



Anti-money laundering and counter-terrorist financing measures

Ukraine

Fifth Round Mutual Evaluation Report

December 2017



The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism - MONEYVAL is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. Through a dynamic process of mutual evaluations, peer review and regular follow-up of its reports, MONEYVAL aims to improve the capacities of national authorities to fight money laundering and the financing of terrorism more effectively.

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CONTENTS

EXECUTIVE SUMMARY	4
Key findings.....	4
Risks and General Situation.....	5
Overall Level of Effectiveness and Technical Compliance	5
Priority Actions.....	12
Effectiveness & Technical Compliance Ratings	14
MUTUAL EVALUATION REPORT	15
Preface.....	15
CHAPTER 1. ML/TF RISKS AND CONTEXT.....	16
ML/TF Risks and Scoping of Higher-Risk Issues	16
Materiality	20
Structural Elements	21
Background and other Contextual Factors	21
CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION.....	32
Key Findings and Recommended Actions	32
Immediate Outcome 1 (Risk, Policy and Coordination)	34
CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES	42
Key Findings and Recommended Actions	42
Immediate Outcome 6 (Financial intelligence ML/TF).....	46
Immediate Outcome 7 (ML investigation and prosecution).....	55
Immediate Outcome 8 (Confiscation)	71
CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION.....	81
Key Findings and Recommended Actions	81
Immediate Outcome 9 (TF investigation and prosecution).....	84
Immediate Outcome 10 (TF preventive measures and financial sanctions)	89
Immediate Outcome 11 (PF financial sanctions)	92
CHAPTER 5. PREVENTIVE MEASURES.....	95
Key Findings and Recommended Actions	95
Immediate Outcome 4 (Preventive Measures).....	96
CHAPTER 6. SUPERVISION.....	105
Key Findings and Recommended Actions	105
Immediate Outcome 3 (Supervision)	107
CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS.....	124
Key Findings and Recommended Actions	124
Immediate Outcome 5 (Legal Persons and Arrangements).....	125
CHAPTER 8. INTERNATIONAL COOPERATION	130
Key Findings and Recommended Actions	130
Immediate Outcome 2 (International Cooperation).....	130

TECHNICAL COMPLIANCE ANNEX.....	138
Recommendation 1 - Assessing Risks and applying a Risk-Based Approach.....	138
Recommendation 2 - National Cooperation and Coordination.....	141
Recommendation 3 - Money laundering offence.....	142
Recommendation 4 - Confiscation and provisional measures.....	144
Recommendation 5 - Terrorist financing offence.....	146
Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing..	150
Recommendation 7 - Targeted financial sanctions related to proliferation.....	154
Recommendation 8 - Non-profit organisations.....	156
Recommendation 9 - Financial institution secrecy laws.....	159
Recommendation 10 - Customer due diligence.....	160
Recommendation 11 - Record-keeping.....	165
Recommendation 12 - Politically exposed persons.....	166
Recommendation 13 - Correspondent banking.....	168
Recommendation 14 - Money or value transfer services.....	168
Recommendation 15 - New technologies.....	169
Recommendation 16 - Wire transfers.....	170
Recommendation 17 - Reliance on third parties.....	172
Recommendation 18 - Internal controls and foreign branches and subsidiaries.....	173
Recommendation 19 - Higher-risk countries.....	174
Recommendation 20 - Reporting of suspicious transaction.....	175
Recommendation 21 - Tipping-off and confidentiality.....	176
Recommendation 22 - DNFBPs: Customer due diligence.....	177
Recommendation 23 - DNFBPs: Other measures.....	178
Recommendation 24 - Transparency and beneficial ownership of legal persons.....	178
Recommendation 25 - Transparency and beneficial ownership of legal arrangements.....	181
Recommendation 26 - Regulation and supervision of financial institutions.....	182
Recommendation 27 - Powers of supervisors.....	188
Recommendation 28 - Regulation and supervision of DNFBPs.....	189
Recommendation 29 - Financial intelligence units.....	191
Recommendation 30 - Responsibilities of law enforcement and investigative authorities.....	193
Recommendation 31 - Powers of law enforcement and investigative authorities.....	194
Recommendation 32 - Cash Couriers.....	195
Recommendation 33 - Statistics.....	197
Recommendation 34 - Guidance and feedback.....	198
Recommendation 35 - Sanctions.....	198
Recommendation 36 - International instruments.....	202
Recommendation 37 - Mutual legal assistance.....	203
Recommendation 38 - Mutual legal assistance: freezing and confiscation.....	204
Recommendation 39 - Extradition.....	206
Recommendation 40 - Other forms of international cooperation.....	207
Compliance with FATF Recommendations.....	211
GLOSSARY OF ACRONYMS.....	215

EXECUTIVE SUMMARY

1. This report provides a summary of the anti-money laundering (AML) and countering the financing of terrorism (CFT) measures in place in Ukraine as at the date of the on-site visit (between 27 March and 8 April 2017). It analyses the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations and the level of effectiveness of Ukraine's AML/CFT system, and provides recommendations on how the system could be strengthened

Key Findings

- Corruption poses an overarching money laundering (ML) risk in Ukraine. It generates substantial amounts of criminal proceeds and seriously undermines the effective functioning of certain state institutions and the criminal justice system. The authorities are aware of the risks emanating from corruption and significant state-wide measures to mitigate the risk are currently being implemented. However, law enforcement focus to target corruption-related ML is only at its inception.
- Ukraine has a reasonably good understanding of its ML and terrorism financing (FT) risks although there are areas (e.g. cross-border risks, risks posed by the non-profit sector and legal persons) where understanding could be enhanced. Ukraine has comprehensive national coordination and policy-making mechanisms to address identified risks, which include political commitment and have a positive effect. These mechanisms include proliferation financing (PF). Further efforts are needed to address the risks posed by fictitious entrepreneurship, the shadow economy and the use of cash, all of which are considered to pose a major ML risk.
- The Financial intelligence Unit (FIU) generates financial intelligence of a high order. Spontaneous case referrals regularly trigger investigations into ML, associated predicate offences or FT. Law enforcement agencies (LEAs) also seek intelligence from the FIU on a regular basis to support their investigative efforts. However, the FIU finds itself at a critical juncture as its IT system is out-dated and staffing levels are no longer adequate to cope with an ever increasing work-load. Reporting appears to be in line with Ukraine's risk profile and has resulted in a significant number of case referrals to LEAs. Ukraine has nevertheless started to take steps to further improve the quality of suspicion-based reporting.
- ML is still essentially seen as an adjunct to a predicate offence. While pre-trial investigations may be opened for ML in certain circumstances without a conviction for the predicate offence, it was widely assumed that a conviction for the predicate offence is essential before a ML case can be taken to court. The sentences for ML are almost always less than for the predicate offences and generally need to be more dissuasive in practice. The authorities have recently started aggressively restraining funds in cases of top level corruption and theft of state assets with a view to confiscation. Nonetheless, the confiscation regime does not appear to be applied consistently in all proceeds-generating cases.
- Since 2014, the Security Services have concentrated on the consequences of international terrorism involving the fight against Islamic State of Iraq and the Levant (ISIL), which has led to indictments, though no convictions as yet for FT. Financial investigations are undertaken in parallel with all terrorism-related investigations. Although Ukraine demonstrates aspects of an effective system in implementing FT targeted financial sanctions (TFS), the legal framework is still not entirely in line with international standards. No funds or other assets have been frozen under FT TFS

in Ukraine.

- The National Bank of Ukraine (NBU) has a good understanding of risk and applies an adequate risk-based approach to the supervision of banks. Major efforts have been made by the NBU in ensuring transparency of beneficial ownership of banks and in removing criminals from control of banks. The NBU has applied a range of sanctions to banks, including fines and revocation of licences. As a result, the application of preventive measures by the banking sector has been found to be broadly effective. Significant improvements are required by most other supervisory authorities in discharging their functions and by non-bank institutions and designated non-financial businesses and professions (DNFBPs) in applying preventive measures.
- Although the Unified State Register (USR) records all basic information and makes this available to the public online, the Registrar does not ensure that the basic or beneficial ownership information provided to it by legal persons is accurate or current. While this would not normally be considered a material issue, the vast majority of the private sector explained that they do rely on the USR to verify the beneficial owner (BO) of their client.
- Ukraine has been generally proactive in providing and seeking mutual legal assistance (MLA). However, a number of issues have an impact on the effectiveness of MLA rendered, particularly issues related to tipping off. Limitations noted in relation to the transparency of legal persons at the national level negatively impact Ukraine's capacity to provide comprehensive assistance.

Risks and General Situation

1. Ukraine faces significant ML risks. Corruption and illegal economic activities (including fictitious entrepreneurship, tax evasion and fraud) are the major ML threats. Organised criminality is on the rise and has a substantial impact on the overall ML risk situation. So-called conversions centres involving fictitious companies through which funds are siphoned from the real to the shadow economy are one of the prevalent ML typologies. Such centres are used to convert proceeds into cash and transfer proceeds out of Ukraine. Cash circulation is high and is considered to pose a significant threat to the financial system and economic security of the country. Turning to the risk of FT, since 2014, Ukraine has found itself used as a transit country for those seeking to join ISIL fighters in Syria. The non-profit sector is considered by the authorities to be vulnerable to FT. The sector has been misused to channel funds to terrorists and terrorist organisations.

2. The Ukrainian financial sector is bank-centric and roughly holds 80% of the assets in the financial sector. The banking services provided are generally traditional in nature and include deposits, loans, money transfers, foreign exchange and guarantees. High-risk products are either forbidden or not generally provided. The size of the shadow economy in Ukraine, which is exacerbated by the widespread use of cash, constitutes a significant ML vulnerability. Money remittances (through banks) play a significant role within Ukraine's economy. Most remittances are purportedly linked to Ukrainians working abroad sending money to their relatives in Ukraine. However, a significant portion of the remittances are conducted through informal channels.

Overall Level of Effectiveness and Technical Compliance

3. Since the last evaluation, Ukraine has taken steps to improve the AML/CFT framework. Notably, a new AML/CFT law was adopted in 2014 which, inter alia, requires the authorities to conduct a national risk assessment (NRA) with a view to identifying ML/TF risks, as well as

measures to prevent or mitigate such risks; defines measures to combat the financing of proliferation of weapons of mass destruction; introduces tax crimes as predicate offences to ML; provides for compulsory financial monitoring of financial transactions of national public officials and officials from other countries and international organisations; and improves existing procedure on the suspension of financial transactions. Amendments were also carried out to the Code of Criminal Procedure of Ukraine (CPC), which include modifications to the provisions related to jurisdictional issues in respect of Art. 209 (ML offence) of the Criminal Code (CC) and to pre-trial investigation in ML proceedings in certain cases. However, some deficiencies and uncertainties remain in Ukraine's technical compliance framework, particularly with respect to the FT offence and the TFS regime, the supervision of DNFBPs and sanctions for non-compliance.

4. The Ukrainian authorities (UAs) have demonstrated a substantial level of effectiveness in ML/FT risk understanding and domestic co-ordination to combat ML, FT and PF; as well as in using financial intelligence in ML, associated predicate offences and FT investigations. A moderate level of effectiveness has been achieved in the other areas covered by the FATF Standards, except for the investigation and prosecution of ML.

Assessment of Risks, coordination and policy setting (Chapter 2 – IO.1; R.1, R.2, R.33)

5. Ukraine has undertaken a ML/FT NRA and published a NRA report. A suitable number of private sector representatives participated in the NRA process. Ukraine has demonstrated a reasonably good understanding of its ML/FT risks although there are areas where understanding would be enhanced by taking further steps to identify and assess risk. Information sources should be increased, for example, by improving the statistical framework and increasing focus on external threats, organised crime, beneficial ownership and non-profit organisations (NPOs) and other facets of FT risk.

6. Ukraine has a substantial background in coordinating and setting five yearly strategies and annual plans to address ML/FT. It has comprehensive national coordination and policy making mechanisms, which include political commitment and which have a positive effect. These mechanisms include PF. National policies and activities are coordinated well by the FIU, and also by the MoF in relation to legislation. Both bodies are proactive. Substantial initiatives have been, and are being, introduced at the national level to address the key and other ML/FT risks. AML/CFT measures are embraced within wider "whole of Government" initiatives, Combatting corruption and ML arising from corruption is the highest priority. Examples include establishment of a national anti-corruption strategy and the establishment of the National Anti-Corruption Bureau of Ukraine NABU and the National Corruption Prosecutors Office as bodies dedicating to fighting corruption and ML arising from corruption. There are also initiatives aimed at addressing fictitious entrepreneurship and the use of conversion centres, tax evasion and ML from tax evasion, the shadow economy and organised crime.

7. Cooperation at operational level and information exchange between authorities is generally positive, particularly where the FIU is involved.

8. Some significant and positive initiatives have been undertaken by competent authorities. Examples include the NBU's very significant efforts to remove criminals from having control of banks and its development of themed onsite inspections on politically exposed persons (PEPs) risk; the high focus of the FIU on ML and in addressing risk (such as the introduction of an automated system for the prioritisation of its analysis, the successful development of complex ML cases and the

establishment of a separate team to be responsible for ensuring the effectiveness of case referrals to LEAs); the significant outreach by a number of the supervisory bodies such as the NBU and the FIU. However, there are also some areas where the objectives and activities of authorities need to be strengthened and aligned with ML/FT risks. These include pursuit by NABU of corruption-related cases systematically; more focus on the investigation and prosecution of ML and on the implementation of the confiscation framework; in relation to FT, extending the objectives and activities to cover parallel financial investigations; and more focus outside the banking sector in particular on risk based approaches to supervision following statutory moratoria on onsite and offsite inspections.

9. Areas of simplified due diligence are minor and are consistent with identified risks although the NRA and other published risk material has not led to specific requirements on enhanced due diligence (EDD).

Financial Intelligence, Money Laundering and Confiscation (Chapter 3 – IOs 6-8; R.3, R.4, R.29-32)

10. The FIU produces good quality operational analysis. Effective mechanisms allow for the proactive collection, risk-based prioritisation and analysis of financial intelligence originating from a broad range of sources, including the very high number of reports, mainly mandatory, filed by the obliged entities. Reporting appears to be in line with Ukraine's risk profile and has resulted in a significant number of case referral to LEAs. Ukraine has nevertheless started to take steps to emphasise suspicion-based reporting with a view to diminishing the number of reports and alleviating analytical resource needs, as well as making sure that financial intelligence is as reflective as possible of constantly evolving risks. Strategic analysis produced by the FIU supports the annual update of the reporting criteria, as well as LEAs investigative efforts.

11. Spontaneous case referrals regularly trigger investigations into ML, associated predicate offences or FT by LEAs, which also seek intelligence from the FIU on a regular basis to support their self-initiated investigative efforts. Cooperation among competent authorities is facilitated by a number of institutional mechanisms allowing for the timely and confidential exchange of financial information and intelligence with the relevant authorities.

12. Since 2014, the FIU has been under a growing resource strain, with diminishing resources and increasing numbers of reports to be processed. In addition, the information technology (IT) equipment needs significant updating. Inadequate resources are likely to have a negative impact on the FIU's effective functioning if not urgently addressed.

13. ML was still seen by most interlocutors met onsite primarily as an adjunct to a predicate offence. While pre-trial investigations may be opened for ML in certain circumstances without a conviction for the predicate offence, it was widely assumed that a conviction for the predicate offence is essential before a ML case can be taken to court. Some interlocutors considered that an acquittal for the predicate offence means that ML cannot go ahead. Art. 209 of the CC needs to be revised to establish beyond doubt that a conviction is not needed for the predicate offence in order to proceed with a ML case in court. Art. 209 should also clarify that in a ML prosecution underlying predicate crime may also be inferred from facts and circumstances.

14. Before 2014 ML prosecutions rarely confronted Ukraine's highest AML risks (top level corruption and theft of state assets). Prosecutions generally involved local officials/mayors, where

ML was added to indictments containing other counts (which attracted higher penalties). There remain many similar ML cases being prosecuted involving such “low hanging fruit”.

15. Since March 2014 active steps are being taken against persons in Ukraine who were connected at senior levels to the former regime. These involve complex pre-trial investigations for misappropriation and laundering of state assets. They appear to have resulted so far in 2 court convictions, 1 of which is for ML in very significant amounts.

16. It is welcome that the Specialised Anti-Corruption Prosecutor is also taking action against current senior politically exposed persons for corruption (and to some extent ML). He should routinely also focus on the ML aspects alongside corruption offences. More resources are needed for financial investigation in his office and in law enforcement generally.

17. It is important for the Prosecutor General’s Office of Ukraine to use ML offences more actively to attack the creation of fictitious enterprises, which are a high national ML risk. ML prosecutions involving these sham businesses need to result in dissuasive sentences, as Art. 205 of the CC (fictitious entrepreneurship) can only be punished administratively with fines. Art. 205 of the CC urgently needs strengthening with dissuasive terms of imprisonment.

18. The sentences for ML are almost always less than for the predicate offences and generally need to be more dissuasive in practice. Some defendants serve no prison sentences at all for the basic offence under Art. 209-1 due to the operation of Art. 69 and 75 of the CC, aimed at reform of convicted persons. The impact of these provisions should be independently reviewed. Inappropriate ML sentences should automatically be appealed by the prosecution to counter any public perception that the higher the defendant, the more lenient is the sentence.

