortcomings:
    - There is no comprehensive legal obligation which covers customer identification when carrying out occasional transactions that are wire transfers in all the circumstances covered by the Interpretative Note to SR VII;
    - There is no legal obligation which covers customer identification when the financial institution has doubts about the veracity or adequacy of previously obtained identification data.
    - There are no requirements for financial institutions:
        - to obtain information on the purpose and nature of the business relationship,
        - for ongoing CDD,
        - for enhanced CDD or
        - conducting CDD on existing customers.
    - The documents which can be used for verification of identification are not sufficiently determined.
    - For customers that are legal persons or legal arrangements, there are no requirements that financial institution should verify that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person.
    - There is no legislation which provides for a concept of "beneficial owner" as required by the Methodology. Financial institutions are not required to take reasonable measures to verify the identity of beneficial owners using relevant information or data obtained from reliable sources.

34. There are no requirements in Law or Regulation with regard to PEPs and across the whole financial sector is a widespread unawareness of this concept[16]. Furthermore, "the former Yugoslav Republic of Macedonia" has not implemented any enforceable AML/CFT measures concerning establishment of cross-border correspondent banking relationships[17].

35. The legal framework of "the former Yugoslav Republic of Macedonia" does not comprehensively cover the issue of shell banks[18].

36. The AML Law does not allow the withdrawal or suspension of a financial institution's licence for not observing the requirements of the AML Law. From the sectoral laws, the Banking Law, the

[15] Art. 26 of the new AML/CFT Law now explicitly prohibits banks to open and keep anonymous accounts.

[16] The new AML/CFT Law now expressively addresses PEPs.

[17] The new AML/CFT Law now addresses in Art. 14 para 3 the issue of correspondent banking.

[18] The new AML/CFT Law now explicitly addresses shell banks and prohibits their establishment or any business relationships with shell banks.

Law on Securities and the (amended) Law on Fast Money transfer allow a licence to be revoked in the case of infringements related to AML obligations but not when it comes to obligations related to CFT. The other sectoral laws do not provide for withdrawing or suspending a financial institution's licence for not observing AML/CFT obligations.

37. The authorities will have to address further the issue of supervision. Currently, apart from the NBM and (to an unclear extent) the Securities and Exchange Commission (SEC), no other designated supervisory body includes AML/CFT issues as an integrated part in its supervisory activities. For the operations of pension companies and pension funds no supervisor concerning AML/CFT issues is designated[19].

38. Also the sanctioning system needs amending as for infringements of the AML Law the respective supervisory authority has to apply to courts. This does not work in practice as no sanctions have been imposed so far.

39. Concerning market entry, the legislation to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a bank, savings house, insurance company, brokerage house, money or value transfer service, foreign exchange office and investment fund management company is insufficient; for companies issuing credit/debit cards, pension companies and pension funds no such preventive legislation exists at all.

40. For companies issuing debit/credit cards, no special licensing or registration system exists. As a consequence, there are also no requirements to prevent criminals or their associates from holding or being the beneficial owners of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils, etc in such entities.

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

41. As for financial institutions, the core obligations for DNFBP are based on the AML Law. The coverage of DNFBP in the AML Law is very complete and in line with both international standards and the EU Directive. It comprises *inter alia* casinos; audit; accounting and tax consulting, dealers in real estate; notaries, attorney and other legal services; activities related to trading with works of fine arts; processing and trading with precious metals and stones. Additionally "the former Yugoslav Republic of Macedonia" has added other categories (which are not required by international norms) to the obliged entities: e.g. travelling and tourist agencies.

42. Since the core obligations for both DNFBP and financial institutions are based on the same law (i.e. the AML Law), it can be noted, that the obligations and also the deficiencies in the AML/CFT preventive measures framework as described for financial institutions apply to DNFBP in the same way as for financial institutions. To recap, DNFBP (leaving aside the special regime for lawyers and notaries public under Art. 34) are obliged to perform client identification; gather and keep information on transactions; submit cash transaction reports and suspicious transaction reports to the MLPD; and keep information confidential. Only for attorneys and notaries public do some exceptions exist, as Art. 34 of the AML Law stipulates that "*attorneys and notaries during execution of their task to defend or represent the client or at the time of the court procedure or other procedure*" are exempted from the obligations of the AML Law.

[19] This shortcoming was obviously also acknowledged by the legislator of the new AML/CFT Law which included the "Agency for supervision of fully funded pension insurance" (MAPAS) as supervisory authority (Art. 46).

43. It needs to be noted that most categories of DNFBP seem to be not very much aware of their obligations and, moreover, some of them even protest against their obligations: e.g. the Bar Association handed the evaluators a letter in which they describe their duties under the AML Law as "*attacks against professional secret*". Perhaps as a consequence of this unwillingness, the number of reports (STR/CTR) to the MLPD from these entities and from the DNFBP sector in general is very low; only notaries appeared to be active in this regard which could also be seen by the number of reports submitted and the seminars they organised and attended. While most interviewees were to a certain extent informed about money laundering issues in general, familiarity with combating financing of terrorism issues was very limited and practically non-existent.

44. Supervision of DNFBP concerning AML/CFT issues appears very low. Though supervisory authorities responsible for monitoring compliance with the AML Law have been assigned for the major DNFBP, in practice, some of these supervisory commissions have either not yet been established (auditors and accountants) or have not yet conducted any kind of supervision (lawyers). For real estate agents, dealers in precious metals, dealers in precious stones, dealers in high value and luxury goods, AML/CFT supervision should be conducted by the Public Revenue Office (PRO); however, the PRO has not yet started with this supervision. Only the commissions for notaries has already commenced with supervision, but also very late (more than two years after its formation) and consequently without any results. So far, only the Public Revenue Office seems to be active in supervising casinos (though also no sanctions have yet been imposed). For those supervisory authorities which had or have to be created on the basis of Art. 39 of the AML Law is it unclear which supervisory powers they have as the law is silent on this issue. As a consequence, the Bar Association created such a supervisory commission but does not conduct supervision.

5. Legal Persons and Arrangements & Non-Profit Organisations

45. There are various forms of companies established in "the former Yugoslav Republic of Macedonia" for the purpose of undertaking business and they have to be registered by the commercial register; trusts cannot be established in "the former Yugoslav Republic of Macedonia". The commercial register is public, and anyone, without having to prove legal interest, can peruse the particulars entered into the registration files and request that they be issued a copy or verified transcript. There is, as yet, no information from the commercial registry available on-line though the authorities are making efforts to make it possible. The company registration system contains no provision concerning the recording, registering or public availability of any data specifically related to the beneficial owner. A further shortcoming is that the Central Register only determines whether all registration requirements as set out by the law have been met, but there is no kind of verification process. Thus the information available is not necessarily reliable.

46. Though the AML Law covers associations and foundations as obliged entities, it seems that there has been no formal review of the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. There is no supervision exercised by any authority that would at least indirectly cover this issue.

6. National and International Co-operation

47. While cooperation between the MLPD and the Financial Police seems to be quite close, cooperation with the other authorities appears to be more distant and formal. A certain shortcoming is the widespread uncertainty concerning money laundering investigations as to which investigative authority is competent for which cases: particularly there are no clear rules in which cases the Ministry of Interior and in which cases the Financial Police is investigating.

48. As a consequence of the second round evaluation report, the Government of "the former Yugoslav Republic of Macedonia" established a so-called "Council for Combat against Money Laundering and Financing Terrorism" in July 2005. This Council is headed by the Director of the MLPD, and its members are high-level representatives of other state bodies. It is competent for monitoring the realisation of the objectives set in the National Strategy. It also considers the issues and problems of the current operations and exchanges experiences; so far it already organised joint trainings. However, this advisory body has no competence to coordinate the activities of the different authorities and bodies and has a solely advisory role (though the authorities interpret the National Strategy in a broader sense and consider that this Council has also competencies for coordination).

49. The Criminal Procedure Code provides the legal basis for mutual legal assistance in criminal matters and also for extradition. Though the Criminal Procedure Code contains no rules that would explicitly require dual criminality, this requirement is implicitly incorporated in the respective rules. Consequently, the shortcomings related to the criminalization of money laundering and terrorist financing apply also for mutual legal assistance: this means that "the former Yugoslav Republic of Macedonia" could not provide legal assistance to foreign countries in money laundering cases where the proceeds laundered would not reach the sum of five officially declared monthly salaries in "the former Yugoslav Republic of Macedonia" (the minimum value threshold required by the money laundering offence). The same situation applies for terrorist financing cases concerning conducts which are not criminalized by the domestic legislation.

7. Resources and Statistics

50. At the time of the onsite visit, the MLPD did not have a sufficient number of staff to cover all its tasks satisfactorily. Also the investigative bodies and agencies are insufficiently staffed and as a consequence money laundering cases are only investigated in relation to tax matters. There is a presumed backlog of money laundering cases at courts which seriously reduces the effectiveness of the entire AML system. The reasons for this backlog at courts were said to be insufficient training of judges and presumably also understaffed courts.

51. Statistics are a very weak point in the AML/CFT system of "the former Yugoslav Republic of Macedonia". Apart from some basic data kept by the Customs and the Financial Police which can serve as a basis to produce statistics and the limited statistics from the Ministry of Interior and the MLPD, no authority keeps comprehensive and detailed statistics on money laundering investigations, prosecutions and convictions or other verdicts indicating not only the number of persons involved but also the number of cases/offences and, in addition, providing information on the underlying predicate crimes and further characteristics of the respective laundering offence (whether it was prosecuted autonomously etc.).

III. MUTUAL EVALUATION REPORT

1 GENERAL

1.1 General information on "the former Yugoslav Republic of Macedonia"

52. "The former Yugoslav Republic of Macedonia" is situated in the central part of the Balkan Peninsula. It covers an area of 25,713 square kilometres. The country is bordered by Serbia, Bulgaria, Greece and Albania. It is a major transit way for shipment of goods from Greece towards Eastern, Western and Central Europe.

53. The capital is Skopje, with 500 000 inhabitants.

54. The country is a member of the United Nations, the Council of Europe, the World Trade Organisation (WTO), and the Organisation for Security and Co-operation in Europe (OSCE).

55. The country has been trying for a long time to become a member of the European Union. It signed a Stabilisation and Association Agreement (SAA) in 2001. On the basis of the overall progress of reforms achieved, the European Commission considered that the country was well on its way to satisfying the political criteria set by the European Council in 1993 and the Stabilisation and Association Process. "The former Yugoslav Republic of Macedonia" applied for EU membership in March 2004. In November 2005 the European Commission recommended giving candidate status to the country which was granted by the EU Council of Ministers in December 2005. However, the EU did not offer a date for the start of membership talks and referred to a list of conditions which have to be fulfilled first (both on national and European level as well).

56. "The former Yugoslav Republic of Macedonia" continues to co-ordinate its NATO-related activities with Albania and Croatia and is pushing ahead with military reforms.

Economy

57. "The former Yugoslav Republic of Macedonia" is a small economy with a gross domestic product (GDP) of about 6.2 billion USD, representing about 0.01% of the total world output. It also is an open economy, highly integrated in international trade, with a total trade-to-GDP ratio of 99.2%. Agriculture and industry have been the two most important sectors of the economy, but the services sector has gained prominence in the past few years. Economic problems persist, even as the country undertakes structural reforms to finish the transition to a market-oriented economy. A low standard of living, high unemployment rate and relatively modest economic growth rate are the central economic problems. At the time of the on-site visit the average monthly net salary was 14 067 MKD (approx. 235 EUR).

58. "The former Yugoslav Republic of Macedonia" belongs to one of the less developed regions of the former Yugoslavia. It suffered severe economic difficulties after independence, when the Yugoslav internal market collapsed. It faced many problems during the transition to a market economy.

59. In February 2006, the country officially joined the Central-European Free Trade Area. The main transition challenges are: the need to improve the business environment (particularly for Small and Medium-sized Enterprises - SME), to reduce bureaucracy, improve corporate governance

standards, reform judiciary, fight corruption, improve governance, strengthen the banking sector and implement further regulatory reforms.

60. "The former Yugoslav Republic of Macedonia" has taken a number of steps to establish a functioning market economy. The following data was provided concerning economic indicators of "the former Yugoslav Republic of Macedonia":

	2000	**2001**	**2002**	**2003**	**2004**	**2005**
Output				*(Percentage change in real terms)*		
GDP	4,5	-4,5	0,9	2,8	4,1	4,0
Industrial gross output	9,4	-4,6	-0,8	5,1	-2,1	6,9
Employment					*(Percentage change)*	
Labour force (end-year)	0,6	6,3	-4,4	4,4	-3,3	6,9
Unemployment (end-year -% of L.F,)	32,1	30,5	31,9	36,7	37,2	36,5
Prices and wages					*(Percentage change)*	
Consumer prices (annual average)	5,8	5,3	2,4	1,1	-0,3	0,1
Gross average monthly earnings	5,5	3,6	6,9	4,8	3,5	3,8
Government sector					*(In per cent of GDP)*	
General government balance	2,5	-6,3	-5,6	-0,1	0,7	0,3
expenditure	33,7	40,3	40,5	38,5	35,8	37,8
debt	53,2	51,6	49,6	45,7	44,3	47,6
Interest rates				*(In per cent per annum, end-year)*		
Basic rate of the NB	8,9	10,7	10,7	7,0	6,5	6,5
Interbank interest rate	7,2	11,9	14,4	5,8	7,9	8,5
Deposit rate	10,7	10,0	9,2	6,7	6,5	5,2
Lending rate	19,0	19,2	17,7	14,5	12,0	12,1
External sector					*(In millions of US dollars)*	
Current account	-69	-244	-358	-149	-415	-76
Trade balance	-690	-526	-804	-848	-1112	-1052
Merchandise exports	1321	1155	1112	1363	1672	2040
Merchandise imports	2011	1682	1916	2211	2785	3092
FDI, net	175	441	78	96	156	97
External debt stock	1548	1494	1641	1831	2034	2253
Memorandum items				*(Denominations as indicated)*		
Population (million)	2,0	2,0	2,0	2,0	2,0	2,0
GDP (bill. of MKD)	236	234	244	251	265	276
GDP per capita (US $)	1793	1717	1885	2316	2653	2850
External debt/GDP (%)	43,2	43,5	43,5	39,5	38,3	39,5

61. Recently "the former Yugoslav Republic of Macedonia" was ranked by the World Bank as the fourth "best reformatory state" out of 178 countries. Since independence the country has undergone considerable economic reform. It has developed an open economy with trade accounting for more than 90% of GDP in recent years. Since 1996, it has witnessed steady, though slow, economic growth with GDP growing by 3.1% in 2005. The government has successfully reduced inflation, with an inflation rate of only 3% in 2006 and 2% in 2007. "The former Yugoslav Republic of Macedonia" is trying to attract foreign investment and promotes the development of SMEs. The current government introduced a flat tax system with the intention of making the

country more attractive for foreign investment. The flat tax rate was 12% in 2007 and will be further lowered to 10% in 2008.

62. Despite these successes, in 2005 the national unemployment rate was 37,2% and in 2006 its poverty rate was 22%. The country still has one of the lowest per capita GDPs in Europe. Furthermore, the country's grey market is estimated at close to 20% of GDP.

63. In terms of structure, as of 2005 the service sector constituted by far the largest part of GDP at 57,1%, up from 54,2% in 2000. The industrial sector represents 29,3% of GDP, down from 33,7% in 2000 while agriculture represents only 12,9%, up from 12%. Textiles represent the most significant sector for trade, accounting for more than half of total exports. Other important exports include iron, steel, wine and vegetables.

System of Government

64. "The former Yugoslav Republic of Macedonia" is a multiparty democracy. It achieved its independence from the former Yugoslavia on 20 November 1991, having adopted its constitution on 17 November 1991. The unicameral assembly (*Sobranie*) consists of 120 seats. Members of parliament have a 4-year mandate.

65. The executive branch consists of the President (and the Council of Ministers (elected by the majority vote of all the deputies in the *Sobranie*). The prime minister is elected by the assembly.

66. The Prime Minister is the head of government and is selected by the party or coalition that gains a majority of seats in parliament. The Prime Minister and other ministers must not be members of parliament.

67. The President represents the country at home and abroad. He is the commander in chief of the armed forces and heads the Security Council. The President is elected by general, direct ballot and has a term of 5 years, with the right to one re-election.

Legal System and Hierarchy of normative acts

68. The court system consists of a Constitutional Court, a Supreme Court, local courts and appeal courts. The Constitutional Court is responsible for the protection of constitutional and legal rights and for resolving conflicts of power between the three branches of government. Its 9 judges are appointed by parliament with a mandate of 9 years, without the possibility of re-election. In civil and criminal cases, the courts are organised in three instances: first instance, courts of appeal and the Supreme Court. There are no specialised courts. The Supreme Court is the highest court in the country and is responsible for the equal interpretation of laws by all courts. Its judges are appointed by parliament without time limit.

69. In "the former Yugoslav Republic of Macedonia", the hierarchy of normative acts is as follows:

    (1) Constitution of "the former Yugoslav Republic of Macedonia" (and constitutional amendments);
    (2) Laws and ratified international acts;
    (3) By-laws (secondary legislation - published in the Official Gazette): rulebooks, directives (handbooks), decrees, regulations, settlements etc;
    (4) Internal acts (of state bodies/institutions/organisations): guidebooks (manuals), statute, order, etc. These acts are not published in the Official Gazette.

Transparency, Good Governance, ethics and measures against corruption

70. Tackling corruption and organised crime has been a top priority in recent years for the Government of "the former Yugoslav Republic of Macedonia". The country has been a member of the Council of Europe monitoring mechanism, the Group of States against Corruption (GRECO) since 7 October 2000. It has since then been evaluated twice by this mechanism.

71. The Anti-Corruption Policy is particularly addressed in the Law on Prevention of Corruption which prioritizes the following principles: legality, trust, equality, publicity, and responsibility. Based on this Law, the State Commission on Prevention of Corruption was established at the end of 2002 as an independent and autonomous commission consisting of seven members appointed by Parliament.

72. In GRECO's Second Round Evaluation Report it was pointed out that, concerning the Control of Public Administration, "*there are several mechanisms in place to ensure control of administrative bodies. These include petitions to a higher administrative authority, revisions before a court, complaints to the Ombudsman and, finally, State and internal revision*"[20]. Conflicts of interest of public officials are addressed by the Constitution and the Law on Prevention of Corruption. The Law on the Election of Deputies and the Law on Civil Servants complete the legislation concerning the prevention of conflicts of interest. For several professions there exist Codes of conduct/ethics (for civil servants, tax officers, the police, the Customs and the judiciary).

73. In 2007, "the former Yugoslav Republic of Macedonia" ranked 84 (out of 179) on the Transparency International Corruption Perceptions Index.

74. "The former Yugoslav Republic of Macedonia" has signed (18 August 2005) and following the onsite visit on 13 April 2007, also ratified the 2003 United Nations Convention against Corruption. Furthermore, it has signed and ratified the Council of Europe Criminal Law Convention on Corruption (CETS 173; signed and ratified on 28 July 1999) and the Council of Europe Civil Law Convention on Corruption (CETS 174; signed on 8 June 2000, ratified on 29 November 2002).

1.2 General Situation of Money Laundering and Financing of Terrorism

36. In the past several years (2001, 2002, 2003 and during the first nine months of 2004) a total of 74 297 criminal offences were registered in "the former Yugoslav Republic of Macedonia". Out of this number, 90,6% were criminal offences in the field of classic types of crime, 5,5% were criminal offences in the field of commercial and financial crime, 2,8% were criminal offences in the field of illegal trade, and 1,1% were criminal offences in the field of organised crime.

37. In the field of organised crime, criminal offences of corruption, trafficking in human beings and forced prostitution were the most represented crimes. For the purpose of the suppression of these crimes, significant activities have been carried out and several police investigations related to these cases have been conducted.

38. The following table shows the number of registered criminal offences in the field of organised crime in 2001, 2002, 2003 and the first nine months of 2004. The source of data is the Ministry of Interior and the data were collected in compliance with the "Law on Classification of Criminal Acts in the Republic of Macedonia" (OG 60/97).

[20] GRECO; Second Round Evaluation Report; p. 10, para 47.

LEGAL CLASSIFICATION	2001	2002	2003	01 - 09 2004
Unauthorised production and release in trade of narcotics, psychotropic substances and precursor (Art. 215, p.2)	13	9	9	18
Unauthorised procurement and possession of nuclear materials (Art. 231)	/	/	/	/
Extortion (Art.258 para 2)	4	3	1	8
Counterfeiting Money (Art. 268)	154	177	144	91
Money laundering and other unlawful property gain (Art.273)	/	/	/	/
Trafficking (Art.278 para 2)	4	5	44	69
Receiving a bribe (Art. 357)	20	13	4	9
Giving a bribe (Art. 358)	7	8	9	15
Illegal Interceding (Art. 359)	1	2	4	/
Disclosing an official secret (Art.360)	/	/	/	/
Manufacture and acquisition of weapons and means intended for committing a crime (Art.395)	/	1	/	/
Trafficking in human beings (Art.419)	/	18	42	11
total	**203**	**236**	**257**	**221**

39. The data and information collected and analysed thus far were interpreted by the authorities that there are links of criminal groups active in "the former Yugoslav Republic of Macedonia" with criminal groups of Bulgaria, the Russian Federation, Albania, Czech Republic, Turkey, Middle East countries, and in particular with criminal groups active on the territory of Bosnia and Herzegovina, Croatia, Montenegro and Serbia; there were indications that criminal groups from "the former Yugoslav Republic of Macedonia" have also links with organised criminal groups from Western European countries, which are in most cases the final destination of the criminal activity. The links between these groups are particularly visible in the field of illicit trade in narcotics and psychotropic substances, smuggling of persons, smuggling of excise goods, illegal trade in weapons and stolen cars. According to the experience in this field, the illicit trade in narcotics and psychotropic substances could be taken as a specific example. This illicit trade is done via the so-called Balkan drugs route, where "the former Yugoslav Republic of Macedonia" is a transit area; due to its small and non-profitable market, only a small part of the drugs which come from the Middle East and Turkey remains on its territory; the major part is intended for the Western European countries. The territory of "the former Yugoslav Republic of Macedonia" is also a transit part of the international smuggling channels for the smuggling of human beings across state border to Western Europe countries.

40. International connections between the criminal groups involved in the illegal trade of weapons have also been noted. This channel is well developed and organised by criminal structures from "the former Yugoslav Republic of Macedonia", Albania and other Western Balkans countries.

41. Concerning trafficking in human beings, especially of women for the purpose of forced prostitution, "the former Yugoslav Republic of Macedonia" may appear both as a transit country and as a final destination.

42. Connections between international criminal groups and criminal groups in the country also exist in the cases of the smuggling of stolen vehicles from Western Europe and "the former Yugoslav Republic of Macedonia" that end up on the illegal markets in Eastern Europe and in the neighbouring countries.

43. The authorities consider that tax evasion is the most prominent under the offences generating a basic source of income; in this regard also fraud, smuggling, damaging or privileging of creditors and falsifying documents were mentioned. The most common scheme to evade taxes (VAT, profit tax, personal income tax) was described as follows: several companies are formed by one natural

person, which are registered to the same address and do not have any employees. These companies usually have several accounts in different banks in which deposits are made on the basis of payments for fictitious invoices from different companies. No business relations exist between these companies and no goods or services are the object of their business activities. The money which is transferred to the accounts of the fictitious companies is done with transactions below the limit for declaration to the FIU (under 15 000 EUR); these funds are withdrawn in cash by the founder of the fictitious companies on the basis of material costs and marketing services. This person keeps a percentage of this money for himself and the other funds are given physically to the owner of the company which issues the false invoice and transfers the funds.

44. On the basis of the criminal charges submitted by the Ministry of Interior and Financial Police, public prosecution authorities have conducted investigations against 209 persons for the criminal offences under Art.279 (tax evasion) and Art.273 (the money laundering offence). Indictments have been submitted against 32 persons under Art.279 and for 15 persons under Art.273. For further details see the analysis under section 2.1 (para 168 ff).

45. During the period from 2003 until 2006, the MLPD received 129 STR, of which banks submitted the largest number. After the analysis was made, 21 cases for suspected money laundering have been submitted to the competent law enforcement authorities (Ministry of Interior, Public Prosecution, and Financial Police). The STRs received and analysed are mostly related to tax evasion, the abuse of an official position, damaging or privileging of creditors etc. as predicate offences. The MLPD identified several methods used for legalisation of the funds derived from illegal sources. The most popular among them were the following:
    - using non-resident accounts of companies registered by citizens of "the former Yugoslav Republic of Macedonia" in countries with strong bank-secrecy and off-shore countries;
    - the use of fictitious invoices for payment of marketing and other services or on the basis of fictitious contracts;
    - frequent cash payments and withdrawals from accounts which are below the limit for declaration to the FIU (15 000 EUR);
    - several transfers of significant amounts of money (originated from the criminal offences – mainly fraud and abuse of official position) to many accounts of different persons who seem not connected between themselves and the withdrawal of this money in cash.

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

Financial Sector

46. The financial sector primarily comprises banking, insurance and securities:

    Banking sector
    - commercial banks;
    - non-banks depositary institutions (savings houses);
    - 1 savings house operating like a credit union;
    - fast money transfer providers;
    - currency exchange bureaus;

    Insurance sector
    - insurance organisations;
    - founders of non-state pension schemes;

    Securities sector
    - broker companies;
    - securities registrars.

Banking sector

47. Commercial bank activities are mainly regulated by the Banking Law and the "Law on the National Bank of the Republic of Macedonia"[21]. The "National Bank of the Republic of Macedonia"[22] (hereinafter: NBM) adopts normative acts (Decisions, Supervisory Circulars) to regulate these entities. According to the Banking Law, commercial banks are established as joint-stock companies. The licence for establishing a bank is granted by the NBM which also supervises their activities. The licences are issued for an unlimited term and are effective on the whole territory of "the former Yugoslav Republic of Macedonia". If obligations defined under the Law are not fulfilled, the licence can be revoked, based on the NBM's decision. A licence is also required for branches of foreign banks to operate in "the former Yugoslav Republic of Macedonia".

48. The amount of the bank capital determinates what financial activities a bank can perform (Article 45 and 46 of the Banking Law). For some banking activities (e.g. payment operations abroad including fast money transfer) a founding capital of at least 9 million EUR is required. Certain activities require in addition the special approval of the NBM.

49. At the time of the on-site visit, trust operations were not carried out by commercial banks operating in "the former Yugoslav Republic of Macedonia". "The former Yugoslav Republic of Macedonia" has not signed[23] the Convention on the Law applicable to Trusts and on their Recognition (1 July 1995, The Hague) and the authorities were positive that they would not recognise trusts created in other countries.

50. The NBM is responsible for the supervision of the activities of commercial banks, savings houses, fast money transfer providers and currency exchange units (*bureaux de change*) concerning the implementation of the provisions of the AML Law.

51. At the end of December 2006, 19 commercial banks were operating in "the former Yugoslav Republic of Macedonia", of which 8 worked with a majority of foreign capital. There is one fully state owned bank. The table beneath illustrates the ownership structure of commercial banks in "the former Yugoslav Republic of Macedonia":

Ownership structure of commercial banks in "the former Yugoslav Republic of Macedonia"		
	Dec-05	**Dec-06**
Foreign ownership more than 50%	8	8
Foreign ownership less than 50%	9	9
Resident Shareholders 100%	3	2
Foreign Branches	0	0
Total number of banks	20	19

52. The banks are considered to be the driving force in the whole financial sector. The authorities provided the following table showing the total assets, loans and deposits of the commercial banks in relation to the GDP of "the former Yugoslav Republic of Macedonia":

[21] See Para 4.

[22] See Para 4.

[23] Status table can be found at: http://www.hcch.net/index_en.php?act=conventions.status&cid=59

	2006 (in million MKD)	% of GDP
GDP	308,772	
Assets	174,117	56.4%
Loans	89,806	29.1%
Deposits	125,267	40.6%

53. The evaluation team could not be provided with statistical data concerning number of non-resident bank-accounts, number of banks keeping non-resident bank accounts, percentage of non-residents accounts etc.. It was explained that no authority keeps such data. The representatives of the State Foreign Exchange Inspectorate took the view that non-resident accounts are one of the biggest threats concerning money laundering in "the former Yugoslav Republic of Macedonia". Representatives of the NBM objected this opinion and explained that these accounts belonged to the less regulated area of banking operations, but that this changed in the last 3-4 years. There are now NBM by-laws that regulate the opening and operation of non-resident accounts.

54. The authorities provided the following table concerning the structure of banks' assets and liabilities (data refer to the end of 2006):

Structure of banks' assets and liabilities	millions of Denars	millions of Euros
Cash and NBRM bils	20,622	343.7
Portfolio of securities	14,807	246.8
Loans to non-financial enteties (net of provisions)	79,627	1,327.1
Placement to banks	47,194	786.6
Fixed and other assets	11,867	197.8
Total assets	**174,117**	**2,902.0**
Deposits of non-financial enteties	125,267	2,087.8
Borrowings and dues to banks	19,593	326.6
Other liabilities (including after-tax-profit for current year)	6,070	101.2
Equity and reserves	23,187	386.4
Total liabilities and equity	**174,117**	**2,902.0**

55. There are fourteen savings houses in "the former Yugoslav Republic of Macedonia" that were founded in compliance with the provisions of the Law on Banks and Savings Houses (the major parts of this law ceased to be valid with the introduction of the Banking Law in 2000). The Banking Law and the "Law on the National Bank of the Republic of Macedonia" govern the activities of savings houses. Furthermore, also Part II of the Law on Banks and Savings Houses is still applicable to these entities (due to the transitional provisions of the Banking Law). As with the commercial banks, the NBM issues Decisions, which regulate the activities of the savings houses (usually these Decisions apply both for banks and savings houses). The NBM supervises the activities of savings houses, which, in addition to compliance with licensing requirements, covers all types of inspections, the imposition of restrictions and sanctions, including governance and liquidation through temporary administration. Savings houses are authorised to perform the following activities:
    - attract deposits from individuals and charity organisations;
    - extend loans to individuals;

56. Initially the evaluators were informed that no credit unions exist in "the former Yugoslav Republic of Macedonia". This opinion was coupled by the fact that there is also no specific legislation for such institutions. However, during the onsite visit, the evaluators heard from representatives of the NBM that there is one savings house which has the characteristics of a

credit union: it is owned by its members and it gives credits only to its members. It was explained that this is not in contradiction to the legal framework, but as there are no specific rules for credit unions, the regulations for savings houses apply: e.g. it can operate only with natural domestic persons but not with foreign entities.

57. The NBM is also authorised to supervise the activities of currency exchange bureaus. The Law on Foreign Exchange Operations regulates the supervisory activities of the NBM over these financial institutions. The evaluators were informed that, at the time of the third on-site visit, 300 licenced currency exchange bureaus were operating in "the former Yugoslav Republic of Macedonia". The operations of exchange offices include the purchase of cash foreign currency and cheques denominated and payable in foreign currency from foreign and domestic natural persons, as well as the sale of cash foreign currency to foreign and domestic natural persons. The authorities consider currency exchange bureaus a remaining money laundering vulnerability.

58. There are two global money transfer services operating in "the former Yugoslav Republic of Macedonia". In their replies to the MEQ, the authorities advised that there is only one global money transfer service ("Western Union") operating in "the former Yugoslav Republic of Macedonia" which cooperates with 1 agent and 35 subagents. During the onsite visit, the evaluators also learned from representatives of the NBM that there is a second global money transfer service ("MoneyGram") operating on the territory of "the former Yugoslav Republic of Macedonia" which cooperates with two banks. This kind of business falls under the provisions of the "Law on Fast Money Transfer" which defines "fast money transfer" as the electronic transfer of money by a natural person from one country to another natural person in another country within one hour from the payment, irrespective of whether the transfer is from or to "the former Yugoslav Republic of Macedonia", whereby the inflow and outflow is performed via banks. Providers of fast money transfers are licenced and have to be supervised by the NBM according to the Law on Fast Money Transfer. The NBM has to perform supervision over observance of the AML Law for fast money transferors as well.

Insurance sector

59. According to the Law on Insurance Supervision, insurance undertakings can perform either non-life or life insurance activities. Insurance undertakings can be organised only as joint stock companies. There are 10 licenced insurance undertakings operating in "the former Yugoslav Republic of Macedonia", out of which one is covering life insurance, one is licenced to perform non-life insurance and reinsurance business and 8 insurance undertakings are licenced non-life insurers.

60. There are 5 insurance brokerage companies organised as joint stock companies. These are licenced to perform insurance mediation services on behalf and for the account of the policyholders in all lines of business (non-life and life insurance, as well as mediation services for reinsurance cover). Insurance brokerage companies should have a minimum capital of 75 000 EUR, at least two insurance brokers should be employed and they should have professional indemnity insurance cover of at least 250 000 EUR per one insured event, or 500 000 EUR in aggregate.

Securities sector

61. On 30 September 2006, there were 11 brokerage houses and 6 banks in "the former Yugoslav Republic of Macedonia" having a licence to work with securities; the licences are issued by the Securities and Exchange Commission. Depending on the amount of the founding capital, they can perform the following types of securities-related services: purchase and sale of securities at the order of and for the account of the customer; purchase and sale of securities for own behalf and account; securities portfolio management at the order and for the account of an individual

customer; performing transactions and activities for the account of an issuer of securities necessary for successful public offering of securities, without a mandatory buyout of unsold securities; performing transactions and activities for the account of an issuer of securities necessary for a successful public offering of securities, with mandatory buyout of unsold securities; providing listing sponsor activities; providing investment advice and performing transactions and activities for the account of third parties necessary for carrying out a takeover of a joint stock company in accordance with the Law on Taking Over of Companies. In addition, the Securities and Exchange Commission is in direct charge of the operations of the "Macedonian Stock Exchange AD Skopje"[24] and the Central Securities Depositary AD Skopje.

Designated Non-Financial Businesses and Professions (DNFBP)

Lawyers

62. Throughout "the former Yugoslav Republic of Macedonia", there are 1,670 attorneys which have obtained a licence from the "Macedonian Bar Association"[25] (MBA). Pursuant to the Attorney's Law the legal profession is conducted exclusively by attorneys at law. Attorneys carry out their legal profession as individuals or are associated in a law firm. Individual attorneys or law firms are registered in the register of attorneys that is kept by the MBA. According to Art. 39 of the AML Law, the MBA formed a commission for the supervision of its members concerning the implementation of the AML Law. This commission consists of five members. However, representatives of the Bar Association are of the opinion that this commission has no supervisory powers and it seems that so far no supervision (at least concerning AML/CFT issues) took place.

Notaries

63. There are 130 notaries public in "the former Yugoslav Republic of Macedonia". According to Article 39 of the AML Law, the Chamber of Notaries has established a Commission for performing supervision over the application of the provisions from the AML Law by notaries public. This Commission was formed in November 2004 and is composed of 18 members divided into 6 committees, each consisting of 3 members (elected for four years without the right of re-election).

Real Estate Agents

64. There are 115 registered real estate agencies founded as limited liability companies on the basis of the Law on trade enterprises. According to the AML Law, the Public Revenue Office is responsible for supervision over the application of AML/CFT measures and actions by these agencies.

Casinos

65. Throughout the territory, there are 8 casinos. Organising games of chance is regulated by the Law on Games of Chance and Entertainment Games (OG 10/97, 54/97, 13/01, 72/01, 102/01 and 2/02). Organising games of chance can be of permanent and occasional character. The Government issues licences for the permanent organising of games of chance in the casinos on behalf of "the former Yugoslav Republic of Macedonia", proposed by the Minister of Finance. Licences for the permanent organising of games of chance are issued on the basis of requirements stipulated in the Law (Articles 17 and 18), to a company meeting the following requirements: founding capital of at least 2 500 000 EUR in MKD equivalent; certain technical requirements; managers and other persons professionally skilled and experienced in the correct management of the operations. The

[24] See Para 4.

[25] See Para 4.

fee for obtaining the licence is determined by the Government of "the former Yugoslav Republic of Macedonia". Licence holders are obliged to pay the funds for the awarded licence, i.e. 50% on the day the licence is awarded, and the final 50% in equal annual instalments by 30 January at the latest in the current year, for each year of the validity of the licence. Pursuant to Article 38 of the AML Law, the Public Revenue Office supervises the enforcement of measures and actions.

Dealers in precious metals and stones/dealers in works of fine arts

66. There are 294 registered dealers in precious metals and stones and 210 dealers in works of fine arts. All these entities are subject to the AML Law which also makes the Public Revenue Office responsible for supervision over the application of AML/CFT measures and actions by these entities.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

67. In principle, domestic and foreign natural persons and legal entities can establish a company. However, the following persons cannot establish a company:
    (i) natural persons determined by a definitive court decision to have caused bankruptcy intentionally due to which creditors could not collect their claims, whilst the prohibition determined by the court decision is still in force;
    (ii) persons against which a bankruptcy procedure has been initiated during the bankruptcy procedure;
    (iii) persons or members of the management body or the manager of these persons, including persons from terminated companies, who failed to pay taxes and contributions which they were legally obliged to pay;
    (iv) persons, members or shareholders or members of the management body or the manager of these persons whose account has been frozen whilst the freeze is still in force; and
    (v) other cases when prohibition on founding of a company is prescribed by law.

68. The companies are established with a Company Agreement. The certification of signatures on the agreement is made by a notary public. The entry in the trade registry is made by filing an application for registration.

69. The basic law regulating the formation and business activity of companies in "the former Yugoslav Republic of Macedonia" is the Company Law (OG 28/04). Companies regulated by this Act can be classified based on the level of responsibility for obligations of the members of the company. Pursuant to Article 27 of the Company Law, there are certain forms of companies such as general partnership, limited partnership and limited partnership by shares where all or part of the members (partners) are jointly and severally liable for the company's liabilities with their entire property (which, in case of limited partnership, applies to the general partners only). For the purposes of this report, however, the relevant entities are the other forms of companies, such as limited liability company and joint stock company, in which the members, as a general rule, shall be held liable for the obligations of the company only up to the amount of their respective shares (contributions).

70. These legal persons formally come into existence on the date on which they are entered in the commercial register and they cease to exist as a legal person upon deletion from this register (Art. 25). The commercial register is a public book that contains data (in a registration file) and documentary evidence (in a book of enclosures) for each entity the registration of which is stipulated by law (Art. 82). Formerly, each region had its public trade register kept and maintained by competent courts (that is, the Basic Court Skopje I in Skopje, the Basic Court in Bitola and the

Basic Court in Stip) information on which was centralised in a central register of companies. In recent years significant changes took place as a result of the adoption of the "Law on the one-stop-shop system and keeping of the trade register and the register of other legal persons" (OG 84/05; hereinafter OSS-System Law) which established the Unique Trade Register within the framework of the Central Register of "the former Yugoslav Republic of Macedonia". Pursuant to its Art. 67(2), the Central Register overtook as of 1 January 2006 *"the keeping of the Trade Register from the competent courts, together with the transfer of the registered data in the trade registers"*. In this respect, the competent courts were obliged to deliver their documentation on the subjects of entry, the electronic database, the main book of entry, registration files, book of statements, entry books and all other documentation established for keeping the registers so that all these will be permanently stored in the Central Register.

71. By the above mentioned OSS-System Law, the authorities launched a project to establish a one-stop-shop system to facilitate company registration procedures. According to Art. 2 of the OSS-System Law, this regime enables acceptance, processing, distribution and centralized access to data stipulated by law that are entered, among others, in the trade register, and thanks to its full computerisation, the process allows for significant shortening of the time needed for registration. However, all this is only focused on the acceleration and simplification of the process and thus it appears to involve no changes to the statutory requirements for registering a company.

72. According to Art. 85 of the Company Law, the data in the commercial register are public, which means that anyone can, at their own expense but without having to prove legal interest, request a copy or verified transcript of the data entered in the registration file, inspect the book of enclosures and request a copy of the documents contained therein.

73. A joint stock company is a company in which the shareholders participate with contributions in the charter capital that is divided in shares (Art. 270). The minimum nominal value of the company's charter capital must not be less than 25 000 EUR (or MKD equivalent) but at least 50 000 Euro (or MKD equivalent) when a company is founded successively by way of a public offering notice to subscribe for shares (Art. 273). The capital of a joint stock company can only be represented by registered shares. The fact that all shares must be registered means that no bearer shares (shares made out to the holder) are allowed in "the former Yugoslav Republic of Macedonia".

74. All shares are issued, transferred and maintained in an electronic record form in the Central Securities Depository whereby they are registered in the shareholders' register of the respective company by indicating the name and full identification data of the shareholder be it a natural or legal person (Art. 283). Each shareholder is entitled, upon request, to inspect all data registered in the register of shareholders of the respective company to which access is enabled by the Central Securities Depository but the data obtained from the inspection can only be used for the purpose of exercising the shareholders' rights.

75. There is no requirement under the Company Law for details of shareholders to be publicly disclosed and recorded in the commercial register in the case of joint stock companies, except in special cases such as the successive founding of the company, the minutes of the founding meeting of shareholders and the list of participants that has to be attached to the application form for entry (Art. 316 Paragraph 3). Data on owners are therefore only available at the Central Securities Depository on the request of entitled persons and state bodies. According to Art. 67(5) of the Law on Securities (OG 95/05) *"the Depository is obliged to issue a list of all owners of a particular issuer's Securities"* that is, the list of shareholders *"to such issuer of Securities as well as to state bodies[26] authorised by law"*. In addition, the Depository is required to publish on its

[26] In the official English version it was "governmental bodies" which term was likely not to cover, for example, courts and other state bodies outside the governmental structure. The original term is, however, "државни"

web site each month a list of individuals and legal entities holding in excess of 5% of any class of securities of a company (see in English at http://cdhv.org.mk/English/5_%.htm).

76. A limited liability company is a company in which one or more natural or legal persons subscribe to a pre-determined core capital of the company with a contribution (Art. 166). The number of members shall not exceed 50 persons; otherwise the company has to be transformed into a joint stock company or will be liquidated. A limited liability company must have a minimum founding capital of 5 000 EUR (or MKD equivalent) where the minimum contribution of the members cannot be less than 100 EUR (or MKD equivalent). Such a company is incorporated on the basis of a company agreement between and signed by the founders (if the company is established by a single member, a statement of founding is required).

77. Details of members of limited liability companies are publicly available at the commercial register. The manager of the company is obliged to keep a register of parts (i.e. the company's business shares) in which are entered, pursuant to Art. 195 of the Company Law, the full identification data of each member (name, unique ID number or passport number, residence/address; in the case of legal persons: business name, registered office and registration number) as well as full details on their contribution. Within three days of any changes to the entries, the manager is obliged to inform the commercial register.

78. Foreign companies may operate on the territory of "the former Yugoslav Republic of Macedonia" by opening a branch office (Art. 581 Paragraph 2 of the Companies Law). The foreign company may carry out all activities through its branch office under the same conditions as domestic companies with the same or similar form and scope of activities. Establishment of such a branch office has to be registered in the commercial register. Having passed the registration procedure, the branch office can conduct its activities in the name and on behalf of the foreign company (Art. 589 of the Companies Law). Foreign companies may, however, open a representative office in "the former Yugoslav Republic of Macedonia" instead of, or before, incorporating a branch. Representative offices of foreign companies have no legal personality and they must not perform commercial activities (Art. 596).

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

79. Combat against organised crime and corruption is one of the top priorities of the Government of "the former Yugoslav Republic of Macedonia". To that end, the Government adopted in 2003 an Action Plan to combat organised crime. Furthermore, the Government adopted a National Strategy on Preventing Money Laundering and Combating Terrorism Financing on 30 June 2005, which was prepared by the MLPD to address the recommendations from MONEYVAL's Second Round Evaluation Report. This strategy is intended to achieve the following goals:
    (i) Harmonisation of national legislation with international regulations, experience and standards for money laundering prevention and financing terrorism;
    (ii) Prevention of abusing the financial system for money laundering and financing terrorism;
    (iii) Improvement of the regulations and supervision over implementation of the legislation;
    (iv) Increasing the efficiency level of the prosecution bodies;
    (v) Establishment of an efficient system for inter-institutional co-operation;
    (vi) Strengthening of technical capacities of the MLPD;
    (vii) Strengthening of international co-operation; and
    (viii) Raising of public awareness of the necessity of undertaking AML/CFT measures.

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which means "state" (in adjective form; "state" as a noun is "држава") while "governmental" means "владни" (government = "влада").

80. To improve cooperation between the bodies and institutions involved in combating money laundering and financing of terrorism, the Government of "the former Yugoslav Republic of Macedonia" decided on 18 August 2005 to establish an advisory body for combating money laundering and financing of terrorism. This body was named the "Council for Combat against Money Laundering and Financing Terrorism". It is headed by the Director of the MLPD, and its members are high-level representatives of the following state bodies: the Ministry of Interior, the Ministry of Justice, the Public Prosecution Office, Customs Administration, the Public Revenue Office, the Financial Police and the NBM. This Council is competent to monitor the realisation of the objectives set in the National Strategy. It also considers the issues and problems of the current operations and exchanges experiences; so far it already organised joint trainings. It submits an annual report on the fulfilment of the strategic objectives set in the National Strategy to the Government.

81. The Money Laundering Prevention Directorate (MLPD) is the central authority in the field of prevention and combat against money laundering and, as such, is responsible for monitoring and improving the AML/CFT system. The MLPD does not have a prescribed methodology or system for measuring the effectiveness of the AML regulation (the AML system is mostly determined by the AML Law). Strategic goals for the development of the AML system were developed in 2005 by the adoption of the National Strategy for combating money laundering.

82. In order to harmonise the national legislation with international standards, "the former Yugoslav Republic of Macedonia" signed the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198) on 17 November 2005. For the purpose of implementing this Convention, as well as the 3rd EU AML Directive and to be in compliance with FATF Recommendations, the MLPD has already prepared a draft AML/CFT law[27]. In addition, amendments to the criminal Code are ongoing.

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

83. The following are the main bodies and authorities involved in combating money laundering or financing of terrorism on the financial side:

The Money Laundering Prevention Directorate

84. The Money Laundering Prevention Directorate (hereinafter MLPD) was established in September 2002 as a body within the Ministry of Finance. As an administrative type of Financial Intelligence Unit (FIU), the MLPD has no investigation competences; it operates according to the AML Law. The basic competences of the MLPD are to collect, process, analyse, keep and disseminate data obtained by the obliged entities. The MLPD is the mediator between the financial and other private sectors, (subjects committed by the Law) on one hand, and police and judiciary bodies on the other. The MLPD is organised in 3 units: the Analytics Unit, the Suspicious Transactions Unit and the System Development and International Co-operation Unit.

85. According to the Law, the obliged entities have to submit reports about suspicious transactions and reports on one or more cash transactions higher than 15 000 EUR (or MKD equivalent) to the MLPD. State bodies are also obliged to submit reports on suspicious transactions to the MLPD. The MLPD analyses the received reports and forwards written and explanatory reports to the Ministry of Interior, Financial Police or Public Prosecutor for further procedures. The AML Law provides for preliminary measures (the postponement of the transaction or the temporary seizure

[27] The new AML/CFT Law came into force on 18 January 2008 (OG 04/2008).

of money or property) and gives the MLPD the competence to postpone a transaction up to 72 hours until the issue of a final court decision by the investigative judge. The MLPD is as a member of the EGMONT group and exchanges data via the EGMONT Secure Web.

86. In April 2007, the Government adopted the MLPD's Annual Report for the period from 1 January until 31 December 2006. This report contains all the activities of the MLPD concerning ML/FT prevention and typologies derived by cases opened and processed by the MLPD. The report can be found on the web side of the MLPD (www.dspp.gov.mk; in Macedonian language only).

87. Preparations for implementation of a Twinning project for the MLPD were ongoing. Spain was selected as a twinning partner in this project which is composed of two components: 1) Institutional and Capacity Building of the MLPD and other authorities involved in the prevention of money laundering and financing of terrorism and 2) Strengthening the MLPD's inter-institutional cooperation with authorities involved in the money laundering prevention and international cooperation.

"The National Bank of the Republic of Macedonia"[28] (NBM)

88. The NBM is the supervisory body for banks, savings houses, exchange offices and providers of fast money transfer services; it is competent to control the implementation of measures and activities for combat against money laundering and financing terrorism by these financial institutions. The NBM is an independent institution in conducting its functions, including the supervisory function (Article 4 of the "Law on the National Bank of the Republic of Macedonia"[29]). Under the current legal framework, the NBM has to report to Parliament twice per year about its supervisory activity.

Ministry of Finance - Insurance Supervision Division

89. The Insurance Supervision Division within the Ministry of Finance was established in July 2000, as a special organisational unit in charge of control over the insurance companies. Prior to its establishment, the Monetary and Financial System Department controlled insurance companies, which consisted only of an analysis of the submitted financial statements by these companies.

90. Since April 2001, the Ministry of Finance (Insurance Supervision Division) is a member of the International Association of Insurance Supervisors (IAIS).

91. The Law on Insurance Supervision (which came into force in 2002), the Law on Compulsory Insurance in Traffic, the Company Law, the Contract Law, and the Law on Administrative Procedure together with the AML Law build up the legal framework for insurance, re-insurance, supervision over the operations of the insurance companies, insurance brokerage companies and the National Insurance Bureau.

Securities and Exchange Commission (SEC)

92. The Securities and Exchange Commission (SEC) was designed as an independent regulatory body controlling the operations of the authorised participants on the securities market. It is in charge of

[28] See Para 4.

[29] See Para 4.

the enforcement of the following laws (including the bylaws based on these laws): the Law on Securities, the Law on Investment Funds, and the Law on Taking Over Joint Stock Companies.

93. Pursuant to the Law on Securities, SEC controls the operations of the authorised participants on the securities market for the purpose of enforcement of the Law on Securities. In cooperation with the NBM, it can also control the operations of banks that perform services related to securities. Self-regulatory organisations are obliged to inform the SEC on violations by participants on the securities market, if they should detect such violations in the course of their controls.

94. The AML Law envisages that the supervision of the stock exchange, brokerage companies and the investment funds in terms of the implementation of the measures and actions for the prevention of money laundering is carried out by the SEC.

95. The AML Law makes the SEC responsible for supervising the activities of the stock exchange, brokerage companies and investment funds in terms of the implementation of the measures and actions for prevention of money laundering and financing of terrorism.

Ministry of Interior

96. At the time of the onsite visit, the Ministry of Interior was in the process of reorganisation. The Unit Combating Corruption and Money Laundering (ML Unit) is part of the Financial Crime Sector of the Organised Crime Department of the Central Police Services. As far as financing of terrorism is concerned, the ML Unit considers itself as competent investigative authority. The authorities are of the opinion that there is currently no risk of national terrorism in the country; the Administration for Security and Counter-Intelligence, being a Department of the Ministry of Interior separate from the Central Police Services, as well as the Intelligence Agency (the latter being an independent body and outside the Ministry of Interior) are in charge of observations in this field. As with cases of financing of terrorism, the Organised Crime Department might get involved in investigations (which has not yet happened so far).

97. The Ministry of Interior initiated four cases in 2005 and 2006. The Ministry of Interior explained to the evaluation team that the ML Unit and the Economic Crime Unit are working in practice only on cases of tax evasion. As a result, there seem to be no investigations in money laundering cases dealing with proceeds not related to tax offences.

98. The Ministry of Interior provided the evaluation team with statistics concerning the number of charges sent to the Public Prosecution Office concerning money laundering, persons involved, damage/economic loss because of the crime, and the type of predicate offence; but the data were not always consistent with the data provided by other authorities (see para 172 below). Furthermore, the Ministry of Interior does not keep statistics concerning figures on the number of investigations in money laundering, the number of investigations initiated by the MLPD, by other authorities, by foreign authorities and own initiative as well as on the results of these investigations.

The Public Prosecution Service

99. The Public Prosecutor's Office is an independent state organ responsible for prosecuting crime and other punishable acts. The prosecutors are appointed for a six years term and any form of political activity is prohibited for Public Prosecutors. The Public Prosecutors basically proceed before the courts. According to the provisions of the Criminal Procedure Code (Art. 146,152,153,158), Public Prosecutors have wide authorisations to lead the pre-investigation procedures (they can give orders to the authorised official persons; can order authorised official persons to be put on their disposal; submit written requests for execution of examinations which should be answered in certain deadline, etc.). However, the representatives with whom the evaluation team met presented a different picture of the practice: in pre-investigation or

investigation procedures, the prosecutors usually act upon request of the Ministry of Interior or the Financial Police. Apart from the competences in respect of the use of special investigative measures the prosecutors usually have no active role in investigations; they do not give orders to the investigating police authorities and do not influence the collection of evidence. Quite the contrary, the operation of prosecutors in investigations is determined by the different police authorities. Only in some cases the prosecutors act on their own initiative: the evaluators were informed that this is the case when it comes to acts related to organised crime and other criminal offences which attract a special "interest". There are no prosecutors specialised in money laundering or economic crime. There is only the "Unit for prosecution of committers of criminal acts of organised crime and corruption" which was established as a separate organisational unit within the Public Prosecutor Service. It was explained that this Unit becomes mainly active in cases of trafficking in human beings and drug trafficking but it was also said that the competences of this unit include as well the pursuing of committers of money laundering and financing of terrorism. The Unit is competent to act before all first instance courts within the territory.

Judiciary

100. According to the Law on Courts (OG 36/95, 45/95 and 64/03), the courts have general competence and they are organised in three instances: first instance, appellate courts and the Supreme Court. In "the former Yugoslav Republic of Macedonia", there are no specialised courts. In the document Specific Action – Oriented Measures against Organised Crime in "the former Yugoslav Republic of Macedonia" adopted on 10 November 2003 by the Government, the courts are referred to under Priority 4 that foresees the specialised training of judges in the area of the fight against organised crime, enhancing the capacity of the judiciary for the fight against organised crime. With a decision of the presidents of first instance courts, five courts have been appointed to work on cases of organised crime, including money laundering. In addition there is an ongoing specialisation and training of the selected judges in the area of the fight against organised crime. The Strategy for reform of the judiciary foresees the strengthening of professional relations with the Unit for the Fight against Organised Crime and Corruption, as well as with other national institutions working in this area.

Customs

101. Customs Administration registers each export and import of cash money or securities throughout the customs line, if the amount exceeds the maximum stipulated by the Law. In any case, when the amount of export or import of cash money or securities, exceeds the amount of 10 000 EUR or when a ground of suspicion of money laundering or financing terrorism exists, Customs Administration informs the MLPD in writing. According to Art. 145 para 1 CPC, also the Customs Authority is in charge of investigating money laundering cases. However, in practice it notifies in case of a suspicion of money laundering the MLPD and/or the Financial Police to carry out investigations. The Customs Administration Law requires for issuing a Code of Conduct and stipulates expressively that conduct contrary to the Code of Conduct may be subject to disciplinary measures, including dismissal (Art. 72 Customs Administration Law). The evaluators were informed that such a code of conduct was actually issued, though the content of such code of conduct could not be assessed.

Financial Police

102. In 2002, the Financial Police was established as a body within the Ministry of Finance. This Unit is competent for the pursuing of financial crime, including money laundering and financing terrorism, within the territory of "the former Yugoslav Republic of Macedonia". Financial crimes were only dealt with by the Ministry of Interior until the Financial Police were established. By establishing this specialised body, this segment was separated and allocated from the police competences, therefore, the financial aspect of criminal acts started to be processed directly, so the

"trace of money" and its gained illegal material profit, are monitored, i.e. a proactive financial investigation is opened.

Public Revenue Office (PRO)

103. The Public Revenue Office is responsible for supervising the implementation of measures and activities for the combat against money laundering and financing terrorism concerning all tax payers. This means that the PRO is *inter alia* responsible for the supervision of organisers of games of chance (casinos and others), physical and legal persons dealing with the sale of real estate, works of art, antiques, excise goods, processing and sale of precious metals and stones, travel and tourist agencies, foreign representative offices, subsidiary-offices, branch-offices and parts of subjects which perform similar activities, and associations of citizens and foundations. There are serious doubts whether the PRO can supervise all these entities in a satisfactory manner; in practice, it seems that the PRO is only active with regard to the supervision of casinos. However, if, during the control, which may be carried out at the MLPD's request, any irregularities and non-compliances with the provisions of the Law are determined, the Public Revenue Office informs the MLPD.

State Commission on Prevention of Corruption

104. The Law on Prevention of Corruption was passed in April 2002, and the legal framework for the prevention of criminal acts in the field of corruption was established for the first time. On the basis of this Law, the State Commission on Prevention of Corruption was established as an independent and autonomous commission consisting of seven members appointed by Parliament. At the beginning of its establishment, the State Commission on Prevention of Corruption prepared the State Strategy for Prevention and Repression of Corruption as a framework for undertaking activities for combating corruption. Considering that, "the former Yugoslav Republic of Macedonia" has accepted the principle "all crimes approach" which means that each criminal act is a predicate criminal act of money laundering, therefore, criminal acts of corruption are considered as predicate criminal acts. The Law on Prevention of Money Laundering and Other Proceeds of Crime precisely states that in the realisation of its competences the MLPD co-operates with the State Commission on Prevention of Corruption, which is committed to submit a written report in the case of suspicion for money laundering and financing terrorism, according to Article 23 of the AML Law.

Commission of Attorneys, Notaries, Accountants and Auditors

105. Article 39 of the AML Law requires the professional associations of attorneys, notaries, auditors and accountants to establish commissions for performing supervision of the measures and actions stipulated by the AML Law. At the time of the on-site visit, no such commissions for auditors or accountants have yet been created. The Bar Association already formed such a commission but the evaluators were told from representatives of the Bar Association that this Commission seems to have no supervisory powers and that so far no supervision (at least concerning AML/CFT issues) took place. Also the Chamber of Notaries has already established such a Commission. This Commission was formed in November 2004 and is responsible for an ongoing regular inspection of the service and lawfulness of the notaries public including supervision and control of the application of the enactments from the AML Law. The evaluators were told that the inspections started in March 2007 and were expected to be finished in June 2007.

Ministry of Justice

106. The competences of the Ministry of Justice relate amongst others to: judiciary, public prosecution, ombudsman; state administration; criminal law; work of notaries public; property

rights and obligation relations; organisation and management with penitentiaries and houses of correction and reformatory; amnesty and pardoning; election system, keeping records of the election right; criminal proceedings, out-of-court proceedings, executive and administrative proceedings; administrative supervision; and performing the activities that are not within the competencies of other organ of the state administration. Concerning AML/CFT issues, the Ministry of Justice has a crucial role in the area of mutual legal assistance where it is the central responsible authority.

Ministry of Foreign Affairs

107. The main competencies of the Ministry of Foreign Affairs in the AML/CFT area are the following:
- to cooperate with its foreign partners in suppression of terrorism efforts;
- to coordinate the conduction of the restrictive measures according to the Law on International Restrictive Measures.

108. Concerning international cooperation, the role of the Ministry of Foreign Affairs is limited to providing the diplomatic channels concerning foreign letters rogatory.

c. The approach concerning risk

109. The AML/CFT framework of "the former Yugoslav Republic of Macedonia" is not based on a risk assessment. Neither the AML Law nor other regulations provide for financial institutions measures based on the degree of risk attached to particular types of customer; business relationship; transaction and product[30]. Only the (non-binding) Supervisory Circular No. 7 includes some additional measures which banks should apply in certain higher risk situations (including PEPs; private banking, correspondent banking, electronic banking).

d. Progress since the last mutual evaluation

110. Since the last mutual evaluation, "the former Yugoslav Republic of Macedonia" has issued a number of laws to improve its legislation concerning AML/CFT issues.
- new Law on Prevention of Money Laundering and Other Proceeds of Crime (OG 46/2004; hereinafter the "AML Law");
- Law for amendments of the Criminal Code (OG 19/2004);
- Law for amendments of the Criminal Procedure Law (OG 74/2004);
- Law for fast money transfer (OG 77/2003);
- Law for amendments of the Law for public prosecution (OG 38/2004).

111. Positive developments of the new AML Law are amongst others:
- definition of basic terms (e.g. proceeds of crime, property, financial institution, entity, client, money laundering and financing terrorism);
- it defines in an exhaustive manner the competencies of the MLPD;
- it tries to reduce the use of cash by prohibiting cash payments above 15 000 EUR (transactions above this threshold may only be performed through a financial institution authorised to perform payment operations);
- provisions that allow provisional measures for the MLPD.

112. An important improvement in the Law for amendments of the Criminal Code is the establishment of criminal responsibility for legal persons. Furthermore, it is a positive step that the

[30] The new AML/CFT Law provides now also both for simplified and enhanced customer due diligence to address various levels of risk.

anti-money laundering criminalisation now provides for negligent money laundering and thus exceeds the international standards.

113. One of the most important achievements brought by the 2004 amending law was to broaden the range of predicate offences and introduce an "all crimes approach", instead of the previous model which listed certain predicate offences (trade in narcotics, trade in arms) and in addition referred to "*other punishable action*" (i.e. any criminal offences). Now all the designated categories of offences under the Glossary to the FATF Recommendations are covered.

114. The Law for amendments of the Criminal Procedure Law (OG 74/2004) introduced 8 special investigative measures.

115. The MLPD created a guidance book which was published and disseminated in 2006 that contains a list of indicators which could raise a suspicion of money laundering.

116. The resources of the MLPD were strengthened (staff, IT).

117. In 2005, a National Strategy on Prevention of Money Laundering and Financing Terrorism (2005-2008) was adopted. On the basis of this National Strategy, a Council for Combat Against Money Laundering and Financing Terrorism was established, which convenes regular meetings and is obliged to submit, at least once per year a report of its operations to the Government, as well as proposals and initiatives for the improvement of the money laundering prevention system.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of money laundering (R.1 and 2)

2.1.1 Description and analysis

Recommendation 1

118. Money laundering was first criminalised in "the former Yugoslav Republic of Macedonia" in 1996 by the new Criminal Code that came into force the same year (OG 37/96). The separate money laundering offence was included in Art. 273 under the name "Laundering of money and other unlawful property gain". This article was not only renamed to the more appropriate title of "Laundering of money and other proceeds of crime" but also substantially and structurally amended by the 2004 Law on Amending the CC adopted in March 2004 (OG 19/04) with the intention of bringing the money laundering offence fully into line with the Strasbourg Convention and Palermo Convention.

119. At the time of the previous round of evaluation (2002), the amending law had already been in draft phase and submitted to Parliament; consequently the second round report could already provide a detailed description and analysis of the draft provisions establishing the new money laundering offence. Comparing these provisions to the respective ones as adopted, one can see that the text has practically not changed during the legislation process and therefore most of the statements made by the second round evaluation team remain valid.

120. It needs to be noted in advance that the language of Art. 273 (1) and (2) that currently define the core offence of money laundering, which is fairly complicated in itself, was made even more difficult to comprehend due to several inaccuracies in the English translation. The evaluators were provided with a number of different English versions of the relevant provisions which differed not only in terminology but also as regards substantial issues. Some of these problems could be solved during the on-site visit by the help of the interpreters but other discrepancies needed a thorough analysis of the various English translations including the original text in Macedonian language. As a result, the evaluators compiled a revised English version of the money laundering as follows (the accuracy of this translation was confirmed by the authorities):

Laundering of money and other proceeds of crime
Art. 273

(1) The person who releases in circulation, accepts, takes over, exchanges or breaks money of greater value that he/she acquired through a criminal act or for which he/she knows was acquired through a criminal act, or by conversion or transfer in any other manner conceals that it originates from such a source or conceals its location, movement or ownership, shall be punished with imprisonment from one to ten years.

(2) The punishment referred to paragraph 1 shall also apply to the person who sells, gives as a present or releases into other sort of circulation property or objects of greater value acquired through a criminal act or purchases, accepts as a pledge, or in any other way acquires, conceals or passes property or objects for which he/she knows were acquired through committing a criminal act or who by counterfeiting documents, not reporting facts or in another way conceals that they originate from such a source, or who conceals their location, movement and ownership.

121. It is obvious that the legislator made substantial changes to the money laundering offence to bring it more in line with the relevant international standards. However, a number of shortcomings still remain.

122. The range of conducts that establish money laundering was significantly expanded by the 2004 amending law. Nevertheless, the scope of the core offence still does not cover all the physical (material) elements as required by Art. 3 of the Vienna Convention and Art. 6 of the Palermo Convention and the compliance with these standards is further limited by the rather complicated structure of the offence making a differentiation between conducts according to whether money or other property is laundered. As a result, some of these acts would only establish money laundering if committed in relation to money (Paragraph 1) while others might also be committed in relation to "*property or objects*" where the notion of "property" as it was explained by the authorities necessarily comprises "money" as well (Paragraph 2).

123. Conversion and transfer are expressly addressed by the money laundering offence in Paragraph 1 but only to the extent they are committed in respect of "money of greater value" (for further details concerning "money of greater value" see below under para 135). Conversion and transfer of other sorts of property as well as of money below the said threshold are therefore not covered by the law. Concealment is covered as regards the true source, location, movement and ownership of the property and not only in case of money of greater value (Paragraph 1) but also in respect of "*property or objects*" (Paragraph 2).

124. Concerning acquisition, possession and use of laundered proceeds, it can be concluded that "acquisition" is covered by the current money laundering offence, as Paragraph 2 explicitly covers acquirement of property and objects "*in any other way*" regardless of their value. The simple possession of laundered property is not criminalised by the legislation of the "the former Yugoslav Republic of Macedonia. The authorities argued that acceptance of laundered money (Paragraph 1) as well as purchasing, acceptance or acquirement of laundered property or objects (Paragraph 2) necessarily imply possessing the respective money or property; therefore "possession" should be covered by Article 273. However, the evaluators were not convinced by this interpretation. It is also debatable whether the "use" of property is sufficiently covered because the scope of the possible terms "*sells, gives as a present or releases into other sort of circulation"* seems to address other kinds of conduct.

125. The 2004 amending law removed the requirement that money-related concealment activities listed in Paragraph 1 were only penalized if committed "*through banking, financial or other economic operation*". According to the present legislation committing the offence under these circumstances would establish an aggravated form of money laundering (Paragraph 3).

126. No particular purpose or motive is defined as a prerequisite element of the offence. As a result, the notion of conversion (or transfer) and concealment (or disguise) of property appears to cover laundering activities committed for the purpose of either concealing or disguising the illicit origin of the proceeds, or assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his action.

127. The evaluators found deficiencies concerning compliance with criterion 1.2 that requires the money laundering offence to extend to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime. There are two major aspects from which the present legislation does not properly meet this criterion. First is the already mentioned division of conducts between Paragraphs 1 and 2 as a result of which some of the laundering activities (those listed in Paragraph 1) are only related to "money" while others (those in Paragraph 2) relate to "property or objects". The second major problem is that the scope of the offence, both in Art. 273(1) and (2), is expressly restricted by the application of the threshold of "greater value".

128. The object of the laundering offence in Paragraph 1 is "money". This limitation, to the extent it was present also in the former money laundering offence, had already been criticised by evaluators of both the first and the second round who also recommended that the authorities should review the wording of the offence to satisfy themselves that "*the term 'money' refers without any doubt to cash, money in bank accounts and all types of negotiable instruments*". In response, "the former Yugoslav Republic of Macedonia" declared in the 2004 Progress Report that *"the term 'money' refers to cash, money on banking accounts",* though no legal provision was pointed out to support this statement. On the other hand, reference was made to the then amended AML Law claiming that it provides for the definition of the basic terms including "money" and this opinion was expressed in the replies to the MEQ as well.

129. Art. 2(7) of the AML Law defines the term "money" as "*means of payment in circulation in the Republic of Macedonia*[31] *or other country as stipulated by Law*". This definition obviously falls short of meeting the recommendations made by the first and the second evaluation reports: while it arguably encompasses money on bank accounts, the definition does not cover "*all types of negotiable instruments*". It needs to be noted that the draft AML/CFT Law provides a broader definition of "money": "*cash means of payment in denomination or electronic money which pursuant to the law are in circulation in the Republic of Macedonia*[32] *or abroad".* "Electronic money*"* is defined as *"monetary value recorded and stored on a magnetic card issued by a financial institution which is bought for an equivalent value of denomination in cash and is used as a means of payment for other places.*" However, the draft definition still appears not to cover all types of negotiable instruments.

130. Leaving aside the deficiencies of the "definition of money" provided for by the AML Law, the evaluators doubt that it can be applied at all in the context of the money laundering offence in Art. 273. The problem with this cross-reference is that the term "money" is already defined by the Criminal Code itself in Art. 122(12) according to which "*money shall stand for coins and banknotes in legal circulation in the Republic of Macedonia*[33] *or another country".* As this provision can be found in the General Part of the CC under the title "*Meaning of terms as used in this Code*" the evaluators came to the conclusion that this definition must refer to any criminal offence in the Special Part of the CC including the offence of money laundering too. Consequently, there is no room to use the definition of the AML Law and it must be concluded that the scope of the offences listed in Article 273 Paragraph 1 is restricted to laundering of cash, that is, domestic and foreign coins and banknotes.

131. The authorities agreed that the term "money" should be interpreted on the basis of the definition provided by Art. 122(12) CC. Nevertheless they argued that this definition is actually interpreted more widely in the judicial practice, comprising money on bank accounts as well, even if this is not explicitly mentioned in the law[34]. This interpretation clearly goes beyond the restrictive language of Art. 122(12). However, in the evaluators opinion there is a need for a legislative solution to avoid a solution *praeter legem*.

132. As for the conducts in Paragraph 2 of Art. 273 no similar definitional question arose about the object of the offence as "property and objects" are not defined by the Criminal Code. Reference was made to the definition of "property" provided by Art. 2(3) of the AML Law which reads as follows: "*assets of every kind, whether tangible or intangible, movable or immovable, corporal or non-corporal, other rights over the objects, claims, public documents and legal documents for*

[31] See Para 4.

[32] See Para 4.

[33] See Para 4.