19. Credit is given for the determined work that is now ongoing to restrain and confiscate funds in cases of top level corruption and theft of state assets, in line with national ML risks. There are now some very significant restraint orders in place in many of the cases involving high level officials of the former regime and their associates. These have necessitated complex (and far-reaching) asset tracing through accounts of numerous companies, both in Ukraine and abroad. In respect of pre-trial investigations of persons believed to be connected to the former President, it was said at the time of the onsite visit that UAH 35 billion (~EUR 1.15 billion), EUR 1 billion, apartments, cars and even islands were under restraint. The Agency responsible for Asset Recovery, which has been created, is not yet operational, so these assets are not all under management. These investigations appear to have resulted in 2 court convictions so far, one of which was for ML in very significant amounts.¹

20. Nonetheless, it is difficult to assess systematically whether the new system is fully established in practice in all proceeds-generating cases. It is unclear how regularly the new provisions are being used by the judges and how many final special confiscation orders have been made as most information on this is anecdotal. Not all ML convictions result in confiscations.

21. There are issues that still need to be addressed by the prosecution and judiciary on the practical implementation of the new Special Confiscation provisions in the courts. A workable standard of proof in confiscation proceedings on the linkages of alleged proceeds to the offences for which there are convictions needs to be established and consistently applied.

¹ On 28 March 2017 after the conviction of one high official of the former regime for ML and participation in a criminal group, funds and securities totalling UAH 34,973,266,108.65 (equivalent to EUR 1.12 billion) were confiscated under a court verdict. This decision was enforced in favour of the state budget of Ukraine on 28 April 2017.

22. There also appear to be some problems in conducting financial investigations, and a lack of resources for them across the board. More financial investigations need to be undertaken to ascertain the direct and indirect profits in all major proceeds-generating crimes, and not just in the highest profile cases.

23. The evaluators consider therefore that the new Special Confiscation regime still needs time to bed down and achieve the objectives of the CPC amendments of 2015 on a consistent basis. It is important that the opportunities provided by the new provisions on value confiscation orders and confiscation from 3rd parties are used by prosecutors and courts widely in future.

Terrorist Financing and Financing Proliferation (Chapter 4 – IOs 9-11; R.5-8)

24. Since the last evaluation by MONEYVAL in 2009, Ukraine has introduced an autonomous TF offence (Art. 258⁵) supplementing the range of terrorist-related offences in Ch. IX Criminal Code. Since 2014, Ukraine has found itself used as a transit country for those seeking to join ISIL fighters in Syria. The Security Services have concentrated on the consequences of international terrorism involving the fight against ISIL, which has led to indictments, though no convictions as yet for FT under Art. 258⁵. Parallel financial investigations are integrated with, and used to support, all terrorism-related investigations.

25. During 2015 and 2016, the Security Services uncovered the activities of 4 transnational networks operating in Ukraine, transiting FTFs from the Caucasus and facilitating their return to their home countries. 3 members of ISIL were among 69 persons detained. These 3 persons are said to be active participants in the recruitment, training and financing of the travel of fighters to Syria and Iraq. They have been referred to the Ukraine courts under Art. 258³, Art. 258⁵ (FT), Art. 263 and Art. 358 of the CC. The cases have not yet been concluded. Other significant criminal justice measures have been taken by the UAs against the remainder of the group involving, variously, other criminal offences in Ukraine (under Ch. IX, XIV and XV of the CC), extradition, and deportation. The Security Service of Ukraine (SSU) continues actively to monitor over 900 other persons with a view to FT offences.

26. Ukraine demonstrates aspects of an effective system in implementing TFS relating to terrorism and FT. Authorities, financial institutions (FIs), and most DNFBPs are aware of their respective obligations in that context and demonstrate compliance without delay. However, in addition to the lack of effectiveness of the implementation of beneficial ownership-related customer due diligence (CDD) requirements, some important technical deficiencies undermine Ukraine's ability to fulfil all its obligations under the United Nations (UN) framework. Critically, not all funds and other assets covered by the United Nations Security Council Resolutions (UNSCRs) are subject to freezing and the prohibition to make funds and other assets to designated persons is incomplete.

27. Authorities are aware of the FT risks faced by non-profit sector, which can be used for channelling funds to terrorists. However, Ukraine's understanding of risks could benefit from deeper analysis – by considering risks arising from international terrorism and by sharing the Security Service's more granular understanding of risks in the sector with other authorities, the private sector and the non-profit sector itself. Although insufficiently risk-based, a number of measures are contributing to FT risk mitigation, including registration, obligations to maintain and record a broad range of information and to issue financial statements, as well as monitoring by the State fiscal Service of Ukraine (SFS), which, despite including clear AML/CFT objectives, is focused on tax collection considerations.

28. In relation to proliferation of weapons of mass destruction (WMD), UAs have a sophisticated institutional framework to handle the transit of controlled or prohibited goods, and to monitor sanctioned entities when presented with a specific case of illicit commercial transaction or transshipment. However, the effectiveness of PF-related TFS suffers from similar deficiencies as the FT-related TFS. There is limited operational cooperation between export and customs control authorities and other competent authorities when handling PF UNSCRs. It is unclear whether adequate resources are allocated by supervisors to monitoring compliance with PF-TFS related obligations. The prevalence of cash and ubiquitous use of fictitious companies may also contribute to sanctions evasion.

Preventive Measures (Chapter 5 – IO4; R.9-23)

29. The private sector appears to have a positive and constructive relationship with both the FIU and with their respective regulators, communication and education came out as being particular strengths of this relationship.

30. The private sector's understanding of their AML/CFT obligations was demonstrably very good. However, outside of the banking sector, the understanding of the ML/TF risks facing those businesses was much weaker. The private sector understood their obligation to establish the ownership structure of their client as well as to identify and verify the ultimate beneficial owner (UBO) of the client. The resource used, almost exclusively outside the banking sector, to verify the beneficial ownership of a client is the USR. However, authorities and private sector broadly agree that the information held by the USR lacks reliability.

31. Suspicious transaction report (STR) reporting obligations are generally well understood by the private sector as are the potential offences for tipping off. Tipping off was generally agreed to include disclosure by the officer responsible for financial monitoring. However, extending those tipping off requirements to any other staff members who may be aware of a disclosure being made was mixed. In a number of cases, understanding that there needs to be controls to prevent a member of staff from disclosing that they have reported their suspicions to the officer responsible for financial monitoring, are much weaker.

32. There are some legislative gaps in respect of persons acting as nominee directors and members of Ukrainian legal persons. Where persons are acting in these capacities and are not otherwise supervised as accountants or lawyers, there is no obligation under the AML/CFT Law upon these persons to apply preventative measures. In addition, the AML/CFT Law allows for all PEPs to be derecognised three years after leaving office, this is not consistent with FATF guidance on recommendation 12.

Supervision (Chapter 6 – IO3; R.26-28, R. 34-35)

33. Very significant efforts have been made by the National Bank of Ukraine (NBU) in relation to ensuring transparency of beneficial ownership of banks and in removing criminals from control of banks; these efforts have been complemented by the Deposit Guarantee Fund. The National Securities and Stock Market Commission (SC) has made strong efforts to ensure that beneficial owners (BOs) and controllers are not criminals. However, other supervisory authorities cannot, or do not, verify whether or not relevant reporting entities (REs) are beneficially owned or controlled by criminal elements or their associates.

34. The NBU and the SC have a good understanding of ML risks in the banking and investment sectors respectively and a broad understanding of FT risks in those sectors. The National Commission for the State Regulation of Financial Services Markets (NC) has a good understanding of ML risks. Other supervisors had a basic understanding of risks or understanding was lacking.

35. The NBU is undertaking comprehensive onsite and offsite supervision for banks. It follows a largely risk based approach (RBA) to AML/CFT supervision. The NBU for non-bank licensees and other supervisory authorities have insufficient staff and, except for the NBU and the Ministry of Justice (MoJ), have been the subject of moratoria on supervision (none was in force when the evaluation team visited Ukraine); these factors have limited supervision since 2014. None of these supervisory authorities (except the NBU in a very limited way for non-banks) has been conducting routine offsite supervision. Other than the MoJ, onsite supervision outside the banking sector has been limited. Hence, outside the banking sector overall levels of supervision have not been sufficient. In addition, with the partial exception of the SC, the statutory criteria for classifying REs into risk categories and the time frames for onsite inspections mean that supervision can be only partially ML/FT risk based. The intensity of supervision between non-bank licensees by supervisory authorities other than the NBU is varied in a very limited way or not at all.

36. The NBU has applied a range of sanctions to banks, including fines and revocation of licences. It has also applied strong sanctions (prohibitions) to individuals but no other penalties. Outside the banking sector, the levels of fines are too low and only the SC has applied strong sanctions in addition to the imposition of fines. Sanctions have not been applied to individuals. There are significant technical gaps and the sanctions framework can be only partially effective.

37. The NBU has made a demonstrable difference to the level of compliance in the banking sector. While the SC has made a difference in relation to beneficial ownership and control of licensees, overall, the evidence that non-bank supervisory authorities are routinely making a comprehensive and systematic difference on levels of compliance is not strong, with two of the supervisors making no difference. Apart from supervision of the banking sector, the levels of supervision and sanctions militate against supervisors making a difference in levels of compliance by REs.

38. The large majority of supervisory authorities have undertaken outreach to promote understanding of obligations and risks. Particularly strong and positive outreach activity has been carried out by the FIU, the NBU (for banks) and the NC, while the MoF was responsible for establishing and operating a training centre until 2015 (this is now operated by the FIU). However, provision of information by the Ministry of Infrastructure and the Ministry of Economic Development and Trade is lacking.

Transparency of Legal Persons and Arrangements (Chapter 7 – IO5; R. 24-25)

39. The extent to which legal persons and legal arrangements can generally be misused for ML/TF purposes is well understood. However, no exercise has been conducted to specifically consider how legal persons established under Ukrainian law, have been used to disguise ownership or to launder the proceeds of crime.

40. There was no process or legislative power identified which obliges the authorities to ensure that all information stored on the USR is correct, accurate and up to date.

41. The USR records all basic information and makes this available to the public online, the Registrar does not ensure that the basic or beneficial ownership information provided to it by legal

persons is accurate or current. While this would not normally be considered a material issue, the vast majority of the private sector explained that they do rely on the USR to verify the BO of their client. Because the information is not being verified by the Registrar and is also not generally being independently verified by the RE, this deficiency appears to be more pervasive.

42. While the law enforcement agencies are able to levy criminal sanctions for providing false or misleading information to the USR, there are only around 1% of such referred cases being prosecuted.

International Cooperation (Chapter 8 – IO2; R. 36-40)

43. In general, Ukraine provides good quality and timely MLA in relation to investigations, prosecutions and related proceedings on ML, predicate offences and TF, as broadly recognised by its international partners. However, the effectiveness of incoming MLA, in particular in relation to asset seizure and confiscation, remains hindered by factors such as: corruption and breaches of confidentiality; weaknesses in the domestic regime for the seizure of documents; and the absence of a prioritisation system for processing requests. Ukraine is proactive in seeking MLA in relation to ML, predicate offences, particularly corruption, and FT. However, Ukraine has demonstrated a limited level of effectiveness in requesting assistance with a view to confiscation. Limitations noted in relation to the transparency of legal persons and arrangements at the national level negatively impacts Ukraine's capacity to provide the widest assistance. Based on the information available on other forms of cooperation, all competent authorities seem to exchange information with foreign counterparts for purposes of AML/CFT, including, in particular, in relation to addressing tax evasion, asset recovery and consolidated supervision.

Priority Actions

- The analysis and written articulation of ML and FT risk should be enhanced, whether by way of revising the NRA or otherwise, by:

(a) utilising more statistics and ensuring that the statistics used are robust; (b) further analysing the external threats and the threats of organised crime and beneficial ownership; (c) communication of relevant information held by the SSU on FT risks to other authorities and further analysing the threats of NPOs.

- Introduce a provision under Art. 209 of the CC which clearly states that a person may be convicted of ML in the absence of a judicial finding of guilt in respect of the underlying criminal activity and providing that the existence of the predicate offence may be established on the basis of circumstantial or other evidence without it being incumbent on the prosecution to prove a conviction in respect of the underlying criminal activity.

- More ML prosecutions and convictions in line with national ML risks are required in cases involving high level corruption, theft and embezzlement of State assets by current top officials and their associates (as well as those connected with the former regime).

- Financial investigations into the sources of alleged proceeds should be routinely undertaken in proceeds-generating cases using trained financial investigators working in parallel with the investigators of the predicate offences.

- The authorities should ensure that early restraints are routinely made in all proceeds-generating cases. In this context it should be considered whether investigators should have the power of early restraint, subject to fast tracked reviews of such restraints by the prosecutors.
- Bring the FT offence and TFS framework for FT and PF in line with international standards.
- Consider options to limit staff turnover at the FIU. This could include such proposals as career development programmes; and evaluating the remuneration packages on offer.
- All supervisory authorities should add to their existing supervisory approach by undertaking systematic offsite supervision and analysing material received so as to inform their understanding of the ML/FT risk profile of individual licensees (and of sectors) and approaches to onsite inspections, so that on-site and off-site supervision is fully based on ML/FT risk.
- Those responsible for the maintenance of the USR should take reasonable steps to verify the information submitted is correct, accurate and up to date.
- The MoJ should establish a clear system for the prioritisation of incoming MLA requests. The authorities should apply measures to ensure that the effectiveness of incoming MLA requests is not hindered by tipping off and other practices concerning provisional access to information. Improve the quality of outgoing MLA requests seeking assistance for confiscation purposes.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings (High, Substantial, Moderate Low)

IO.1 – Risk, policy and coordination	IO.2 – International cooperation	IO.3 – Supervision	IO.4 – Preventive measures	IO.5 – Legal persons and arrangements	IO.6 – Financial intelligence
Substantial	Moderate	Moderate	Moderate	Moderate	Substantial
IO.7 – ML investigation & prosecution	IO.8 – Confiscation	IO.9 – TF investigation & prosecution	IO.10 – TF preventive measures & financial sanctions	IO.11 – PF financial sanctions	
Low	Moderate	Moderate	Moderate	Moderate	

Technical Compliance Ratings (C – compliant, LC – largely compliant, PC – partially compliant, NC – non compliant, N/A – not applicable)

R.1 – assessing risk & applying risk-based approach	R.2 – national cooperation and coordination	R.3 – money laundering offence	R.4 – confiscation & provisional measures	R.5 – terrorist financing offence	R.6 – targeted financial sanctions – terrorism & terrorist financing
LC	C	LC	LC	PC	PC
R.7 - targeted financial sanctions – proliferation	R.8 –non-profit organisations	R.9 – financial institution secrecy laws	R.10 – Customer due diligence	R.11 – Record keeping	R.12 – Politically exposed persons
PC	LC	C	LC	C	LC
R.13 – Correspondent banking	R.14 – Money or value transfer services	R.15 –New technologies	R.16 –Wire transfers	R.17 – Reliance on third parties	R.18 – Internal controls and foreign branches and subsidiaries
C	LC	LC	C	N/A	LC
R.19 – Higher-risk countries	R.20 – Reporting of suspicious transactions	R.21 – Tipping-off and confidentiality	R.22 - DNFBPs: Customer due diligence	R.23 – DNFBPs: Other measures	R.24 – Transparency & BO of legal persons
C	C	C	LC	LC	LC
R.25 - Transparency & BO of legal arrangements	R.26 – Regulation and supervision of financial institutions	R.27 – Powers of supervision	R.28 – Regulation and supervision of DNFBPs	R.29 – Financial intelligence units	R.30 – Responsibilities of law enforcement and investigative authorities
PC	LC	LC	PC	C	C
R.31 – Powers of law enforcement and investigative authorities	R.32 – Cash couriers	R.33 – Statistics	R.34 – Guidance and feedback	R.35 – Sanctions	R.36 – International instruments
C	LC	PC	C	PC	LC
R.37 – Mutual legal assistance	R.38 – Mutual legal assistance: freezing and confiscation	R.39 – Extradition	R.40 – Other forms of international cooperation		
LC	LC	LC	LC		

MUTUAL EVALUATION REPORT

Preface

44. This report summarises the AML/CFT measures in place in Ukraine as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Ukraine's AML/CFT system, and recommends how the system could be strengthened.

45. This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the evaluation team during its on-site visit to the country from 27 March to 8 April 2017.

46. The evaluation was conducted by an assessment team consisting of:

- Mr John Ringguth – Scientific Expert, MONEYVAL (legal expert)
- Mr Sharon Friedman – Head of Economic Crime Division, State Attorney, Israel (legal expert)
- Mr Amar Salihodzic – Senior Policy Advisory, Financial Intelligence Unit, Liechtenstein (law enforcement expert)
- Ms Julia Friedlander – Senior Policy Advisor for Europe Office of Terrorist Financing and Financial Crimes, Department of the Treasury, USA (expert on targeted financial sanctions)
- Mr Dan Johnson – Senior Manager of Policy & Authorisations, Financial Services Authority, Isle of Man (financial expert)
- Mr Richard Walker – Director of Financial Crime Policy and International regulatory Advisory, Policy Council of the States of Guernsey (financial expert)

MONEYVAL Secretariat

- Mr Michael Stellini – Head of AML/CFT Monitoring and Training Unit
- Ms Astghik Karamanukyan – Administrator
- Ms Solene Philippe – Administrator
- Mr Panagiotis Psyllos – Programme Assistant

47. The report was reviewed by Mr Daniel Azatyan (FIU Armenia), Mr Gabor Simonka (FIU Hungary) and the FATF Secretariat.

48. Ukraine previously underwent a MONEYVAL Mutual Evaluation in 2009, conducted according to the 2004 FATF Methodology. The 2009 evaluation and the 2015 follow-up report have been published and are available at <http://www.coe.int/en/web/moneyval/jurisdictions/ukraine>.

49. That Mutual Evaluation concluded that the country was compliant with 2 Recommendations; largely compliant with 12; partially compliant with 27; and non-compliant with 6. Ukraine was rated compliant or largely compliant with 13 of the 16 Core and Key Recommendations. Ukraine was placed under the enhanced follow-up process immediately after the adoption of its 3rd Round Mutual Evaluation Report and was moved to biennial updates in September 2015.

CHAPTER 1. ML/TF RISKS AND CONTEXT

50. Located in eastern Europe, Ukraine is the second largest country on the continent, covering over 603,000 square kilometres. Ukraine shares borders with Russia in the east, Belarus in the north, Poland, Slovakia and Hungary in the west, Romania and Moldova in the southwest, and the Black Sea and Sea of Azov to the south. Kyiv is the capital of Ukraine. The population of Ukraine is 42.7 million (2015 State Statistics Service estimate as of January 01, 2016). Ukraine's GDP is about USD 90.62 billion (2015 World Bank estimate) and its official currency is the Hryvnia (UAH).

51. Ukraine is a republic with a parliamentary-presidential form of government. The President of Ukraine is elected for a five-year term and is the Head of State. The constitution provides the President with strong executive powers, such as issuance of decrees, appointment of presidential representatives to oversee policy implementation by local authorities and the power to appoint the Prime Minister upon confirmation by Parliament. The day-to-day administration of the government rests in the hands of the Prime Minister, who heads the Cabinet of Ministers (CoM). Legislative power is vested in the Parliament. A unicameral parliament (Verkhovna Rada) consists of 450 deputies. The parliamentarians are elected for a five-year term in free, multi-candidate elections. Ukraine's legal system is based on civil law principles.

52. Ukraine is a member of the United Nations, the Organisation for Security and Cooperation in Europe, the World Trade Organisation, the Council of Europe, the European Bank for Reconstruction and Development, the World Bank, the International Monetary Fund, the Organisation of the Black Sea Economic Co-operation and other international organisations.

ML/TF Risks and Scoping of Higher-Risk Issues

Overview of ML/TF Risks

ML Threats

53. Corruption is one of the major ML threats in Ukraine generating substantial amounts of proceeds². According to Transparency International, corruption in Ukraine is widespread, permeating all levels of society. The public administration, particularly the civil service, judiciary, the prosecution and the police, are especially vulnerable to corruption. Reports issued by the Group of States against Corruption (GRECO) and other bodies of the Council of Europe also highlight the extent of corruption in Ukraine and the lack of independence in judiciary and police (customs service included).

54. The NRA identifies illegal economic activities as another major ML threat³. White collar crime has exceeded other more conventional proceeds-generating offences, such as drug trafficking, in terms of threat⁴. Indeed, the top five predicate offences in the period under review were fictitious entrepreneurship⁵, tax evasion, fraud, embezzlement, and abuse of power⁶.

² NRA p. 42

³ NRA p. 41

⁴ Ibid p. 42

⁵ Fictitious entrepreneurship is defined by article 205 of the CC of Ukraine and refers to sham business, that is the establishment or acquisition of businesses entities (legal persons) to cover illegal activities or engage in prohibited types of business. The "enterprise" – i.e. firm, or company or business – is not fictitious in the sense

55. Inextricably linked to fictitious entrepreneurship are the so-called conversion centres, which present a key ML risk. Such centres are used by individuals to take proceeds out of Ukraine or to convert proceeds into cash. Conversion centres are considered to be hubs through which funds are siphoned from the real economy to the shadow economy. Companies are often used as part of the conversion centre process⁷. The misuse of companies for the conversion of proceeds is also facilitated by the gaps in the verification of beneficial ownership system⁸, since approximately 20% of Ukrainian companies fail to provide accurate information to the registry. The NRA also underlines that there is no procedure for detection of non-provision and verification of credibility of the information on the end beneficiary owners (controllers) provided by legal persons to the state registrars.

56. Organised crime is also a factor with a substantial impact on the overall ML risk situation in Ukraine. According to the NRA, international Organised Crime Groups (OCGs) recently have shown a growing interest in Ukraine in the spheres of ML and trafficking in human beings (THB)⁹, weapons, hazardous materials and narcotic substances.¹⁰ Cybercrime is also an area of interest.¹¹ It is said that due to an increase in illegal migration, ethnic organised crime is on the rise.¹² The growing presence of organised crime in Ukraine has also been reinforced by the high corruption levels within the state services. In fact, corruption has helped feed the upsurge of organised crime and its extension into politics. Linkages between political and administrative elites and criminals are not a rare phenomenon. As a result, the Ukrainian state faces difficulties to function effectively.¹³

57. The high level of cash circulation is considered as a major risk in the NRA. In conjunction with the strong outflows of cash, weak border controls and very limited number of investigations on ML cash couriers it causes a number of negatives consequences to the financial system of the country and a significant threat to its economic security¹⁴.

of having no existence at all, but is a sham, which is not what it purports to be, and whose real functions are not what they purport to be. Such entities can perform a variety of functions in wrongful economic dealings. In this particular context, they can be used to record spurious indebtedness to be netted-off against earnings for tax purposes, or they can be introduced into circular transactions in which money changes its exchange value; etc.

⁶ Statistics on predicate offences are included in the NRA under figure 1.5.2

⁷ NRA p. 42

⁸ NRA p. 58

⁹ According to the 2014 Report of the Council of Europe's Group of Action against Trafficking in Human Beings (GRETA) on Ukraine 89% of the victims in THB are subject to labour exploitation, 8% subject to sexual exploitation, and 3% subject to forced begging and organ removal.

¹⁰ NRA p. 41. According to the UNODC Annual Drug Seizures data in the period 2011-2014 more than 23 tons of cannabis plants were seized by the UAs. See <https://data.unodc.org/>. Also, in 2014 only the European Monitoring Centre for Drugs and Drug Addiction reported the destruction of 1 584 illegal poppy and 1 773 illegal cannabis crops.

¹¹ Ibid p. 181. Also, the 2012 Report of the Data Protection and Cybercrime Division of the Council of Europe has identified the following crime types in Ukraine: GSM network fraud, internet auction fraud, payment card fraud and the use of compromised bank account details or accounts in electronic payment systems.

¹² Ibid p. 41

¹³ An example of the OCGs' influence on state mechanisms is the inefficient investigation of organised crime as underlined by the NRA (p. 152).

¹⁴ Ibid p. 70

FT Threats

58. Turning to the risk of FT, since 2014, Ukraine has found itself used as a transit country not only for displaced persons, but also for those seeking to join ISIL fighters in Syria. The SSU has concentrated on the consequences of international terrorism involving the fight against ISIL, which has led to indictments, though no convictions as yet for FT. The non-profit sector is considered by the authorities to be vulnerable to FT. The NRA rates the risk of NPOs as one of the major risks (albeit not one of the highest risks). According to the NRA, the main way of unlawful use of non-commercial organisations is channelling the funds to terrorists by non-profit organisations. Their special status (charity status, tax exempt) creates ideal conditions for the non-traceability of illegal funds and their use for territorial transfer of such funds through branches or to provide material and technical support to terrorists.

59. In the NRA, the Ukrainian authorities (UAs) consider acts of material support to the events in eastern Ukraine as giving rise to FT risks. According to information provided by the UAs, during 2014-2016, more than three hundred criminal proceedings were initiated by the SSU under Art. 258⁵ (FT offence) of the CCU in relation to these acts and 11 persons were convicted. As the formal applicability of the FT Convention to domestic events in the eastern part of Ukraine is currently sub judice in the case pending before the International Court of Justice¹⁵, the evaluation team has focused its assessment on the activities of the UAs to counter the financing of international terrorism, which indisputably fall within the scope of the FT Convention, and consequently also the FATF Recommendations.

Country's risk assessment

60. Ukraine published its first NRA in 2016. The NRA report considers both ML and FT. The State Financial Monitoring Service (FIU) co-ordinated the development of the NRA with the assistance of the Organisation for Security and Co-operation in Europe. Representatives of all the participants of the national financial monitoring system participated in the analysis and other work leading up to the final report. Higher risk areas and institutional gaps were identified as a result of the process and an action plan was drawn up by the authorities at the end of 2016 to address those risks and gaps, although it has not been finalised yet.

61. Sources of information for the NRA include the knowledge of the UAs, legislative instruments in Ukraine, some reports generated by authorities inside Ukraine (the SFS and the NBU) and outside the jurisdiction, and some (mostly Ukrainian) websites.

62. The NRA methodology is unique to Ukraine. It identifies a range of external and internal threats, divided into thematic groups, and specifies thirty-seven risks arising from them. Each risk is allocated a level of potential consequence (a number on a designated scale) which could arise from it and a separate probability level (a number on a designated scale) of that consequence occurring. Vulnerabilities are included within the analysis of threat, consequence and risk. The combination of consequence and probability generates an overall numerical risk level. This is reduced to a net risk level in each case by means of a proxy (a number on a designated scale) for the level of effectiveness of available measures present in the system for that risk.

¹⁵International Court of Justice, Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation).

63. Each risk therefore has a net risk level, which represents the NRA's conclusion for that risk. The 37 risks are divided into four risk reduction levels (i.e. priorities), namely high (nine), major (22), moderate (five) and minor (one). These four levels allow for some prioritisation of risks within each level as each risk has a net risk level. The nine high categories have net risk levels ranging from 16 (3 risks) as the highest to 12 (6 risks) as the lowest. The net risk levels represent the NRA's conclusions.

64. The NRA contains a general overview on the Ukrainian economy, data on the financial/ non-financial sectors and an overview of the risks in the relevant sectors. The risk factors were identified on the basis of a qualitative and quantitative analysis of industry questionnaires, statistical information of competent authorities and information from various international organisations such as Transparency International Ukraine, Political Risk Services, International Centre for Peace Studies, Peace Fund, and Economist Intelligence Unit, Ukrainian Sociology Service etc.

Scoping of Higher Risk Issues

65. The assessment team identified areas which required an increased focus through an analysis of information provided by the UAs, including the NRA, and by consulting various open sources.

66. **Corruption:** The assessment team sought to determine the extent to which the efficiency of the criminal justice system has been dented by corruption. Discussions took place with the relevant officials on the effectiveness of the measures that have been instituted to fight corruption and related ML and the challenges that LEAs face in effectively curtailing this phenomenon. The issue of the number of ML investigations/prosecutions/convictions in respect of those that alleged to have laundered/launched on behalf of politically exposed persons (PEPs)/high level officials arrested in the aftermath of the Euromaidan uprisings and in relation to those presently in office, also received considerable attention. The issue of STRs processing (in 2015, 20% of all STRs are related to PEPs) was explored.

67. **Organised Crime:** The assessment team explored the extent to which ML related to OCGs is prioritised by law enforcement (especially 3rd party, foreign predicate-related and stand-alone ML) and the manner in which these cases are investigated and prosecuted. In addition, the application of specific measures targeting cash-conversion centres was discussed with the authorities, since according to the NRA, are commonly used by OCGs to convert non-cash resources into cash with the assistance of banks, lawyers and other professionals¹⁶.

68. **Economic crimes:** As noted previously, economic crimes have surpassed more conventional proceeds-generating crimes such as drug trafficking in Ukraine. The assessment team therefore explored whether law enforcement objectives and activities have evolved to address these emerging threats, especially those of the Department for the Protection of the Economy within the National Police.

69. **Mutual legal assistance (MLA) and international cooperation:** Both ML and FT have a significant cross-border element in Ukraine. The assessment team paid particular attention to the existence of robust MLA mechanisms and other forms of international cooperation, as well as the manner in which UAs provide MLA and co-operate with their foreign counterparts and whether they proactively seek international assistance.

¹⁶ NRA p. 42, see also http://www.graham-stack.com/?page_id=944

70. **Shadow economy and use of cash:** The shadow economy accounts for a very significant part of the gross domestic product (GDP)¹⁷ in Ukraine. Thus the level of cash in circulation is very high¹⁸. Taking into account the widespread use of cash and the fact that tax evasion is one of the most significant ML threats in Ukraine, discussion were held with the tax authorities on the measures to mitigate these risks.

71. **Formal and informal money remittances:** Given the important role played by incoming formal and informal remittances¹⁹ in Ukraine's economy and the possibility that these are misused for ML and FT, the effectiveness of preventive measures by banks and supervision received particular attention by the assessment team.

Materiality

72. The Ukrainian financial sector is bank-centric. The share of the banking system in total financial system assets is roughly 80%. The banking services provided are generally traditional in nature and include deposits, loans, money transfers, foreign exchange and guarantees. High-risk products are either forbidden or not generally provided. Only 0.5%-1% of the banks' customers are classified as higher-risk (such as PEPs, NPOs, natural persons involved in large cash transactions, natural and legal persons conducting unusual transactions, customers from higher-risk countries, etc.).

73. The size of the shadow economy in Ukraine, which is exacerbated by the widespread use of cash, constitutes a significant ML vulnerability. According to official sources, the size of the shadow economy in the country is around 42% of the GDP and the proportion of cash in the supply of money is around 30%.²⁰ Other reasons for the high circulation of cash include limited access to cashless settlements and low population awareness/confidence in the national currency and the financial system, both of which significantly contribute to financial exclusion²¹.

74. Money remittances play a significant role within Ukraine's economy. For instance, incoming remittances totalled USD 6.5 billion in 2014.²² Most remittances are purportedly linked to Ukrainians working abroad sending money to their relatives in Ukraine.²³ A significant portion of the remittances are conducted through informal channels.²⁴ The main sending countries are Czech Republic, Germany, Italy, Russia and the United States.²⁵

¹⁷ According to the NRA, the shadow economy comprised 35% of the official GDP in 2013 and 41% in 2014, although it is purportedly generated by legitimate trade and business rather than criminal enterprises

¹⁸ NRA p. 33

¹⁹ For instance, incoming remittances totalled USD6.5 billion in 2014. See

<http://www.bank.gov.ua/doccatalog/document?id=80651>

²⁰ MEDTU official web-site "Shadow Economy Trends in Ukraine, 2015", available at:

<http://www.me.gov.ua/Documents/List?lang=uk-UA&id=e384c5a7-6533-4ab6-b56f-50e5243eb15a&tag=TendentsiiTinovoiEkonomiki>. See also, NRA p. 33

²¹ NRA p. 33

²² <http://www.bank.gov.ua/doccatalog/document?id=80651>

²³ http://www.iom.org.ua/sites/default/files/iom_migration_as_an_enabler_of_development_in_ukraine.pdf

²⁴ Ibid

²⁵ <http://www.bank.gov.ua/doccatalog/document?id=80651>

Structural Elements

75. The key structural elements which are necessary for an effective AML/CFT regime are generally present in Ukraine. There is a high-level commitment to address AML/CFT issues. AML/CFT policy-making and coordination is conducted through the FIU. The activities of the FIU are regulated and coordinated by the CoM through the Minister of Finance. Nevertheless, Ukraine is regarded as a politically unstable country.²⁶ This has had a negative impact on social stability and economic development in the country, which has created favourable conditions for both ML and FT to materialise.

Background and other Contextual Factors

76. Corruption is endemic and permeates all levels of the public administration to varying degrees²⁷. This seriously undermines public confidence in the civil service and the criminal justice system and encourages criminals to act with impunity²⁸. In the 2016, Transparency International Corruption Perception Index (CPI) Ukraine ranks 131st out of 176 countries. The establishment of the Specialized Anti-Corruption Prosecutors Office, in late 2015, and the National Anti-Corruption Bureau, in late 2014, brought about some progress in the fight against corruption both in terms of prevention and evidence.

77. The level of financial inclusion is considered as medium, with 53% of the adult population maintaining an account at a formal financial institution.²⁹ The NBU has published a lot of material and conducted awareness-raising campaigns especially on consumer protection. Information on basic account features, account switching information, information on types of accounts available and account services is frequently disseminated to the public at large. However, distrust in the formal financial sector remains an issue and the use of cash is still widespread. Furthermore, the Ukrainian legislative framework encourages the establishment of credit unions which cater to lower income persons which further supports the promotion of financial inclusion within Ukraine.

AML/CFT strategy

78. The manner in which AML/CFT strategies are developed and implemented is described in par. 82.

Legal & institutional framework

79. The AML/CFT legal and organisational framework in Ukraine is principally governed by the AML/CFT Law, along with acts of the CoM, FIU acts and other government agencies' acts. The AML/CFT Law is supplemented by certain provisions in the CC, the CPC, the Code of Administrative Proceedings of Ukraine, the Code of Administrative Offenses of Ukraine, the Civil Code of Ukraine,

²⁶ The NRA states that, according to an analysis based on data from, *inter alia*, the State Statistics Service of Ukraine, World Bank and the International Centre for Peace Studies, the political stability indicators in Ukraine in the past 10 years have barely reached the level of 50%.

²⁷ NRA p.17 – 21

²⁸ It is to be noted, however, that various country-wide measures have been instituted in recent years to fight corruption.