[34] Reference was made to the second conviction for money laundering (June 2007) in which case the proceeds laundered consisted of bank account money.

ownership, other rights, claims and asset in a written or electronic form". This definition is fully in line with the language of the Vienna and Palermo Conventions and is therefore broad enough to encompass an adequately wide range of proceeds including immovable property also. Nevertheless, it cannot be directly applicable in the context of Art. 273 CC considering that all definitions provided by Art. 2 of the AML Law are listed below the phrase "*for the purposes of this Law, certain terms shall have the following meaning*"[35]. However, the authorities argued that the concept of "property" is considered a "generic notion" in criminal jurisdiction that needs not to be specified by law. It comes from the generic concept of "property" that it comprises, as it was mentioned above, the notion of "money" also. In this context, the definition provided by the AML Law can be considered as a potential base of interpretation although criminal jurisdiction is not bound by that definition. Even if the lack of a specific definition of "property" in the criminal legislation of "the former Yugoslav Republic of Macedonia" seems not to pose a problem thus far to the legal practitioners, the evaluators consider it necessary that this term be expressly defined by positive law in line with the international standards referred to above.

133. Article 273 is silent on the issue whether the money laundering offence is extended both to direct and indirect proceeds of crime, but in any case the latter is not excluded. In this context, the evaluators note that Art. 2(2) of the AML Law defines "proceeds from crime" as "*any property or economic advantage derived directly or indirectly from criminal offences. This term encloses proceeds from crime performed abroad, under condition at the time of performing the crime, to be stipulated as criminal offence under the laws of the state where it is performed and the laws of the Republic of Macedonia*"[36]. This is, again, a perfect definition in literal compliance with the Vienna and Palermo Conventions, but cannot be directly applied in the context of Art. 273 CC. The evaluators were, however, assured by the authorities that indirect proceeds of crime are nevertheless considered as being covered by the money laundering offence. In this context, reference was made to Art. 97(1) CC which provides that "*nobody is allowed to retain indirect or direct property gain acquired by the perpetration of a criminal offence"*. According to the domestic authorities, this provision is to be considered as a general principle in criminal legislation on the basis of which the notion of "proceeds of crime" necessarily comprises indirect proceeds as well. This interpretation has actually been applied in a number of concrete cases in the practice of the relevant domestic authorities. In spite of these practical issues, the evaluators are not entirely convinced that Art. 97(1) CC which originally serves for the determination of "*the grounds for confiscation of property gain*" could be considered as a sound legal basis for the criminalisation of laundering of indirect proceeds of crime. It should also be noted that the term "*property gain*" as used by Art. 97(1) CC does not appear in the core offence of money laundering where, as discussed above, Paragraph 1 of Art. 273 deals with "*money*" and Paragraph 2 with "*property or objects*" while Paragraph 8 uses the term "*proceeds of crime*" to designate a specific sort of confiscatable assets apparently beyond the range of proceeds otherwise encompassed by the offence of money laundering (*"money, illegally acquired property, objects or other proceeds from crime... "*[37]). In this context, the possibility for the laundering of indirect proceeds should be provided for primarily and explicitly by Art. 273 CC itself.

134. As referred to above, the second major deficiency in compliance with criterion 1.2 is the application of a value threshold as regards the object of money laundering. That is, the laundering activities listed in Paragraph 1 Art. 273 would establish the offence of money laundering only if committed in relation to "*money of greater value*". As for the activities encompassed by Paragraph 2 the same rule seems to apply only to some of them (selling, giving as a present or releasing into other sort of circulation need to be committed in relation to "*property or objects of greater value*") but it was explained during the pre-meeting that the authorities interpret this

[35] Emphasis added.

[36] See Para 4.

[37] Emphasis added.

provision in a way that this threshold applies for all conducts under paragraphs 1 and 2 of Art. 273. Though it is not explicitly provided for by legislation, it was explained by the authorities that the multiple commissions of any threshold-bound laundering activities would collectively establish the criminal offence of money laundering if the individual acts were under the value limit but the cumulate value of proceeds goes beyond the "*greater value*" threshold.

135. "Greater value" is defined by Art. 122 item 26 CC as amended by the 2004 amending law, according to which *"greater property gain, value or damage shall stand for gain, value or damage corresponding to the amount of five officially declared average monthly salaries in the Republic at the time of committing the crime"*. Continuous calculation and official declaration of average monthly salaries is carried out by the State Statistical Office on the basis of the Law on State Statistics (OG 54/97). As these figures are of crucial importance in the criminal jurisdiction, they are regularly published in the "Official Gazette of the Republic of Macedonia" and are also available on the website of the Statistical Office http://www.stat.gov.mk with a retrospective database. At the time of the on-site visit the average monthly net salary was 14 067 MKD, thus the threshold of "*greater value*" amounted to 70 335 MKD (approx. 1 150 EUR).

136. This threshold ("*greater value*") was introduced by the 2004 Law on Amending the CC. According to the authorities, the main purpose of this modification was to enable focusing on the most essential occurrences of money laundering – in other words, laundering activities committed below the five-months-salary value limit were considered as having no importance. As a result, most of the laundering activities listed in Art. 273 CC will not establish the criminal offence of money laundering if committed in relation to assets below this threshold.

137. Second round evaluators had already warned that the then proposed amendments were "*a step backwards in that they would introduce a financial threshold*" and urged revisiting this issue. However, this recommendation was not followed by "the former Yugoslav Republic of Macedonia" and the value limitation remained in the money laundering offence. Moreover, the current value threshold is significantly higher in comparison to other crimes: e.g. in case of theft or fraud applies a "*minor value*" limit which is one half of the officially declared average monthly salary. Nonetheless, the authorities appeared confident that there had been no money laundering case rejected on this ground and that the elimination of the value threshold would not increase the number of money laundering cases.

138. In this context, reference was also made to the criminal offence of "*Covering up*" which covers the illicit trafficking in stolen and other goods as follows:

Covering up
Article 261

(1) A person who buys, receives as security, or in some other way procures, covers up or pushes through an item that he knows was acquired through a criminal offence, or something that was received for this by sale or exchange, shall be punished with a fine, or with imprisonment of up to three years.

(2) A person who commits the criminal offence from paragraph 1 and who could have known that the object has been acquired through a criminal offence, shall be punished with a fine, or with imprisonment of up to one year.

(3) If the value of the object from paragraphs 1 and 2 is significant or the object has special scientific, cultural or historical significance, the perpetrator shall be punished with imprisonment of three months to five years.

The authorities confirmed that there is an overlap between Art. 261 and the money laundering offence (Art. 273 CC). As a result of this, the criminal acts that can be subsumed under both Articles are considered as money laundering if the value of the laundered proceeds reaches the amount of five officially declared average monthly salaries (the "*greater value*" threshold), while in cases where the value of the proceeds is below this threshold, the perpetrator should be prosecuted only for "*Covering up*" instead of money laundering. (The "significant value" referred

to in Paragraph 3 above corresponds to the amount of 50 officially declared average monthly salaries according to Art. 122[27] CC).

139. Nevertheless, not even such a practical approach can efficiently remedy the restrictiveness of the money laundering offence. To sum up, the application of a threshold based on the value of the laundered proceeds is in absolute contradiction with criterion 1.2 of the Methodology and it is strongly recommended that it be removed.

140. It was one of the most important achievements brought by the 2004 amending law to broaden the range of predicate offences and to introduce an "all crimes approach" instead of the previous model which listed certain predicate offences (trade in narcotics, trade in arms) and in addition referred to "*other punishable action*" (i.e. any criminal offences). Now all the designated categories of offences under the Glossary to the FATF Recommendations are covered (for details see the table under Annex II).

141. In both the first and second round reports, concern was expressed that the money laundering offence did not explicitly cover proceeds laundered on national territory which stem from a predicate offence committed abroad. The first evaluation team recommended that these types of laundering activities be criminalised in "the former Yugoslav Republic of Macedonia" and that sufficient evidence of the commission of a predicate offence abroad (without requiring a conviction) be a valid ground to undertake prosecution. As there was no progress in this respect, the examiners of the second round "s*trongly advised*" that the criminal legislation should explicitly provide for proof of the predicate offence (whether domestic or foreign) through circumstantial or other evidence, and that it should not matter whether the predicate offence was committed within the territorial jurisdiction of "the former Yugoslav Republic of Macedonia". The evaluators should note that the 2004 amendments to the CC failed to implement these recommendations and consequently there is still no positive legislation in "the former Yugoslav Republic of Macedonia" covering these issues. Nevertheless, the evaluation team was assured by the host authorities that the laundering of foreign proceeds is generally considered as being covered by the language of Art. 273 CC. As it was explained, the offence contains no restriction or specification in this respect and therefore it necessarily refers to any proceeds (money and/or property or objects) regardless of whether the crime they are derived from was committed in the country or abroad. In this respect, as it was clarified during the pre-meeting, the offences committed in another country must meet the standard of dual criminality. This interpretation is generally accepted and has actually been applied in the practice of the prosecuting authorities and the judiciary in a number of concrete cases[38]. As a result, criterion 1.5 appears to be adequately met.

142. Evaluators of the previous rounds could not form a clear picture of what level of proof concerning the commission of the underlying crime was actually required, i.e. whether a conviction for the predicate offence was essential to a successful prosecution for money laundering. The second round report suggested special trainings and issuance of clear guidelines on minimum evidential requirements to prove the offence "even if the Macedonian authorities consider that the law does not need to explicitly set out that the predicate offence can be proved by circumstantial or other evidence". In the meantime, the authorities of the "the former Yugoslav Republic of Macedonia" succeeded in adequately addressing this issue. While it had never been questioned that no prior conviction for the predicate crime is required provided that both the predicate and the laundering offence are prosecuted simultaneously, even if some of the perpetrators are charged with money laundering only, the "classic" autonomous money laundering cases needed further explanation for the legal practitioners. In this respect, the Explanatory Report

[38] In a recent conviction for money laundering (May 2008), the proceeds laundered consisted of money derived from cigarette smuggling committed in one country and tax evasion committed in another country while the laundering activities took place in "the former Yugoslav Republic of Macedonia".

for the 2004 amending law to the CC clarifies that there is no need for a previous conviction for the predicate crime in order to prosecute money laundering as a separate criminal offence. From the practical perspective, the authorities confirmed that the prosecutor could also be satisfied with any sort of solid evidence that proves the commission of the underlying criminal offence though there has not been any judicial practice in this respect. As of 2005 a number of training sessions and seminars were organised for legal practitioners (Academy for Training of Judges and Public Prosecutors) as well as for police officers in order to raise awareness of these evidentiary aspects.

143. Previous reports expressed a concern that the former money laundering offence did not explicitly address the case where proceeds are laundered by the perpetrator of the predicate offence (self laundering). However, it seems that at least in practice this was not a problem for convicting somebody for self laundering: The first conviction for the offence of money laundering took place in 2005 where the defendant was convicted for both the money laundering and the predicate offence (fraud). According to the authorities, the convict was sentenced to 2 years of imprisonment for the money laundering offence "*and in total with the criminal offence fraud – 3 years and 6 months imprisonment*" and since the indictment was submitted in 2001 (i.e. under the former money laundering offence) the verdict must also have been brought on the basis of the former Art. 273(1), namely the court must have accepted that the latter provision had already covered the laundering of own proceeds[39].

144. Nonetheless this potential shortcoming of the money laundering offence was addressed and, to some extent, remedied in the new Art. 273 (1) by adding the phrase "*that he/she acquired through a criminal act"* to cover self laundering also. However, the evaluators still have some concerns whether self laundering is prosecutable for all forms of conducts as prescribed by Art. 273(1) CC. The phrase "*that he/she acquired through a criminal act"* appears only in Paragraph 1 together with "*or for which he/she knows was acquired through a criminal act*". This means that there are two different options. In Paragraph 2, however, the acts "*purchases, accepts as a pledge, or in any other way acquires, conceals or passes*" are explicitly related to property or objects "*for which he/she knows were acquired through committing a criminal act*"; thus it may be concluded that for these conducts self laundering is not prosecutable. The authorities were, however, positive that laundering of own proceeds is covered by both paragraphs. In their opinion, Paragraph 1 has to be considered as a generic rule that sets conditions also for the conducts listed under Paragraph 2. This approach was said to be supported by the above mentioned Explanatory Report for the 2004 amending law to the CC and reference was also made to certain criminal cases in which charges were based on this interpretation. Nonetheless, the evaluators are not at all convinced about the soundness of this legal basis considering that the apparent lack of one of the respective conditions in Paragraph 2 could not be adequately remedied by any explanatory report or legal practice. In any case, the evaluators were not informed that there would be fundamental principles prohibiting the criminalisation of self laundering in all its forms.

145. Criterion 1.7 requires that there should be appropriate ancillary offences, unless this is not permitted by fundamental principles of domestic law. In the criminal law of "the former Yugoslav Republic of Macedonia" most ancillary offences are provided by the general part of the Criminal Code with a potential application to any criminal offence defined in the Special Part, including money laundering.

146. According to Art. 19(1) of the Criminal Code, attempt is punishable only *"when, for the criminal offence in question, the punishment of imprisonment for a term of five years or a more*

[39] According to Art. 3(1) of the Criminal Code, *"the law that was in effect at the time when the criminal offence was perpetrated shall apply to the perpetrator of the criminal offence."* As for the *lex posterior* (i.e. the law has since been amended) Art. 3(2) provides that *"the law that is more lenient to the perpetrator shall be applied"* and considering, that the new money laundering offence is clearly less lenient than the former one, the court must have applied the former Article 273 in this case.

severe punishment may be imposed", while the attempt of a less serious offence is not punishable unless it is expressly provided for by law. Money laundering is, as quoted above, threatened with imprisonment of one to ten years therefore attempt of this offence is evidently subject to criminal liability. Pursuant to Art. 19(2) attempt shall be punished *"within the limits of the punishment prescribed for the same criminal offence perpetrated, but the punishment may also be reduced"*. An "attempt" as defined by Art. 19(1) must be a deliberate act ("*whoever intentionally commences execution of a criminal offence…"*) and therefore it is not applicable to the negligent form of money laundering in Paragraph 4 of Art. 273 (which is not mandatory under the Methodology).

147. Further ancillary offences are similarly sanctioned. Art. 23(1) provides that *"whoever intentionally instigates another to perpetrate a criminal offence, shall be punished as if he has perpetrated such offence"* while in case of criminal offences threatened with imprisonment of five years or more, the inciter "*shall be punished as for the attempt"* even if the "*criminal offence has never been attempted"* pursuant to Paragraph 2.

148. The same sanction as in Art. 23(1) applies, according to Art. 24(1), for anybody who *"intentionally helps another to perpetrate a criminal offence"*. At this point, Art. 24(2) provides a list of examples that are deemed to be acts of helping the perpetrator:

> *(2) The following, in particular, shall be considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetrating the criminal offence, removing obstacles to the perpetration of criminal offence, and promising, prior to the perpetration of the criminal offence, to conceal the existence of the criminal offence, to hide the perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or goods acquired by perpetration of the criminal offence.*

149. Thus it can be said that this language also covers "facilitating" and "counselling the commission". The wording *"to conceal (…) the traces of the criminal offence or goods acquired by perpetration of the criminal offence"* appears to be in some overlap with the money laundering offence itself as defined in Art. 273(1) to (2) for as much as the notion of money laundering includes, in fact, concealing the traces of the predicate offence. It is most likely, however, that these provisions would not actually collide as the application of Art. 273 as a *sui generis* criminal offence would prevail.

150. Conspiracy to commit a criminal offence which carries a minimum plenaty of three years imprisonment constitutes a separate offence according to Art. 393 of the Criminal Code whereas for committing an offences punishable with at least four years of imprisonment, a simple agreement to commit the crime is sufficient to establish conspiracy:

> *Conspiring to commit a criminal offence*
> *Article 393*
>
> *(1) A person who conspires with another to commit a criminal offence, for which a punishment of imprisonment of three years or more may be pronounced, shall be punished with a fine, or with imprisonment of up to one year*
> *(2) The penalty referred to in paragraph 1 shall also be imposed on a person who agrees to commit a crime for which a penalty of imprisonment of four years or a severer penalty is prescribed.*

151. As money laundering is threatened with imprisonment of one to ten years, it falls within the scope of the above provision including its Paragraph 2. Though the FATF Recommendations do not provide a definition for "conspiracy", this term is commonly understood as an agreement between two or more natural persons to break the law at some time in the future. It can be concluded that Art. 393 goes beyond the other ancillary offences like attempt, aiding and abetting as there are separate provisions for these acts (see above). Thus, Article 393 covers a stage of crime which is in advance of the other ancillary offences provided by the general part of the

Criminal Code. Consequently it can be said, that conspiracy to commit money laundering is punishable.

152. It also needs to be mentioned that the law (Art. 363 of the Criminal Code) even penalizes failure to report the preparation of a criminal offence (the same failure committed by an official person establishes an aggravated offence as provided for in Art. 364). Criminal accountability for such a failure applies in relation to criminal offences *"for which a punishment of imprisonment of five years or a more severe punishment can be imposed"* which would therefore cover money laundering offence as well.

153. Among aggravated forms of money laundering, Paragraph 3 provides that:

> *(3) If the crime referred to in paragraphs 1 and 2 has been committed in banking, financial or in some other economic operation or if by division of the transaction the duty to report is avoided in the cases provided by law, then the perpetrator shall be sentenced to an imprisonment of at least three years.*

As it was explained by the host authorities, this provision actually refers to four different, alternative conditions, any of which may establish the aggravated form of money laundering, that is, if the crime is committed

i.) in banking operation;
ii.) in financial operation;
iii.) in any other economic operation, or
iv.) by division of the transaction in order to avoid being reported.

154. As discussed above (para 125), committing the offence in a *"banking, financial or other economical operation"* is no longer a general prerequisite to establish money laundering but an additional factor to upgrade it to an aggravated offence. It should be noted that at least one of the offences encompassed by Paragraph 1, that "transfer" can only be committed with the involvement of some banking or other similar operation; as a consequence, money laundering which involves "transfer" would always be considered as an aggravated offence.

155. Concerning the second phrase of Paragraph 3, the language of the law leaves some room for interpretation. "*Division of the transaction*", in order to avoid the "*duty to report*", obviously refers to Art. 22 of the AML Law that requires the reporting of all cash transactions above the 15 000 EUR threshold. The action described in the second phrase of Paragraph 3 will therefore occur if a cash transaction, the amount of which would otherwise exceed the reporting limit, is split into two or more transactions below 15 000 EUR in order to avoid the entire amount being noticed and the transaction being reported by the bank or other obliged entity. Certainly, this fourth option must be actioned by either of the preceding 3 conditions, that is, division of a transaction can only take place in some kind of banking, financial or other economic operation. Nevertheless, as it was explained by the authorities, the legislator deemed it important to put some "additional accent" on this issue.

156. The more serious aggravated offences can be found in Paragraph 5 as follows:

> *(5) The person who commits the crime referred to in paragraphs 1, 2 and 3 as a member of a group or of another association engaged in money laundering, illegal acquisition of property or property gain, or with the help of foreign banks, financial institutions or persons, shall be sentenced to an imprisonment of at least five years.*

The second phrase of Paragraph 5 raises some concerns. *Prime facie*, this provision provides for a more severe punishment for those committing the offence of money laundering with the help of foreign entities in general – that is, foreign banks or other financial institutions as well as foreign "persons" which necessarily means any natural or legal persons in this context. Foreign persons themselves are, on the other hand, not addressed directly by this aggravated offence. The authorities explained that this provision refers to natural persons with foreign citizenship (regardless of whether or not they are residents of "the former Yugoslav Republic of Macedonia") and legal persons registered and established abroad. The evaluators were advised that, even if the

language of this provision appears to comprise any sort of "help" provided by foreigners, the legislator intended to address domestic citizens who make use of special advantages that can only be available to foreign persons e.g. the possibility for opening a non-resident bank account. Nevertheless, the application of a more severe punishment solely on the basis of citizenship/place of registration has a discriminative character particularly as far as "foreign persons" in general are concerned. Commission of a criminal offence in complicity with a foreign citizen should not be punished more severely than the same crime committed with a domestic accomplice. The same refers to foreign banks also, where the evaluators need to point out that the notion of "*foreign bank*" or "*foreign financial institution*" has already been (and will be even more) outdated as a result of globalisation and also the European integration. Furthermore, this language leaves a lot of discretion and it is unclear, for example, whether a foreign bank which has a local branch or subsidiary in "the former Yugoslav Republic of Macedonia" would also be considered as a "foreign bank". Essentially, whatever is covered by the second phrase of Paragraph 5 it is still not likely to pose a threat being as serious as the organised criminality addressed in the first phrase and therefore it appears disproportionate to sanction it with the same punishment.

Recommendation 2

157. Examiners of the previous rounds had already drawn attention to the rigour of the knowledge standard in the core offence of money laundering which apparently allowed no room for the intentional element of the offence to be inferred from objective factual circumstances. As it was noted in the second round report, legislators of the "the former Yugoslav Republic of Macedonia" failed to follow the recommendations made by the first round report evaluators in this respect as the then drafted new money laundering offence did not appear to bring any improvement as regards the level of proof required in relation to the knowledge standard. It was therefore reiterated that where the knowledge standard applies it should be capable of being inferred from objective factual circumstances.

158. The third round evaluation team did not notice any relevant legislative development in this field. The mental element as set out in Art. 273(1) and (2) CC apparently requires that the offender must "know" that the objects of the offence are acquired by a criminal offence. Considering that no specific level of *mens rea* is provided concerning the money laundering conducts in the core offence, the general rule of Art. 11 CC applies (Art. 6 CC stipulates that the provisions of the General Part shall be applicable to all criminal offences determined by the laws of the country) which provides that a perpetrator shall be held criminally responsible, as far as deliberate acts are concerned, for the commitment of an intentional[40] criminal offence which term, according to Art. 13 CC covers *dolus eventualis*. This is in line with the international standards which require "knowledge" in this respect.

159. The law also provides for negligent money laundering in Art. 273(4) CC (which goes beyond the international standards):

> *(4) The person who commits the crime referred to in paragraphs 1, 2 and 3, who should and could have known that the money, property or other property gain or objects have been acquired through crime, shall be fined or sentenced to an imprisonment up to three years.*[41]

160. The criminal legislation contains no explicit provision whether the intentional element of a criminal offence, including money laundering, may be inferred from objective factual

[40] In the English version of the law which the team received this was mistranslated as "*premeditated*".

[41] The translation follows the official English version of the 2004 amending law except for the dotted underlined part which was inaccurate and confusing in the original text ("was obliged and could have known"). The actual meaning of the original *"бил должен и можел да знае*" was clarified during the on-site visit with the assistance of the interpreters. (The same phrase was translated in the 2004 Progress Report as "should have known and could know".)

circumstances. A representative of the prosecution, however, clarified during the pre-meeting that circumstantial evidence, that is, drawing inference from facts in order to prove *mens rea* standards might be (and has actually been accepted in established cases as) "entirely sufficient" in criminal proceedings.

161. It was noted with approval that corporate criminal liability had been introduced in the law of "the former Yugoslav Republic of Macedonia" since the last evaluation, incorporating it into the Criminal Code by the above mentioned 2004 amending law. According to the new Art. 28a CC a legal person shall be criminally liable *"if the perpetration of the crime has occurred as a result of an action or omission of due supervision on the part of the management body or the responsible person in the legal person, or of another person who had been authorised to act on behalf of the legal person within its authorisations, or when it has exceeded its authorisations for the benefit of the legal person"*. All legal persons (with the exception of the state) have criminal responsibility; foreign entities may be held responsible in case of offences committed on the territory of "the former Yugoslav Republic of Macedonia" regardless of whether they have their office or subsidiary operating in the country. Special procedural rules applicable in case of legal entities can be found in Chapter XXVIIa of the Criminal Procedure Code[42] (OG 15/97) as amended by its 2004 amending law (OG 74/04).

162. According to Art. 96a, legal entities may be punished with a fine or temporary or permanent prohibition of performing a certain activity or the termination of the legal person. Fines shall not be less than 100 000 MKD (approx. 1 666 EUR) nor exceed 30 million MKD (approx 500 000 EUR) but in case of crimes committed upon mercenary motives or causing greater property a fine can be imposed up to the doubled amount of the maximum (Art. 96a para 2). Prohibition of performing a certain activity shall be imposed in addition to a fine if the method of committing the crime causes a danger that the same or a similar act may be committed again. It can be applied either for a period of time (ranging between 1 to 3 years) or on a permanent base depending on whether the criminal offence in question is threatened, should it be committed by a natural persons, with up to or at least 3 years of imprisonment. The court may pronounce the termination of the legal person in two cases: firstly, under practically the same conditions as above with the exception that the crime involved needs to be punishable with at least 5 years of imprisonment and secondly, when the criminal offence (regardless of the range of punishment) "*has been committed after a previous conviction whereby the legal person has been issued a permanent prohibition for performing an activity"* (Art. 96a para 5). According to Art. 96b(1) the punishment is determined taking into account the economic potential, that is, *"the balance sheet and the profit and loss sheet"* of the legal person as well as the type of its activity and the nature and gravity of the crime committed.

163. Apart from the above mentioned provisions in the General Part of the CC, the money laundering offence itself also contains a special provision on the criminal responsibility of legal persons. Paragraph 7 of Art. 273 as follows:

> *(7) If the crime referred to in paragraph 1 is committed by a legal person, then it shall be fined*[43].

The examiners could not find a reason why the insertion of this paragraph in its present form was necessary. Firstly, there is no explanation why Paragraph 7 refers only to Paragraph 1. As a consequence (which was confirmed by the authorities), it (i) restricts the liability of legal persons to money laundering conducts related exclusively to "money" (ii) excludes their liability for laundering conducts encompassed by Paragraph 2 and (iii) excludes also the aggravated forms of

[42] Referred to as Chapter XXVIIa in the MEQ as well as in the original of the 2004 amending law (available on the internet at http://www.mlrc.org.mk/ZAKONI/z2004108.htm) while it was mentioned as "Chapter XXIX" in the "clarified" English version of the CPC with which the evaluators were provided.

[43] In the original English version of the 2004 amending law, the second phrase was "*then the legal person shall be fined"* but the original refers only once to the subject of the offence.

money laundering in case of legal entities. Bearing in mind that Article 28a, as discussed above, provides for the general responsibility of legal persons for any criminal offences, the specific provision in Art. 273(7) can only be considered as an unexplainable impediment to the effective implementation of the general rule, significantly restricting its applicability in respect of money laundering. It is also hard to understand why Paragraph 7 is restricted to the imposing of a fine. As mentioned above, the fine is the minimum sanction applicable to legal persons as further measures, such as prohibition of performing a certain activity or termination of the legal person, can only be imposed in addition to a fine. As it was confirmed during the pre-meeting, Paragraph 7 actually stipulates that legal persons can only be fined for the offence of money laundering, that is, no further criminal sanctions are available.

164. In any case, though there is now a legal basis, no investigations have been initiated against legal persons in money laundering cases, let alone prosecutions or convictions. On the other hand, the evaluators were informed that conducting criminal proceedings against a legal person had already been a common and successful practice as there had already been more than one prosecution (including the application of provisional measures) against legal persons though no precise figures were mentioned in this respect.

165. The sanctions applicable for natural and legal persons as described above are generally effective and dissuasive compared with the sanctions for other crimes and according to the economical situation. They are also proportionate, with the above mentioned exception in the second phrase of Art. 273(5). As for criminal sanctions against natural persons, any form of money laundering is threatened with imprisonment as principal punishment, without alternative: the range of punishment is 1 to 10 years of imprisonment in respect of the unaggravated form of the offence (Art. 273[1]-[2]) while it is "at least 3 years" (Art. 273[3]) or "at least 5 years" (Art. 273[5]) in respect of the aggravated offences. As it was explained by the authorities, whenever the CC determines no upper limit to the punishment, it is the general rule in Article 35 to be applied, according to which an imprisonment may not be longer than 15 years (in this case, 3 to 15 years and 5 to 15 years respectively). Furthermore, the negligent form in Paragraph 4 is also subject to serious punishment (fine or imprisonment up to 3 years). The criminal law allows for no possibility to substitute imprisonment for a fine.

166. Imprisonment is thus the sole form of punishment applicable in respect of money laundering. However the court also has the right to impose a fine in money laundering cases as a supplementary punishment to the imprisonment. Article 34(2) CC provides that "*for criminal offences perpetrated out of self-interest, a fine may be pronounced as secondary punishment even if it is not prescribed by law"* which may obviously add to the effectiveness of the sanction. When deciding on the amount of the fine, the court first determines the amount of the "daily fine" taking into account the "*property and personal situation*" of the offender, namely the daily income and other factors (actual property versus family and other obligations) that establish his/her property status. According to Art. 38 CC as amended by the 2004 amending law the minimum daily fine is the MKD equivalent of 1 EUR while the maximum is that of 5 000 EUR. The court then determines how many multiples of that are proportionate to the gravity of the offence within the range of 5 to 360 daily fines. Should the fine be applied as a supplementary punishment, no daily fine is determined thus the court imposes a single amount of fine ranging between 20 to 5 000 EUR in MKD equivalent. In case of non-payment the court may order that the fine be collected by force (Art. 38-a); if the coercive settlement yields no result, the fine shall be substituted by imprisonment.

167. So far, fifteen persons were convicted for money laundering and all of them were sentenced to imprisonment. The severity of punishments can be illustrated by the second conviction where the court imposed for money laundering and the predicate crime a (aggregated) period of fourteen years imprisonment. Concerning this second conviction, the authorities informed that the formal

investigation procedures started in 2006, the bill of indictment was forwarded to court in February 2007 and the conviction at first instance was pronounced in April 2007[44].

Statistics

168. Criterion 32.2 (b) (i) requires that competent authorities maintain comprehensive statistics, amongst other things, on money laundering investigations, prosecutions and convictions. The authorities provided statistical information on these issues (sometimes by filling in templates which were given by the evaluation team), however these statistics appear to be imperfect and the evaluators are not convinced how and to what extent they are maintained on a regular basis.

169. The evaluators were given various sorts of statistics, some were provided in the MEQ (statistical figures from law enforcement authorities, including the Ministry of Interior and the Financial Police) and others were provided by the MLPD subsequent to the on-site visit. No statistics maintained by the prosecution or the judiciary were made available to the team. Although these statistics are, in many respects, informative for the purposes of the evaluation, some deficiencies need to be highlighted.

170. One of the shortcomings identified relates to the period of time covered by the various statistics. For the evaluation purposes, the statistical figures of the past four years were requested, yet the statistics the authorities provided concerned either the period up to the first 9 months of 2004 (particularly as regards general ML/FT situation) or exclusively the period from 2005 until 2006 (particularly those provided by law enforcement authorities). The different scope and structure of the various statistics caused some problems as the figures were rarely, if at all, comparable which created obstacles in forming of a general overview of the aggregate number of money laundering cases, investigations, indictments and convictions in the country. In addition, the potential unavailability of certain statistical data as well as data for a certain time period also implies that statistics were/are not maintained on a regular base and figures had only been gathered just prior to the evaluation or other for other ad-hoc purposes.

171. As far as investigations conducted by the Police (Ministry of Interior) are concerned, there were altogether 60 criminal charges (formal investigations) for money laundering against 150 perpetrators in the period between 2005 and 2006 out of which 40 charges against 87 persons in 2005 and the rest against 63 persons in 2006. In the same period, the Financial Police lodged 108 criminal charges for aggravated money laundering (Art. 273 Paragraph 3) as well as 5 "supplements" (i.e. a special report to expand the previous charges to encompass money laundering also) against 150 perpetrators, of which 64 charges and 5 supplements were brought against 74 persons in 2005 and 51 charges against 64 persons in 2006. The predicate offence was, in the vast majority of the cases, tax evasion.

172. The Ministry of Interior also provided statistics but the first figures provided were different than the data described in the previous paragraph. After the pre-meeting the data were corrected ant the following figures were provided:

				Predicate criminal offence				
Year	**No. of charges for ML (Art. 273)**	**No. of persons**	**Damage / economic loss (in MKD)**	**Tax evasion (Art.279)**	**Damaging or privileging of creditors (Art. 257)**	**Smuggling (Art. 278)**	**Falsifying a document (Art. 378)**	**Abuse of an official position**
2005	40	87	385.212.999,00	39	1			
2006	20	63	152.290.388,00	17		1	1	1
Total	**60**	**150**	**537.503.387,00**	**56**	**1**	**1**	**1**	**1**

[44] The second instance ruling dates from 26 February 2008.

173. Among the persons against whom investigations were initiated (either by the Ministry of Interior or by the Financial Police), indictments have already been submitted against 15 persons for the offence of money laundering, in all cases together with a charge for the predicative tax evasion.

174. Upon request of the evaluators, the MLPD provided statistical tables containing information on the reports they received (the format was provided for by the evaluation team). These tables show how many times the FIU made notifications, on the basis of the reports received, to law enforcement or prosecuting authorities and also how many of these cases were followed by an indictment or a conviction. These statistics encompass the period from 2004 until 2006[45]:

	Statistical Information on reports received by the FIU				Judicial proceedings			
	cases opened by FIU		notifications to law enforcement/ prosecutors		indictments		convictions	
year	ML	FT	ML	FT	ML	FT	ML	FT
2004	30	/	5	/	/	/	/	/
2005	41	/	6	/	2	/	/	/
2006	36	/	10	/	3	/	/	/

175. That said, there have already been 5 indictments issued in cases that had originally been initiated on the basis of STRs. Considering the total numbers, this is quite promising especially as the figures show an increase in the positive outcome of the reporting system such as the notifications to law enforcement/prosecuting authorities as well as the number of indictments. These 5 indictments are comprised by the aggregate 15 referred to above in para 173.

176. No statistical information was available as regards how many, if any, of the ongoing investigations or prosecutions were related to autonomous money laundering, that is, where the laundering offence was prosecuted separately from the predicate offence (the 15 indictments so far were related to the laundering of own proceeds). Neither was there any statistical data provided in relation to investigations or prosecutions involving negligent money laundering.

177. The evaluators welcome the first conviction achieved in a money laundering case (2005) nevertheless they are seriously concerned that there has only been one case that ended with a conviction (one person convicted) for money laundering since it was separately criminalised in 1996. The second conviction took place in 2007 subsequent to the on-site visit, in which case 14 of the 21 persons involved were convicted for money laundering. On the face of it, the increasing number of indictments appears to be in somewhat imbalanced with the low number of convictions. Taking into account, however, that 14 out of the altogether 15 persons prosecuted were involved in the same case (which resulted in the second conviction; see previous paragraph) the number of cases (not persons) where at least an indictment could be submitted is equally low, that is, both the number of convictions and indictments are below what would be desirable. In case of the first conviction the judicial proceedings took 4 years (the evaluators were not informed how long it took in the second case to achieve the final verdict).

178. In any case, the lack of convictions in the 9 years between 1996 and 2005 is hard to explain bearing in mind that the separate money laundering offence has not changed for eight years and there appeared, at least from the angle of domestic authorities, no significant problem as to its interpretation. The evaluators are, however, inclined to say that the increase of cases in the past few years was a result of the express criminalisation of self-laundering as such cases were

[45] Tables shown here are extracts from the more detailed originals.

frequently referred to in most of the cases mentioned. Generally speaking, there has in fact been more than one conviction achieved on the basis of Art. 273 which proved to be applicable, despite taking several years to secure a conviction. Yet the examiners were concerned that backlogs generally in criminal cases impact on the current effectiveness of money laundering criminalisation. As an explanation to delays in proceedings, the host authorities referred to the lack of expertise and specific education within the judiciary, particularly in economic crime offences as predicates such as tax evasion as overly sophisticated in most of the times.

2.1.2 Recommendations and comments

179. Although most of the essential criteria in Recommendations 1 and 2 appear to be met, the legal provisions in Art. 273 of the Criminal Code are seriously deficient in meeting the requirements of the international instruments and also raise some uncertainties that may easily impede the practical implementation of the provisions.

180. First of all, the examiners reiterate the recommendation made by both the first and the second round evaluation teams that simple possession of laundered property should clearly be criminalised, which still appears not to be covered by Art. 273 as does the use of laundered property. As for the other offences identified in Paragraphs 1 and 2 of Art. 273, the authorities should satisfy themselves that all the language of Art. 6(1) (a) and (b) of the Palermo Convention and Art. 3(1) (b) and (c) of the Vienna Convention on the physical aspects of the money laundering offence are properly reflected. In this context, one of the problematic points is the differentiation between offences according to whether money or other proceeds are concerned which urgently needs to be reconsidered as the different approach in criminalising the various conducts as well as the rather complicated inner structure of the offence may pose an obstacle when implementing these provisions in concrete cases.

181. It is beyond question that application of the value threshold in Paragraphs 1 and 2 of Art. 273 is a serious shortcoming of the money laundering offence that should in any case be abandoned. Neither the relevant FATF Recommendations nor international Conventions provide for any exception based on such a threshold which is, in addition, set overly high for the overall economic situation in "the former Yugoslav Republic of Macedonia".

182. The uncertainties regarding the object of the money laundering offence should be addressed urgently and practically by incorporating into the anti-money laundering criminalisation the single notion of "property" instead of the current and more ambiguous terms such as money and/or property and object, as previously proposed, without any effect, by the previous evaluation team. Apart from this, as a minimum the scope of the current terms should be clarified; specifically, there is an urgent need for clear definitions, in particular for "money" and "property". Terms used by the Criminal Code should, to the extent possible, always be explained within the same law and if this definition appears to be outdated (like "money" as defined by Art. 122[12] CC) the necessarily legislative steps must be taken.

183. The examiners share the opinion of their second-round predecessors according to which a newly-formulated provision, clearly based on the language of the Strasbourg Convention, should be introduced, which clarifies all previously identified inconsistencies.

184. It should be clarified in Art. 273 CC that self laundering is criminalised for all conducts of money laundering (covering both Paragraphs 1 and 2).

185. With regards to the mental element of the offence, the evaluators appreciate that the anti-money laundering criminalisation, while providing for negligent money laundering, actually exceeds the international standards. In contrast, and as far as the evaluators are informed, this potential of the regime has not yet been made use of, as there have been no investigations or prosecutions involving negligent money laundering. Equally, the otherwise successfully applied

rules on corporate criminal liability should have already led to money laundering cases against legal entities. The authorities should therefore consider whether the benefits of negligent money laundering in the statute are being used in the best way and also seek for possible obstacles that may hinder law enforcement and prosecutors in successfully investigating and prosecuting legal persons for money laundering activities. With regard to the General Part of the Criminal Code providing with Art. 28a for a comprehensive regime of corporate criminal liability, Paragraph 7 of Art. 273 appears to be a redundant and as well as a restrictive provision that spoils the legal effect of the general provisions and it is thus recommended to either modify or remove Paragraph 7 of Art. 273 CC.

186. As far as practical issues are concerned, the presumed backlog of money laundering cases pending at courts should be addressed. The lack of expertise, referred to as a possible reason behind long delays in money laundering cases, should not pose a permanent obstacle as it appears to be remediable by appropriate training of the judiciary and prosecutors which had already been mentioned among priorities in previous rounds of MONEYVAL evaluations. Low effectiveness concerning money laundering convictions needs to be addressed.

187. Considering the advantages and the disadvantages of the different statistics kept by various authorities, it is nevertheless advised that at least one of the authorities involved (perhaps the prosecution or the judiciary) maintains *comprehensive* and more detailed statistics on money laundering investigations, prosecutions and convictions or other verdicts (as well as whether confiscation has also been ordered) indicating not only the number of persons involved but also the number of cases/offences but also providing information on the underlying predicate crimes and further characteristics of the respective laundering offence (whether it was prosecuted autonomously etc.).

2.1.3 Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating
R.1	**PC**	• At some points the money laundering offence does not meet the standards set by the Vienna and Palermo Conventions. A number of offences are either not met (possession or use of proceeds) or insufficiently met by the current offence. • The scope of the money laundering offence is limited by the differentiation between offences as regards the object of the offence (money, other property). • All the offences covered by the money laundering offence are only applicable if the money/property exceeds a certain threshold ("greater value"). • Self laundering is not expressly provided as prosecutable for all kind of offences of Art. 273 CC. • The low number of convictions and indictments raises concerns as to effective implementation.
R.2	**LC**	• Potential backlogs both in general terms and especially in money laundering cases, apparently due to the lack of expertise, threaten the effectiveness of the AML system. • Low number of convictions and relatively low number of indictments compared to the number of open investigations. • No prosecutions or convictions of legal entities for money laundering, raising concerns as to effective implementation of corporate criminal liability. Restrictiveness of the specific provision in Art. 273(7) as regards criminal liability of legal persons in money laundering cases.

2.2 Criminalisation of terrorist financing (SR. II)

2.2.1 Description and analysis

188. "The former Yugoslav Republic of Macedonia" ratified the International Convention for the Suppression of the Financing of Terrorism (hereafter "Terrorist Financing Convention") on 30 August 2004 (OG 30/04) and this Convention was referred to in the replies to the MEQ as an international standard being actually implemented in domestic legislation. Notwithstanding that, the financing of terrorism is not criminalised as a separate criminal offence either by the Criminal Code or any other law. The authorities pointed to Art. 394a(2) of the Criminal Code to cover terrorist financing. Art. 394a defines the criminal offence of "*terrorist organisation*" and was inserted into the Criminal Code by the 2004 amending law, together with the new money laundering offence in Art. 273. Considering that this article was drafted and adopted parallel to the ratification process of the Terrorist Financing Convention, it was obviously intended to transpose the requirements of the latter into national legislation. So far, the applicability of Art. 394a (including its paragraph 2) CC has not been tested before courts as there have been no criminal proceedings, indictments, convictions or even investigations in this respect. As a consequence, the authorities were able to answer a number of questions hypothetically only as there is no case-law or practice on the exact scope of the current provisions:

Terrorist organisation
Article 394a

(1) One that creates a group, gang or other criminal organisation with intention to perform the following crimes: murder, body injuries, kidnapping persons, destruction of public facilities, transport systems, infrastructure facilities, information systems and other public structures, hijacking of planes or other means of public transportation, production, possessing or trade with nuclear weapons, biological, chemical and other types of weapons and dangerous materials, emission of dangerous radioactive, poisonous and other dangerous substances or causing fire and explosion, destruction of facilities for water supply, energy or other essential natural sources with intention creating sense of uncertainty or fear among the citizens or endangering of the constitutional setting of the country or the interests of international organisation or foreign country, shall be sentenced with imprisonment of at least eight years.

(2) The member of the group, gang or another criminal organisation, as well as one that provides means for financing[46] or helps in other way, shall be sentenced to an imprisonment of four to ten years.

189. On the face of it, that which is covered by the offence above is the establishment of a "*terrorist organisation*", a term which refers to any "*group, gang or other criminal organisation*" that is intended to perform any of the criminal activities listed in Paragraph 1. This exhaustive list contains a number of criminal offences the range of which, if committed for any of the purposes referred to in the same paragraph, actually corresponds to the notion of "terrorist act" according to Art. 2(1) lit a) and b) of the Terrorist Financing Convention. Actual or at least attempted perpetration of any of these offences is not a prerequisite as the mere intention to commit such crimes appears to be sufficient.

190. The coverage of the offence in Paragraph 2 goes beyond what can normally be considered as a simple aiding-and-abetting approach. The language of the law appears to be broad enough not to restrict the scope of "provision of financial means" to the single conduct of the core offence, which is the mere establishment of the group or other organisation. Instead, Paragraph 2 seems to

[46] Translation confirmed by the authorities (the official English translation of the amending law used instead of the dotted underlined part the term "*money for financing*").

encompass the initial as well as the subsequent or continuous financing of the group or organisation.

191. SR.II requires the criminalisation of the financing of terrorism, terrorist acts and terrorist organisations as well as that such offences be money laundering predicate offences. The Methodology notes that financing of terrorism should extend to any person who wilfully provides or collects funds by any means, directly or indirectly with the unlawful intention that they should be used in or in the knowledge that they are to be used, in full or in part (i) to carry out a terrorist act/s (ii) by a terrorist organisation or (iii) by an individual terrorist. On the other hand, the footnote to the Methodology and the FATF Interpretative Note to SR.II (para 2d) makes it clear that criminalisation of financing of terrorism solely on the basis of aiding and abetting, attempt or conspiracy does not comply with SR.II.

192. Concerning the *actus reus* of the offence, it is obvious that the term "*provision of financial means*" as provided for by Art. 394a(2) CC does not cover the *collection* of means, which is one of the core activities in criterion II.1a. The authorities argued that the notion of "provision" in the domestic legal terminology also includes "collecting" but the evaluation team has concerns regarding the soundness of this argumentation because of the essentially different characters of the two activities[47].

193. Art. 394a(2) is designed to cover the provision of financial means with the intention that they should be used by a terrorist organisation, as referred to in criterion II.1a(ii). The coverage seems to extend to funds provided for any purpose as the legislator did not specify that the financial support be provided, for example, with regard to the illegal activities performed by the organisation. On the other hand, the examiners could not find any specific provision in the Criminal Code by which criteria II.1a(i) and (iii) that require *inter alia* criminalisation of the provision and collection of funds with the unlawful intention that they should be used in full or in part to carry out a terrorist act or by an individual terrorist would have been clearly covered. As for the offence in Art. 394a(2) it is directly related to the notion of "organisation" that the financing of an individual terrorist must necessarily be out of its scope, even if the person is otherwise a member of the organisation involved and, with regard to what was discussed above, the same goes for the financing of carrying out a particular terrorist act as well. In return, Art. 394a(2) appears, to the limited extent it meets the requirements of SR.II, to comply with criterion II.1c(i) applying irrespective of whether the funds were actually used to carry out or attempt a terrorist act. To the same limitation is covered criterion II.3 that requires terrorist financing offences be applicable regardless of whether the person alleged to have committed that offence is in the same country or a different country from the one in which the terrorist act(s) occurred or will occur. It is worth to note at this point that while the criminal offence of terrorist act was separated into two different articles according to whether domestic (Art. 313 CC) or international terrorism (Art. 419 CC) is involved, there was no such distinction made in Art. 394a so that it may safeguard both the domestic constitutional order and the interests of foreign countries.

194. For the sake of completeness, it should also be highlighted that within the present legal framework, one could also try resorting to the criminal offences of terrorism (Art. 313 CC) and international terrorism (Art. 419 CC) combined with the generic provisions on complicity (instigation, aiding, abetting) but this approach would not achieve better results; financing of an individual terrorist regardless of his/her actual involvement in any particular act would necessarily remain uncovered this way while the financial support provided for the perpetration of a terrorist act, though potentially subsumable under a more generic provision, would not be in line with the Interpretative Note to SR.II.

[47] These concerns were reinforced by the fact that the new offence of terrorist financing in Art. 394c introduced by the 2008 amending law to the CC criminalizes both provision and collection of funds.

195. In the absence of jurisprudence, it is unclear whether Art. 394a(2) covers the full definition of ”funds” according to criterion II.1b. Furthermore, as there is no autonomous terrorist financing offence, the evaluators have doubts that the aiding and abetting approach could cover attempt and the other ancillary offences as requested by criteria II.1d and II.1e.

196. As the money laundering offence follows an all crimes approach, the relevant paragraphs intended to address terrorist financing (as far as they go) are predicate offences for money laundering (criterion II.2).

197. The criminal legislation contains no explicit provision whether the intentional element of a criminal offence, including terrorist financing, may be inferred from objective factual circumstances. Nevertheless, the host authorities, as discussed in relation to R.2 above, were confident about the sufficiency of circumstantial evidence in proving *mens rea* standards.

198. As for the issue of corporate criminal liability, the analysis given under Section 2.1 applies also for terrorist financing respectively (apart from the complications caused for the money laundering offence by Art. 273 para 7 CC).

199. Apart from the very limited coverage of terrorist financing in the Criminal Code, still in the year 2004 that is, parallel to the ratification process of the Terrorist Financing Convention and the adoption of the amending law that introduced Art. 394a to the CC, the legislator inserted a brief, though comprehensive definition of terrorist financing into the then-enacted AML Law which provided in its Art. 2(8) that *"'Financing terrorism' includes activities of financing terrorist activities, terrorists and terrorist organisations."* This definition is significantly more in line with the language of the Methodology in terms that it addresses all the three activities (financing of a terrorist act, a terrorist organisation and an individual terrorist) prescribed by criterion II.1a – in contrast to the offence in Art. 394a(2) which covers only one of the three. However, this definition is not applicable in criminal cases – there is no connecting clause that would allow for such an application and moreover, the term “financing of terrorism” is not used by the CC. This “double definition” approach is therefore rather misleading and should be abandoned as is already the case for the definition of money laundering which, under the former AML Law, had similarly been defined by both laws but the current AML Law; when defining this term in its Art. 2(1) simply referred to the offence in Art. 273 CC. Such an approach would be favourable also in this case, provided that a separate offence of terrorist financing is introduced into the Criminal Code.

200. In their replies to the MEQ, the authorities also admitted that the *“Criminal Code should be amended with the provisions incriminating ‘terrorism financing’ as a separate criminal act. In that manner MLPD has submitted an initiative to the competent ministry (Ministry of Justice) criminalising ‘terrorism financing’ to be envisaged in the future amendments and changes of Criminal Code. This initiative was accepted”*. In this context, reference was made to Point 3.1 of the 2005 National Strategy on Combat Against Money Laundering and Financing Terrorism according to which the CC should be amended *“in the direction of incrimination of criminal act ‘financing terrorism’ as a separate criminal act”. T*hese statements clearly illustrate that the authorities have also realized the need for a separate criminal offence presumably in full compliance with the Terrorist Financing Convention. Yet, no tangible result was reported to the evaluators as there has been little development in this field up to the date of the on-site visit. In fact, the representatives of the Ministry of Justice with which the examiners met were not aware of the fact that their ministry was, or should have been, involved in the elaboration of a separate criminal offence concerning financing of terrorism. After the onsite visit, the evaluation team was informed by the MLPD that a draft law which was intended *inter alia* to introduce such a separate terrorist financing offence into the Criminal Code was already in the phase of adoption at the end of 2007.[48]

[48] This conceptual problem has since been remedied by the adoption of the 2008 amending law to the CC that introduced a separate criminal offence of terrorist financing.

2.2.2 Recommendations and comments

201. Though the International Convention for the Suppression of the Financing of Terrorism has been signed and ratified, there are still several shortcomings with respect to the implementation of the penal provisions of this Convention in the criminal substantive law. The *sui generis* criminalisation of the establishment of a terrorist organisation comprising, inter alia, the provision of financial means to the creation and presumably also to the maintaining of such an organisation was an important step. On the other hand, essential parts of the core offence in Art. 2 of the Terrorist Financing Convention are not yet implemented in the domestic law, such as the notion of collecting of means as well as the financing of an individual terrorist or that of the perpetration of a terrorist act.

202. Further clarification is required as to the coverage of "financial means" as provided for by Art. 394a(2) CC.

203. As there is no autonomous terrorist financing offence, the evaluators have doubts that the aiding and abetting approach would sufficiently cover attempt and the other ancillary offences as requested by criteria II.1d and II.1e.

204. It is recommended to criminalize financing of terrorism (preferably as an autonomous, independent offence), covering all the essential criteria in SR.II and the requirements of the Interpretative Note to SR.II., including all forms of terrorist acts provided for in the Convention, and all forms of financing of the perpetration of such acts as well as that of individual terrorists.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating

SR.II	**PC**	• The present incrimination of terrorist financing appears not wide enough to clearly provide for criminal sanctions in respect of both individuals and legal persons concerning:
		  • the collection of funds with the unlawful intention that they are to be used, in full or in part, to carry out a terrorist act, by a terrorist organisation or by an individual terrorist,
		  • the provision of funds with the unlawful intention that they are to be used, in full or in part, to carry out a terrorist act, or by an individual terrorist.
		• Further clarification is required as to the coverage of "financial means" as provided for by Art. 394a(2) CC.
		• Attempt and the other ancillary offences as requested by criteria II.1d and II.1e seem to be not covered.

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

2.3.1 Description and analysis

General

205. The confiscation and provisional measures regime in force and effect at the time of the third on-site visit had undergone some significant changes since the last round of evaluation. However, the result and sometimes the purpose of these changes were not always obvious to the evaluators, especially that the particularly complex structure of the respective provisions remained. At this point, the evaluators wish to reiterate the observation made by the previous round evaluation team that even some of the domestic authorities were "*unsure about the scope and interrelationship between the various complex provisions*". Also, the evaluators of the present round experienced unusual difficulties while attempting to comprehend and analyse the provisions both in the Criminal Code and the Criminal Procedure Code that jointly establish the confiscation and provisional measures regime as both the actual meaning of and the interconnection between the respective articles was substantially obscured by the inconsequent use of key legal terms. The first thing the evaluators noticed was the inaccurate use of the terms "confiscation" and "seizure" in the English version of the laws. In most jurisdictions, the legal terminology makes a clear distinction between, on the one hand, measures consisting of the permanent deprivation of property or items that can typically be ordered by the court in its final decision (usually referred to as "confiscation") and, on the other, measures with a provisional character where the deprivation of property would only last until the end of the criminal proceedings with a view to further decision in this respect (usually referred to as "seizure"). Such a clear differentiation is practically lacking in the English translations of the Criminal and Criminal Procedure Codes provided to the evaluators, where both the terms "confiscation" and "seizure" appear to be completely interchangeable as they are applied to designate either permanent or provisional measures randomly. A perfect example for this is Art. 219 (former Art. 203) CPC where "confiscation" refers first to the permanent deprivation of property in Paragraph 1 (*"objects which according to the Criminal Code are to be confiscated..."*) then to a provisional measure in Paragraph 4 (*" the authorised officials of the Ministry of Internal Affairs may confiscate the objects listed in paragraph 1 of this Article..."*)

206. Considering that usually such anomalies are caused by inaccurate translation of the original texts, the evaluators analysed very thoroughly all the relevant provisions in the original version. The result is surprising, as obviously the confusing use of legal terms can only partially be blamed on the inaccuracies of the English translation because the original version proved to be inconsequent with the usage of these terms. Moreover, the original text uses not only two but four different terms, apparently on a random base, to designate either the permanent or the provisional deprivation of property; in many cases, the same word is used for both kinds of measures as it is illustrated by the following table:

terms in original version[49]	Usage in the Criminal Code	Usage in the Criminal Procedure Code
конфискација [*konfiskatsiya*]	♦ refers to **confiscation** (of property/ gain) ♦ translated as **"confiscation"**	♦ used when referring to the same measure in the CC (confiscation of property/gain) ♦ translated as "**confiscation**" (as in the CC)
одземање [*odzemanye*]	♦ refers to **confiscation** (of objects/ items) ♦ translated as **"seizure"** in most of the times but also as **"confiscation"** in Art. 100a[2] (in addition, it was translated as **"forfeiture"** in the former Art. 68 CC subsequently deleted by the 2004 amending law)	♦ double usage: **A/** used when referring to the same measure in the CC (confiscation of objects/items) **B/** refers to **seizure** (of objects/items) with a view to the measure in **A/** above ♦ translated as **"confiscation"** in both cases above (contrary to the CC in which the same term is translated as "seizure") - in case of B/ above, the provisional character of the measure is sometimes indicated by the addition of the adjective **"temporary"** but sometimes not (see Art. 219 [ex-203] Para 1 vs. Para 4 for example) - translated as **"seizure"** (for no special reason) in the title of Chapter XXX (former XXVIII)
пленување [*plenuvanye*]	♦ refers to **confiscation** (of property/ gain) used in the CC until its 2004 amendment then replaced with "*конфискација*" ♦ (was) translated as "**seizure**"	-
запленување [*zaplenuvanye*]	-	♦ refers to **seizure** of objects/items (a synonym to "*одземање*" in this respect) ♦ translated as **"confiscation"**

207. As it can be seen above, neither "confiscation" nor "seizure" appears to have a distinctive meaning in the English versions of the original legal texts as both of them may refer to measures consisting of either permanent or temporary deprivation of property. Thus the simple quotation of these English texts, with their random usage of the key terms, would necessarily lead to confusion. On the other hand, the proper meaning of these terms in the respective CC and CPC articles can, with more or less effort, be identified through structural analysis of the laws, in which the examiners finally succeeded thanks to the additional help they received on-site from the interpreters and using the findings made by the previous evaluation team in this respect. As a result of this, and for the sake of comprehensiveness, it is necessary to make some amendments when quoting the original English-language versions of the respective provisions; irrespective of the language used in the provided translation, for measures consisting of permanent deprivation of either objects/items or other sorts of property will therefore be quoted with the term "confiscation". For measures with provisional character the term "seizure" will be used. These amendments will be made visible in the text as dotted underlined and the explication will be given in a footnote (e.g. "confiscates[1]").

[49] Including all these terms, both in the original text and English, in their respective verb forms (e.g. seizure/seized ~ одземање/одземат).

208. Another serious obstacle the evaluators had to face was that the "clarified" i.e. consolidated English version of the Criminal Procedure Code they were given by the authorities was apparently renumbered from beginning to end. On the other side, the local authorities kept on referring to the former numbers of the respective articles – both during the on-site discussions and, in written form, in the replies they had given to the MEQ (e.g., the provisions that deal with the procedure for the confiscation of property and objects were formerly located in Chapter XXVIII beginning as from Art. 485 while, in the renumbered version, they can be found in Chapter XXX as from Art. 532). However, it seems that the clarified/consolidated version of the CPC has never been used in practice in "the former Yugoslav Republic of Macedonia". The last amending law the provisions of which appear to be incorporated into the consolidated English version is that of 2004 (OG 19/04). Though this amending law was not provided to the evaluators in English translation, its original could be found on the website www.mlrc.org.mk and, as far as it was intelligible to the examiners, all references to CPC articles in the amending law are made according to the former numbering scheme. For example, the 2004 amending law provided for the insertion of the new Articles 203a to 203d (203г in original Cyrillic) which somehow became Art. 220 to 223 in the consolidated version. As a consequence of this numbering problem and to avoid confusion by referring to wrong articles, it is necessary that all references to the Criminal Procedure Code will hereinafter be made according to the new i.e. clarified article numbers (as they are in the English version with which the evaluation team was provided for) and the former numbers will also be indicated in brackets: e.g. "Art. 220 (former Art. 203a)".

209. Turning now to the confiscation regime of "the former Yugoslav Republic of Macedonia", it is twofold in respect of money laundering cases as the substantive law contains, on the one hand, general provisions (especially Art. 97-98 and 100a CC) and, on the other hand, there is also a specific provision for the money laundering offence (Art. 273[8] CC) which complements the generic provisions.

General confiscation provisions

210. As a general rule, the confiscation regime is conviction-based as it is expressed by Article 537(1) (former Art. 490) of the Criminal Procedure Code *"The court may pronounce confiscation of property benefit*[50] *in the verdict with which the accused is found guilty, in the decision for court reprimand or in the decision for application of an educational measure, respectively in the decision with which is pronounced the security measure."* As it was clarified during the on-site visit, this provision was intended to describe the variety of final court decisions (including the verdict of guilty and also others) in which the ruling on confiscation may be incorporated. In this context, therefore, the auxiliary verb "*may*" has nothing to do with whether the confiscation is of mandatory or discretionary character (see below for a more detailed analysis).

211. The main provisions governing the confiscation of proceeds of crime (criterion 3.1a) can be found in the following articles of the Criminal Code:

The grounds for confiscation of property gain

Article 97

(1) Nobody is allowed to retain indirect or direct property gain acquired by the perpetration of a criminal offence.

(2) The gain referred to in paragraph 1 of this Article shall be confiscated by the court decision, which established the perpetration of a criminal offence, under the terms set forth under this Code.

[50] *"Property gain*", "*property benefit*" as well as "*material gain*" are used as alternate translations for the very same original "*имотна корист*".

Manner of confiscation of property gain
Article 98

(1) Property gain acquired through crime consisting of money, valuable movable or real property, as well as any other property, assets, material rights or rights in kind, shall be confiscated from the perpetrator and if their confiscation is not possible, then other property corresponding to the acquired property gain shall be confiscated from the perpetrator.

212. These general confiscation provisions relate to money laundering as well as any other types of crime and their strict language appears to leave no doubt that confiscation of proceeds is compulsory (*"nobody is allowed to retain property gain" or "property gain [...] shall be confiscated"* etc.) In addition, the rigour of the substantive law is underpinned by the procedural rules as Article 533(1) CPC (former Art. 486) provides that *"the property and property benefit gained by the committing of the criminal act is certified in a criminal procedure ex officio"*. It is also prescribed by Paragraph 2 that both the Court and any other authorities, before whom the criminal procedure is conducted, are obliged to collect evidence during the procedure and to inspect circumstances *"which are important for the determination of the property and property benefit"*. Furthermore, Art. 536(1) CPC (former Art. 489) provides that as soon as the conditions for confiscation of the property and property benefit are fulfilled, the court will *ex officio* order temporary security measures (see below for further details).

213. Turning to the object of confiscation, the notion of "property gain" (or benefit) as defined by Art. 98(1) above appears to be wide enough to cover any sorts of property including real estate or property rights.

214. As for the coverage of indirect proceeds, Article 97(1) of the Criminal Code explicitly provides for the confiscation of both direct and indirect proceeds of crime.

215. As just quoted above, Art. 98(1) CC is designed also for value confiscation: if it is impossible to confiscate, in full or in part, the proceeds of crime in their original form (money, valuable movable and real property etc.) the court is allowed to make a corresponding value order, i.e. to confiscate other property from the offender to an equivalent amount. However, a positive elemtn to value confiscation is how extensively the procedural rules require the *ex officio* activity of the court in establishing the value of property benefit subject to confiscation. In addition to the provisions quoted above, Art. 535 CPC (former Art. 488) requires the court to "*order expertise*" in the event that the value of the property gain cannot be determined by any other means (para 1) as well as to issue an international seizure warrant in case the property is presumed to be abroad (para 2) and provides that the court, while gathering the needed evidences for the determination of the correct amount of the property benefit, may request additional data from state organs, financial institutions and other legal and natural persons who are all obliged to submit the requested information without delay (para 3). The examiners welcome these provisions as they are likely to encourage judges to take such decisions instead of waiving the confiscation order itself because of difficulties to establish the precise amount of the pecuniary benefit. This possibility for a quasi-investigative enquiry is particularly important considering that "the former Yugoslav Republic of Macedonia" has not yet introduced the reversal of the burden of proof in the framework of measures targeting the proceeds of crime (albeit that this is only an additional element in the Methodology and not one of the essential criteria).

216. Confiscation of proceeds of crime committed by a legal entity is dealt with by two separate, yet correlated articles of the Criminal Code: Article 96e ("*Confiscation of property, property gain and seizing items*") which was introduced by the 2004 amending law as part of the new Chapter VIa "Sanctions against a Legal Person" provides that

(1) Confiscated property and property gain acquired through a criminal act by a legal person shall be subject to the provisions of Articles 98 through 100 of this Code, respectively.

Article 100 reads as follows:

Confiscation of property gain from a legal person
Article 100

If a legal person obtains property gain acquired by the perpetration of a criminal offence, it shall be confiscated.

217. In this context, it is worth mentioning Paragraph 2 of Art. 96e which provides for the subsidiary responsibility of the natural persons behind the legal person (that is, investors or shareholders) in case the proceeds originally obtained by the legal person can no longer be confiscated from the said entity:

(2) If no property or property gain can be confiscated from the legal person due to the fact that it has ceased to exist prior to the enforcement of the confiscation, then the founder(s) of the legal person, i.e. for a company the shareholders or joint investors shall be jointly obliged to settle an amount equal to the acquired property gain.

218. The essential criteria 3.1b and 3.1c require that laws provide for the confiscation of property that constitutes instrumentalities either used in or intended for use in the commission of any money laundering, terrorist financing or other predicate offences. Art. 100a of the Criminal Code provides for the confiscation (in the original: "seizure") of instrumentalities as well as (debatable) objects deriving from the commission of a criminal offence:

Conditions for confiscating[51] items
Article 100a

(1) Nobody may retain or acquire items originating from the perpetration of a crime.
(2) Items intended for or used to commit the crime shall be confiscated[52] from the perpetrator regardless of the fact whether they are in his/her possession[53] or in the possession of a third party, should the interest of general safety, human health and moral reasons require so.
(3) The items that have been used or that were intended to be used for committing a crime, can be confiscated if there is a danger of them being used again for committing a crime. Items in the possession of a third party shall not be confiscated unless they were aware or were obliged to be aware that they have been used or intended for committing the crime. [54]

219. The uncertainty about the confiscation of objects procured during the committal of a criminal offence comes from the apparently inconsequent inner structure of the article. Objects of this kind are dealt with in Paragraph 1 which, on one hand, forbids anyone to retain or acquire such items but, on the other, does not provide for their seizure or confiscation. Rules related to the application of such coercive measures can be found in Paragraphs 2 and 3 exclusively as regards the confiscation of instrumentalities i.e. items intended for or used to commit a crime. There appears therefore no generic provision that would explicitly prescribe the confiscation of objects deriving from the commission of a criminal act; this deficiency may easily cause problems in judicial practice as the respective procedural rules also require "*objects which according to the Criminal Code have to be confiscated*" (Art. 532[1] - former Art. 485[1] CPC). Although several offences

[51] The dotted underlined text corresponds to the meaning of the term used in the original. The English translation uses "seizing". The original is "одземање". See also para 208.

[52] The original is "одземат".

[53] Translation confirmed by the authorities.

[54] The dotted underlined words correspond to the meaning of the term used in the original. The English translation uses "seized". The original is "одземат". See also para 208.

of the Criminal Code specifically provide for the confiscation of such items, e.g. counterfeiting money (Art. 268[5]), production of narcotic drugs without authorisation (Art. 215[6]), and these specific provisions can be applied despite the possible lack of a generic rule governing this issue.

220. Pursuant to Art. 96e para 3 CC, Art. 100a is also directly applicable concerning legal persons. However, this conclusion needs further explanation considering the text of Art. 96e para 3 CC which contains a misleading cross-reference (referring to the nonexistent Art. 101a instead to Art. 100a):

> *(3) The confiscation[55] of items from the legal person shall adequately be subject to the provisions of Article 101a of this Code.*

The authorities confirmed that this reference to (the non existent) Art. 101a CC is wrong and that the reference should be to Art. 100a instead. This wrong cross-reference was explained as an error in the legislative process. This seems a logical explanation because Art. 101 (i.e. the one that would necessarily precede Art. 101a) is already in the next chapter of the CC related to completely different issues while Art. 100a deals with "confiscation of items" as referred to in Art. 96e(3). Thus, it appears very likely that the legislator must have made a numbering mistake in Art. 96e(3) and reference should therefore be made to Art. 100a CC (the very last paragraph of the chapter before Art. 101) instead to the non-existent Art. 101a.

221. Turning to the definition given by Art. 100a(2) CC above, the phrase *"items intended for or used to commit the crime"* corresponds with the language of Criterion 3.1. Yet, confiscation of such objects is only possible under certain circumstances, that is, if application of this measure is required by *"interest of general safety, human health and moral reasons"* (Paragraph 2) or if there is a danger that the objects would be used again for committing a crime (Paragraph 3). In the evaluators' view, both of these conditions seem rather vague and requiring the prosecution to prove their fulfilment may unnecessarily restrict the applicability of this Article. Moreover, Paragraph 3 does not provide for mandatory confiscation of instrumentalities and leaves confiscation to the court's discretion even if the danger described therein (repeated perpetration etc.) can be proved by the prosecution. These are, in the view of the evaluators, unnecessary restrictions considering that the domestic legal framework allows in a number of specific cases mandatory confiscation of instrumentalities without any further condition or restriction. Such provisions can be found, amongst others, in relation to unauthorised production of and trade in narcotic drugs as regards movable and real property used for the manufacturing and transporting of the drugs (Art. 215[6]) or in case of trafficking in human beings or migrants where the objects and means of transportation used for committing the crime shall be seized (Art. 418a[7] and 418b[5]).

222. Another example of this is Paragraph 6 of Article 394a that provides for the confiscation of instrumentalities related to the offence of terrorist organisation in Art. 394a CC (where Paragraph 2 is intended to criminalize the financing of terrorism; see Section 2.2). In this context, Article 394a(6) prescribes that "*The objects and the means intended for preparing the crimes, as well as the money for financing the organisation shall be confiscated*[56]". The language of Art. 394a(6) leaves some discretion whether it adequately covers the objects and means not only intended but also used for the perpetration of the crime (at least this possible limitation appears not to affect the second phrase that refers to the money for financing the organisation).

223. Similarly, the money laundering offence provides a mandatory confiscation rule in Art. 273(8) as follows:

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[55] The dotted underlined text corresponds to the meaning of the term used in the original. The English translation uses "seizure" instead. The original is "одземање". See also para 208.

[56] The dotted underlined text corresponds to the meaning of the term used in the original. Conversely, the English translation uses "seized". The original is "*одземат*". See also para 208.

(8) The money, the illegally acquired property, the objects or other proceeds of the crime shall be confiscated *and if the* confiscation *is not possible, then other property corresponding to that value shall be* confiscated *from the perpetrator.* [57]

Money and other property referred to in Art. 273(8) are thus subject to mandatory confiscation. Nevertheless, they cannot be classified as "instrumentalities" but as "laundered property" which, according to the terminology of FATF Recommendation 3 are two different categories of property subject to confiscation. As a consequence, there seems to be no provision available in criminal law that would prescribe mandatory and unconditional confiscation of instrumentalities used in or intended for use in the commission of a money laundering offence. It is therefore assumed that such items may only be confiscated according to the general rules in Art. 100a, that is, bound to conditions and partially to the discretion of the courts.

224. Conversely, Paragraph 8 of Article 273, as mentioned above, refers to illicit money, property objects or other proceeds that represent the object of the money laundering offence i.e. the property to be or having been laundered. Such a mandatory confiscation rule is therefore in line with the first part of criterion 3.1 that requires the confiscation of "property that has been laundered". While value confiscation is not applicable in case of instrumentalities and other objects confiscatable pursuant to Art. 100a of the Criminal Code, the confiscation of laundered property is expressly provided for by Art. 273(8).