²⁹ <http://databank.worldbank.org/data/reports.aspx?source=1228>

the Law of Ukraine “On Banks and Banking Activities”, the Law of Ukraine “On Insurance”, the Law of Ukraine “On State Regulation of the Securities Market in Ukraine”, the Law of Ukraine “On Financial Service and State Regulation of Financial Services Market” and other financial sector laws.

80. Since the last evaluation, Ukraine has taken steps to improve the AML/CFT framework. Notably, a new AML/CFT law was adopted in 2014 which, *inter alia*, requires the authorities to conduct a NRA with a view to identifying ML/FT risks, as well as measures to prevent or mitigate such risks; defines measures to combat the financing of proliferation of weapons of mass destruction; introduces tax crimes as predicate offences to ML; provides for compulsory financial monitoring of financial transactions of national public officials and officials from other countries and international organisations; and improves existing procedure on the suspension of financial transactions. Amendments were also carried out to the CPC, which include modifications to the provisions related to jurisdictional issues in respect of Art. 209 (ML offence) of the CC and to pre-trial investigation in ML proceedings in certain cases.

81. The main agencies involved in Ukraine’s institutional structure to implement its AML/CFT regime are the following:

82. **The Council on Prevention and Counteraction to the Legalisation (laundering) of the Proceeds from Crime, Terrorist Financing, and Financing of Proliferation of Weapons of Mass Destruction (AML/CFT Council)** was set up to coordinate the activities of various authorities in the fight against illegal financial flows and the proliferation of weapons and terrorism. The AML/CFT Council is headed by the FIU and comprises representatives of all government agencies involved in AML/CFT and representatives of self-regulatory organisations. The AML/CFT Council participates in the drafting of legal acts for the implementation of international standards in the fight against ML/FT, including the FATF standards. It also prepares action plans to combat illegal finance and submits recommendations and proposals to the CoM.

83. **The State Financial Monitoring Service (FIU)** is an administrative-type of FIU and has the status of an independent central executive agency. It is the leading authority in the AML/CFT system in Ukraine and is empowered to implement and coordinate the national AML/CFT policy. It conducts typical FIU activities but also supervises real estate agents. According to its statute, the activities of the FIU are regulated and coordinated by the CoM through the Minister of Finance.

84. **The Prosecutor General’s Office of Ukraine (PGOU)** supports the prosecution in court on behalf of the state; represents the interests of individuals or the state in court in the cases stipulated by law; supervises detective operations, inquiries and pre-trial investigations; supervises the enforcement of court judgments delivered in criminal cases, as well as in application of other coercive measures related to restraint of individual personal liberty. In 2015, the Specialised Anti-Corruption Prosecutor’s Office (SAPO) was established within the structure of the PGOU. SAPO is an independent structural unit of the PGOU. The main tasks and functions of SAPO include supervising pre-trial investigations conducted by the National Anti-Corruption Bureau of Ukraine (see below).

85. **The National Police of Ukraine (NP)** is under the command of the Minister of Internal Affairs. The NP is responsible for police services, state migration and state border services. Its main functions include, *inter alia*, undertaking the necessary operative-investigatory measures for the prevention, detection and investigation of crime, protection of public and private property, and maintenance of law and order. The departments within the NP responsible for the pre-trial investigation of ML are mainly the Department for the Protection of the Economy, Department

responsible for Combatting Cybercrime, Department responsible for Combatting Drug Crimes, Department responsible for Combatting Human Trafficking.

86. **The Security Service of Ukraine (SSU)** is a special-purpose law-enforcement agency, which is entrusted with the security of the state and is subordinated to the President of Ukraine. The SSU is the only law enforcement body responsible for the investigation of FT offences. The Main Directorate for Combating Corruption and Organised Crime is also responsible for related ML cases.

87. **The State Fiscal Service of Ukraine (SFS)** is responsible for the implementation and submission of proposals to the MoF concerning state tax and customs policy as well as state policy related to law enforcement in taxation and customs control. In accordance with its powers, provided by law, the SFS, inter alia, controls the transfer of taxes, fees, customs duties and other charges to the public budgets and state specialised funds. Since 2015, its structure includes the Department for Combating the Laundering of Criminal Proceeds and is responsible for the pre-trial investigation of ML related to predicate offences falling within the remit of the SFS.

88. **The National Anti-Corruption Bureau of Ukraine (NABU)** is a state law enforcement agency with the key objective of preventing, exposing, stopping, investigating and solving corruption-related offences committed by high officials, and averting new ones.

89. **The National Bank of Ukraine (NBU)** is a specialised state institution whose main responsibility is to ensure the external and internal stability of the national currency. NBU has broad regulatory, licensing and supervisory functions in the banking sector under the Laws on the NBU and On Banks and Banking. NBU issues licenses for the establishment and operation of foreign currency exchange offices, as well as for MVTs, which have to perform their activities through a bank. MVTs also need to be registered with NC. As of April 1, 2017, the actual number of the NBU employees was 5440. 152 of them, the employees of the Financial Monitoring Department, were directly involved in the AML/CFT area.

90. **The National Securities and Stock Market Commission (SC)** is authorised to determine and implement the securities market state policy. The SC is the licensing and supervisory authority responsible for entities that perform professional stock market activities in the country: securities traders, asset management institutional investors, depository institutions, stock exchanges, persons exercising clearing activity and Central depository of securities. 7 employees are responsible for AML/CFT matters.

91. **The National Commission for the State Regulation of Financial Services Markets (NC)** is responsible for the implementation of a unified policy on the provision of financial services and for the registration, licensing and supervision of credit unions, leasing companies, pawnshops, insurance companies, pension funds and companies, financial companies and other institutions whose exclusive activity is to provide financial services. The division responsible for monitoring compliance with AML/CFT requirements comprises 5 employees. The division is a part of the department responsible for the development of financial services markets and international cooperation. On-site, the evaluation team was informed that the NC was expected to be dismantled in the course of 2017 and its functions transferred to the NBU and the SC.

92. **The Ministry of Economic Development and Trade (MEDT)** regulates and supervises commodity and other exchanges involved in financial transactions with commodities. Since 2015, MEDT's Methodological Support Unit of the Department of the State Property Management and Industrial Development, has been in charge of AML/CFT issues and comprised 7 employees.

93. **The Ministry of Infrastructure (MoI)** regulates and supervises the activities (including AML/CFT) of “Public JSC” Ukrainian Postal Office”, which is the state enterprise licensed by the National Commission on the Issues of Communication Regulation in Ukraine for performing postal transfers. AML/CFT-related tasks and functions are performed by the Unit for Internal Investigation, Corruption Prevention and State Financial Monitoring, which comprises 8 staff members. The post has a general license from the NBU to conduct currency transactions.

94. **The Ministry of Finance (MoF)** is responsible for formulating and implementing state policy on AML/CFT matters. It also regulates and supervises lotteries and gambling, traders in precious metals and stones, auditors, auditor firms, individual entrepreneurs who provide accounting services (except for persons that provide services under employment relations). There are 5 employees engaged in AML/CFT matters at the MoF.

95. **The Ministry of Justice (MoJ)** is the national executive body responsible for drafting legislation in Ukraine. Within the AML/CFT framework, the MoJ is responsible for the state regulation and supervision of notaries, barristers, barrister bureaus and associations and business entities that provide legal services (except for persons that provide services under employment relations). Three persons are entrusted with AML/CFT duties at the MoJ. The MoJ is also responsible for MLA.

96. **The Ministry of Foreign Affairs of Ukraine (MFA)** is a national executive body in charge of formulating and implementing the Government’s policy in the area of foreign affairs. Within the AML/CFT framework, the MFA is responsible for submitting proposals to committees of the UN Security Council to include/remove natural or legal persons to its sanctions lists. In addition, the MFA coordinates the conclusion and implementation of international treaties, coordinates membership of the country (and of its representative bodies) in international organisations, and regularly updates competent national authorities on the UN Security Council Resolutions in connection with FT and PF.

97. **The Deposit Guarantee Fund (DGF)** is responsible for protecting the rights and interest of bank depositors. The main responsibilities of the DGF are to ensure the proper functioning of the deposit guarantee system and the resolution of failed banks. All licenced banks are members of the DGF. The DGF has established a department of illegal activities to detect actions of a criminal or civil nature which have taken place in banks in administration or liquidation.

Financial sector

98. One of the Government’s priorities since 2014 has been the stabilisation and restructuring of the national financial system in order to improve its competitiveness and compliance with international standards and regain public confidence. The process has been supported by international technical cooperation programmes. This has notably included the “cleaning up” of many insolvent banks and the nationalisation of the largest national bank, Privatbank, in December 2016.

99. The Ukrainian banking system, which dominates the country’s financial sector, is a two-tier structure consisting of the NBU and state and commercial banks. As of April 1, 2017, 182 banks were registered in the State Register of banks of Ukraine. 95 of them have a license³⁰, 3 are recognised as insolvent, and 87 under liquidation. The value of total banking assets was estimated at UAH 1,737

³⁰ Taking into account 1 bank, which is being sanitised.

billion in December 2016 (EUR 61 billion). The nationalisation of Privatbank has resulted in an increase in the share of the state-owned banks in net-assets (51.3%). There has been a significant decline in the number of banks, from 147 solvent banks in 2014 to 93 in January 2017. The concentration of the sector thus has increased, with the top 5 banks representing 56.1% of the sector's net assets in December 2016 (40% in 2013)³¹. The withdrawal of banks from the market and the optimisation of branch networks by the two largest banks have also led to a significant fall in the number of branches of the past 3 years, from 19,300 in December 2013 to 10,300 in December 2016³².

Table 1: Entities licensed by the NBU

	2010	2011	2012	2013	2014	2015	2016	01.04.2017
Licensed Banks	176	176	176	180	163	120	100	95
Currency Exchange Offices	207	233	184	186	166	135	5	5
MVTS	29	29	31	38	46	47	39	30

100. As of 1 April 2017, banks with foreign equity capital accounted for 34,6% of the bank system capital, with the foreign capital share being mainly from the Russian Federation (20%), Luxemburg (3,6%), Cyprus (4%), Hungary (1,4%) and Austria (1%).

101. As of 31 December 2016, the total assets of financial companies amounted to UAH 67,401.4 million (~EUR 2,209.62 million). The total assets of insurance companies amounted to UAH 56,075.6 million (~EUR 1,838.33 million), the total assets of credit unions amounted to UAH 31,962.3 million (~EUR 1046.64 million).

102. As of 31 December 2016, the following non-bank financial institutions were registered with the State Register of financial institutions by the National Commission for State Regulation of Financial Services Markets:

- Insurance companies and brokers: 367
- Credit institutions: 621. This included 462 credit unions, 130 other credit institutions and 29 legal persons of public law.
- Pawnshops: 469
- Financial companies: 650³³
- Non-government pension funds: 64
- Administrators of non-government pension funds: 22

103. As regards non-banking financial institutions (NBFIs) supervised by the National Securities and Stock Market Commission (NSSMC), as of 31 December 2016, there were:

- 300 asset management companies;
- 302 licence holders conducting securities trading
- 291 licence holders conducting brokerage activities;

³¹ NBU, *Banking Sector Review*, February 2017

³² NBU, *Banking Sector Review*, February 2017

³³ These entities carry out the following types of activities: lending, including financial loans; financial leasing; factoring; guarantees and warranties; administration of financial assets for the purchase of goods in groups; management of building financing funds; management of real estate funds.

- 278 licence holders conducting dealership activities;
- 51 licence holders conducting underwriting;
- 24 licence holders conducting securities management activities;
- 1 licence holders conducting mortgage management activities;
- 8 licence holders conducting activities on the organisation of trade in the stock market.

DNFBPs

104. The sector is dominated by lawyers, notaries and accountants. Lawyers are regulated by the Law on Advocacy, while state or private notaries operate in accordance with the Law on Notaries and accountants are regulated by the Law on Business Accounting and Financial Reporting as well as the Provisions on Organisation of Business Accounting and Financial Reporting in Ukraine approved by the CoM. Auditors and accountants are registered as entrepreneurs. Private notaries, lawyers and arbitration managers who are not registered as individual entrepreneurs are registered as persons engaged in independent professional activity with the law administration and have to receive a certificate confirming their right of an individual to conduct independent professional activity from the responsible government authorities. Advocates who acquired the right to advocacy in Ukraine are entered in the Unified Register of Advocates of Ukraine which is operated by the Bar Councils.

Table 2: Number of DNFBPs

DNFBP	2010	2011	2012	2013	2014	2015	2016
Real estate agents*	57	160	190	205	193	195	179
Entities which carry out trading in cash of precious metals and precious stones and products from them*	4	4	5	4	4	4	5
Notaries	6760	6960	7089	7226	6944	6811	6604
Lawyers*		64	68	69	70	70	69
Entities that provide legal services*		71	85	87	86	90	90
Auditors, audit companies*	23	55	57	59	60	73	74
Accountants*	7	12	10	10	10	11	13
Commodity exchanges*	251	261	302	306	315	319	324
Economic entities that conduct lotteries*	3	6	7	11	11	10	10
Postal operators*	4	4	4	6	6	6	6
Total	7139	7674	7884	8052	7769	7674	7460

*information on entities registered with the FIU (not taking into account the separated units)

Preventive measures

105. At the time of the 3rd round mutual evaluation, whereas all types of FIs covered by the FATF Recommendations were found to be designated entities under Ukraine's AML/CFT legislation, DNFBPs only included casinos. Although the Law "On the prohibition of gambling business in Ukraine" (2009) prohibited gambling, casinos and virtual casinos in the country, the new AML/CFT Law (2010) retained "entities carrying out activities pertaining to lotteries and gambling, including casinos, electronic (virtual) casinos" as part of the designated entities. The successive new AML/CFT Laws (2010 and 2015) also included all DNFBPs as defined by the FATF Recommendations, except for a number of TCSP activities the provision of which is not provided for by Ukrainian law.

106. The cornerstone of the AML/CFT preventive measures is the Law of Ukraine "On prevention and counteraction to legalisation (laundering) of proceeds from crime or terrorist financing" (AML/CFT Law). The AML/CFT Law was adopted in 2002, and amended several times, before it was replaced by a new AML/CFT Law in 2010, which took into account the recommendations from the 2009 Moneyval mutual evaluation; relevant international conventions and standards; and lessons drawn from experience on AML/CFT issues gathered in previous years. The new law expanded the list of reporting entities (REs) and enhanced preventive measures. On 6 February 2015, a new law "On prevention of legalisation (laundering) of proceeds from crime and terrorism financing and the financing of proliferation of weapons of mass destruction" came into force. The law took into account the 2012 FATF Recommendations and, *inter alia*, further expanded the scope of designated entities and enhanced preventive measures (in relation to PEPs, customer beneficial ownership, risk-based CFF measures...) and designated entities' responsibility of banks for violation of AML/CFT requirements. The law also amended the legislation on some categories of REs, notably in relation to the articulation between professional secrecy and AML/CFT reporting obligations. The AML/CFT Law is supported by a number of laws governing specific categories of designated entities (Laws "On Banks and Banking Activity", "On Credit Unions", "On Securities and Stock Market", "On Financial Services and State Regulation of Financial Markets", "On Payment Systems and Money Transfer", "On Notaries", "On Accounting and Financial Reporting", etc.). A number of resolutions developed by the FIU and adopted by the Government, as well as by-laws issued by the respective AML/CFT regulators, provide more detailed obligations for the implementation of the aforementioned laws. The provision of guidance by supervisors is part of the missions the AML/CFT Law has assigned to them.

107. The AML/CFT Law now appears to have addressed many gaps in preventive measures highlighted in the 2009 mutual evaluation. A number of deficiencies remain, as noted in the TC Annex.

Legal persons and arrangements

108. The main laws governing the creation and regulation of legal persons in Ukraine are the Civil Code, the Commercial Code and the Laws of Ukraine "On Business Companies", "On State Registration of legal persons, Private Entrepreneurs and Public Formations" (hereafter "Law on Registration"), "On Securities and Stock Market" and "on Joint Stock Companies". Legal personality is granted upon registration with the Unified State Register of legal persons, Private Entrepreneurs, and Civil Associations (USR). The USR, set up in Since 1 July 2004, is a single state information system, which registers information on legal persons, individual entrepreneurs and public formations that do not have legal personality. Data in the USR is open and public (except for registration numbers of tax payers cards and passport details) and only in few limited cases payment is required. State authorities and their officials receive information from the USR free of charge for the purpose of exercising their powers specified by law, exclusively in electronic form through an electronic portal.

109. Legal persons are either "Private Law" or "Public Law" entities. "Private Law legal persons" must be organised on the basis of constituent documents and can be established and operate under the model statute in the manner specified by law. "Public Law legal persons" can be established on the basis of a regulatory Act by the President of Ukraine, the state power authority, or the local self-government body. Foreign companies or other legal persons established under the laws of another

jurisdiction can conduct economic activities in Ukraine through branches or permanent establishments. Branches must be registered with the USR.

110. As of 01.07.2017, according to information from the State Statistics Service of Ukraine, there were 1,207,282 registered legal persons, including 663 foreign legal persons.

111. The most common form of legal persons in Ukraine is the company. There are three main categories of companies under Ukraine's law:

- The most popular type of company is the *limited liability company*. Established by one or up to 100 persons, its capital is divided into shares of the amount specified by its charter. Members are not liable for the company's obligations and bear risks of loss connected with the company activity only up to the amount of their contribution.
- A *joint stock company* is entitled to issue shares (the issuance of bearer shares has been prohibited since 2006). Its capital is divided into a definite number of shares of the same nominal value certifying corporate rights to the company. The liability of members is limited to the unpaid amount of their shares. A joint stock company can be public (with shares listed on at least one stock exchange) or private (with shares distributed privately among its founders).
- A *company with additional liability* is founded by one or more legal persons whose capital is divided into shares determined by the company's charter. Members bear solidary subsidiary liability for the company's obligations in the amount equal to their contributions into the capital of the company and, in case this capital is not sufficient, to the amount determined by the constituent document of the company.

112. As of 01.07.2017, according to information from the State Statistics Service of Ukraine, there were 551, 620 limited liability companies; 14, 957 joint stock companies; and 1, 417 companies with additional liability.

113. Under Ukrainian law, upon registration with the USR, legal personality is also conferred to two categories of partnerships:

- Under a *general partnership*, members carry out entrepreneurial activities on behalf of the partnership and incur joint subsidiary liability in respect of the partnership's obligation by all property they own.
- A *limited partnership* also includes one or more partners who bear liability in respect of the partnership's obligation limited to the amount of their contributions and who do not participate in the management of the partnership.

114. As of 01.07.2017, according to information from the State Statistics Service of Ukraine, there were 1365 general partnerships and 380 limited partnerships.

115. The other types of legal persons registered with the USR are: *public associations*, which are established for charitable purposes and cannot distribute profit, income or assets (in case of dissolution), to their members or executives; *co-operatives*, which are associations of individuals for the purpose of joint production; and *private enterprises*, based on private ownership, and which can conduct economic activities for profit of its members.

116. As of 01.07.2017, according to information from the State Statistics Service of Ukraine, there were 17 317 *public associations*, 2 272 production co-operatives and 201 134 private enterprises.

117. Ukraine stands at 80 in the ranking on the Ease of Doing Business but 20 on the Ease of Starting a Business in the *World Bank Report 2017*. The country is thus in the second-to-last place in Eastern Europe under the first index, and in the 6th place under the second. The report highlights the complexity of Ukraine’s legal and political environment and weight bureaucratic obstacles, as well steps recently taken towards clarity and simplicity of processes.

118. The Law "On Amendments to Certain Legislative Acts of Ukraine regarding the definition of final BOs of legal persons and public figures", which came into force on 25 November 2014 and amended, *inter alia*, the Law on Registration, introduced an obligation for legal persons to declare beneficial ownership information to the USR. The USR contains information on the BOs of legal persons, but it is believed that there are cases when information is submitted to the USR only on the economic owners of legal persons (shareholders, stockholders, persons who have the right to vote) and not on other economic beneficiaries, whose significant influence on a company results from the actual circumstances. Administrative liability for not submitting information on BOs of legal persons was introduced thereafter. The range of sanctions available includes fines of between UAH 3,000 and 5,000 (~EUR 98.35 and EUR 163.92) as well as administrative penalties.

119. Art. 1 (41) of the AML/CFT Law defines a trust as a non-resident legal person which runs its operations on fiduciary terms where the “attorney” acts for the account of and in the interests of the principal, and is obliged to take certain legal actions for reward. The legislation Ukraine does not provide for the establishment of trusts and is not a party to the Hague Convention on the Law Applicable to Trusts and on their Recognition. The provision of trust services is also not provided by the legislation of Ukraine. However, there is no prohibition for residents to act as a trustee, protector or administrator of a trust that is set up outside of Ukraine, if allowed by the legislation of the country of establishment of such a trust and solely in accordance with the manner prescribed by such legislation.

Supervisory arrangements

120. The AML/CFT supervision framework appears to have been significantly enhanced since the last mutual evaluation, with a range of state authorities supervising all designated entities as follows:

Financial institutions	Licensing or registration	AML/CFT Supervisor	Relevant legislation
Banks	Licensing by NBU	NBU	AML/CFT Law Law on the NBU Law on Banks and Banking
Currency Exchange Offices	Licensing by NBU	NBU (for currency transactions by banks) NC (for non-bank FIs conducting currency transactions)	AML/CFT Law NBU Res. No. 297 on the Procedure of issuing non-banking financial institutions and the National postal services operator general license to carry out foreign currency operations NBU Res. No. 338 on the Procedure of on-site and off-site inspections with regard to comply with currency law requirements by banks, non-banking FIs, Ukrainian Postal Office
MVTS	Licensing by NBU	NBU	AML/CFT Law

			Law on Banks and Banking Law on Financial Services and State Regulation of Financial Services Markets
Post office (for postal money transfers)	Licensing by the National Commission on the Issues of Communication Regulation General license from the NBU for conducting currency transactions	MoI	AML/CFT Law Law on Postal Communication Law on Payment Systems and Money Transfer in Ukraine Law on Financial Services and State Regulation of Financial Services Markets
Securities traders	Licensing by SC	SC	AML/CFT Law Law on Securities and Stock Market Law on State Regulation of Securities Market
Stock exchanges	Licensing by SC	SC	AML/CFT Law Law on Securities and Stock Market Law on State Regulation of Securities Market
Depository institutions	Licensing by SC	SC	AML/CFT Law Law on Securities and Stock Market Law on State Regulation of Securities Market Law on National Depository System and Peculiarities of Electronic Securities Circulation Law on depository system of Ukraine
Asset management companies	Licensing by SC	SC	AML/CFT Law Law on Securities and Stock Market Law on State Regulation of Securities Market in Ukraine Law on the Institutes of Common Investment
Insurance companies and brokers	Licensing by NC	NC	AML/CFT Law Law on Financial Services and State Regulation of Financial Markets Law on Insurance
Credit unions	Licensing by NC	NC	AML/CFT Law Law on Credit Unions Law on Financial Services and State Regulation of Financial Markets
Non-state pension funds and administrators of non-state pension funds	Licensing by NC	NC	AML/CFT Law Law on Financial Services and State Regulation of Financial Markets Law on Non-State Pension Provision
Pawnshops	Licensing by NC	NC	AML/CFT Law Law on Financial Services and State Regulation of Financial Markets

Financial companies	Licensing by NC	NC	AML/CFT Law Law on Financial Services and State Regulation of Financial Markets
Other financial institutions	Licensing by NC	NC	AML/CFT Law Law on Financial Services and State Regulation of Financial Markets Law on Financial Leasing
Commodity exchanges	No licensing required	MEDT	

121. In the 2009 mutual evaluation report, DNFBP supervision was rated as non-compliant. The main deficiencies related to the supervisory and regulatory regime of the gambling industry, the inadequate resources of the MoF to perform AML/CFT supervision and the fact that, with the exception of the gambling sector, no specific AML/CFT supervision was provided for in Ukrainian legislation for the other categories of DNFBP activities. Under the new AML/CFT Law, all DNFBPs are covered by specific AML/CFT supervision, under the below arrangements:

DNFBPs	Licensing, registration, appointment, regulation	AML/CFT Supervisor	Relevant legislation
Real estate intermediaries	Not subject to licensing	FIU	AML/CFT Law
Precious metals and precious stones dealers	The Law of Ukraine "On Amending Some Legislative Acts of Ukraine on Restriction of State Regulation of Economic Activity" of 19.10.2010 N 2608-VI does not provide for the licensing of these entities	MoF	AML/CFT Law
Lawyers, law offices and legal services providers	Issuing of certificates on the right to exercise advocacy is carried out based on the decision of the qualification and disciplinary commission of advocacy. The state registration of advocate office and advocate association is carried out in the manner prescribed by the Law of Ukraine "On State Registration of legal persons and Individuals-Entrepreneurs", taking into account particularities provided for by the Law of Ukraine "On Advocacy"	MoJ	AML/CFT Law
Notaries	Issuing certificate on the	MoJ	AML/CFT Law

	right to exercise notarial activity is carried out by the MoJ		
Accountants	Licensing is not provided for	MoF	AML/CFT Law
Auditors, audit firms	Auditors are required to have a certificate that determines their qualifying availabilities to exercise audit activity	MoF	AML/CFT Law

International Cooperation

122. Ukraine is actively engaged in a variety of international initiatives in the areas of AML/CFT. In particular, all competent authorities of Ukraine take part in the work of such multilateral fora, both at policy and operational level, as MONEYVAL, the Egmont Group, Interpol, Europol or Eurojust. Ukraine has signed and ratified the relevant international treaties regulating cooperation, and taken steps to implement UNSCRs in areas relevant to AML/CFT. Bilateral cooperation, including MLA, is also based on a wide range of bilateral treaties and other arrangements.

Terrorist Financing and Financing of Proliferation

123. The evolution of international terrorism has had an impact on Ukraine's FT risk profile. The SSU has identified that the country is used as a transit country for persons seeking to join ISIL in Syria. Four transnational networks linked to ISIL operating in Ukraine have been identified. The authorities are acutely aware that NPOs, in particular charities, are vulnerable to FT but the understanding of the associated risks could benefit from deeper analysis.

124. The authorities report that there has been no case of proliferation of WMD or PF. A producer of dual use goods, Ukraine has a robust institutional framework to handle the transit of controlled or prohibited goods, and monitor sanctioned entities when presented with a specific case of illicit commercial transaction or trans-shipment. However, the legal framework governing PF-related TFS needs to be further brought in line with international standards.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key Findings

- Ukraine has demonstrated a reasonably good understanding of its ML/FT risks although there are a few shortcomings in relation to the statistical framework and the analysis of external threats, organised crime, beneficial ownership, and NPOs and in the sharing of information on other facets of FT risk.
- Ukraine has a substantial background in coordinating and setting five yearly strategies and annual plans to address ML/FT.

- Ukraine has comprehensive national coordination and policy making mechanisms, which include political commitment and which have a positive effect. These mechanisms include PF. National policies and activities are coordinated well by the FIU, and also by the MoF in relation to legislation. Both bodies are proactive.
- Cooperation at operational level and information exchange between authorities is generally positive, particularly where the FIU is involved.
- Substantial initiatives have been, and are being, introduced at the national level to address the key and other ML/FT risks.
- Some significant initiatives have been undertaken by competent authorities (for example, the NBU's very significant efforts to remove criminals from having control of banks and its development of themed onsite inspections on PEP risk). There are also other examples of positive actions undertaken in line with risks. However, there are also some areas where the objectives and activities of authorities need to be strengthened and aligned with ML/FT risks.
- Areas of simplified due diligence are minor and are consistent with identified risks although the NRA and other published risk material has not led to specific requirements on enhanced due diligence (EDD).
- A suitable number and range of private sector representatives participated in the NRA process and the NRA report has been published.

Recommended Actions

- The analysis and written articulation of ML and FT risk should be enhanced, whether by way of revising the NRA or otherwise, by:
 - (a) utilising more statistics and ensuring that the statistics used are robust;
 - (b) further analysing the external threats and the threats of organised crime and beneficial ownership;
 - (c) communication of relevant information held by the SSU on FT risks to other authorities and further analysing the threats of NPOs;
 - (d) conduct of a specific assessment of the risks posed by legal persons;
- The coordination framework should be enhanced so that the objectives and activities of all AML/CFT authorities are aligned and addressing ML/FT risks effectively.
- Add to the existing significant work on reducing the extensive use of cash and shadow economy in order to mitigate these risks and improve financial inclusion.
- Identified risks should be reviewed with the aim of ascertaining whether any further risks relevant to Ukraine should be the subject of EDD and making any necessary changes to the EDD framework.

125. The relevant Immediate Outcome considered and assessed in this chapter is IO 1. The recommendations relevant for the assessment of effectiveness under this section are R1-2.

Immediate Outcome 1 (Risk, Policy and Coordination)

Country's understanding of its ML/TF risks

126. Ukraine has demonstrated a reasonably good understanding of its ML/FT risks. This was evident in discussions with most of the authorities met on-site, who were confident in identifying the main risks facing them at an institutional level but also the overarching risks facing Ukraine as a whole. This understanding comes from information gathered in the course of the authorities' operational activities, research conducted domestically, reports generated both internally (e.g. the SFS and the FIU) and externally, and the NRA. Since the ML/FT risks facing Ukraine are complex and multi-faceted, the NRA presented an opportunity for the authorities to obtain a more detailed and focussed view of the risks, thereby enhancing their understanding. All of the policy and operational AML/CFT authorities in Ukraine and a suitable cross-section of private sector entities participated in the NRA. Significant and worthwhile effort has been devoted to the NRA (the methodology used is described in Ch. 1), which is based on a variety of information sources, albeit that the evaluation team considers that further external sources could have been used. The authorities are generally in agreement with the risks as rated and ranked in the NRA.

127. The key risks of laundering of funds in practice are seen by Ukraine as arising from corruption, fictitious entrepreneurship (the establishment of fictitious companies where front persons act as shareholders and directors) and the use of so-called conversion centres to facilitate laundering, tax evasion, organised criminality and the shadow economy. The evaluation team broadly agrees that these are the key risks and that they are consistent with its findings. However, as the authorities themselves acknowledge, the understanding of other risks could be further enhanced.

128. The extent to which legal persons can generally be misused for ML/FT is well understood. However, the NRA does not specifically consider how legal persons established under Ukrainian law can be used to launder the proceeds of crime (see Ch. 7). The evaluation team considers that legal persons present a higher risk than the risk of weaknesses in the verification of BOs which is the focus of the NRA. Although the NRA includes some information on the risks presented by legal persons, a separate analysis of the risks has not been undertaken. It does identify the risks related to the lack of verification of BOs, which includes gaps in, and lack of verification of, the information in the USR, and the use of straw men. While there are typologies which include legal persons, there is no specific assessment of the wider threats, vulnerabilities and risks, including the specific risks of each type of Ukrainian legal person that can be formed. Overall, meetings with some authorities and the private sector suggest that 20% of Ukrainian companies may have provided false or otherwise inaccurate information to the registry. The possibility of registering companies by front persons is considered by the FIU and LEAs to promote the functioning of conversion centres.

129. The cross-border element of ML risks to Ukraine from foreign criminality have not been separately considered within the overall risk analysis except by way of noting that Ukraine is becoming the object of growing interest for organised groups and flows of information between the FIU and counterparties in other jurisdictions, and are partly understood. The FIU was aware of examples of a few cases of criminals outside Ukraine using the jurisdiction and also noted an increase in cybercrime. Use of high value wire transfers for ML appears to be linked to the use of nominees in Ukraine. The impact of external threats warrants more in-depth consideration by Ukraine.

130. With regard to transportation of cash, the authorities are not aware of the risks between Ukraine and neighbouring countries. While there have been a significant number of undeclared cash movements, in practice, the very limited number of investigations and the lack of knowledge about any penalties applied strongly reduces the opportunity to understand the risks. The authorities are aware that a combination of statistics and completed cases is needed to fully understand the risks.

131. While the NRA explicitly considers suspicion of ML in connection with the situation in eastern Ukraine to some extent (the FIU has also advised that the NRA generally took the situation in the East into account) and the NBU has considered the ML risks, the evaluation team was not provided with demonstrable evidence during the onsite element of the evaluation that any ML risks arising from eastern Ukraine were comprehensively understood. Nevertheless, following its visit to Ukraine, further information has been provided to the team which indicates that the risks have been analysed and are generally understood by the FIU. The FIU has noted the risks of large migration flows, incomplete control over the movement of assets, and the potential for links between the separatism issues referred to below (see par. 79) and ML. The main tools used in ML schemes have been straw men, cash, use of fictitious legal persons and interruption of the transit of assets.

132. More generally, the authorities plan to improve the reliability of the existing statistical framework and increase the sources of data so as to enhance understanding of risk. Some statistics used for the NRA are collected by authorities on the basis of different assumptions. For example, some LEAs have reported statistics on the basis of cases opened while others have compiled them on the basis of cases closed. There are also differences in relation to the number and type of investigated cases presented to the courts on the one hand and cases heard by the courts on the other. The FIU considers that the statistical information used in the NRA is trustworthy and provides the general picture accurately albeit that the basis of calculation is different between authorities where more than one authority provides information. No information was seen by the evaluation team that would disagree with this conclusion.

133. The threats of international terrorism have contributed to a change in Ukraine's FT risk profile. Ukraine has found itself used as a transit country not only for internally displaced persons, but also for those seeking to join ISIL fighters in Syria. While the NRA does not consider it, the SSU understands this risk. This understanding has arisen from investigations carried out between 2014 and 2016 to identify persons illegally crossing the border for the purposes of international terrorism and from activity in 2015/2016 which uncovered the activities of four active transnational networks of ISIL operating in Ukraine. FTF transit points were also identified and the SSU has concluded that Ukraine has been used as a transit zone for FTFs. While the need to protect confidentiality of sensitive security information is fully understood, a more coordinated approach to identifying and communicating some information about these risks to other authorities and the private sector in the AML/CFT system would be beneficial.

134. The authorities are acutely aware that NPOs are vulnerable to abuse by illicit financial actors and to FT not least as a result of the size of the shadow economy. However, the understanding of the associated risks could benefit from deeper analysis. The risk classification used by the SFS as a basis for monitoring the sector is unduly focussed on whether NPOs are being misused for commercial purposes, which also militates against a complete understanding of FT risk. The SSU was able to articulate better why charities posed a significant FT risk but this understanding has not been communicated to other authorities, private sector or the NPO sector.