225. Confiscation *in rem* is expressly provided by both the criminal substantive and the criminal procedural law of "the former Yugoslav Republic of Macedonia". The Criminal Code contains two separate yet almost identical provisions in this respect, first in Art. 97(3) as regards the confiscation of property gain and another one in Art. 100a(4) related to the confiscation ("seizure") of objects serving as instrumentalities for the perpetration of a criminal offence:

"The court shall issue a decision for confiscation[58] *(конфискација)* [in Art. 100a(4) it is: *"seizing items"* where *"*seizing*" (одземање)* also refers to the permanent deprivation of property] *in a procedure provided by law when due to factual or legal impediments it is not possible to conduct criminal proceedings against the perpetrator of the crime."*

226. As for the specific procedural rules referred to above, they can be found in Art. 532 (former Art. 485) and Art. 541 (former Art. 493a) of the Criminal Procedure Code. Article 532(1) provides for confiscation *in rem* in general terms, prescribing that *"the objects which according to the Criminal Code have to be confiscated will be also confiscated when the criminal procedure will not finish with a verdict that finds the accused guilty".* This provision thus refers to cases where the criminal proceedings have been terminated but, for the above-mentioned factual or legal impediments, a conviction of a perpetrator was not possible (e.g. the offender could not be identified or the criminal proceedings need to be discontinued etc.). It is also applicable, according to its Paragraph 3 by the court *"when in the verdict which finds the accused guilty it was failed to bring such a decision."*

227. Further procedural rules can be found in Article 541 CPC (former Art. 493a) which provides in its Paragraph 1 that

(1) When there are factual and legal obstacles for conducting criminal procedure against certain person, the court shall[59] *enforce special procedure for confiscation of the property and the property benefit and confiscation*[60] *of objects upon the proposal of the Public*

[57] The dotted underlined words correspond to the meaning of the term used in the original. The English translation instead uses "seized"/"seizure". The original is "*одземат*"/ одземање". See also para 208.

[58] The original is "одземање".

[59] The authorities confirmed that the correct translation should be "shall" instead of "may" (as it was translated in the official English version of the CPC).

[60] The dotted underlined text corresponds to the meaning of the term used in the original. The English translation uses instead "seizure". The original is "одземање". See also para 208.

Prosecutor if certain conditions are fulfilled for implementation of these special measures from Criminal Code.

In the special procedure mentioned above, the court examines the evidence necessary to establish whether or not the respective property or objects can be considered as proceeds of crime or instrumentalities thereof (Paragraph 2) Although apparent, it should be noted that both Art. 532 and 541 clearly cover the money, objects or property confiscatable under the specific provisions related to certain offences in the Special Part of the Criminal Code including, amongst others, money laundering in Art. 273(8) or terrorist organisation ("financing") in Art. 394a(6).

228. Confiscation from third parties (criterion 3.1.1. b) is covered concerning confiscation of proceeds from crime pursuant to Art. 98(2) of the Criminal Code:

(2) Property gain shall also be confiscated from third parties to whom it has been transferred without adequate compensation if they were not aware and they could have been or were obliged to be aware that it had been acquired through crime.

Confiscation of proceeds from third parties therefore depends on their knowledge based on the standard of negligence. Items declared a cultural heritage as well as those the plaintiff has a personal connection with shall be, however, confiscated from third parties regardless of their knowledge and whether or not the item was acquired for adequate compensation (Art. 98[3] CC).

229. As far as the confiscation of instrumentalities in the possession of third parties is concerned, it is the (debatable) mandatory form in Art. 100a(2) which has to be applied (subject to certain conditions, e.g. must be in the interest of general safety etc.; see above para 221). Instrumentalities subject to confiscation under Art. 100a Paragraph 3 cannot be confiscated if they are in the possession of a third party unless the latter was, or was obliged to be, aware that the objects have been used or intended for committing the crime.

230. Further protection for the rights of bona fide third parties is provided for by the Criminal Procedure Code. Article 534 (former Art. 487) provides that the person to whom the property benefit was transferred as well as the representative of the legal person shall be summoned for examination in pre-trial proceedings and at the trial, where they are entitled to present evidence concerning the determination of the property benefit.

231. As far as instrumentalities and other objects are concerned, their confiscation may be carried out without the same consideration given to third parties and the only protection is that such confiscation *"does not prejudice the right of third parties to compensation of the damage incurred by the perpetrator of the crime"* (Art. 100a[5] CC). Though it is not explicitly provided for by law, the examiners think it very likely that the latter provision also refers to property being confiscated pursuant to Art. 273(8).

232. Criterion 3.6 requires that there should be authority to take steps to prevent or void contractual or other actions where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation. This issue is adequately addressed by Art. 542(5) CPC (former Art. 493b) providing that "*All legal acts concluded after committing the criminal act and with the purpose to reduce the value of the property, which is the subject of the confiscation measure, are nullified."* However, this provision has not yet been applied in any money laundering case.

<u>Provisional measures</u>

233. One of the two pivotal provisions within the regime of provisional measures is Art. 219 CPC (former Art. 203) that provides for "*temporary confiscation*" of objects:

(1) Objects which according to the Criminal Code are to be confiscated or may serve as evidence in the criminal procedure shall be confiscated temporarily and entrusted to the court to guard or in another manner their guarding shall be secured.

234. In the context of the above provision the term "confiscated temporarily"[61] obviously refers to what one would normally call "seizure", meaning a temporary measure. As a consequence, Art. 219(1) appears to apply for any object that can be confiscated pursuant to the Criminal Code including proceeds from crime as well as instrumentalities of a criminal act and, obviously, objects having been laundered thus being confiscatable according to Art. 273(8) CC. On the other hand, the fact that Art. 219(1) refers to "*objects*" but not to "*proceeds*" in a broader sense (or "*property benefit*" as it is generally used in the CPC) implies that it must have been intended to cover objects confiscatable under Art. 100a of the Criminal Code as well as those falling under the scope of specific provisions like Art. 273(8) but not the proceeds of crime in a general sense. Because of its restrictive language, Art. 219(1) CPC appears not to cover either intangible property items (e.g. dematerialized securities[62]) or real estate. Similarly, money only appears to be covered by this article as far as it can be considered an "object" that is, primarily in the form of cash, while assets consisting of bank account money (deposits on a bank account etc.) are unlikely to be seizable under Art. 219(1) CPC.

235. The 2004 amending law introduced a new kind of provisional measure into the Code of Criminal Procedure in Article 220 (former Art. 203a) according to which

> *(1) The investigative judge or the council by a decision may order[63] temporary securing of the objects and means which are related to the criminal act. The property or[64] the means subject to securing[65] are under the supervision of the court. The temporary securing of objects or property is understood[66] as temporary freezing, seizure [67], withholding[68] funds, bank accounts and financial transaction or proceeds from crime[69].*

236. The above provision shows that the legislator intended to achieve the largest coverage possible; however, some shortcomings remain. The essential problem is that, from a systemic point of view, the subsequently inserted Article 220 (former Art. 203a) was not properly harmonised with the already existing Article 219 (former Art. 203) which led to some overlap and thus makes it difficult to determine the exact scope of the respective provisions.

237. On the face of it, Art. 219 and 220(1) describe two separate kinds of coercive measures that are different not only in their names ("temporary securing" vs. "temporary confiscation") but also as far as their actual coverage is concerned. In this context, while Art. 219 is restricted to the seizure of objects confiscatable under the Criminal Code, the scope of "temporary securing" in Art. 220(1) encompasses any objects and means that are related to the criminal act regardless of whether or not they can be subject to final confiscation. However, these Articles overlap when it

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[61] The original is "*привремено одземат*".

[62] That is, securities that are not on paper and no certificate exists (they may exist only in the form of entries in a depositories book etc.).

[63] In the official English version of the CPC it was "can determine" but the original "*може да определи*" can more accurately be translated as "may order" (this translation was confirmed by the authorities).

[64] "And" in the original, but needed to be changed as the original "или" means "or" (this translation was confirmed by the authorities).

[65] Translation confirmed by the authorities.

[66] In this context, the expression "understood as" refers to a closed list of the applicable measures by which the temporary securing of objects or property can be carried out.

[67] The dotted underlined text corresponds to the meaning of the term used in the original. The English translation uses instead "confiscation". The original is "запленување". See also para 208.

[68] Translation confirmed by the authorities.

[69] In the official English version "gains from the criminal acts" was used (also in Paragraph 2) but it was confirmed to the evaluators that the version above is closer to the original "*приноси од кривичното дело*".

comes to objects that are not only related to a criminal act but are also confiscatable pursuant to the Criminal Code. For such objects, it is practically impossible to determine which measure has to be applied for their seizure: the "temporary confiscation" under Art. 219(1) or the other "confiscation" which is one of the forms of temporary securing measures pursuant to Art. 220(1).

238. It is necessary to highlight that in these two Articles the term "confiscation" stands for two different terms in the original text: "*zaplenuvanye*"[70] in Art. 219 and "*odzemanye*"[71] in Art. 220(1). However, this does not mean that these measures are of different character. On the contrary, both are temporary measures, which is self-evident as regards Art. 219 but equally in case of Art. 220(1) which, according to Art. 220(3) "*can last until the end of the procedure*" as the latest, and both comprise the provisional deprivation of property items which will be deposited in the safekeeping of the court. The only differences are that, first, the temporary securing measures, including "confiscation" in Art. 220(1) may be applied on a discretionary base while "temporary confiscation" appears to be mandatory pursuant to Art. 219 and second, temporary securing measures are only applicable by the court while "temporary confiscation" can also be applied, under certain circumstances described below, also by the law enforcement authorities.

239. In this relation, Art. 220 paragraph 6 contains specific rules on the seizure of "monetary means" as follows:

> *(6) The seizure*[72] *of the monetary means*[73] *is done by an order and they are kept in safe or deposited on a special account without the right to be at someone's disposal.*

In this context, "monetary means" necessarily refers to money in cash (not excluding any tangible form of money equivalents) considering that the term in the original version used for "confiscation" (i.e. seizure) at this point is the one usually related to objects or items and also because account money is covered by Paragraph 7 as subject of temporary freezing (see below in details). The scope of "confiscation" under Art. 220(1) is thus clearly extended to the seizure of cash while this is not so explicit in case of "temporary confiscation" (Art. 219) nevertheless both measures appear to be applicable in this respect.

240. Apart from seizure of objects (as described above), the other temporary securing measures provided for by Art. 220(1) CPC (former Art. 203a) include (1) temporary freezing and (2) the withholding of funds, bank accounts, financial transactions or proceeds from crime. These measures are not defined by law and therefore it is unclear, what the difference is between "freezing" and "withholding" of assets, what is meant with the "withholding of proceeds of crime" etc. In addition, it is not clear what sorts of assets may be subject to "temporary freezing".

241. A further difficulty in this respect is Paragraph 2 of Art. 220 CPC (former 203a) which contains further provisions on freezing:

> *(2) Apart from the objects under Article 219 of this law, the court may bring a decision for freezing the means, accounts and funds for which there is a ground for suspicion that they are proceeds from perpetrated criminal acts.*

Here again, one cannot tell with certainty what, if any, the difference is between "temporary freezing" in Paragraph 1 of Art. 220 and "freezing" in Paragraph 2 of the same Article. In the original text, the term "freezing" is, just like in the English text, identical in both paragraphs namely "*zamrzuvanye*"[74]. "Temporary freezing" is a temporary securing measure thus applicable

[70] "запленување".

[71] "одземање".

[72] The dotted underlined text corresponds to the meaning of the term used in the original. The English translation uses instead "confiscation". The original is "запленување". See also para 208.

[73] It was "money fund" in the official English version but "monetary means" is a more accurate translation of the original "*парични средства*" (this was confirmed by the authorities).

[74] "замрзување".

to "*means related to the criminal act*" while "freezing" under Art. 220(2) applies to means, accounts and funds suspected to be proceeds of crime. These two categories are not exactly the same (e.g. "means" in Paragraph 1 does not seem to comprise accounts and funds in Paragraph 2 etc.), nevertheless they are very likely to overlap but and the evaluators cannot see a firm base on which a clear distinction could be made.

242. From another point of view, it might also be possible that the freezing measures in Paragraphs 1 and 2 of Art. 220 are practically the same. This interpretation is supported by the language of Art. 220 Paragraphs 3 and 4 which are obviously intended to cover any measures that can be found in the preceding two Paragraphs:

(3)The measures for temporary securing of object or property can last until the end of the procedure.

(4)The temporary freezing of accounts can last until the end of the procedure and its justification shall be re-examined ex officio every two months.

243. Following this classification, one may conclude that provisional measures under Article 220 CPC (former Art. 203a) must necessarily fall under either of these categories, that is, there are securing measures related to objects and property and there are others consisting in freezing in general. In this context, the court would issue, on the basis of Art. 220 either a securing order or a freezing order. This interpretation is much more convenient and functionable than seeking for differences between freezing measures under Paragraphs 1 and 2. However, also with such an interpretation some questions would be left unanswered, like

- whether "freezing" covers also "withholding" and if yes, why they are mentioned as separate forms of measures in Paragraph 1;
- why Art. 220(4) is restricted to the freezing of accounts while similar measures referred to in Paragraphs 1 and 2 are much broader in their scope (e.g. freezing of means and funds are also covered).

244. To conclude, the correlation between the freezing measures under Paragraph 1 and 2 is not entirely clear and leaves open a lot of questions; this is obviously the result of inaccuracies in the legislative process and not simply of mistranslation.

245. Further procedural rules can be found in the remaining paragraphs of Article 220 such as:

(7) The decision for freezing the financial transaction or bank account, the court delivers it to the bank or other financial institution.

(8) No one can call upon the bank secrecy in order to escape the execution (avoid enforcement) of the court decision for temporary freezing, seizure[75] or withholding of the means which are deposited in the bank.

In the context of the last paragraph, freezing refers without doubt to money on bank accounts (see Paragraph 7) while seizure ("confiscation") of means appears to target cash or other tangible means physically deposited in a bank (i.e. a safe). On the other hand, the confusion about the distinctive character of "*withholding*" remains.

246. All the provisional measures referred to above can only be ordered by a court decision as soon as the investigation has commenced: during the investigation phase by the investigative judge; after initiation of criminal charges by the court of trial (i.e. a judge or panel of judges.) According to the Criminal Procedure Code, a criminal investigation against a concrete person is formally initiated by an investigative judge upon the request of the public prosecutor. Freezing and seizing orders can be upheld until the termination of the proceedings. This is explicitly stipulated in case of temporary securing and/or freezing measures under Art. 220 (former Art. 203a) in Paragraphs 3 and 4. Concerning Art. 219 (former Art. 203) there is no such specific rule in the CPC

[75] The dotted underlined text corresponds to the meaning of the term used in the original. The English translation instead uses "confiscation". The original is "запленување". See also para 208.

nevertheless it appears obvious that the procedure is similar to that in Art. 220(3) as regards temporary securing.

247. In certain cases provisional measures are also allowed before the formal commencement of the investigation: Art. 219(4) CPC (former Art. 203) authorizes law enforcement to temporarily seize objects in the course of the so-called pre-investigative procedure. In the context of the CPC, this refers, as a general rule, to the Ministry of Interior. Art. 145 (former Art. 142a) extends this authority to the Customs administration (Paragraph 1) as well as to the Financial Police (Paragraph 2) in cases falling under their specific competence, including, in case of both authorities, the offence of money laundering (Art. 273 CC). Art. 219 para 4 reads as follows:

> *(4) The authorised officials of the Ministry of Internal Affairs may seize[76] the objects listed in paragraph 1 of this Article when they act according to Articles 144 and 157 of this Code or when they execute a court order.*

Articles 144 and 157 (former Art. 142 and 147), which are quoted by Art. 219 para 4 CPC, belong to Chapter XV of the Criminal Procedure Code which deals with the pre-investigative procedure. Article 144 (former Art. 142) stipulates the general rules for what measures can be taken by law enforcement to discover the perpetrator, to discover and secure traces of the offence and objects of evidentiary value and to gather all information that is necessary for successfully conducting criminal proceedings. Article 157(1) CPC (former Art. 147), on the other hand, provides that if there is danger in delay[77] the Ministry of Interior (or, as seen above, the Financial Police and Customs) may even before the commencement of the investigation carry out certain investigative measures, including the seizure ("temporary confiscation") of objects according to Article 219 CPC (former Art. 203).

248. Contrary to the "temporary confiscation" (i.e. seizure) of objects, the temporary securing and/or freezing measures under Art. 220 CPC (former Art. 203a) including "confiscation" (Paragraph 1) and "(temporary) freezing" (Paragraphs 1-2) cannot be carried out by the law enforcement authorities in the pre-investigative phase of the criminal procedure. Application of these measures always requires a court decision and the formal initiation of an investigation; otherwise it would be, according to the authorities, contrary to the principles of the legal system.

249. According to Art. 29 of the AML Law, the MLPD (FIU) is authorised to order the postponement of financial transactions with a view to further provisional measures but only for a time period of no more than 72 hours:

> *Provisional Measures*
> *Article 29*
>
> *(1) In case of existing justified suspicion for criminal offence of money laundering or financing of terrorism, the Directorate in term of 24 hours latest from the finding that a transaction is under carrying out, shall submit to the competent public prosecutor elaborated initiative for submitting request for imposing provisional measures for terminating the transaction and temporary confiscation of money or asset. (...)*
> *(3) Postponement of transaction shall endure since the decision is made upon request, and latest 72 hours from postponement of the transaction.*

250. The subsequent steps of the procedure are as follows: the competent public prosecutor is required by Art. 31 of the AML Law to examine the initiative and, in case it turns out to be justifiable, to submit a request, without any delay and latest in term of 24 hours from the receipt of the initiative, to the competent investigative judge for ordering temporary measures. The investigative judge is then obliged, within 24 hours of receipt of the request, to make a decision

[76] The dotted underlined text corresponds to the meaning of the term used in the original. The English translation uses "confiscate". The original is "одземат". See also para 208.

[77] Translated as "danger of *cancelling*" in the official English version of CPC but the original term "*одлагање*" means "delay".

about which the competent public prosecutor, the entity and the client must be notified without any delay, while the MLPD must be notified by the public prosecutor (Art. 32.)

251. Apart from the provisions above, the AML Law is silent concerning the issue of "*provisional measures for terminating the transaction and temporary confiscation of money or asset*" and does not contain any further procedural rules as for the proper definitions, conditions and terms of the "provisional measures" the investigative judge should apply in this situation. As it was clarified by the authorities during the pre-meeting, it is the Criminal Procedure Code that has to be applied as the underlying subsidiary law in this respect which actually provides for provisional measures of this kind in details. That said, when it comes to the application of "provisional measures" according to the AML Law, the investigative judge would directly apply the respective articles of the CPC (e.g. Art. 220 CPC). Furthermore, Art. 32 of the AML Law contains clear reference to the CPC as regards the rules that govern the right of appeal against the decision of the investigative judge.

252. In the above context, it should be noted that the draft of the new AML Law[78], while stipulating the provisional measures in almost literal accordance with the present Law, provides an explicit definition to the term "provisional measures" in its Art. 2(14) pursuant to which it "*shall mean temporary prohibition of the transfer, destruction, conversion, disposal or circulation of money or assets or temporary storage, freezing or temporary confiscation of money or assets by order issued by a court or another competent authority in a procedure determined by law*". Certainly, this scope is much wider than what could ever be covered by the respective provisional measures under the Criminal Procedure Code. Nevertheless the legislator appears to provide an opportunity for the application of other procedural rules than the CPC by simply referring to "a procedure determined by law" where not only courts but also "other competent authorities" may apply provisional measures.

253. While the three-day deadline of Art. 29 Paragraph 3 of the AML Law could be, in its entirety, sufficient to provide enough time for the prosecution to prepare for further measures, the process is perhaps unnecessarily and unproductively fragmented by dividing the above term to 3x24 hours and thus requiring the FIU to provide data establishing an extremely high level of suspicion related to the given transaction in only one day. The "*existing justified suspicion for criminal offence of money laundering or financing of terrorism*" appears to be a standard set overly high. This perhaps offers an explanation as to why, according to the representatives of the MLPD, there had been only 3 cases up to the time of the on-site visit when provisional measures were finally applied in such cases, that is, one case per year between 2005 and 2007 respectively. In the last case, the funds frozen (blocked) amounted to 3,8 million EUR.

254. The violation of the measures under Art. 29-32 of the AML Law, that is, performing a transaction contrary to the order of the MLPD or provisional measures imposed by the court is properly sanctioned by the penalty provisions in Art. 41 of the said law.

255. Concerning the securing of assets that constitute proceeds of crime, Article 536 CPC (former Art. 489) provides for a further, separate measure that can exclusively be applied by the court during the course of the procedure for confiscation of property and property benefit (Chapter XXX):

> *When the conditions for confiscation of the property and property benefit are fulfilled, the court will ex officio order temporary security measures established with Article 219 of this Law.*

The reference to Art. 219 (and not to Art. 220) CC seems not entirely reasonable for the evaluation team; as far as the temporary deprivation of the proceeds of crime is concerned, Art.

[78] The new AML/CFT Law came into force on 18 January 2008 (OG 04/2008) and this definition was moved to Art. 2 (15).

220 CPC provides for a very wide range of measures applicable to various sorts of property, explicitly including proceeds of crime. However, Art. 219 can only be applied, in this respect, to the seizure of objects confiscatable under the Criminal Code - objects constituting proceeds are presumably, but not expressly covered. Thus it is unclear why the legislator chose the much more restrictive Art. 219 when it comes to securing of proceeds subject to confiscation. In any case, a provisional measure going beyond physical objects cannot be applied in the above context (thus also the freezing of bank account money is not possible).

256. The situation whether provisional measures can be carried out *ex parte* and without prior notice requires examination of different legislative provisions. Overall, it seems to be possible to carry our provisional measures *ex parte* and without prior notice in the following situations:

- the competent law enforcement authorities can seize ("temporarily confiscate") objects in the so-called pre-investigative procedure (Art. 157[1] CPC; however, this does not apply to freezing);
- the MLPD in the situations of Art. 29 of the AML Law.

257. Concerning provisional measures under Art. 219-220 CPC, it appears that the respective orders can be obtained from the investigative judge by the prosecutor in writing. The provision is silent as to whether notice is required, but the authorities expressly advised in their replies to the MEQ that "*measures of confiscation, freezing and seizure of proceeds for which there are grounds for suspicion that they originate from crime are applied without prior notification to the perpetrator"*. The evaluators nevertheless considered that a clear provision, across the board, covering *ex parte* freezing and seizing without prior notice would assist the legislative framework.

258. Law enforcement agencies appear to have sufficient powers to trace and identify property as required by Criterion 3.4. In this context, and apart from the measures already discussed, reference needs to be made to the investigative measures listed under Art. 144(2) CPC as well as Art. 157 CPC on certain urgent investigatory actions, both of which have already been referred to above.

Additional elements

259. Described in the text above.

2.3.2 Recommendations and comments

260. The third round evaluation team shares the opinion of the evaluators of the previous round that the current legal framework applicable to confiscation and provisional measures seems rather complicated. There are parallel regimes both in terms of criminal substantive and procedural law, namely a different set of rules are applied for instrumentalities, another for the proceeds of crime etc. and the respective measures are not only inaccurately and inconsequently formulated but also their scopes often overlap and to such an extent that makes the assessment of their interconnection and mutual applicability very difficult.

261. Absence of proper statistical figures concerning confiscations and application of provisional measures had been mentioned as a problematic issue in previous rounds of evaluation and there appears to be no development in this field. According to the authorities, there are no official statistics kept concerning either the number of the respective court orders or the volume of seized/frozen/confiscated assets. The evaluators were only informed of a rather small number of confiscations and a moderate number of provisional measures. The examiners were not satisfied that provisional measures, just like at the time of the previous evaluation, were only rarely addressed by the authorities in criminal cases, perhaps because the provisional measures regime

does not allow for satisfactory freezing or seizing at a stage early enough to ensure that there are proceeds available for the court to confiscate.

262. Lack of practical experience in the functioning of provisions on confiscation and provisional measures made it difficult to form a judgment about their overall effectiveness. In any case, the authorities should review this regime to ensure that it is fully operational and to satisfy themselves that the necessary tools are in place for a complete and effective system. As a general issue, urgent legislative steps should be made in order to minimize the confusion in terminology so as to achieve the simplification and standardisation of the legal terms (various and randomly used forms of seizure/confiscation) used by either the CC or the CPC to designate the permanent or temporary coercive measures in this field respectively. A generic review of the regime should primarily be supported by compiling and maintaining of comprehensive and precise statistics on the volume and effectiveness of confiscation and the provisional measures.

263. As far as Art. 100a of the Criminal Code is concerned, the uncertainty about the confiscation of objects deriving from a criminal offence (Paragraph 1) should urgently be remedied. As for the confiscation of instrumentalities, the conditions set by the general rules under Art. 100a(2) and (3) CC are formulated vaguely and also unnecessarily restrictive, particularly when compared with the specific provisions related to certain criminal offences in the Special Part of the CC stipulating the unconditional and mandatory confiscation of instrumentalities. The authorities should therefore consider the overall mandatory and unconditional confiscation of objects used for or intended for use in criminal offences, particularly as the specific confiscation rule in Art. 273(8) CC is concerned where, as a minimum requirement, confiscation of instrumentalities to the offence of money laundering (that is, not only the money or proceeds laundered) should expressly be rendered mandatory by the law.

264. The evaluators understand that it comes from the structure of the administration of justice system that provisional measures can only be carried out, with the sole exception of seizure of objects directly related to the offence, by the decision of an investigative judge as from the formal initiation of the investigation. Nevertheless, the authorities should reassess to what extent this structure might retard or even hinder the seizure of proceeds, if once applied in a concrete money laundering case. They should also reconsider, whether the immediateness of such measures could better be provided by allowing the investigating bodies to carry them all out, if necessary and upon subsequent approval of the judge. In any case, the evaluators agree with the previous team that a much greater emphasis needs to be given to the taking of provisional measures at early stages of investigations to support more confiscation requests upon conviction and the starting point could be a more extensive interpretation of Art. 219 CPC as the only provisional measure applicable in pre-investigation proceedings so that it could be applied for the seizure of objects or cash that constitute proceeds of crime.

265. The weakest point in the system is the uncertainty regarding the exact range of provisional measures and the terminology that leads to obviously unintended overlaps between the respective articles. The whole issue of provisional measures should immediately be reassessed so as to
- establish a clear relationship between the respective provisions (e.g. Art. 219 and 220 CPC);
- eliminate overlaps or apparent duplications in the regulation;
- standardize (and reduce the number of) legal terms used to designate seizure and freezing;
- provide that measures under Art. 220 should also be applied by courts in procedures under Chapter XXX of the CPC (see Art. 536).

266. It is also a major deficiency of the provisional measures regime and should therefore be remedied that only “temporary confiscation” under Art. 219 is mandatory while the measures with a considerably larger scope in Art. 220 are only applicable upon the discretion of the court (or that of the investigative judge during the investigatory stage, respectively.)

267. The circumstances under which Art. 29 of the AML Law empowers the MLPD (FIU) to postpone financial transactions seems unnecessarily limited by requiring an overly high standard of suspicion and the evaluators note the adoption of the term "reasonable suspicion" in the draft AML Law instead. The steps the legislator appears to have made towards the clarification of the legal basis of provisional measures applicable under the AML Law are welcomed, even though the scope of measures described by Art. 2(14) of the draft law does not seem to be harmonized with the existing criminal procedural law and therefore the examiners urge the authorities to modify either the new AML Law or the CPC or both in order to establish precise cross-references between the two laws so that there may be no doubt which provisional measure is applicable under which conditions.

268. A clearer provision for freezing orders *ex parte* or without prior notice would be beneficial. The authorities should remedy this situation also for the other parts of the provisional measures regime.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**LC**	• The confiscation regime is still too complicated which may hamper its effective application; this refers particularly to the provisional measures where neither the actual list of applicable measures nor their respective coverage is properly defined by law. • Confiscation of instrumentalities is in most of the cases only discretionary and the same goes for instrumentalities of money laundering offences. • Only in certain situations provisional measures can be carried out *ex parte* and without prior notice. • Postponement of transactions by the FIU with a view to further provisional measures is bound to overly high standard of suspicion. • Provisional measures are only rarely applied.

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

2.4.1 Description and analysis

269. Criteria III.1 and III.2 require that countries have effective laws and procedures to freeze terrorist funds or other assets of persons designated either by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999) or in the context of S/RES/1373(2001). Such freezing should take place without delay and without prior notice to the designated persons involved.

270. As far as freezing under the UN Security Council Resolutions is concerned, the evaluators found that there was practically no legislation currently existing in “the former Yugoslav Republic of Macedonia” that would specifically implement the said instruments in terms of roles, responsibilities and conditions. During the on-site visit, different authorities had diverse opinions as to what legal basis can be, if at all, applied for freezing accounts of persons matched with names on the lists. Reference was made to either or both the current AML Law and the Criminal Procedure Code, nevertheless neither of these laws turned out to be applicable in this respect.

271. As for the AML Law, it certainly authorizes the MLPD to postpone a transaction for up to 72 hours but any further provisional measures for the temporary confiscation (i.e. seizure) of the money or assets involved can only be taken by the competent public prosecutor and the investigative judge respectively, and as these measures appear not to be governed in all details by the AML Law they are likely to be applied according to the respective rules of the Criminal Procedure Code (though the authorities appeared divided on this question). In addition, the postponement of a transaction could, however, only be applied *"in case of existing justified suspicion for criminal offence of money laundering or financing of terrorism"* (Art. 29 of the AML Law). The application of this phrase causes some problems with regard to the reference of a "*criminal offence of ... financing of terrorism*": although Article 2(8) of the AML Law defines the term "*financing of terrorism*", the clear reference to the "*criminal offence of ... financing of terrorism*"[79] excludes referring to this interpretative provision. When looking for a criminal offence of financing of terrorism, it has to be concluded (as described in Section 2.2) that there is no offence in criminal legislation with the title "*financing of terrorism*"[80]. The only solution for this problem is to resort to Art. 394a(2) of the Criminal Code that is, the sole criminal offence addressing (to a certain extent) terrorist financing. It has to be concluded that for the application of the measure provided for in Art. 29 of the AML Law, an existing and justified suspicion of a concrete act establishing the criminal offence in Art. 394a(2) CC is required. It goes without saying that this condition is in a number of situations difficult to fulfil: e.g. considering the case that there is a suspicion that assets on a bank account are (likely to be) owned by one of the designated persons or entities – in such a situation, the simple appearance of any person or entity on a UNSCR list cannot be regarded as evidence to establish the suspicion of a criminal offence (Art. 394a(2) CC) subject to prosecution. Also the rules of the Criminal Procedure Code do not appear to be applicable in this respect mainly because there has been no criminal procedures initiated.

272. So far no assets related to designated persons or entities had been detected and, therefore, been frozen in "the former Yugoslav Republic of Macedonia"; so neither the AML Law nor the Criminal Procedure Code has ever been applied in this respect. In fact, some of the interviewees with which the evaluators met on-site appeared undecided as to what should be done and which legal provisions should be applied in such a situation. The lack of a relevant legal framework was also confirmed in the replies to the MEQ where the authorities explained that the implementation of the UNSCRs including the designation, competences and coordination of state bodies responsible for that implementation would be carried out by the new Law on International Restrictive Measures – this response necessarily implies that no actual implementation had so far taken place in this respect.

273. At the time when the authorities replied to the MEQ, the said law was still in draft phase; thus only the then draft of this law was being discussed in the replies and only an English translation of this version was given to the evaluators on-site. However, the evaluators need to note that the Law on International Restrictive Measures (OG 36/07) had already been adopted at the time of the on-site visit and, what is more, its text had undergone some significant changes compared to the draft version the evaluation team was provided with. The final text of the law was adopted on 7 March 2007 and came into force on 1 June 2007. This law *"regulates the manner of implementation of international restrictive measures* (…) *designates the competent state administration bodies and their coordination in implementing the restrictive measures"* that are applicable *"to one or a group of states, natural and legal persons and to other entities"* (Art.1) and were introduced by, first and foremost, *"the legally binding Resolutions adopted by the United Nations Security Council under Chapter VII of the United Nations Charter*" (Art. 2[1]). One of the possible restrictive measures available under this law are so-called "*financial measures*" also referred to as

[79] Emphasis added.

[80] This conceptual problem has since been remedied by the adoption of the 2008 amending law to the CC that introduced a separate criminal offence of terrorist financing.

"*freezing of property and financial assets*" which means, pursuant to Article 3 *"ban on disposal of the property and the financial assets of natural and legal persons, as well as prohibition to make property and financial assets available to entities that the restrictive measure applies to"*.

274. However, the Law on International Restrictive Measures does not establish a practical administrative procedure for freezing accounts of names on the respective lists but can only serve as the legal basis for introducing such a procedure. All that is stipulated by Art. 7 is the personal and territorial scope of the Law (its provisions shall apply to natural persons of nationality of "the former Yugoslav Republic of Macedonia", to legal persons established pursuant to the laws or otherwise performing business activities in "the former Yugoslav Republic of Macedonia" as well as any natural or legal person residing or found on the territory of the country) while Art. 8 provides that no legal or natural person shall be held liable for implementing a restrictive measure in accordance with this Law. Instead of further procedural rules, Art. 4 authorizes the Government to adopt, upon the proposal of the Ministry of Foreign Affairs, an additional Decree for implementation of a restrictive measure. It appears from the text of the Law that such Decrees are to be adopted on a case-by-case basis which means that procedural rules (manners of and exceptions from the implementation etc.) would also be determined on an *ad hoc* basis presumably depending on the nature of the case. That said, no Decrees issued under Art. 4 are envisaged to provide for a general set of rules establishing an effective and publicly known procedure for the implementation of international restrictive measures, including an appropriate freezing procedure. These Decrees, just like all decisions and decrees issued by the Government are to be published in the Official Gazette pursuant to the "Law on the Government of the Republic of Macedonia" (OG 59/00). In any case, the evaluators are not informed about any such Decree having been issued since the Law on International Restrictive Measures became effective (at least none of them were published in the Official Gazette up to the end of 2007) which means that this law has not yet been applied in any concrete case. In addition, the evaluators had the impression during the on-site visit that some representatives of the host authorities had not even heard about this law until it was mentioned by members of the evaluation team.

275. In the absence of effective laws (i.e. those going beyond the mere authorisation for issuing implementing decrees) and procedures to freeze funds or other assets owned by or related to persons designated by the relevant UN Security Council Resolutions, criteria III.1 and III.2 are not met.

276. As far as criterion III.4 is concerned, the evaluators found no actual legislation on the basis of which they could have had a picture as to whether and to what extent the Law on International Restrictive Measures or any related bylaw would be able to cover the contents of the term "*funds or other assets*" as it is defined by the Interpretative Note to SR.III.

277. As for the requirement under criterion III.5 the authorities admitted in their replies to the MEQ that they had not developed a system for communicating actions taken under the freezing mechanisms and it was envisaged to prepare and issue guidance in the respect after the adoption of the Law on International Restrictive Measures. Although the law has since been adopted, the evaluators have not been informed about any such guidance prepared and issued by any authority and the same goes for criterion III.6.

278. Similarly, the authorities declared in the MEQ that any requirements under criteria III.7 to III.13 would equally be "*taken into consideration after adoption of Law on International Restrictive Measures*" which underlines that the Law, in itself, cannot be taken into account as a comprehensive legal source in this respect. Due to the lack of effective and publicly-known measures (as regards to criteria III.7 and III.8) as well as of appropriate procedural rules (as regards to criteria III.9 and III.10) it needs no further explanation why these requirements are not met. Also it goes without saying that with respect to the total lack of a legal system to address

SR.III, that there are also no provisions to comply with the requirements of criteria III.12 (bona fide third parties) and III.13 (measures to monitor compliance with the relevant legislation).

Additional Elements

279. As "the former Yugoslav Republic of Macedonia" was not yet active in the legal implementation of SR.III, there are consequently also no legal provisions in place to cope with the additional elements III.14 and III.15.

Statistics

280. Not applicable.

2.4.2 Recommendations and comments

281. There is a complete lack of a comprehensive, effective and directly applicable legal framework that would provide a sufficient legal basis for freezing accounts of persons named on the respective lists without delay, and especially for answering to the numerous practical questions following implementation of the United Nations Resolutions. It is apparent that neither the AML Law nor the Criminal Procedure Code can be applied in this respect mainly because of the strict language used in the respective articles. On the other hand, the Law on International Restrictive Measures that was referred to by most domestic authorities as solution to comply with Special Recommendation III is far too incomplete in its present form, providing nothing more but an essential legal basis and a legislative authorisation for the issuance of *ad hoc* governmental decrees in concrete cases without any detailed rules on roles, responsibilities and procedures. The evaluators therefore strongly advise that a comprehensive set of detailed and generally applicable rules for an administrative procedure should be drafted and adopted, practically on the conceptual base that has already been provided by the Law on International Restrictive Measures.

282. In this respect, all the institutions should be given clear user-friendly guidance and instructions concerning their rights and obligations under the freezing mechanisms, such as in the case of errors, namesakes or requests for unfreezing and for access for basic expenses.

283. The examiners therefore recommend
- establishment of an effective system for implementation without delay by all financial institutions in this field, together with the provision of clear and publicly known guidance concerning their responsibilities;
- create and/or publicise procedures for considering de-listing requests and unfreezing assets of de-listed persons;
- create and/or publicise a procedure for unfreezing in a timely manner the funds and assets of persons inadvertently affected by the freezing mechanism upon verification that the persons is not a designated person;
- clarify the procedure for authorising access to funds/assets that are frozen and that are determined to be necessary on humanitarian grounds in a manner consistent with S / Res / 1452 (2002);
- create and/or publicise the procedure for court review of freezing actions;
- consideration and implementation of relevant parts of the Best Practice Paper.

2.4.3 Compliance with Special Recommendation SR.III

	Rating	Summary of factors underlying rating
SR.III	**NC**	• A comprehensive system for freezing without delay by all financial institutions of assets of designated persons and entities, including publicly known procedures for de-listing etc. is not yet in place.

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26, 30 and 32)

2.5.1 Description and analysis

284. The Directorate for Money Laundering Prevention (MLPD) was established in September 2001 as a body within the Ministry of Finance[81]. It is operating on the basis of the AML Law published in the Official Gazette, OG 46/2004 (July 2004). The MLPD is an administrative type FIU and has no investigative powers. The MLPD has a central role in the anti-money laundering system of "the former Yugoslav Republic of Macedonia". The AML Law includes some isolated and incoherent reference to financing of terrorism and Art. 2 mentions financing of terrorism but without comprehensive definition or reference to any other law[82]. However, the general provisions and especially Art. 1 refer only to money laundering. While Art. 3 AML Law on the competences of the MLPD refers in some aspect expressively to financing of terrorism, the rules on the duty to submit STRs to the MLPD (Art. 14 and 22) refer only to money laundering. Also in practice the MLPD's role in combating financing of terrorism is currently very limited.

285. The MLPD's staff is composed of the Director and 10 staff members organised in three units, the Analytical Unit, the Unit for Suspicious Transactions and the Unit for System Development and International Cooperation. The Director of the MLPD directly reports to the Minister of Finance.

286. The Analytical Unit, staffed with 5 employees, collects CTRs submitted by the private entities pursuant to the AML Law. CTRs from banks are submitted in electronic form, while all other CTRs are submitted in form of hardcopies. Once a month, the incoming CTRs are checked against the MLPD's database (an electronic list of all CTRs which have been submitted in electronic form so far). Only CTRs qualified especially as suspicious are checked immediately in the database. CTRs submitted in hardcopy are not fed manually in the database. Apart from this database, there is no other database available except some access to very basic data of the Public Revenue Office[83]. It was stated that it was practically impossible for the Unit to actually analyse all those

[81] The new AML/CFT Law changed the name of the FIU into "Office for Prevention of Money Laundering and Financing Terrorism" (OPMLFT). It also made the FIU a legal entity (while remaining a body within the Ministry of Finance).

[82] The new AML/CFT Law now explicitly addresses "financing terrorism" and provides in its Art. 2 item 2) a definition for it.

[83] From the second half of 2007 on, the MLPD has established a system which allows to access via contact officers data of the criminal register, the register on vehicles and the register on personal data (covering the following data of persons: names, place and date of birth, address, unique ID-number, citizenship) of the Ministry of Interior. The MLPD has since that time also direct (online) access to the Central Register and to the Register of the Stock Exchange (containing all the movements of the market but no names).

data submitted in hardcopy which seemed to be just collected without any further treatment. It was even conceded that even with more staff it would not be possible to analyse all those CTRs submitted in hard copy (especially from the Customs)[84]. Should, during the analysis, suspicion appear that a certain transaction is related to money laundering, the Analytical Unit submits the report after approval by the Director to the Unit for Suspicious Transactions for more detailed processing.

287. The Unit for Suspicious Transactions, being staffed with 2 employees, collects and analyses data received by the Analytical Unit as well as all STR. At the time of the on site visit, all STRs were submitted in hardcopy, registered and after approval by the Director analysed. Such Analysis basically consists of a check in the CTR database being the only database and additional checks in web search engines. The MLPD has no access to "World Check" or any other platform for intelligence. After such analysis, the Unit will submit a report to the Director for further processing or make an application to the Director for a request for additional information addressed to the entity having submitted the STR.

288. The Unit for International Cooperation and System Development, being staffed with 2 employees, analyses the laws in force, proposes changes and amendments, and exchanges information with foreign FIUs. In cooperation with the Analytical Unit it describes typologies and is responsible for determining the list of indicators to identify suspicious transactions and the compilation of the guidance manual. Furthermore, there was one new employee responsible for the new IT systems which were in the process of implementation. These workflows reflect what was described as the actual way of working in the units. The evaluators were informed about the existence of a Rulebook on the Organisational Setup and Operations but this was not available to the evaluators.

289. The AML Law does not require the MLPD to issue guidance. The MLPD is only obliged to determine a list of indicators for the recognition of suspicious transactions by those entities subject to the law (Art. 4 item 9). The MLPD is of the opinion that the respective supervisory bodies (Art. 38) are responsible for providing guidance and also for special programmes and trainings. Nonetheless, the MLPD issued in 2006 a guidance manual and sent it to most of the supervisory bodies (the NBM, the Public Revenue Office, the Securities Commission, the Insurance Supervisory Unit, the Bar Association and the Notaries' Commission) for further dissemination among the entities they are responsible for. This manual was available only in Macedonian language; the evaluators were told that it includes different lists of indicators for the various sectors, a list of risk countries, and some information on procedures and obligations concerning suspicious transaction reports. In addition, a book compiling the National Strategy Paper and some relevant legal texts and international recommendations in Macedonian and English language had also been distributed in the past but is currently out of stock. The forms for reporting suspicious transactions can be downloaded at the website of the Ministry of Finance. The AML Law requires the MLPD to provide training for the persons within the obliged entities who are in charge for the prevention of money laundering (financing of terrorism is not mentioned). The authorities provided a table showing that between November 2001 and May 2007 the MLPD has organised (or was at least involved in) in total 30 training seminars; overall approx. 400 persons from banks, brokers, money transmitters, savings houses, lawyers, notaries, insurance companies, casinos, real estate agents and currency exchange bureaus have been trained.

290. Pursuant to Art. 27 para 1 of the AML Law the MLPD may request data and documentation from all state bodies, financial institutions or other legal or natural entities. It is not specified under which circumstances or conditions (e.g. within which time) such requests can be executed or have to be responded to. As the MLPD has no online access to a police database, criminal

[84] Since March 2008 also Customs sends CTRs in electronic form, which enables the MLPD to analyse them with special software.

register or a court register, it has to submit written requests to such authorities[85]. There was no information available how often the MLPD sent such requests to other authorities and how quickly and in which way they responded. Overall there was the impression, that cooperation with the financial police of the Ministry of Finance (having their offices next door) was much closer than with other authorities.

291. Pursuant to Art. 25 of the AML Law the MLPD may request additional information from reporting parties in case of insufficient data concerning submitted reports. The evaluators were told that in such a case the officers of the Analytical Unit have to submit such a request to the Director of the MLPD for approval; there are internal rules how to deal with this in case of his absence. The evaluators were told, that the MLPD routinely requests for additional information (though no precise figures could be provided). The law does not provide within which time the reporting parties have to respond to such requests[86]. Furthermore, the penal provisions of Art. 41 ff of the AML Law do not provide any sanction for failure to respond to a request according to Art. 25 of the AML Law. The evaluators were told that theoretically Art. 36 para 22 of the Administrative Law stipulates a general duty for private persons to answer to authorities if obliged to. Therefore there would be the possibility to impose a fine up to the equivalent of 4 000 EUR for not fulfilling the obligation to respond to request for additional information according to Art. 25 of the AML Law. However, without a cross reference from one law to the other, the evaluators doubt that this could function; not least because this was never done in practice. The evaluators were assured that the obliged entities "usually" respond satisfactorily but no statistics were available to prove this.

292. In case of a suspicion of a "*suspicion of committed criminal offence money laundering or financing terrorism*", the MLPD shall immediately prepare and submit a report to the "*competent state bodies making decisions for any further actions*" (Art. 28). The authorities confirmed that this refers only to "committed" crimes and does not cover attempted crimes. It was acknowledged that this is a possible shortcoming of the AML Law but that this should be compensated by Art. 142 of the Criminal Procedure Code which requires all state bodies to report all crimes (covering both committed and attempted crimes) to the investigative authorities. However, there is no rule and no common understanding which state bodies (Ministry of Interior, Customs, Financial Police or State Prosecutor) are competent for which cases.

293. Art. 27 para 2 of the AML Law stipulates that the MLPD "*may upon need*" exchange information with investigative bodies. On the face of it, this is not linked with further requirements and it is not clear, which situations would cause such a case of need. This provision also contains no requirement that such a case is linked with a suspicion of money laundering or financing of terrorism; in fact, there seems to be no need of a suspicion of any criminal activity to exchange information with other authorities. However, Art. 21 of the AML Law stipulates that "*any data provided under this Law shall be confidential and may be used only for the purpose of detecting and preventing money laundering or financing terrorism*". Thus, reading Art. 27 together with Art. 21 there seem to be (useful) restrictions with regard to the provision of information by the MLPD to other state bodies. Certainly the system would benefit from an explicit cross-reference between these two provisions to avoid any difficulties. Apart from this rather unspecific provision for exchange of information, it can be noted on the positive side that Art. 27 contains a helpful provision explaining that information may not be disseminated to other bodies if this information comes from foreign authorities to combat money laundering and financing of terrorism. In these cases information exchange would only be possible if the foreign authorities would agree to this disclosure. This is a useful provision avoiding conflicts of

[85] See FN 83.

[86] Art. 34 para 2 of the new AML/CFT Law contains now such a time limit (though 10 working days appear to be quite a long period).

providing information on the one side and keeping information secret on the other side in an international context.

294. The MLPD does not have its own budget and is treated in this regard as any other department within the Ministry of Finance[87]; it is to a large extent dependent on the general budgetary priorities of the ministry. As a consequence the MLPD needs for recruitment of additional staff the approval of the Ministry of Finance. Also laws do not recognise any operative independence from the Ministry. Other than stated by the Financial Police, the MLPD rather conceded not to have any intention or plans to realise more operational, budgetary or legal independence or even autonomy. The MLPD seems to be at present fully satisfied with its budget. Though this budgetary situation does not appear to be a problem at present, in the examiners' view a separate budget may strengthen the independence of the MLPD (26.6).

295. Data collected under the law shall be confidential and only be used for the purposes of the detection and prevention of money laundering or the financing of terrorism (Art. 21). According to Art. 26 of the AML Law, any data and reports received shall be regarded as a professional secret and may only be used as determined by this law. The disclosure of professional or official secret by an official person is protected by Art. 360 Criminal Code. However the Criminal Code does not expressively extend the application of this offence to the time when an official has lost the legal status of an official person (leaving the FIU; dismissal etc.). MLPD shall keep all data at least 10 years after which period the data it "may" destroy them. There is no further rule regarding the conditions under which such data can be kept longer than 10 years and how to treat data which were not destroyed after this period.

296. There is one terminal allowing access to the Egmont Secure Web which is a stand alone terminal. CTRs are submitted in electronic form to the MLPD just by banks via secured email. STRs submitted by banks are brought by bank couriers. The MLPD's premises are located in an office building sheltering public services as well as private companies (media). To get access to the offices of the MLPD it is required to enter first the offices of the Financial Police whose entrance is secured by an electronic badge system; further on to enter the premises of the MLPD from the Financial Police one has to pass a door which should be locked and is under video surveillance. This double barrier was in function during the first day of the visit, while during the rest of the days these doors were accessible without the necessity of any individual badge. Furthermore, the premises of the MLPD are accessible through a back door leading to the backstairs in the building. This backdoor was not locked during the days of the visit, bearing the risk that unauthorised persons could get access to the premises of the MLPD.

297. Art. 4 of the AML Law stipulates that the MLPD has to file an activity report to the Minister of Finance upon request, but at least once per year. The evaluators were told, that in practice the MLPD drafts such a report once per year and that it is published on the website of the Ministry.

298. The MLPD is a member of the Egmont Group since June 2004. The evaluators were told that the FIU has signed till the time of the onsite visit Memoranda of Understanding with the FIUs from 15 countries (see below para 805). Pursuant to Art. 37 of the AML Law, the MLPD may submit data received to the authorised bodies and organisations of other states upon "their request" and it may conclude agreements with such authorised state bodies or international organisations regarding the detection and prevention of money laundering and financing of terrorism. This seems to include all information and intelligence protected by the official secret pursuant to Art. 26 of the AML Law. According to the Egmont Principle of Information exchange

[87] The new AML/CFT Law now addresses explicitly the issue of a budget for the FIU: Art. 3 para 4 stipulates that "*the assets for funding the Office shall be provided from the Budget of the Republic of Macedonia, whereas 10% shall be provided from the confiscation performed to the benefit of the Republic of Macedonia*" (see also para 4).

members are also expected to disseminate information spontaneously to a foreign FIU when the member has to assume that such information could be of significance to the foreign FIU. As Art. 37 of the AML Law expressively requires a request of the foreign FIU in order to allow dissemination of information, there is some serious doubt, whether spontaneous dissemination without prior request is allowed according to the law. However, some of the Memoranda of Understanding between the MLPD and other FIUs refer also to spontaneous exchange of information and thus seem to go beyond the language of Art. 37 of the AML Law[88].

299. According to the Law on Infraction Procedure and Sanctioning, the MLPD reports any observations of infractions of the AML Law by obliged entities to the respective supervisory body. The respective supervisory body will decide on reporting the case to the judicial authorities while a special department of the court is competent for the penal decision. The MLPD does not receive feedback from the supervisory bodies nor the courts regarding decisions taken subsequent to the MLPD's reports.

300. All officers of the MLPD must have at least a bachelor degree in law or economics or must have graduated from the police academy. According to the regular recruitment procedure there will be held a public job advertisement on the basis of the profile description and the set of essential and additional favourable requirements. Alternatively a new officer could be deployed from another state authority to the MLPD. Additionally essential requirements also include sufficient skills in English language and a state offered certificate concerning the handling of classified information. There are no further essential requirements or additional trainings after employment or deployment. Before recruitment, police records of a candidate are checked. While some officers have been employed directly after graduation the majority has been deployed from other parts of the Ministry of Finance, none of them having any investigative experience or other practical professional experience in the field of criminal investigations. After starting to work for the MLPD the officers are mainly trained on the job. The authorities commented on this that they do not see a need that the staff of the MLPD should have professional experience in the field of criminal investigations considering that the MLPD is an administrative type of FIU which tasks do not cover criminal investigations. The evaluators have been informed that representatives of the MLPD have participated in some international conferences covering the topic of money laundering.

301. Pursuant to Art. 3 of the AML Law, the director of the MLPD is appointed for a four years term by the government of "the former Yugoslav Republic of Macedonia" upon proposal of the Minister of Finance. The Minister of Finance is free in his decision and a prior public job advertisement is not required.

302. Since MONEYVAL's second round evaluation report (which was adopted in September 2003), the number of staff of the MLPD has increased from 4 to 11. Nonetheless the evaluators have doubts whether the number of staff is able to comply with the tasks dedicated to the MLPD: particularly the number of CTRs being submitted on hardcopies put a huge workload on the MLPD. The lack of resources may also be a reason that so far guidance to the obliged entities is very limited. Also the number of pending cases raises serious doubts about the sufficiency of human resources.

303. At the time of the on-site visit a new electronic system financed by the European Agency for Reconstruction was installed and configured in a specially secured room, but was not yet operational. About 1 million EUR has been invested in up-to-date hardware and software as well as in training of users. There is an email server, a web server and an Oracle Server having been installed two month before the time of the visit, but these instruments were not being used yet. The implementation of the system was still in progress and overseen by specialists acting on

[88] Art. 44 para 2 of the new AML/CFT Law now explicitly allows for spontaneous dissemination of information.

behalf of the European Agency for Reconstruction. The web-server is secured by a firewall. At the time of the onsite visit the MLPD used the ministry's IT-system. It is intended that the new system will be completely independent from the IT-system of the Ministry of Finance. It was planned to put in place batteries for supply of electricity in case of a cut of electricity, but this means of security was not yet in place (but is part of the EU-conditions to fulfil). At the time of the on-site visit, they were still completing the migration of the data of the old system (CTRs which were submitted in electronic form by banks) to the data of the new system; the only IT-tool in use was the email system for information exchange with banks for submitting CTRs to the MLPD. This email system is encrypted with respective keys just for banks. All STRs and other (i.e. from non-banks) CTRs were still submitted by post mail (with approx. 2, 3 or more days of delay) or occasionally by bank courier (what seemed not to be general practice). Apart from a very limited access to basis data of the State Revenue Authority, information exchange between state bodies is done also in paper form, namely in relation to the Financial Police, Ministry of Interior and Customs.

304. By request of the evaluation team during the on-site visit, the authorities filled in the following tables concerning the number of CTRs/STRs received by the FIU and the outcome of these reports:

2004											
Statistical Information on reports received by the FIU								Judicial proceedings			
Monitoring entities, e.g.	reports received concerning			cases opened by FIU		notifications to law enforcement/ prosecutors		indictments		convictions	
	transactions above threshold	suspicious transactions									
		ML	FT	ML	FT	ML	FT	ML	FT	ML	FT
commercial banks	35.461	14	0	30	0	5	0	0	0	0	0
insurance companies	0	0	0								
Notaries	40	1	0								
Currency exchange	0	0	0								
broker companies	0	0	0								
securities' registrars	0	0	0								
lawyers	0	0	0								
accountants/auditors	0	0	0								
company service providers	0	0	0								
customs	489	0	0								
competent state authorities	0	15	0								
saving houses	2	0	0								
others (please specify)	0	0	0								
Total	35.992	**30**	**0**								

2005											
Statistical Information on reports received by the FIU								Judicial proceedings			
Monitoring entities, e.g.	reports received concerning			cases opened by FIU		notifications to law enforcement/ prosecutors		indictments		convictions	
	transactions above threshold	suspicious transactions									
		ML	FT	ML	FT	ML	FT	ML	FT	ML	FT
commercial banks	75.655	26	0	41	0	6	0	2	0	0	0

insurance companies	0	0	0								
Notaries	33	1	0								
Currency exchange	0	0	0								
broker companies	0	0	0								
securities' registrars	0	0	0								
lawyers	6	2[89]	0								
accountants/auditors	0	0	0								
company service providers	0	0	0								
customs	285	0	0								
saving houses	7	0	0								
competent state authorities	0	12	0								
others (please specify)	0	0	0								
Total	**75.986**	**41**	**0**								

2006											
Statistical Information on reports received by the FIU								**Judicial proceedings**			
Monitoring entities, e.g.	**reports received concerning**			**cases opened by FIU**		**notifications to law enforcement/ prosecutors**		**indictments**		**convictions**	
	transactions above threshold	**suspicious transactions**									
		ML	**FT**	**ML**	**FT**	**ML**	**FT**	**ML**	**FT**	**ML**	**FT**
commercial banks	67.033	27	0								
insurance companies	0	0	0								
Notaries	9	0	0								
Currency exchange	0	0	0								
broker companies	0	0	0								
securities' registrars	0	0	0								
lawyers	0	0	0	36	0	10	0	3	0	0	0
accountants/auditors	0	0	0								
company service providers	0	0	0								
customs	724	2	0								
saving houses	18	0	0								
competent state authorities	0	7	0								
others (please specify)	0	0	0								
Total	**67.784**	**36**	**0**								

305. Apart from the fact that the number of STR seems to be very low, the evaluators have been informed that 19 cases of 2005 and 13 cases of 2006 were at the time of the on-site visit still pending in the MLPD's workflow and not ready for decision whether to submit them to the competent bodies or to close the file. Though the authorities explained that for these cases additional data and information were collected/analysed, it has to be said that this number is an astonishing backlog considering that the MLPD receives only each or each second week an STR.

[89] These 2 "reports" were submitted by lawyers over request of the MLPD and cannot be considered as "STR" like commonly understood; see also para 669.

306. An excerpt of the tables above (including also data from the year 2003) shows that the vast majority of STRs is submitted by banks:

STRs received by the FIU							
Year	Financial institutions		Non-financial institutions			State bodies and institutions	Total
	Banks	Other fin. inst.	Customs	Notaries public	Lawyers		
2003	17	0	0	0	0	5	22
2004	14	0	0	1	0	15	30
2005	26	0	0	1	2	12	41
2006	27	0	2	0	0	7	36
Total:	84	0	2	2	2[90]	39	129

307. The authorities provided the following figures concerning received CTRs:

Entities	2002	2003	2004	2005	2006	Total
Banks	15388	21767	35461	75655	67033	215304
Savings houses	3	6	2	7	18	36
Brokers	0	0	0	0	0	0
Stock Exchange	0	0	0	0	0	0
Insurance Companies	4	0	0	0	0	4
Exchange Offices	1	0	0	0	0	1
Notaries	0	0	40	33	9	82
Lawyers	0	0	0	6	0	6
Customs	1038	911	489	285	724	3447
State Bodies	0	0	0	0	0	0
Total	16434	22684	35992	75986	67784	218880

308. Also concerning CTRs, it can be seen that banks are the most active ones amongst the obliged entities. The authorities took the view that this is a result of Art. 13 of the AML Law which prohibits each cash payment or settlement or receiving cash money equal or above 15 000 EUR in MKD equivalent (regardless whether it is in a single or several connected transactions). Transactions above this threshold may only be performed through a financial institution authorised to perform payment operations (for the reasons to introduce such a provision see para 394 below). However, though such transactions should be channelled mainly via banks, this does not mean that no other obliged entities could be involved in such transactions – this can be even seen from the figures above that notaries submitted 82 CTRs. Thus more outreach to the non-banking sector is required for a better understanding of the obligations to submit CTRs.

309. The CTRs submitted by banks are put daily into an electronic list; data submitted by Customs are not put in this list or otherwise analysed.[91]

310. All the MLPD's activity so far resulted in 2 judicial money laundering proceedings in 2005 and 3 in 2006[92].

[90] See FN 89.

[91] Since March 2008 also Customs sends CTRs in electronic form, which enables the MLPD to analyse them with special software.

[92] During the pre-meeting, the authorities informed about the outcome of two proceedings from 2006: in the first case 14 persons were convicted for money laundering and predicative offence fraud, falsification of documents and abuse of office; over initiative of the MLPD, 750 000 EUR and property worth more than 2 000 000 EUR were frozen and subsequently confiscated. Additionally, by court decision, another 750 000 EUR were frozen

311. There was no further possible statistics regarding the causes of suspicion, the number of reports submitted to which of the "competent bodies". The statistics concerning the number of requests sent to foreign FIUs and received from foreign FIUs can be found under Section 6.5 of this report (para 822). There was no further information available regarding the countries involved, the measures carried out or the duration of these procedures. The evaluators were only informed that most cases were related to the neighbouring countries. There were also no statistics concerning the number of spontaneous dissemination of information. There was also no statistics regarding the number/kind of predicate offences (though such a statistics would have had just one number, as all predicate offences of money laundering so far were tax offences).

2.5.2 Recommendations and comments

312. Some parts of the AML Law refer only to money laundering but do not provide a clear legal mandate for the MLPD to deal with terrorist financing issues. Also in practice the MLPD's role in combating financing of terrorism is very limited. It is recommended to make clarifications to the AML Law with regard to the prevention of terrorist financing, particularly amending the relevant provisions and make it absolutely clear that they also cover the prevention of terrorist financing.

313. The MLPD has no timely access to a police database, criminal register or a court register; in such cases, it has to submit written requests to such authorities. This may unnecessarily prolong the process to gather information[93].

314. The MLPD "*may upon need*" exchange information with investigative bodies. The AML Law is not entirely clear, which situations would cause such a case of need and there are also some doubts whether such cases have to be linked with a suspicion of money laundering or financing of terrorism. It should be clarified that this possibility is reduced to cases where there are grounds to suspect money laundering or financing of terrorism.

315. The fact that the MLPD does not have its own separate budget does not appear to be a problem at present, but in the examiners' view a separate budget may strengthen its independence (particularly with regard to the need of approval of the Ministry of Finance to recruit additional staff or just to buy computer hardware or software).

316. Banks send the vast majority of STRs (and also CTRs) to the MLPD; the authorities should undertake efforts to increase the number of STRs submitted by other reporting entities. Considering the low number of CTRs from the non-banking sector, it should be evaluated whether all obliged entities follow their reporting obligations.

317. The MLPD does not have a sufficient number of staff to cover all its tasks (e.g. analysing STRs, CTRs) satisfactorily.

318. Customs Authorities send a huge number of CTRs in hard copies in huge quantities which does not allow a systematic analysis, particularly in case of multiple cash transactions in smaller amounts over a period of time by the same persons. Thus, the authorities should consider the use of an electronic reporting system also for these CTRs similar to the system used by banks in order to allow a better analysis.[94]

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and subsequently confiscated. In the second case, four persons were convicted where the predicative offence was abuse of office.

[93] see FN 83.

[94] Since March 2008 also Customs sends CTRs in electronic form, which enables the MLPD to analyse them with special software.

319. The MLPD does not keep sufficient statistics, such as the number and results of the reports disseminated to other institutions (investigations, indictments, convictions, persons involved, cases); the number of spontaneous dissemination of information etc.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors underlying rating
R.26	**PC**	• Some parts of the AML Law refer only to money laundering but do not provide a clear legal mandate for the MLPD to deal with terrorist financing issues. Also in practice the MLPD's role in combating financing of terrorism is very limited. • The MLPD has no timely access to a police database, criminal register or a court register; in such cases, it has to submit written requests to such authorities. This may unnecessarily prolong the process to gather information[95]. • The provisions regulating the exchange of information between the MLPD and investigative bodies are too unspecific and there is some unclarity of the AML Law whether it is allowed to exchange information with other state bodies even without a suspicion of any criminal activity.

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30 and 32)

2.6.1 Description and analysis

Recommendation 27

General

320. The competent authorities to investigate money laundering cases in "the former Yugoslav Republic of Macedonia" are the Ministry of Interior, the Financial Police and the Customs: Pursuant to Art. 144 Criminal Procedure Code, the Ministry of Interior is responsible to undertake all necessary measures to disclose the criminal offender or the collaborator in order to prevent them of hiding or escaping, to detect and secure the traces and objects which may serve as evidence of the crime as well as all information which could be useful for the successful conduction of the criminal procedure. According to an amendment to the Criminal Procedure Code (Art. 142a, 144a, 145 para 2), the Financial Police, which is an investigative body of the Ministry of Finance, is competent to investigate (with the same powers like the Ministry of Interior) in cases of tax offences, money laundering (irrespective of the predicate offence), smuggling, illicit trade and other offences generating income and being subject to taxes or customs. Furthermore, authorised persons of the Customs may investigate on the basis of Art. 145 para 1 Criminal Procedure Code in case of suspicion of a catalogue of criminal offences, which includes also money laundering (irrespective of the predicate offence). For terrorist financing investigations exclusively the Ministry of Interior is competent.

[95] see FN 83.

321. Special investigative measures have to be ordered in pre-investigative procedures by the public prosecutor or the investigative judge; in investigation procedures exclusively the investigative judge has to decide upon such measures. In cases of disagreement between the Public Prosecutor and the Investigative Judge, a Council of the Court will decide. Special investigative measures may be executed by the Ministry of Interior, the Customs Authority or the Financial Police.

The Ministry of Interior

322. At the time of the onsite visit, the Ministry of Interior was in the process of reorganisation and provided two different organisational charts, the past chart and a chart showing an organisational structure which was not yet implemented. The Unit Combating Corruption and Money Laundering (ML Unit) is part of the Financial Crime Sector of the Organised Crime Department of the Central Police Services; it has five officers who are required to have working experience, foreign language and basic IT skills. It was intended to extend staff up to nine officers including the chief by the end of 2007. In addition seven field officers being part of the Sector for Financial Crime with similar professional background are deployed to the major cities in the country and may support the work of the ML Unit.

323. In case of special investigative measures, units of the Section for Special Investigative Techniques, which is within the Organised Crime Department, can be requested for support. Furthermore, the liaison offices of the National Central Bureau of Interpol (IP Skopje) and the Southeast European Cooperative Initiative (SECI, based in Bucharest) can give additional support as well as some liaison officers abroad.

324. The ML Unit does not use any electronic investigation case management system or case information system. It has only access to the central person register, a register of criminal charges and a register for wanted persons. All other information has to be requested in writing from other authorities.

325. As far as financing of terrorism is concerned, the ML Unit considers itself as competent investigative authority. The authorities are of the opinion that there is currently no risk of national terrorism in the country; namely, the Administration for Security and Counter-Intelligence, being a Department of the Ministry of Interior separate from the Central Police Services, as well as the Intelligence Agency is in charge of observations in this field. As with cases of financing of terrorism, the Organised Crime Department might get involved in investigations (which has not yet happened so far).

326. The evaluators were informed that the Ministry of Interior initiated four cases in 2005 and 2006. When the MLPD was asked why the predicate offences of all money laundering cases were exclusively related to tax offences, it was explained that cases relating to other predicate offences (e.g. trafficking in human beings, drug trafficking (Balkan Route), forced prostitution, corruption etc.) should be produced by the Ministry of Interior. Indeed the Ministry of Interior declared that the ML Unit and the Economic Crime Unit (being also competent for corruption, smuggling of goods, cyber crime and money forgery) are working in practice, as far as money laundering is concerned, mainly on cases of tax evasion. In practice, investigations in money laundering cases dealing with proceeds not related to tax offences, obviously do not achieve similar results[96].

327. There are no legislative measures allowing the Ministry of Interior when investigating a money laundering case to postpone or waive the arrest of a suspected person and/or the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering.

[96] After the onsite visit, there have been two money laundering convictions where the predicate offences were amongst other fraud, falsification of documents and abuse of official authority.

Representatives of the Ministry of Interior explained that in practice a postponement of arrest or seizure will be agreed with the responsible Public Prosecutor during an ongoing operation which satisfies criterion 27.2.

328. The Ministry of Interior does not keep any kind of detailed statistics, especially figures on the number of investigations in money laundering, the number of investigations initiated by the MLPD, by other authorities, by foreign authorities and own initiative as well as on the results of these investigations.

The Financial Police

329. On the basis of the Law on Financial Police (FinPL), which is in force since 1 September 2002, the Financial Police was established as a body within the Ministry of Finance. It is competent for pursuing financial crimes as described by Art. 5 FinPL. The Financial Police interprets its competence to be responsible largely for investigations in economical organised crimes with focus on tax and customs offences. The law mentions explicitly money laundering, but the evaluators were told that the Financial Police also feels competent in relation to cases of a suspicion of terrorist financing (though this is not provided for by law)[97]. The Financial Police is vested with all typical police powers and beyond that the Financial Police may execute search of suspect's business and other premises by its own estimate or upon request by the Public Prosecutor (Art. 6 FinPL). The Financial Police is proposing a new law and desires more budgetary independence allowing them to take their own internal decisions on priorities (e.g. currently the Financial Police needs external budgetary approval for travels outside the capital which appears not satisfactory to them)[98].

330. The Financial Police is staffed with 10 officers and informed the evaluation team that a staff of 35 officers would be optimal[99].

331. Financial Police officers attended a three month training concerning international banking and money laundering. They also attended other seminars covering the following topics:

- Best practices in financial investigations
- Strategies on financial investigations
- Prevention of financing terrorism
- Risks at tax controls
- Prevention of money laundering, etc.

332. For recruitment work experience of 10 years and a university degree in law or economy or graduation at the police academy are required. Applicants should not be older than 35 years. Recruitment is possible by public or internal advertisement or by deployment. Before recruitment, the criminal records of candidates are checked and a screening procedure has to be passed (also in case of internal deployment). Candidates have to give a declaration of finances and deposits and are screened regarding their financial situation, properties and family. However, there is no on-going screening of the officer's financial situation after commencement of duties.

[97] During the pre-meeting, the authorities informed that according to the new Law on Financial Police, the Financial Police is explicitly competent also in financing of terrorism issues.

[98] During the pre-meeting, the authorities informed that meanwhile the Financial Police has obtained an independent budget.

[99] During the pre-meeting, the authorities informed that since the onsite-visit the staff of the Financial Police staff has been increased up to 25 persons.

333. Regarding the possibilities to postpone or waive the arrest of a suspected person and/or the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering, the same conclusions as mentioned above in relation to the powers of the Ministry of Interior apply (para 327), as the Law on Financial Police and the provisions regarding the financial police's competences make no amendments to the deficient regulations in the CPC which is also applicable in those cases the Financial Police is investigating in money laundering cases and on the grounds of the CPC.

The Customs Authority

334. According to Art. 145 para 1 CPC, the Customs Authority is also charged with the investigation of money laundering cases. However, in practice it notifies in case of a suspicion of money laundering the MLPD and/or the Financial Police to carry out investigations.

335. After sending the CTRs to the MLPD, a copy of each CTR is also sent to the Sector for Investigation and Analysis of the Customs and analysed there. As mentioned before, CTRs of the Customs are collected by the MLPD but not further analysed due to the fact that they are sent as hardcopies. Although the Customs submitted a large number of CTRs to the MLPD, these reports did not generate any results.

336. The Customs Administration Law requires for issuing a Code of Conduct and stipulates expressly that conduct contrary to the Code of Conduct may be subject to disciplinary measures, including dismissal (Art. 72 Customs Administration Law). The evaluators were informed that such a code of conduct was actually issued, though the content of such code of conduct could not be assessed.

The Public Prosecution Office

337. The Public Prosecutor's Office is an "*independent state organ*" responsible for prosecuting crime and other punishable acts (Art. 2 Law on the Public Prosecutor's Office, PPOL); it is required to exercise its functions in a "*lawful, impartial and objective manner*" (Art. 5 PPOL). The prosecutors are appointed for a six years term (Art. 5 para 2 PPOL), any form of "*political organising and acting are prohibited in the Public Prosecutor's Office*" (Art. 13 PPOL). If the Public Prosecutor after expiration of the six years term is not reappointed, he shall continue to perform duties of a deputy public prosecutor in the same office (Art. 83 para 1 PPOL).