National policies to address identified ML/TF risks

135. The CoM sets AML/CFT strategies at five yearly intervals and, to date, action plans annually. The strategy agreed in 2011 (covering the period 2011 – 2015) included measures to ensure that Ukraine is a reliable international partner; prevent the prerequisites for ML/FT; increase the effectiveness of analysis and the development of typologies; enhance of AML/CFT legislation; enhance the activities of LEAs and other authorities; enhance supervision; and provide public information on AML/CFT measures.

136. The 2016 strategy (for the period 2016 – 2020) has similar objectives but with the addition of CPF, professional development, and effective international cooperation. The 2016 action plan, which was implemented completely at the time of the on-site visit, contains 27 actions divided into themes³⁴. While the action plan was approved before the completion of the NRA, many of the measures relate to national vulnerabilities which were later identified in the NRA. Turning to FT, while there are positive actions in the 2016 action plan which addressed FT and the 2015 strategy includes a number of measures, the totality of these measures does not constitute a comprehensive strategy which addresses the issues raised in IO9. Such a strategy is planned by the authorities.

137. The risks identified in the NRA are more fully addressed under the draft new action plan (for 2017), which was awaiting approval by the CoM at the time of the on-site visit. It is intended to cover three years up to the period of the next iteration of the NRA. It takes each of the 37 NRA risks in turn and identifies 92 mitigating actions and the authorities responsible for those actions. It also identifies time frames for completion or whether the action should be regarded as continuous. Focus includes actions on revamping the training process for LEAs, establishment of a domestic PEP database, updating of the FIU's IT systems, statistical reporting requirements and templates, NPOs, efficiency of LEAs and the transformation of case referrals from the FIU to LEAs into criminal cases, improvement of investigation of tax related crimes so as to address conversion centres, the completion of a study on cases heard by the Supreme Court and the development of guidelines, and improvement of the quality of beneficial ownership information through the audit of information filed by legal persons. Meetings of the AML/CFT authorities have been held on a number of topics of joint interest such as cybercrime, the collection of statistics, foreign trade issues and NPOs to identify mitigating actions.

138. Substantial initiatives have been, and are being, introduced by Ukraine at the national level to address the key and other ML/FT risks. AML/CFT measures are embraced within wider “whole of government” initiatives.

139. Combatting corruption and ML arising from corruption is the Ukrainian Government's highest priority. It has agreed the establishment of a National Council, a strategy on anti-corruption for the period 2014-2017 and an implementation plan for the strategy. There are a significant number of Government plans which include combatting corruption as the highest area of focus. Both NABU and the National Anti-Corruption Prosecutors Office have been established as authorities dedicated to fighting corruption and ML arising from corruption. In addition, an authority responsible for asset recovery is being established.

³⁴ Namely, improvement of legislation on AML/CFT/CPF; minimising of risk; increasing the efficiency of law enforcement and other State authorities; improving the regulation and supervision of reporting entities; ensuring transparency of the operation of State entities; the professional development of staff within reporting entities and the authorities; and participation in international cooperation.

140. With reference to addressing fictitious entrepreneurship and the use of conversion centres, legislation was agreed on 3 April 2017 on the creation of a new authority, which will be responsible for prevention, detection and investigation, and criminal justice measures, in relation to crimes against the State and/or local government. This authority will not only help to address fictitious entrepreneurship but is also part of the national policy to address tax evasion.

141. The AML/CFT agenda is addressing tax evasion and ML from tax evasion through more focus on banks in particular to identify and mitigate risk. In addition, Ukraine has a strategy for sustainable development, which is addressing tax evasion through tax reform. The aim is to simplify the tax system, create a fairer system and make payment of tax easier. In at least some areas the tax burden is being reduced and the system is being remodelled so that it is more customer-focussed. In addition, measures are also being taken by means of legislation to change facets of the tax system in order to tackle the potential for tax evasion schemes and the consequent ML. This activity also has the objective of reducing the shadow economy. As noted in par. 29, the NBU has undertaken various measures to improve financial inclusion. However, distrust in the formal financial sector remains an issue and the use of cash is still widespread.

142. Measures have been taken to address organised crime via a policy and action plan for the period 2011 to 2017. The authorities are reviewing a draft of the next policy.

143. More generally, Ukraine's strategy and action plans envisage increasing the effectiveness of supervisory authorities in identifying and mitigating risks and of LEAs in investigating ML and the predicate criminality leading to ML.

Exemptions, enhanced and simplified measures

144. Under Art. 6(5) of the AML/CFT Law, REs are required to perform EDD on higher risk clients. There are also additional, specific provisions which must be complied with relating to correspondent banking relationships and domestic and foreign PEPs. The same requirements can be found in the sectoral legislation on banks and NBFIs. MoF Order 584 of 2016 establishes the framework for client risk assessment, including an annex which establishes a range of factors, the presence of any of which means a relationship should be classified as high risk. See R.1 and R.10. Overall, there is no specific provision requiring entities automatically to take the NRA or other risk identification and assessment material produced by the authorities into account.

145. Under Art. 9(3) of the AML/CFT Law, it is not obligatory to carry out client identification and verification in connection with:

- (a) insurance contracts other than life insurance, under which the client is an individual, and the total insurance payment does not exceed UAH 5 000 (~EUR 163.92), or its amount is equivalent to the specified amount, including in foreign currency;
- (b) business relations which arise on the basis of the agreements on participating in lotteries provided the size of the player's bet does not exceed UAH 5 000 (~EUR 163.92);
- (c) the payment organisation, participant or member of the payment system, bank, branch of a foreign bank conducting financial operations without opening an account in the amount which is less than UAH 150 000 (~EUR 4,917.46), or in the amount which is equivalent to the specified amount, including in foreign currency, precious metals, other assets, and units of value);
- (d) transactions between banks registered in Ukraine.

146. While the provisions under Art. 9(3) of the AML/CFT Law do not appear to be unreasonable, there was no analysis prior to the Law coming into force which would support the application of simplified due diligence. Nevertheless, the lower-risk scenarios are not inconsistent with the NRA.

Objectives and activities of competent authorities

147. Some significant initiatives have been undertaken by the competent authorities.

148. NABU and SAPO are authorities dedicated to addressing the most important risk – anti-corruption and ML from corruption. NABU has made significant efforts since its establishment in 2016 to pursue corruption offences, including dealing with a large number of cases against former and current high-level officials (although corruption-related ML offences do not yet appear to be pursued on a systematic basis). NABU has also established a specialised analytical unit to assist other LEAs to undertake financial investigations. As a consequence, there have been some significant and substantial restraint orders which have been made by the courts in connection with corruption and theft of State assets.

149. The activities of law enforcement and prosecutors, since 2014, have been much more focused on addressing Ukraine's highest ML risks, within the resources they have at their disposal. This is especially the case with respect to tax evasion, embezzlement and other economic crime. However, more emphasis needs to be given to fictitious enterprises - which is an overarching ML risk. The prosecutors and the courts still need to resolve issues connected with the levels of proof in confiscation proceedings, as set out in IO8, if confiscation of criminal assets is to be effective in all proceeds-generating crime. In depth financial investigations appear to be few and far between, and more resources and training are needed for financial investigation. More judicial training is required on ML issues and the new confiscation provisions if recent amendments to the CC and CPC are to achieve their objectives. There is no real opportunity for Customs to focus on ML by investigating cash couriers effectively at the border. It can only seize suspected property, transfer cases to LEAs and inform the FIU about illegal currency values.

150. Acts of terrorism are a priority for LEAs, particularly the SSU. The SSU has carried out significant pre-trial investigations (including parallel financial investigations) since 2014 to identify persons illegally crossing the border for the purposes of international terrorism and uncovered four transnational networks operating in Ukraine. Significant measures have been taken against the networks by LEAs and prosecutors, including prosecution of offences in Ukraine, extradition and deportation.

151. The FIU has a high level of focus on ML and in addressing risk. It has introduced an automated system for the prioritisation of its analysis of STRs and successfully developed complex ML cases which address Ukraine's risks. It has also established a separate team to be responsible for ensuring the effectiveness of case referrals to LEAs. In addition, the FIU has adopted a number of initiatives aimed at promoting measures for the authorities and REs to mitigate risks. By way of example, it devotes significant effort to seeking to ensure that its training centre is effective in providing outreach to REs.

152. Very significant efforts have been undertaken by the NBU in relation to seeking to ensure transparency of beneficial ownership of the banking sector and in removing criminals from control of banks; six banks have been closed down due to lack of transparency and ten banks have been closed on the basis of AML/CFT deficiencies. The NBU also devotes very significant attention to combatting corruption and the part played by PEPs in this, undertaking thematic onsite inspections

since 2016 which focus solely on PEP risk. It provides or is involved with significant training for banks not only on corruption and PEPs but also beneficial ownership, fictitious companies, fraud, the provision of distance services and FT.

153. The DGF established a department in early 2016 to address illegal activity within banks. It has taken positive steps both in detecting illegality (corruption, fraud and ML in particular) and submitted some 3,500 cases to LEAs for the initiation of criminal proceedings and in undertaking work to take these cases forward.

154. The SC has made strong efforts to seek to ensure that licensees are good quality and BOs and controllers are not criminal. It also conducts themed inspections which consider ownership and control. However, the evaluation team has a concern that the issue of a licence by the NC is automatic (as a result of legislative shortcomings). In addition, other supervisory authorities or other third parties do not, or are unable to, carry out checks on BOs or controllers.

155. All the supervisory authorities of REs were required to put in place statutorily prescribed risk grading systems for registered/licensed entities in 2015 or 2016 (the NBU's system being an enhancement to an existing methodology). None of the systems is wholly ML/FT risk based. The NBU is in the best position as AML/CFT elements are a relatively large component of the classification for banks, while the framework for the SC has some element of ML/FT risk but, in the other cases, the prescribed classification is only partially ML/FT risk based. In addition, other than for the NBU and the SC, statutory time frames for onsite inspections also mean that supervisory authorities cannot undertake a wholly RBA to supervision. The NBU (for banks) has the most comprehensive approach to both onsite and offsite supervision, which is largely risk based in practice, and its resources appear to be directed at the areas of greatest risk. Except for the NBU (for banks) and the MOJ, statutory moratoria on onsite and offsite supervision and lack of staff capacity significantly reduced the level of AML/CFT supervision from the summer of 2014 to the time of the evaluation team's visit to Ukraine so that supervision has not been sufficient. The terms of all of the moratoria have now expired. There is meaningful outreach to the private sector by the large majority of supervisory authorities. This is a key part of the objectives and activities of such authorities; particularly strong and positive activity has been undertaken by the FIU and FI supervisors (notably the NBU and the NC) and by the MOF in establishing the training centre, which has come within the FIU's responsibility since 2015.

156. As indicated in IO10, the SFS as the supervisor for NPOs has been focussed on commercial and tax issues rather than on FT risk. However, in 2016, legislation came into force which rebalances the SFS's objectives and activities by requiring it also to consider ML/FT issues.

National coordination and cooperation

157. Ukraine has comprehensive national coordination and policy making mechanisms, which include political commitment. These mechanisms also apply to CPF following amendments to the AML/CFT Law in February 2015. The MOF is responsible at political level for the development and implementation of national policies. At the operational level, the FIU coordinates the development and implementation of these policies and activities in relation to them; it was also the coordinator of the NRA and the preparation of the NRA report.

158. The AML/CFT Council facilitates coordination and cooperation between the authorities. The AML/CFT Council, which meets approximately three times a year, also considers and proposes ways of overcoming challenges related to implementation of AML/CFT policies and assessing the

effectiveness of the measures related to ML/FT. In addition, the Council provides a platform for the coordination of supervisory and regulatory activities at an operational level. This takes place in the form of two working groups (one for banks and one for non-banks), which include private sector representatives. Meetings of the working groups take place quarterly and cover measures taken by REs, issues faced by such entities and proposed legislation. Discussion within the Council includes CFT as well as AML. This has included, for example, NPOs and CFT training for the private sector.

159. The CoM approves a new strategy at five yearly intervals and, to date, action plans annually following agreement of them by the Council. The action plans are also approved by the NBU. The draft action plan arising from the NRA, which has been provided to the CoM is intended to have a three year life in order to tie in with the completion of the next iteration of the NRA. The FIU briefs the CoM, the NBU and the National Council on Security and Defence on a quarterly basis on the implementation of policies and actions taken by authorities in response to the current strategy and the action plans which implement the strategy. Quarterly and substantial annual written reports are also provided by the FIU to these bodies.

160. Although the first action plan arising from the NRA has not yet been approved, progress on the 2016 action plan (completed at the end of 2016) and its predecessors, and the development of mitigating measures, has been tracked on a quarterly basis. The FIU coordinates the preparation of a document which contains input from the authorities and provides this to CoM, the NBU and the National Council on Security and Defence Council. The MoF is involved through its participation in the Council.

161. The coordination framework makes a positive difference. Ukraine points in particular to:

- completion of the NRA;
- active and productive investigation of the laundering of the proceeds from corruption, embezzlement and appropriation of state funds and property by the former President of Ukraine Viktor Yanukovich and others, leading to significant confiscation of assets;
- the establishment of NABU and cooperation between the FIU and NABU leading to significant exchange of information in relation to cases involving significant potential proceeds of crime. The cases include members of parliament, judges, a prosecutor, public servants, heads of enterprises and others;
- effective activity by the FIU training centre, with input by the MoF and supervisory authorities.

162. Linked with the coordination role of the FIU, the MOF coordinates the preparation of legislation. It works closely with the authorities, including the FIU in particular. Coordination is demonstrated by the enactment of similar legislation for each of the supervisory authorities on the risk grading of entities and the timing of onsite inspections. Other recent legislation to address gaps and risks includes changes of legislation in relation to improve the effectiveness of TFS and the introduction of an autonomous FT offence in the CC. Legislation is currently being drafted on financial investigations, revisions to the AML/CFT Law, and the submission of information by REs to assist monitoring by the authorities.

163. The structure and coordination activity described above has been in place since 2003. National policies and activities are coordinated well by the FIU, and also by the MOF in relation to legislation. Both bodies are proactive.

164. There are formal and informal information exchange mechanisms that support cooperation and coordination between the authorities such as MoUs.

165. Looking specifically at LEAs, several of NABU's staff originate from the FIU, which is seen as helpful in facilitating interagency cooperation and in furthering NABU's objectives. Information from the FIU also helps NABU's effectiveness in providing it with intelligence which allows it to seek international cooperation. NABU ensures that its staff meet representatives of other LEAs to facilitate positive relationships and cooperation, and information exchange takes place when needed. In some cases joint investigation teams have been established between LEAs and prosecutors. LEAs cooperate with the FIU on an ongoing basis in a very constructive manner; this level of cooperation should be extended by LEAs to the supervisory authorities. LEAs receive significant input from the FIU in relation to the financial aspects of investigations.

166. Dealing specifically with investigation of FT by LEAs, the cooperation between the SSU and the FIU on the identification and investigation of FT cases appears to be functioning properly.

167. The FIU has signed MOUs with a large number of the AML/CFT authorities. There is significant liaison between the FIU and supervisory authorities. The FIU regards information exchanges with it by supervisors as effective.

168. The NBU has entered into MOUs with NABU, Customs, the SFS, the FIU, the SC, the NC and the DGF. It also discloses information without an MOU being in place. There has been substantial information exchange with the SSU, the FIU and LEAs such as NABU. There is strong liaison between the NBU and the FIU in particular, including on training for the private sector. It meets bilaterally with other authorities to discuss current issues and share experience, including monthly meetings with the NC in relation to MVTs.

169. The NC has signed MOUs with the FIU, the NBU and the SC but also exchanges information without an MOU being in place. It has exchanged information with the FIU and LEAs. The NC has also liaised with the FIU and the SC in connection with private sector training. In addition, it provides the FIU with information on breaches by REs, action being taken to address breaches, general levels of compliance by supervised entities and winding up of REs. The SC, the MOF and the MOJ also provide such information to the FIU.

170. Turning to PF, the UAs were able to demonstrate effective operational cooperation on proliferation between customs and export control authorities, as well as their collaboration with security services. However, operational cooperation was less evident between customs and export control authorities on the one hand and the FIU, supervisors and law enforcement on the other in relation to PF.

Private sector's awareness of risks

171. The NRA report was launched in December 2014 at a meeting comprising 40 representatives of the private and public sectors. This was followed up by discussion in meetings of the two working groups mentioned above, publication of the report by the FIU on its website and four workshops for the private sector held on the NRA report in Lviv and Kiev in late 2015 and early 2016. FIs and DNFBPs met by the evaluation team were aware of the report. In addition, many of the REs met by the evaluation team had some involvement with the NRA process.

172. The FIU has also published FT typologies and indicators in 2012 and its 2016 risk assessment of NPOs. The FIU has also published a booklet on typologies for the period from 2014 and presented

it to the two working groups. In addition, the FIU places statistics pertinent to risk on its website. The FIU also hosts a training centre which provides training to the private sector; this has referred to the NRA and the risks referred to in the NRA report.

173. The MoJ has also issued typologies and guidance while the MOF has published typologies. More generally, as indicated in IO3, substantial outreach efforts have made to REs.

Conclusion

174. Ukraine has demonstrated a reasonably good understanding of its ML/FT risks. This understanding would be enhanced by taking some further steps to identify and assess risk by, for example, increasing information sources such as improving the statistical framework and increasing focus on specific areas such as external threats, organised crime and NPOs.