338. According to Art. 42 para 2 item 1 CPC, the Public Prosecutor is in charge to direct the preliminary procedures. He may request the Ministry of Interior to collect evidence (Art. 152 para 2 CPC) and the Ministry of Interior is obliged to respond to such a request within 30 days, in exceptional difficult cases, e.g. organised crime, this time is extended to 90 days (Art. 152 para 7 CPC). The Public Prosecutor has to be informed immediately about measures which have been undertaken by the Ministry of Interior (Art. 152 para 8 CPC).

339. However, at the time of the onsite visit the evaluators were informed that in practice the Public Prosecutor basically proceed before the courts (Art. 19 PPOL), in pre-investigation or investigation procedures they only act upon request of the Ministry of Interior or the Financial Police. Apart from the competences in respect of the use of special investigative measures the prosecutors have usually no active role in investigations and they do not give further orders to the investigating police authorities and do not influence the collection of evidence. Instead, the law provides for a more directing role. For instance the evaluators were informed that the prosecutors usually do not give orders to the investigating police authorities and, apart from the exceptions mentioned, have no influence on the collection of evidence. Quite the contrary, the operation of the prosecutor in investigations is determined by the different police authorities. Only in some cases the prosecutors act on their own initiative: the evaluators were informed that this is the case

when it comes to acts related to organised crime and other criminal offences which attract a special "interest". There are no prosecutors specialised in money laundering or economic crime.

340. According to the Prosecutors, the main issues concerned with are tax issues and abuse of professional position (corruption). The only money laundering conviction was a case of a payment on the basis of a fictitious invoice and subsequent back-payment. Public prosecutor do not keep statistics about notifications of money laundering suspicions, number of money laundering proceedings, indictments etc.

Coordination of money laundering investigations

341. As already stated in the first round evaluation report and again in the second round evaluation report, there is widespread uncertainty as to which investigative authority is competent for which cases. The Public Prosecutor stated not to know in which sort of cases the Ministry of Interior or the Financial Police is the competent investigative authority. The MLPD stated that they tend to submit cases involving legal persons to the Financial Police while cases involving natural persons are submitted to the Ministry of Interior; the Financial Police simply stated that cooperation with the MLPD is much closer than cooperation with the Ministry of Interior because they work next door to each other. During the pre-meeting, representatives of the MLPD further explained that they forward STRs to the investigative bodies according to the technical capacities of these bodies; other criteria are said to be defined by the laws which define the competences of the Ministry of Interior and the Financial Police. However, it should be noted that the relevant laws are not that clear concerning the competencies of these investigative bodies as both, the Ministry of Interior and the Financial Police, are competent in money laundering investigations regardless of the type of predicate offence. Consequently, it cannot be said that it is predetermined by law to which investigative body the MLPD should forward its reports for further investigations (the technical capacities of the investigative bodies can anyway not be regarded as a relevant factor in this regard).

342. As a consequence of the second round evaluation report the so-called "Council for Combat against Money Laundering and Financing Terrorism" (see above para 80) has been established to improve the structure of the system. Subsequently a Memorandum of Understanding has been concluded between the Ministry of Interior and the Ministry of Finance. No English version of this Memorandum was available but the evaluators were told that the Ministry of Interior and the Ministry of Finance agreed in it that both police forces are competent in investigating the same matters.

343. Though the crime statistics shows significant occurrence of aggravated theft, fraud, abuse of official duty, bribery offences, trafficking in human beings, illicit trade in drugs and arms and many other offences generating proceeds and typically being predicates to money laundering, the efforts both of the Financial Police as well as the Ministry of Interior seem to be almost exclusively focused on money laundering in relation to tax evasion.

344. On the positive side, it should be noted that the Law on the Public Prosecutor's Office (OG 74/04) allows the Public Prosecutor in cases of organised crime, corruption and other criminal acts, for which the Law provides a minimal sentence of four years, to ask for one or more authorised persons from competent state bodies to be put at the disposal of the Public Prosecutor's Service for a certain period of time. This provision was presented to allow a better co-ordination of the activities of all involved competent bodies and collecting of relevant data and information at one place.

Additional elements

345. Art. 146 para 1 CPC stipulates that special investigative measures may be undertaken "*for providing information and evidence necessarily needed for the successful conduction of the criminal procedure which could not be otherwise gathered or the gathering would be accompanied with big difficulties, for criminal acts for which the law proscribes penalty of imprisonment of at least four years, and for the criminal acts for which the law prescribes penalty of imprisonment of at least five years and for which there is ground suspicion that are committed by an organised group, gang or other criminal association*". The following special investigative measures are provided for by law:
- monitoring of communication and entrance in home or other premises or in means of transport;
- searching in computer systems, confiscation of computer systems or parts of it storing the data;
- secret surveillance, monitoring and visual and sound recording of persons and objects;
- simulating purchase of objects, simulating bribery and acceptance of a bribe;
- controlled transportation and delivery of persons and goods;
- use of undercover agents;
- open pseudo-bank accounts for the purpose of depositing assets deriving from criminal activity;
- register pseudo-companies or use of existing companies to collect data.

346. In an ongoing investigation, the investigative judge decides upon request of the public prosecutor on the approval of such a measure. During pre-investigative procedures again the investigative judge decides upon request of the public prosecutor on the approval of such measures except of monitoring of communication in public space and means of transportation and monitoring of premises. In cases of pre-investigative procedures and as long as there is no known suspect, the prosecutor may decide without approval of the investigative judge on the execution of such measures except monitoring of communication and searching in computer systems. These measures may last four months at most and can be extended after anew decision up to three more months.

347. At the time of the on-site visit, there was no legal basis for telephone tapping or cross-border operations like hot pursuit, surveillance or controlled deliveries. Though a new Law on Telephone Interception providing for telephone tapping had been adopted in November 2006, it was not yet in force; it will enter into force after a 6-months period for enacting the necessary by-laws for its application.

348. The evaluators were informed that about 70 police officers were trained in the execution of special investigative measures and could be assigned to operations if required.

349. Though there is a legal basis and police officers have been trained, such special investigative measures have been used so far only four times in corruption cases (audio and video monitoring; fictitious loan of objects, simulated or accepted bribes) but never in a money laundering investigation.

Recommendation 28

350. Pursuant to Art. 161 ff CPC, investigations shall be conducted on request of the public prosecutor submitted to the investigative judge. Pursuant to Art. 214 search of residence and other premises of the accused or any other person can be conducted in order to find and confiscate traces of crime or objects significant for the criminal procedure. Such search requires an order by the court; in case of urgency and danger to otherwise jeopardize a successful search, the Ministry of Interior may search premises and persons and temporarily confiscate objects (Art. 157 CPC).

351. The Ministry of Interior may also temporarily confiscate objects which can be confiscated in a criminal investigation or pre-investigation in case of urgency and danger to otherwise jeopardize a successful confiscation or while executing some court order (Art. 219 ff CPC).

352. Temporary confiscation of objects also includes freezing of funds and bank accounts and financial transactions or gains from criminal acts until the end of the procedure and final decision. Such money has to be kept in a safe or deposited and held in a special account. No one can call upon bank secrecy to avoid the execution of the court decision (Art. 220 para 8 CPC).

353. Art. 222 lists items which cannot be confiscated; this list includes *inter alia* documents addressed from the accused to his defence lawyer (Art. 222 para 1 item 2 CPC).

354. Temporary confiscation of objects also includes records which may serve as evidence (Art. 225 CPC). Persons holding such objects or records are obliged to deliver them upon request. Refusal to produce such objects or records may be punished with a fine ranging from 100 to 1 000 EUR which seems to be not very dissuasive even taking into account the domestic economical situation.

355. The CPC also allows for hearings of witnesses. Anybody who is likely to be able to make statements concerning the case under investigation or other important circumstances shall be summoned as witness. Certain persons are exempted from the obligation to bear witness; this includes relatives, religious confessors, lawyers, physicians, social workers and psychologists about facts they learned while in executing their professional duties. Apart from these persons, also persons keeping military secrets cannot be heard as witness without release from this duty; the same applies for a "*counsel of the accused for what he has been entrusted with by the accused as his counsel, unless the accused himself requires it*".

356. The coercive measures described above can be applied in all criminal procedures and crimes pursuant to the Penal Code and the CPC, and therefore also in proceedings related to money laundering.

357. The Financial Police may act on the basis of the CPC as well as on the basis of the Law on Financial Police both laws providing similar competences. According to the Law on Financial Police, coercive measures like the execution of searching the suspect's business premises can be executed without any order of judiciary authorities. Only imposing a prohibition on the suspect to dispose of his property and accounts has to be ordered by a court decision (Art. 6 para 1 item 12 of the Law on Financial Police).

Recommendation 32

358. At the time of the onsite visit, no authority kept comprehensive and detailed statistics containing precise figures of money laundering investigations and prosecutions also providing information on the nature of the respective money laundering offences and the predicates involved. The Ministry of Interior provided the evaluation team with statistics concerning the number of charges sent to the Public Prosecution Office concerning money laundering, persons involved, damage/economic loss because of the crime, and the type of predicate offence; but the data were not always consistent with the data provided by other authorities (see para 172 above). Furthermore, the Ministry of Interior does not keep statistics concerning figures on the number of investigations in money laundering, the number of investigations initiated by the MLPD, by other authorities, by foreign authorities and own initiative as well as on the results of these investigations.

359. However, in preparation for the pre-meeting, the authorities advised that the Customs authorities keep and regularly update a database of initiated criminal charges since 01.01.2004. It

was said to contain data on the perpetrator, the place and the date when the act was committed, the type, the quantity and the value of goods subject to the criminal act, the avoided levies, the legal basis, the number of the charge and other data. According to this database, in the period from 01.01.2004 until 02.06.2008, the Customs Administration initiated a total of 494 criminal charges against 641 natural persons as well as against 225 legal persons, for goods in a total amount of MKD 202,611,368.84 (EUR 3,321,500.00) wherein the amount of the evaded levies was MKD 546,033,346.66 (EUR 8,951,400.00). Out of these charges, there were no criminal charges submitted related to possible money laundering. Until 01.01.2007 the records were kept in writing and as of 01.01.2007 the records have been kept in parallel, in writing and in electronic form.

360. Furthermore, the authorities referred to data kept by the Financial Police. The information was that:

- in the course of the year 2005, a total number of 73 criminal charges were filed against 84 persons, wherein 69 criminal charges related to possible money laundering, in which tax evasion was considered as a predicate offence, while damage to the Budget of "the former Yugoslav Republic of Macedonia" was caused in the amount of MKD 233,200,260.50;
- in the course of the year 2006, a total number of 50 criminal charges were filed against 69 persons, wherein 49 criminal charges related to possible money laundering, in which tax evasion was considered as a predicate offence, while damage to the Budget of "the former Yugoslav Republic of Macedonia" was caused in the amount of MKD 220,040,718.00
- in the course of the year 2007, a total number of 41 criminal charges were filed against 61 persons, wherein 21 criminal charges related to possible money laundering, in which tax evasion was considered as a predicate offence, while damage to the Budget of "the former Yugoslav Republic of Macedonia" was caused in the amount of MKD 79,921,150.50.

361. However, it should be said that the Customs' database is beyond doubt a useful tool yet it is not the same as commonly understood under "statistics" which means not only the collection but also the analysis, interpretation, explanation and presentation of data (e.g. in a table, graph etc.). With other words, the data kept by Customs provide a solide basis to produce statistics but they do not present statistics *per se*. The same applies also for the data of the Financial Police which only provides the raw material for statistics (though the data are more detailed and comprehensive).

2.6.2 Recommendations and comments

362. The MLPD is disseminating its reports for further investigation either to the Financial Police or to the Ministry of Interior, but there are no clear criteria providing a distinction which body is competent in which cases.

363. Though the crime statistics shows significant occurrence of aggravated theft, fraud, abuse of official duty, bribery offences, trafficking in human beings, illicit trade in drugs and arms and many other offences generating proceeds and typically being predicates to money laundering, the efforts both of the Financial Police as well as the Ministry of Interior are almost exclusively focused on money laundering in relation to tax evasion.

364. Officers of the relevant departments within the Ministry of Interior and Customs should be provided with adequate training for combating money laundering and terrorist financing.

365. At least one of the involved authorities should keep comprehensive, accurate and detailed statistics containing precise figures of money laundering investigations and prosecutions (particularly in terms of the number of cases) also providing information on the nature of the respective money laundering offences and the predicates involved.

2.6.3 Compliance with FATF Recommendations 27 and 28

	Rating	Summary of factors underlying rating
R.27	**LC**	• The MLPD is disseminating its reports for further investigation either to the Financial Police or to the Ministry of Interior, but there are no clear legal criteria determining which body is competent in which cases. • Money laundering investigations are almost exclusively focused on money laundering in relation to tax evasion.
R.28	**C**	

2.7 Cross Border Declaration or Disclosure (SR. IX)

2.7.1 Description and analysis

366. In "the former Yugoslav Republic of Macedonia" the legal framework governing the transfer of currency and bearer negotiable instruments across borders consists mainly of the:
- Law on Customs Administration,
- Customs Law,
- AML Law,
- Criminal Procedure Code,
- Law on Foreign Exchange Operations,
- Decision on Terms and Conditions and Amount of Cash in Domestic Currency, Cheques and Monetary Gold that can be imported in or exported from "the former Yugoslav Republic of Macedonia",
- Decision on terms and Conditions and Amount of Cash in Foreign Currency, Cheques and Monetary Gold that can be imported in or exported from "the former Yugoslav Republic of Macedonia".

367. According to Art. 10 para 8 of the Law on Customs Administration, the Customs Administration is responsible for the control of the import and export of cash in domestic and foreign currency, cheques and monetary gold across the border line of "the former Yugoslav Republic of Macedonia". Persons are controlled and checked in a random and selective way. According to Art. 16 para 1 of the AML Law, the Customs Administration is obliged to register each import and export of cash or securities through the customs line, "*if the amount exceeds maximum ceiling stipulated by Law*". The AML Law does not specify to *which* law it refers; the evaluators were advised that this is a reference to the whole domestic legislation; however, for the purposes of Art. 16 only the legislation mentioned above under para 366 seems relevant.

368. Residents and non-residents are subject to certain restrictions regarding import and export of cash in any currency:
a) export of currency:
Resident natural persons may export up to the equivalent of 2 000 EUR without documentation or up to 4 000 EUR with documentation issued by an exchange office or a bank; exports exceeding 4 000 EUR are not permitted for resident natural persons. Non-residents may export up to 2 000 EUR without documentation; export of banknotes exceeding 2 000 EUR is only allowed if a certificate of imported banknotes issued by the customs authorities is presented.
b) import of currency:
Residents may import up to the equivalent of 10 000 EUR without documentation; imports exceeding this amount have to be declared to the customs authority and will be reported as CTRs to the MLPD. Non-residents may import up to 2 000 EUR without documentation; amounts exceeding that amount require documentation from the customs authorities. Amounts exceeding

the equivalent of 10 000 EUR have to be reported by the Customs Authority to the MLPD as CTR (Art. 16 of the AML Law).

369. Any person entering or leaving the country may be asked to disclose the amount of cash and cheques (but no other bearer negotiable instruments) in any currency that exceeds the above mentioned thresholds; the evaluators were informed that "the former Yugoslav Republic of Macedonia" is envisaging to implement a declaration system covering in addition also bearer securities above a certain threshold. The authorities commented on this that securities issued in "the former Yugoslav Republic of Macedonia" are exclusively issued in electronic form and that it is therefore not possible to carry them in physical form. Nonetheless, the authorities should proceed to cover also bearer securities in the future (as this kind of security is issued in a number of other countries).

370. The Customs Administration has to declare to the MLPD each import or export of cash or securities exceeding 10 000 EUR in MKD equivalent – this is done as an CTR. It also has to notify the MLPD about any amount of cash or securities when grounds for suspicion of money laundering are found (Art. 16) – this is done as an STR. In 2006, two STRs and 724 CTRs have been sent from Customs to the MLPD. According to Art. 16 para 2 of the AML Law, the Customs Administration has to register the identity of a person subject to a CTR, the identity of a person performing an import or export of cash or securities on behalf of another party (but not necessarily the identity of the other party), the amount involved to the intended cross-border transaction and place and time of the incident. In case of an STR the necessary data is registered and sent to the MLPD. It is not clear, what data has to be registered by the Custom Authority in case of a false disclosure, when such false disclosure does not rise suspicion of money laundering and the amount does not exceed the threshold of 10 000 EUR. After the pre-meeting, the authorities informed (though without referring to a legal provision) that in the event of a false declaration or failure to make a declaration, the customs officers shall elaborate minutes on the temporary seized means of payment and goods which shall comprise the following data: customs office, date of preparation, data on the perpetrator (name and surname, address, unique ID number or passport number, the authority that has issued the passport), amount and currency, information as to the manner of detecting the cash instruments (declared, non-declared, hidden), data on the subject of the minutes: cash, checks, securities, gold, box for remarks by the customs officer, column for the statement of the traveller, signatures of the customs officer and the traveller.

371. Each relevant cross-border transportation fulfilling the requirements of an CTR has to be notified to the MLPD within three days while STRs have to be notified within 24 hours (Art. 16 para 3 and 4 of the AML Law). CTRs and STRs are reported as hardcopies by public mail.[100] False disclosures not fulfilling the requirements of CTRs or STRs are not being submitted to the MLPD. The Customs Administration is obliged to keep all data referring importing or exporting money or securities through the customs line for at least 10 years (Art. 20 of the AML Law).

372. According to the Criminal Procedure Code, authorised persons of the Customs Administration have all police competences and may request and obtain further information from the carrier with regard to the origin of the currency and the instruments and their intended use. According to Art. 27 of the Customs Administration Law, Customs officers are authorised to undertake all measures and actions for detection and prevention of custom offences as well as crimes in performing their customs operations in accordance with the Criminal Procedure Code. As authorised persons of the Customs Administration are vested with all police powers in pre-investigations, they have the competence to stop or restrain currency or instruments in order to ascertain whether evidence of money laundering may be found. As financing of terrorism is not an offence listed in Art. 145 para 1 CPC, the Customs Administration does not have the full pre-

[100] The authorities report that meanwhile all CTRs are submitted in electronic form to the MLPD as well as the records regarding omitted and false declarations irrespective of the amount concerned.

investigative competences according to the Criminal Procedure Code in investigations related to the financing of terrorism. Nevertheless, the authorities interpret Art. 22 and 27 ff of the Customs Administration Law in such a way, that the Customs should be authorised to detain a person on the border and seize money temporarily, if there is a suspicion of any crime (including financing of terrorism, even if this is not explicitly mentioned in Art. 145 CPC), in order to consign the case to the Police Authorities. Furthermore, the authorities explained that Customs can also contact their colleagues from the Border Police who have all the necessary powers when it comes to terrorist financing.

373. The evaluators were informed that the Customs Administration has signed various agreements with other national state bodies:

- "Memorandum on cooperation for prevention of organised and other types of crime in the Republic of Macedonia with the Ministry of Interior"[101],
- "Protocol on implementation of the Memorandum on cooperation for prevention of organised and other types of crime in the Republic of Macedonia with the Ministry of Interior – Bureau for Public Safety"[102] (this protocol is also covering the relation between the Customs Administration and the Border Police),
- Memorandum on cooperation with the Basic Public Prosecution,
- Memorandum on cooperation with the Public Revenue Office,
- Protocol on cooperation for prevention of organised and other types of crime in "the former Yugoslav Republic of Macedonia" with the
  - Public Revenue Office,
  - the MLPD,
  - the Financial Police.

  The latter protocol should particularly improve the cooperation between the Customs Administration and the MLPD in order to disclose and prevent organised and other types of financial crime: currently, communication and exchange of data is carried out in writing. Representatives from Customs explained that there are no meetings or regular contact with the MLPD. They referred to the "Council for Combat against Money Laundering and Financing Terrorism" (see above para 80) where also a representative from Customs takes part. This Council was said to have meetings at least once per month to discuss all the current problems.
- General Memorandum of Understanding between Ministry of Interior and the Ministry of Finance relating to money laundering but not covering financing of terrorism.

374. At the time of the onsite-visit, there was no information, which obligations are stipulated in these memoranda with regard to money laundering or financing of terrorism. After the pre-meeting, the authorities informed that the signed Memoranda and Protocols regulate the manner of cooperation, coordination and joint activities of the contracting parties, i.e. stipulate the area of cooperation, the method of cooperation, harmonisation of the activities and promotion of the cooperation, provides for the possibility to conduct joint risk analysis, activities and actions, establishing of joint working groups, joint utilisation of technical assets and equipment, expert and technical assistance, exchange of information and data, education and further qualification of employees, settlement of mutual disputes, cooperation and exchange of information. However, during the on-site visit, the representatives of the Customs were not aware of the practical use of these memoranda and suggested the evaluators to ask the respective counter-parts of the memoranda for further explanation. Furthermore, the evaluators were not informed particularly whether Border Police has to report to Customs a suspicion of crime, including money laundering or financing of terrorism apart from the general obligation of reporting crimes prosecuted ex officio according to Art. 142 CPC.

[101] See Para 4.

[102] See Para 4.

375. Concerning international cooperation, the authorities referred to a number of bilateral agreements with several European countries concerning mutual administrative assistance with regard to customs offences.

376. With regard to sanctions for making a false disclosure or disclosure contrary to the obligations under SR IX. (criterion IX.8), the authorities referred to Art. 56 para 32 of the Law on Foreign Exchange Operations which reads as follows: "*The legal entity, resident or non-resident shall be fined from MKD 250 000 to 300 000*[103] *for committing a misdemeanour, if it [...] transfers cash domestic and foreign currency, cheques and monetary gold contrary to the conditions determined by the Government of the Republic of Macedonia and the National Bank of the Republic of Macedonia*"[104]. The authorities interpret this provision that Customs have to submit to the competent court a request for initiating misdemeanour procedures in case they detect domestic or foreign currency cash, cheques or monetary gold that were not declared or declared in higher amount than allowed; other bearer negotiable instruments (as defined by the Interpretative Note to SR.IX.) than cheques are not covered by this provision. The evaluators were informed that courts have already imposed sanctions on the basis of Art. 56 para 32 of the Law on Foreign Exchange Operations.

377. Also, concerning sanctions for couriers transporting cash or bearer negotiable instruments that are related to terrorist financing or money laundering (criterion IX.9), the authorities made reference to Art. 56 para 32 of the Law on Foreign Exchange Operations (see previous paragraph). However, the evaluators doubt that Art. 56 para 32 could be applied in such a situation as it only refers to provisions regulating legal transport of cash or bearer negotiable instruments, but it is not applicable in case of transporting cash or bearer negotiable instruments that are related to terrorist financing or money laundering (or crime in general). During the pre-meeting, the authorities referred in this context also to the general sanction regime of the Criminal Code, particularly to the money laundering offence and to the provisions covering financing of terrorism. This reference to the sanction regime of the Criminal Code (and the criminalisation of money laundering and terrorist financing) seems also to cover a number of conducts envisaged by criterion IX.9, though it should be noted that it suffers from the same deficiencies as described under Sections 2.1 and 2.2.

378. Customs officers receive general training in the control of passengers, but did not receive special training to detect cash couriers particularly involved in money laundering or financing of terrorism and up to the time of the onsite visit, Customs have not yet detected a cash courier.

379. In the event that false disclosure also raises a suspicion of money laundering, Customs are enabled to confiscate such assets on the basis of the CPC. The Customs do not have a corresponding authority when it comes to a suspicion of terrorist financing, but, as described above, the authorities took the view that Customs can contact their colleagues from Border Police who have this authority.

380. In the case of cross-border transportation of means being property of persons designated either by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999) or in the context of S/RES/1373(2001), the Customs Authority explained that they would apply the rules of the Law on Foreign Exchange Operations and confiscate such property for the purpose of a procedure relating to a foreign exchange offence. However, there is no practice on this and the evaluators doubt that such property could be kept frozen for criminal procedures on the basis of the Law on Foreign Exchange Operations. Although the Customs Administration has no general pre-investigative competence provided by the CPC with regard to terrorist financing, the authorities interpret Art. 27 ff of the Customs Administration Law to be

[103] Approx. 4 200 to 5 000 EUR.

[104] See Para 4.

able to seize property temporarily also when detecting or preventing crimes not listed in art. 145 CPC in order to consign the case after provisional measures to the competent Police authorities.

381. In relation to criminal offences, there are no explicit provisions allowing the Customs or any other authority from "the former Yugoslav Republic of Macedonia" to notify the Customs Services or other competent authorities of the country of origin or the country of destination about unusual cross-border movement of gold, precious stones or metals with a view of establishing the source, destination and purpose of the movement of such items in order to take appropriate action. The evaluators were informed that some international agreements as well as Art. 22 of the Customs Administration Law would allow for the exchange of information also in relation to criminal matters. Nevertheless, it was said that in case of proper reporting to the Customs and compliance with all customs duties no further measures would be taken into consideration.

382. Until the on-site visit, the CTRs and STRs were sent in hardcopy by post to the MLPD. Protection of data regarding the cross-border transactions of items, cash and securities, as well as personal data is covered by the Law on Protection of Personal Data which should ensure proper use of the information/data that is registered/forwarded to the MLPD. However, sending CTRs and STRs by post imposes, theoretically, a risk that the information/data may be intercepted by a third party.

383. During the period from 2003 until 2006, a total of 105 offences were detected according to the Law on Foreign Exchange Operations (Article 56), whereby:
EUR 1 038 324,59 were detected as not declared, of which EUR 942 249,59 were seized;
US$ 374 362 were detected as not declared, of which US$ 318 890 were seized;
CHF 278 400 were detected as not declared, of which CHF 256 200 were seized;
CAD 129 000 were detected as not declared, of which CAD 80 000,00 were seized;
AUD 48 800 were detected as not declared, of which AUD 33 800 were seized;
SEK 82 000 were detected as not declared, of which SEK 41 000 were seized;
None of these cases seems to have triggered money laundering or financing of terrorism investigations.

Additional elements

384. When the Best Practice Paper was addressed, the representatives of the Customs Authority conceded to be unfamiliar with the existence of such a paper. It was not possible to assess to what extent best practice issues were implemented.

2.7.2 Recommendations and comments

385. Any person entering or leaving the country may be asked to disclose cash or cheques in any currency that exceeds the above mentioned thresholds (para 368). However, apart from cash and cheques no other bearer negotiable instruments are covered by legislation concerning the physical cross-border transportation of currency and bearer negotiable instruments.

386. "The former Yugoslav Republic of Macedonia" should ensure that there are effective, proportionate and dissuasive sanctions concerning persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments that are related to terrorist financing or money laundering contrary to the obligations under SR IX. Currently this issue is addressed by the general sanction regime of the Criminal Code (particularly the criminalisation of money laundering and terrorist financing). The coverage of criterion IX.9 by the criminalisation of money laundering and terrorist financing is insufficient as far as these provisions are deficient as described under Sections 2.1 and 2.2. Overall, criterion IX.9 should be covered in a comprehensive and clear manner.

387. Customs officers did not receive special training to detect cash couriers and till the time of the onsite visit, Customs have not yet detected a cash courier.

388. The range of sanctions (approx. 4 200 to 5 000 EUR) of the Law on Foreign Exchange Operations with regard to infringements as described by criterion IX.8 is insufficient and does not permit a proper and adequate reaction to deviant behaviour in relation to all kind of perpetrators (residents, non-residents, legal entities). A more broad and dissuasive range of penalties should be introduced.

389. In case of cross-border transportation of means being property of persons designated either by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999) or in the context of S/RES/1373(2001), Customs should be entitled to confiscate such property.

390. "The former Yugoslav Republic of Macedonia" should introduce provisions allowing the Customs or any other domestic authority to notify the Customs Services or other competent authorities of the country of origin or the country of destination about unusual cross-border movement of gold, precious stones or metals with a view of establishing the source, destination and purpose of the movement of such items in order to take appropriate action.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
SR.IX	**PC**	• Apart from cash and cheques no other bearer negotiable instruments are covered by legislation concerning the physical cross-border transportation of currency and bearer negotiable instruments. • In case of cross-border transportation of means being property of persons designated either by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999) or in the context of S/RES/1373(2001), the Customs do not have authority to confiscate such property. • The range of sanctions (approx. 4 200 to 5 000 EUR) of the Law on Foreign Exchange Operations with regard to infringements as described by criterion IX.8 is insufficient and does not allow to apply a proper and adequate reaction to deviant behaviour in relation to all kind of perpetrators (residents, non-residents, legal entities). • Customs officer did not receive special training to detect cash couriers. • There are no explicit provisions allowing the Customs or any other authority from "the former Yugoslav Republic of Macedonia" to notify the Customs Services or other competent authorities of the country of origin or the country of destination about unusual cross-border movement of gold, precious stones or metals with a view of establishing the source, destination and purpose of the movement of such items in order to take appropriate action. • The sanctions regime is not covering all situations concerning persons who are carrying out a physical cross-border transportation of bearer negotiable instruments that are related to terrorist financing or money laundering contrary to the obligations under SR IX (criterion IX.9).

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

391. Primary legislation (as defined by the Methodology) in "the former Yugoslav Republic of Macedonia" is passed by Parliament; it comes into force eight days after its publication in the "Official Gazette" of "the former Yugoslav Republic of Macedonia". Primary legislation includes *inter alia* the AML Law, the Banking Law, the "Law on the National Bank of the Republic of Macedonia"[105], Law on Securities, Law on Investment Funds, Law on Fast Money Transfer and the Foreign Exchange Law. Primary legislation empowers specific bodies, such as some supervisory authorities, to make Regulations, which are issued as decrees (by-laws). Article 4 of the AML Law authorises the MLPD to initiate proposals for laws and by-laws related to the prevention and detection of money laundering and prevention of financing terrorism and to express its opinion upon proposed laws which are relevant for the prevention of money laundering and financing terrorism. The same article of the AML Law sets up a responsibility of the MLPD to create (in co-operation with other supervisory bodies) a list of indicators to recognise suspicious transactions. Article 31 of the "Law on the National Bank of the Republic of Macedonia"[106] states that for the purpose of providing and preserving safe and stable banking system, without jeopardising the primary objective, the NBM shall take decisions, prescribe methodologies and standards, and undertake measures, adhering to the international standards. Article 64 item 9 stipulates that the Council of the NBM shall prescribe the rules and standards of conducting control and supervision. Article 69 of the same law provides that the Governor of the NBM shall be authorised to adopt manuals for uniform implementation of by-laws adopted by the NBM Council in accordance with Article 64 of the Law. Art. 184 of the Law on Securities entitles the Securities and Exchange Commission to pass "*acts or rules arising from this Law and other laws within its competence"*; Art. 192 makes the regulations deriving from the Law on Securities subject to inspections (but not mandatory or enforceable). However, there is no primary legislation which would provide a specific authority to issue secondary legislation dealing with AML/CFT issues[107].

392. The basic obligations under the AML Law cover some aspects of:

- Customer identification (Articles 7 - 11);
- Record keeping (Article 20);
- Monitoring of certain transactions (Article 14)
- Reporting suspicious transactions (Articles 22 - 24);
- Keeping information confidential (Article 21);
- Establishment of internal procedures and units for AML/CFT control (Articles 5, 38 - 40).

393. Based on the "Law on the National Bank of the Republic of Macedonia"[108] which designated the NBM as the supervisory body for banks and savings houses, the NBM issued so-called "Supervisory Circulars". In April 2005, the NBM issued the Supervisory Circular No. 7 "*Anti-Money Laundering Systems of the Banks"* (Annex 2), which contains recommendations for establishing AML systems in banks; combating terrorist financing issues are not explicitly addressed by this circular. Furthermore, it explains that "*all stated recommendations for the anti-money laundering systems of banks, can be equally used by savings houses and other financial institutions, with appropriate adjustments to the characteristics and the nature of those*

[105] See Para 4.

[106] See Para 4.

[107] Art. 46 para 4 of the new AML/CFT Law contains now an authorisation that the supervisors "*may prescribe a manner and procedure for adequate establishment and application of the programmes for prevention of money laundering for the entities they are to supervise*".

[108] See Para 4.

institutions". These circulars are serving as (non-binding) guidelines for banks and savings houses; the representatives of commercial banks with which the evaluators met understand these circulars as recommendations which they should follow. Representatives of savings houses explained they consider Circular No. 7 as "practically mandatory" and that they use it in application of the AML Law. However, these circulars cannot be regarded as "other enforceable means" in the sense of the Methodology because they are not sanctionable.

394. Art. 13 of the AML Law is a remarkable provision in the AML/CFT legislation of "the former Yugoslav Republic of Macedonia" as it has a significant impact on economical transactions: it prohibits each cash payment or settlement or receiving cash money equal or above 15 000 EUR in MKD equivalent (regardless whether it is in a single or several connected transactions). Transactions above this threshold may only be performed through a financial institution authorised to perform payment operations. One reason for introducing this provision was that this threshold is the same as for CTRs; as a consequence the MLPD has to be informed of all such transactions. Another reason was the intention of government to increase the number of credit card users and to reduce cash. However, this provision is only sanctionable when legal entities are involved in a transaction. Though some interviewees were aware of this provision and the number of issued cards increased for 2-3 times, it is unclear how far practice follows this legal provision, particularly with regard to the fact that economics in "the former Yugoslav Republic of Macedonia" is still mainly cash based.

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering / financing of terrorism

395. The AML/CFT framework of "the former Yugoslav Republic of Macedonia" is not based on a risk assessment. Neither the AML Law nor other regulations provide for financial institutions measures based on the degree of risk attached to particular types of customer; business relationship; transaction and product[109]. Only the (non-binding) Supervisory Circular No. 7 includes some additional measures which banks should apply in certain higher risk situations (including PEPs; private banking, correspondent banking, electronic banking).

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

3.2.1 Description and analysis

Recommendation 5

396. The AML Law provides in Art. 2 several definitions; amongst others it describes to which persons/entities the law applies. Art. 2 item 5 uses the term "*entity*" and describes it generally as "*any person undertaking measures and performing activities of prevention and detection of money laundering stipulated by this Law [...]*"; subsequently it explains that this covers

(i) "*financial institutions and official and responsible persons within*";

(ii) certain legal and natural entities; this mainly refers to DNFBP (see Section 4) but also contains the following financial institutions as it is understood by the Methodology:

(1) management with money and securities, opening and disposal of bank accounts, safe-deposit boxes and other accounts, establishing or taking part in the management or operation of the legal entities, representing clients in financial transactions;

[109] The new AML/CFT Law now also provides for both simplified and enhanced customer due diligence to address various levels of risk.

(2) works connected with issuing payment and credit cards;

(3) *other related activities of acquainting property and other forms of disposal or management with money or property;*

(iii) foreign representative offices, affiliates, branch-offices and parts of entities, registered abroad and performing activities in "the former Yugoslav Republic of Macedonia", as well representative offices, affiliates, branch-offices and parts of entities registered in "the former Yugoslav Republic of Macedonia" and performing activities abroad.

397. However, in this context it is problematic that Art. 2 item 5 only refers to money laundering but not to terrorist financing. This could be misunderstood by the obliged entities that their obligations are limited to money laundering only[110].

398. Article 2 item 4 of the AML Law provides a definition for "financial institutions" as follows: "*legal or natural entity that carry out one or more activities connected with collecting deposits, awarding credits, issuance of payments cards, foreign exchange operations, economic and financial consulting, financial leasing, factoring, operations connected with insurance, operations connected with securities for its own or for the account of the client, maintenance and management of money, securities and objects made of precious metals and other financial activities stipulated by Law*".

399. This list of financial institutions as provided for by Art. 2 item 5 in conjunction with item 4 is very complete and covers all financial institutions as it is required by the Methodology and which are operating in "the former Yugoslav Republic of Macedonia".

400. On a general note it should be noted that the AML Law links some obligations (reporting of transactions; identification) of financial institutions with a threshold of 15 000 EUR in MKD equivalent. Though the authorities are of the opinion that this threshold is appropriate for AML/CFT purposes, the examiners consider that this threshold is too high and inadequate for the domestic economic situation.

Anonymous accounts and accounts in fictitious names

401. There is no direct prohibition for opening anonymous accounts, accounts in fictitious names or numbered accounts in legislation. The evaluators were told that it is planned to introduce such a requirement with amendments to the AML Law[111]. Currently only the Supervisory Circular No. 7 addresses this issue to a certain extent as banks should determine the identity of a customer or beneficial owner before or at the moment of establishing the business relationship (section 2.1.2). Banks are advised not to establish business relationship in case they fail to identify the client, the beneficial owner or to obtain information on the purpose and the intended nature of the business relationship. The Supervisory Circular also recommends that a bank should not have anonymous accounts or accounts opened under obvious fictitious names (item 2.1.2.). However, as highlighted above (para 393) this circular cannot even be regarded as "other enforceable means" as defined by the Methodology (which would anyway be insufficient with regard to the fact that criterion 5.1 is an asterisked one).

402. The authorities explained that at the time of the onsite visit no anonymous accounts, numbered accounts or bearer shares existed in "the former Yugoslav Republic of Macedonia". It was said that this opinion derives from the results gathered during the supervision performed by the NBM. The supervisory techniques and procedures should enable to cross-check the data on the number

[110] This shortcoming has obviously been acknowledged also by the authorities and now the new AML/CFT Law contains, in its Art. 5 (which is determining the obliged entities), an explicit reference to financing of terrorism.

[111] Art. 26 of the new AML/CFT Law now explicitly prohibits banks to open and keep anonymous accounts.

of opened accounts with the banks' and saving houses' financial data. Furthermore, it was said that the Banking Law requires banks when opening an account, to issue a special document (saving book) that contains the client's personal data (Article 50). With the enactment of the Banking Law in 2000, banks were required to comply with this requirement, for new and existing accounts. Nonetheless, it has to be noted that these measures provide some safeguards against anonymous accounts or accounts in fictitious names, but it does not present a systematic assessment as to whether banks still have such accounts. There were no figures available, e.g. how many of these accounts ever existed, how many of them were closed, transferred into named accounts etc.

Customer due diligence

When CDD is required

403. Criterion 5.2 has an asterisk too. It requires all financial institutions to undertake CDD when:
   a.) establishing business relations;
   b.) carrying out occasional transactions above the applicable designated threshold (USD/EUR 15 000). This also includes situations where the transaction is carried out in a single operation or in several operations that appear to be linked;
   c.) carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII;
   d.) there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations; or
   e.) the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

404. Article 7 of the AML Law requires financial institutions to determine the identity and addresses of their clients prior to opening an account or a pass book; accepting to hold shares, bonds or other types of securities; providing the usage of the safe-deposit boxes; asset management or effectuating or payment on behalf of a third party. When performing activities related to life insurance, insurance companies are obliged to identify the client if the amount of individual or several instalments of insurance premium to be paid within one year exceeds the amount of 1 000 EUR in MKD equivalent or if the payment of a single insurance premium exceeds the amount of 2 500 EUR in MKD equivalent.

405. All entities subject to the AML Law are obliged by the Law to determine the client's identity at each transaction in amount of 15 000 EUR or over in MKD equivalent on the day when the transaction is carried out and in cases when it is clear that there are several connected transactions in amount of 15 000 EUR or over in MKD equivalent (Article 9 para 1 and 2 of the AML Law); for entities performing currency exchange operations and providers of fast money transfer exists a lower threshold concerning identification: these entities have to determine the identity of their clients prior each transaction exceeding 2 500 EUR or over in MKD equivalent (Art. 17 and 18 of the AML Law). Furthermore, the obliged entities shall determine the client's identity each time when there is a suspicion of money laundering (Article 9 para 3 of the AML Law). The obligation to determine a client's identity when there is a suspicion of terrorist financing is not provided for by Art. 9 and is less clear embedded in the AML Law[112]. This can only be deferred from Art. 15 of the AML Law which is in the section "*special monitoring of certain transactions*":

> *"In each case when grounds to suspect the transaction is connected with terrorist actions of the client or party involved in a transaction, or that the money or asset subject to transaction are intended for financing terrorism, besides determining the client's identity,*

[112] Art. 8 of the new AML/CFT Law is now more clear on this requirement.

the entity if possible shall request information related to the course of a transaction, its purpose, final destination of the money and each party involved in a transaction."[113]

406. Currently financial institutions are only in certain circumstances required to identify customers when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII: Art. 18 of the AML Law requires providers of fast money transfer to identify their customers in the case of each transaction exceeding 2 500 EUR in MKD equivalent. However, as the "Law on Fast Money Transfer" only applies for electronic transfer of money by a natural person from one country to another natural person in another country, this does not cover domestic wire transfers. Furthermore, the threshold of 2 500 EUR is not in line with the threshold as determined by SR VII (i.e. 1 000 EUR for cross-border wire transfers).

407. Neither the AML Law nor any other law or regulation requires financial institutions to identify customers when the financial institution has doubts about the veracity or adequacy of previously obtained identification data.

408. The representatives from banks, exchange offices, savings houses, brokerage houses and insurance companies told the evaluators that all clients are identified before starting business relations.

Required CDD measures

409. Criterion 5.3 is marked with an asterisk too. Financial institutions are required to identify permanent or occasional customers (whether natural or legal persons or legal arrangements) and verify the customers' identity using reliable independent source documents, data or information.

410. Article 8 of the AML Law defines how the identity of a (legal or natural) person shall be determined. Its para 1 stipulates that "*the identity of a physical person shall be determined by submitting original, official and valid document (personal documents*[114]*) or a certified transcript at notary containing a photograph of a person*". Art. 8 para 2 provides some requirements which information these documents need to contain: "*name, surname, date of birth, place and address of a permanent or temporary residence, the unique register number, the identity card number and authority of issuance*". However, there is no legislation clearly defining which documents fulfil the criteria of Art. 8 para 1, i.e. which quality they need to have, from which authority they have to be issued etc. Thus, it is left to the discretion of the reporting entities what they consider appropriate. As a consequence, it seems that all kind of official documents which meet the criteria of Art. 8 paragraphs 1 and 2 can be used, such as identification cards of public officials (military, prosecutors, judges, etc.). The authorities are of the opinion that only passports and ID-cards fulfil these criteria and that no other documents exist in this regard. However, the authorities could not point to legislation which would prohibit authorities (e.g. ministries, courts, Police, Customs etc.) to issue documents for their employees which would fulfil these criteria and could be used as identification documents under Art. 8 of the AML Law (in addition, there was insufficient information whether even some existing identification cards of public officials fulfil these criteria).

411. Moreover, Art. 8 of the AML Law covers only a "first level" verification obligation, because the identification of clients is only possible with certain types of documents (see above). However, these obligations are only detailed at one level and do not contain provisions for enhanced verification measures for cases/clients which present higher risks. Neither does the AML Law, nor subordinate legislation contain an obligation for financial institutions to use reliable, independent

[113] Emphasis added.

[114] The authorities advised that the term "*identity card*" which was used in the official translation was inaccurate and should be replaced by "*personal documents*".

source documents, data or information to verify the authenticity of the provided information. The examiners consider that to enhance the effectiveness of the verification process further steps should be taken to provide for reporting entities to conduct enhanced due diligence in higher risk cases by using other reliable independent documents.

412. The identity of a legal person has to be verified "*by submitting the court registration in original or certified transcript at notary*". If the legal person should not be registered at court (which is an indirect reference to foreign entities only because all legal entities in "the former Yugoslav Republic of Macedonia" are necessarily registered), the identity should be verified by providing (in original or notarized copy) "*a document on establishing or insertion of the name, address, seat and activity of a person*" (Art. 8 para 6). The seat and tax identification number of a legal entity shall be determined from the submitted court registration.

413. For residents who want to open a foreign currency account the "Decision on the manner of opening foreign currency accounts of residents with authorised banks"[115] applies. This Decision provides similar requirements like the AML Law concerning the identification process but in contrast it allows identification of natural persons only with ID cards. Though it is astonishing that passports are apparently not valid identification documents in these situations, it at least avoids the uncertainty of Art. 8 of the AML Law (see para 410 above). After the onsite visit, at the end of March 2007, the NBM issued a "Decision on the Method of opening resident foreign currency accounts". With entering into force of this new Decision (April 2007), the "Decision on the manner of opening foreign currency accounts of residents with authorised banks" ceased to be valid. Art. 2b of the new Decision now permits to identify natural persons by passport also (besides ID-cards). However, also the new Decision covers only a "first level" verification obligation and does not contain provisions for enhanced verification measures for cases/clients which present higher risks.

414. Concerning foreign customers Art. 8 para 3 of the AML Law requires that the identity shall be established "*on the base of data stated in his travel document*[116] *in original or certified transcript at notary*". Apart from this, there are no further requirements concerning the verification of identification[117].

415. The Supervisory Circular No. 7 further defines the CDD requirements with regard to the verification process of the identity of clients; however, as mentioned before, this Circular is not binding.

416. Criterion 5.4 requires two specific issues to be covered in respect of the verification process with regard to legal persons. The first is verification that any person purporting to act on behalf of the customer is so authorised, and the identification and verification of the identity of that person (criterion 5.4a of the Methodology). This is marked with an asterisk and needs to be in Law or Regulation. No such requirement is provided anywhere in legislation or regulations issued or authorised by a legislative body of "the former Yugoslav Republic of Macedonia".

417. Criterion 5.4b of the Methodology covers the second issue in relation to the verification process for legal persons. It is not marked with an asterisk but needs to be covered by other enforceable means. The verification of the legal status of the legal person or arrangement requires

[115] The English version of this Decision which the evaluation team received was titled "Decision on the manner of opening foreign *exchange* accounts of residents with authorised banks" but it was explained that "Decision on the manner of opening foreign *currency* accounts of residents with authorised banks" is a more appropriate translation (emphasis added).

[116] The authorities advised that the translation used in the official version ("*travelling identification*") was inaccurate and should be replaced by "*travel document*".

[117] Art. 10 para 4 of the new AML/CFT Law now contains more general verification requirements.

e.g. proof of incorporation or similar evidence of establishment and information on the customer's name, trustees (for trusts), legal form, address, directors and provisions regulating the power to bind the legal person or arrangement. The necessity to verify the legal status of a legal person is addressed by the AML Law stating that the identity of a legal entity shall be determined by submitting the court registration in original or certified transcript at notary (Art. 8 para 4). The Supervisory Circular No. 7 is more specific on this point (section 2.1.2): "*In the case when the customer is a legal entity, the identification should be performed through providing the following documentation: court registration in original or a copy verified by a notary; phone number and fax number; data on the owner of the legal entity, the executive body and the members of the management bodies; decision by legal entity's competent body for opening an account or establishing a business relationship with the bank; list of persons who are authorised to work with the account; the basic activity according to the National Classification of Activities; financial and audit reports for the last few years.*" As this Circular cannot be regarded as other enforceable means, criterion 5.4b is only partially covered by Art. 8 para 4 of the AML Law.

Beneficial owners

418. Art. 10 of the AML Law ("Identification of beneficial owner") requires the obliged entities in each case when a transaction is carried out on behalf and in the interest of a third party and it is required by law to "*to determine the identity of a person performing such transaction, as well the bearer*[118] *of the rights, or the party on behalf of which and in whose interest the client acts (the beneficial owner)*". This definition of "beneficial owner" is not in line with the Glossary to the 2003 FATF Recommendations and as a result, financial institutions are not obliged to go further than collecting information at the second level in respect to owners of the legal entity. It was the impression of the evaluation team that this was also the understanding of banks and that in practice they would not go beyond this level[119]. Furthermore, the requirement that this only needs to be done "*when the law stipulates such a duty*" is at least unclear. So far such a legal duty is only provided for by Art. 10 para 2 of the AML Law which requires that "*in cases when a suspicions exist whether the client acts on its own or on behalf and in interest of a third party, the entity is obliged to request an information from the client due to determine the identity of the bearer*[120] *of the rights (the beneficial owner)*". This is not in line with the Methodology which requires the beneficial owner to be identified in any case, not only when there is a suspicion that a client "*acts on its own or on behalf and in interest of a third party*". Conversely, this obligation addresses at least partially the requirements of criterion 5.5.1 that financial institutions should be obliged to determine whether the customer is acting on behalf of a third person (though limited to cases where the financial institution has such a suspicion).

419. There is no legislation requiring financial institutions to take reasonable measures to verify the identity of beneficial owners using relevant information or data obtained from reliable sources.

420. Neither law, regulation nor other enforceable means require financial institutions to understand the ownership and control structure for customer that are legal persons or legal arrangements. The authorities referred in this regard to Art. 8 para 4 of the AML Law concerning identification requirements of legal entities which stipulates that the identity of legal entities "*shall be determined by submitting the court registration in original or certified transcript at notary*". However, this does not sufficiently address the requirement that financial institutions should understand the ownership and control structure for customers that are legal persons or legal

[118] The English version of the AML Law uses the term "barrier". The evaluation team was informed that "bearer" is the correct translation.

[119] The new AML/CFT Law now provides a new definition for "beneficial owner" which is intended to be more in line with both the definition as provided for by the Glossary to the FATF Recommendations and the definition of the 3rd EU AML Directive.

[120] See FN 118.

arrangements. Firstly this is insufficient in the context of foreign legal entities: as stated above (para 412), in certain situations also "*a document on establishing or insertion of the name, address, seat and activity of a person*" (Art. 8 para 6) would be sufficient for identification of foreign entities; as countries have different requirements concerning the content of such a document there is no guarantee that such a document would provide sufficient data to understand the ownership and control structure of legal persons or legal arrangements. Secondly, even the data provided for by the court registration of "the former Yugoslav Republic of Macedonia" do not provide sufficient information in this regard as it contains no information on the ultimate beneficial owners. Furthermore, the data are not verified and updated – thus, they may not reflect the real situation. The current legislation is also silent on the issue of determining the natural persons that ultimately own or control the customer. This is only partially included in the non-binding Circular No. 7 stating that banks should do so (section 2.1.2 point 1, page 8). For other financial institutions than banks and savings houses, not even guidance exists.

Purpose and intended nature of the business relationship

421. Criterion 5.6 covers the requirement to obtain information on the purpose and intended nature of the business relationship (the business profile). Neither the AML Law, nor any other legislation or other enforceable means contain such a requirement[121]. Only the Supervisory Circular No. 7 (section 2.1.2, page 9) states that banks should have a clear picture about the customer's basic activity, especially for those customers who have large amounts and turnover on their accounts. In these cases, banks should obtain, beside the financial reports, the following data: list of main customer's suppliers and buyers and their geographical location, data about customer's international activities and its participation on the international markets, identification of the dominant means of collection payment of the claims/liabilities (cash and wire transfer). The authorities advised that the familiarity of banks with their clients' business profile is checked during on-site supervision of the NBM; furthermore, it is part of the NBM's supervisory procedures (item 8.2.1.2 and 8.2.1.3 of the manual). However, this supervisory activity cannot be considered to compensate the deficient legislation in this regard.

Ongoing due diligence

422. According to criterion 5.7 (again asterisked), financial institutions should be required to conduct ongoing due diligence (which should include e.g. scrutiny of transactions to ensure that they are consistent with knowledge of the customer and the customer's business and risk profile) on the business relationship. No such requirement can be found in laws, regulations or even other enforceable means. Only the (non-binding) Supervisory Circular No. 7 (section 2.1.3, page 12) provides some guidance for ongoing monitoring of bank clients: besides the regular monitoring of all transactions and accounts, banks are advised to verify and check on a regular basis the information gained about the identity of its customers. Also, whenever a bank determines that there is not enough data for an existing customer, it should undertake adequate measures for rapid providing of the necessary data. For financial institutions other than banks and savings houses not even guidelines exist. The authorities advised that the NBM checks during on-site supervision as to whether banks conduct ongoing monitoring of clients (this is also part of the NBM's supervisory procedures; item 8.2.1.1 of the manual); again, this supervisory activity cannot be considered to compensate the deficient legislation in this regard.

Risk

423. Criterion 5.8 requires financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction. As mentioned under Section 3.1, the AML/CFT framework of "the former Yugoslav Republic of Macedonia" does not provide for a

[121] Art. 9 para 1 lit c) of the new AML/CFT Law now contains such an explicit requirement.

risk based approach. Enhanced due diligence in higher risk situations such as non face to face relationships, legal persons such as companies on bearer shares, non-resident customers, private banking and PEPs is completely missing. Neither the AML Law nor other regulations provide for financial institutions measures based on the degree of risk attached to particular types of customer; business relationship, transaction and product. Only the Supervisory Circular No. 7 contains some recommendations in this regard: necessity to treat some categories of customer as higher risk (e.g. private banking, politically exposed persons, etc); this circular emphasizes the importance to monitor the operations of these customers.

Simplified or reduced CDD

424. The existing legal framework is silent on the existence of simplified due diligence and does not specify the cases when reduced or simplified measures can be applied for customer identification as there is no simplified due diligence touched upon anywhere in the legislation[122].

Timing of verification

425. According to Article 7 of the AML Law, the obliged entities are required to determine the identity of the clients when carrying out transactions or establishing any other form of business or contractual relationship in the cases "stipulated by the AML Law". The AML law requires the obliged entities to determine the identity of clients

(i) prior to opening an account or a pass book; receipt of keeping shares, bonds or other types of securities; provision for usage of the safe-deposit boxes; asset management or effectuating or receipt of payment on behalf of a third party (Art. 7 para 2);
(ii) at each transaction equal or above 15 000 EUR in MKD equivalent (Art. 9 para 1);
(iii) in the case of several transactions which are connected and amount to 15 000 EUR or higher in MKD equivalent (Art. 9 para 2),
(iv) each time when there is a suspicion of money laundering (para 3);
(v) when there is a suspicion that the transaction is connected with terrorist actions of the client or party involved in a transaction, or that the money or asset subject to transaction are intended for financing terrorism (Art. 15).

In the first case (i) the obliged entities are required to determine the identity of the clients in advance. In the cases (iv) and (v) it has to be done at the same time. However, in the cases (ii) and (iii), the client's identity has to be established "*on the day when the transaction was carried out*" (Art. 9 para 1 and 2). Though this timeframe seems not very long, this general possibility to complete the CDD process after carrying out a transaction is not in line with the possibilities as provided for by criterion 5.14.

Failure to satisfactorily complete CDD

426. Whenever an obliged entity is unable to comply with compulsory CDD requirements, it has to refuse the execution of the transaction, business or other relationship and notify the MLPD (Article 12 of the AML Law[123]). The report to the MLPD shall contain "*data on the type of*

[122] The new AML/CFT Law now also provides for both simplified and enhanced customer due diligence to address various levels of risk.

[123] The official version of the AML Law uses in Article 12 instead of "refuse" the term "reject". Subsequently to the onsite visit, the authorities provided a more accurate translation of Art. 12 which reads as follows:

(1) Where the client, the principal or the transaction have not been identified in the cases of compulsory identification, the entity shall be bound to refuse the execution of the transaction or business or other relation or legal matter, or if the transaction is in progress, to postpone it and immediately notify in writing the Directorate on the postponement, i.e. on the refusal to execute the transaction.

transaction, business or other relation or legal matter and all other available data and facts for the purpose of identification of the client, i.e. the transaction" (Article 12 para 2). The postponement may endure since the identification of the client or transaction is performed, or certain provisional measures for suspicious transactions in terms of Article 29 to Article 32 of this Law are imposed.

427. According to Article 53 of the Banking Law, a bank should neither take deposits nor effect orders for payment or transfer of money or other property "*if it reasonably suspects or undoubtedly identifies that the funds derive from criminal activities*".

428. The (non-binding and only for banks and savings houses applicable) Supervisory Circular No. 7 recommends that banks should not open an account, start business relationship, perform certain transactions, or cancel the initiated business relationship with a customer if the bank is incapable of performing certain CDD measures. The evaluators were also advised that the "Manual on the manner of controlling the anti-money laundering process in banks and saving houses" advises supervisors of the NBM to evaluate the practices of banks when starting business relationship.

Existing customers

429. Financial institutions should be required to apply CDD requirements also to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. Some examples are given in the box in the Methodology of the times when this might be appropriate – e.g. when a transaction of significance takes place, when the customer documentation standards change substantially etc. At present, this is only somewhat addressed by the Supervisory Circular No. 7 which explains in which circumstances a bank should update the data of clients: when a certain significant transaction is made, significant changes in the identity of the customer (status change, dominant activity, etc.), or material change in the operation with a certain account opened in the bank. Also, whenever the bank determines that there is not enough data for an existing customer, it should undertake adequate measures for rapid providing of the necessary data. Apart from these non-binding guidelines, there are no provisions in the legal system addressing these issues and, as far as the examiners understood, it is also not done in practice. This issue should also be addressed preferably in the Law or by enforceable means.

430. According to criterion 5.18, financial institutions should be required to perform CDD measures on existing customers if they are customers having anonymous accounts, accounts in fictitious names or numbered accounts. The authorities acknowledged that no such requirements are provided in the legislation but think that such a situation could not occur as banks cannot open accounts without a proper identification of a client. However, as described above (paragraphs 401 ff), there is no direct prohibition for opening anonymous accounts, accounts in fictitious names or numbered accounts in legislation and (without a proper assessment by the authorities) it is uncertain whether such accounts (still) exist.

European Union Directive

Article 7

431. According to Article 7 of the Second European Union AML Directive, member States shall ensure that financial institutions refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the competent authorities. In addition,

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(2) With the notification referred to in paragraph (1) of this Article, the entity shall submit to the Directorate data on the type of transaction, business or other relation or legal matter and all other available data and facts for the purpose of identification of the client, i.e. the transaction.

(3) Postponing the transaction can last until the client, i.e. the transaction, is identified, or until measures have been provided for a suspicious transaction, referred to in Articles 29-32 of this Law.

these authorities may, under conditions determined by their national legislation, give instructions not to execute the operation which has been brought to their attention by an obliged person who has reason to suspect that such operation could be related to money laundering.

432. There is no direct requirement for an obliged entity to postpone or to refrain from carrying out a transaction which it knows or suspects to be related to money laundering. The AML Law only requires refusing a transaction in the case of failure of mandatory identification (Art. 12).

Article 3(8)

433. According to Article 3 para 8 of the European Union Directive, institutions and persons subject to this Directive shall carry out identification of customers, even where the amount of the transaction is lower than the threshold laid down, wherever there is a suspicion of money laundering. According to Art. 9 para 3 of the AML Law, financial institutions are required to identify clients wherever there is a suspicion of money laundering regardless of any threshold.

Recommendation 6

434. Neither the AML legislation nor other enforceable provisions contain specific and/or enhanced CDD measures in relation to politically exposed persons (PEPs), whether foreign or domestic. So far, financial institutions are neither by the AML Law nor by sectoral laws required to put in place appropriate risk management systems to determine if a potential customer, a customer or the beneficial owner is a PEP. Nor are there requirements to develop procedures to obtain authorisation for establishing business relationships with a PEP from senior management, or for continuing such a relationship with a customer or beneficial owner who is subsequently found to be or becomes a PEP. As they are not identified, there is no requirement to conduct enhanced ongoing monitoring of business relationships with PEPs. It follows that financial institutions are also not required to take reasonable measures to establish the source of funds of customers[124].

435. Again, only the (non-binding and only for banks and savings houses applicable) Supervisory Circular No. 7 addresses the issue of PEPs though its definition ("*persons that have important public positions and persons or companies they are related to*") is neither very explanatory nor in accordance with the definition provided for by the Glossary to the FATF Recommendations. The Circular requires for this type of clients additional measures:

(i) Establishing of an adequate system for prompt identification of politically exposed persons;
(ii) The decision for establishing business relationship with the customer must be made by the manager of the appropriate organisational unit, about which the bank's competent body for money laundering prevention has to be notified;
(iii) Determining the source of funds of the customer;
(iv) Continuous detailed monitoring of the business cooperation with these persons.

Additional elements

436. "The former Yugoslav Republic of Macedonia" has signed (18 August 2005) and ratified (13 April 2007) the 2003 United Nations Convention against Corruption.

Recommendation 7

437. Criteria 7.1 to 7.4 of the Methodology cover cross-border banking and other similar relationships (gather sufficient information about a respondent institution, assess the adequacy of the respondent institution's AML/CFT controls, obtain approval from senior management before entering new correspondent relations, document the respective responsibilities of each institution).

[124] The new AML/CFT Law now expressively addresses PEPs.

438. There are no laws, regulations or other enforceable means which address the issue of correspondent banking. Only the (non-binding) Supervisory Circular No. 7 provides some recommendations in this respect (section 2.1.2, page 11)[125].

Recommendation 8

439. Criteria 8.1 to 8.2.1 of the Methodology cover policies to prevent the misuse of technological developments; policies regarding non-face to face customers including specific and effective CDD procedures to manage the specific risks associated with non-face to face business relationships or transactions.

440. Article 11 of the AML Law requires the obliged entities in the case of "*applying new technologies, when entering into a business relationship or carrying out a certain transaction with a client who is physically absent*" to request additional documents or to apply additional measures to verify or confirm the received documentation. If the client does not provide the requested documents, the first payment has to be carried out through an account opened by the client in another financial institution. Though this addresses to a certain extent the requirements of Recommendation 8, the option either to request additional documents or apply additional measures is insufficient in this context. It is nowhere described what kind of additional documents/measures are required and it is left to the discretion of the financial institutions. There is no legislation or guidance addressing such issues like specific CDD procedures in case of new technologies (e.g. related to ATM machines, telephone banking etc.).

441. There are also no explicit requirements that financial institutions should have policies in place regarding non-face-to-face customers. However, the authorities and institutions interviewed during on-site visit explained to the examiners that there is no practice to start relationships with the customers via Internet and it also seems that currently modern financial technology is not widespread in the financial industry of "the former Yugoslav Republic of Macedonia"; the authorities advised that internet banking is not yet widely used though no assessment of the size of this kind of business has been undertaken.

442. The "Macedonian Post Office"[126] closely cooperates with the "Postenska Banka", which uses the postal offices for providing its financial services. The post organisation officers perform the bank services for the "Postenska Banka"; there is an electronic network between the postal organisation and "Postenska Banka". The evaluators were told that accounts are only opened in the head office of the "Postenska Banka"– however, applicants can leave their ID documents at a postal office which sends it then to the head office where the account will be then opened. The evaluators were informed that 99% of all payments via postal offices are made by natural persons and that all payments made through the "Postenska Banka" are only on a domestic level. However, Art. 47 and 48 of the Banking Law show that there are very tight links between the "Postenska Banka" and the "Macedonian Post Office"[127]: These provisions authorize the "Postenska Banka" to the following activities (Art. 47):

1. *computes and controls payments through postal and telegraphic money orders in the inland payments system;*
2. *Renders services related to international money orders, postal checks, postal savings, and redeems;*
3. *Collects security payments in other countries, in compliance with the World Postal Association for Collection of Securities Act;*

[125] The new AML/CFT Law now addresses in Art. 14 para 3 the issue of correspondent banking.

[126] See Para 4.

[127] See Para 4.

4. *Executes payments operations abroad, in compliance with the law;*
5. *Issues payment cards to effectuate the functions of the founder.*

This means that though current practice of the "Postenska Banka" in cooperation with the "Macedonian Post Office"[128] seems to be reduced to domestic transfers, this does not mean that this will necessarily remain like this because there is the legal possibility to conduct also international transfers.

443. The (non-binding) Supervisory Circular No. 7 contains some information and guidance with regard to electronic banking.

3.2.2 Recommendations and comments

444. It is problematic that several provisions of the AML Law only contain a reference to money laundering but not to terrorist financing. This could be misunderstood by the obliged entities that their obligations are limited to money laundering only. It should be clarified in the AML Law which obligations relate both to the prevention of money laundering and terrorist financing (unless this cannot be done with a clear catch all provision).

445. There are no laws or regulations which would prohibit the opening of anonymous accounts, numbered accounts or accounts in fictitious names. It is unclear whether such accounts (still) exist and to which extent. The authorities should as a matter of urgency issue legislation clearly prohibiting financial institutions from keeping anonymous accounts or accounts in fictitious names. Furthermore, it should be established with a thorough assessment whether such accounts still exist. If so, they should be closed as soon as possible.

446. Financial institutions should be required to identify customers when carrying out occasional transactions that are wire transfers in all the circumstances covered by the Interpretative Note to SR VII, when the financial institution has doubts about the veracity or adequacy of previously obtained identification data. The obligation to identify customers when there is a suspicion of terrorist financing should be made clearer in the AML Law.

447. The concept of verification of identification should be further addressed. The authorities should take steps to apply an enhanced verification process in appropriate cases. In higher risk cases and for foreign clients, they should consider requiring financial institutions to use *other* reliable, independent source documents, data or information when verifying customer's identity (in addition to the documents as currently prescribed by law).

448. The authorities should clearly define which other documents than passports or I.D. cards can be used for verification of identification and which are in accordance with the international standards as required by Footnote 8 of the Methodology (with reference to the General Guide to Account Opening and Customer Identification issued by the Basel Committee's Working Group on Cross Border Banking). Currently it is left to the discretion of the reporting entities what they consider appropriate.

449. For customers that are legal persons or legal arrangements, financial institution should be required to verify that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person.

450. The legislation should provide for a definition of "beneficial owner" which is in line with the one provided for by the glossary to the FATF Methodology. Financial institutions should be required to take reasonable measures to verify in all situations (and not only when "*a suspicion*

[128] See Para 4.

exists whether the client acts on its own or on behalf and in interest of a third party") the identity of beneficial owners using relevant information or data obtained from reliable sources.

451. Moreover, for all clients, financial institutions should be required to determine whether the customer is acting on behalf of a third party. If this is the case, they should identify the beneficial owner and verify the latter's identity. With regard to clients who are legal persons, financial institutions should understand the controlling structure of the customer and determine who the beneficial owner is.

452. Concerning timing of verification, the possibility provided by Art. 7 para 1 and 2 to establish the client's identity "*on the day when the transaction was carried out*" (unless there is a suspicion of money laundering) is too general and should be brought in line with the circumstances as described by criterion 5.14.

453. Financial institutions should be 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. Furthermore, there should be a requirement for financial institutions to perform CDD measures on existing customers if they are customers having anonymous accounts, accounts in fictitious names or numbered accounts.

454. Financial institutions should be required to obtain information on the purpose and intended nature of the business relationship.

455. Financial institutions should be required to conduct ongoing due diligence on the business relationship and to ensure that documents, data or information collected under the CDD process are kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships.

456. Financial institutions should be required to perform enhanced due diligence for higher risk categories of customers, business relationship or transaction, including private banking, companies with bearer shares and non-resident customers.

457. There are no requirements in Law or Regulation with regard to PEPs. The authorities should put in place measures by enforceable means that require financial institutions:

- to determine if the client or the potential client is - according to the FATF definition – a PEP;
- to obtain senior management approval for establishing a business relation with a PEP;
- to conduct higher CDD and enhanced ongoing due diligence on the source of the funds deposited/invested or transferred through the financial institutions by the PEP.

458. "The former Yugoslav Republic of Macedonia" has not implemented Recommendation 7 through enforceable means. In relation to cross-border correspondent banking and services, financial institutions should not only conduct CDD as required under Recommendation 5, but also obtain further information on:

- the reputation of the respondent counterparts from publicly available information;
- AML/CFT controls, assessing and ascertaining their adequacy;
- document the respective AML/CFT responsibilities of each institution;
- obtain guarantees that counterpart organisations apply the normal CDD measures to all customers that have client access to the accounts of the correspondent institutions and that it is able to provide relevant customer identification data on request.

459. The current legislation addresses Recommendation 8 to a certain extent but places a wide discretion with the obliged entities; this needs further regulation and guidelines to make it effective. Financial institutions should be required to have policies in place to prevent the misuse

of technological developments for AML/CFT purposes and to address specific risks associated with non-face to face transactions.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating

R.5	**NC**	• Opening of anonymous or numbered accounts, as well as accounts in fictitious names is not prohibited by law or regulation.
		• There is no comprehensive legal obligation which covers customer identification when carrying out occasional transactions that are wire transfers in all the circumstances covered by the Interpretative Note to SR VII;
		• There is no legal obligation which covers customer identification when the financial institution has doubts about the veracity or adequacy of previously obtained identification data.
		• There are no requirements for financial institutions:
		  • to obtain information on the purpose and nature of the business relationship,
		  • for ongoing CDD,
		  • for enhanced CDD or
		  • conducting CDD on existing customers.
		• The documents which can be used for verification of identification are not sufficiently determined.
		• For customers that are legal persons or legal arrangements, there are no requirements that financial institution should verify that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person.
		• There is no legislation which provides for a concept of "beneficial owner" as required by the Methodology. Financial institutions are not required to take reasonable measures to verify the identity of beneficial owners using relevant information or data obtained from reliable sources.
		• The possibility to establish the client's identity on the day when the transaction was carried out (unless there is a suspicion of money laundering) is too general and not in line with the circumstances as described by criterion 5.14.

R.6	**NC**	• A comprehensive definition for PEPs is missing and across the whole financial sector is a widespread unawareness of this concept.
R.7	**NC**	• "The former Yugoslav Republic of Macedonia" has not implemented any enforceable AML/CFT measures concerning establishment of cross-border correspondent banking relationships.
R.8	**PC**	• The current legislation deals only partially with Recommendation 8 and also leaves a lot of discretion for the obliged entities.

3.3 Third Parties and introduced business (R.9)

3.3.1 Description and analysis

460. Currently legislation does not permit financial institutions to rely on third parties to perform the customer identification process on behalf of intermediaries. Only the (non-binding and only for banks designed) Supervisory Circular No. 7 describes what actions banks should take when establishing relationship with customers through intermediaries in the meaning of proxies, authorised agents etc., but this falls not under the scope of Recommendation 9.

3.3.2 Recommendation and comments

461. Currently the AML Law does not provide for third party reliance or introduced business, but neither does it prohibit it, even though in practice this situation does not occur. However, as financial institutions could in future consider relying on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business, the authorities should cover all the essential criteria under Recommendation 9 in the AML Law.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**N/A**	Recommendation 9 is not applicable.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and analysis

462. Art. 84 of the Banking Law defines what has to be considered for banks as a "business secret": "*data on the savings deposits and all deposits of natural and legal persons, as well as data on the operations of natural persons through their giro and current accounts and the operations of legal persons through their giro accounts*". Art. 83 of the Banking Law states that "*persons with special rights and responsibilities, bank employees and other persons with access to bank operation, are prohibited from disclosing data and information determined by law and bank statute and other bank acts as a business secret*" and that "*the data which the bank is obliged to submit to the National Bank and to other bodies and institutions in compliance with the law, and which represent a business secret of the bank shall be considered as confidential"*. According to Art. 119 item 31 of the Banking Law "*a bank shall be fined for infraction from Denar 100 000 to 300 000 [...] if it discloses business secret, contrary to Articles 83 and 84 of the Banking Law*".