175. Ukraine has a substantial background in coordinating and setting five yearly strategies and annual plans to address ML/FT, and it possesses comprehensive national coordination and policy making mechanisms which include PF. Substantial initiatives have been, and are being, introduced at the national level to address the key and other ML/FT risks. Some significant initiatives have been undertaken by competent authorities (for example, the NBU's very significant efforts to remove criminals from having control of banks and its development of themed onsite inspections on PEPs) and there are also examples of positive actions undertaken in line with ML/FT risks. However, there are also areas where the objectives and activities of authorities need to be strengthened and aligned with risks. Further coordinated attention might also be directed at the shadow economy and, in particular, financial inclusion. It would also be beneficial for there to be a coordinated review of whether additional EDD measures should be applied to REs.

Cooperation at operational level and information exchange between authorities is generally positive, particularly where the FIU is involved. **Ukraine has a substantial level of effectiveness for IO 1.**

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

IO 6

- Based on a robust legal and institutional framework, and despite an increasing resource strain, the FIU produces good quality operational analysis. Effective mechanisms are in place to generate financial intelligence originating from a broad range of sources, including the very high number of reports filed by REs.
- The spontaneous dissemination of cases from the FIU regularly triggers investigations into ML, associated predicate offences or FT by LEAs. Most LEAs also regularly seek intelligence from the FIU to support their own investigative efforts. Cooperation among competent authorities is facilitated by a number of institutional mechanisms allowing for the timely and confidential exchange of financial information and intelligence with the relevant authorities.
- Strategic analysis produced by the FIU supports the annual update of the reporting criteria, as well as LEAs investigative efforts.

- However, since 2014, the FIU's personnel and budget resources have decreased while its workload has risen sharply. In addition, the IT equipment of the FIU, which is heavily relied on for the purpose of analysing the high number of transactions submitted by REs, appears to need updating. If not urgently addressed, these resource issues may have a negative impact on the FIU's ability to carry out its functions in an effective way, both domestically and internationally.
- The ongoing efforts aimed at emphasizing the suspicion-based nature of reporting, as noted under IO4, resulting in a smaller number of better-focused reports, should contribute to alleviating the abovementioned resource strain issues.

IO 7

- The number of ML investigations initiated by law enforcement compared with the increasing number of significant proceeds-generating offences is small, and ML indictments are declining.
- ML is still seen by most interlocutors met onsite primarily as an adjunct to a predicate offence. While investigations may be opened for ML in certain circumstances without a conviction for the predicate offence, it is essential to have a conviction for the predicate offence to take a ML case to court. Some interlocutors considered that an acquittal for the predicate offence means that ML cannot go ahead.
- Most ML cases brought to court either involve self-laundering or 3rd parties on the same indictment as the author of the predicate offence. Prosecuting contested autonomous ML cases, on the basis of underlying predicate crime being inferred from facts and circumstances, has still not been tested.
- Before 2014, ML prosecutions rarely confronted one of Ukraine's highest ML risks (top level corruption and theft of state assets). Since March 2014, complex pre-trial investigations are actively being taken forward against senior officials of the former regime. They appear to have resulted so far in one conviction for ML in very significant amounts. The SAPO is also now taking action against current senior politically exposed persons, which includes ML.
- The sentences for ML are almost always less than for the predicate offences and not dissuasive. Some defendants serve no prison sentence at all for the basic ML offence due to the operation of Articles in the CC aimed at reform of convicted persons.

IO 8

- The confiscation legal regime has been updated and improved since the last evaluation through the introduction of special confiscation aimed at proceeds, though confiscation as an additional penalty remains available for many grave offences. It is difficult to assess systematically whether the new system has bedded down in practice in all proceeds-generating cases. It is unclear how regularly the new provisions (as opposed to confiscation as an additional penalty) are being used by the judges and how many significant final special confiscation orders have been made, as most information on this is anecdotal. Not all ML cases appeared to result in confiscation orders.
- There appear to be some problems in conducting financial investigations and a lack of resources for them across the board. In practice, thorough financial investigations in major proceeds-generating offences are few and far between, though considerable efforts are made in the biggest cases.
- Since 2014, officials from the previous regime and current top officials and politically exposed persons are being investigated and made suspects in cases and their assets are being restrained with

a view to confiscation. Credit is given for the determined work that is now ongoing to restrain and confiscate funds in cases of top level corruption and theft of state assets, in line with national ML risks. At the time of the onsite visit there was a considerable gap between obtaining significant restraints and the achievement of final confiscation orders. More final confiscation orders, including those using the new special confiscation provisions, are necessary.

- There is not yet a consistent evidential standard for establishing whether alleged proceeds came from crime, when the special confiscation issue is raised after conviction

Recommended actions

IO 6

- Ensure that the personnel and budget resources allocated to the FIU, in particular to its analytical function, are consistent with its workload. Consider options to limit staff turnover. This could include such proposals as career development programmes; and evaluating the remuneration packages on offer.
- Update the IT equipment of the FIU.
- Continue efforts to emphasize the suspicion-based nature of reports from obliged entities, as noted under IO4.

IO 7

- Introduce a provision under Art. 209 of the CC which clearly states that a person may be convicted of ML in the absence of a judicial finding of guilt in respect of the underlying criminal activity and providing that the existence of the predicate offence may be established on the basis of circumstantial or other evidence without it being incumbent on the prosecution to prove a conviction in respect of the underlying criminal activity.
- Stop the decline in the number of ML indictments by ensuring that prosecutors advise LEAs to proactively follow the money in major proceeds-generating offences with a view to identifying how and by whom the proceeds are laundered. Identify specialized prosecutors dealing with ML to guide their colleagues in handling these cases (where they are not handling them themselves) and to advise as necessary on appeals against inappropriate sentences.
- Conduct prosecutorial and LEA training covering the FATF standards on ML criminalisation (and Ukraine's obligations under the Warsaw Convention).
- Pending legislative clarification, as recommended above, prosecutors should (following the provisions of the Warsaw Convention):
 - send autonomous ML cases to court without a conviction for a predicate offence when there is evidence from which a court can properly reach a conclusion as to the existence of the underlying predicate offence(s);
 - routinely consider the issue of pursuing prosecutions without a conviction for the predicate offence(s) where there is evidence that a court may properly conclude the existence of the underlying predicate offence(s).
- LEAs should consider the creation of a dedicated team(s) of investigators specialized in financial investigations (financial investigators) and ensure their close cooperation with specialized prosecutors in matters relating to ML. Law enforcement authorities should conduct on a regular

basis training for more law enforcement officers on pursuing effective financial investigations in parallel with the predicate offence.

- Develop short and clear mandatory instructions for prosecutors on when and how to direct law enforcement authorities to pursue financial investigations in major proceeds-generating cases.
- More ML prosecutions and convictions in line with national ML risks are required in cases involving high level corruption, theft and embezzlement of State assets by current top officials and their associates (as well as those connected with the former regime).
- NABU needs to place emphasis on the ML aspects of its corruption cases involving senior officials and to recruit and train more skilled financial investigators.
- The Ukrainian authorities should use ML offences more actively to attack the creation of fictitious enterprises. Art. 205 CC also needs legislative strengthening, with dissuasive terms of imprisonment.
- ML penalties issued by the courts need to be much more dissuasive in practice than they are at present. As part of this process, the impact of Art. 69 and Art. 75 CC on ML prosecutions should be reviewed. Inappropriate ML sentences should be automatically appealed by the prosecution.
- The Supreme Court Resolution on ML prosecutions urgently needs updating. All judges need professional training to handle basic ML cases. Specialist ML training for judges involved in NABU cases should be actively considered so that they are also able to handle the ML aspects of NABU corruption cases (and within specialised anti-corruption courts, if they are introduced).
- During ML/FT investigations LEAs should widely apply the practice of appealing to the court with the claim of provisional access to items and documents without summoning a person.
- In order to measure its own performance in ML prosecution and conviction, Ukraine should develop and keep reliable, reconciled and centralised statistical data on ML prosecutions and convictions, disaggregated by types of cases (law enforcement generated, STR related, self-laundering, 3rd party laundering, autonomous ML) and the risk profiles of the cases. This statistical data should be regularly reviewed by the FIU, law enforcement and prosecutorial authorities collectively, and corrective action taken where necessary to improve the quality of the data. The policy implications of the statistics should be regularly reviewed by law enforcement and prosecutors at senior levels. It is advised that the PG should consider periodically engaging with the Supreme Court at a policy level where there are significant issues in ML cases which need resolution at a high level.

IO 8

- The authorities should examine why so many ML cases appear not to result in confiscation orders.
- Financial investigations into the sources of alleged proceeds should be routinely undertaken in proceeds-generating cases using trained financial investigators working in parallel with the investigators of the predicate offences. Financial investigations should not simply be reserved for the biggest cases. The prior recommendation under IO 7 for the creation of dedicated teams of financial investigators as resources to all law enforcement bodies is re-iterated also in the context of IO8.

- The authorities should ensure that early restraints are routinely made in all proceeds-generating cases. In this context it should be considered whether investigators should have the power of early restraint, subject to fast tracked reviews of such restraints by the prosecutors.
- There should be developed between the Judiciary and the PG a workable policy on the level of evidence needed to determine whether assets were the proceeds of crime, after conviction for proceeds-generating criminal offences. This policy should be consistently applied by the courts. To ensure that confiscation is always raised at the conclusion of trials for proceeds-generating offences, the PG should issue directions to all prosecutors in this regard. In the longer term, the authorities should decide whether the law needs amending to include a clause on the confiscation issue in the indictment.
- The authorities should review the training that is provided to judges on the new confiscation provisions and where necessary pursue further awareness-raising and education of the Judiciary on these issues.
- The PG should ensure that all supervising prosecutors in proceeds-generating cases are trained in modern financial investigative techniques and are capable of directing investigating officers in financial investigations where necessary. More focused guidance on the importance of early restraint and confiscation of proceeds should be issued to all prosecutors.
- After one year the PG and the Judiciary together with the Assets Recovery Office should review how effectively the new confiscation provisions are being applied and take any necessary remedial action. To support this review the authorities should maintain accurate, reconciled statistics on the use of special confiscation and early seizing and freezing.
- The Assets Recovery Office should become operational as soon as possible to ensure effective management of assets under restraint.

176. The relevant Immediate Outcomes considered and assessed in this chapter are IO 6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R.4 & R.29-32.

Immediate Outcome 6 (Financial intelligence ML/TF)

Use of financial intelligence and other information

177. The State Financial Monitoring Service, which is an administrative-type FIU, is the main body which generates intelligence of a financial nature in Ukraine. Its function within the country's AML/CFT framework is well understood by the other competent authorities and its outputs are regularly used by LEAs. Numerous cases were presented where financial intelligence generated by the FIU (either on the basis of reports/information from REs or exchanges with foreign FIUs) was used by LEAs to develop evidence for pre-trial investigations into ML, associated predicate offences and FT. The FIU's input is also regularly sought by LEAs in the course of their investigations.

178. The examples provided in the boxes below illustrate how the FIU's analysis was of major assistance in developing cases initiated by a LEA.

IO 6 Case Example 1: Support provided by the FIU in an LEA-initiated investigation

In 2014, the SSU initiated a pre-trial investigation on bank officials suspected of having assisted in the concealment of a large volume of illicit funds in conspiracy with a client of the bank. It was suspected that proceeds of crime had been used by the client to purchase precious metals in the amount of UAH 500 million (approximately EUR 17 million). Subsequently, the client re-sold the precious metals, deposited the profits into several private accounts held by other banks situated in Ukraine and abroad and withdrew the funds from the accounts in cash. Following a request for information from the SSU, the FIU conducted a search in its database and identified four reports on transactions involving the suspect, which had previously been filed by other banks. Additional information was obtained from the institutions involved and, following further analysis, it was established that the suspect had deposited a total amount of UAH 13 million (EUR 426,179.91), in cash into a personal account and had sold 35 kg of gold in the period under investigation. Subsequently, the FIU contacted the SFS, quickly established that the person was registered as the director of a number of fictitious companies and received further clear indications that those funds were proceeds of crime. Furthermore, the FIU requested additional information from the banking sector, which revealed additional connections to offshore accounts and resulted in the exchange of information between the FIU and nine foreign counterparts. Ultimately, these exchanges revealed that the person had been connected to a large scale cybercrime fraud scheme in Europe and North America. The perpetrator was successfully indicted and, correspondingly, all funds associated with the perpetrator and his criminal acts were seized.

179. The box below illustrates how LEAs successfully investigated a money mule case on the basis of information spontaneously disseminated by the FIU.

IO 6 Case example 2: FIU-initiated investigation

Based on the financial analysis of cash threshold-based reports filed by banks in 2015, the FIU suspected that accounts might have been misused in money mule operations. Those cash-intensive accounts had been held by two non-EU citizens. Seemingly fictitious contracts through shell companies had been presented to the banks as justifications for the payments. The FIU liaised with foreign FIUs and was informed that the two individuals were connected to additional accounts in neighbouring jurisdictions, and that one of those individuals had also been the subject of investigations in his home country. The FIU analysed the information in more detail and alerted customs officials at specific border checkpoints to the fact that the vehicles of the two persons of interest could be used to transport cash out of Ukraine. By including the SFS and Customs as well as the SSU into the case, it was later revealed that the two persons had been money mules and cash couriers of an organised crime group which used the aforementioned method to launder proceeds of crime totalling ~ USD 165 million over 2008-2014. The two foreign individuals were subsequently arrested upon trying to move large amounts of cash (including foreign currency) across Ukraine's external borders as well as through the international airport in Kyiv.

180. Cooperation is also effective in CFT, as illustrated by the example in the box below.

IO 6 Case Example 3: Co-operation in FT case

Based on the results of transactions monitoring, the FIU identified financial transactions involving a citizen of Libya, E., and conducted on multicurrency accounts opened in several Ukrainian banks using international payment systems. Credit operations involved immaterial amounts (up to USD 1,000) from citizens of other countries. Further, the funds were directed to a Belgian citizen, A. The

FIU identified that the financial transactions and their participants were high risks. In addition, the FIU received information from a foreign FIU indicating that A. was suspected to have created and supplied false identification documents to former Syrian soldiers and persons from Iraq intending to enter Europe. The FIU suspended the financial transactions on the account of E. The CR was disseminated to the SSU, which initiated a criminal proceeding. According to the results of the pre-trial investigation, an indictment under Art.263-1 CC (Illegal Handling of Weapons, Ammunition, or Explosives Substances) in relation to E. was transferred to a court. A court sentence imposed a 3-year imprisonment penalty.

181. FIU information is also critical in the seizure of criminal assets through the application of its power to suspend suspicious financial transactions. According to statistics, for the period 2014-2016, the suspension of financial transactions was executed in 402 dossiers, of which 230 dossiers (57.2%) were prepared at the request of LEAs during a pre-trial investigation. The initiators of the suspension of financial transactions were the following: LEAs - 230 dossiers (57.2%), REs - 123 dossiers (30.6%), FIU - 49 dossiers (12.2%). The total amount of funds suspended was UAH 26,921.3 million (EUR 851 million), the information on which was also transferred as part of the case referrals to LEAs. In addition, in the period from 2010 to 2016, the FIU received from LEAs information regarding the restraint on cash and other property in criminal proceedings totalling UAH 31,351.41 million (EUR 991.3 million) and asset seizure amounting to UAH 389.5 million (EUR 12.3 million).

STRs received and requested by competent authorities

182. The FIU acts as the central authority for the receipt of reports from REs: “mandatory financial monitoring” (see R.20) based on a combination of a value threshold (exceeding UAH 150 000) (~EUR 4,917.46) and a list of objective indicators, i.e. pre-defined categories of transactions considered to be higher risk; and “internal financial monitoring”, triggered either by subjective indicators requiring some qualitative analysis from the REs (e.g. complex or unusual transactions or “grounds to believe that the financial transaction is connected with ML or FT”). Statistics on the reports are provided under IO 4.

183. During the on-site visit, most REs appeared to demonstrate a satisfactory understanding of their reporting obligations, including the professions with the lowest reporting levels. Failure or delays in filing mandatory reports appear to be sanctioned by supervisors with fines, which results in very timely reporting (same day in most cases). Those sectors that file the highest numbers of mandatory reports feel that the resources allocated to the process are disproportionate to the benefits that are perceived to be derived therefrom. The report submission form has been simplified, which has contributed to making this process less resource-intensive. Suspicion-based reports constitute a smaller percentage of the total number of reports and, according to the FIU, only a small portion of these contain any clear suspicion of ML/FT. In practice, the list of indicators provided by the authorities in relation to suspicion-based reporting seems to be over-relied on by REs, which may limit their capacity in reaching their own subjective conclusions on whether a suspicion exists based on the particular circumstances of each case. Despite these issues, a substantial percentage of the reports (whether mandatory or suspicion-based) has generated a case-referral to LEAs (see Table under core issue 6.3). The authorities have undertaken outreach to the obliged entities to promote suspicion-based reporting. In addition, the FIU has initiated the adoption of draft amendments to the AML/CFT Law as part of the legislative package to transpose the 4th EU Anti-ML Directive, which, inter alia, seeks to improve the reporting regime. The amendments, once adopted,

will reduce the number of mandatory reporting indicators from 17 to 4 and increase the threshold from UAH 150 000 to 300 000, (~EUR 4,917.46 to EUR 9,834.92) in order to enable REs to allocate more resources to and focus their attention on suspicion-based reporting.