463. According to Article 84 of the Banking Law, business secret may be disclosed in the following cases:
- if the client has given a written consent to disclose the data;
- upon written request or order of the competent court;
- upon written request of the NBM for the needs of the supervision or another body authorised by law, and
- if the data are disclosed to the MLPD in accordance with the law.

464. Pursuant to Article 95 of the "Law on the National Bank of the Republic of Macedonia"[129], the NBM council members and the employees of the NBM are not allowed to disclose business secrecy or confidential data. This is only possible upon written request of a court. Otherwise this is only allowed when this is specifically determined by law and also only in relation to the Ministry of Finance, the Deposit Insurance Fund, the Financial Police, the State Anti-Corruption Committee and the MLPD.

465. Similar confidentiality requirements apply to insurance companies (Art. 108 of the Law on Insurance Supervision), but, as with banks, these requirements have some exceptions: Art. 108 para 2 item 2 explicitly stipulates that "*the obligation to protect confidential data shall not apply [...] in cases stipulated by the law governing the prevention of money laundering*". The Ministry of Finance being the supervisor in AML issues for insurance businesses may require from insurance and reinsurance intermediaries information and documents regarding their activities and the insurance companies must submit the requested information to the Ministry of Finance. Article 94 part 4 of the Law on Insurance requires that "*in conducting the supervision, the insurance company must provide access to authorised persons to the full documentation of the company"*. The right to request the needed information is set out in the Law on Insurance Supervision (Articles 232 and 233). The Law on Insurance Supervision also sets out that the Ministry of Finance may provide the necessary requested information to other (domestic and foreign) supervisory bodies (for supervisory purposes) and judicial bodies (for the purposes of bankruptcy procedures).

466. It seems that the Law on Securities contains no provisions on financial secrecy including exemptions that allow competent authorities to access the relevant information to perform their duties; the authorities could only point in this regard to Art. 188 of the Law on Securities but this provision deals only with information which the SEC acquired in the course of its supervisory activity (thus dealing with secrets of the Commission but not of the financial institution). However, Article 36 of the AML Law provides a general possibility for the MLPD to access such information: "*The reference to a business or a professional secret shall not be accepted as a ground for the refusal to submit data according to this Law*".

467. There is no clear power for financial institutions to share information where this is required by Recommendation 7 and SR.VII.

468. Regarding the exchange of information among financial supervisors, see Chapter 6.1 (domestic exchange of information) and 6.5 (international exchange of information).

3.4.2 Recommendations and comments

469. It is recommended that a provision be made for the sharing of information between financial institutions in relation to correspondent banking and in relation to identification of customers involved in cross-border or international wire transfers.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**LC**	• Financial institutions are not specifically authorised to share information for the implementation of Recommendation 7 and SR.VII.

[129] See Para 4.

3.5 Record keeping and wire transfer rules (R.10 and SR. VII)

3.5.1 Description and analysis

Recommendation 10

470. Recommendation 10 has numerous criteria under the Methodology which are asterisked, and thus need to be required by law or regulation. Financial institutions should be required by law or regulation:

- to maintain all necessary records on transactions, both domestic and international, for at least five years following the completion of the transaction (or longer if properly required to do so) regardless of whether the business relationship is ongoing or has been terminated;
- to maintain all records of the identification data, account files and business correspondence for at least five years following the termination of the account or business relationship (or longer if necessary) and the customer and transaction records and information;
- to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.

Transaction records are also required under Criteria 10.1.1 (which is not asterisked) to be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution. This needs to be required by other enforceable means (and be sanctionable).

471. Under Article 20 of the AML Law, financial institutions (as well as all other entities) are obliged to keep data about the client's identity (the cases in which information on customer identification should be gathered is described in Section 3.2 starting paragraph 404) or transaction for a period of at least 10 years from the last transaction made or at least 10 years "*from the date the agreements expire*". All data submitted to the MLPD are supposed to be kept at least 10 years from their submission.

472. The existing AML Law does not distinguish between domestic and international transactions when dealing with the record keeping issues, it just points out that "*any data*" about the transaction or the client's identity has to be kept. "*Any data about the client's identity or transaction*" in this respect refers to the information which the obliged entities have to gather according to the AML Law (arg. ex "*provided on the basis of this Law*").

473. Section VI of the AML Law (Art. 41 – 43) provides sanctions in the case institutions do not keep records as required under Art. 20 (ranging from 250 000 to 300 000 Denar for the reporting institution and from 40 000 to 50 000 Denar for the responsible officer).

474. Also sectoral laws contain requirements for record keeping where some of them go beyond the requirements of the AML Law and others are below this standard:

(i) Article 109 paragraph 8 of the Insurance Supervision Law stipulates that data obtained for identification purposes by the insurers shall be kept for a period of ten years after the expiry of the insurance contract, or, in case of damage incurrence, ten years after the case is closed. The Insurance Supervision Law contains no requirements to keep records concerning transactions.

(ii) According to Article 21 of the Law on Fast Money Transfer, "*fast money transfer provider and the subagent shall be obliged to keep single records for each transaction of fast money transfer*". The mentioned article also states that "*the National Bank shall stipulate the manner of keeping the records referred to in this Article*". Due to this the NBM has adopted the Decision "*On the manner of keeping records for each prompt money transfer transaction"*, which states the content of the records to be kept for each transaction of a money transfer service provider. That has to include such basic elements as:

- type of currency and amount;
- recipient data (name and surname, address, National ID of the citizen, ID or passport number, etc.);
- sender data (name and surname, address, National ID of the citizen, ID or passport number, etc.);
- control number;
- date of transfer;
- signature of the client and the provider of prompt money transfer service
- service fee.

475. There are no clear obligations for financial institutions to keep records of the account files and business correspondence. Furthermore, no provision is included to ensure that the mandatory record-keeping period may be extended in specific cases upon request of an authority; the authorities referred in this regard to Art. 20 of the AML Law requiring financial institutions to keep records for "at least 10 years" which goes beyond the requirement of Recommendation 10 to keep them for five years - though the evaluators welcome this longer period it should be noted that this is not the same as required by criterion 10.2 (keeping records for a longer period if requested by a competent authority in specific cases upon proper authority).

SR.VII

476. The Methodology requires, for all wire transfers, that financial institutions obtain and maintain the full originator information (name of the originator; originator's account number; or unique reference number if no account number exists) and the originator's address (though countries may permit financial institutions to substitute the address with a national identity number, customer identification number, or date and place of birth) and to verify that such information is meaningful and accurate. Full originator information should accompany cross-border wire transfers, though it is permissible for only the account number to accompany the message in domestic wire transfers.

477. The evaluators were told that Banks are the only entities that provide wire transfers in "the former Yugoslav Republic of Macedonia". However, the "Macedonian Post Office"[130] cooperates with the "Postenska Banka", which uses the postal offices for providing its financial services. The post organisation officers perform the bank services for the "Postenska Banka" and there is an electronic network between the postal organisation and "Postenska Banka". It was said that all payments made through the "Postenska Banka" are only on a domestic level and 99% of them are done by natural persons. However, as mentioned above (para 442), there are very tight (legal and factual) links between the "Postenska Banka" and the "Macedonian Post Office"[131]. Furthermore, some provisions of the Banking Law (esp. Art. 47) authorize the "Postenska Banka" and thus indirectly also the "Macedonian Post Office"[132] to conduct also international transfers. This means that though current practice of the "Postenska Banka" in cooperation with the "Macedonian Post Office"[133] seems to be reduced to domestic transfers, this does not mean that this will necessarily remain like this because there is the legal possibility to conduct also international transfers. Concerning supervision of the "Postenska Banka" and the "Macedonian Post Office"[134] performed by the NBM see below para 558.

478. Apart from banks it is necessary to mention in the context of SR VII that also two global money transfer services are operating in "the former Yugoslav Republic of Macedonia". It was

[130] See Para 4.

[131] See Para 4.

[132] See Para 4.

[133] See Para 4.

[134] See Para 4.

explained in the replies to the MEQ that there is only one global money transfer service ("Western Union") operating in "the former Yugoslav Republic of Macedonia" which cooperates with 1 agent and 35 subagents. During onsite, the evaluators also learned from representatives of the NBM that there is a second global money transfer service ("MoneyGram") operating on the territory of "the former Yugoslav Republic of Macedonia" which cooperates with two banks. This kind of business falls under the provisions of the "Law on Fast Money Transfer" which defines "fast money transfer" as the electronic transfer of money by a natural person from one country to another natural person in another country within one hour from the payment, irrespective of whether the transfer is from or to "the former Yugoslav Republic of Macedonia", whereby the inflow and outflow is performed via banks.

479. In relation to implementation of SR VII, the authorities also advised that the NBM provides a settlement system for domestic payments. This function of the NBM is provided by the implementation of the so-called RTGS (Real Time Gross Settlement) system, which is called MIPS – "Macedonian Interbank Payment System"[135] in NBM. The NBM is the owner and the operator of MIPS. The MIPS processes the orders, which are in SWIFT format. However, this system provides only the technical background for domestic payments but does not address the requirements of SR VII.

480. The authorities referred in their replies to the MEQ concerning criterion VII.1 to the "Decision on amendment to the Decision on the manner of keeping records for each fast money transfer transaction" (OG 61/2004) which requires providers of fast money transfer service and its subagents to keep a special numerated registry, signed by the authorised person of the company, for each transaction amounting over 2 500 EUR in MKD denomination, in which the data shall be registered chronologically. The numerated registry should contain the following data (fields):

- ordinal number (which should be stated chronologically);
- name and surname of the natural person who executed the transaction;
- national identification number, or passport number (for non-residents);
- currency code;
- amount in foreign currency;
- MKD amount; and
- field for the signature of the company's authorised person.

The above mentioned national identification number is structured in a way that it allows to make a conclusion about the person's date of birth, person's sex and place of birth . This Decision requires providers of fast money transfer service to obtain and maintain all the information as required by criterion VII.1. However, these requirements are only applicable in case of transactions above 2 500 EUR which is higher than provided by criterion VII.1 (1 000 EUR). In addition, the aforementioned Decision does not require financial institutions to verify the identity of the originator in accordance with Rec. 5. Leaving aside the deficiencies of this Decision, it must be stressed that the evaluators found in the AML Law a much more appropriate provision with regard to the requirements of criterion VII.1: Art. 18 of the AML Law requires providers of fast money transfer to "*determine the identity of the client prior to each transaction exceeding amount of 2 500 EUR in Denar counter value. The entities [...] are obliged to record all data in chronological order in numerated register signed by the responsible person in a trade company*". The way how financial institutions should verify the identity of clients is described above under section 3.2 (para 410 ff). Apart from the threshold of 2 500 EUR, Art. 18 in conjunction with the verification obligations stipulated by the AML Law covers to a large extent the requirements of criterion VII.1.

481. There are no legal requirements on financial institutions concerning the obligation to include full originator information in the message or payment form accompanying cross-border wire transfers of EUR/USD 1 000 or more (criterion VII.2).

[135] See Para 4.

482. Concerning domestic wire transfers, the authorities referred to the "Manual for the Form and the Contents of the Payment Instruments for conducting Payment Operations in the Country" (issued by the Ministry of Finance on the basis of Art. 7a para 4 of the Law on Payment Operations) and the Standard for Message Type (issued by the NBM on the basis of Art. 5 item 6 of the Law on Payment Operations). According to these documents, the following information is needed for domestic wire transfers: name of the originator, account number, type of transactions. The originator's address is not required according to these documents. Though these documents address to a certain extent the requirements of criterion VII.3, it should be noted that there is no obligation that the information is meaningful and accurate. Furthermore, the evaluators have concerns whether the "Manual for the Form and the Contents of the Payment Instruments for conducting Payment Operations in the Country" and the "Standard for Message Type" can be regarded as mandatory. The authorities explained in this regard that the legal basis for issuing the "Manual for the Form and the Contents of the Payment Instruments for conducting Payment Operations in the Country" and the Standard for Message Type can be found in the Law on Payment Operations. It was also explained that this standard is part of the contracts signed between the NBM and banks. Without this contract, banks cannot be a member of the MIPS which is organised by the NBM (see above para 479). Thus, it was said that the banks are contractually and legally obliged to follow the provisions of the Standard.

483. There are no requirements for each intermediary and beneficiary financial institution in the payment chain to ensure that all originator information that accompanies the wire transfer is transmitted with the transfer (criterion VII.4).

484. The NBM "Decision on the manner of performing international payment operations" lays down the requirements for the transfer of money. Though this document contains main principles, it does not mention the necessity for obtaining and maintaining ordering customer information for all wire transfers of USD/EUR 1 000 or more. Only in cases when the amount of transfer is above MKD equivalent of EUR 10 000 the receiving bank is obliged to obtain information about the ordering customer (criterion VII.5).

485. The NBM is responsible for supervision of banks and providers of fast money transfer and this supervision activity covers also the implementation of SR VII by these entities as far as SR VII is provided for in the legal system. For this purpose the NBM conducts offsite and onsite supervision. Off-site control consists of reviewing the reports that commercial banks submit to the NBM. On-site control consists of reviewing of selected sample of wire transfers and checking out its accordance with the legislation. In 2005, the NBM conducted AML related examinations of 23 money transfer providers, and in 2006 of 40 money transfer providers. Neither in 2005 nor in 2006, the NBM found non-compliance with the provisions of the AML Law. In 2007, the NBM supervised 13 money transfer providers and initiated one misdemeanor charge (to courts) due to non-compliance with the provisions of the AML Law (i.e. not maintaining a registry of transactions above 2 500 EUR).

486. The deficiencies of the sanctions regime of the AML Law as described under section 3.10 (para 582 ff) apply also with regard to SR VII: The pecuniary sanctions for natural persons are on the low end but somehow adequate for the domestic economic situation; the fines for legal entities are neither dissuasive nor proportionate for financial institutions. The Banking Law allows to revoke a licence of a bank if it does not comply with the AML requirements as stipulated by Art. 53 of the Banking Law which reads as follows:

"The bank shall not take deposits, nor effect orders for payments, or transfer of funds, or other property, if it reasonably suspects or undoubtedly identifies that the funds derive from criminal activities.

The knowledge referring to paragraph 1 of this Article can be inferred from objective factual circumstances.

The bank shall inform the authorised Anti-Money Laundering Department of the suspicion or knowledge described in paragraph 1 of this Article and shall provide, at the authorities request, additional relevant information, in accordance with the applicable legislation."

However, Art. 53 does not refer to financing of terrorism and thus it seems that for infringements related to combating financing terrorism obligations a licence of a bank could not be revoked[136]. The evaluators were told that in April 2007, the Law on Fast Money Transfer was amended and from that time on also allowed to revoke a licence for non-compliance with this law (or by-laws issued on the basis of this law). Apart from that, neither the AML Law nor the other sectoral laws allow to withdraw or suspend a financial institution's licence for not observing requirements of the AML Law. The AML Law does not provide a sanctioning regime for directors or senior management. The sanctioning system of the AML Law requires a court decision via application of the supervisory authorities. This seems too complicated and does not work in practice as no sanctions have been imposed so far. The authorities should revise the procedures for sanctioning infringements of the AML Law with a view to make it easier to apply.

487. The "Decision on amendment to the Decision on the manner of keeping records for each fast money transfer transaction" (OG 61/2004) does not contain sanctions in case of infringements. However, this Decision seems to be sanctionable via the "Law on Fast Money Transfer" (concerning provider of fast money transfer: Art. 37 item 5 in conjunction with Art. 21 paragraphs 3 and 4; concerning their subagents: Art. 38 item 2 in conjunction with Art. 21 paragraphs 3 and 4); the fines for the legal entities range from 250 000 to 300 000 MKD (approx. 4 166 to 5 000 EUR); the responsible person within the legal entity could be fined between 40 000 to 50 000 MKD (approx. 666 to 830 EUR). The analysis concerning the deficiencies of the sanctions regime of the AML Law (see previous paragraph) is respectively applicable concerning the sanction regime of the "Law on Fast Money Transfer". So far this sanction regime has been tested only once in practice: the NBM initiated misdemeanour proceedings at courts against one money transfer provider due to non-compliance with the provisions of the AML Law (i.e. not maintaining a registry of transactions above 2 500 EUR; see para 485 above); so far courts did not yet decide on this request.

3.5.2 Recommendation and comments

Recommendation 10

488. Art. 20 of the AML Law provides a solid basis to require financial institutions to keep records of transactions and client's identity for a time period in compliance with Recommendation 10. However, also some sectoral laws contain requirements for record keeping where some of them exceed the requirements of the AML Law but others are below this standard. To avoid a conflict between these laws and in order to clarify the situation for the obliged entities, it is recommended to bring the sectoral laws in line with the obligations of the AML Law (at least in those cases where the sectoral laws are below the standards of the AML Law).

489. There should be for financial institutions clear requirements by law or regulation to keep records of the account files and business correspondence.

490. Financial institutions should be required by law or regulation to maintain records of the identification data, account files and business correspondence for longer than five years following the termination of an account or business relationship if so requested by a competent authority in specific cases; the same applies for transactions, both domestic and international, following completion of the transaction.

[136] The authorities advised that this shortcoming was solved with the new Banking Law.

Special Recommendation VII

491. Criterion VII.1 is addressed by two pieces of legislation: Art. 18 of the AML Law and the "Decision on amendment to the Decision on the manner of keeping records for each fast money transfer transaction". Both provisions are at least deficient with regard to the fact that they are only applicable in case of transactions above 2 500 EUR which is higher than provided by criterion VII.1 (1 000 EUR). Apart from that, the aforementioned Decision is more deficient as it does not require providers of fast money transfer service to obtain and maintain all the information as required by criterion VII.1: in particular it does not require information concerning the originator's address (or instead of the address a national identity number, customer identification number, or date and place of birth). Moreover, the aforementioned Decision does not require financial institutions to verify the identity of the originator in accordance with Rec. 5. Overall the overlap of these two pieces of legislation is significant and could lead to confusion concerning application. It is thus recommended to harmonise these provisions and to bring them in line with the requirements of criterion VII.1.

492. There are no legal requirements on financial institutions concerning the obligation to include full originator information in the message or payment form accompanying cross-border wire transfers of EUR/USD 1 000 or more (criterion VII.2). For domestic wire transfers exist two pieces of legislation (the "Manual for the Form and the Contents of the Payment Instruments for conducting Payment Operations in the Country" and the "Standard for Message Type"). Apart from some concerns about the mandatory character of these documents, it should be noted that there is no obligation that the information is meaningful and accurate. This should be addressed by law, regulation or other enforceable means.

493. There are no requirements for each intermediary and beneficiary financial institution in the payment chain to ensure that all originator information that accompanies the wire transfer is transmitted with the transfer.

494. In addressing criterion VII.5 (risk based procedures for identifying incomplete originator information), it has to be concluded that the NBM "Decision on the manner of performing international payment operations" contains some of these requirements, but it is only applicable in cases when the amount of transfer is above MKD equivalent of EUR 10 000 (which is above the 1 000 EUR/USD threshold as provided for by SR VII).

495. The sanctions regime of the AML Law should be amended as described under section 3.10 (para 582 ff). The same applies for the sanction regime as provided for by the "Law on Fast Money Transfer" for infringements of the "Decision on amendment to the Decision on the manner of keeping records for each fast money transfer transaction".

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**PC**	• The record keeping requirements of the AML Law and some sectoral laws are not harmonised which could lead to difficulties in implementation. • Financial institutions are not required to keep all necessary records on transactions for longer than five years if requested to do so in specific cases by a competent authority upon proper authority. • Financial institutions are not required to keep identification data for longer than five years where requested by a competent authority in specific cases on proper authority. • There are also no clear obligations specified to keep records of the account files and business correspondence.
SR.VII	**NC**	• Criterion VII.1 is only covered for transactions exceeding 2 500 EUR in MKD equivalent. Moreover, there are two pieces of legislation regulating the same issue in different ways. • Financial institutions are only required to include full originator information in the message or payment form accompanying cross-border wire transfers above 2 500 EUR or more (which is higher than the threshold of 1 000 EUR/USD as provided for by criterion VII.2). • There are no legal requirements on financial institutions that the originator information in the message or payment form accompanying domestic wire transfers is meaningful and accurate. • There are no requirements for each intermediary and beneficiary financial institution in the payment chain to ensure that all originator information that accompanies the wire transfer is transmitted with the transfer. • The sanctions regime concerning SR VII has several deficiencies and has never been applied in practice which raises concerns of effective implementation.

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 and 21)

3.6.1 Description and analysis

Recommendation 11

496. Recommendation 11, which requires financial institutions 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, needs to be provided for by law, regulation or other enforceable means.

497. The financial institutions are not specifically 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. The existing AML Law talks only in the context of the STR regime about the necessity to inform the MLPD about all suspicious transactions which may occur. The AML Law obliges the entities subject to the law to send all the relevant information and data

concerning transactions under suspicion to the MLPD (Article 22 of the AML Law). In such cases the entities subject to the law are obliged to ask for additional information on the suspicious transaction (Article 14 of the AML Law).

498. The MLPD developed a list of indicators for recognition of suspicious transactions. This list is part of the "Manual for the AML/CFT" which was issued by the MLPD in November 2006 (2500 of these manuals have been sent to the supervisors for further dissemination). No English version of this manual or of this list of indicators was available. However, the authorities advised that this list is divided into several subsections for the various sectors and their areas of activities. It was said to provide an extensive set of examples for suspicious transactions and activities and to cover to some extent complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. Although not part of law or by-law, this list of indicators is used by the NBM while conducting supervision. After determining a transaction that falls under these indicators has not been reported, the supervisor would inform the MLPD; the representatives from the NBM informed that they have forwarded 10 such cases to the MLPD in 2006 and 2007.

499. There is no obligation for the entities to document the obtained information in writing and keep it available for relevant authorities and auditors. The authorities referred to Art. 20 of the AML Law which requires the obliged entities to keep all the information about the customers and transactions for at least ten years; however, this requirement may be sufficient in the context of Recommendation 10 (record keeping) but has nothing to do with criterion 11.3 dealing with keeping records of the findings gathered according to criterion 11.2.

Recommendation 21

500. The non-binding Supervisory Circular No. 7 of the NBM states that "*banks should be especially careful in the operating with banks that have weak policies for customer identification, with a head office in the country which has weak standards for customer identification and anti-money laundering or countries that are identified by FATF as non-cooperative in the combat against money laundering*". However, the entities interviewed during the onsite visit were only aware of the FATF list of non-cooperative countries (NCCT countries). This is insufficient in the context of Rec. 21 which requires financial institutions to pay special attention not just to countries designated by FATF as non-cooperative but to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.

501. The evaluators were told (but could not verify as no English translation was available) that also the list of indicators for suspicious transactions (see para 509) contains advice to pay attention to customers from countries known as drug producers or traffickers (mentioning as an example some countries in the Middle and Far East, Northern and Central Africa and Central America). However, at the time of the onsite visit the entities interviewed did not show much awareness of this.

502. Apart from this Supervisory Circular No. 7 and list of indicators, which are both non-binding and thus rather irrelevant in the context of Rec. 21, there are no other means which would address criteria 21.1, 21.1.1. or 21.2. There are also no mechanisms in place that would enable the authorities to apply counter-measures to countries that do not apply or insufficiently apply the FATF recommendations.

3.6.2 Recommendations and comments

503. Financial institutions are not required to investigate the purpose of complex/unusual large transactions and thus to keep a record of the written findings. There is no requirement to establish

the purpose and background of unusual transactions or to maintain this information in writing and keep records which will be accessible by authorities. It is strongly recommended to implement Recommendation 11.

504. The Supervisory Circular No. 7 and the list of indicators for suspicious transactions address some elements of Recommendation 21 as both contain a reference to countries which could be seen as subject to this Recommendation. However, these documents are non-binding and insufficient with regard to the requirements of Recommendation 21. It is recommended to implement Recommendation 21 by law, regulation or other enforceable means.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	**NC**	• Recommendation 11 has not been implemented.
R.21	**NC**	• Recommendation 21 has not been implemented.

3.7 Suspicious transaction reports and other reporting (Recommendations 13, 14, 19, 25 and SR.IV)

3.7.1 Description and analysis

Recommendation 13 and Special Recommendation IV

505. If a transaction should raise a suspicion of money laundering (Article 14 of the AML Law), the obliged entities are required first to notify "*promptly*" the MLPD and then to send a written report to the MLPD no later than within 24 hours from the moment of finding out about the suspicion. The written report has to contain all relevant information regarding the transaction and the identity of the clients and other parties involved in the transaction. Concerning this obligation to promptly notify the MLPD, it has to be said that there are no provisions or guidelines determining in which form (written, by phone, email etc) this should be done. It is also unclear how often this is done in practice. The interviewees with which the evaluators met did either not know of this provision or interpreted it in a rather lenient way meaning that they would notify the MLPD in advance only in case that there is "*really something suspicious*".

506. Concerning STRs related to a suspicion of financing of terrorism, Art. 15 requires the obliged entities to notify and to send a written report to the MLPD within the same timeframe like reporting transactions related to possible money laundering (i.e. promptly concerning notification and the report no later than within 24 hours from the moment of finding out about the suspicion). This obligation applies in the case that there are (1) "*grounds to suspect the transaction is connected with terrorist actions of the client or party involved in a transaction"* or (2) *"that the money or asset subject to transaction are intended for financing terrorism*". The condition to report transactions when there are "*grounds to suspect the transaction is connected with terrorist actions of the client or party involved in a transaction*" would be insufficient in the context of SR IV as it refers only to actions of the client or a party involved in a transaction but not to funds in general linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. This requirement seems to be covered by the second reason to report transactions related to terrorist financing which is described as "*that the money or asset subject to transaction are intended for financing terrorism*". "*Financing terrorism*" is defined by Art. 2 item 8 of the AML Law and includes "*activities of financing terrorist activities, terrorists*

and terrorist organisations". Comparing the 2 conditions to report transactions related to financing terrorism it seems that all the cases as described by condition 1 are covered by condition 2 which makes the first condition redundant. This overlap could possibly confuse reporting entities and bears the risk that financial institutions only report transactions where the participants of the transaction are directly involved in terrorism and that transactions to intermediaries of terrorists will not be reported.

507. Concerning terrorist financing, Art. 15 of the AML Law obliges the reporting entities to report "*money or property*[137] *subject to transaction*" related to financing terrorism. Art. 2 item 3 of the AML Law defines "*property*" as "*assets of every kind, whether tangible or intangible, movable or immovable, corporal or non-corporal, other rights over the objects, claims, public documents and legal documents for ownership, other rights, claims and asset in a written or electronic form*". Thus it seems that all kind of "funds" as defined by the Terrorist Financing Convention are covered. However, the AML Law requires that assets have to be linked with a transaction and therefore there is e.g. no obligation to report assets (regardless how this term is defined) linked with financing terrorism which are simply deposited on a bank account.

508. Reporting of transactions for legalising illicit income covers all offences required to be included as predicate offences under Recommendation 1 including also tax matters, but with the exception of financing of terrorism in all its forms (see sections 2.1 and 2.2).

509. The AML Law itself does not specify what elements would make a transaction suspicious. Art. 4 item 9 of the AML Law requires the MLPD to determine a list of indicators to recognise suspicious transactions; the evaluators where told that a guidance book having been published and disseminated in 2006 that contains a list of indicators which could raise a suspicion of money laundering. 2500 copies of this Guidance Book were sent to the supervisors for further dissemination to the obliged entities. No English version of this guidance book was available, but the authorities advised that it contains an explanation of the terms *money laundering* and *financing terrorism* including the process of money laundering, the phases, instructions and obligations. It was also said to include guidance for the obliged entities how to follow the requirements arising from the AML Law, indicators for identifying suspicious transactions for banks, savings houses, exchange offices, service providers for fast money transfer, stock exchange, brokerage houses, lawyers, notaries, auditors, games of chance, real estate agencies, insurance companies, domestic legal regulations and by-laws for prevention of money laundering and financing terrorism.

510. The AML Law does not require the reporting of attempted transactions. The representatives of the MLPD explained that they received so far, two or three reports concerning attempted transactions.

511. Figures on STRs are provided for in Section 2.5 of the report. These figures show a very uneven reporting: banks send the biggest number of STRs and no other financial institution (savings houses, insurance, exchange bureaus etc.) submitted any STR[138]. This indicates a lack of understanding or cooperation of these sectors and further outreach to these entities is needed.

512. In practice, no reports with a suspicion of terrorist financing were sent to the MLPD. The evaluators also got the impression that the financial institutions were of the opinion that "the former Yugoslav Republic of Macedonia" is not very exposed to terrorist threats and in consequence that it would be unlikely to detect a transaction related to financing of terrorism.

[137] The authorities advised that the official English version of the AML Law using "assets" was inaccurate and that instead the proper translation should be "property" (the same like as defined in Art. 2 of the AML Law).

[138] This applies for the DNFBP sector in a similar manner, where also only notaries and lawyers submitted a very low number of STRs (see section 4.2).

Additional Elements

513. See above.

European Union Directive

514. Article 7 of the EU AML Second Council Directive requires that institutions and persons subject to the Directive refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the authorities who may stop the execution of the transaction. Furthermore, where to refrain from undertaking the transaction is impossible or could frustrate efforts of an investigation, the Directive requires that the authorities be informed (through an STR) immediately the transaction is undertaken.

515. There is no provision in legislation requiring financial institutions to refrain a transaction in case that a transaction might be related to money laundering. The AML Law only requires financial institutions to refuse a transaction in case that a client cannot be identified (Art. 12); but this is not the same as required by Art. 7 of the EU AML Second Council Directive.

Safe Harbour Provisions (Recommendation 14)

516. Article 35 para 2 of the AML Law provides that "*civil or criminal responsibility cannot be initiated against the authorised or the responsible persons, employers or the employees within the entities who submitted information or reports according to the provisions of this Law*". This covers entirely the requirements of criterion 14.1. Going beyond the requirements of Recommendation 14, Art. 35 para 3 provides for an exemption from civil or criminal liability for the damages that occurred as a result of the *postponement* of a transaction. Only in case that such a postponement would establish a criminal offence, the relevant persons would not be protected.

Tipping off (Recommendation 14)

517. Article 21 para 4 of the AML Law stipulates that the obliged entities and their employees shall not notify the client or a third party for submission of data to the MLPD or for any other measures or actions undertaken in terms of this Law[139]; there is no such obligation with regard to directors of financial institutions (which is not a problem concerning banks as directors have to be full-time employees of the bank; Art. 62 para 5 of the Banking Law). Though the penalty provisions under section VI. of the AML Law mention Art. 21, it seems that the tipping off provision of Art. 21 para 4 is not sanctionable considering that the relevant penalty provisions (Art. 41 and 43) only provide sanctions in case that "*data provided in terms of this Law are used contrary to the purpose stipulated in this Law*". As tipping off is not a conduct of using data, it has to be concluded that Art. 41 and 43 only sanction the abuse of data but not tipping off.

Additional elements

518. Article 24 of the AML Law prohibits the MLPD to reveal the identity of an employee in the entity submitting a report; para 4 provides two exceptions from this rule: (1) when there is a suspicion that the employee or the entity committed money laundering or (2) in case of a written request by the competent court if this is necessary to determine the facts in a criminal case.

[139] The English version of the AML Law provided to the evaluation team uses in Art. 21 para 4 the term "may not". During onsite, it could be clarified by the evaluation team with help of the interpreters that the proper translation of the original has to be "must not".

519. Article 26 of the AML Law provides that any data and report received, analysed and processed by the MLPD are regarded as a professional secret and its officers are not allowed to use them for any other purposes, except for those determined by the AML Law.

Recommendation 19

520. Art. 22 of the AML Law requires the obliged entities to submit reports to the MLPD concerning all transactions or linked transactions above a certain threshold (15 000 EUR). It should be noted that this threshold is too high for the domestic economical situation. Furthermore, as described above in section 1.2 (paragraphs 43 and 45), it seems that criminals are aware of this limit and try to make transactions below this threshold.

521. The CTRs submitted by banks are put daily into an electronic list; data submitted by Customs are not put in this list or otherwise analysed.[140] Further details concerning the processing of CTRs by the MLPD are described under section 2.5 (para 286 f). This information contained in this database of the MLPD is available to other competent authorities for AML/CFT purposes upon their written and elaborated request.

Recommendation 25

522. According to the existing AML Law of "the former Yugoslav Republic of Macedonia" the MLPD is obliged to notify the entity about the reception of a report on suspicious transaction (Article 25 of the AML Law). It seems that this is not done in practice, or at least not in relation to all monitoring entities.

523. The AML Law obliges the MLPD to notify entities on a regular basis (at least once a year) of the performed reviews. This seems to be not done in practice.

3.7.2 Recommendations and comments

Recommendation 13 and Special Recommendation IV

524. The AML Law should explicitly provide an obligation to report attempted transactions.

525. Apart from banks no other financial institution submitted any STR. The total lack of an STR related to financing of terrorism raises concerns of effective implementation. More outreach and guidance to financial institutions is necessary to better explain them their reporting obligations under the AML Law.

526. The overlapping reasons to report transactions with a suspicion of terrorist financing could lead to confusion of the reporting entities. In order to impose clear obligations to the reporting entities, the authorities may wish to simplify the language of Art. 15 of the AML Law.

Recommendation 14

527. Article 35 of the AML Law covers the requirements of criterion 14.1. However, the authorities may wish to reconsider the language of this Article as its Paragraph 1 only provides protection in the case of transactions suspected to be related to money laundering (but not terrorist financing). This (possible) shortcoming is remedied by the following paragraphs of Art. 35, but it

[140] Since March 2008 also Customs sends CTRs in electronic form, which enables the MLPD to analyse them with special software.

makes on the other side Paragraph 1 redundant and perhaps even contradictory. A clearer language of Art. 35 would be desirable.

528. There are no tipping off provisions in relation to directors of financial institutions (which is not a problem concerning banks as directors have to be full-time employees of the bank). The existing tipping off provisions are not sanctionable. It is recommended to introduce enforceable tipping off provisions prohibiting financial institutions and their directors, officers and employees (permanent and temporary) from disclosing the fact that a STR or related information is being reported or provided to the FIU.

Recommendation 19

529. Though the country is compliant with this Recommendation, it should consider to lower the threshold for reporting transactions to an amount which is more adequate for the domestic economical situation.

Recommendation 25

530. Though the AML Law obliges the MLPD to provide the obliged entities with general and specific feed-back, this is not done in practice and this should be remedied. This may also be a reason of the uneven reporting that nearly exclusively banks submit STRs. Thus more outreach to the non-banking sector is required.

3.7.3 Compliance with Recommendations 13, 14, 19, 25 and Special Recommendation SR.IV

	Rating	Summary of factors underlying rating
R.13	**PC**	• The AML Law does not explicitly cover the reporting of attempted transactions. • Apart from banks no other financial institution submitted any STR.
R.14	**LC**	• Apart from the special situation concerning banks, there are no tipping off provisions in relation to directors of financial institutions. • The existing tipping off provisions are not sanctionable.
R.19	**C**	
R.25	**PC**	• Though the AML Law obliges the MLPD to provide the obliged entities with general and specific feed-back, this is not done in practice.
SR.IV	**PC**	• Only "property" linked with a transaction is covered by the reporting obligation. • The AML Law does not explicitly cover the reporting of attempted transactions. • The total lack of an STR related to financing of terrorism raises concerns of effective implementation.

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 and 22)

3.8.1 Description and analysis

Recommendation 15

531. Art 33 of the AML Law requires the obliged entities to develop programmes for "*centralisation of data regarding clients' identity, the bearer of rights, consignees, authorised representatives and consignors as well of data for suspicious transactions*", and the "*appointment of responsible persons in charge of the program implementation on a central managerial level, as well in each organisational part*". The programmes should also include a "*plan for permanent training of the responsible persons and the other employees*" as well as co-operation with the MLPD. However, though Art. 33 addresses some elements of Recommendation 15, it fails to set out the obligation for establishing internal policies, procedures and controls with regard to CDD as it deals only with centralisation of clients' (and their affiliates') identity data; the latter is certainly an element but not the complete scope of an internal policy to combat money laundering and financing of terrorism. A requirement to implement an internal programme covering the detection of unusual and suspicious transactions and the reporting obligation is completely missing.

532. The evaluators found only two pieces of legislation which address this issue to a certain extent: firstly, the "Law on Fast Money Transfer" contains a provision that applicants for a licence to conduct fast money transfer have to submit *inter alia* a "*programme on money laundering prevention*" (Art. 7 item 2). Secondly also the "Decision on the documentation necessary for granting licences according to the provisions of the Banking Law, the Law on Securities and the Law on Microfinancing Banks" contains a provision that applicants have to submit with their application a "*set of written policies and procedures regulating the bank's operations*" which has to include amongst other things a "*policy and procedures for money laundering prevention*". However, none of these two regulations specifies in more details (as it is described by Recommendation 15) what these programmes on money laundering should cover. Moreover, none of them mention prevention of terrorist financing[141].

533. There is no provision concerning timely access of the AML/CFT compliance officer and other appropriate staff to CDD and other relevant information[142].

534. Concerning the requirement for financial institutions to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with AML/CFT procedures, policies and controls, the authorities referred to the (only for banks applicable but non-binding) Supervisory Circular No. 7 of the NBM[143]. Furthermore, the authorities referred to Art. 106 para 2 lit g) of the Law on Securities requires that applicants for a licence to operate a brokerage house shall submit "*data regarding the proposed compliance officer who shall oversee*

[141] The authorities advised that in July 2007 the NBM issued a "Decision on Issuing Licences to Banks" which now requires banks also to formulate a programme related to combating financing of terrorism.

[142] The authorities advised that they in the meanwhile addressed this shortcoming with regard to banks in Art. 99 para 4 of the new Banking Law (entering into force in June 2007): "*The employees with the bank shall provide to the [compliance] officer [...] an access to the available documentation and render all necessary information.*"

[143] Art. 95 of the new Banking Law (entering into force in June 2007) now requires banks internal audit units also to cover AML issues (and debatable terrorist financing issues).

implementation of the laws and other legal acts". However, it seems that the AML Law itself contains a more appropriate provision with its Art. 33 lit. d) which requires the obliged entities to introduce "*instruments for internal audit of the implementation of the measures and actions*". The AML Law does not specify that this audit should be adequately resourced and independent.

535. There is no requirement for financial institutions to put in place screening procedures to ensure high standards when hiring staff (apart from some fit and proper requirements of some staff with regard to banks, savings houses, brokerage houses, money or value transfer services, foreign exchange offices and investment fund management companies; for details see below para 588 ff). However, it seems that in practice banks apply their own internal vetting procedures when recruiting staff.

Additional elements

536. There are no special provisions allowing AML/CFT compliance officers to act independently and to report to senior management above the compliance officer's next reporting level or the board of directors[144]. The authorities referred in this context to the NBM Supervisory Circular No. 7 which provides that banks should introduce policies defining the "*line of responsibility for reporting detected suspicious transactions: manager of a sector - person responsible - Executive Body - Board of Directors*". Apart from the fact that this circular is not binding and only applicable for banks and savings houses, this recommendation of the Circular may even be counterproductive in this regard as it recommends a "*line of responsibility*" instead of providing a possibility to ignore the usual hierarchy and to report directly to senior management (above the compliance officer's next reporting level) or the board of directors.

Recommendation 22

537. At the end of December 2006, 19 commercial banks were operating in "the former Yugoslav Republic of Macedonia", of which 8 worked with majority foreign capital (i.e. more than 50%). There was one fully state owned bank. In principle, the legal framework of "the former Yugoslav Republic of Macedonia" allows banks to have cross-border establishments under certain circumstances: Art. 25 item 3 of the Banking Law stipulates that "*the establishing of a bank and opening of a branch, a subsidiary or a representative office abroad*" is only allowed with prior consent by the Governor of the National Bank. However, the authorities reported that currently banks of "the former Yugoslav Republic of Macedonia" have no branches or subsidiaries in other countries.

538. There are no brokerage companies or insurance undertakings which have subsidiaries or branches abroad. Art. 108 of the Law on Securities only allows to open branches on the territory of "the former Yugoslav Republic of Macedonia". Currently insurance undertakings are only allowed to establish foreign branches in European Union member countries which requires a licence by the Ministry of Finance. There are no licencing or other requirements if foreign exchange offices would like to open branches or subsidiaries abroad; however, the authorities took the view that they could in no case influence the activities of foreign exchange offices if these would like to develop such activities as foreign exchange offices are only established as companies which have a licence for providing foreign exchange services but not as foreign exchange offices *per se*; this argumentation seems not convincing for the evaluation team as the way how financial services can be exercised should be determined by the domestic legal system.

[144] Article 99 of the new Banking Law requires banks to have an independent compliance officer: "*The officer [...] shall perform solely the activities defined by paragraph 2 of this Article and shall be independent in the performance of activities within their competence*".

539. Foreign institutions branches and subsidiaries acting in "the former Yugoslav Republic of Macedonia" as well as branches and subsidiaries of domestic institutions acting abroad are subject to the AML Law (according to the definition of "entity" in Article 2 item 5). This seems on the face of it to address Recommendation 22, but it is not the same as it only provides an obligation for branches and subsidiaries abroad which will be only in exceptional cases be enforceable; on the other side, there is no obligation requiring domestic financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit.

540. Financial institutions are also not required to inform their home country 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) laws, regulations or other measures.

3.8.2 Recommendation and comments

Recommendation 15

541. Financial institutions should be required to establish internal policies, procedures and controls for CDD and detection of unusual and suspicious transactions and the reporting obligation (the easiest way by amending Art. 33 of the AML Law). The provisions for providers of fast money transfer, banks and savings houses requiring a programme on money laundering prevention should be extended to cover also prevention of terrorist financing and be specified to cover all requirements of Recommendation 15.

542. The AML/CFT compliance officer and other appropriate staff should have timely access to customer identification data and other CDD information, transaction records, and other relevant information.

543. Financial institutions should be required to put in place screening procedures to ensure high standards when hiring employees.

Recommendation 22

544. Currently, the financial industry of "the former Yugoslav Republic of Macedonia" is not yet active abroad and for certain financial institutions there are also some safeguards that this could not change immediately; thus the risks appear low. However, the financial institutions of "the former Yugoslav Republic of Macedonia" may want to expand in the future (which is allowed according to the legal framework). Thus, financial institutions should be required to ensure that the AML/CFT requirements applicable to financial institutions are also applied to branches and majority owned subsidiaries located abroad, especially in countries which do not or insufficiently apply the FATF Recommendations, to the extent that local applicable laws and regulations permit. When local applicable laws and regulations prohibit this implementation, competent authorities in the country of the parent institution should be informed by the financial institutions that they cannot apply the FATF Recommendations.

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**PC**	• Apart from the special situation for providers of fast money transfers, banks and savings houses, financial institutions are not required to implement an internal programme covering CDD, detection of unusual and suspicious transactions and the reporting obligation. • There is no provision concerning timely access of the AML/CFT compliance officer and other appropriate staff to CDD and other relevant information. • Financial institutions are not required to put in place screening procedures to ensure high standards when hiring employees.
R.22	**NC**	• There is no provision requiring financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit. • There is no provision requiring financial institutions to inform their home country 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) laws, regulations or other measures.

3.9 Shell banks (R.18)

3.9.1 Description and analysis

545. There is no legislation which would directly address the issue of shell banks. The Supervisory Circular No. 7 is touching the subject of shell banks stating that a "*bank should not start business relationship with banks that are from countries where they do not have physical presence and they are not part of a certain financial group (so called "shell" banks)*". However, this circular applies only to banks and savings houses and is moreover not binding.

546. The Banking Law defines the procedures for licensing a bank. Art. 3 of the Banking Law stipulates that a "*bank is established as a shareholding company on the territory of the Republic of Macedonia*"[145]. Furthermore the authorities explained that the Banking Law contains further specifications concerning the required facilities of a bank which serve as a safeguard to allow the establishment of a shell bank in "the former Yugoslav Republic of Macedonia". The evaluators were ensured by representatives of the NBM that the current legal framework does not allow in any circumstances to open a bank without its physical presence. It seems that in practice there is no bank currently authorised and operating in "the former Yugoslav Republic of Macedonia" which has the characteristics of a shell bank. It seems that all have a physical presence in the country.

547. Neither the existing AML Law nor other legislation prohibits establishing relations with shell banks (as mentioned above, only the Supervisory Circular No. 7 contains recommendations in this respect). There are no measures in place that require the financial institutions to satisfy themselves

[145] See Para 4.

that respondent financial institutions in a foreign country do not permit their account to be used by shell banks.[146]

3.9.2 Recommendations and comments

548. Financial institutions should be prohibited from entering into or continuing correspondent banking relationship with shell banks. In addition, there should be an obligation placed on financial institutions to satisfy themselves that a respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**PC**	• There is no prohibition on financial institutions from entering into, or continuing correspondent banking relationships with shell banks. • Financial institutions are not required to satisfy themselves that respondent financial institutions in a foreign country do not permit accounts to be used by shell banks.

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs / Role, functions, duties and powers (including sanctions) (R. 23, 29, 17 and 25)

3.10.1 Description and analysis

Recommendation 23 (overall supervisory framework: criteria 23.1, 23.2)

549. Chapter V of the AML Law lists the competent authorities for supervision of financial institutions:
(i) the NBM,
(ii) the Ministry of Finance,
(iii) the Public Revenue Office and
(iv) the Securities and Exchange Commission.

550. The NBM is competent for the supervision of banks, savings houses, currency exchange offices and providers of fast money transfer services. The NBM's supervision is regulated by the "Law on the National Bank of the Republic of Macedonia"[147], the Banking Law, the Foreign Exchange Law and the Law on Fast Money Transfer. Based on these legal acts, the NBM has issued by-laws that regulate the establishment and operation of these institutions and their supervision in more details. In accordance with the "Law on the National Bank of the Republic of Macedonia"[148] (Article 68), the NBM has issued a "Manual on the manner of controlling the anti-money laundering and combating terrorism financing process in banks and savings houses" (see

[146] The new AML/CFT Law now explicitly addresses shell banks and prohibits their establishment or any business relationships with shell banks.

[147] See Para 4.

[148] See Para 4.

below paragraph 609). The NBM has to notify the MLPD if it should detect irregularities in the course of its supervision activity related to AML issues (in 2007, the NBM informed the MLDP on 10 occasions[149]).

551. Pursuant to the Law on Securities (OG 95/2005), the Securities Exchange Commission (SEC) is responsible for the (general) supervision of operations of the authorised participants on the securities market. If banks perform services related to securities, the SEC cooperates in supervision issues with the NBM. According to the AML Law (Art. 38), the SEC has to supervise stock exchange, broker companies and investment funds for AML purposes. There are 11 brokerage companies in the country and 6 banks have the right to deal with securities.

552. According to the Law on Insurance Supervision, the Ministry of Finance is responsible for (general) supervising and licensing insurance companies, insurance brokerage companies, authorised actuaries and the National Insurance Bureau. There are 10 insurance companies (8 non-life, 1 life and 1 non-life and reinsurance company) and 5 insurance brokerage companies in "the former Yugoslav Republic of Macedonia". The AML Law (Art. 38) makes the Ministry of Finance responsible for AML/CFT supervision of insurance companies. Art. 206 para 1 of the Law on Insurance Supervision prescribes that supervision of insurance undertakings has to be carried out by persons who are authorised by the Minister of Finance to do so; within the Ministry of Finance this supervisory activity is exercised by the Insurance Supervision Division. Art. 206 para 2 entitles the Minister of Finance to also authorize auditors or other qualified persons to carry out some parts of the supervision. The examiners were informed during the onsite visit that so far AML/CFT issues were not included in on-site examinations. The only activity of the Ministry of Finance in this regard was sending the guidance manual (see above para 289) from the MLPD to the industry.

553. The Public Revenue Office is responsible for the supervision of the other financial institutions (as this term is defined by the AML Law - see para 398), trade companies carrying out games of chance and other legal and natural entities being the subject of those measures and actions. The authorities explained that the term "other legal and natural entities being subject of those measures and actions" refers to all other obliged entities under the AML law which are not subject to supervision by another supervisory authority; the reason for this general competence is that the Public Revenue Office is authorised to perform control over all tax payers.

554. The Agency for Supervision of Fully Funded Pension Insurance (MAPAS) was established by the "Law on Mandatory Fully Funded Pension Insurance" to supervise the operation of pension companies and pension funds with the objective of protecting the interests of pension fund members (insured persons). "The former Yugoslav Republic of Macedonia" recently reformed its pension system which included the introduction of private pension funds which are regulated by the aforementioned Law. MAPAS is a legal entity which is responsible for organising the tender and for granting and withdrawing licences for the management companies of new private pension funds. It supervises not only pension companies and pension funds, but also the custodians or foreign asset managers' activities, and monitors their financial statements to ensure that they operate in compliance with domestic regulations and laws. The "Law on Mandatory Fully Funded Pension Insurance" does not contain any reference with regard to AML/CFT supervision. The authorities are of the view that there is no possibility of money laundering with regard to pension funds because the contributions which are paid in the mandatory private pension fund are part (35%) of the pension contribution paid from the employers. Because of that, MAPAS during its onsite visits, does not enclose activities on money laundering supervision and the AML Law does not mention MAPAS as a supervisory body. However, the evaluators are less convinced that this area can be considered as no risk at all. Though the possible transactions are obviously limited, it cannot be said that criminals could not take advantage of this system as normal bank channels are

[149] This covers the whole year of 2007 (data from 1.1.2007 till the time of the onsite visit were not available).

used which allows the undertaking of financial transactions between various participants, money can be transferred and re-transferred etc[150].

555. The following table provides an overview concerning the supervision and licensing regime of financial institutions in "the former Yugoslav Republic of Macedonia":

Financial institutions	Supervisory/ Sanctioning authority	Licensing authority (if licenced)	Legal Basis
Commercial banks	NBM	NBM	Banking Law; AML Law
Credit unions	Not existing in "the former Yugoslav Republic of Macedonia". There is only one savings house which is *acting* like a credit union – it is owned by its members and it gives credits only to its members; it is treated like a saving house (supervision all 18 months); the same laws like for saving houses apply; it can operate only with natural domestic persons (but not with foreign entities).		
Savings houses	NBM	NBM	Law on Banks and Savings Houses (Part II only); Banking Law; AML Law
Insurance companies (including life)	Ministry of Finance-Insurance Supervision Division	Ministry of Finance-Insurance System Division	Law on insurance supervision; AML Law
Brokerage houses	Securities and Exchange Commission	Securities and Exchange Commission	Law on Securities, AML Law
Securities companies	Not existing in "the former Yugoslav Republic of Macedonia".		
Pension funds/ pension companies	MAPAS	MAPAS	Law on mandatory fully funded pension insurance
Stock brokers	Securities and Exchange Commission	Securities and Exchange Commission	Law on Securities, AML Law
investment funds/ investment fund management companies	Securities and Exchange Commission	Securities and Exchange Commission	Law on investment funds, Law on Securities, AML Law
Companies issuing credit/debit cards	Public Revenue Office	no licensing regime	AML Law
Foreign Exchange offices	NBM	NBM	Law on foreign exchange operations (Art. 43), AML Law
Providers of fast money transfers (money remitters)	NBM	NBM	Law on Fast Money Transfer providers, AML Law
Postal organisation	The only postal organisation provides financial services only in cooperation with the "Postenska Banka" (for details see para 558 below).		

556. The MLPD is not responsible/authorised for supervision but it can request the supervisory authorities listed in Art. 38 of the AML Law (i.e. the NBM, the Ministry of Finance, the Public Revenue Office and the Securities and Exchange Commission) to perform supervision concerning a specific entity. In such a case, the supervisory authority has to inform the MLPD of the results of this supervision activity (Art. 40 para 2 AML Law); they also have to inform the MLPD in the course of regular on-site examinations if they should detect any irregularities or non-compliance with the provisions of the AML Law (para 1).

557. Art. 43 of the Law on Foreign Exchange Operations prescribes that foreign exchange operations are supervised by the NBM, the Ministry of Finance, the Ministry of Economy and the Securities and Exchange Commission. The NBM is responsible for the supervision of foreign

[150] This shortcoming was obviously also acknowledged by the legislator of the new AML/CFT Law which included MAPAS as supervisory authority (Art. 46).

exchange operations conducted by authorised banks, savings houses and foreign exchange offices (Art. 45); the reference to savings houses in this regard was explained to make no sense as savings houses are not authorised to perform foreign exchange operations. The Ministry of Finance (State Foreign Exchange Inspectorate) shall conduct supervision of the foreign exchange operations of residents (other than banks, savings houses and exchange offices) and non-residents (Art. 46). Though the Ministry of Economy and the Securities and Exchange Commission are also mentioned as supervisory bodies for foreign exchange operations, no specific tasks were assigned to them. The evaluators were informed that in practice only the NBM supervises foreign exchange operations of banks and foreign exchange offices (savings houses are not authorised to perform foreign exchange operations and thus they are not supervised in this regard).

558. There is only one postal company in "the former Yugoslav Republic of Macedonia": the public enterprise "Macedonian Post Office"[151]. It is state owned and was founded by the Government. It performs postal services in domestic and foreign postal traffic. It cooperates with the "Postenska Banka", which is an independent organisation (33 % of shares are held by the "Macedonian Post Office"[152], 67 % is private capital, a so-called golden share[153] is owned by state) and uses the postal offices for providing its financial services. The post organisation officers perform the bank services for the "Postenska Banka"; there is an electronic network between the postal organisation and "Postenska Banka". As mentioned above (para 442), there are very tight (legal and factual) links between the "Postenska Banka" and the "Macedonian Post Office"[154]. Furthermore, some provisions of the Banking Law (esp. Art. 47) authorize the "Postenska Banka" and thus indirectly also the "Macedonian Post Office"[155] to also conduct international transfers. This means that though the current practice of the "Postenska Banka" in cooperation with the "Macedonian Post Office"[156] seems to be reduced to domestic transfers, this does not mean that this will necessarily remain so because there is the legal possibility of also conducting international transfers. The authorities advised that the operation and the supervision of the "Postenska Banka" are regulated with the Banking Law and that this organisation is not treated differently to other banks. It was explained that Article 77 paragraph 4 of the Banking Law empowers NBM to exercise surveillance over the operation of entities determined as related (affiliated) with banks. As shareholders are considered as related with banks (Article 2 item 5 of the Banking Law), the NBM is also authorised to conduct supervision over the operations of the "Macedonian Post Office"[157] as a shareholder with a qualified holding (above 5% of the bank's capital). This power was already used in practice: during the period between 22 January and 7 February 2007, the NBM performed a targeted examination of "Postenska Banka". The reason for this targeted on-site examination was to examine the risks associated with the existing co-operation of these two entities.

[151] See Para 4.

[152] See Para 4.

[153] This share provides a dominant voting right to the Government when deciding on certain issues defined in the Article 48 of the Banking Law (amongst others change of ownership, mergers of operations, investment policies etc.). It also empowers "the former Yugoslav Republic of Macedonia" to retain the right arising from the golden share for a period of 12 months after the privatisation of at least 51% of the capital of this entity.

[154] See Para 4.

[155] See Para 4.

[156] See Para 4.

[157] See Para 4.

Recommendation 30 – (Structure, funding, staffing, resources, standards and training)

General

559. Concerning rules which would require the staff of the supervisory authorities to maintain high professional standards, the authorities could only point to specific rules for the employees of the NBM: it was said that the NBM Code of Conduct requires the NBM employees to maintain their professional knowledge and abilities at the required level and to pay due professional attention during the performance of their tasks.

560. Concerning the requirement to keep professional secrets confidential, the authorities could only point to Art. 25 of the Law on Civil Servants that obliges civil servants to keep state secrets and official secrets confidential. This provision provides a general requirement to keep state secrets and official secrets confidential but this means that sectoral laws have to define what should be considered as a "state secret or official secret". Consequently, without a specific rule determining what should be considered as a state secret or an official secret, Art. 25 of the Law on Civil Servants cannot be applied. The evaluators were not advised of any sectoral laws which would define such secrets.

561. As employees of the NBM and the SEC are not public servants, the above mentioned provision of the Law on Civil Servants does not apply and this issue is regulated separately: The Law on Securities (Art. 188) requires that "*all present and former Commissioners as well as employees and staff of the Commission and consultants retained by the Commission must not use for their own benefit or disclose business secrets or internal information they acquire during the operations in the Commission. The obligation for confidentiality shall continue to be valid during five years following the day of termination of term of office*". Art. 95 of the "Law on the National Bank of the Republic of Macedonia"[158] requires that staff of the NBM "*shall not disclose the business secret and confidential data, regardless of the manner they obtained it*"; fines can be imposed for infringements (Art. 97).

562. The number of supervisors and their familiarity with AML/CFT issues, integrity and training issues is best provided for in the NBM.

563. The staff of the supervisory authorities attended several seminars and courses on various subjects regarding AML/CFT issues:

Title of the training-seminar	Number of participants	Organiser of the training seminar
Money laundering and international banking (2003)	4 (NBM)	Programme for training of the Financial Police – (Lecturers – experts from the US Treasury)
Seminar on prevention of financial crime (2003)	2 (PRO, NBM)	USAID
Seminar on prevention of financial crime (2003)	2 (SEC, Insurance Supervision Division)	USAID
Seminar on prevention of money laundering (2004)	7 (NBM, Insurance Supervision Division, PRO, SEC)	USAID
Seminar on tax evasion (2004)	9 (PRO)	USAID
Financing terrorism (elements, evidence and international aspects) (2005)	5 (NBM, Insurance Supervision Division, PRO, SEC)	USAID

[158] See Para 4.

Seminar on the efforts to prevent money laundering – integrity, money laundering and preparation for the third EU directive on money laundering prevention (2005)	2 (NBM)	MLPD
Seminar on "Coordination of the activities among the competent bodies for implementation of measures and actions regulated under the Law on Prevention of Money Laundering and Other Proceeds from Crime". (2005)	2 (NBM, Insurance Supervision Division)	MLPD in cooperation with the Council of Europe, Project MOLI-MK
Techniques for investigation of money laundering (2005)	1 (PRO)	Council of Europe, Project MOLI-MK
Training "Experiences and trends in the cooperation between the money laundering prevention units and the bodies in charge for investigations (2006)	5 (NBM, PRO, SEC)	MLPD
Seminar on money laundering, seizure of property and confiscation (2006)	2 (NBM, PRO)	Customs Administration in cooperation with the US Embassy
Seminar on "Types of prevention of money laundering and financing terrorism" (2005)	3 (NBM, Insurance Supervision Division, SEC)	MLPD in cooperation with the Council of Europe, Project MOLI-MK
Seminar on prevention of money laundering (2006)	3 (NBM)	MLPD in cooperation with MoIA (TAIEX Programme)
Conference on prevention of money laundering and confiscation (2005)	1 (NBM)	MLPD in cooperation with the Council of Europe, Project MOLI-MK
Conference on prevention of money laundering and confiscation (2005)	3 (PRO)	MLPD in cooperation with the Council of Europe, Project MOLI-MK
Investigation techniques of financial crime (2006)	3 (NBM, PRO, SEC)	Economic Office of the US Embassy in "the former Yugoslav Republic of Macedonia"
Final conference on prevention of money laundering and confiscation (2005)	3 (NBM, PRO)	Council of Europe, EAR and the MLPD

564. During 2005 two technical assistance projects were organised. These projects included seminars and on-the-job trainings and covered the internationally accepted mechanisms for AML/CFT supervision, latest changes in money laundering and terrorist financing typologies, etc. The training was realized in the framework of the MOLI-MK Project which was implemented by the Council of Europe and the funds were approved by the European Agency for Reconstruction (EAR) within the CARDS programme. Training has also been provided from USAID and the US Embassy in Skopje[159].

"The National Bank of the Republic of Macedonia"[160] (NBM)

565. The Supervision Department of the NBM is directly liable to the Governor of the NBM. It has 51 employees, involved in supervision of banks, savings houses, exchange offices and fast money transfer providers. Within the On-site Supervision Department there is a group of six banking supervisors specialized in the field of AML/CFT. Despite of the specialisation, in the past almost all of the supervisors were part of a certain type of training (seminar). In addition to this, two employees of the Financial Stability, Banking Regulations and Methodology Department are closely involved in the NBM's AML/CFT activities (from the regulatory point of view). One of these employees is a regular member of the National AML/CFT Council. Overall it seems that the units within the NBM responsible for AML/CFT supervision are adequately structured, funded, staffed, and provided with sufficient technical and other resources to fully and effectively perform their functions.

[159] At present, there is an ongoing Twinning Project "Strengthening the capacities for AML/CFT" which was launched in October 2007.

[160] See Para 4.

Insurance Supervision Division (Ministry of Finance)

566. Within the Ministry of Finance the supervisory activity is exercised by two Units within the Financial System Department: the Insurance Supervision Division, responsible for on-site inspections and off-site monitoring, and the Insurance System Division, responsible for licensing and regulation. Insurance Supervisors of the Ministry of Finance are civil servants; they are trained, organised, and assessed in accordance to the Law on Civil Servants and the internal acts regulating the organisation of the Ministry of Finance. This does not necessarily include AML/CFT issues. Decisions of supervisors require approval from the Minister of Finance.

567. The authorities consider the staff to be competent but insufficient (5 people); all of them have a university degree. Each of them is engaged in different specific areas of insurance. The representatives confirmed that they participated in the training seminars as described in the table above (para 563); however, they emphasized that they require more training.

State Foreign Exchange Inspectorate (Ministry of Finance)

568. The State Foreign Exchange Inspectorate (FEI) is an agency within the Ministry of Finance. Its tasks are described in Art. 3 of the Law on Foreign Exchange Inspectorate (OG 89/04) and Art. 46 of the Law on Foreign Exchange Operations: it shall conduct supervision of the foreign exchange operations of residents (other than banks, savings houses and exchange offices) and non-residents. The Inspectorate is managed by the Director and it is organised into two units: the Inspection Surveillance Unit (1 head plus four inspectors) and the Unit for Legal Affairs and Analytics (1 head plus two advisors). Two employees are responsible for administrative-technical issues within the Inspectorate. The staff of the FEI has not been trained on AML/CFT issues so far[161]. The representatives of the FEI took the view that they could provide a lot of information concerning money laundering issues to the MLPD but that they lack staff, equipment etc.

Securities and Exchange Commission (SEC)

569. The evaluators were told onsite that 14 persons are employed at the SEC of which 2 are technical staff. 4 persons were dealing with supervision issues. The evaluators were told that AML/CFT issues are part of the full scope on-site supervision examinations. However, comparing the low number of staff (4 supervisors) with the number of examinations (see below para 617 ff), there are some doubts that the SEC is sufficiently staffed to cover AML/CFT issues in a satisfactorily manner[162].

Recommendation 29 - Authorities' Powers

General

570. The supervisory bodies do not need a court order in the cases described below where a possibility exists to compel production of or to obtain access for supervisory purposes.

571. The AML Law itself contains no provisions which would make its supervision provisions enforceable. This is only provided for in certain sectoral laws (e.g. Banking Law).

[161] After the onsite visit the evaluators were informed that the staff of FEI was included in the activities of the Twinning Project and that two employees attended the "Seminar on tax, foreign trade, customs and smuggling" which took place in February 2008.

[162] The SEC acknowledged the lack of staff in the Capital Market's Supervision Department and in 2008 it hired two more supervisors (and it is planned to hire even more staff).

572. The AML Law contains no specific provisions to sanction directors or senior management in the case of failure to comply with AML/CFT requirements. The Banking law (Art. 119, para 2) provides for a money penalty of the "*executive Body of a bank and other persons with special rights and responsibilities in a bank, who commit an infraction under paragraph 1 of this Article, shall be charged with a fine from 10 000 to 50 000 MKD"* if the bank "*fails to notify the Money Laundering Prevention Directorate and to submit other relevant information to the competent body*". Art. 197 of the Law on Securities provides for pecuniary penalties and the possibility to (temporarily or permanently) revoke a licence of directors in cases "*when a director, employee, member of the Management Board and member of the Supervisory Board or member of the Board of Directors of a Licenced Securities Market Participant or the holder of an individual licence for operating with securities to engage in securities market activities has violated, or is violating, any provisions of this Law, or any other Laws within its competence*". It was explained to the evaluators that the AML Law is included in the expression "*other Laws within its competence"*. Apart from the two provisions mentioned above, the other sectoral laws are silent concerning sanctions for directors or senior management in the case of failure to comply with AML/CFT requirements.

"The National Bank of the Republic of Macedonia"[163] (NBM)

573. The Banking Law prescribes that during supervision, banks are obliged to allow the authorised persons of the NBM to inspect all available documents, in particular the supervisor may request:
(i) the bank to provide reports and information on the operation of the bank;
(ii) an auditing report and additional information on the completed audit of the bank; and
(iii) extraordinary surveys on the bank's operation (Art. 80).

574. The supervisors of the NBM are entitled, in the course of the supervision of banks, to access all documents or information which are relevant for supervision; for this no court order is required. This also relates to confidential data (as prescribed by the Banking Law) – in this case, the data may be disclosed only upon written request of the NBM for the needs of the supervision (Article 84 of the Banking Law).

575. Art. 85 of the Banking Law describes several measures (e.g. written warnings, revoking the founding or operating licence of a bank, prohibition to perform part of or all financial activities etc.) what the NBM can do in case a "*bank has violated the provisions of this Law and the other regulations passed by the National Bank, or if determined that the operations of the bank have endangered the timely implementation of commitments towards the creditors of the bank*". Apart from this rather general provision, there seem to be no specific provisions enforcing the rights of the NBM in the course of supervision as described above (para 573)[164].

576. "The Law on Fast Money Transfer" (OG 77/2003) specifies that during on-site controls, NBM inspectors are allowed to review all necessary documents concerning business activities of money transfer services.

577. The NBM is also responsible for supervision of foreign exchange offices. The Law on Foreign Exchange Operations contains no provisions concerning the powers of NBM supervisors when performing supervision of foreign exchange offices, like access to documentation, taking copies etc. It is understood that this is an unintentional omission by the law drafters because – in contrast - Art. 47 contains such provisions concerning the powers of supervisors from the Ministry of

[163] See Para 4.

[164] This is now different with the new Banking Law which entered into force on 9 June 2007: Article 117 obliges banks to provide all necessary information and documentation for the purposes of bank supervision. According to Article 187, "*a bank shall be fined for infraction in the amount of MKD equivalent from EUR 15 000 to EUR 20 000 if it fails to provide the reports, information and other data defined by Article 117 of this Law*".

Finance when supervising the operations of residents (other than banks, savings houses and exchange offices) and non-residents. Also Art. 10 of the "Law on the National Bank of the Republic of Macedonia"[165] ("*The National Bank [...] grants operating licence to foreign exchange bureaus and supervises their operations in accordance with the law*") is of no help in this regard as it only prescribes that the NBM is entitled for supervision but it does not specify the powers of supervisors. Only when exchange offices conduct fast money transfers, there is a possibility for NBM inspectors to review all necessary documents concerning the business activities of money transfer services (see para above).

Ministry of Finance-Insurance Supervision Division

578. The supervisors from the Ministry of Finance (Insurance Supervision Division) are entitled to examine the accounting books, business documents, administrative and other business evidence. Upon request the obliged entities have to produce copies of the relevant documents for the supervisors (Art. 207 para 3 of the Law on Insurance Supervision). The Law on Insurance Supervision contains sanctioning provisions if the relevant entities should not cooperate with the MOF in the course of its supervision activity (Art. 236 para 1 item 19).

State Foreign Exchange Inspectorate (Ministry of Finance)

579. The Ministry of Finance (State Foreign Exchange Inspectorate) shall conduct supervision of the foreign exchange operations of residents (other than banks, savings houses and exchange offices) and non-residents (Art. 46 of the Law on Foreign Exchange Operations). However, the authorities could not point to provisions which would assign special powers of the State Foreign Exchange Inspectorate linked with these responsibilities.

Securities and Exchange Commission

580. Art. 192 of the Law on Securities entitles the Securities and Exchange Commission (SEC) to conduct offsite and onsite inspections of the operations of licenced securities market participants. *Off-site inspection shall be performed by obtaining data from licenced securities market participants, and on-site inspection shall be performed by direct inspection of the operational data, at the premises of the securities market participant being supervised* (Article 193). Failure, or refusal of a Licenced Securities Market Participant to provide the authorised person with all the needed documents, their copies and needed explanations, or obstruction of an inspection, shall be grounds for temporary or permanent revocation of its licence for operation by the Commission (Article 195).

581. In cooperation with the NBM, the Commission may also perform inspections of the operations of banks providing services related to operation with securities.

Recommendation 17 – Sanctions

582. Section VI of the AML Law provides for administrative sanctions of the obliged entities in the case of infringement of regulations of the AML Law. It provides for sanctions both for legal entities and "*the responsible person within the legal entity*". The pecuniary sanctions range for natural entities and responsible persons within a legal entity from 40 000 to 50 000 MKD (approx. 666 to 833 EUR) and for legal entities from 150 000 to 300 000 MKD (approx. 2 500 to 4 166 EUR). The pecuniary sanctions for natural persons seem on the low end but somehow adequate for the domestic economic situation. However, the fines for legal entities (with a maximum

[165] See Para 4.

amount of approx. 4 166 EUR) cannot be considered to be dissuasive and proportionate for financial institutions.

583. In addition to pecuniary penalties, the AML Law also provides for the possibility of imposing a prohibition to perform a particular profession, activity or duty for a certain period (3 months up to 1 year). The AML Law does not provide for withdrawing or suspending a financial institution's licence for not observing requirements of the AML Law. In contrast, the Banking Law, the Law on Securities and the (amended) Law on Fast Money Transfer address this issue as follows:

(i) Art. 85 of the Banking Law describes several measures (e.g. written warnings, revoking the founding or operating licence of a bank, prohibition to perform part of or all financial activities etc.) what the NBM can do in case a "*bank has violated the provisions of this Law and the other regulations passed by the National Bank, or if determined that the operations of the bank have endangered the timely implementation of commitments towards the creditors of the bank*". Though this provision does not contain a reference to the AML Law but to the provisions of the Banking Law itself, it can be concluded that it allows the withdrawal of licences in a number of infringements related to AML obligations because Art. 53 of the Banking Law stipulates that a "*bank shall not take deposits, nor effect orders for payments, or transfer of funds, or other property, if it reasonably suspects or undoubtedly identifies that the funds derive from criminal activities*"; furthermore, it requires that "*the bank shall inform the authorised Anti-Money Laundering Department of the suspicion or knowledge described in paragraph 1 of this Article and shall provide, at the authorities request, additional relevant information, in accordance with the applicable legislation.*"

(ii) The Law on Securities has a similar provision for revoking a licence when the holder of the licence "*has violated, or is violating, any provisions of this Law, or any other Laws within its competence*" or "*has caused their Licenced Securities Market Participant to violate its Rules, this Law, or the regulations issued pursuant hereto*" (Art. 197). In this context, the authorities explained "*this law*" refers to the "*Law on Securities*" while "*any other Laws within its competence*" refers to laws where the SEC is designated as a supervisory authority.

(iii) At the time of the on-site visit the Law on Fast Money Transfer did not provide for the possibility of revoking a licence; due to an amendment coming into force in May 2007, also this law now provides for a comparable possibility of revoking a licence, as provided for by Art. 197 of the Law on Securities.

However, neither the Banking Law nor the Law on Securities nor the (amended) Law on Fast Money transfer allow the respective supervisors to revoke or suspend a licence in the case of infringements related to CFT obligations. The other sectoral laws do not provide for withdrawing or suspending a financial institution's licence for not observing the requirements of the AML Law.

584. The AML law only allows sanctions to be imposed on legal entities and "*the responsible person within the legal entity*" but does not explicitly provide a sanctioning regime for directors or senior management. The term "*responsible person*" does not expressively encompass directors or senior management. During the pre-meeting, the authorities explained that the definition for "*responsible person*" can be taken either from Art. 3 para 33 of the Trade Company Law or from Article 122, paragraph 7 of the Criminal Code; both definitions (which are slightly different in wording) seem to cover directors or senior management. However, this cross-referencing to two different laws leaves some discretion and for the sake of the rule of law - the system would benefit from clearer cross-referencing and less ambiguity.

585. The AML Law is silent about how the sanctions as provided for by the AML Law should be imposed, particularly by which body, following which rules of procedure etc. In their response to the questionnaire, the authorities advised that the supervisors (depending on the nature of the requirement in question) are empowered to apply sanctions of the AML Law. The evaluators were also told that, in 2005 and 2006, the NBM imposed "corrective measures" against three banks; one "corrective measure" was imposed because a bank failed to establish a system for monitoring and identifying money laundering transactions. The legal basis for the NBM to undertake

corrective measures is determined (a) by Article 33 of the "Law on the National Bank of the Republic of Macedonia"[166] which obliges the Governor of the NBM "*to undertake measures against the bank or the savings house and […] determine deadlines for compliance with the standards and elimination of the identified non-compliance and irregularities"* and (b) Article 85 of the Banking Law which lists the possible measures. In July 2006, the NBM filed a request to court to launch misdemeanour procedures against one bank and its bodies because the bank was operating contrary to Art. 22 of the AML Law. In 2006, the NBM also supervised the operations of 177 authorised exchange offices and filed to the competent court five requests for launching misdemeanour procedures against authorised exchange offices because of non-compliance with Article 17 paragraphs 1 and 2 of the AML Law. Representatives of the Insurance Supervision Division (Ministry of Finance) informed that they have initiated only once so far court proceeding against an insurance company but the court refused the request; since then no further requests to courts were filed. It can be concluded that the authorities interpret the AML Law in a way that the supervisory authorities are only authorised to apply to the courts for initiating misdemeanour proceedings. Considering that the courts so far did not impose any sanctions, the sanctioning system of the AML Law has to be regarded as completely ineffective.

586. The NBM can also impose sanctions which are provided for by the Banking Law (Article 85). According to this law, the NBM has the power to submit a request for starting criminal procedures or misdemeanour procedures against banks/savings houses and the executive body of a bank/savings house or other responsible persons within a bank/savings house. However, these sanctions are not dealing with infringements of AML/CFT obligations. The NBM as a supervisor of exchange offices and fast money transfer providers can also use one or more of the measures and actions determined within the Foreign Exchange Law and the Law on Fast Money Transfer. Again, none of these laws provide sanctions for infringements of AML/CFT obligations.

587. The Minister of Finance is authorised to undertake supervision measures against insurance undertakings in the case of disclosure of irregularities. Measures can include an order to eliminate irregularities, revoking of the licence for performing insurance activities, liquidation or bankruptcy. The decision by the Minister of Finance on revoking of the licence is subject to an appeal to the Government Committee for resolving second-instance appeals (Art. 211 ff of the Law on Insurance Supervision). However, none of the measures stipulated by the Law on Insurance Supervision are linked with the AML Law or with AML/CFT obligations and can thus not be applied in case of infringements related to AML/CFT obligations.

Market entry – R.23 (criteria 23.3., 23.5, 23.7 (licensing/registration elements only))

General

588. According to Article 10 of the "Law on the National Bank of the Republic of Macedonia"[167], the NBM is authorised to grant licences to banks, savings houses, for performing services of prompt money transfer and foreign exchange bureaus. For an overview of the licensing regime referring to the various financial institutions see the table at para 555.

Banks (banks, branches of foreign banks and representative offices of foreign banks) and savings houses

589. The authorities pointed to several provisions which should prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils, etc in

[166] See Para 4.

[167] See Para 4.

a financial institution: according to Article 11 of the Banking Law, each legal entity or natural person intending to acquire shares or to increase the number of shares they already hold, so that they exceed 5 percent, 10 percent, 20 percent, 33 percent, 50 percent or 75 percent of the total number of bank's voting shares, directly or indirectly, should submit an application to the NBM for obtaining prior approval. The NBM can reject such an application due to several reasons, e.g.:
- The manner of operations or the nature of the activities performed by such person indicates high-risk tendency;
- The financial and the economic standing of such persons do not correspond with the value of shares they intend to acquire;
- There are grounded reasons to doubt the legitimacy of the origin of the funds, the integrity or the true identity of such persons;

590. Art. 26 of the Banking Law deals with changes in the ownership structure of voting shares and requires amongst others that "*the legal entity or natural person that acquired 1 percent to 5 percent of the bank's voting shares should notify the National Bank and submit evidence for the source of funds supported by documents within five days after the registration of such change in the Central Securities Depositary*". The Governor of the NBM shall determine by Decision that the shares for which no or inadequate evidence for the source of funds has been submitted shall not bear voting rights and the persons who acquired such shares, or the representatives of such persons, may not be members of the bank's management bodies. After the Governor's Decision becomes final, the NBM shall immediately inform the MLPD. In 2005, seventeen cases (in five banks) of non-compliance with Article 26 of the Banking Law were determined and as appropriate evidence of the source of funds was not submitted, the voting rights of these persons who acquired shares were limited.

591. According to Article 25 of the Banking Law, without obtaining a prior approval of the Governor of the NBM, a bank is not allowed to make capital investments in another bank, nor make capital investments in financial of non-financial institutions domestically or abroad exceeding 10 percent of the bank's guarantee capital. If the Governor of the NBM has not granted approval, because of a non-submitted appropriate evidence of the source of funds, the NBM is obliged to immediately inform the MLPD of its final decision.

592. According to Article 62 of the Banking Law, the Board of Directors of a bank may not appoint the Executive Body of the bank without prior approval from the NBM. This Article prescribes the conditions which a member of the executive board of a commercial bank has to fulfil. Somebody shall not be a member of the executive board:

"3. who is convicted to imprisonment as follows:

- *in the period from the validity of the verdict to the day the sentence is served, and 5 years from the date the sentence has been served, in case of conviction with decree absolute on up to 3 years of imprisonment;*
- *in the period from the validity of the verdict to the day the sentence is served, and 10 years from the date the sentence has been served, in case of conviction with decree absolute on over 3 years of imprisonment.*

4. to whom security measure has been enforced - prohibition to carry out profession, activity or duty during the validity of the measure";

593. The "Decision on the documentation necessary for granting licences according to the provisions of the Banking Law, the Law on Securities and the Law on Microfinancing Banks" requires that applicants for a bank licence have to enclose with their application in the case of shareholders who are natural persons a "*certificate issued by authorised court proving that the shareholder is not subject to criminal charges*".

594. Art. 62 of the Banking Law and the "Decision on the documentation necessary for granting licences according to the provisions of the Banking Law, the Law on Securities and the Law on

Microfinancing Banks" are limited in their scope to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils, etc in a bank or savings house: Art. 62 of the Banking Law covers only certain crimes and the aforementioned Decision is based on the Banking Law and, hence, cannot go beyond the content of the Banking Law. The other provisions to which the authorities referred (see above) are dealing with the legitimacy of funds but do not prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a bank or savings house.

Credit Unions

595. Initially the evaluators were informed that no credit unions exist in "the former Yugoslav Republic of Macedonia". This opinion was coupled by the fact that there is also no specific legislation for such institutions. However, during the onsite visit, the evaluators heard from representatives of the NBM that there is one savings house which has the characteristics of a credit union (it is owned by its members and it gives credits only to its members). It was explained that this is not in contradiction to the legal framework, but as there are no specific rules for credit unions, the regulations for savings houses apply (e.g. it can operate only with natural domestic persons but not with foreign entities). This institution is supervised every 18 months.

Insurance companies (including life)

596. Pursuant to the Insurance Supervision Law, the Ministry of Finance is the competent body to issue licences for insurance companies. Art. 23 of the Law on Insurance Supervision stipulates that members of the managing board shall not have a "*record of a conviction punishable under the property or financial codes*" – the scope of this reference remained unclear as there is neither a legal definition of this term in the Law on Insurance Supervision nor such a heading in the Criminal Code. Apart from this very unclear provision, neither this law, nor the Law on Insurance nor any other piece of legislation contains provisions to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function, including on the executive or supervisory boards, councils, etc in an insurance company.

Pension Funds/Pension Companies

597. The establishment of pension funds and pension companies is regulated in the Law on Mandatory Fully Funded Pension Insurance. Article 14 stipulates that a pension company for managing pension funds may be founded by domestic and foreign legal entities. The founders which would hold 51% of the share capital of a Pension Company shall be banks, insurance companies, pension companies and other financial institutions or entities which, directly or indirectly, hold more than 50% of the shares of such institutions. The same legal entity may not be a shareholder of more than one Pension Company. Article 15 determines the requirements of a founder of a pension company: it shall be a legal entity satisfying *inter alia* the following criteria:
(a) minimum capital of 20 million EUR in MKD equivalent;
(b) minimum three years of existence;
(c) permanent management team comprised of competent, expert and experienced persons.
If a foreign financial institution wants to become a founder, it must have in addition "*for at least one year prior to that time a minimum investment grade level rating by a reputable international rating agency*".

598. It can be seen from these requirements, that there are no provisions to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest

or holding a management function, including in the executive or supervisory boards, councils, etc in a Pension company or Pension Fund.

Companies issuing credit/debit cards

599. The evaluators were informed that there is no special licensing or registration regime for this kind of service. As a consequence there are also no requirements to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils, etc in such entities. However, the authorities advised that companies issuing credit/debit cards provide their services mainly via banks. Nonetheless, at least one company (Diners) operates autonomously and uses bank channels only for money transfer. These companies fall under the supervision of the Public Revenue Office (PRO). Representatives of the PRO explained that they already controlled these entities (but no figures how often this was done could be provided). AML/CFT issues are not checked systematically but if supervisors should come across irregularities related to AML/CFT issues, they would inform the MLPD thereof (there was no information whether this had been done so far).

Foreign Exchange Offices

600. The "Decision on the conditions and the manner of obtaining licence and performing exchange offices operations" determines under which conditions the NBM can issue a licence for performing exchange offices operations. Amongst others, "*the responsible person in the legal entity and the employees that perform exchange offices operations should not be subject to pressed criminal charges nor to non-trial condemning sentence which is proved with a document issued by the authorised court, and they should not be convicted nor be under investigation for offences related to financial operations*". The authorities explained that instead of "*should not*" (dotted underlined in the previous sentence), a better translation would be "*cannot*". The "Decision on the conditions and the manner of obtaining licence and performing exchange offices operations" does not specify which crimes should be understood as "*offences related to financial operations*". The authorities interpret this as a reference to Chapter XXV of the Criminal Code ("*Criminal Offences against Public Finances, Payment Operations and the Economy*"). This chapter includes *inter alia* the money laundering offence, counterfeiting money, securities fraud etc. However, though it seems a possible interpretation to understand "*offences related to financial operations*" as reference to Chapter XXV of the Criminal Code, some doubts remain as the title and content of Chapter XXV clearly goes beyond what could be commonly understood as "*offences related to financial operations*": e.g. Art. 272 ("Forgery of Trademarks, Measures and Weights") or Art. 276 ("Illicit Manufacturing"). With this level of uncertainty it remains questionable whether refusing a licence could be reasoned with a conviction of the responsible person for any of the offences covered by Chapter XXV of the Criminal Code.

601. Also the term "*responsible person in the legal entity*" is not defined in the "Decision on the conditions and the manner of obtaining licence and performing exchange offices operations" but it seems to cover directors, senior management (see above paragraph 584) and owners of foreign exchange offices; beneficiaries seem to be not covered at all.

Brokerage activities

602. As of 30 September 2006, there were 11 brokerage houses operating in "the former Yugoslav Republic of Macedonia". These entities were licenced to work with securities by the Securities and Exchange Commission. Depending on the amount of the founding capital, they can perform the following types of securities-related services: purchase and sale of securities at the order of and for the account of the customer; purchase and sale of securities for own behalf and account; securities portfolio management at the order and for the account of an individual customer; performing transactions and activities for the account of an issuer of securities necessary for

successful public offering of securities, without mandatory buyout of unsold securities; performing transactions and activities for the account of an issuer of securities necessary for a successful public offering of securities, with mandatory buyout of unsold securities; providing listing sponsor activities; providing investment advice and performing transactions and activities for the account of third parties necessary for carrying out a takeover of a joint stock company in accordance with the Law on Taking Over of Companies.

603. The requirements to receive a licence from the Securities and Exchange Commission for brokerage activities are set out in the Law on Securities (Art. 97 ff). A brokerage house can only be founded as a joint stock company. Art. 98 - 100 describe some basic requirements, like amount of basic capital and risk management of brokerage houses. Art. 101 stipulates that the appointment of the director of a brokerage house must be approved by SEC. The SEC has to refuse approval of a candidate *inter alia* if the person was

"sentenced to imprisonment :
from the period of effectiveness of the verdict till the day of servicing the sentence and 5 years from the day when he/she serviced the sentence, in the case of conviction up to 3-year imprisonment;
from the period of effectiveness of the verdict till the day of servicing the sentence and 10 years from the day when he/she serviced the sentence, in the case of conviction beyond 3-years imprisonment." (Art. 101 para 3 lit b.).

This provision covers obviously only mandatory sentences but not sentences on probation.

604. After the pre-meeting, the authorities also pointed to the "Regulation on the additional information required in the application for a licence to establish a brokerage house" (Official Gazette of the Republic of Macedonia No. 6/2007) which further defines the requirements as set out by the Law on Securities. The Evaluators were not provided with an English version of this Regulation but it was said that it authorizes the SEC to require from the founders of brokerage companies the following documents:

(i) Certificate issued by the competent institutions that there are no bankruptcy or liquidation proceedings instituted against the founder;
(ii) Certificate issued by the competent court that no sanction prohibiting founder's activities has been passed.
(iii) Statement by the founder given under full moral, penal and material responsibility and verified with a notary, that the founder has not been convicted with an effective verdict for a perpetrated criminal offence of causing bankruptcy of a legal entity.

605. Furthermore, this Regulation was said to contain some provisions concerning the documentation for directors of brokerage houses: the application for an operational licence of a brokerage house must be supported with information for each of the members of the supervisory board, managing board, or board of directors containing the following:

(i) Evidence from a competent court that no sanction prohibiting performance of profession, activities or duties has been passed on the member of the supervisory board, managing board, or board of directors;
(ii) Evidence from a competent court of previous conviction/non-conviction of a member of the supervisory board, managing board, or board of directors;
(iii) Statement by the member of supervisory board, managing board, or board of directors given under full moral, penal and material responsibility and verified by a notary, that this member has not been convicted with an effective verdict for a perpetrated criminal offence of causing bankruptcy of a legal entity
(iv) Statement by the member of supervisory board, managing board, or board of directors given under full moral, penal and material responsibility and verified with a notary, that there do not exist any of the restrictions on the appointment stipulated in Article 346 of the Law on Trade Companies or any other restriction established with the law, and in the case of independent non-

executive member on the board of directors also a statement that there do not exist any of the restrictions stipulated in Article 3 paragraph 1 item 25 of the Law on Trade Companies.

606. However, though there are a number of provisions, it should be noted that, apart from some requirements for directors of brokerage houses, there are no substantial requirements to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils, etc in such entities. Also the "Regulation on the additional information required in the application for a licence to establish a brokerage house" (see para 604 above) does not add very much in this regard: firstly, the focus is restricted to bankruptcy proceedings and does not address any other crimes (e.g. money laundering); secondly, even the verification process that there is no such conviction seems insufficient because it puts the liability on the applicant to state that he has not been convicted (the verification process by a notary refers obviously only to the fact that this statement was given by the applicant "*under full moral, penal and material responsibility*"). Lastly, considering that the "Regulation on the additional information required in the application for a licence to establish a brokerage house" can only specify what is prescribed by the Law on Securities itself, there are doubts, whether provisions which go beyond the requirements of the Law on Securities could be enforced.

Investment funds/investment fund management companies

607. The establishment of investment funds and investment fund management companies is governed by the Law on Investment Funds. Art. 4 para 3 describes that investment funds shall be incorporated and managed by fund management companies in accordance with the charter of the fund and the provisions of the Law on Investment Funds. Section V. of the Law on Investment Funds describes amongst others the conditions under which investment fund management companies can be established. Art. 44 prescribes that members of the management board in such a company need the prior approval of the SEC. Some persons are not allowed to be appointed, particularly if they were sentenced for a period of five years after the verdict has become final (excluding the time served for punishment) for one of the following criminal offences: "*initiation of false bankruptcy, acting against the obligation to maintain the business books, causing damage to creditors, awarding privileges to creditors, malpractice during mandatory settlement and bankruptcy procedures, unauthorised disclosure or acquisition of business secrets or fraud*". It is unclear from this language whether this provision covers not only mandatory sentences but also sentences on probation. However, it is anyway limited to criminal offences related to diligence of a prudent business man and does obviously not cover convictions for money laundering, organised crime, terrorist financing etc. Thus there is only insufficient legislation to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils, etc in investment fund management companies.

Money or value transfer services

608. Providers of fast money transfer are licenced and supervised by the NBM according to the Law on Fast Money Transfer. According to this law a company, which wants to obtain a licence from the Governor of the NBM to conduct fast money transfer, has to fulfil, amongst others, the following condition:

> *"5. No security measure - prohibition to perform profession, activity or duty to be declared against the responsible person and the employees that will conduct fast money transfer, as well as no legal court verdict to be declared against criminal act in the area of finance".*

The term "*responsible person in the legal entity*" seems to cover also directors and senior management (see above paragraph 584).

Ongoing supervision and monitoring – R.23 (criteria 23.4, 23.6, 23.7 (supervision/oversight elements only))

"The National Bank of the Republic of Macedonia"[168] (NBM)

609. The NBM conducts off-site and on-site supervision of banks and savings houses. Off-site supervision is done by surveillance of the documentation that banks and savings houses submit to the NBM. An on-site examination of the AML and CFT policies and procedures consists of an analysis of bank's procedures, their implementation and operation in practice. The NBM has issued a "Manual on the manner of controlling the anti-money laundering and combating terrorism financing process in banks and savings houses" which is used by NBM supervisors for onsite supervision. This manual describes procedures for evaluating the AML measures of institutions supervised by the NBM; it is structured as a step-by-step system starting with the preparation for the examination and ending with the description of activities after the on-site visit. The manual includes guidelines for the analysis of policies, procedures and practices focusing mainly on internal procedures for client identification and to some extent dealing with issues of management and internal audit responsibilities and reporting obligations of an institution. In order to help supervisors to obtain all relevant information the manual includes detailed questionnaires for the preparation of and the on-site visit itself. However, there is no provision for the evaluation of policies and procedures for combating terrorism financing and apart from mentioning it in the title of the document and in the footnote to the first item (stating that in the further text of the Manual the term AML includes also CFT) there is no mentioning of combating terrorism financing at all (terrorist financing is only addressed in an annex to this manual, a so-called "request letter", with which banks have to provide information e.g. on their CFT policy).

610. In 2006, the NBM conducted (pursuant to Article 24 and 32 of the "Law on the National Bank of the Republic of Macedonia"[169]) 31 on-site inspections of banks/savings houses. Eleven examinations were full-scope (7 banks, 4 savings houses) and twenty were targeted at specific issues (concerning international payment operations, collection of cash foreign currency by residents, etc.). Full-scope examinations usually include AML/CFT issues as well. At the time of the onsite visit, the NBM did not yet conduct specific AML/CFT inspections[170]. The evaluators were told that the main elements of the examinations in 2006 were the evaluation of the internal control and audit systems, the anti-money laundering systems and the corporate governance.

611. The NBM is also responsible for the supervision of money transfer services and exchange offices. It was explained that onsite and offsite supervision also applies for these entities. In 2006, the NBM controlled 177 foreign exchange offices and filed five requests to the competent court for launching misdemeanour procedures against foreign exchange offices because of incompliance with Art. 17 paragraphs 1 and 2 of the AML Law. In the same period, the NBM also carried out 46 on-site examinations of money transfer services providers and detected non-compliance with the provisions of the AML Law; the misdemeanour procedures were not yet initiated at the time of the onsite visit. However, the supervisors do not have a (special) supervision manual covering AML/CFT issues for these types of entities. Furthermore, it is unclear how much importance AML/CFT issues have during the onsite examinations and how systematically this is addressed.

612. The authorities provided the following figures concerning onsite supervision conducted by the NBM:

[168] See Para 4.

[169] See Para 4.

[170] Such specific inspections were started by the NBM in 2008.

NBM examinations				
	Banks	**Saving houses**	**Exchange Offices**	**Money transfer providers**
2004	13	8	293	/
2005	10	10	220	23

MAPAS (Agency for supervision of fully funded pension insurance)

613. The first onsite supervisions were made in 2006 and they covered the activities of pension companies and pension funds. As the authorities did not see a possibility of money laundering in this area, MAPAS did not enclose activities on money laundering supervision during its onsite visits. For the different opinion of the evaluation team concerning the risks in this sector see para 554.

Ministry of Finance-Insurance Supervision Division

614. Pursuant to Article 159 of the Insurance Supervision Law, the Ministry of Finance is obliged to supervise the operations of insurance undertakings. It has to determine whether their activities are in accordance with the risk management rules, other provisions of the Insurance Supervision Law or other laws regulating the operations of companies. Within the Ministry of Finance the Insurance Supervision Division is competent for this supervision activity which does this as follows:

(i) off-site supervision via collection, analysis and verification of reports and information submitted by insurance companies and other entities, pursuant to the provisions under the Insurance Supervision Law;
(ii) annual on-site (full or partial) supervision over the operations of insurance companies (control) as well as supplementary supervision, when considering that this is within the interest and for protection of the insurees' rights; and
(iii) specific supervision measures in accordance with provisions of the Insurance Supervision Law.

615. During 2004, 2005 and 2006 the Insurance Supervision Division performed several on-site and off-site inspections (though no data could be provided). The objective of the on-site inspections was to supervise the operations of the insurance undertakings with regard to the risk management requirements of the Law on Insurance Supervision. The examinations were focused on monitoring the risk management models adopted by the insurance companies and the systems of reporting. In two insurance undertakings irregularities were found and measures of supervision were issued in accordance with the Law on Insurance Supervision. However, AML/CFT issues were not part of these inspections.

State Foreign Exchange Inspectorate (Ministry of Finance)

616. There were no data available concerning the supervision activity of the State Foreign Exchange Inspectorate. In any case, AML/CFT issues were not part of these inspections.

Securities and Exchange Commission (SEC)

617. It was explained that there is one annual on-site examination for the Stock Exchange and Depositary, and twice a year of all the members of the Stock Exchange. After the pre-meeting, the authorities provided the following table which shows the number of on-site examinations performed by the SEC from 2004 till 2006:

Entities supervised	2004	2005	2006
Brokerage companies	28	30	29
Macedonian Stock Exchange	1	1	1
Central Depositary	1	1	1
Total	**30**	**32**	**31**

618. The evaluators were told that AML/CFT issues are part of the full-scope on-site supervision examinations. As mentioned above (para 569), there are doubts, when comparing the low number of staff (4 supervisors) with the number of examinations, that the supervisors of the SEC are in a position to cover AML/CFT issues in a satisfactory manner. However, the SEC sent the following number of notifications to the MLPD concerning detected irregularities in the course of its supervision activity related to AML issues:

Supervised entities	Number of notifications sent to MLPD		
	2005	2006	2007
Brokerage companies	2	3	6
Macedonian Stock Exchange	/	/	/

Recommendation 25 – Guidelines and feedback

619. The MLPD issued a guidance manual in 2006 and sent it to most of the supervisory bodies (the NBM, the Public Revenue Office, the Securities Commission, the Insurance Supervisory Unit, the Bar Association and the Notaries' Commission) for further dissemination among the entities they are responsible for. This manual was available only in Macedonian language; the evaluators were told that it includes different lists of indicators for the various sectors, a list of risk countries, and some information on procedures and obligations concerning suspicious transaction reports. During the onsite visit, the evaluators heard from several financial institutions (banks, insurance companies, foreign exchange offices) that they have received this manual and that they make use of it. In addition, a book compiling the National Strategy Paper and some relevant legal texts and international recommendations in Macedonian and English had also been distributed in the past but is currently out of stock.

620. In addition, the Supervisory Circular No. 7 for banks was issued to support financial institutions to comply with AML/CFT obligations. It is a helpful document and fills a lot of gaps from legislation (e.g. PEPs, beneficial owner). It describes the CDD process in more details and raises awareness of certain situations which may pose a money laundering risk. However, it is deficient when it comes to terrorist financing. Though the Circular explains that "*all stated recommendations for the anti-money laundering systems of banks, can be equally used by savings houses and other financial institutions, with appropriate adjustments to the characteristics and the nature of those institutions*", this possibility of usage was never communicated to other financial institutions. Apart from the possibility of using the Supervisory Circular Nr. 7, there are no specific guidelines for financial institutions other than banks to assist them to implement and comply with their respective AML/CFT requirements.

Recommendation 32 – statistics

621. Apart from the statistics provided by the NBM (see above para 610 ff) and the SEC (see above para 617 ff), no other supervisory body keeps statistics on supervision. As no sanctions have been imposed so far, there are also no statistics on that.

3.10.2 Recommendations and comments

622. The pecuniary sanctions as provided for by the AML Law seem on the low end but somehow adequate for natural persons considering the domestic economic situation. However, this cannot be said concerning the fines for legal entities; they are too low and are neither dissuasive nor proportionate.

623. The AML Law does not allow the withdrawal or suspension of a financial institution's licence for not observing the requirements of the AML Law. From the sectoral laws, the Banking Law, the Law on Securities and the (amended) Law on Fast Money transfer allow a licence to be revoked in the case of infringements related to AML obligations but not when it comes to obligations related to CFT. The other sectoral laws do not provide for withdrawing or suspending a financial institution's licence for not observing AML/CFT obligations. The authorities should introduce legislation allowing the respective supervisors to withdraw or suspend a licence of any type of financial institution in the case of not observing AML/CFT requirements.

624. The sanctioning system for infringements of the AML Law does not work in practice as no sanctions have been imposed so far. The authorities should revise the procedures for sanctioning infringements of the AML Law with a view to make it easier to apply.

625. Apart from the NBM and (to an unclear extent) the SEC, no other supervisory body includes AML/CFT issues as an integrated part of its supervisory activities. For the operations of pension companies and pension funds a specific supervisory authority should be designated; preferably the "Agency for Supervision of Fully Funded Pension Insurance" (MAPAS) should be designated with this task.

626. The Law on Foreign Exchange Operations contains no provisions concerning the powers of inspectors from the NBM when performing the supervision of foreign exchange offices, like access to documentation, taking copies etc.

627. There should be provisions assigning special powers to the State Foreign Exchange Inspectorate linked with its supervisory responsibilities.

628. The AML Law is silent on how the sanctions as provided for by the AML Law should be imposed, particularly by which body, following which rules of procedure. It should be made clear, preferably in the AML Law itself, which bodies are competent for initialising and imposing administrative sanctions which are provided for in the AML Law.

629. The legislation to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a bank, savings house, brokerage house, insurance company, money or value transfer service, foreign exchange office and investment fund management company is insufficient; for companies issuing credit/debit cards, pension companies and pension funds no such preventive legislation exists at all. This raises serious concerns and should be addressed as a matter of priority.

630. A special licensing or registration regime for companies issuing credit/debit cards should be introduced.

631. The Supervisory Circular Nr. 7 for banks does not explicitly cover CFT issues. The manual created and sent by the MLPD to supervisory bodies was known by most kinds of financial institutions. However, in the absence of an English version of this manual it is difficult to assess its practical use and coverage of AML/CFT issues.

632. Apart from employees of the NBM, there are no specific rules requiring staff of the supervisory authorities to maintain high professional standards. Apart from employees of the NBM and the SEC, there are no specific rules requiring staff to keep professional secrets confidential. Staff of all supervisory bodies should be required to maintain high professional standards and to keep professional secrets confidential.

633. More training and staff for the Insurance Supervision Division is needed.

3.10.3 Compliance with Recommendations 17, 23 and 29

	Rating	Summary of factors underlying rating
R.17	**NC**	• The sanctioning system for infringements of the AML Law does not work in practice as no sanctions have been imposed so far. • The pecuniary sanctions of the AML Law for legal entities are too low and neither dissuasive nor proportionate. • The AML Law does not stipulate how the sanctions as provided for by the AML Law should be imposed. • The AML Law does not provide for withdrawing or suspending a financial institution's licence for not observing requirements of the AML Law. The Banking Law, the Law on Securities and the (amended) Law on Fast Money Transfer allow this for AML infringements (but are deficient when it comes to terrorist financing issues). The other sectoral laws do not provide for withdrawing or suspending a financial institution's licence for not observing AML/CFT requirements.
R.23	**PC**	• In practice, apart from the NBM and (to an unclear extent) the SEC, no other designated supervisory body includes AML/CFT issues as an integrated part in its supervisory activities. • The legislation to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a bank, savings house, insurance company, brokerage house, money or value transfer service, foreign exchange office and investment fund management company is insufficient; for companies issuing credit/debit cards, pension companies and pension funds no such preventive legislation exists at all. • There is no special licensing or registration regime for companies issuing credit/debit cards. • For the operations of pension companies and pension funds no specific supervisory authority is designated.
R.25	**LC**	• Unclear whether guidelines have been issued to assist financial institutions to combat terrorist financing.
R.29	**LC**	• There are no provisions governing the powers of inspectors from the NBM when performing supervision of foreign exchange offices. • The AML law does not provide a clear authority to sanction directors or senior management. Apart from the special situation concerning the Banking Law, the Law on Securities and the

		(amended) Law on Fast Money Transfer (these laws are deficient when it comes to terrorist financing issues), also the sectoral laws have no such provisions with regard to violations of AML/CFT obligations. • There seem to be no provisions which would assign special powers to the State Foreign Exchange Inspectorate linked with its supervisory responsibilities.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and analysis

634. Banks are the entities which perform most of the money transfers in "the former Yugoslav Republic of Macedonia". They perform wire transfers via banking channels, including the SWIFT-system and global money transfer services (e.g. MoneyGram). The "Macedonian Post Office"[171] cooperates with the "Postenska Banka", which uses the postal offices for providing its financial services. The post organisation officers perform the bank services for the "Postenska Banka". The evaluators were told that 99% of the money transfers are made for natural persons and are only on a domestic level. However, the Banking Law (esp. Art. 47) authorizes the "Postenska Banka" also to conduct international transfers. This means that though the current practice of the "Postenska Banka" in cooperation with the "Macedonian Post Office"[172] seems to be reduced to domestic transfers, this does not mean that this will necessarily remain like this because there is the legal possibility of also conducting international transfers. Both the "Postenska Banka" and also the "Macedonian Post Office"[173] are subject to supervision by the NBM (see above para 558).

635. While for banks the Banking Law and, since an amendment in May 2007, also the "Law on Fast Money Transfer" (OG 77/2003) apply, the money transfer service business for non-banks is only regulated by the "Law on Fast Money Transfer" which defines "fast money transfer" as the electronic transfer of money by a natural person from one country to another natural person in another country within one hour from the payment, irrespective of whether the transfer is from or to "the former Yugoslav Republic of Macedonia", whereby the inflow and outflow is performed via banks. This law allows for transfer of cash in foreign currency only (Art. 19).

636. Providers of fast money transfers need a licence from the Governor of the NBM to perform this kind of business. The requirements for obtaining a licence are outlined in Art. 7 of the Law on Fast Money Transfer and include amongst others that the applicant has to submit with the documentation a programme on money laundering prevention (this is reiterated by Art. 27 but both provisions fall short of making a reference to terrorist financing).

637. Money service providers are authorised to conclude a contract with legal entities that act as their subagents (Art 2 item 3). The subagents are not licenced themselves and to be operational only require a contract with the licenced provider of fast money transfers. Art. 12 of the Law on Fast Money Transfer describes the minimum requirements for subagents which includes *inter alia* that the subagent must also have a programme on money laundering prevention (as for the providers themselves, there is no reference to terrorist financing); furthermore, a subagent should also not be

[171] See Para 4.

[172] See Para 4.

[173] See Para 4.

convicted for a crime "*in the area of finance*" – the Law does not clarify which crimes should be understood as a "crime in the area of finance". The representatives from the NBM interpreted this as a reference to Chapter XXV of the Criminal Code: "Criminal Offences against Public Finances, Payment Operations and the Economy"; this chapter includes *inter alia* the money laundering offence, counterfeiting money, securities fraud etc.

638. Art. 15 of the Law on Fast Money Transfer obliges the NBM to keep a registry of all fast money transfer providers and their subagents. Since 2004 the NBM has had such a registry. The scope of the registry is defined with a separate Rulebook, enacted by the governor of the NBM. The registry contains the following data:

a. date of the issued licence/the date of the agreement between the fast money provider and the subagent;
b. name of the fast money provider/the subagent;
c. reference number of the fast money provider/the subagent;
d. responsible person in the fast money provider/the subagent;
e. address;
f. date of revocation of licence, i.e. date of termination of the agreement between the fast money provider and the subagent.

639. In their replies to the MEQ, the authorities advised that there is only one global money transfer service ("Western Union") operating in "the former Yugoslav Republic of Macedonia" which cooperates with one agent and 35 subagents. However, during onsite, the evaluators learned from representatives of the NBM that there is also a second global money transfer service ("MoneyGram") operating on the territory of "the former Yugoslav Republic of Macedonia" which cooperates with two banks.

640. The NBM is responsible for the supervision of providers of fast money transfers (including their subagents) concerning the implementation of the Law on Fast Money Transfer and regulations governing money laundering prevention (Art. 28); prevention of terrorist financing is not mentioned in this regard. Art. 38 item 1 of the AML Law makes the NBM also responsible for supervising providers of fast money transfers concerning their compliance with the AML Law; their subagents are not mentioned by Art. 38.

641. The table below shows the number of onsite visits conducted by the NBM:

NBM examinations	**2004**	**2005**	**2006**	**2007**
AML/CFT examinations	/	23	46	13

It was explained that agents and also subagents of both money transfer services were subject to inspections.

642. Section VI of the Law on Fast Money Transfer provides for sanctions of providers of fast money transfers and their subagents (providing sanctions both for the legal entity and the "responsible person" within the legal entity). Also persons who perform this kind of business without having a licence can be sanctioned and for these persons the most severe sanctions of the Law on Fast Money Transfer apply, as this is regarded as a criminal offence sanctioned with imprisonment between one to three years. The sanction regime for providers of fast money transfers and their subagents also includes sanctions if they should fail to prepare and implement a programme for money laundering prevention or act contrary to AML regulations (Art. 37 item 9; Art. 38 item 4). The sanctions for the legal entities range from 250 000 to 300 000 MKD (approx. 4 166 to 5 000 EUR), those for the responsible person within the legal entity from 40 000 to 50 000 MKD (approx. 666 to 830 EUR). Until 2007, the NBM has initiated only 1 sanctioning procedure against one fast money transfer provider (subagent) because of non-compliance with the AML Law (the courts have not yet taken a decision on this). In the course of its supervision, the NBM has the authority, in the case of infringements of providers of fast money transfer

services, to (1) submit written warning letters/recommendations, (2) issue written orders and determine a deadline to fulfil the requirements of the Law on Fast Money Transfer, (3) cancel the contract with the subagent, and (4) to withdraw the licence. So far, the NBM has not issued any such corrective measures.

643. According to Art. 18 of the AML Law (and debatable also on the basis of Art. 27 of the Law on Fast Money Transfer), fast money service providers are also obliged to observe the requirements set forth in the AML Law. Though the AML Law also provides for sanctions, it has to be reiterated that the sanctioning system of the AML Law is completely ineffective and was never applied in practice (for details see above Section 3.10 concerning sanctions; para 582 ff).

644. As described above under Section 3.10 in more detail (para 608), the legislation to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a money or value transfer service, is insufficient.

645. It should be noted that the evaluators have some doubts concerning the practical feasibility of some provisions of the "Law on Fast Money Transfer", e.g.:

- the restriction that transfers are only allowed amongst physical persons (Art. 17) seems in an international context difficult to follow considering that in a lot of countries companies can act under the name of a natural person which makes it difficult for the agents to realise that a physical person could be involved in such a transfer.
- Art. 20 prohibits that natural persons make money transfers to another country exceeding 2 500 EUR per month; money transfers from another country are limited to 5 000 EUR per day and person. Apart from the debatable practical use of such a provision, it seems difficult for agents to follow this requirement because a client could use other subagents and this seems difficult to detect. After the pre-meeting, the authorities advised that there is a database and that agents have immediate access to information on all outflows and inflows. However, even with access to such a database, it seems difficult to follow this requirement without an automatic system immediately indicating that a client has exceeded a limit.
- Art. 19 requires fast money transfer providers "*to execute both the inflow and outflow of funds for the fast money transfer via a special account opened with a domestic bank authorised for payment operations with abroad*" - considering the working methods of global money transfer services sending money around the world within less than 1 hour (which is also the definition used by the "Law on Fast Money Transfer" itself), such an account will presumably not be used for transferring the money of clients but only for balance purposes. The same applies for Art. 3 of the "Law on Fast Money Transfer" which stipulates that also the subagents can conduct fast money transfers on their own behalf but only via the account of the provider.
- Also the reasoning why transfers are only allowed in foreign currency is not entirely clear. In this regard it was explained that according to the Law on Payment Operations, domestic payments can only be performed by the banks in the country and that this Law does not allow any other entity to be a member of the domestic payment system.

Though not all of these issues are directly related with risks of money laundering or terrorist financing, they may cause some ignorance concerning the provisions of this law by the agents (and subagents) performing this kind of business.

3.11.2 Recommendations and comments

646. The authorities should implement requirements in relation to Recommendations 4-11, 13-15 and 21-23 in the MVT sector.

647. The sanctioning system for infringements of the AML Law requiring court decisions via application of the supervisory authorities is too complicated and does not work in practice as no sanctions have been imposed so far. It should be amended to provide for an effective sanctioning

regime. It is unclear whether the sanctioning regime of the Law on Fast Money Transfer has ever been applied in practice.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**PC**	• Implementation of Recommendations 4-11, 13-15 and 21-23 in the MVT sector suffers from the same deficiencies as those that apply to other financial institutions and which are described earlier in section 3 of this report. • The sanctioning system for infringements of the AML Law requiring court decisions via application of the supervisory authorities seems too complicated and does not work in practice as no sanctions have been imposed so far. No information whether the sanctioning regime of the Law on Fast Money Transfer has ever been applied.

4 PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

Generally

648. According to Article 2 (item 5) of the AML Law, entities other than financial institutions subject to the AML Law are:

- legal and natural entities performing one of the following activities:
  a) real estate trading;
  b) audit, accounting and tax consulting;
  c) notaries, attorney and other legal services related to: purchase and sales of real estate and companies, management of money and securities, opening and disposal of bank accounts, safe-deposit boxes and other accounts, establishing or taking part in the management or operation of the legal entities, representing clients in financial transactions and real estate trading;
  d) activities related to trading with works of fine arts[174], antiques and other objects of great value for larger consumption;
  e) activities related to trading with excise commodities;
  f) processing and trading with precious metals and stones;
  g) travelling and tourist agencies and
- a trade company carrying out games of chance (casino and others);
- foreign representative offices, affiliates, branch-offices and parts of entities, registered abroad and performing activities in "the former Yugoslav Republic of Macedonia", as well as representative offices, affiliates, branch-offices and parts of entities registered in "the former Yugoslav Republic of Macedonia" and performing activities abroad and
- associations of citizens and foundations.

649. Trust and company service providers are not explicitly mentioned by the AML Law as obliged entities. However, this kind of service could be considered as covered by Art. 2 item 5 c) of the AML Law: "*legal services related to: purchases and sale of [...] companies, [...] establishing or taking part in the management or operation of the legal entities*". Apart from this uncertain coverage of trust and company service providers, it can be concluded that all categories of DNFBP as provided for by the FATF Recommendations are addressed by the AML Law. As described in Section 5.2 in more detail, trusts cannot be established in "the former Yugoslav Republic of Macedonia".

650. The evaluators were advised that there is no prohibition to establish trusts in "the former Yugoslav Republic of Macedonia".

651. The major DNFBP in "the former Yugoslav Republic of Macedonia" are as follows:

- 130 public notaries;
- 1,650 Lawyers;
- at the time of the on-site visit there were 40 auditing and 1065 accounting services;
- real estate agencies: there are 115 registered real estate agencies in "the former Yugoslav Republic of Macedonia" founded as limited liability companies on the basis of the Law on Trade Enterprises;
- 294 dealers in precious metals and stones;

[174] The provided translation of the AML Law uses the term "*writing works*", but it was explained to the evaluation team that "works of fine arts" is the correct translation.

- organisers of games of chance: At the time of the on-site visit, there were 8 casinos operating in "the former Yugoslav Republic of Macedonia" (for further details see para 65); and
- 210 dealers in works of fine arts.

652. The AML Law (Annex 1) holds most categories of DNFBP to the same standards as the reporting financial institutions; only for attorneys and notaries public do some exceptions exist, as Art. 34 of the AML Law stipulates that "*attorneys and notaries during execution of their task to defend or represent the client or at the time of the court procedure or other procedure*" are exempted from the obligations of the AML Law. Since the core obligations for both DNFBP and financial institutions are based on the same law (i.e. the AML Law), it can be noted, that the obligations and also the deficiencies in the AML/CFT preventive measures framework as described for financial institutions apply to DNFBP in the same way as for financial institutions. To recap, DNFBP (leaving aside the special regime for lawyers and notaries public under Art. 34) are obliged to perform client identification; gather and keep information on transactions; submit cash transaction reports and suspicious transaction reports to the MLPD; and keep information confidential.

653. It needs to be noted that most categories of DNFBP seem to be not very much aware of their obligations and, moreover, some of them even protest against their obligations: e.g. the Bar Association handed the evaluators a letter in which they describe their duties under the AML Law as "*attacks against professional secret*". Perhaps as a consequence of this unwillingness, the number of reports (STR/CTR) to the MLPD from these entities and from the DNFBP sector in general is very low (for statistics see above para 304 ff); only notaries appeared to be active in this regard which could also be seen by the number of reports submitted and the seminars they organised and attended. While most interviewees were to a certain extent informed about money laundering issues in general, familiarity with combating financing of terrorism issues was very limited and practically non-existent.

4.1 Customer due diligence and record-keeping (R.12)
(Applying R.5 to R.10)

4.1.1 Description and analysis

Generally

654. Recommendation 12 requires DNFBP to meet the CDD and record-keeping requirements set out in Recommendations 5, 6 and 8 to 11 in the circumstances specified in Criterion 12.1.

Applying Recommendation 5

655. The issue of anonymous accounts and accounts in fictitious names applies for DNFBP in the same way as described under Section 3.2 for financial institutions (para 401 f).

656. General CDD obligations for the categories of DNFBP covered by the AML Law have the same strengths and weaknesses as described in section 3.2. As a consequence, DNFBP are not required to identify customers (a) when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII; (b) when there are doubts about the veracity or adequacy of previously obtained identification data. DNFBP are also not obliged by law to obtain information on the purpose and intended nature of the business relationship, conduct ongoing due diligence on the business relationship or perform enhanced due diligence for higher risk categories of customers, business relationships or transactions (as outlined in R 5.6-

5.8). Moreover, the AML Law and regulations do not require reporting entities to perform CDD when there are doubts about the veracity or adequacy of previously obtained data; nor must they apply CDD requirements to existing customers on the basis of materiality and risk. The documents which can be used for the verification of identification are not sufficiently determined. For customers that are legal persons or legal arrangements, there are no requirements to verify that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person. There is no legislation which provides for a concept of "beneficial owner" as required by the Methodology. DNFBP are not required to take reasonable measures to verify the identity of beneficial owners using relevant information or data obtained from reliable sources. The possibility of establishing the client's identity on the day when the transaction was carried out (unless there is a suspicion of money laundering) is too general and not in line with the circumstances as described by criterion 5.14.

657. In practice it seems that DNFBP do not interpret the obligations of the AML Law in the same way as financial institutions; e.g. representatives of the Bar Association expressed their opinion that a driving licence would be a sufficient document for identification of customers as it contains an ID number while most representatives from banks said that this would not be acceptable (though it needs to be noted that these different approaches presumably result from the unclear legislation in this regard; see para 410 above); the authorities explained in this regard that a driving licence would not be sufficient for identification as it does not contain an address (which is a requirement of Art. 8 para 2 of the AML Law).

658. Art. 19 of the AML Law stipulates that casinos are obliged to determine the identity of clients at the entrance to the casino. All identification data have to be kept in a register. This procedure was confirmed by representatives from casinos who said that they identify clients again in case of wins or losses over a certain threshold (it was said to be 10 000 EUR).

Applying Recommendation 6 - Politically Exposed Persons

659. As already stated under section 3, Politically Exposed persons (PEPs) are not addressed in the AML Law[175]. The issue is not covered either in any of the DNFBP special regulations. There was also a widespread unawareness of this issue amongst DNFBP: several interviewees told the evaluation team that they are not familiar with the term "politically exposed persons" (e.g. Bar Association, Chamber of Notaries), others (e.g. casinos) understood PEPs only in a very narrow sense and far from the definition as provided for by the FATF Recommendations.

Applying Recommendations 8 – new technologies and non face-to-face business

660. The situation as described above for financial institutions (see section 3.2; para 440 ff) applies equally for DNFBP.

Applying Recommendation 9- Third Parties and introduced Business

661. Recommendation 9 is not applicable to "the former Yugoslav Republic of Macedonia" (see Section 3.3).

Applying Recommendation 10 – Record Keeping

662. In general, the same situation as described above concerning financial institutions applies also for DNFBP with regard to their record keeping obligations (see section 3.5). From the sectoral laws with which the evaluation team was provided, only the Notary Public Law contains a specific

[175] The new AML/CFT Law now expressively addresses PEPs.

record keeping provision: Art. 20 para 4 of stipulates that "*notary public acts and books shall be kept permanently*".

Applying Recommendation 11 - Complex, Unusual, Large Transaction

663. There is no specific requirement in the AML Law or secondary legislation for obliged entities to pay special attention to complex, unusual large transaction, nor to analyse them and keep records accordingly. The existing AML Law talks only in the context of the STR regime about the necessity to inform the MLPD of all suspicious transactions which may occur. The AML Law obliges the entities subject to the law to send all the relevant information and data concerning transactions under suspicion to the MLPD (Article 22 of the AML Law). In such cases the obliged entities have to ask for additional information on the suspicious transaction (Article 14 of the AML Law).

664. As described in Section 3.6 in more detail (see particularly para 498), the MLPD developed a list of indicators for the recognition of suspicious transactions which is part of the "Manual for the AML/CFT" which was issued by the MLPD in November 2006. 2500 of these manuals have been sent to the supervisors (NBM, Ministry of Finance, SEC, Public Revenue Office) and also the Bar Association as well as the Chamber of Notaries for further dissemination. However, considering the number of obliged entities (e.g. 1650 lawyers, 130 notaries), it seems that not all DNFBP could have been provided with such a manual. The authorities took the view that it was within the responsibility of the Bar Association and the Chamber of Notaries to find a way to disseminate the information contained in this manual to all their members (e.g. by excerpt etc.).

EU-Directives

665. Under the FATF standards, CDD in casinos (including internet casinos) is required when customers engage in transactions above EUR 3 000. Under Article 3 paragraph 5 of the Second EU AML Directive, the identification of all clients of casinos is required if they purchase or sell gambling chips with a value of 1 000 EUR or more. However, the subsequent paragraph 6 provides that casinos subject to State supervision shall be deemed in any event to have complied with the identification requirements if they register and identify their clients immediately on entry, regardless of the number of gambling chips purchased. In "the former Yugoslav Republic of Macedonia", all casinos are subject to state supervision by the Public Revenue Office. All customers must have their identity verified upon entry into the casino. Having adopted procedures in the AML Law for the identification of all customers on entry of the casino, "the former Yugoslav Republic of Macedonia" is in compliance with the provisions of Article 3 (6) of the Second EU AML Directive.

4.1.2 Recommendations and Comments

666. The coverage of DNFBP is very complete and in line with both international standards and the EU Directive. It comprises *inter alia* casinos; audit; accounting and tax consulting, dealers in real estate; notaries, attorney and other legal services; activities related to trading with works of fine arts; processing and trading with precious metals and stones. Additionally "the former Yugoslav Republic of Macedonia" has added other categories (which are not required by international norms) to the obliged entities: e.g. travelling and tourist agencies.

667. However, the support for and understanding of the AML/CFT regime is very uneven. While notaries seem engaged and fulfilling their obligations in practice; other sectors, e.g. lawyers even protest against their obligations under the AML Law. Having said that, the evaluators recommend

working with the different sectors to improve awareness, and overcome any unwillingness to apply AML/CFT requirements. Information campaigns to this end are required.

668. "The former Yugoslav Republic of Macedonia" should fully implement Recommendations 5, 6, 8, 10 and 11 and make these measures applicable to DNFBP.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors underlying rating
R.12	**NC**	• The same concerns in the implementation of Recommendations 5, 6, 8, 10 and 11 apply equally to DNFBP (see section 3 of the report). • Apart from notaries, there is less awareness of AML/CFT issues in the whole DNFBP sector and some even protest against their obligations under the AML Law.

4.2 Suspicious transaction reporting (R. 16)
(Applying R.13 - 15 and 21)

4.2.1 Description and analysis

Applying Recommendation 13 - Suspicious transactions reporting

669. Criterion 16.1 requires essential criteria 13.1 – 4 to apply to DNFBP. Criteria 13.1-3 are marked with an asterisk. The first two require reports to the FIU where the obliged entity suspects or has reasonable cause to suspect, that funds are the proceeds of criminal activity or has reasonable grounds to suspect or suspects, that funds are linked to terrorism etc or those who finance terrorism. The AML Law keeps DNFBP to the same standards as financial institutions and requires them to report to the MLPD in respect of suspicious transactions. As broadly described under section 3.7 for financial institutions, the same issues and deficiencies apply equally for DNFBP. Notaries seem engaged and are seen to be fulfilling their obligations in practice; on the other hand, some DNFBP, like lawyers, even do not accept their obligations. This may also be a reason for the extremely small number of STRs coming from the DNFBP sector: between 2003 and 2006, there were all in all only 2 STRs submitted by notaries to the MLPD; though the statistics under Section 2.5 (para 304 ff) show two reports submitted by lawyers this must be seen in the light of the explanations given by the representatives of the Bar Association with which the evaluation team met: they advised that these reports were not submitted by the initiative of lawyers themselves but stand for information provided by lawyers over the request of the MLPD; thus this cannot be considered as an STR as commonly understood (the authorities objected this and took the view that these were genuine STRs submitted by lawyers on their own initiative without prior contact with the MLPD; this could not be verified by the assessment team). Overall, two STRs within 4 years from one kind of DNFBP seems insufficient and more outreach to this sector is necessary.

670. Under the general conditions of the AML Law all DNFBP have to report directly to the MLPD (and not via their self-regulatory organisations).

Applying Recommendation 14 - Protection for disclosure and no tipping-off

671. The issues of "Tipping off" and "safe harbour" provisions are extensively described under section 3.7.

Applying Recommendation 15 – Internal controls, compliance and audit

672. The analysis concerning implementation of Recommendation 15 as described under section 3.8 applies also for DNFBP.

Applying Recommendation 21 – Special attention for higher risk countries

673. As already explained under Section 3.8, the AML Law is silent on the business relationship and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply AML/CFT measures. The authorities could only refer to the above mentioned manual which contains a list of indicators for suspicious transactions including advice to pay attention to customers from countries known as drug producers or traffickers (mentioning as an example some countries in the Middle and Far East, Northern and Central Africa and Central America). However, at the time of the onsite visit the entities interviewed did not show much awareness of this. Apart from this list of indicators, which is non-binding and thus rather irrelevant in the context of Rec. 21, there are no other means which would address criteria 21.1, 21.1.1. or 21.2. There are also no mechanisms in place that would enable the authorities to apply counter-measures to countries that do not apply or insufficiently apply the FATF Recommendations.

4.2.2 Recommendations and comments

674. The same deficiencies in the implementation of Recommendations 13-15 and 21 in respect of financial institutions apply equally to DNFBP. In terms of effectiveness, DNFBP (apart from notaries public) seem moreover less aware of their obligations and some even protest against them. The number of STRs (and also CTRs) from the DNFBP sector is extremely small and perhaps a result of this unwillingness. Further outreach to these sectors is needed and more work needs to be done to improve awareness, and overcome any unwillingness to apply AML/CFT requirements. Ongoing information campaigns to this end may be helpful.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**NC**	• The same deficiencies in the implementation of Recommendations 13-15 and 21 in respect of financial institutions apply equally to DNFBP. • Some institutions are quite unconcerned about ML/FT risks in their field and others, like lawyers, do not accept their obligations. This may also be one of the reasons for the small numbers of STRs from the DNFBP sector.

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

4.3.1 Description and analysis

675. Overall the following situation concerning supervision and licensing of DNFBP occurs in "the former Yugoslav Republic of Macedonia":

DNFBP	Supervisory/ Sanctioning authority	Licensing authority (if licenced)	Legal Basis
Casinos	Public Revenue Office	Ministry of Finance	Law on Games of Chance and Entertainment Games, AML Law
Real estate agents	Public Revenue Office	-	Law on Trade Companies
Dealers in precious metals	Public Revenue Office	-	Law on Trade Companies
Dealers in precious stones	Public Revenue Office	-	Law on Trade Companies
Lawyers	MBA	MBA	Attorney's Law
notaries	Chamber of Notaries	Chamber of Notaries	Notary Public Law
accountants	Public Revenue Office	Ministry of Finance	Accountancy Law
Company Service Providers	Public Revenue Office	-	Depending on the type of company.
dealers in high value and luxury goods	Public Revenue Office	-	Law on Trade Companies
pawnshops	Do not exist.		
auction houses	Do not exist.		
investment advisers	Securities and Exchange Commission	Securities and Exchange Commission	Law on Securities, AML Law

Applying Recommendation 24

Casinos

676. Throughout the territory of "the former Yugoslav Republic of Macedonia", there are 8 casinos. Organising games of chance is regulated by the Law on Games of Chance and Entertainment Games (OG 10/97, 54/97, 13/01, 72/01, 102/01 and 2/02).

677. The legislative competence for games of chance (including casinos) is within the Ministry of Finance where the Unit for Games of Chance is dealing with these issues. The Law on Games of Chance and Entertainment Games regulates the conditions and the way how games of chance and entertainment games are organised in "the former Yugoslav Republic of Macedonia".

678. The licence for organising games of chance in a gaming room (casino) is issued by the Government of "the former Yugoslav Republic of Macedonia" upon the proposal by the Minister of Finance, and the overall procedure is implemented by the Ministry of Finance (Art. 16 of the Law on Games of Chance and Entertainment Games).

679. Only a company seated in "the former Yugoslav Republic of Macedonia" can obtain a licence for a casino. Foreign legal and natural persons are not allowed to organize independently games of chance (Art. 14). An applicant for a casino licence has to fulfil *inter alia* the following conditions (Articles 17, 18 and 42):

1. founding capital of at least 2,5 million EUR in MKD equivalent (the company is obliged to keep the value of the founding capital);
2. technical conditions for organising games of chance;
3. a manager and other persons having proper education and experience necessary for proper organisation of the operations and not being sentenced for "*a crime connected with games of chance or entertainment games or for a criminal deed from the field of economics*"; and

4. has settled the liabilities towards the state at least six months prior to the publication of the announcement for obtaining a licence, has no blocked giro account and regularly pays the salaries;

It has to be noted that there are no legal requirements that an applicant has to prove the legitimate origin of the founding capital.

680. Licence holders have to pay a fee which is determined by the Government of "the former Yugoslav Republic of Macedonia" on the basis of a graduated tariff depending on various factors (number of tables, types of games etc.). They are obliged to pay 50% on the day the licence is awarded, and the remaining 50% in equal annual instalments by 30th January at the latest in the current year, for each year of the validity of the licence. Representatives from one casino told the evaluators that their licence amounts to 520 000 EUR. As for the founding capital, the licence holders to do not need to prove the legitimate origin of the licence fee.

681. Though it would not be prohibited to open an internet casino, the evaluators were told that no internet casinos with a basis in "the former Yugoslav Republic of Macedonia" exist. However, it seems that there were already some considerations to run such a business as representatives of casinos explained that a licence for an internet casino would be 630 000 EUR.

682. The authorities also said that residents of "the former Yugoslav Republic of Macedonia" are not allowed to participate in foreign internet casinos. This opinion seems to be supported by Art. 27 of the Law on Games of Chance and Entertainment Games which prohibits the participation in foreign games of chance if the money is paid from the territory of "the former Yugoslav Republic of Macedonia". Though it seems difficult to observe such a prohibition, it seems that the country at least tried to cope with the problem: the Minister of Finance informed the evaluation team that there was a problem with one foreign internet lottery. As a consequence the Minister of Finance sent a letter to commercial banks asking them to block any transactions to this company (it was acknowledged by the authorities that this measure was only a request for cooperation and not enforceable).

683. Pursuant to Article 38 of the AML Law, the Public Revenue Office is responsible for the supervision of casinos concerning their measures and actions under the AML Law. The Public Revenue Office created – with the help of international experts - a special manual for the supervision of casinos which is dealing with AML/CFT issues. The evaluators saw a first draft of this manual and it seems that it contains very useful information and to be very complete. However, it was said that this manual was only designed for supervision purposes and not as guidance for casinos (it was explained that disseminating it to the supervised entities would be "counterproductive"). Supervisors of the Public Revenue Office also participated at the beginning of 2007 in an AML training seminar held in Bulgaria. Representatives of the Public Revenue Office explained that they have not yet detected any infringements against the AML Law committed by casinos; as a consequence, no sanctions concerning AML/CFT infringements have been applied to casinos. For breaches of the AML Law, the sanctioning regime of the AML Law with the deficiencies described above (no effectiveness; only pecuniary fines; for details see para 582 ff) applies. The Law on Games of Chance and Entertainment Games contains pecuniary sanctions and provides also the possibility to withdraw licences but it does not cover AML/CFT requirements and thus no such sanctions can be applied in case of such infringements.

Notaries

684. At the time of the onsite visit, 130 notaries public were operating in "the former Yugoslav Republic of Macedonia". In accordance with the Notary Service Law, the notaries are organised in the Notary Chamber of "the former Yugoslav Republic of Macedonia" which was established in 1998 and consists of several authorities:

1. Assembly of the Notary Chamber (constituted of all notaries in "the former Yugoslav Republic of Macedonia")
2. Managerial Board of the Notary Chamber (9 members)
3. President of the Notary Chamber
4. Disciplinary council of the Notary Chamber (5 members)
5. Supervisory Committee (3 members)
6. Commission for appointment of notaries (7 members)
7. Technical council (5 members)

The mandate for all members of the chamber authorities is 3 years.

685. Article 39 of the AML law obliges the chambers of notaries to establish a commission for performing supervision of the application of the provisions of the AML law undertaken by notaries. The members of the commission shall be appointed for a period of 4 years without a right to reappointment. For the appointments and composition of the commissions, the chambers or associations shall notify the MLPD. As a consequence, the Chamber of Notaries has established such a Commission for performing supervision over the application of the provisions from the AML Law by notaries public. This Commission was formed in November 2004 and is composed of 18 members divided into 6 committees, each consisting of 3 members (elected for four years without the right of re-election). These committees are responsible for an ongoing regular inspection of the service and lawfulness of the notaries public including supervision and control of the application of the enactments from the AML Law. The evaluators were told that the inspections started in March 2007 and were expected to be finished in June 2007.

686. The evaluators were also told that the new Notary Law, which was in its finishing stage, will have a significant part dedicated to the fight against money laundering. This chapter will contain three articles dealing with the activities of notaries in this area and their active participation and contributions in the fight against money laundering, organised crime, terrorism funding and other proceeds of criminal action.

Lawyers

687. According to Art. 39 of the AML Law, the Bar Association of "the former Yugoslav Republic of Macedonia" formed a commission for supervision of its members concerning the implementation of the AML Law. This Commission consists of five members. However, representatives of the Bar Association are of the opinion that this Commission has no supervisory powers and it seems that so far no supervision (at least concerning AML/CFT issues) took place.

Auditors and accountants

688. Similar as for lawyers and notaries, Article 39 requires also the other professional associations of auditors and accountants to establish commissions for performing supervision of the measures and actions stipulated by the AML Law. At the time of the on-site visit, no such commissions have yet been created.

Real estate agents, dealers in precious metals, dealers in precious stones, dealers in high value and luxury goods

689. Real estate agents, dealers in precious metals, dealers in precious stones, dealers in high value and luxury goods can be founded on the basis of the Law on Trade Companies as sole proprietors or limited liability companies. All of them have to be registered in the Central Registry. The AML Law designates the Public Revenue Office (PRO) as supervisor for AML/CFT issues for these entities. However, so far these entities have not yet been supervised concerning AML/CFT issues by the PRO.

Applying Recommendation 25 (Guidance for DNFBP other than guidance on STRs)

690. As mentioned above, the MLPD issued in 2006 a guidance manual and sent it to the supervisory bodies (amongst others the Public Revenue Office, the Bar Association and the Notaries' Commission) for further dissemination among the entities they are responsible for. It could not be verified to which extent this manual was actually further distributed to DNFBP (for the concerns expressed see above para 664). This manual was available only in Macedonian language; the evaluators were told that it includes different lists of indicators for the various sectors, a list of risk countries, and some information on procedures and obligations concerning suspicious transaction reports. In addition, a book compiling the National Strategy Paper and some relevant legal texts and international recommendations in Macedonian and English language had also been distributed in the past but is currently out of stock.

691. Representatives from the Public Revenue office told the evaluators that in 2006 they explained the AML Law to compliance officers of casinos. In the course of their subsequent supervision activity they found that the compliance officers were familiar with their tasks under the AML Law.

692. For notaries three meetings/seminars dealing with AML/CFT issues were organised so far where a large number of notaries participated.

693. Representatives of the Bar Association acknowledged that there is a risk of money laundering in their sector due to the structure of their clients and they even believe that money laundering takes place. However, they said that they need more training to deal with these issues.

694. As already mentioned above, the awareness of financing of terrorism threats and countermeasures was quite low concerning both DNFBP and the respective supervisory bodies.

4.3.2 Recommendations and comments

695. On the positive side it can be noted that supervisory authorities responsible for monitoring compliance with the AML Law have been assigned for the major DNFBP. However, in practice, some of these supervisory commissions have either not yet been established (auditors and accountants) or have not yet conducted any kind of supervision (lawyers). For real estate agents, dealers in precious metals, dealers in precious stones, dealers in high value and luxury goods, AML/CFT supervision should be conducted by the PRO; however, the PRO has not yet started with this supervision. Only the commissions for notaries has already commenced with supervision, but also very late (more than two years after its formation) and consequently without any results. So far, only the Public Revenue Office seems to be active in supervising casinos (though also no sanctions have yet been imposed). For those supervisory authorities which had or have to be created on the basis of Art. 39 of the AML Law is it unclear which supervisory powers they have as the law is silent on this issue. As a consequence, the Bar Association created such a supervisory commission but does not conduct supervision. Hence, the authorities should review the AML Law and make either amendments or clarify it in sectoral laws or by-laws which powers these supervisory commissions have. Furthermore, supervision bodies responsible for monitoring compliance with AML/CFT requirements should be assigned and created for real estate agents, dealers in precious metals, dealers in precious stones, dealers in high value and luxury goods.

696. Concerning obtaining a licence for casinos, fit and proper requirements for owners and managers are very limited: it is only required that managers have not been sentenced for a crime in the area of games of chance or for an economic crime. The authorities should introduce the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function

in, or being an operator of a casino. Furthermore, there should be legal requirements for casino providers to prove the legitimate origin both of the founding capital and the licence fees.

697. The guidance for DNFBP appears to be lower than in relation to the financial sector. Also the awareness of financing of terrorism threats and countermeasures was quite low. Ongoing initiatives, training and outreach to the whole DNFBP sector will be necessary in this regard.

4.3.3 Compliance with Recommendations 24 and 25 (criterion 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.5 underlying overall rating
R.24	**NC**	• Some of the supervisory commissions for DNFBP have either not yet been established (auditors and accountants) or not yet conducted any kind of supervision (lawyers). • Though the AML Law designated the Public Revenue Office (PRO) as supervisor for AML/CFT issues for real estate agents, dealers in precious metals, dealers in precious stones, dealers in high value and luxury goods, the PRO has not yet started supervising these entities. • For the supervisory authorities based on Art. 39 of the AML Law is it unclear which supervisory powers they have. • Fit and proper requirements for owners and managers of casinos are insufficient. • Casino providers do not need to prove the legitimate origin of the licence fee or the founding capital. • The sanctions regime for DNFBP provided by the AML Law is deficient in the same ways as described in section 3.10.
R.25	**PC**	• The guidance for DNFBP appears to be lower than in relation to the financial sector. Less awareness of money laundering issues and no familiarity with financing of terrorism indicates a lack of guidance.

4.4 Other non-financial businesses and professions/ Modern secure transaction techniques (R.20)

4.4.1 Description and analysis

698. Criterion 20.1 states that countries should consider applying Recommendations 5, 6, 8 to 11, 13 to 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.

699. The AML Law includes also the following non-financial businesses and professions (other than DNFBP):

a.) activities related to trading with writing works, antiques and other objects of great value for broad consumption;
b.) trading in excise goods;
c.) travel and tourist agencies and
d.) other related activities of acquainting property and other forms of disposal or management with money or property;
e.) foreign representative offices, subsidiaries, branch offices and part of entities registered abroad and carrying out an activity in "the former Yugoslav Republic of Macedonia", as well as representative offices, subsidiaries, branch offices and part of entities registered in "the former Yugoslav Republic of Macedonia", carrying out an activity in a foreign country.

700. Though included in the AML Law, it had not been demonstrated to the evaluators that these entities actually implement the AML/CFT requirements placed upon them or that there is any supervisory regime in place to monitor their compliance. Moreover, it seems that there was no risk analysis when making all these entities subject to the AML Law. It is particularly unclear why the authorities extended this list to "*foreign representative offices, subsidiaries, branch offices and part of entities registered abroad and carrying out an activity in the Republic of Macedonia*[176]*, as well as representative offices, subsidiaries, branch offices and part of entities registered in the Republic of Macedonia*[177]*, carrying out an activity in a foreign country*". This covers a very broad range of entities but the evaluators have doubts whether it is possible to get even an overview of these entities leaving aside supervision and enforcement.

701. Criterion 20.2 specifies that countries should take measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering. Examples of techniques or measures that may be less vulnerable to money laundering provided in the Methodology are reducing reliance on cash, not issuing very large denomination of banknotes and secured automated transfer systems.

702. The authorities advised that they were trying to reduce cash and to increase the number of credit card users. The reports received from the banks show that the number of issued credit cards increased 2-3 times. The authorities provided the following figures concerning payments through the NBM payment system MIPS to demonstrate the increase of non-cash payments:

[176] See Para 4.

[177] See Para 4.

	change between 2005 and 2006	change between 2006 and 2007
Number of transactions	+ 13.4%	+ 21.6%
Value of transactions	+ 14.1%	+ 32.6%

703. A further measure to increase the number of credit card users and to reduce cash is Art. 13 of the AML Law which prohibits each cash payment or settlement or receiving cash money equal or above 15 000 EUR in MKD equivalent (regardless whether it is in a single or several connected transactions). Transactions above this threshold may only be performed through a financial institution authorised to perform payment operations. However, this provision is only sanctionable when legal entities are involved in a transaction. Though some interviewees were aware of this provision, it is unclear how far practice follows this legal provision.

4.4.2 Recommendations and comments

704. "The former Yugoslav Republic of Macedonia" has taken steps to extend AML/CFT requirements to other non-financial businesses and professions (other than DNFBP). However, a further review will be required to assess whether it is necessary to cover all these entities. It is advised to conduct an analysis of which non-financial businesses and professions (other than DNFBP) are at risk of being misused for money laundering or terrorist financing. These sectors should be kept under review to ensure that all non-financial businesses and professions that are at risk of being misused for the purposes of money laundering or terrorist financing are regularly considered for coverage in the AML Law. After that, the authorities should ensure that the relevant FATF Recommendations (5, 6, 8 to 11, 13 to 15, 17 and 21) are being applied in practice.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**LC**	• The application of the AML Law is extended to an overly wide range of non-financial businesses and professions (other than DNFBP) without undertaking a risk assessment which seems to be counterproductive with regard to effective implementation. Moreover, for these entities no supervisory regime is in place and no other legislative acts apart from the AML Law have been issued for AML/CFT purposes.

5 LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and analysis

705. Recommendation 33 requires countries to take legal measures to prevent the unlawful use of legal persons in relation to money laundering and terrorist financing by ensuring that their commercial, corporate and other law require adequate transparency concerning the beneficial ownership and control of legal persons. Competent authorities must be able to have access in a timely way to beneficial ownership and control information, which is adequate, accurate and timely. Competent authorities must also be able to share such information with other competent authorities either domestically or internationally. Bearer shares issued by legal persons must be controlled.

706. As noted in Section 1.4 (to which reference should also be made with regard to this Recommendation) there are various forms of companies established in "the former Yugoslav Republic of Macedonia" for the purpose of undertaking business and they have to be registered by the commercial register.

707. Entry into the commercial register requires a special application in a prescribed form, filed by the manager (or one of the managers) in case of limited liability companies and by the management body (or an authorised member thereof) in case of joint stock companies. The data that shall be entered in the commercial register are stipulated by Art. 182 (for limited liability companies) and Art. 298 (for joint stock companies) as follows:

- business name and registered office;
- scope of operations of the company;
- designation and identification of the founders/members: name, unique ID number or passport number, residence/address; in case of legal persons: business name, registered office and registration number;
- amount of the core capital (limited liability company) or the amount of the charter capital, the number of the issued shares as well as the total number of shares paid up (joint stock company);
- designation and identification of the manager / members of the management body as well as members of the supervisory board (required data as above);
- authorisation to represent the company.

708. Any change of data referred to above shall also be entered in the commercial register. Among others, the following documents need to be enclosed to the registration form:

- the constitutive documents (the charter of the stock company; the company agreement or the founding statement in case of limited liability companies);
- copies of identification documents for founders as referred to above;
- proof of the amount paid issued by the bank into which the payment of the contribution/shares was transferred;
- in case of transfer of non-monetary contributions, the agreements thereto as well as documentary ownership evidence;
- documents on the appointment of the administration (managers/management body) and the supervisory board (or controller) with personal data as above.

- a statement from the legally authorised representative of the legal person or from the natural person, certified by a notary, or submission of proof that there is no obstacle for him to be a founder of the company.

709. Pursuant to Art. 93(5) of the Company Law, the enclosures submitted with the registration form shall be scanned by the "Central Register of the Republic of Macedonia"[178] (hereinafter: "Central Register") and kept in an electronic form, as well as in their original as a constituent part of the commercial register. The commercial register is public, and anyone, without having to prove legal interest, can peruse the particulars entered into the registration files and the book of enclosures and request that they be issued a copy or verified transcript. There is, as yet, no information from the commercial registry available on-line though the authorities are making efforts to make it possible.

710. Details of members of limited liability companies are, as noted above, available on the public commercial register while in case of joint stock companies, data on shareholders are available at the Central Securities Depository (CSD) on the request of entitled persons and state bodies only (except for data concerning the identity of the largest owners of each security i.e. those holding in excess 5% of the securities of a company which are accessible to public). That said, judicial and administrative bodies including, *inter alia* courts, public prosecutors, the Ministry of Interior and other law enforcement agencies as well as the MLPD have the right to access, within their competence provided by law, any data kept by the Central Securities Depository.

711. As it was described in more details in Section 1.4 of the report, the commercial register is now maintained nationally in a centralised manner by the Central Register of "the former Yugoslav Republic of Macedonia". It contains the name and personal data of persons authorised to act on behalf of registered entities, the persons who are the managers or members of management or supervisory boards of registered entities as well as the members of the limited liability company; also the shareholders of a joint stock company are available through the Central Securities Depository.

712. The company law and, in particular, the company registration system contains no provision concerning the recording, registering or public availability of any data specifically related to the beneficial owner, that is, the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted, and those persons who exercise ultimate effective control over a legal person or arrangement. Only the AML Law prescribes in its Art. 10 that in each case when a transaction is carried out on behalf and in interest of a third party, the reporting entities are obliged to determine the identity of the bearer[179] of the rights, or the party on behalf of which and in whose interest the client acts (the beneficial owner); the deficiencies of the definition of the beneficial owner were already described above under Section 5.2 (para 418 ff). Furthermore, the obliged entities are also required to request information from the client in this regard if there is a suspicion that the client acts on behalf and in interest of a third party. In case the reporting entity is not able to conduct this identification it shall be obliged *"to refuse the execution of the transaction or business or other relation or legal matter, or if the transaction is in progress, to postpone it and immediately notify in writing the Directorate on the postponement, i.e. on the refusal to execute the transaction*"[180] (Art. 12). The MLPD is authorised to access this information in the circumstances as provided for by Art. 25 of the AML Law.

[178] See Para 4.

[179] The English version of the AML Law uses the term "barrier". The evaluation team was informed that "bearer" is the correct translation.

[180] Clarified translation in accordance with the authorities.

713. One of the aspects that need further discussion in relation to the registration procedure is the question whether the registering authority performs any control concerning the data submitted by applicants. It was noted in the 2nd round evaluation report that it was "*unclear how far the courts simply accept the names put forward or whether enquiries are made into the beneficial owners of companies*". Now this issue is explicitly addressed by the current Company Law. According to Art. 94, the Central Register only determines whether all registration requirements as set out by the law have been met but *"the legality and validity of the contents of the enclosures (documentary ownership evidence and other documents) which are submitted for entry in the commercial register shall not be inspected nor shall the legality of the procedure according to which they were adopted or the legality of data entered in the commercial register and their compliance with this law be examined. The person, or persons determined by this law shall be liable for their validity and legality."* Controls that are performed are thus formal on the completeness of the documents and the registering authority is only obliged to determine whether the application contains all requirements and if the stipulated documents have been attached. As a result, any rejection of entry into the register would only take place in case of obvious incorrectness or invalidity of the data submitted.

714. The Company Law stipulates that all shares shall be "*issued, transferred and maintained in an electronic record form*" in the Central Securities Depository where they are registered in shareholders' register by indicating the name and full identification data of the shareholder be it a natural or legal person. Considering that all shares must be registered in "the former Yugoslav Republic of Macedonia" it is not possible to issue shares made out to the bearer (bearer shares) even if this prohibition is not explicit in the legislation.

5.1.2 Recommendations and comments

715. It is a positive development that the commercial register is now maintained nationally in a centralised manner by the Central Register of "the former Yugoslav Republic of Macedonia". Though this system provides some transparency on ownership of legal entities, it should be noted that the Central Register only determines whether all registration requirements as set out by the law have been met, but there is no kind of verification process. Thus the information available is not necessarily reliable. Furthermore, it would be helpful if the data could be accessed online to avoid a lengthy process of gathering information in writing.

716. The commercial, corporate and other laws do not provide for adequate transparency with respect to beneficial ownership. It is recommended that "the former Yugoslav Republic of Macedonia" reviews its commercial, corporate and other laws with a view to taking measures to provide adequate transparency with respect to beneficial ownership (as provided for in the Glossary to the FATF Recommendations).

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• The legal framework does not ensure adequate, accurate and timely information on the beneficial ownership and control of legal persons.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R. 34)

5.2.1 Description and analysis

717. Recommendation 34 requires countries to take measures to prevent the unlawful use of legal arrangements in relation to money laundering and terrorist financing by ensuring that commercial, trust and other laws require adequate transparency concerning the beneficial ownership and control of trusts and other legal arrangements.

718. Domestic trusts cannot be established in "the former Yugoslav Republic of Macedonia" as the notion of "trust" is unknown in its domestic legislation.

719. "The former Yugoslav Republic of Macedonia" has not signed[181] the Convention on the Law applicable to Trusts and on their Recognition (1 July 1995, The Hague) and the authorities were positive that they would not recognise trusts created in other countries. When asked whether a foreign trust could establish a subsidiary company in "the former Yugoslav Republic of Macedonia", domestic interlocutors did not exclude that it would, at least theoretically, be possible but only in the form of a branch office which would be a company established pursuant to the Macedonian law.

5.2.2 Recommendations and comments

720. Under the present circumstances, Recommendation 34 is not applicable as trusts cannot be established in "the former Yugoslav Republic of Macedonia". Nevertheless, given the uncertainty about the position of foreign trusts operating, potentially and indirectly, in "the former Yugoslav Republic of Macedonia", the local authorities should consider satisfying themselves that foreign trusts do not operate in their country having registered themselves as branches of foreign institutions.

5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**N/A**	As the domestic system does not allow establishing a (foreign or domestic) trust, Recommendation 34 is not applicable.

5.3 Non-profit organisations (SR. VIII)

5.3.1 Description and analysis

721. The non-profit sector in "the former Yugoslav Republic of Macedonia" comprises mainly associations and foundations. The establishing, registration and legal status of these entities are regulated by the Law on Associations of Citizens and Foundations (OG 31/98; hereinafter "Law on Associations"). According to Art. 2(1) of the Law on Associations, *"citizens may freely associate in citizen's associations or in creating foundations for accomplishing economic, social,*

[181] Status table can be found at: http://www.hcch.net/index_en.php?act=conventions.status&cid=59

cultural, scientific, professional, technical, humanitarian, sport and other rights and believes in accordance with the Constitution and the Law". At the time of the on-site visit, there were altogether 2297 such entities registered in "the former Yugoslav Republic of Macedonia". A foundation is, according to Articles 2 and 56 of the Law, a non-profit organisation without membership; its principal aim is to manage the property (assets) it owns in order to accomplish its statutory goals.

722. The Law on Associations is not applicable to political parties or religious groups as these are governed by separate legislation[182]; Art. 3 of the Law on Associations even prohibits associations and foundations from engaging in election fundraising, campaigning or providing financial support to political parties. Associations and foundations are legal persons that acquire their legal personality upon registration into the register for citizen's associations or foundations (Art. 5). Registration appears to be mandatory, considering that the Law envisages a fine in case the association or foundation starts functioning before being inscribed into the register (Art. 84).

723. Citizens' associations can be founded by citizens of "the former Yugoslav Republic of Macedonia" (Art. 29) while foreigners are only allowed to join such associations as members (Art. 28). On the other hand, foreign citizens residing in "the former Yugoslav Republic of Macedonia" may also found a specific type of association (so-called "Foreigner's Association") under more restrictive circumstances. Founding of such an association may be approved only for the promotion of certain purposes: science, sport, humanitarian or social reasons (Art. 49).

724. Associations and foundations have to be registered in the register of citizens' associations and foundations. Until recently, this register was kept and maintained by the court with jurisdiction over the seat of the association or foundation (Art. 13) while the Court of first instance in Skopje(I) also kept a single register of all the registered associations and foundation in the country, based on the data obtained from the courts in charge of registration (Art. 15). In this respect, significant changes were brought by the adoption of the "Law on the One-stop-shop system and keeping of the trade register and the register of other legal persons" (OG 84/05; hereinafter OSS-System Law) by which the register of citizens' associations and foundations was taken over from the authorised courts by the Central Register of "the former Yugoslav Republic of Macedonia"; so wherever the competent court is mentioned in the Law on Associations it necessarily refers now to the Central Register (according to Art. 68 of the OSS-System Law, the date of transition was the 30 September 2006; as from this date, the relevant court registers had to be taken over by the Central Register).

725. The register of citizens' associations and foundations – that is, the present register of other legal persons – is public and the decision by which an entity is registered thereto is to be published in the Official Gazette too (Art. 14).

726. Along with the application for registration, the applicant has to enclose the decision on founding the entity (in case of foundations a "founder's act") as well as the rules (statute) of the association or foundation, the plan of activities, the list of the founders, the names of the persons authorised for representation of the entity and, as far as foundations are concerned, the amount and the origin of the initial capital of the foundation (Art. 16) in which context Art. 65 requires the attachment of prove for collected assets for the foundation (bank certificate confirming money transfers to the foundation, decision for money transfers, personal declaration for donation etc.) In case of foreigner's associations, the application must also contain information on the assets by which the aims of the association are going to be achieved (Art. 50).

727. According to Article 18 of the Law on Associations, the decision for the inscription to the register shall contain: the name (title) of the entity, the content of its work and activities as well as

[182] Law on Religious Communities and Religious Groups (OG 35/97) and Law on Political Parties (OG 41/94)

the seat and territory where the activity is taking place. Since the register is public, all these data are publicly available.

728. In course of the registration procedure, the registering authority (now the Central Register) *"shall ascertain the circumstances and render a decision on the inscription of the citizen's association or foundation to the register"* (Art. 17) where "ascertaining the circumstances" refers to the examination whether all the required documents are listed and whether the statute and the programme of the entity are in accordance with the Constitution and other laws of the country. In case of non-accordance, the deficiencies need to be remedied within a deadline of maximum 30 days, or else the application will be rejected (Art. 19). In case of changes and amendments to the statute or other relevant data, the associations and foundation are required to inform the registering authority within 30 days and request for the inscription of the changes into the register. (Art. 20)

729. The Central Register is thus only responsible for registration procedures. This limitation of responsibility comes not only from the Law on Associations but also from Art. 39(2) of the OSS-System Law which, determining the general rules on what should be taken into consideration in the registration procedure, provides that *"during the entry, the Registrar shall not (1) examine the lawfulness and truthfulness of the contents of the enclosures (documents and evidence) submitting for entry in the registers (2) examine the legality of the procedure in which the same were adopted, and (3) examine whether the data entering the registers are true and in accordance with the law"* for which the applicant person shall exclusively be responsible (para 3). As a consequence it seems that there is no room for the Central Register to verify the submitted documentation, not even under suspicious circumstances.

730. Associations and foundations of which the annual income exceeds 2500 EUR (in MKD equivalent) are required to submit annual account or financial report on their incomes to the Central Register. Entities below this threshold have no such obligation. All what is provided by the OSS-System Law in this respect is that the Central Register shall assign the status "inactive" to the entity that has not submitted the annual account or the financial report to the Central Register (Art. 61). The law contains, however, no further details as regards this reporting requirement which must necessarily be regulated in details by the Law on Accountancy of the Non Profit Organisations (OG 24/03) which piece of legislation was not made available to the evaluation team in English. In any case, it was made clear during the on-site visit that the Central Register does not exercise actual supervision based on financial documentation submitted by NPOs.

731. A similar obligation is stipulated by the Law on Associations concerning associations or foundations that obtained, under conditions specified by the Law, public benefit status. According to Art. 11 of the Law, associations and foundations of public benefit *"shall be under duty to send their annual reports to the Ministry of Finance"* which reports *"are open to a review by the general public"*. The evaluators have no exact information whether this reporting obligation is governed by the above-mentioned Law on Accountancy of the NPOs or any other piece of legislation and especially whether the Ministry of Finance or any other state body performs any supervisory activity over these reports.

732. Finally, Art. 44 of the Law on Association provides that *"Control over the legality in acquiring, use and disposal of the association's assets are made by an authorised organ in charge for public revenues"*. This refers to the Public Revenue Office which performs supervision over the business activity of NPOs in order to check whether the incomes derived from such activity are actually expended for the purposes which are the registered activities of the given association or foundation. If not, the income will be taxed (while NPOs are otherwise exempted from taxation). The Public Revenue Office performs this supervisory role mainly on the basis of reports of the respective entities but may also carry out on-site inspections. In case of circumstances

raising a suspicion of criminal activity, the Public Revenue Office informs the competent law enforcement authorities or, in case of money laundering, the MLPD.

733. As a result, there appears no state authority in "the former Yugoslav Republic of Macedonia" that would carry out any sort of actual supervision over either the validity of the registration documents or the lawful functioning of the associations or foundation, be it exercised offsite (on the basis of documents submitted) or on-site, occasionally or regularly in order to establish whether all economic resources of those entities are applied exclusively to their goals or for their established purposes.

734. To be complete, it is necessary to mention that the authorities made "*associations of citizens and foundations*" obliged entities under the AML Law (Art. 2 item 5). However, it seems that this was not done on the basis of a risk analysis but simply to follow international requirements. Apart from making these entities subject to the AML Law, there are no further provisions further defining their obligations or any particularities. It also appears that in practice neither associations nor foundations and not even the authorities are aware of these obligations: it was not mentioned in the replies to the MEQ that these entities are subject to the AML Law; furthermore, the evaluators were told on-site that so far no outreach to these entities had been undertaken and were not informed of any plans to do so in the near future.

735. Overall, it appears that there has been no review of the adequacy of laws and regulations that relate to non-profit organisations that can be abused for the financing of terrorism, as required by Criterion VIII.1. Though the AML Law deals theoretically with associations and foundations, this is not enforced and there are no measures in place to ensure that terrorist organisations cannot pose as legitimate non-profit organisations or that funds or other assets collected by or transferred through such organisations are not diverted to support the activities of terrorists or terrorist organisations, as required by Criteria VIII.2 and VIII.3. What there is, or might be, in place does not appear to amount to effective implementation of Special Recommendation VIII.

Additional elements

736. It seems that most of the measures in the Best Practice Paper for SR VIII have not been implemented.

5.3.2 Recommendations and comments

737. Though the AML Law covers associations and foundations as obliged entities, it seems that there has been no formal review of the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. There is no supervision exercised by any authority that would at least indirectly cover this issue.

738. It is first advised that a formal review of the current legislation covering the non-profit sector is undertaken from the point of view of the threats to this sector inherent in terrorist financing, in line with SR VIII and its Interpretative Note. It is then recommended that the authorities review the existing system of laws and regulations in this field so as to assess themselves the adequacy of the current legal framework according to Criterion VIII.1. Consideration should also be given in such a review to effective oversight of the NPO sector, the issuing of guidance to financial institutions on the specific risks of this sector and consideration of whether and how further measures need taking in the light of the Best Practices Paper for SR.VIII. In particular, ongoing programme verification and field audits should be considered in identified vulnerable parts of the sector. Consideration needs to be given to ways in which effective oversight of the NPO sector can be achieved in the context of SR.I.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**NC**	• No special review of the risks and not any sort of ongoing monitoring of the NPO sector have been undertaken. • Financial transparency and reporting structures are in practice not existing and thus do not amount to effective implementation of criteria VIII.2 and VIII.3.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31)

6.1.1 Description and analysis

739. Recommendation 31 (and criterion 13.1) is concerned with co-operation and coordination between policy makers, the FIU, law enforcement, supervisors and other competent authorities.

740. The AML Law of "the former Yugoslav Republic of Macedonia" contains provisions concerning cooperation both on domestic and international levels: According to its Article 4, the MLPD is authorised to cooperate with all the relevant domestic bodies including the NBM, the Public Revenue Office, the Securities and Exchange Commission and other state authorities and institutions involved in the AML/CFT regime. According to the same Article, the MLPD is authorised to conclude agreements of cooperation and exchange of information with "*competent bodies of other states and international organisations acting in combat against money laundering and financing of terrorism*". While Article 37 of the AML Law entitles the MLPD to conclude MoUs with relevant foreign bodies, there is no such explicit authorisation for the MLPD to conclude cooperation agreements with national authorities and bodies. However, this seems to be no problem in practice as the MLPD had at the time of the onsite visit already signed several cooperation agreements. Though not explicitly provided for by law, the authorisation to do so could be inferred by giving a wide interpretation to Art. 4 of the AML Law ("... *to cooperate* ..."). So far, the MLPD has signed the following Protocols and Memoranda of Cooperation[183]:

- "Protocol for cooperation in combating organised and other forms of financial crime in the Republic of Macedonia"[184] between the Customs Administration, the Public Revenue Office, the Financial Police and the MLPD, signed on 13 December 2005;
- Memorandum for cooperation in combating money laundering and financing of terrorism between the MLPD and the NBM, signed on 28 August 2006 (for details see below para 745);
- Memorandum for cooperation in detecting and prosecuting of persons committing criminal offences under the category of organised crime and corruption between the Public Prosecutor Office, the Ministry of Interior, Customs Administration, the Public Revenue Office, the MLPD and the Financial Police, signed on 24 June 2005.

741. While cooperation between the MLPD and the Financial Police seems to be quite close, cooperation with the other authorities appears to be more distant and formal. The evaluators were informed that requests for information to the Ministry of Interior are carried out in writing and answers may take a while[185]. Art. 27 AML Law just stipulates that the MLPD "*may*" request data

[183] After the onsite visit the MLPD has signed the following Protocols and Memoranda of Understanding :

- Protocol for cooperation in the combating terrorism and organised crime between Ministry of Finance (MLPD) and the Ministry of Interior (Administration for security and counter-intelligence), signed on 04.07.2007;
- Protocol for cooperation in combating organised crime between Ministry of Finance (MLPD) and Ministry of Interior (Bureau for public security), signed on 13.06.2007;
- Protocol for cooperation on prevention and repression of corruption and conflict of interests between the State Anti-Corruption Commission, Public Revenue Office, Public Prosecutor Office, Judicial Council, Ministry of Interior, State Audit Institute, Customs Administration, Financial Police, MLPD and State Cadastre Institute, signed on 25.12.2007;
- Protocol for cooperation in combating money laundering and financing of terrorism between the MLPD and the State Attorney's Office, signed on 08.02.2008.

[184] See para 4.

[185] From the second half of 2007 on, the MLPD has established a system which allows to access via contact officers data of the criminal register, the register on vehicles and the register on personal data (covering the following data of persons: names, place and date of birth, address, unique ID-number, citizenship) of the Ministry of Interior.

and documentation from all state bodies, financial institutions or other entities. But there seems to be no corresponding legal obligation for these bodies to answer these kinds of requests. Representatives of the MLPD also informed that the number of requests or reports from the Ministry of Interior to the MLPD was very low.

742. According to Art. 17 of the Law on Financial Police, the financial police shall cooperate with the Public Prosecution, the Ministry of Interior, the Public Revenue Office, Customs Administration, the MLPD and other state agencies or other legal entities in charge of detection and prevention of any punitive acts. This article also obliges the requested authorities to provide assistance to the financial police without delay.

743. As already stated in the first round evaluation report and again in the second round evaluation report, there is widespread uncertainty as to which investigative authority is competent for which cases. The Public Prosecutor stated not to know in which cases the Ministry of Interior and in which cases the Financial Police is investigating. The MLPD informed the evaluators that they tend to submit cases involving legal persons to the Financial Police while cases involving natural persons are submitted to the Ministry of Interior; the Financial Police simply stated that cooperation with the MLPD is much closer than cooperation with the Ministry of Interior because they work next door to each other. To improve this situation, the Ministry of Interior and the Ministry of Finance concluded a Memorandum of Understanding. The evaluators were not shown this Memorandum but were told that the Ministry of Interior and the Ministry of Finance agreed in it that both police forces are competent in investigating the same matters - however, it seems debatable whether this is a helpful development with regard to already overlapping and uncertain competencies.

744. As a consequence of the second round evaluation report, the Government of "the former Yugoslav Republic of Macedonia" established a so-called "Council for Combat against Money Laundering and Financing Terrorism" (see above para 80) in July 2005. This Council is headed by the Director of the MLPD, and its members are high-level representatives of the following state bodies: the Ministry of Interior, the Ministry of Justice, the Public Prosecution Office, Customs Administration, the Public Revenue Office, the Financial Police and the NBM. It is competent for monitoring the realisation of the objectives set in the National Strategy. It also considers the issues and problems of the current operations and exchanges experiences; so far it already organised joint trainings. It submits to the Government an annual report on the fulfilment of the strategic objectives set in the Strategy. This advisory body has no competence to coordinate the activities of the different authorities and bodies and has a solely advisory role; though the authorities interpret the National Strategy in a broader sense and consider that this Council has also competencies for coordination, it has to be said that this interpretation is not covered by the language of the National Strategy. Moreover, even if this interpretation were to be correct, it has to be stressed that the National Strategy does not provide a legal basis to act on, thus, it also cannot assign (enforceable) competencies. It is not known to the evaluators, to which conclusions this Council came in recent years or what recommendations have been submitted to the Government or what improvements have been initiated or carried out subsequent to the advisory board's annual reports and advice.

745. Article 38 of the "Law on the National Bank of the Republic of Macedonia"[186] entitles the NBM to exchange information with domestic and foreign supervisory bodies for supervisory purposes. For the purpose of the exchange of information, the NBM has signed Memoranda of Understanding with several international and domestic bodies. On a domestic level, the NBM has signed a Memorandum of Understanding with the Security Exchange Commission (for supervisory purposes) and another one with the MLPD (for cooperation in the area of money laundering and terrorist financing). The evaluators were informed that the Memorandum of Understanding between the NBM and the MLPD governs *inter alia* the following:

[186] See Para 4.

- the exchange of data and information gathered in the process of preventing money laundering and terrorist financing;
- cooperation concerning education and training;
- the exchange of information about changes in the legislation that can influence on institutions operation and cooperation.
- The MLPD can request the NBM to conduct supervision of the financial institutions that are subject to NBM supervision. The NBM is obliged to disclose to the MLPD the results from the performed supervision within 30 days.
- The NBM should report to the MLPD any requests for initiating misdemeanour procedures related to the AML Law.

746. Domestic cooperation among financial supervisors is covered by sectoral laws (e.g. Article 77 of the Banking Law; Art. 232 of the Law on Insurance Supervision; Art. 163 of the Law on Securities). Apart from the above mentioned Memorandum of Understanding of the NBM with the Security Exchange Commission, the evaluators were not informed whether there are other agreements of cooperation between financial supervisors.

Additional Elements

747. There is no over-all mechanism in place for consultation between the authorities and bodies and the financial and other private sectors. In this respect one could only consider Art. 4 of the AML Law, which gives the MLPD the competence (not necessarily the obligation) to determine lists of indicators in cooperation with other entities and supervisory bodies, as well as the competence to take part in activities to build professional know-how within the responsible entities in order to enhance compliance. However, in practice, it seems that apart from issuing and disseminating a guidance book no further activity has taken place in this respect so far. The authorities also pointed in this regard to Art. 40 of the AML Law which requires (some limited) cooperation of the supervisory bodies and the commissions from Art. 39 of the AML Law on one side with the MLPD on the other side: this encompasses the obligation (a) to inform the MLPD in case of initiating infringement procedures and (b) to perform supervision over elaborated requests of the MLPD. Also Art. 40 of the AML Law covers criterion 31.2 only to a minor extent.

6.1.2 Recommendations and Comments

748. The widespread uncertainty as to which investigative authority is competent for which cases already stated in the first round evaluation report and again in the second round evaluation report, is still prevailing as there is still no authority or mechanism in place ensuring a nation-wide policy on cooperation or appropriate coordination in the combat against money laundering or financing of terrorism, although legal provisions seem to allow cooperation among all the authorities and other bodies. Also the "Council for Combat against Money Laundering and Financing Terrorism" which was established after the second round evaluation report does not seem to have achieved any change in this respect. Thus, the evaluators recommend clarifying the competences of the investigative bodies (clearly defining which authority is competent in which cases). While the cooperation between the MLPD and the Financial Police seems to work, there are no special agreements with the Ministry of Interior and prosecutors; Memoranda of Understanding with these bodies may help to improve cooperation and to accelerate information exchange.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**PC**	• There is no authority or mechanism in place ensuring a nation-wide policy on cooperation or appropriate coordination in the combat against money laundering or financing of terrorism which is particularly problematic as there is widespread uncertainty as to which investigative authority is competent for which cases. • Apart from a good level of cooperation between the MLPD and the Financial Police, there seem to be no such links with other law enforcement authorities.

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

6.2.1 Description and analysis

749. "The former Yugoslav Republic of Macedonia" has signed and ratified all the conventions specified by Criterion 35.1 and SR.I as follows:
- the Vienna Convention (UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988) applies to "the former Yugoslav Republic of Macedonia" by succession[187] as it was originally ratified by Yugoslavia in 1990;
- the Palermo Convention (UN Convention Against Transnational Organised Crime 2000) was ratified on 12 January 2005 (Law on Ratification – OG 70/04)
- the Terrorist Financing Convention (1999 UN International Convention for the Suppression of the Financing of Terrorism) was ratified on 30 August 2004 (Law on Ratification – OG 30/04)[188].

750. Since the ratification of any of these conventions does not necessarily mean full implementation as required by R.35 and SR.I, the Methodology requires assessors to make sure that the most relevant articles of the respective conventions are actually implemented. The comments made earlier in respect of the physical elements of the money laundering offence also apply here.

751. As for the Terrorist Financing Convention, the implementation of the relevant articles which has to be checked are Articles 2 to 18 (namely, Articles 2-6 and 17-18 in relation to SR.II; Article 8 in relation to SR.III and Articles 7 and 9-18 in relation to SR.V). With regard to Article 2 of the said Convention, the criminalisation of the financing of terrorism, as discussed above (see 2.2.2) is insufficient and there is urgent need for legislation (preferably a specific autonomous offence) which fully covers all the elements of SR.II and the respective Interpretative Note.

752. According to criterion I.2, countries should fully implement the United Nations Security Council Resolutions relating to the prevention and suppression of terrorist financing (respectively S/RES/1267(1999), its successor resolutions as well as S/RES/1373(2001)), which requires "any necessary laws, regulations or other measures to be in place and for these provisions to cover the

[187] According to the website of the UN Treaty Collections, the Government of "the former Yugoslav Republic of Macedonia" deposited with the Secretary General notifications of succession to the Socialist Federal Republic of Yugoslavia to various treaties with effect from 17 November 1991, the date on which it assumed responsibility for its international relations.

[188] Ratification dates as indicated on the UN Treaty Collections website.

requirements contained in those resolutions". As discussed in relation to SR.III above (section 2.4), the relevant UNSCRs have only been, if at all, implemented to a very limited extent – in fact, there is practically no domestic legislation that would specifically implement the said instruments in terms of roles, responsibilities and conditions while the existing legal framework is unable to address most of the legal issues relating to this matter.

Additional elements

753. "The former Yugoslav Republic of Macedonia" ratified the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) in 2000 (Law on Ratification – OG 58/99) which entered into force on 1 September of the same year. Comments made earlier about the scope and effectiveness of the current confiscation regime indicate that the Convention was not fully implemented at the time of the on-site visit. The CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) was signed by "the former Yugoslav Republic of Macedonia" on 17 November 2005 but its ratification has not yet taken place.

6.2.2 Recommendations and comments

754. The same comments as are made above in relation to the implementation of the respective Conventions (especially the Terrorist Financing Convention) and the UN Security Council Resolutions apply here.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**PC**	**Implementation of the Palermo and Vienna Conventions** • At some points, the money laundering offence does not meet the standards set forth by these Conventions. A number of conducts is either not met or insufficiently met by the current legislation. The scope of the money laundering offence is further limited by the differentiation between conducts as regards the object of the offence as well as the value threshold. **Implementation of the Terrorist Financing Convention** • The present incrimination of terrorist financing appears not wide enough to clearly sanction the collecting of funds in general, and also the provision or collection of funds with the unlawful intention that they should be used, in full or in part, to carry out a terrorist act or by an individual terrorist for any purpose.
SR.I	**PC**	• "The former Yugoslav Republic of Macedonia" has failed to implement several provisions of the Terrorist Financing Convention, notably a terrorist financing offence which fully covers all the elements of SR.II and the respective Interpretative Note. • There is no adequate legal structure for the conversion of designations under S/RES/1267(1999) and its successor resolutions as well as S/RES/1373(2001). • A comprehensive and effective system for freezing without delay by all financial institutions of assets of designated persons and entities, including publicly known procedures for de-listing etc. is not yet in place.

6.3 Mutual legal assistance (R.32, 36-38, SR.V)

6.3.1 Description and analysis

Recommendation 36 and SR.V

755. In addition to the Vienna, Palermo and Strasbourg Conventions, "the former Yugoslav Republic of Macedonia" has also ratified the Council of Europe Convention on Mutual Assistance in Criminal Matters of 1959 (ETS No. 030) and its Additional Protocol (ETS No. 099) which were ratified and also entered into force in 1999 (Law on Ratification – OG 32/99); the Second Additional Protocol to the said Convention (ETS No. 182) was ratified in 2003 (Law on Ratification – OG 44/03).

756. The Criminal Procedure Code provides the legal basis for mutual legal assistance in criminal matters and also for extradition. The respective rules governing these issues can be found in Chapters XXXII and XXXIII (former Chapters XXX and XXXI) of the CPC. It comes, however, from the Constitution of "the former Yugoslav Republic of Macedonia" (OG 52/91) that the main principles applicable in the field of international cooperation in criminal matters are the precedence of international treaties over national law and the direct applicability of the conventions. Article 118 of the Constitution provides that *"The international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law."* Accordingly, Art. 551 CPC (former Art. 502) provides that *"international judicial criminal assistance will be performed according to the provisions of this Law, unless otherwise provided with the provisions of the European Convention for mutual international judicial assistance in the criminal matter with the Protocols, the Convection of United Nations for trans-national organised crime and with other international treaties ratified in accordance with the Constitution of Republic of Macedonia*[189]*."* As a consequence, domestic law can only be applicable in non-treaty based cooperation or for the regulation of issues not covered by the otherwise applicable treaty.

757. In the above mentioned Chapter XXXII of the Criminal Procedure Code, however, one cannot find a comprehensive set of provisions that would determine in detail the procedural rules through which foreign requests for mutual legal assistance are executed by "the former Yugoslav Republic of Macedonia". Instead, the said Chapter contains only 3 articles (in addition to the above quoted Art. 551) by which this issue is directly addressed, that is, Art. 552 and 553 (former Art. 503 and 504) dealing with general rules of competence as well as various channels of communication and Art. 555 (former Art. 505a) dealing with legal assistance concerning confiscation and provisional measures upon the request of other countries.

758. The Ministry of Justice is the central judicial authority responsible for mutual legal assistance. According to Art. 552(1) CPC (former Art. 503) this Ministry is responsible, as a general rule, for delivering the requests of domestic courts for judicial assistance in criminal cases to foreign counterparts as well as for receiving foreign rogatory letters and forwarding them to domestic courts. Foreign requests are thus executed by the courts of "the former Yugoslav Republic of Macedonia" which means those courts that are competent, by virtue of a specific law, for rendering international judicial criminal assistance. Pursuant to Art. 31(1) of the Law on Courts (OG 58/06) such cases fall under the competence of "*basic courts with enhanced competence*" (according to Paragraph 3 there are 10 such courts in the country) which are also empowered to decide on extradition.

[189] See Para 4.

759. The mechanism for the provision of legal assistance is the diplomatic channel in which foreign letters rogatory are received by the Ministry of Foreign Affairs then transmitted to the Ministry of Justice which will forward them to the competent domestic courts for execution (Art. 553[1] CPC) while direct communication between domestic judicial authorities and their foreign counterparts can take place in two different ways:

760. The first is what appears to be one of the ordinary ways of communication, that is, direct contact between the competent domestic and foreign courts, which is regulated by Art. 552(1) CPC (former Art. 503) as follows: *"The applications of domestic courts for judicial assistance in criminal cases are delivered to the foreign agencies in a diplomatic course through the Ministry of Justice or directly from the competent* court[190]. *In the same manner to the domestic courts are delivered the applications of the foreign agencies for judicial assistance"*. It appears to come from the language of the law that this court-to-court communication is considered as an alternative to the classic inter-ministerial channel though it is not entirely clear whether or not an otherwise competent court may decide, entirely on its own, to enter into direct contact with its foreign counterpart instead of sending a letter rogatory through the Ministry of Justice. On the face of it, there is nothing in the law to prevent the court from doing so. Representatives of the Ministry of Justice, when asked about this during the on-site visit, could not provide exact data as regards how frequently this inter-judicial channel is applied instead of the classic inter-ministerial one.

761. The other form of direct communication is provided for by Paragraph 2 of Art. 552(1) CPC (former Art. 503) as an exception to the ordinary channel of transmission. It allows in urgent cases and under the condition of mutuality that *"the applications for judicial assistance may be delivered by the Ministry of Internal Affairs"* (which means the Police). Accordingly, Art. 553(2) CPC (former Art. 504) stipulates that, in such cases of emergency, it is the Ministry of Interior that *"directs the application to the court via*[191] *the Ministry of Justice"*. In other words, the only difference lies in that the diplomatic channel is avoided, that is, foreign requests are not received by the Ministry of Foreign Affairs but the domestic Police forces (Ministry of Interior) as a result of international police cooperation. The rest of the procedure is the same, as the foreign requests must be delivered to the Ministry of Justice and then to the competent court for execution. The CPC is silent on whether the Ministry of Interior has any specific role in communicating the results of the legal assistance to the requesting country.

762. The evaluators need to note at this point that they found no legal basis that would support the statement the authorities made in the 2004 Progress Report according to which the Ministry of Justice may, depending on the stage of the procedure, disseminate the foreign requests either to the public prosecutor or to the court for execution. On the contrary, the representatives of the public prosecution denied their direct involvement in the execution of foreign letters rogatory and, as it was confirmed at the pre-meeting, the above statement must have been a mistake in the Progress Report.

763. Certainly, all these issues would not affect direct communication between judicial authorities where it is provided by an international treaty (e.g. the ETS 141 Strasbourg Convention) or, at least, a bilateral agreement. The evaluation team was, however, informed on-site that the authorities had not yet gained any experience in such kind of direct cooperation in money laundering or terrorist financing cases.

764. As a result of the significantly limited extent to which the procedural rules relating to the provision of mutual legal assistance in criminal matters are regulated by the Criminal Procedure Code, some issues appear to have left unaddressed by the current legislation. Representatives of the Ministry of Justice also admitted that the handful of relevant articles in the Criminal Procedure

[190] Emphasis added.

[191] Clarified translation in accordance with the authorities.

Code is seriously insufficient to meet the actual needs of regulation and therefore they feel they need a complete new law on international legal assistance. There appears to be no legal provision, for example, that would allow for the spontaneous exchange of information between domestic and foreign authorities (it is not prohibited, though). What is more unusual is that there appears to be no legislation determining the minimum content and form of requests for mutual legal assistance (bearing in mind that the formalities of extradition requests are defined in details in the respective articles of the CPC). According to the interlocutors the team met on-site, foreign requests must be submitted in a written form but there was no certainty about any further prerequisites. In the evaluators' view, such an insufficient level of regulation may easily cause problems when it comes to implementation as it may leave too much room for judicial discretion in the concrete cases.

765. Art. 553(3) CPC (former Art. 504) requires that the decision of the competent domestic court regarding *"the permission and manner of the conducting of the act"* (i.e. what investigative or other measures can be taken and under which circumstances when proceeding in the execution of a foreign request) must be made in accordance with the domestic regulations. As a consequence, "the former Yugoslav Republic of Macedonia" is able to provide a wide range of mutual legal assistance including the direct applicability of practically any investigative means and measures available under the respective articles of the Criminal Procedure Code. The evaluators were thereby assured that the powers of domestic courts and other competent authorities required under Recommendation 28 are equally available for use in response to requests for mutual legal assistance.

766. As far as mutual legal assistance is concerned, the Criminal Procedure Code contains no rules that would explicitly require dual criminality. However, there is no doubt that this requirement is implicitly incorporated in the respective rules and thus applies, at least to a certain extent, indirectly. Art. 553(4) stipulates that *"when the application refers to a criminal act for which according to the domestic regulations extradition is not allowed, the court will request guidance*[192] *from the Ministry of Justice"*. Art. 560(1) CPC (former Art. 510) determines the conditions for extradition, among which one can find that *"the crime for which there is a request for extradition to be a criminal act both according to the domestic Law and the Law of the country in which it has been committed"*. This is the usual standard of double criminality even if, on the face of it, the Criminal Procedure Code does not seem to automatically exclude the execution of a foreign letter rogatory on the sole ground that this standard is not met. In such cases, as quoted above, the competent court is required to ask the Ministry of Justice for "*guidance*". Nevertheless, as it was clarified during the pre-meeting, this "*guidance*" would in no circumstances lead to the circumvention of dual criminality standards, that is, the execution of a foreign request that fails to meet the principle of dual criminality. Instead, this provision simply provides an opportunity for the judge, who finds that a certain letter rogatory cannot be executed because of not meeting this standard, to turn to the Ministry of Justice, as the central authority in international judicial cooperation, for confirmation or verification of his/her position in this issue.

767. During the pre-meeting, the authorities confirmed that "the former Yugoslav Republic of Macedonia" could not provide legal assistance to foreign countries in money laundering cases where the offence committed abroad would not meet the dual criminality standards as regards the minimum value threshold required by Art. 273 CC, that is, where the amount of the proceeds laundered would not reach the sum of five officially declared monthly salaries in "the former Yugoslav Republic of Macedonia" (approx. 1150 Euros as referred to above). However, the authorities took the view that, from practical purposes, this limitation would not pose a significant obstacle in international judicial cooperation.

[192] Clarified translation in accordance with the authorities.

768. Apart from these, the evaluators were not informed of any further provision that would make mutual legal assistance subject to unreasonable, disproportionate or unduly restrictive conditions. Specifically, there is no legislation under which a foreign request for mutual legal assistance could be refused on the ground that the offence involves fiscal matters.

769. In the course of the execution of foreign requests, issues of secrecy or confidentiality requirements on financial institutions or DNFBP do not appear to present any particular obstacles. There is no specific legislation concerning this issue and the evaluators presume that the relevant provisions applicable in domestic cases would be applied accordingly.

770. The execution of mutual legal assistance requests in a timely way and without undue delay is not directly provided as the Criminal Procedure Code determines no deadlines in this respect. On the other hand, the above mentioned Art. 553(3) CPC (former Art. 504) allows for the application of Art. 13 of the same Code which prescribes that *"the court shall be obliged to attempt enforcement of the procedure without delay"* even if this rule is still far from being strict enough to set any sort of timeframe for the execution of rogatory letters. According to the representatives of the Ministry of Justice, the average time requirement for a foreign request involving investigative measures to be fulfilled is about 2-3 months.

771. In the context whether "the former Yugoslav Republic of Macedonia" has considered devising and applying any specific mechanism for determining the best venue for prosecution in cases that are subject to prosecution in more than one country, the authorities referred to Art. 557 and 558 CPC (former Art. 507 and 508) that deals with taking over ("undertaking") and surrendering ("transferring") of criminal proceedings.

Additional Elements

772. Described in the text above.

Statistics

773. The authorities could present to the evaluators only some generic figures concerning mutual assistance requests but this information cannot be regarded as statistics: all the numerical information the Ministry of Justice provided was the total number of requests per year, both in criminal and civil matters and regardless of whether they were issued or received by the authorities. The only relevant information the evaluators were given in this respect was that out of these rogatory letters, there were two in 2005, one in 2006 and another one in the first quarter of 2007 related to money laundering (while it remained unknown whether they were outgoing or incoming requests). The team was, on the other hand, informed by the Ministry of Justice that as far as mutual legal assistance issues are concerned in general, there are no further or more comprehensive statistics maintained by any authority, let alone statistical data relating specifically to money laundering or terrorist financing.

Recommendation 38 - Confiscation / Freezing

774. Criterion 38.1 requires that there should be 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 laundered property or proceeds from, as well as instrumentalities used or intended for use in the commission of any money laundering, terrorist financing or other predicate offences. According to Criterion 38.2, these requirements should also be met where the request relates to property of corresponding value.

775. The evaluation team of the previous round detected serious deficiencies in this field and made a number of recommendations. "The former Yugoslav Republic of Macedonia" appears to have followed these recommendations and made some significant steps in its legislation to comply more with the desired standards. The core provision in this respect is Art. 555 (former Art. 505a) of the Criminal Procedure Code that was inserted by the 2004 amending law. Paragraph 1 and 2 of this Article provide that

> *(1) Domestic courts are acting upon the application of the foreign organs for undertaking temporary measures for ensuring the Article 220 of this Law, or in the execution of measure for confiscation of property and property benefit*[193] *and confiscation*[194] *of the objects towards which they have proceeded in accordance with the provisions from the international agreement.*
>
> *(2) The confiscated property and the property benefit or the confiscated*[195] *objects can be abandoned, by the decision of the court, to a foreign country under conditions stipulated by international agreement*[196].

776. In accordance with the general rule above, the 2004 amendments of both the Criminal Procedure Code and the Criminal Code completed the confiscation and provisional measures regime by adding new, specific provisions to the respective articles of the said Codes. In this context, Art. 221 CPC (former Art. 203b) provides that

> *The decision for temporary securing of objects and property can be*[197] *brought by the court on the request by other state, in cases prescribed by the international agreements ratified in accordance with the Constitution of the Republic of Macedonia*[198].

As far as confiscation is concerned, Art. 97 CC while determining the grounds for confiscation of property gain (i.e. the proceeds of crime) provides in its Paragraph 4 that

> *(4) Under the conditions determined by a ratified international treaty, confiscated property may be returned to another country.*

777. Article 100a CC, which defines conditions for the confiscation ("seizure") of objects, contains a practically identical provision in its Paragraph 6 (with the only difference that it refers simply to "property").

778. As far as confiscation of laundered property under Art. 273(8) CC is concerned, there is no direct reference in the articles quoted above (bearing in mind that Art. 100a CC, as it was already discussed, does not cover such property). It may nevertheless be confiscated and therefore subject to delivery to another jurisdiction pursuant to Art. 555 CPC (former Art. 505a) where the phrase "confiscation of objects" is, in lack of any further specification, flexible enough to encompass laundered property confiscatable under Art. 273(8) CC.

779. It appears therefore that the full scale of measures covering both the temporary and permanent deprivation of property is available for use upon the request of another state. On the other hand, it

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[193] In the official English version, the dotted underlined part was "*property confiscation and property benefit*" which is an inaccurate translation of the original *"конфискација на имот и имотна корист"*; the authorities confirmed that the proper translation should be "*confiscation of property and property gain*" (as it is translated in other parts of the same document).

[194] The dotted underlined text corresponds to the meaning of the term used in the original. The English translation uses instead "seizure". The original is "одземање". See also para 208.

[195] The dotted underlined text corresponds to the meaning of the term used in the original. The English translation uses instead "seized". The original is "одземените". See also para 208.

[196] Clarified translation in accordance with the authorities.

[197] The official English version of the CPC used instead of the dotted underlined part the word "*is*", but it could be clarified that the correct translation is "*can be*" ("*може*" in the original text).

[198] See Para 4.

needs to be noted that the applicability of all the above provisions is somewhat limited by the requirement that assistance can only be rendered in case there is a ratified international treaty (agreement) governing this particular issue. In other words, these provisions cannot be applied in international judicial cooperation not based on a treaty.

780. "The former Yugoslav Republic of Macedonia" is a full party to the Strasbourg Convention. In light of the domestic legal background as it is described above, it appears obvious that the authorities enforce foreign confiscation orders through the permissible route under the Convention (Article 13 Paragraph 1b) of submitting the case to a court of "the former Yugoslav Republic of Macedonia" for enforcement.

781. It seems that criterion 38.3 which requires arrangements for co-ordinating seizure and confiscation actions with other countries has not been formally addressed.

782. It also seems that there has not been given consideration to the establishment of a separate 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 (Criterion 38.4). The authorities referred in this regard only to Art. 98(4) CC which stipulates that the property confiscated by the court will accrue to the state budget ("*become property of the state*") provided that there is no injured party to whom it could be returned.

783. Sharing confiscated assets with other countries is possible when confiscation is a result of coordinated law enforcement actions (Criterion 38.5). Though there is no specific procedure for this mechanism stipulated, one could use Art. 555(4) CPC (former Art. 505a) according to which:

> *(4) In the case when with the international agreement it is regulated that the confiscated property and the property benefit shall be divided between the Republic of Macedonia*[199] *and some other state, such proposal to the foreign country will be delivered by the Ministry of Justice.*

Again, this possibility is only available in case there is an international agreement governing this issue. The evaluators were informed during the on-site visit that no sharing of confiscated assets had yet taken place in "the former Yugoslav Republic of Macedonia".

Additional element

784. There are no provisions that would allow for the recognition and enforcement of foreign non-criminal confiscation orders in "the former Yugoslav Republic of Macedonia".

Terrorist financing (SR.V)

785. To the extent that terrorist financing is covered in the legislation of "the former Yugoslav Republic of Macedonia", the same mutual legal assistance rules as described above would apply to requests of foreign states. As far as dual criminality requirements apply under Art. 553(4) CPC, even if implicitly and depending on the discretion of the Ministry of Justice, the problems explained in respect of the domestic offence intended to cover financing of terrorism (Art. 394a CC) are likely to limit mutual assistance as well.

[199] See Para 4.

6.3.2 Recommendations and comments

786. "The former Yugoslav Republic of Macedonia" has a legal framework which complies with some aspects of the requirements of Recommendations 36 to 38 and SR.V, though the effectiveness of the system could not be assessed due to the complete lack of statistical figures. Complete, detailed and precise statistics must therefore be kept on AML/CFT mutual legal assistance issues, which will also assist in strategic analysis as well as identifying efficiency issues / timing and fulfilment of requests in whole or in part.

787. The principle of dual criminality is, though implicitly, present in the domestic legislation and this is why the definitional problems with the domestic offence intended to cover the financing of terrorism (Art. 394a CC), as well as the value threshold required by the money laundering offence, may possibly cause difficulties in providing mutual legal assistance.

788. Arrangements for coordinating seizure and confiscation action with other countries should be established. Consideration should also be given to establishment of an asset forfeiture fund as well as to sharing of confiscated assets with other countries when confiscation is a result of coordinated law enforcement action.

789. There are only some very limited statistics concerning mutual assistance requests available (only the total number of requests per year, both in criminal and civil matters and regardless of whether they were issued or received by the authorities). More comprehensive statistics are necessary to evaluate the system.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.36	**LC**	• The shortcomings of the domestic legislation intended to cover the financing of terrorism as well as the value threshold applied in the money laundering offence may limit mutual legal assistance based on dual criminality.
R.37	**LC**	• The shortcomings of the domestic legislation intended to cover the financing of terrorism as well as the value threshold applied in the money laundering offence may limit mutual legal assistance based on dual criminality.
R.38	**LC**	• In the complete absence of statistics it is not possible to determine whether and to what extent "the former Yugoslav Republic of Macedonia" provides effective and timely response to foreign requests concerning freezing, seizure or confiscation. • No consideration has been given to 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. • There are no arrangements for coordinating seizure or confiscating actions with other countries.
SR.V	**PC**	• The shortcomings of the domestic legislation intended to cover the financing of terrorism may limit mutual legal assistance based on dual criminality.

6.4 Extradition (R. 37 and 39, SR.V)

6.4.1 Description and analysis

790. "The former Yugoslav Republic of Macedonia" ratified the European Convention on Extradition (ETS No. 024) together with both of its Additional Protocols (ETS No. 086 and 098); they were ratified and also entered into force in 1999. The domestic legislation for implementation is Chapter XXXIII (former Chapter XXXI) of the Criminal Procedure Code.

791. In line with Article 118 of the Constitution that provides for the precedence of international treaties over national law and the direct applicability of the conventions (as quoted in the previous chapter of this report; para 756) and similarly to Art. 551 CPC (former Art. 502) that implements this principle in the field of mutual legal assistance, Article 559 CPC (former Art. 509) provides that the "*extradition of the accused or of the convicted persons will be requested or will be performed in accordance with the provisions of this Law, whether with the European Convention of Extradition with the Protocols and with the other international treaties ratified according to the Constitution of the Republic of Macedonia*[200] *it is not differently regulated."* The domestic law can thus be applicable only in non-treaty based cooperation or for the regulation of issues not (or not properly) covered by the otherwise applicable treaty.

792. According to Paragraph 1(3) of Art. 560 CPC (former Art. 510) one of the presumptions of extradition is that the act constituting the offence meets dual criminality requirements, that is, "*the crime for which there is a request for extradition to be a criminal act both according to the domestic Law and the Law of the country in which it has been committed".* The evaluators were assured by the representatives of the Ministry of Justice that dual criminality is interpreted by the authorities flexibly enough to comply with Criterion 37.2. In practice, if the criminal offence to which the foreign request is related does not exist under the same (or similar) name in the criminal law of "the former Yugoslav Republic of Macedonia", the judge has to analyse the offence element by element so as to find a proper, corresponding article in the Criminal Code of "the former Yugoslav Republic of Macedonia" under which it can be subsumed. This must be the reason why Art. 561(3) CPC (former Art. 511) requires that an extract from the text of the Criminal Law of the foreign country which is to be applied against the accused person must be enclosed to the application for extradition. Nevertheless the value threshold required for the money laundering offence, as it was mentioned in relation to mutual legal assistance, might be an obstacle in extradition cases as well.

793. There is no legislation in "the former Yugoslav Republic of Macedonia" that would determine a specific minimum period of imprisonment in this respect, that is, there is no threshold as regards the legally imposable or, in case of extradition for the purpose of enforcement of sanctions, the actually imposed punishment. However, even if the competent court has found that the conditions for extradition are met in all respects, the Ministry of Justice is authorised to reject an extradition request: a) if the respective criminal act is punishable in the Law of "the former Yugoslav Republic of Macedonia" with a sentence only up to 3 years, b) if the foreign court has pronounced a sentence of imprisonment only up to one year (Art. 568 CPC former Art. 518). In these situations extradition is subject to the full discretion of the Ministry of Justice. Certainly, this condition is not likely to apply in money laundering or terrorist financing cases.

794. Consequently, not only money laundering is an extraditable offence but also (to the very limited extent as it is covered by Article 394a of the Criminal Code) the financing of terrorism. Thus, the deficiencies regarding the criminalisation of terrorist financing (as described above

[200] See Para 4.

under Section 2.2) pose also a significant obstacle to executing extradition requests related to such offences.

795. The Constitution of "the former Yugoslav Republic of Macedonia" precludes the extradition of nationals, prescribing in its Article 4(2) that *"a subject of the Republic of Macedonia*[201] *may neither be deprived of citizenship, nor expelled or extradited to another state"*. Accordingly, this is repeated among the conditions for extradition under Art. 560(1) CPC (former Art. 510).

796. Criterion 39.2(b) requires that a country that does not extradite its own nationals solely on the grounds of nationality, should, at the request of the country 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. This requirement is directly addressed by Article 118 of the Criminal Code providing that

> *the criminal legislation shall apply to a citizen of the Republic of Macedonia*[202] *who shall perpetrate a criminal offence outside of its territory, with the exception of criminal offences referred to in article 117, if he is found within the territory or if he is extradited to the Republic of Macedonia*[203].[204]

That is, citizens of "the former Yugoslav Republic of Macedonia" are subject to domestic prosecution for the crimes they committed abroad provided that they are actually within the territory of the country. Should there have been criminal proceedings initiated by the respective foreign authorities against this person, such proceedings may be taken over pursuant to Article 558(1) CPC (former Art. 508): the competent public prosecutor may decide on taking over the criminal proceedings in the case of a foreign request for taking over the prosecution of a person being either a citizen or a resident of "the former Yugoslav Republic of Macedonia" for a criminal act committed abroad. Submission of the case to the competent domestic authority, as it is required by Criterion 39.2(b) is thus provided for. Nevertheless, the public prosecutor appears to have discretion whether or not to prosecute the case. The law is, on the other hand, silent on the procedural and evidentiary aspects of taking over criminal proceedings (whether investigative action previously undertaken by a foreign judicial authority are recognised etc.) and therefore no conclusion can be drawn whether Criterion 39.3 is adequately met.

797. Reasons that render extradition inadmissible are listed in Art. 559(1) CPC (former Art. 509) which includes (in addition to the situations with a lack of dual criminality and the exemption of nationals; see above):

- the crime for which the extradition is requested was committed either on the territory of "the former Yugoslav Republic of Macedonia" or against it or its citizens;
- lapse of time (obsoleteness of the criminal prosecution or the execution of the punishment);
- *ne bis in idem* (subpara 5);
- where the identity of the person to be extradited has not been determined (subpara 6),;
- and, particularly, subpara 7 which does not allow for extradition unless there is "sufficient evidence for grounded suspicion that the foreigner whose extradition is requested, committed a certain crime or that there is a legally valid verdict".

The language of subpara 7 implies that the competent court of "the former Yugoslav Republic of Macedonia" shall, at least to some extent, weigh the available evidence before deciding on the

[201] See Para 4.

[202] See Para 4.

[203] See Para 4.

[204] Art. 117 provides that the criminal legislation of "the former Yugoslav Republic of Macedonia" shall apply *"to any person who shall perpetrate a criminal offence as set forth in Articles 305 to 326, or in article 268, if the counterfeiting is related to the domestic currency"* where Art. 305-326 cover criminal offences against the State and Art. 268 deals with the counterfeiting of money.

admissibility of the extradition as the law requires a decision on whether or not the evidence is sufficient to establish grounds for suspicion. Art. 561(3) lit 3 CPC (former Art. 511) requires the application for extradition to be supported by, inter alia, "*evidence for the grounded suspicion*". In any case, according to the authorities, there has not been a single extradition request refused on this ground.

798. Similarly to mutual legal evaluation, the fact that the foreign request concerns a fiscal offence poses no obstacle to extradition.

799. To avoid undue delays and in line with Criterion 39.4, time limits are envisaged at each stage of the procedure. Relevant provisions can be found throughout the articles defining the procedural rules for extradition in Art. 561-575 CPC.

Statistics

800. The authorities provided the following data concerning statistics on extradition:

Year	Number of extraditions accomplished	
	FROM the country	TO the country
2004	7	10
2005	14	17
2006	10	29
up to March 2007	5	10
cases pending in March 2007	7 requests	43 requests

801. Out of these, there was, in 2007, one case where someone was extradited to "the former Yugoslav Republic of Macedonia" in relation to a money laundering case while another one, also involving an incoming extradition, was still pending at the time of the on-site visit.

802. The evaluators were given no statistical information as regards the number of foreign requests for extradition refused by "the former Yugoslav Republic of Macedonia". In the course of the on-site visit, representatives of the Ministry of Justice reported that foreign requests were, in most cases, rejected because of the lack of guarantee required in relation to judgments *in absentia* under Section 3 of the Second Additional Protocol to the European Convention on Extradition (it needs to be noted that such a guarantee for the repetition of the criminal procedure is equally provided by the domestic legislation in Art. 424 CPC). The evaluators were advised that no extradition requests had ever been refused simply on the grounds of dual criminality.

Additional elements

803. The domestic legislation does not envisage a simplified extradition procedure for any sort of criminal offences and there is no exception for money laundering or terrorist financing. Certainly, as far as a simplified procedure is allowed for by any international treaty ratified by "the former Yugoslav Republic of Macedonia" it can be directly applied pursuant to Art. 559 CPC.

6.4.2 Recommendations and comments

804. In general, money laundering and the financing of terrorism are extraditable offences. However, even if there appears to be sufficient room for a wide interpretation of dual criminality, the deficiencies in the criminalisation of terrorist financing as described under Section 2.2 may nevertheless pose a significant obstacle to executing extradition requests in such situations.

6.4.3 Compliance with Recommendation 37 & 39 and Special Recommendation V

	Rating	Summary of factors relevant to Section 6.4 underlying overall rating
R.37	**LC**	• Because financing of terrorism is insufficiently criminalised in the current domestic legislation, the requirement of dual criminality for extradition would mean that not all kinds of terrorist financing offences would be extraditable and the same refers to money laundering cases below the threshold of five officially declared monthly salaries.
R.39	**LC**	• In the absence of proper statistics it is not possible to determine whether extradition requests are handled without undue delay.
SR.V	**PC**	• The lack of a comprehensive domestic incrimination of financing of terrorism is a serious obstacle for extradition possibilities.

6.5 Other Forms of International Co-operation (R. 40 and SR.V)

6.5.1 Description and analysis

805. The MLPD has been a member of the Egmont Group since June 2004 and has signed Memoranda of Understanding with the FIUs from Albania (2004), Bosnia & Herzegovina (2005), Bulgaria (2002), Croatia (2002), Czech Republic (2005), Luxembourg (2006), Moldova (2006), Montenegro(2006), Poland (2005), Romania (2004), Russian Federation (2005), Serbia (2002), Slovenia (2002), Ukraine (2004) and United States - FINCEN (2005).

806. Art. 37 of the AML Law provides the legal basis for the MLPD to submit data which it received according to the AML Law to foreign bodies and organisations:

> *The Directorate, within the framework of the international cooperation, may, at their request and under condition of reciprocity, submit data received pursuant to this Law to the authorised bodies and organisations of other states in the combat against money laundering, as well to international organisations acting in the field of detection and prevention of money laundering and financing terrorism.*

807. Art. 37 contains some restrictions which may unnecessarily hamper international cooperation: First of all it allows to submit data only (a) to foreign bodies and organisations which are involved in the fight against money laundering and (b) to international organisations fighting against money laundering and terrorist financing. As terrorist financing is not mentioned in the context of foreign bodies and organisations (but in the subsequent part concerning international organisations), it has to be concluded that the MLPD is not entitled to provide information to foreign bodies and organisations which do not have in their scope of activities a competency to combat money laundering (e.g. a body exclusively involved in the fight against terrorism or financing of terrorism). Furthermore, as Art. 37 of the AML Law expressively requires a request from a foreign FIU in order to allow the dissemination of information, spontaneous dissemination without prior request seems to be not allowed according to the law.

808. The AML Law also contains no clear competence for the MLPD to actively *request* information from foreign bodies or organisations. The competence to *submit* information to foreign bodies upon their request does not necessarily include the legal competence to send such requests. Art. 37 only indirectly indicates such a possibility as it requires for submitting information to foreign bodies that this is only allowed "*under condition of reciprocity*". Though this condition of reciprocity only makes sense if the MLPD would also be authorised to request information, a provision clearly allowing the MLPD to do so is missing.

809. Finally, the language of Art. 37 poses another obstacle in the field of international cooperation, as it only allows (under the conditions described above) to submit "*data received pursuant to the law*"[205]. This reference to already received data leaves it unclear, whether this refers exclusively to data which are already in the MLPD's databases or whether this also allows to request data from other domestic authorities or private entities solely for the purpose of responding to a foreign request and submitting such data. A narrow interpretation (i.e. only received data may be submitted) may seriously hamper the possibilities of the MLPD to provide assistance. Apart from the uncertainty, whether such requests for data not yet received is in compliance with the law and the lacking obligation of other authorities and private entities to respond to such requests, it seems very difficult to provide rapid, constructive and effective assistance to foreign requests (apart from data-queries in the only in-house database just containing bank-CTRs). As a consequence of this ambiguous wording of Art. 37 it is also doubtful whether the MLPD is authorised to conduct inquiries on behalf of foreign counterparts.

810. During the pre-meeting, the authorities referred in this regard to Art. 4 para 5 of the AML Law which entitles the MLPD "*to conclude agreements of co-operation and exchange data and information with competent bodies of other states and international organisations acting in combat against money laundering and against financing terrorism*". Though this provision seems to solve some of the difficulties as described above, it has to be noted that Art. 37 appears to be the lex specialis in contrast to the general competence as described under Art. 4 para 5: Art. 37 is titled "International Cooperation" and is much more detailed than Art. 4 para 5. To sum up, it does not seem that Art. 4 para 5 can remedy the difficulties caused by the restrictive language of Art. 37.

811. According to Art. 37 para 2 of the AML Law, the MLPD may conclude cooperation agreements with authorised bodies of other states as well as international organisations acting in the field of detection and prevention of money laundering as well as financing of terrorism.

812. The evaluators received some information from countries which were requested to provide information to the assessors on the effectiveness on international co-operation. While one country described the quality and speediness of the responses (to its three requests via the Egmont Secure Web) as very good and did not report about any problems, another country described some difficulties concerning the two requests coming from "the former Yugoslav Republic of Macedonia" which were not very specific. One country described the quality of response as "medium".

813. Police authorities may exchange directly information with police authorities of foreign countries using Europol or Interpol channels.

814. As far as the international exchange of information of the FIU is concerned there are no such restrictive conditions that international requests have to be refused where fiscal matters are involved or because of confidentially requirements other than professional secrecies. The evaluators were informed that the MLPD may refuse to submit the requested data in the case where the request is contrary to the law or may cause obstructions in ongoing investigations. In the case of refusal the reasons for such decision have to be communicated.

815. As described above in Section 2.5 (para 295), any data collected under the law shall be confidential and only be used for the purposes of the detection and prevention of money laundering or the financing of terrorism (Art. 21). According to Art. 26 of the AML Law, any data and reports received shall be regarded as a professional secret and may only be used as determined by this law. The physical protection of data is described above in para 296.

[205] Emphasis added.

816. Art. 27 para 2 of the AML Law stipulates that the MLPD "*may upon need*" exchange information with investigative bodies with the restriction that information may not be disseminated to other bodies, if this information comes from foreign authorities to combat money laundering and financing of terrorism; in these cases information exchange would only be possible if the foreign authorities would agree to this disclosure. This is a useful provision avoiding conflicts of providing information on one side and keeping information secret on the other side, in an international context.

Cooperation of financial supervisors with foreign financial supervisors

817. Article 38 of the "Law on the National Bank of the Republic of Macedonia"[206], entitles the NBM to exchange information concerning "*the supervision of internationally active banks*" with other domestic and foreign supervisory bodies. The exchange of information is regulated in details by signing Memoranda of Understanding with these bodies. To further improve international cooperation, the NBM has signed Memoranda of Understanding with central banks of the Russian Federation, Albania, Slovenia and Bulgaria. However, it needs to be noted that the scope of Art. 38 seems quite limited considering that it allows information exchange only concerning "*the supervision of internationally active banks*". First of all, it is unclear how the term "*internationally active*" should be interpreted. In the absence of a legal definition, this could refer e.g. to banks simply providing international transfers but it may require that a bank has foreign subsidiaries or branches; the latter interpretation would make this provision practically inapplicable as banks of "the former Yugoslav Republic of Macedonia" were not yet active in this regard. After the pre-meeting, the authorities advised that they took the term "*internationally active banks*" from the terminology used by the "Basel Committee on Banking Supervision" and that it includes both the banks active abroad, as well as banks that have foreign parental banks. This approach raises again concerns: firstly, the evaluators have serious concerns that domestic jurisprudence would accept the definition of an international body (which is not issuing legally binding documents) for the interpretation of national law. Secondly, this interpretation obviously limits the possibilities of the NBM to exchange information with other supervisors to only a part of the banks of "the former Yugoslav Republic of Macedonia": as stated above, so far the banks of "the former Yugoslav Republic of Macedonia" are not yet active abroad. Furthermore, at the end of December 2006, 19 commercial banks were operating in "the former Yugoslav Republic of Macedonia", of which 8 worked with majority foreign capital (which does not necessarily mean that there is a foreign parental bank). Thus, it seems that the NBM can exchange information with foreign supervisors (at a maximum) only for the 8 banks working with majority foreign capital. However, in practice this seems to be no obstacle as representatives of the NBM advised that they already provided information to foreign supervisory bodies concerning banks which do not work with majority foreign capital (information on a shareholder of a domestic bank who wanted to become shareholder of a foreign bank).

818. Apart from that, Art. 38 of the "Law on the National Bank of the Republic of Macedonia" [207] does not provide a legal basis for the NBM to cooperate with foreign supervisors concerning the supervision of savings houses, foreign exchange offices or service providers for fast money transfer (for which the NBM is assigned as the responsible supervisory authority according to Art. 38 of the AML Law). The authorities took the view that the reason not to include savings houses and foreign exchange offices in the remit of Art. 38 of the "Law on the National Bank of the Republic of Macedonia"[208] was that these entities are only allowed to act domestically; as a consequence, it was considered that no need for international co-operation could occur - an

[206] See Para 4.

[207] See Para 4.

[208] See Para 4.

opinion which was not shared by the evaluation team as also with only domestic operating entities it may be necessary to share certain information with foreign supervisors (considering that even if a financial institution acts only domestically this does not necessarily apply for their customers, share holders, products etc.). After the pre-meeting, the authorities also meant that savings houses are treated as banking institutions and that all provisions regarding the operation and supervision of banks are applicable to these institutions as well. Also in this regard the evaluators have some doubts as there is an explicit reference in the Banking Law that it is also applicable for savings houses (Art. 122), but such a reference is missing concerning the application of the "Law on the National Bank of the Republic of Macedonia" [209].

819. The Securities and Exchange Commission has signed MoUs on bilateral cooperation with all SEE (Southeast Europe) countries (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Moldova, Montenegro, Romania, Serbia, Slovenia, Turkey) concerning cooperation in all areas of the securities market, including money laundering prevention.

820. The legal basis for cooperation and sharing of information between the Ministry of Finance (as supervisor for insurance undertakings) and foreign supervisory authorities can be found in the Law on Insurance Supervision (Section 15, Cooperation with supervisory bodies and bodies of the European Union; particularly Art. 233 para 3 item 2). This covers a wide range of data which can be submitted (e.g. names of members of the board; audit reports; implemented supervision measures etc.) and is only bound to the requirement that the foreign supervisory body is obliged to keep the data confidential. So far the Ministry of Finance has not signed any Memorandum of Understanding with a foreign supervisory body.

Additional elements

821. According to Art. 37 para 1 AML Law the MLPD may also submit data to foreign non-counterparts. There is no indication, whether this has to be carried out indirectly or may be submitted directly. As mentioned above, the text of the law explicitly only refers to the delivery of data upon request, and not to spontaneous exchange, and only refers to the possibility of submitting data to foreign state bodies and organisations without referring to the possibility of requesting information either from counterparts or non-counterparts. Reference has been made that the "former Yugoslav Republic of Macedonia" is member of Interpol and SECI and has signed a strategic agreement with Europol. The authorities did not advise whether information exchange with non-counterparts have ever taken place. In practice the MLPD seems to communicate just through Egmont Secure Web.

Statistics

822. Regarding Recommendation 40 the following statistics were provided:

Year	Received requests for information from other FIUs	Requested information from MLPD to other FIUs
2002	6	2
2003	6	2
2004	19	28
2005	24	20
2006	38	34
Total	**89**	**65**

[209] See Para 4.

823. The MLPD also keeps statistics concerning date of the receipt of the request; the country from which the request comes from or to which it was sent to; whether it was sent via the Egmont Secure Web or other channels; the subject of the request (i.e. involved legal or natural entity); when the request was answered, the data when other state authorities agreed that the information can be disseminated to other bodies (Art. 27 of the AML Law; see para 293 of the report). The authorities do not keep statistics concerning the measures carried out.

824. The authorities provided the following statistics concerning the number of exchanged information of the NBM with foreign supervisory authorities:

Year	Number of exchanged information
2001	3
2002	7
2003	2
2004	1
2005	6
2006	1
2007	4

It was said that the NBM also keeps data concerning the spontaneous exchange of information and that this is part of the documentation kept for each bank. However, it seems that this information is only kept as data but not in the form of statistics ("statistics" in the sense of not only collection but also the analysis, interpretation, explanation and presentation of data; e.g. in a table, graph etc.). Moreover, it does not specify whether these requests were related to AML/CFT issues, whether they were granted/refused etc.

6.5.2 Recommendation and comments

825. In order to allow the widest range of cooperation, the MLPD should clearly be entitled to exchange information also spontaneously and without the request of a foreign body (as currently required by Art. 37 of the AML Law).

826. The MLPD should clearly be entitled to provide information to foreign bodies and organisations which are involved in the fight against financing of terrorism, and not only to those which are dealing (exclusively or also) with anti-money laundering.

827. The AML Law should clearly entitle the MLPD to request data from foreign authorities.

828. It should be clarified in the AML law that in the case of a request of a foreign authority the MLPD is authorised to provide not only information which it has already received, but also information which it needs to ask for from other authorities and the obliged entities. Furthermore, mechanisms should be in place to ensure a rapid, constructive and effective international assistance, e.g. direct access to the relevant databases and obligations of domestic authorities to respond to requests of the MLPD in due time.

829. A legal basis should be introduced to authorize the NBM to cooperate with foreign supervisors concerning the supervision of savings houses, exchange offices or service providers for fast money transfer.

830. The supervisory authorities should keep comprehensive statistical information on the exchange of information with foreign counterparts (including spontaneous exchange of information).

6.5.3 Compliance with Recommendations 32 and 40 and SR.V

	Rating	Summary of factors relevant to Section 6.5 underlying overall rating
R.40	**PC**	• Spontaneous dissemination of information from the MLPD to foreign authorities without prior request is not clearly provided for by law. • The MLPD is not clearly entitled to provide information to foreign bodies and organisations which have no competence in the AML area (e.g. only in combating financing of terrorism). • The AML Law contains no clear competence for the MLPD to request data from foreign authorities. • No legal basis for the NBM to cooperate with foreign supervisors concerning the supervision of savings houses, exchange offices or service providers for fast money transfer.
SR.V	**PC**	• Spontaneous dissemination of information from the MLPD to foreign authorities without prior request is not clearly provided for by law. • The MLPD is not clearly entitled to provide information to foreign bodies and organisations which have no competence in the AML area (e.g. only in combating financing of terrorism). • The AML Law contains no clear competence for the MLPD to request data from foreign authorities. • No legal basis for the NBM to cooperate with foreign supervisors concerning the supervision of savings houses, exchange offices or service providers for fast money transfer.

7 OTHER ISSUES

7.1 Resources and Statistics

Remark: *The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report contains the boxes showing the rating and the factors underlying the rating.*

Recommendation 30

7.1.1 Resources - Compliance with Recommendation 30

	Rating	Summary of factors underlying rating
R.30	**PC**	• The MLPD does not have a sufficient number of staff to cover all its tasks satisfactorily. • Insufficient staffing of investigative bodies and agencies, and consequently money laundering cases are only investigated in relation to tax matters. • Officers of the relevant departments within the Ministry of Interior and Customs have not been provided with adequate training for combating money laundering and terrorist financing. • There is insufficient operational independence and autonomy of the supervisory authorities (except the NBM). • Apart from employees of the NBM, there are no specific rules requiring the staff of the supervisory authorities to maintain high professional standards. • Apart from employees of the NBM and the SEC, there are no specific rules requiring staff to keep professional secrets confidential. • The staff, and also training for the staff of the Insurance Supervision Division seem to be insufficient. • The staff of the FEI seems insufficient and has not been trained on AML/CFT issues.

Recommendation 32

7.1.2 Statistics - Compliance with Recommendation 32

	Rating	Summary of factors underlying rating
R.32	**PC**	• Apart from some basic data kept by the Customs and the Financial Police which can serve as a basis to produce statistics and the limited statistics from the Ministry of Interior, no authority keeps comprehensive and detailed statistics on money laundering investigations, prosecutions and convictions or other verdicts indicating not only the number of persons involved but also the number of cases/offences and, in addition, providing information on the

		underlying predicate crimes and further characteristics of the respective laundering offence (whether it was prosecuted autonomously etc.). • The MLPD keeps the basic data which would allow to produce statistics concerning the number and results of the reports disseminated from the FIU to other institutions (investigations, indictments, convictions, persons involved, cases), but with regard to the low number of these reports it does not maintain such kind of statistics. • Apart from the statistics kept by the NBM and the SEC, no other supervisory body keeps statistics on supervision. • No authority keeps comprehensive statistics that would allow to evaluate the effectiveness of the mutual legal assistance system. • No comprehensive statistics on information exchange by supervisory bodies.

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system

TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

For each Recommendation there are four possible levels of compliance: Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC). In exceptional circumstances a Recommendation may also be rated as not applicable (N/A). These ratings are based only on the essential criteria, and defined as follows:

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
Not applicable	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country *e.g.* a particular type of financial institution does not exist in that country.

Forty Recommendations	Rating	Summary of factors underlying rating[210]
Legal systems		
1. Money laundering offence	**PC**	• At some points the money laundering offence does not meet the standards set by the Vienna and Palermo Conventions. A number of offences are either not met (possession or use of proceeds) or insufficiently met by the current offence. • The scope of the money laundering offence is limited by the differentiation between offences as regards the object of the offence (money, other property). • All the offences covered by the money laundering offence are only applicable if the money/property exceeds a certain threshold ("greater value"). • Self laundering is not expressly provided as prosecutable for all kind of offences of Art. 273 CC. • The low number of convictions and indictments raises concerns as to effective implementation.
2. Money laundering offence Mental element and corporate liability	**LC**	• Potential backlogs both in general terms and especially in money laundering cases, apparently due to the lack of expertise, threaten the effectiveness of the AML system.

[210] These factors are only required to be set out when the rating is less than Compliant.

		• Low number of convictions and relatively low number of indictments compared to the number of open investigations. • No prosecutions or convictions of legal entities for money laundering, raising concerns as to effective implementation of corporate criminal liability. Restrictiveness of the specific provision in Art. 273(7) as regards criminal liability of legal persons in money laundering cases.
3. Confiscation and provisional measures	**LC**	• The confiscation regime is still too complicated which may hamper its effective application; this refers particularly to the provisional measures where neither the actual list of applicable measures nor their respective coverage is properly defined by law. • Confiscation of instrumentalities is in most of the cases only discretionary and the same goes for instrumentalities of money laundering offences. • Only in certain situations provisional measures can be carried out *ex parte* and without prior notice. • Postponement of transactions by the FIU with a view to further provisional measures is bound to overly high standard of suspicion. • Provisional measures are only rarely applied.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**LC**	• Financial institutions are not specifically authorised to share information for the implementation of Recommendation 7 and SR.VII.

5. Customer due diligence	**NC**	• Opening of anonymous or numbered accounts, as well as accounts in fictitious names is not prohibited by law or regulation.
		• There is no comprehensive legal obligation which covers customer identification when carrying out occasional transactions that are wire transfers in all the circumstances covered by the Interpretative Note to SR VII;
		• There is no legal obligation which covers customer identification when the financial institution has doubts about the veracity or adequacy of previously obtained identification data.
		• There are no requirements for financial institutions:
		  • to obtain information on the purpose and nature of the business relationship,
		  • for ongoing CDD,
		  • for enhanced CDD or
		  • conducting CDD on existing customers.
		• The documents which can be used for verification of identification are not sufficiently determined.
		• For customers that are legal persons or legal arrangements, there are no requirements that financial institution should verify that any person

		purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person. • There is no legislation which provides for a concept of "beneficial owner" as required by the Methodology. Financial institutions are not required to take reasonable measures to verify the identity of beneficial owners using relevant information or data obtained from reliable sources. • The possibility to establish the client's identity on the day when the transaction was carried out (unless there is a suspicion of money laundering) is too general and not in line with the circumstances as described by criterion 5.14.
6. Politically exposed persons	**NC**	• A comprehensive definition for PEPs is missing and across the whole financial sector is a widespread unawareness of this concept.
7. Correspondent banking	**NC**	• "The former Yugoslav Republic of Macedonia" has not implemented any enforceable AML/CFT measures concerning establishment of cross-border correspondent banking relationships.
8. New technologies and non face-to-face business	**PC**	• The current legislation deals only partially with Recommendation 8 and also leaves a lot of discretion for the obliged entities.
9. Third parties and introducers	**N/A**	• Recommendation 9 is not applicable.
10. Record keeping	**PC**	• The record keeping requirements of the AML Law and some sectoral laws are not harmonised which could lead to difficulties in implementation. • Financial institutions are not required to keep all necessary records on transactions for longer than five years if requested to do so in specific cases by a competent authority upon proper authority. • Financial institutions are not required to keep identification data for longer than five years where requested by a competent authority in specific cases on proper authority. • There are also no clear obligations specified to keep records of the account files and business correspondence.
11. Unusual transactions	**NC**	• Recommendation 11 has not been implemented.
12. DNFBP – R.5, 6, 8-11	**NC**	• The same concerns in the implementation of Recommendations 5, 6, 8, 10 and 11 apply equally to DNFBP (see section 3 of the report). • Apart from notaries, there is less awareness of AML/CFT issues in the whole DNFBP sector and some even protest against their obligations under the AML Law.
13. Suspicious transaction reporting	**PC**	• The AML Law does not explicitly cover the reporting of attempted transactions. • Apart from banks no other financial institution submitted any STR.

14. Protection and no tipping-off	**LC**	• Apart from the special situation concerning banks, there are no tipping off provisions in relation to directors of financial institutions. • The existing tipping off provisions are not sanctionable.
15. Internal controls, compliance and audit	**PC**	• Apart from the special situation for providers of fast money transfers, banks and savings houses, financial institutions are not required to implement an internal programme covering CDD, detection of unusual and suspicious transactions and the reporting obligation. • There is no provision concerning timely access of the AML/CFT compliance officer and other appropriate staff to CDD and other relevant information. • Financial institutions are not required to put in place screening procedures to ensure high standards when hiring employees.
16. DNFBP – R.13-15 & 21	**NC**	• The same deficiencies in the implementation of Recommendations 13-15 and 21 in respect of financial institutions apply equally to DNFBP. • Some institutions are quite unconcerned about ML/FT risks in their field and others, like lawyers, do not accept their obligations. This may also be one of the reasons for the small numbers of STRs from the DNFBP sector.
17. Sanctions	**NC**	• The sanctioning system for infringements of the AML Law does not work in practice as no sanctions have been imposed so far. • The pecuniary sanctions of the AML Law for legal entities are too low and neither dissuasive nor proportionate. • The AML Law does not stipulate how the sanctions as provided for by the AML Law should be imposed. • The AML Law does not provide for withdrawing or suspending a financial institution's licence for not observing requirements of the AML Law. The Banking Law, the Law on Securities and the (amended) Law on Fast Money Transfer allow this for AML infringements (but are deficient when it comes to terrorist financing issues). The other sectoral laws do not provide for withdrawing or suspending a financial institution's licence for not observing AML/CFT requirements.
18. Shell banks	**PC**	• There is no prohibition on financial institutions from entering into, or continuing correspondent banking relationships with shell banks. • Financial institutions are not required to satisfy themselves that respondent financial institutions in a foreign country do not permit accounts to be used

		by shell banks.
19. Other forms of reporting	**C**	
20. Other DNFBP and secure transaction techniques	**LC**	• The application of the AML Law is extended to an overly wide range of non-financial businesses and professions (other than DNFBP) without undertaking a risk assessment which seems to be counterproductive with regard to effective implementation. Moreover, for these entities no supervisory regime is in place and no other legislative acts apart from the AML Law have been issued for AML/CFT purposes.
21. Special attention for higher risk countries	**NC**	• Recommendation 21 has not been implemented.
22. Foreign branches and subsidiaries	**NC**	• There is no provision requiring financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit. • There is no provision requiring financial institutions to inform their home country 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) laws, regulations or other measures.
23. Regulation, supervision and monitoring	**PC**	• In practice, apart from the NBM and (to an unclear extent) the SEC, no other designated supervisory body includes AML/CFT issues as an integrated part in its supervisory activities. • The legislation to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a bank, savings house, insurance company, brokerage house, money or value transfer service, foreign exchange office and investment fund management company is insufficient; for companies issuing credit/debit cards, pension companies and pension funds no such preventive legislation exists at all. • There is no special licensing or registration regime for companies issuing credit/debit cards. • For the operations of pension companies and pension funds no specific supervisory authority is designated.
24. DNFBP - Regulation, supervision and monitoring	**NC**	• Some of the supervisory commissions for DNFBP have either not yet been established (auditors and accountants) or not yet conducted any kind of supervision (lawyers). • Though the AML Law designated the Public Revenue Office (PRO) as supervisor for AML/CFT issues for real estate agents, dealers in precious metals, dealers in precious stones, dealers in high

		value and luxury goods, the PRO has not yet started supervising these entities. • For the supervisory authorities based on Art. 39 of the AML Law is it unclear which supervisory powers they have. • Fit and proper requirements for owners and managers of casinos are insufficient. • Casino providers do not need to prove the legitimate origin of the licence fee or the founding capital. • The sanctions regime for DNFBP provided by the AML Law is deficient in the same ways as described in section 3.10.
25. Guidelines and Feedback	**PC**	• Though the AML Law obliges the MLPD to provide the obliged entities with general and specific feed-back, this is not done in practice. • Unclear whether guidelines have been issued to assist financial institutions to combat terrorist financing. • The guidance for DNFBP appears to be lower than in relation to the financial sector. Less awareness of money laundering issues and no familiarity with financing of terrorism indicates a lack of guidance.
Institutional and other measures		
26. The FIU	**PC**	• Some parts of the AML Law refer only to money laundering but do not provide a clear legal mandate for the MLPD to deal with terrorist financing issues. Also in practice the MLPD's role in combating financing of terrorism is very limited. • The MLPD has no timely access to a police database, criminal register or a court register; in such cases, it has to submit written requests to such authorities. This may unnecessarily prolong the process to gather information[211]. • The provisions regulating the exchange of information between the MLPD and investigative bodies are too unspecific and there is some unclarity of the AML Law whether it is allowed to exchange information with other state bodies even without a suspicion of any criminal activity.
27. Law enforcement authorities	**LC**	• The MLPD is disseminating its reports for further investigation either to the Financial Police or to the Ministry of Interior, but there are no clear legal criteria determining which body is competent in which cases. • Money laundering investigations are almost exclusively focused on money laundering in relation to tax evasion.
28. Powers of competent	**C**	

[211] see FN 83.

authorities		
29. Supervisors	**LC**	• There are no provisions governing the powers of inspectors from the NBM when performing supervision of foreign exchange offices. • The AML law does not provide a clear authority to sanction directors or senior management. Apart from the special situation concerning the Banking Law, the Law on Securities and the (amended) Law on Fast Money Transfer (these laws are deficient when it comes to terrorist financing issues), also the sectoral laws have no such provisions with regard to violations of AML/CFT obligations. • There seem to be no provisions which would assign special powers to the State Foreign Exchange Inspectorate linked with its supervisory responsibilities.
30. Resources, integrity and training	**PC**	• The MLPD does not have a sufficient number of staff to cover all its tasks satisfactorily. • Insufficient staffing of investigative bodies and agencies, and consequently money laundering cases are only investigated in relation to tax matters. • Officers of the relevant departments within the Ministry of Interior and Customs have not been provided with adequate training for combating money laundering and terrorist financing. • There is insufficient operational independence and autonomy of the supervisory authorities (except the NBM). • Apart from employees of the NBM, there are no specific rules requiring the staff of the supervisory authorities to maintain high professional standards. • Apart from employees of the NBM and the SEC, there are no specific rules requiring staff to keep professional secrets confidential. • The staff, and also training for the staff of the Insurance Supervision Division seem to be insufficient. • The staff of the FEI seems insufficient and has not been trained on AML/CFT issues.
31. National co-operation	**PC**	• There is no authority or mechanism in place ensuring a nation-wide policy on cooperation or appropriate coordination in the combat against money laundering or financing of terrorism which is particularly problematic as there is widespread uncertainty as to which investigative authority is competent for which cases. • Apart from a good level of cooperation between the MLPD and the Financial Police, there seem to be no such links with other law enforcement authorities.
32. Statistics	**PC**	• Apart from some basic data kept by the Customs

		and the Financial Police which can serve as a basis to produce statistics and the limited statistics from the Ministry of Interior, no authority keeps comprehensive and detailed statistics on money laundering investigations, prosecutions and convictions or other verdicts indicating not only the number of persons involved but also the number of cases/offences and, in addition, providing information on the underlying predicate crimes and further characteristics of the respective laundering offence (whether it was prosecuted autonomously etc.). • The MLPD keeps the basic data which would allow to produce statistics concerning the number and results of the reports disseminated from the FIU to other institutions (investigations, indictments, convictions, persons involved, cases), but with regard to the low number of these reports it does not maintain such kind of statistics. • Apart from the statistics kept by the NBM and the SEC, no other supervisory body keeps statistics on supervision. • No authority keeps comprehensive statistics that would allow to evaluate the effectiveness of the mutual legal assistance system. • No comprehensive statistics on information exchange by supervisory bodies.
33. Legal persons – beneficial owners	**PC**	• The legal framework does not ensure adequate, accurate and timely information on the beneficial ownership and control of legal persons.
34. Legal arrangements – beneficial owners	**N/A**	As the domestic system does not allow establishing a (foreign or domestic) trust, Recommendation 34 is not applicable.
International Co-operation		
35. Conventions	**PC**	**Implementation of the Palermo and Vienna Conventions** • At some points, the money laundering offence does not meet the standards set forth by these Conventions. A number of conducts is either not met or insufficiently met by the current legislation. The scope of the money laundering offence is further limited by the differentiation between conducts as regards the object of the offence as well as the value threshold. **Implementation of the Terrorist Financing Convention** • The present incrimination of terrorist financing appears not wide enough to clearly sanction the collecting of funds in general, and also the provision or collection of funds with the unlawful intention that they should be used, in full or in part, to carry out a terrorist act or by an individual

		terrorist for any purpose.
36. Mutual legal assistance (MLA)	**LC**	• The shortcomings of the domestic legislation intended to cover the financing of terrorism as well as the value threshold applied in the money laundering offence may limit mutual legal assistance based on dual criminality.
37. Dual criminality	**LC**	• The shortcomings of the domestic legislation intended to cover the financing of terrorism as well as the value threshold applied in the money laundering offence may limit mutual legal assistance based on dual criminality. • Because financing of terrorism is insufficiently criminalised in the current domestic legislation, the requirement of dual criminality for extradition would mean that not all kinds of terrorist financing offences would be extraditable and the same refers to money laundering cases below the threshold of five officially declared monthly salaries.
38. MLA on confiscation and freezing	**LC**	• In the complete absence of statistics it is not possible to determine whether and to what extent "the former Yugoslav Republic of Macedonia" provides effective and timely response to foreign requests concerning freezing, seizure or confiscation. • No consideration has been given to 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. • There are no arrangements for coordinating seizure or confiscating actions with other countries.
39. Extradition	**LC**	• In the absence of proper statistics it is not possible to determine whether extradition requests are handled without undue delay.
40. Other forms of co-operation	**PC**	• Spontaneous dissemination of information from the MLPD to foreign authorities without prior request is not clearly provided for by law. • The MLPD is not clearly entitled to provide information to foreign bodies and organisations which have no competence in the AML area (e.g. only in combating financing of terrorism). • The AML Law contains no clear competence for the MLPD to request data from foreign authorities. • No legal basis for the NBM to cooperate with foreign supervisors concerning the supervision of savings houses, exchange offices or service providers for fast money transfer.
Nine Special Recommendations		
SR.I Implement UN instruments	**PC**	• "The former Yugoslav Republic of Macedonia" has failed to implement several provisions of the Terrorist Financing Convention, notably a terrorist financing offence which fully covers all the

		elements of SR.II and the respective Interpretative Note. • There is no adequate legal structure for the conversion of designations under S/RES/1267(1999) and its successor resolutions as well as S/RES/1373(2001). • A comprehensive and effective system for freezing without delay by all financial institutions of assets of designated persons and entities, including publicly known procedures for de-listing etc. is not yet in place.

SR.II Criminalise terrorist financing	**PC**	• The present incrimination of terrorist financing appears not wide enough to clearly provide for criminal sanctions in respect of both individuals and legal persons concerning:
		  • the collection of funds with the unlawful intention that they are to be used, in full or in part, to carry out a terrorist act, by a terrorist organisation or by an individual terrorist,
		  • the provision of funds with the unlawful intention that they are to be used, in full or in part, to carry out a terrorist act, or by an individual terrorist.
		• Further clarification is required as to the coverage of "financial means" as provided for by Art. 394a(2) CC.
		• Attempt and the other ancillary offences as requested by criteria II.1d and II.1e seem to be not covered.

SR.III Freeze and confiscate terrorist assets	**NC**	• A comprehensive system for freezing without delay by all financial institutions of assets of designated persons and entities, including publicly known procedures for de-listing etc. is not yet in place.
SR.IV Suspicious transaction reporting	**PC**	• Only "property" linked with a transaction is covered by the reporting obligation. • The AML Law does not explicitly cover the reporting of attempted transactions. • The total lack of an STR related to financing of terrorism raises concerns of effective implementation.
SR.V International co-operation	**PC**	• The shortcomings of the domestic legislation intended to cover the financing of terrorism may limit mutual legal assistance based on dual criminality. • The lack of a comprehensive domestic incrimination of financing of terrorism is a serious obstacle for extradition possibilities. • Spontaneous dissemination of information from the MLPD to foreign authorities without prior request is not clearly provided for by law. • The MLPD is not clearly entitled to provide

		information to foreign bodies and organisations which have no competence in the AML area (e.g. only in combating financing of terrorism). • The AML Law contains no clear competence for the MLPD to request data from foreign authorities. • No legal basis for the NBM to cooperate with foreign supervisors concerning the supervision of savings houses, exchange offices or service providers for fast money transfer.
SR.VI AML requirements for money/value transfer services	**PC**	• Implementation of Recommendations 4-11, 13-15 and 21-23 in the MVT sector suffers from the same deficiencies as those that apply to other financial institutions and which are described earlier in section 3 of this report. • The sanctioning system for infringements of the AML Law requiring court decisions via application of the supervisory authorities seems too complicated and does not work in practice as no sanctions have been imposed so far. No information whether the sanctioning regime of the Law on Fast Money Transfer has ever been applied.
SR.VII Wire transfer rules	**NC**	• Criterion VII.1 is only covered for transactions exceeding 2 500 EUR in MKD equivalent. Moreover, there are two pieces of legislation regulating the same issue in different ways. • Financial institutions are only required to include full originator information in the message or payment form accompanying cross-border wire transfers above 2 500 EUR or more (which is higher than the threshold of 1 000 EUR/USD as provided for by criterion VII.2). • There are no legal requirements on financial institutions that the originator information in the message or payment form accompanying domestic wire transfers is meaningful and accurate. • There are no requirements for each intermediary and beneficiary financial institution in the payment chain to ensure that all originator information that accompanies the wire transfer is transmitted with the transfer. • The sanctions regime concerning SR VII has several deficiencies and has never been applied in practice which raises concerns of effective implementation.
SR.VIII Non-profit organisations	**NC**	• No special review of the risks and not any sort of ongoing monitoring of the NPO sector have been undertaken. • Financial transparency and reporting structures are in practice not existing and thus do not amount to effective implementation of criteria VIII.2 and VIII.3.
SR.IX Cross Border declaration and disclosure	**PC**	• Apart from cash and cheques no other bearer

		negotiable instruments are covered by legislation concerning the physical cross-border transportation of currency and bearer negotiable instruments. • In case of cross-border transportation of means being property of persons designated either by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999) or in the context of S/RES/1373(2001), the Customs do not have authority to confiscate such property. • The range of sanctions (approx. 4 200 to 5 000 EUR) of the Law on Foreign Exchange Operations with regard to infringements as described by criterion IX.8 is insufficient and does not allow to apply a proper and adequate reaction to deviant behaviour in relation to all kind of perpetrators (residents, non-residents, legal entities). • Customs officer did not receive special training to detect cash couriers. • There are no explicit provisions allowing the Customs or any other authority from "the former Yugoslav Republic of Macedonia" to notify the Customs Services or other competent authorities of the country of origin or the country of destination about unusual cross-border movement of gold, precious stones or metals with a view of establishing the source, destination and purpose of the movement of such items in order to take appropriate action. • The sanctions regime is not covering all situations concerning persons who are carrying out a physical cross-border transportation of bearer negotiable instruments that are related to terrorist financing or money laundering contrary to the obligations under SR IX (criterion IX.9).

TABLE 2. RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	• The presumed backlog of money laundering cases pending at courts should be addressed. The lack of expertise, referred to as a possible reason behind long delays in money laundering cases, should not pose a permanent obstacle as it appears to be remediable by appropriate training of the judiciary and prosecutors which had already been mentioned among priorities in previous rounds of MONEYVAL evaluations. Low effectiveness concerning money laundering convictions needs to be addressed. • Use and simple possession of laundered property should clearly be criminalised. • As for the offences identified in Paragraphs 1 and 2 of Art. 273 CC, all the language of Art. 6(1) (a) and (b) of the Palermo Convention and Art. 3(1) (b) and (c) of the Vienna Convention on the physical aspects of the money laundering offence should be properly reflected (one of the problematic points is the differentiation between offences according to whether money or other proceeds are concerned). • The value threshold in Paragraphs 1 and 2 of Art. 273 CC should be abandoned. • The uncertainties regarding the object of the money laundering offence should be addressed urgently by incorporating into the anti-money laundering criminalisation the single notion of "property" instead of the current and more ambiguous terms such as money and/or property and object. In any case, there is an urgent need for clear definitions, in particular for "money" and "property". • The system would certainly benefit from a newly-formulated provision, clearly based on the language of the Strasbourg Convention. • It should be clarified in Art. 273 CC that self laundering is criminalised for all conducts of money laundering (covering both Paragraphs 1 and 2). • With regard to the General Part of the Criminal Code providing with Art. 28a for a comprehensive regime of corporate criminal liability, Paragraph 7 of Art. 273 appears to be a redundant and as well as a restrictive provision that spoils the legal effect of the general provisions and it is thus recommended to either modify or

	remove Paragraph 7 of Art. 273 CC. • The authorities should consider whether the benefits of negligent money laundering are being used in the best way and seek for possible obstacles that may hinder law enforcement and prosecutors in successfully investigating and prosecuting legal persons for money laundering activities.

2.2 Criminalisation of Terrorist Financing (SR.II)	• It is recommended to criminalize financing of terrorism (preferably as an autonomous, independent offence), covering all the essential criteria in SR.II and the requirements of the Interpretative Note to SR.II., including all forms of terrorist acts provided for in the Convention, and all forms of financing of the perpetration of such acts as well as that of individual terrorists.
	• The incrimination of terrorist financing should clearly provide for criminal sanctions in respect of both individuals and legal persons concerning:
	  • the collection of funds with the unlawful intention that they are to be used, in full or in part, to carry out a terrorist act, by a terrorist organisation or by an individual terrorist,
	  • the provision of funds with the unlawful intention that they are to be used, in full or in part, to carry out a terrorist act, or by an individual terrorist.
	• The coverage of "financial means" as provided for by Art. 394a(2) CC should be clarified.
	• Attempt and the other ancillary offences as requested by criteria II.1d and II.1e should clearly be covered.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• The confiscation regime is still too complicated which may hamper its effective application; this refers particularly to the provisional measures where neither the actual list of applicable measures nor their respective coverage is properly defined by law. The relevant provisions should be revised and a clear comprehensive system be established. • Confiscation of instrumentalities should be made mandatory. • Laws or regulation should provide for provisional measures to be carried out *ex parte* and without prior notice. • The overly high standard of suspicion for postponement of transactions by the FIU with a view to further provisional measures should be revised. • Provisional measures should more frequently be applied.
2.4 Freezing of funds used for terrorist financing (SR.III)	• A comprehensive system for freezing without delay by all financial institutions of assets of designated persons and entities, including publicly known procedures for de-listing etc. should be established. Thus, the evaluators recommend that a comprehensive set of detailed and generally applicable rules for an administrative procedure should be drafted and adopted, practically on the conceptual base that has already been provided by the Law on International Restrictive Measures.

	• In this respect, all the institutions should be given clear user-friendly guidance and instructions concerning their rights and obligations under the freezing mechanisms, such as in the case of errors, namesakes or requests for unfreezing and for access for basic expenses.
	• The examiners therefore recommend
	  • establishment of an effective system for implementation without delay by all financial institutions in this field, together with the provision of clear and publicly known guidance concerning their responsibilities;
	  • create and/or publicise procedures for considering de-listing requests and unfreezing assets of de-listed persons;
	  • create and/or publicise a procedure for unfreezing in a timely manner the funds and assets of persons inadvertently affected by the freezing mechanism upon verification that the persons is not a designated person;
	  • clarify the procedure for authorising access to funds/assets that are frozen and that are determined to be necessary on humanitarian grounds in a manner consistent with S / Res / 1452 (2002);
	  • create and/or publicise the procedure for court review of freezing actions;
	  • consideration and implementation of relevant parts of the Best Practice Paper.

2.5 The Financial Intelligence Unit and its functions (R.26)	• Some parts of the AML Law refer only to money laundering but do not provide a clear legal mandate for the MLPD to deal with terrorist financing issues. Also in practice the MLPD's role in combating financing of terrorism is very limited. It is recommended to make clarifications to the AML Law with regard to the prevention of terrorist financing, particularly amending the relevant provisions and make it absolutely clear that they also cover the prevention of terrorist financing. • The MLPD should have timely (preferably online) access to more databases, particularly the police database, criminal register and court register. • The provisions regulating the exchange of information between the MLPD and investigative bodies are too unspecific and there is some unclarity of the AML Law whether it is allowed to exchange information with other state bodies even without a suspicion of any criminal activity. It should be clarified that this possibility is reduced to cases where there are grounds to suspect money laundering or financing of terrorism. • Banks send the vast majority of STRs (and also CTRs) to the MLPD; the authorities should undertake efforts (including guidance) to increase the number of STRs submitted by other reporting entities. • Customs Authorities send a huge number of CTRs in hard copies in huge quantities which does not allow a systematic analysis, particularly in case of multiple cash transactions in smaller amounts over a period of time by

	the same persons. Thus, the authorities should consider the use of an electronic reporting system also for these CTRs similar to the system used by banks in order to allow a better analysis.[212]
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	• There should be clear criteria to which body (either the Financial Police or the Ministry of Interior) the MLPD should disseminate its reports for further investigations. • Money laundering investigations should also cover money laundering cases in relation to other predicates than only tax evasion (currently money laundering investigations are almost exclusively focused on money laundering in relation to tax evasion).
2.7 Cross Border Declaration & Disclosure	• Not only cash and cheques, but also other bearer negotiable instruments should be covered by legislation concerning the physical cross-border transportation of currency and bearer negotiable instruments. • In case of cross-border transportation of means being property of persons designated either by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999) or in the context of S/RES/1373(2001), the Customs should have authority to confiscate such property. • The range of sanctions (approx. 4 200 to 5 000 EUR) of the Law on Foreign Exchange Operations with regard to infringements as described by criterion IX.8 is insufficient and does not allow to apply a proper and adequate reaction to deviant behaviour in relation to all kind of perpetrators (residents, non-residents, legal entities). A more broad and dissuasive range of penalties should be introduced. • There should be effective, proportionate and dissuasive sanctions concerning persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments that are related to terrorist financing or money laundering contrary to the obligations under SR IX. Currently this issue is addressed by the general sanction regime of the Criminal Code (particularly the criminalisation of money laundering and terrorist financing). The coverage of criterion IX.9 by the criminalisation of money laundering and terrorist financing is insufficient as far as these provisions are deficient as described under Sections 2.1 and 2.2. Overall, criterion IX.9 should be covered in a comprehensive and clear manner. • Customs officer should receive special training to detect cash couriers. • There should be explicit provisions allowing the Customs or any other authority from "the former Yugoslav Republic of Macedonia" to notify the Customs Services or other competent authorities of the country of origin or the country of destination about unusual cross-border

[212] Since March 2008 also Customs sends CTRs in electronic form, which enables the MLPD to analyse them with special software.

	movement of gold, precious stones or metals with a view of establishing the source, destination and purpose of the movement of such items in order to take appropriate action.
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• The authorities should as a matter of urgency issue legislation clearly prohibiting financial institutions from keeping anonymous accounts or accounts in fictitious names. Furthermore, it should be established with a thorough assessment whether such accounts still exist. If so, they should be closed as soon as possible. • Financial institutions should be required to identify customers when carrying out occasional transactions that are wire transfers in all the circumstances covered by the Interpretative Note to SR VII, when the financial institution has doubts about the veracity or adequacy of previously obtained identification data. The obligation to identify customers when there is a suspicion of terrorist financing should be made clearer in the AML Law. • The concept of verification of identification should be further addressed. The authorities should take steps to apply an enhanced verification process in appropriate cases. In higher risk cases and for foreign clients, they should consider requiring financial institutions to use *other* reliable, independent source documents, data or information when verifying customer's identity (in addition to the documents as currently prescribed by law). • The authorities should clearly define which other documents than passports or I.D. cards can be used for verification of identification and which are in accordance with the international standards as required by Footnote 8 of the Methodology (with reference to the General Guide to Account Opening and Customer Identification issued by the Basel Committee's Working Group on Cross Border Banking). • Financial institutions should be required to obtain information on the purpose and intended nature of the business relationship. • Financial institutions should be required to conduct ongoing due diligence on the business relationship and to ensure that documents, data or information collected under the CDD process are kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships. • Financial institutions should be required to perform enhanced due diligence for higher risk categories of customers, business relationship or transaction, including private banking, companies with bearer shares and non-resident customers.

	• For customers that are legal persons or legal arrangements, financial institution should be required to verify that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person.
	• The legislation should provide for a definition of "beneficial owner" which is in line with the one provided for by the glossary to the FATF Methodology. Financial institutions should be required to take reasonable measures to verify in all situations (and not only when "*a suspicion exists whether the client acts on its own or on behalf and in interest of a third party"*) the identity of beneficial owners using relevant information or data obtained from reliable sources.
	• For all clients, financial institutions should be required to determine whether the customer is acting on behalf of a third party. If this is the case, they should identify the beneficial owner and verify the latter's identity. With regard to clients who are legal persons, financial institutions should understand the controlling structure of the customer and determine who the beneficial owner is.
	• Concerning timing of verification, the possibility provided by Art. 7 para 1 and 2 to establish the client's identity "*on the day when the transaction was carried out*" (unless there is a suspicion of money laundering) is too general and should be brought in line with the circumstances as described by criterion 5.14.
	• Financial institutions should be 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. Furthermore, there should be a requirement for financial institutions to perform CDD measures on existing customers if they are customers having anonymous accounts, accounts in fictitious names or numbered accounts.
	• The authorities should put in place measures by enforceable means that require financial institutions:
	  • to determine if the client or the potential client is - according to the FATF definition – a PEP;
	  • to obtain senior management approval for establishing a business relation with a PEP;
	  • to conduct higher CDD and enhanced ongoing due diligence on the source of the funds deposited/invested or transferred through the financial institutions by the PEP.
	• "The former Yugoslav Republic of Macedonia" should implement enforceable AML/CFT measures concerning establishment of cross-border correspondent banking relationships.
	• The current legislation addresses Recommendation 8 to a certain extent but places a wide discretion with the obliged entities; this needs further regulation and guidelines to make it effective. Financial institutions should be required to have policies in place to prevent the misuse of

	technological developments for AML/CFT purposes and to address specific risks associated with non-face to face transactions.
3.3 Third parties and introduced business (R.9)	• Though Rec. 9 is currently not applicable, the authorities should satisfy themselves by covering all the essential criteria under Recommendation 9 in the AML Law.
3.4 Financial institution secrecy or confidentiality (R.4)	• It is recommended that a provision be made for the sharing of information between financial institutions in relation to correspondent banking and in relation to identification of customers involved in cross-border or international wire transfers.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	• The record keeping requirements of the AML Law and some sectoral laws should be harmonised to avoid difficulties in implementation. • Financial institutions should be required to keep all necessary records on transactions for longer than five years if requested to do so in specific cases by a competent authority upon proper authority. • Financial institutions should be required to keep identification data for longer than five years where requested by a competent authority in specific cases on proper authority. • The authorities should introduce clear obligations for financial institutions to keep records of the account files and business correspondence. • Criterion VII.1 is only covered for transactions exceeding 2 500 EUR in MKD equivalent. Moreover, there are two pieces of legislation regulating the same issue in different ways. The overlap of these two pieces of legislation is significant and could lead to confusion concerning application. It is thus recommended to harmonise these provisions and to bring them in line with the requirements of criterion VII.1. • Financial institutions should be required to include full originator information in the message or payment form accompanying cross-border wire transfers of 1 000 EUR/USD or more. • The authorities should introduce legal requirements on financial institutions that the originator information in the message or payment form accompanying domestic wire transfers is meaningful and accurate. • Each intermediary and beneficiary financial institution in the payment chain should be required to ensure that all originator information that accompanies a wire transfer is transmitted with the transfer. • The sanctions regime concerning SR VII has several deficiencies and has never been applied in practice. It is recommended to amend the sanctions regime of the AML Law. The same applies for the sanction regime as provided for by the "Law on Fast Money Transfer" for infringements of the "Decision on amendment to the Decision on the manner of keeping records for each fast money transfer transaction".

3.6 Monitoring of transactions and relationships (R.11 & 21)	• The authorities should implement Recommendations 11 and 21.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• The AML Law should explicitly provide an obligation to report attempted transactions. • Apart from banks no other financial institution submitted any STR. The total lack of an STR related to financing of terrorism raises concerns of effective implementation. More outreach and guidance to financial institutions is necessary to better explain them their reporting obligations under the AML Law. • The overlapping reasons to report transactions with a suspicion of terrorist financing could lead to confusion of the reporting entities. In order to impose clear obligations to the reporting entities, the authorities may wish to simplify the language of Art. 15 of the AML Law. • Apart from the special situation concerning banks, there are no tipping off provisions in relation to directors of financial institutions. The existing tipping off provisions are not sanctionable. It is recommended to introduce enforceable tipping off provisions prohibiting financial institutions and their directors, officers and employees (permanent and temporary) from disclosing the fact that a STR or related information is being reported or provided to the FIU. • Though the AML Law obliges the MLPD to provide the obliged entities with general and specific feed-back, this is not done in practice and this should be remedied. This may also be a reason of the uneven reporting that nearly exclusively banks submit STRs. Thus more outreach to the non-banking sector is required. • Though "the former Yugoslav Republic of Macedonia" is compliant with Recommendation 19, it should consider to lower the threshold for reporting transactions to an amount which is more adequate for the domestic economical situation.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	• Financial institutions should be required to establish internal policies, procedures and controls for CDD and detection of unusual and suspicious transactions and the reporting obligation (the easiest way by amending Art. 33 of the AML Law). The provisions for providers of fast money transfer, banks and savings houses requiring a programme on money laundering prevention should be extended to cover also prevention of terrorist financing and be specified to cover all requirements of Recommendation 15. • The AML/CFT compliance officer and other appropriate staff should have timely access to customer identification data and other CDD information, transaction records, and other relevant information. • Financial institutions should be required to put in place screening procedures to ensure high standards when hiring employees.

	• Financial institutions should be required to ensure that the AML/CFT requirements applicable to financial institutions are also applied to branches and majority owned subsidiaries located abroad, especially in countries which do not or insufficiently apply the FATF Recommendations, to the extent that local applicable laws and regulations permit. When local applicable laws and regulations prohibit this implementation, competent authorities in the country of the parent institution should be informed by the financial institutions that they cannot apply the FATF Recommendations.
3.9 Shell banks (R.18)	• Financial institutions should be prohibited from entering into or continuing correspondent banking relationship with shell banks. • There should be an obligation placed on financial institutions to satisfy themselves that a respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks. [213]
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	• The sanctioning system of the AML Law is ineffective and should be amended. • The pecuniary sanctions of the AML Law for legal entities should be dissuasive and proportionate. • The AML Law does not allow to withdraw or to suspend a financial institution's licence for not observing requirements of the AML Law. From the sectoral laws, the Banking Law, the Law on Securities and the (amended) Law on Fast Money transfer allow to revoke a licence in case of infringements related to AML obligations but not when it comes to obligations related to CFT. The other sectoral laws do not provide for withdrawing or suspending a financial institution's licence for not observing AML/CFT obligations. The authorities should introduce legislation allowing the respective supervisors to withdraw or suspend a licence of any type of financial institution in the case of not observing AML/CFT requirements. • All supervisory bodies should include AML/CFT issues as an integrated part of their supervisory activities (currently only the NBM and to an unclear extent the SEC do so). • For the operations of pension companies and pension funds a specific supervisory authority should be designated; preferably the "Agency for Supervision of Fully Funded Pension Insurance" (MAPAS) should be designated with this task. • The Law on Foreign Exchange Operations should be amended and provide for powers of inspectors from the NBM when performing supervision of foreign exchange offices, like access to documentation, taking copies etc. • There should be provisions assigning special powers to the State Foreign Exchange Inspectorate linked with its

[213] The new AML/CFT Law now explicitly addresses shell banks and prohibits their establishment or any business relationships with shell banks.

	supervisory responsibilities. • The AML Law is silent how the sanctions as provided for by the AML Law should be imposed, particularly by which body, following which rules of procedure. It should be made clear, preferably in the AML Law itself, which bodies are competent for initialising and imposing administrative sanctions which are provided for in the AML Law. • The legislation to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a bank, savings house, brokerage house, insurance companies, money or value transfer services, foreign exchange offices and investment fund management companies is insufficient and should be amended. For companies issuing credit/debit cards, pension companies and pension funds no such preventive legislation exists at all and should be introduced as a matter of priority. • A special licensing or registration regime for companies issuing credit/debit cards should be introduced. • Staff of all supervisory bodies should be required to maintain high professional standards and to keep professional secrets confidential (currently only for employees of the NBM exist specific rules requiring staff to maintain high professional standards; and only for employees of the NBM and the SEC exist specific rules requiring staff to keep professional secrets confidential.). • Financial institutions should be provided with clear guidance on CFT issues.
3.11 Money value transfer services (SR.VI)	• The authorities should implement requirements in relation to Recommendations 4-11, 13-15 and 21-23 in the MVT sector. • The sanctioning system for infringements of the AML Law requiring court decisions via application of the supervisory authorities is too complicated and does not work in practice as no sanctions have been imposed so far. It should be amended to provide for an effective sanctioning regime.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• "The former Yugoslav Republic of Macedonia" should fully implement Recommendations 5, 6, 8, 10 and 11 and make these measures applicable to DNFBP. • It is recommended to work with the different sectors to improve awareness, and overcome any unwillingness to apply AML/CFT requirements. Information campaigns to this end are required.
4.2 Suspicious transaction reporting (R.16)	• "The former Yugoslav Republic of Macedonia" should fully implement Recommendations 13-15 and 21 and make these measures applicable to DNFBP. • Some institutions are quite unconcerned about ML/FT risks in their field and others, like lawyers, do not accept

	their obligations. Further outreach to these sectors is needed and more work needs to be done to improve awareness, and overcome any unwillingness to apply AML/CFT requirements. Ongoing information campaigns to this end may be helpful.
4.3 Regulation, supervision and monitoring (R.24-25)	• The supervisory commissions for auditors and accountants (based on Art. 39 of the AML Law) should be established. • The supervisory powers of the supervisory authorities, which are based on Art. 39 of the AML Law, should be clarified. The authorities should review the AML Law and make either amendments or clarify it in sectoral laws or by-laws which powers these supervisory commissions have. • The supervisory commission responsible for lawyers should start its supervisory activity. • The Public Revenue Office should conduct AML/CFT supervision concerning real estate agents, dealers in precious metals, dealers in precious stones, dealers in high value and luxury goods. • Concerning obtaining a licence for casinos, fit and proper requirements for owners and managers are very limited: it is only required that managers have not been sentenced for a crime in the area of games of chance or for an economic crime. The authorities should introduce the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a casino. • There should be legal requirements for casino providers to prove the legitimate origin both of the founding capital and the licence fees. • The sanctions regime for DNFBP provided by the AML Law is deficient in the same ways as described concerning financial institutions and should be amended. • The guidance for DNFBP appears to be lower than in relation to the financial sector. Also the awareness of financing of terrorism threats and countermeasures was quite low. Ongoing initiatives, training and outreach to the whole DNFBP sector will be necessary in this regard.
4.4 Other non-financial businesses and professions (R.20)	• "The former Yugoslav Republic of Macedonia" has taken steps to extend AML/CFT requirements to other non-financial businesses and professions (other than DNFBP). However, a further review will be required to assess whether it is necessary to cover all these entities. It is advised to conduct an analysis of which non-financial businesses and professions (other than DNFBP) are at risk of being misused for money laundering or terrorist financing. These sectors should be kept under review to ensure that all non-financial businesses and professions that are at risk of being misused for the purposes of money laundering or terrorist financing are regularly considered for coverage in the AML Law. After that, the authorities should ensure that the relevant FATF Recommendations (5, 6, 8 to 11, 13 to 15, 17 and 21) are being applied in

	practice.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	• The authorities should endure that the legal framework allows for adequate, accurate and timely information on the beneficial ownership and control of legal persons.
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	• Recommendation 34 is not applicable.
5.3 Non-profit organisations (SR.VIII)	• It is first advised that a formal review of the current legislation covering the non-profit sector is undertaken from the point of view of the threats to this sector inherent in terrorist financing, in line with SR VIII and its Interpretative Note. It is then recommended that the authorities review the existing system of laws and regulations in this field so as to assess themselves the adequacy of the current legal framework according to Criterion VIII.1. Consideration should also be given in such a review to effective oversight of the NPO sector, the issuing of guidance to financial institutions on the specific risks of this sector and consideration of whether and how further measures need taking in the light of the Best Practices Paper for SR.VIII. In particular, ongoing programme verification and field audits should be considered in identified vulnerable parts of the sector. Consideration needs to be given to ways in which effective oversight of the NPO sector can be achieved in the context of SR.I.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	• The evaluators recommend clarifying the competences of the investigative bodies (clearly defining which authority is competent in which cases). • There should be an authority or a mechanism in place ensuring a nation-wide policy on cooperation or appropriate coordination in the combat against money laundering or financing of terrorism.

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• "The former Yugoslav Republic of Macedonia" should implement all the provisions of the relevant international conventions it has ratified.
	• The requirements of the UN Conventions should be reviewed to ensure that "the former Yugoslav Republic of Macedonia" is fully meeting all its obligations under them. Particularly "the former Yugoslav Republic of Macedonia" should introduce
	  • a legal structure for the conversion of designations under S/RES/1267(1999) and its successor resolutions as well as S/RES/1373(2001);
	  • a comprehensive and effective system for freezing without delay by all financial institutions of assets of

	designated persons and entities, including publicly known procedures for de-listing etc.; • a system for effectively communicating action taken by the authorities under the freezing mechanisms to the financial sector and DNFBP.
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	• The principle of dual criminality is, though implicitly, present in the domestic legislation and this is why the definitional problems with the domestic offence intended to cover the financing of terrorism (Art. 394a CC), as well as the value threshold required by the money laundering offence, may possibly cause difficulties in providing mutual legal assistance. The same recommendations as described under 2.1 and 2.2 apply. • Arrangements for coordinating seizure and confiscation action with other countries should be established. Consideration should also be given to establishment of an asset forfeiture fund as well as to sharing of confiscated assets with other countries when confiscation is a result of coordinated law enforcement action.
6.4 Extradition (R.39, 37 & SR.V)	• Because financing of terrorism is insufficiently criminalised in the current domestic legislation, the requirement of dual criminality for extradition would mean that not all kinds of terrorist financing offences would be extraditable and the same refers to money laundering cases below the threshold of five officially declared monthly salaries. As a consequence, the deficiencies in the criminalisation of money laundering and terrorist financing as described under Section 2.1 and 2.2 may pose a significant obstacle to executing extradition requests. Thus, also the same recommendations as described under 2.1 and 2.2 apply.
6.5 Other Forms of Co-operation (R.40 & SR.V)	• In order to allow the widest range of cooperation, the MLPD should clearly be entitled to exchange information also spontaneously and without the request of a foreign body (as currently required by Art. 37 of the AML Law). • The MLPD should clearly be entitled to provide information to foreign bodies and organisations which are involved in the fight against financing of terrorism, and not only to those which are dealing (exclusively or also) with anti-money laundering. • The AML Law should clearly entitle the MLPD to request data from foreign authorities. • It should be clarified in the AML law that in the case of a request of a foreign authority the MLPD is authorised to provide not only information which it has already received, but also information which it needs to ask for from other authorities and the obliged entities. Furthermore, mechanisms should be in place to ensure a rapid, constructive and effective international assistance, e.g. direct access to the relevant databases and obligations of domestic authorities to respond to requests of the MLPD in due time. • A legal basis should be introduced to authorize the NBM to cooperate with foreign supervisors concerning the

	supervision of savings houses, exchange offices or service providers for fast money transfer.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	**Recommendation 30** • The staff of the MLPD should be increased enabling it to cover all its tasks (e.g. analysing STRs, CTRs) satisfactorily. • Officers of the relevant departments within the Ministry of Interior and Customs should be provided with adequate training for combating money laundering and terrorist financing. • More training and staff for the Insurance Supervision Division is needed. **Recommendation 32** • One of the authorities involved (perhaps the prosecution or the judiciary) should maintain *comprehensive* and more detailed statistics on money laundering investigations, prosecutions and convictions or other verdicts (as well as whether confiscation has also been ordered) indicating not only the number of persons involved but also the number of cases/offences but also providing information on the underlying predicate crimes and further characteristics of the respective laundering offence (whether it was prosecuted autonomously etc.). • The MLPD should keep statistics concerning the number and results of the reports disseminated from the MLPD to other institutions (investigations, indictments, convictions, persons involved, cases). • More statistical data on AML/CFT mutual legal assistance issues (e.g. nature of mutual assistance requests; the time required to handle them; type of predicate offences related to requests) is needed to show the effectiveness of the system. • All supervisory authorities (and not only the NBM and the SEC) should keep statistics on supervision. • The supervisory authorities should keep comprehensive statistical information on the exchange of information with foreign counterparts (including spontaneous exchange of information).

V. ANNEXES

ANNEX I - Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others

- Minister of Finance
- Ministry of Finance (Insurance Supervision Division)
- Ministry of Foreign Affairs (Sector for multilateral cooperation)
- Ministry of Interior (Money Laundering and Corruption Department; Administration for Security and Counter-Intelligence)
- Ministry of Justice (Sector for European Integration and International Cooperation, Sector for International Legal Assistance, State Administrative Inspectorate)
- Money Laundering Prevention Directorate (MLPD)
- "National Bank of the Republic of Macedonia"[214]
- Basic Court Skopje 1 (Company Registration Department, Criminal Department, Investigative Department)
- State Public Prosecution Office (Unit for prosecution of committers of criminal acts of organized crime and corruption)
- Superior Public Prosecution Office Skopje
- Basic Public Prosecution Office Skopje
- Public Revenue Office
- Central Registry
- State Anti-Corruption Commission (SACC)
- Financial Police
- Customs Administration
- Border Police
- State Foreign Exchange Inspectorate
- Securities and Exchange Commission
- Central Depository of Securities
- Chamber of Public Notaries
- Bar Association

as well as representatives from banks, savings houses, insurance companies, exchange offices (bureau de change), brokerage houses, casinos.

[214] See Para 4.

ANNEX II - Designated categories of offences based on the FATF Methodology

Designated categories of offences based on the FATF Methodology	Offence in domestic legislation (reference is made to the Criminal Code)
Participation in an organised criminal group and racketeering;	Article 394 (Criminal association)
Terrorism, including terrorist financing	Article 313 (Terrorism) Article 419 (International terrorism) Article 394a (Terrorist organisation)
Trafficking in human beings and migrant smuggling; Sexual exploitation, including sexual exploitation of children;	Article 418a (Trafficking of people) Article 418b (Trafficking in migrants) Article 418c (Organising a group and encouraging human trafficking and trafficking in migrants) Chapter Nineteen: Articles 186 to 194 (Criminal Offences against Sexual Freedom and Sexual Morality)
Illicit trafficking in narcotic drugs and psychotropic substances;	Article 215 (Unauthorised production and putting into circulation of narcotics, psychotropic substances and precursors)
Illicit arms trafficking	Article 395 (Manufacture and acquisition of weapons and means intended for committing a criminal offence) Article 396 (Unlawful possession of weapons or explosive materials)
Illicit trafficking in stolen and other goods	Article 261 (Covering up)
Corruption and bribery	Article 353 (Abuse of Office or Official Authority) Articles 357 and 358 (Receiving and giving of bribe)
Fraud	Articles 247 to 250 (Fraud and related other fraudulent offences)
Counterfeiting currency	Article 268 (Counterfeiting money)
Counterfeiting and piracy of products	Article 157 (Infringement of copyright and related rights)
Environmental crime	Chapter Twenty-two: Articles 218 to 234 (Criminal Offences against the Environment)
Murder, grievous bodily injury	Article 123 (Murder) Article 131 (Grave body injury)
Kidnapping, illegal restraint and hostage-taking	Article 141 (Kidnapping) Article 421 (Taking of hostages)
Robbery or theft;	Articles 237 and 238 (Robbery and armed robbery) Articles 235 and 236 (Theft and severe theft)
Smuggling	Article 278 (Smuggling of goods)
Extortion	Article 258 (Extortion)
Forgery	Article 280 (Falsifying or destruction of business books) Article 361 (Forging of official documents) Articles 378 and 379 (Forging of documents)
Piracy	Article 422 (Piracy)
Insider trading and market manipulation	Article 275 Paragraph 2 (Fraud in transactions with securities)

ANNEX III - Compliance with the two Directives of the European Parliament and of the Council (91/308/EEC and 2001/97/EC)

I. INTRODUCTION

In accordance with the procedures agreed by the Committee MONEYVAL and the International Monetary Fund (IMF) for the third round evaluation programme of MONEYVAL under the New Methodology, was evaluated by an IMF expert team as part of its FSAP programme between /dates/ Country and the IMF agreed that a representative of MONEYVAL joins the IMF team for part of the evaluation exercise to examine compliance with the European Union anti-money laundering directives where these differ from the FATF 40-Recommendations and therefore fall within the remit of the MONEYVAL examinations

II. COMPLIANCE WITH THE EU AML SECOND COUNCIL DIRECTIVE

1. Prior to the on-site visit MONEYVAL had identified seven Articles in the EU AML Second Council Directive that differed, mostly in their mandatory aspect, from the FATF 40-Recommendations:

(i)	Article 2a	on the applicability of the AML obligations;
(ii)	Article 3	on identification procedures;
(iii)	Article 6	on reporting suspicious transactions and facts which might be an indication of money laundering;
(iv)	Article 7	on suspected transactions and the authority to stop/suspend a transaction;
(v)	Article 8	on tipping off;
(vi)	Article 10	on reporting of facts that could contribute suspicious transactions by supervisory authorities;
(vii)	Article 12	on extension of AML obligations.

2. The following sections address the findings of the on-site examination. They first describe the differences between the identified articles of the EU AML Second Council Directive and the relevant FATF 40-Recommendations. Following an analysis of the findings of the on-site visit and conclusions on compliance and effectiveness, recommendations and comments are made as appropriate.

Article 2a: Applicability of AML obligations

Description	Article 2a of the EU AML Second Council Directive lists the types of institutions and legal or natural persons, acting in the exercise of certain professions and businesses, that are subject to the Directive. The Article specifies the type of activities of the legal profession for which the obligations become applicable. In the case of auditors, external accountants and tax advisors the obligations are applicable to their broad activities in their respective professions. FATF Recommendation 12, which extends the AML obligations to designated non financial businesses and professions (DNFBP), excludes applicability to auditors and tax advisors whilst it limits the applicability to external accountants under circumstances similar to those applied to the legal profession. Indeed FATF Recommendation 16(a) *strongly encourages* countries to extend the *reporting* requirement (note the further limitation) to the rest of the professional activities of accountants, including auditing – but makes no reference to tax advisors. Also, the applicability of the AML obligations to dealers in high value goods under the EU AML Second Council Directive, in giving some examples, lends itself to a broader interpretation of application. Again, FATF Recommendation 12 limits the application to dealers in precious metals and precious stones. This is further confirmed in the definition of DNFBP in the Glossary.
Analysis	Article 2 of the Law On Prevention Of Laundering Money And Other Proceeds From Crime contains definition of *entity* in which lists the persons subject to the obligations arising under this law. The obligations are applied to financial institutions and legal and natural entities performing one of the following activities: a) action of real estate trading; b) audit, accounting and tax consulting; c) notaries, attorney and other legal services related to: purchase and sale of real estate and companies, management with money and securities, opening and disposal of bank accounts, safe-deposit boxes and other accounts, establishing or taking part in the management or operation of the legal entities, representing clients in financial transactions and real estate trading;

	d) activities related to trading with works of fine arts[215], antiques and other objects of great value for larger consumption; e) activities related to trading with excise commodities; f) works connected with issuing payment and credit cards; g) processing and trading with precious metals and stones; h) travelling and tourist agencies and i) other related activities of acquainting property and other forms of disposal or management with money or property. The definition of *financial institution* in the AML Law includes any legal or natural entity that carry out one or more activities connected with collecting deposits, awarding credits, issuance of payments cards, foreign exchange operations, economic and financial consulting, financial leasing, factoring, operations connected with insurance, operations connected with securities for its own or for the account of the client, maintenance and management of money, securities and objects made of precious metals and other financial activities stipulated by Law.
Conclusion	The existing AML Law in "the former Yugoslav Republic of Macedonia" is applicable to all types of the institutions covered by the EU AML Second Council Directive. The law covers all dealers in high-value goods without any limitations.
Recommendations and Comments	No further recommendations.

Articles 3(3) and 3(4): Identification requirements - Derogation

Description	By way of derogation from the mandatory requirement for the identification of customers by persons and institutions subject to the Directive, the third paragraph of Article 3 of the EU AML Second Council Directive removes the identification requirement in cases of insurance activities where the periodic premium to be paid does not exceed EUR 1 000 or where a single premium is paid amounting to EUR 2 500 or less. Furthermore, Paragraph 4 of the same Article 3 provides for discretionary identification obligations in respect of pension schemes where relevant insurance policies contain no surrender value clause and may not be used as collateral for a loan.

[215] The provided translation of the AML Law uses the term "writing works", but it was explained to the evaluation team that "works of fine arts" is the correct translation.

	FATF Recommendation 5, in establishing customer identification and due diligence, does not provide for any similar derogation. It however provides for a general discretionary application of the identification procedures on a risk sensitivity basis. Therefore, in certain circumstances, where there are low risks, countries may allow financial institutions to apply reduced or simplified measures. Indeed, the Interpretative Note to Recommendation 5 quotes the same instances as the EU AML Second Council Directive as examples for the application of simplified or reduced customer due diligence.
Analysis	Under the AML Law customer identification and customer due diligence are mandatory for all the entities subject to the law when • carrying out transaction or establishing any other form of business or contractual relationship; • prior to opening an account or a pass book, receipt of keeping shares, bonds or other types of securities; provision for usage of the safe-deposit boxes; asset management or effectuating or receipt of payment on behalf of a third party. While performing activities related to life insurance, insurance companies are obliged to identify the client in each case where the amount of individual or several installments of insurance premium which has to be paid in term of one year exceeds an amount of 1 000 EUR in MKD equivalent or when the payment of unique insurance premium exceeds the amount of 2 500 EUR in MKD equivalent (Article 7 of the AML Law). In this way the AML Law lifts the obligation of identification to insurance providers under circumstances as determined by the EU AML Second Council Directive. The AML Law does not provide for the exemption under Art 3 (4) of the EU AML Directive.
Conclusion	Pension schemes are not included in the derogations, and the AML Law is silent on the issue of pension funds at all.
Recommendations and Comments	No further recommendations.

Articles 3(5) and 3(6): Identification requirements - Casinos

Description	Article 3 paragraph 5 of the EU AML Second Council Directive requires the identification of all casino customers if they purchase or sell gambling chips with a value of EUR 1 000 or more. However, Paragraph 6 of the same article provides that casinos subject to State Supervision shall be deemed in any event to have complied with the identification

	requirements if they register and identify their customers immediately on entry, regardless of the number of gambling chips purchased. FATF Recommendation 12 applies customer due diligence and record keeping requirements to designated non-financial businesses and professions. In the case of casinos, these requirements are applied when customers engage in financial transactions equal to or above the applicable designated threshold. The Interpretative Note to Recommendation 5 establishes the designated threshold at EUR 3 000, irrespective of whether the transaction is carried out in a single operation or in several operations that appear to be linked. Furthermore, in the Methodology Assessment, under the Essential Criteria for Recommendation 12, the FATF defines, by way of example, *financial transactions* in casinos. These include the purchase or cashing in of casino chips or tokens, the opening of accounts, wire transfers and currency exchanges. Identification requirements under the FATF - 40 Recommendations for casinos are likewise applicable to internet casinos.
Analysis	In "the former Yugoslav Republic of Macedonia", all casinos are subject to state supervision by the Public Revenue Office. All customers must have their identity verified upon entry into the casino.
Conclusion	Having adopted procedures in the AML Law for the identification of all customers on entry of the casino, "the former Yugoslav Republic of Macedonia" is in compliance with the provisions of Article 3 (6) of the Second EU AML Directive.
Recommendations and Comments	No further recommendations.

Article 6: **Reporting of Suspicious Transactions**

Description	Further to the reporting of suspicious transactions Article 6 paragraph 1 of the EU AML Second Council Directive provides for the reporting obligation to include facts which might be an indication of money laundering. FATF Recommendation 13 places the reporting obligations on suspicion or reasonable grounds for suspicion that funds are the proceeds of a criminal activity.
	Furthermore, paragraph 3 of Article 6 of the EU AML Second Council Directive provides an option for member States to designate an appropriate self-regulatory body (SRB) in the case of notaries and independent legal profession as the authority to be informed on suspicious

	transactions or facts which might be an indication of money laundering. FATF Recommendation 16 imposes the reporting obligation under Recommendation 13 on DNFBP but does not directly provide for an option on the disclosure receiving authority. This is only provided for in a mandatory manner in the Interpretative Note to Recommendation 16. Also, probably because the FATF identifies accountants within the same category as the legal profession, the Interpretative Note extends the option to external accountants. Finally, the same paragraph 3 of Article 6 of the EU Directive further requires that where the option of reporting through an SRB has been adopted for the legal profession, Member States are required to lay down appropriate forms of co-operation between that SRB and the authorities responsible for combating money laundering. The FATF Recommendations do not directly provide for such co-operation but the Interpretative Note to Recommendation 16, although in a non-mandatory manner, makes it a condition that there should be appropriate forms of co-operation between SRBs and the FIU where reporting is exercised though an SRB.
Analysis	In accordance with Article 22 of the Law On Prevention Of Laundering Money And Other Proceeds From Crime, the entities subject to the law are obliged to report on transactions when a suspicion for their relation with money laundering exists. They are obliged by the law to provide the collected data, information and documents regarding the performed transactions to submit to the MLPD in this case. However, this does not fully cover the requirements of Art. 6 para 1 of the EU AML Second Directive as the reporting obligation provided for by the AML Law is obviously "transaction based" but does not encompass an obligation to report facts which are not linked with a transaction.
Conclusion	The Law On Prevention Of Laundering Money And Other Proceeds From Crime is not fully compliant with the EU AML Second Directive as regards reporting obligation under Article 6(1).
Recommendations and Comments	The authorities may wish to broaden the scope of the provision of Article 6 (1) to all facts (without being linked with a transaction).

Article 7: **Suspected Transactions – Refrain / Supervision**

Description	Article 7 of the EU AML Second Council Directive requires that institutions and persons subject to the Directive refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the authorities who may stop the execution of the transaction. Furthermore, where to refrain from undertaking the transaction is impossible or could frustrate efforts of an investigation, the Directive

	requires that the authorities be informed (through an STR) immediately the transaction is undertaken. FATF Recommendation 13, which imposes the reporting obligation where there is suspicion or reasonable grounds to suspect that funds are the proceeds of a criminal activity, does not provide for the same eventualities as provided for in Article 7 of the EU Directive. FATF Recommendation 5 partly addresses this matter but under circumstances where a financial institution is unable to identify the customer or the nature of the business relationship. However, whereas Recommendation 5 is mandatory in this respect, it does not provide for the power of the authorities to stop a transaction. Furthermore, the reporting of such a transaction is not mandatory. Paragraph 1- 3 of the Interpretative Note to Recommendation 5 seem to be more mandatory in filing an STR in such circumstances.
Analysis	There is no provision requiring financial institutions to refrain a transaction in case that a transaction might be related to money laundering. The AML Law only requires financial institutions to refuse a transaction in case that a client cannot be identified (Art. 12); but this is not the same as required by Art. 7 of the EU AML Second Council Directive.
Conclusion	The law is not in compliance with Article 7 of the EU AML Directive.
Recommendations and Comments	In order to be compliant with Article 7 of the EU AML Directive, the authorities should introduce legislation requiring the obliged entities to refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the MLPD which may stop the execution of the transaction. Furthermore, where to refrain from undertaking the transaction is impossible or could frustrate efforts of an investigation, the obliged entities should be required to inform immediately the MLPD (through an STR) after the transaction was undertaken.

Article 8: Tipping off

Description	Article 8(1) of the EU AML Second Council Directive prohibits institutions and persons subject to the obligations under the Directive and their directors and employees from disclosing to the person concerned or to third parties either that an STR or information has been transmitted to the authorities or that a money laundering investigation is being carried out. Furthermore, Article 8(2) provides an option for Member States not to apply this prohibition (tipping off) to notaries, independent legal professions, auditors, accountants and tax advisors. FATF Recommendation 14 imposes a similar prohibition on financial institutions, their directors, officers and employees. Recommendation 16 extends this prohibition to all DNFBP. However, the prohibition under Recommendation 14(b) is limited to the transmission of

	an STR or related information. It does not therefore cover ongoing money laundering investigations. Furthermore, the FATF Recommendations do not provide for an option for certain DNFBP to be exempted from the "tipping off". The Interpretative Note to Recommendation 14 exempts tipping off only where such DNFBP seek to dissuade a client from engaging in an illegal activity.
Analysis	The entities subject to the AML Law of "the former Yugoslav Republic of Macedonia" and their employees according to the Article 21 of this law may not notify the client or a third party for submission of data to the MLPD or for any other measures or actions undertaken in terms of this Law. In cases when the data sent to the MLPD in form of the suspicious transaction report are used for other purposes pursuant to Articles 41 and 43 of the AML Law entities subject to this law are supposed to be fined by money penalty (the amount of the penalty differs for legal and physical persons). There is no tipping off prohibition for ongoing money laundering investigations. There is no exemption from the rule of the Article 21. The Law does not adopt the tipping off exemption for certain DNFBP as provided for under paragraph 2 of Article 8 of the EU Directive.
Conclusion	Although Article 21 of the Law On Prevention Of Laundering Money And Other Proceeds From Crime addresses the "tipping off", the provision is not in full compliance with Article 8 of the EU AML Directive.
Recommendations and Comments	The authorities may wish to reconsider the Law On Prevention Of Laundering Money And Other Proceeds From Crime with the objective of including the tipping off prohibition for ongoing money laundering investigations.

Article 10: **Reporting by Supervisory Authorities**

Description	Article 10 of the EU AML Second Council Directive imposes an obligation on supervisory authorities to inform the authorities responsible for combating money laundering if, in the course of their inspections carried out in the institutions or persons subject to the Directive, or in any other way, such supervisory authorities discover facts that could constitute evidence of money laundering. The Directive further requires the extension of this obligation to supervisory bodies that oversee the stock, foreign exchange and financial derivatives markets. In providing for the regulation and supervision of financial

	institutions and DNFBP in Recommendation 23 and in providing for institutional arrangements (Recommendations 26 –32) the FATF-40 do not provide for an obligation on supervisory authorities to report findings of suspicious activities in the course of their supervisory examinations.
Analysis	According to Article 23 of the Law On Prevention Of Laundering Money And Other Proceeds From Crime supervisory and authorities have a duty to report to the MLPD in cases of existing suspicion for money laundering and financing terrorism. The authorities that have to submit written reports to the MLPD named in this article of the Law are the Ministry of Interior, the Financial Police, the Public Prosecution, the NBM, the State Commission on the Prevention of Corruption, supervision and audit authorities within the Ministry of Finance and other state administration bodies. Supervisory bodies for the financial institutions performing supervision for AML/CFT are the NBM (banks, savings houses, exchange offices and service providers for fast money transfer), Insurance Supervision Division within the Ministry of Finance (insurance companies), Public Revenue Office (other financial institutions, trade companies carrying our the games of chance and other legal and natural entities being subject of those measures and actions) and Securities and Exchange Commission (stock exchange, broker companies and investment funds) (Article 38).
Conclusion	The Law On Prevention Of Laundering Money And Other Proceeds From Crime reflects the principles of the provisions of Article 10 of the EU Directive.
Recommendations and Comments	No further recommendations.

Article 12: **Extension of AML obligations**

Description	Article 12 of the EU AML Second Council Directive provides for a mandatory obligation on Member States to ensure that the application of the provisions of the Directive are extended, in whole or in part, to professions and categories of undertakings, other than the institutions and persons listed in Article 2a, that are likely to be used for money laundering. FATF Recommendation 20 imposes a similar obligation but in a non-mandatory way by requiring countries to consider applying the Recommendations to categories of businesses or professions other than DNFBP.
Analysis	The AML Law of "the former Yugoslav Republic of Macedonia" lists the businesses and persons subject to the law (Article 2, item 5). This

	is in compliance with the Article 2a of the EU Directive – see Section 6.1 of this Report.
Conclusion	The existing Law is in compliance with the Article 12 of the EU Directive.
Recommendations and Comments	No further recommendations.

III. CONCLUSIONS

On the basis of the examination of the divergences of the relevant Articles of the EU Directive from the FATF 40 Recommendations, although, as indicated in paragraph 6 of this Report some minor issues remain outstanding from the full implementation of the relevant points of the Directive, the AML Law of "the former Yugoslav Republic of Macedonia" has transposed the EU AML Second Council Directive to a high degree.