184. The evaluation team was informed that, overall, both mandatory and suspicion-based reports are fully in line with the country’s risk-profile. Most reports are submitted in relation to PEPs, especially domestic; the use of “conversion centres”, including fictitious companies; and cash transactions. Authorities indicate that mandatory reporting criteria are developed and annually reviewed by the FIU taking into account mandatory and suspicion-based reports, the NRA, recommendations from international experts (e.g. IMF) and the experience from other countries.

185. The FIU also receives reports from Customs on illegal movements across the customs border of Ukraine of cash, monetary instruments, precious metals, precious stones and their products, as well as cultural property, in an amount equal to/or exceeding EUR 6000 or equivalent.

Table 3: Information from Customs to the FIU on undeclared asset cross-border transportation

	2012	2013	2014	2015	2016
No. of reports	80	30	13	32	37
No. of individuals involved	84 <i>36 Ukrainian citizens 48 foreign nationals</i>	29 <i>13 Ukrainian citizens 16 foreign nationals</i>	23 <i>7 Ukrainian citizens 16 foreign nationals</i>	182 <i>94 Ukrainian citizens 88 foreign nationals</i>	104 <i>52 Ukrainian citizens 52 foreign nationals</i>
Currency (M)			EUR 0.34 USD 0.60 RUB 1.58 UAH 0.43	EUR 0.37 USD 2.47 RUB 3.65 UAH 2.24 CAD 0.11 GBP 0.11 PLN 0.21	EUR 0.72 USD 2.08 RUB 0.30 UAH 5.87 AED 0.005 CNY 0.05
Precious metals				Silver: 14.79kg, UAH 0.17M Gold: 3kg, UAH 2.41M	Silver: 0.10 kg
Precious natural stones				Raw amber and products: 166.48kg, UAH 11.37M	Raw amber and products: 168.03kg, at least UAH 3.24M
Other				3 vehicles used for cross-border transportation (value of UAH 0.39M)	1,060 rings, 704 earrings, 66 pendants Ancient icon 1000 medical needles

186. The UAs have provided several examples of successful cooperation between the FIU, law enforcement authorities, including Customs, and foreign FIUs in detecting and combating the illegal export of currency instruments from Ukraine, using cash couriers.

IO 6 Case Example 4: Input from Customs in the FIU's operational analysis work

The FIU received STRs from REs regarding a group of nationals from Moldova and Uzbekistan involved in large cash credit and debit operations in foreign currency on the same day from several bank accounts. In order to obtain more information, the FIU submitted requests to the relevant REs, the State Border Service, Customs, the SSU, as well as foreign FIUs.

According to Ukrainian bank 1, the funds debited by Moldovan citizen 1 and the Uzbek citizen had been received from a non-resident company, as a "loan for the construction and commissioning of office buildings." Ukrainian bank 1 also indicated that the non-resident company transferred UAH 2.23 billion (~EUR 73,106,246 million) as a loan to Moldovan citizen 2 and the Uzbek citizen.

According to foreign FIU 1, the non-resident company is a shell company used to facilitate criminal activity. The registered agent of the non-resident company is a company that provides company incorporation services. The registration agent is currently under investigation.

According to foreign FIU 2 the person with the right to dispose of the account of the non-resident company, opened at a Latvian bank, is a citizen of Russia.

The non-resident company transferred USD 164.92 million to Moldovan citizen 1 (USD 6.5 million) and Uzbek citizen (USD 158.42 million). Based on information from the customs authorities, it was established that Moldovan citizen 1 and the Uzbek citizen, using the Official Hall of the Ukrainian airport, moved out USD 4 million worth cash by charter flights on private planes to Moscow. In this connection, the individuals had provided the customs authorities with certificates on the origin of currency issued by Ukrainian bank 1.

The Uzbek citizen carried out several trips from the Ukrainian airport to Moscow, in the context of which he declared the export of about USD 70 million cash, providing the customs authorities with certificates of cash withdrawal from his account issued by Ukrainian bank 1.

The results of the FIU's analysis were sent to SSU, which established that an organised criminal group consisting of citizens from Ukraine, Russia, Moldova and Uzbekistan had created channels for the illegal export of currency originating from accounts opened with Ukrainian bank 1 and destined for CIS countries, including Russia and Moldova. The functions of couriers were performed by the two Moldovan citizens, the Uzbek citizen and two nationals from Ukraine. In addition, it was found that a number of non-resident companies were involved in the criminal scheme.

Following an attempt to export foreign currency instruments to Russia at Borispol airport, SSU staff detained Moldovan citizen 2 and seized USD 9.5 million. After having reviewed the materials collected, SSU opened criminal proceedings under Art. 205 (fictitious business) and 209 (legalisation (laundering) of proceeds from crime) of the CC. The investigation is being conducted by the Prosecutor General's Office of Ukraine.

Operational needs supported by FIU analysis and dissemination

(a) Operational analysis

187. The FIU can obtain information held by all REs, including those that had not previously reported a transaction. Information from REs is regularly sought by the FIU as an integral part of its analysis cycle. Furthermore, the FIU has direct access to all relevant databases held by LEAs as well as access to a wide range of databases containing administrative information. These databases are directly available through internet access.

188. The FIU's overall input to operational analysis is quite substantial. Case files that are created by the FIU itself (based on the analysis of various types of reports; the use of its powers to collect additional intelligence from REs; or bilateral or multilateral exchange of information with international partner agencies) have been successfully considered by all types of LEAs for the purpose of pre-trial criminal investigations into ML, associated predicate offences and FT. In addition, the FIU has assisted investigating bodies successfully in servicing their operational needs, i.e. in providing financial analysis (par.356-357 and KF2 under IO.9 are also relevant to this core issue).

189. FIU Order No. 89 establishes the procedure for analysing reports on financial transactions within the Financial Investigations Department, as well as the methodology for the analysis of reports on financial transactions that may be related to ML, FT or PF. All STRs received by the FIU are automatically classified according to the level of risk, using the resources of the unified information system. All reports are subject to thorough analysis taking into account all available information. Each transaction is analysed to identify any indications that the transaction may be related to ML, FT or PF or associated with the commission of other criminal acts.

190. For high risk transactions, an electronic dossier is immediately created. With respect to medium risk transactions, an analyst carries out additional risk analysis. The potential of ML, FT or PF is analysed under separately determined algorithms. The following information is established: scheme and key participants; signs of known risks, methods, schemes and typologies of ML, FT or PF, etc. After having gathered all available information on the key participants and related persons, the analyst seeks to establish the presence of suspicion of ML, predicate offences, FT or PF. In case a reasonable suspicion exists, a draft case referral is submitted to the FIU's Expert Commission on the review of case referrals and additional case referrals, which elaborate on previous case referrals based on additional information), which decides whether case referrals/additional case referrals should be disseminated to legal person and intelligence agencies. In the absence of suspicions, the analyst recommends to the Director of the Financial Investigations Department that the file be archived. If connections between key participants and other major dossiers are identified, the analyst can recommend to the Director that the financial transactions be included in the relevant dossier. Information on financial transactions performed by participants mentioned in an archived dossier can be used further when analysing the financial transactions linked with these participants. Financial transactions classified as low risk are kept in the unified information base of the FIU and may be used in the course of other financial investigations.

191. The assessment team was informed by all LEAs as well as the main supervisory bodies met on-site that the FIU is clearly the main partner authority of reference when any type of financial analysis is needed either to start or continue an investigation. According to these authorities, the FIU's analytical products are of good quality and in the vast majority of cases have proven instrumental in their work. The FIU has continued to provide analysis of good quality although its resources have been significantly reduced since 2012. The FIU's budget has been decreasing and its IT system needs significant updating. More importantly, the ratio between the FIU's human resources and its workload has recently decreased dramatically: between 2012 and 2016, 30% of the staff, including senior managers, left the FIU mainly due to the uncompetitive salaries offered by the FIU as compared with the private sector and the newly established NABU. At the date on the on-site visit, 38 of the 237 posts were vacant. Meanwhile, the number of reports received by the FIU multiplied by four between 2014 and 2015, as a consequence of the expansion of the list of financial transactions covered by mandatory reporting. Despite these circumstances, the FIU has managed to remain

effective by prioritising cases in line with the risks identified in the NRA, as well as its own risk analysis: cases including PEPs, fictitious domestic companies (in relation to grand scale organised crime), offshore companies (in relation to corruption) and FT have been given priority attention. According to its own assessment of ongoing cases and trends, the FIU is of the view that should the current resource situation continue to worsen, the FIU might no longer be in a position to fulfil all its obligations, especially responding to LEAs' financial analysis needs and international partners' assistance requests.

192. There is no indication that the effectiveness of the FIU's operational activities is hindered by any undue influence.

(b) Strategic analysis

193. According to FIU Order No. 89, the FIU performs strategic analysis aimed at identifying ML risks, trends, methods and financial schemes on an on-going basis. On this basis, as already noted, proposals are made to improve the list of criteria for selecting the suspicious transactions to be reported to the FIU. Proposals are approved by the Head of the FIU. Typological research reports are conducted annually by the FIU in consultation with all participants in the AML/CFT system, and published on its website.

(c) Dissemination

194. The FIU has dealt with a significant and increasing number of cases in the period under review: responses to LEAs' requests for information; cases already investigated by LEAs and input into the unified pre-trial investigation register; or cases disseminated to LEAs in accordance with their investigation competencies under Art. 216 of the CPC.

Table 4: No. of assistance requests from LEAs and supervisory authorities to the FIU

	2012	2013	2014	2015	2016
From the NP(Ministry of Internal Affairs (MIA))	170	317	444	323	230
From supervisory authorities	32	41	27	14	35
From the PGO	33	34	220	284	333
From the SFS	63	154	216	262	211
From the SSU	34	61	375	458	356
From the NABU	0	0	0	12	157
From the MDU	0	0	0	0	2
From intelligence agencies	0	7	2	2	24
Total	332	614	1,284	1,355	1,348

195. The following table provides information on the analytical work of the FIU and the generation/dissemination of financial intelligence.

Table 5: Intelligence disseminated spontaneously and on request

	2012	2013	2014	2015	2016
Total no. of transactions reported by REs	967,821	982,141	1,287,496	4,357,117	6,319,776
Total no. incoming requests from LEAs	300	573	1,257	1,341	1,313
Total no. of all types of submissions from the FIU to LEAs	1,326	2,295	2,407	2,378	1,516

Total no. of case referrals and additional case referrals transmitted to LEAs	719	822	774	686	591
No of transactions submitted to LEAs as part of the case referrals and additional case referral	104,408	44,831	78,217	143,802	62,154 (1 st half of 2016)
<i>Mandatory monitoring</i>	81%	74%	59%	52%	
<i>Internal monitoring</i>	19%	26%	41%	48%	
Value of transactions included in case referrals /additional case referral (million UAH)	158 710 (~EUR 3,278.3M)	80 794 (~EUR 2 648M)	330 283 (~EUR 10,827M)	217 305 (~EUR 7,123M)	62 202 (~EUR 2,039M)
Total no. of investigations based on case referrals / additional case referrals	310	840	602	406	290
<i>Incl. ML-related cases (criminal proceeding under Art. 209 of CC)</i>	19	98	82	44	22
Total value (million UAH) of funds suspended based on case referrals /additional case referrals	60.7 (~EUR 1.99M)	113.23 (~EUR 3.71M)	19,581.06 (~EUR 461.93M)	6330.86 (~EUR 207.55M)	681.14 (~EUR 20,232.99M)

196. The ratio between number of transactions reported and cases disseminated is very high, which is linked to the threshold-based nature of the reporting. The percentage of cases referred to LEAs that are taken forward for further investigation is high, which tends to corroborate the positive feedback they expressed on the quality of the analysis produced by the FIU.

197. The case-referrals related to FT are analysed under core issue 9.2 in the section entitled 'FIU Disseminations'.

198. Internally, the Commission on the review of case referrals and additional case referrals determines the beneficiary of its disseminations. The Commission comprises the Chairman of the FIU, his Deputy (Head of Analysis), the case analyst and, if needed, colleagues from other LEAs in cases where several LEAs could potentially be interested in following up on that case. The Commission meets at least once a week or on an ad-hoc basis if needed, i.e. in high-priority cases including high-level/grand-scheme corruption and PEPs in general, as well as FT.

199. The FIU has concluded framework cooperation agreements with 17 state authorities of Ukraine. These protocols determine i.a. the structure of the files and the requisite composition of information, the grounds for exchange, measures to ensure the protection of information, etc.

200. Cooperation between the FIU and supervisors is governed by the AML/CFT Law and other bylaws, including joint ones. Details of such co-operation are set out under IO 3.

Cooperation and exchange of information/financial intelligence

201. The FIU regularly exchanges ML-related information with the NP, the PGOU, the SFS and the NABU on an operational level. With regard to FT, the SSU would be the main partner agency for the operational exchange of information. In addition to the internal dissemination committee described above, co-operation is also facilitated by a special department within the FIU which is empowered to exchange confidential, operational information with competent domestic LEAs. Further information on cooperation may be found under core issue 1.5.

202. No technical or legal obstacles appear to limit the effective exchange of information between authorities.

203. There do not appear to be particular issues in relation to the protection of the confidentiality of information, be it in the context of exchanges between the FIU and REs, LEAs and foreign partners; or in the analytical work internally carried out by the FIU. STRs and threshold-based reports are generally filed in electronic form through a secure web line. Only 1% of reports involve a physical transfer via postal courier services. Those reports are usually filed by smaller DNFBPs without much experience in co-operating with the FIU. Tipping-off rules seem to be broadly understood by REs (cf. IO4). The information contained in a dossier for submission to the LEAs is gathered electronically and stored in the closed IT system of the FIU. At each stage of dossier processing, information is only available for consultation by an analyst and direct senior management of the Financial Investigation Department. Under the Procedure for providing and reviewing case referrals, approved by joint Order of the MoF and LEAs, case referrals constitute proprietary information of the FIU and are classified as "For Official Use Only". The transmission of such information is carried out using the means of cryptographic protection of information. case referrals may also be sent in envelopes by persons who have the right to work with the documents of "For Official Use Only", in a way that eliminates unauthorised access to their content. Under the Procedure the registration of case referrals and additional case referrals received from the FIU, as well as their use, is carried out by the LEA in accordance with the legislation on the use of information with restricted access, including Art.222 of the CPC on protection of investigation secrecy and the Laws "On Operative and Investigative Activity" and "On Counter Intelligence Activity". Lastly, information is exchanged with international partners through the secured web-site of the Egmont group.

204. The FIU also hosts the domestic FIU training centre that offers various different sorts of training programs in the field of AML/CFT. LEAs as well as supervisory bodies use its services in its headquarters in Kyiv as well as various branches across Ukraine on an ongoing basis. Apart from domestically-organised training sessions that can also include representatives of the private sector, the training centre also cooperates with international donors on a bi- or multilateral basis, if need be.

Conclusions

205. The FIU produces good quality financial intelligence and strategic analysis based on a broad range of sources, including the very high number reports filed by REs. As illustrated by numerous case examples provided by the authorities, a significant percentage of case referrals from the FIU to LEAs generates investigations into ML, associated predicate offences or FT by LEAs. LEAs also regularly request support from the FIU in their own investigative efforts. Cooperation between the

FIU and other competent authorities is facilitated by a number of institutional mechanisms allowing for the timely and confidential exchange of information and intelligence. Overall, reports submitted to the FIU by the REs appear to be in line with the country's risk profile; however, the authorities have started to take measures to encourage suspicion-based reporting, with a view to improving further the quality of this critical source of financial intelligence. These efforts, which could result in a smaller number of better-focused reports, could contribute to alleviating the growing resource issues faced by the FIU, which suffers from staff turnover and relies on IT equipment that needs updating. **Ukraine has achieved a substantial level of effectiveness for IO 6.**

Immediate Outcome 7 (ML investigation and prosecution)

ML identification and investigation

Identification of potential ML cases

206. The UAs indicated that the detection of ML offences is achieved through: reports from the FIU; law enforcement authorities initiating such investigations in carrying out operational-search activities; during investigations of other criminal proceedings; receiving requests for MLA; and as a result of information from others.

207. Proceeds-generating crimes in Ukraine have been increasing since the last evaluation. From 2010 to the first quarter of 2016, the number of recorded crimes of embezzlement by abuse of official position (Art.191 CC), forgery (Art. 366 CC), and offences committed by an organised group or hierarchical organisation (Art. 28, parts 3 and 4 CC) rose year on year. The totals from 2010 to the first quarter of 2016 are reported as: 83035 (Art. 191 embezzlement); 57756 (Art. 366 forgery); and 9459 (OC offences Art. 28). There is a similar upward trajectory in other proceeds-generating crimes in this period. The number of opened ML investigations (without an STR) for the period 2010 to the first quarter of 2016 was 944 (0.6% of the 3 types of major proceeds-generating crime referred to in par. 1 above). The percentage of ML investigations opened would be lower if it was based on the totals of all proceeds-generating offences in this period. Thus the evaluators concluded that many more ML investigations could have been followed up in proceeds-generating crimes in this period.

208. The authorities provided, after the onsite visit, revised figures on ML pre-trial investigations in the table below, which include FIU case referrals. Even though this table covers all of 2016, the figures appear consistent with the conclusions in the preceding paragraph.

Table 6: Number of ML pre-trial investigations and prosecutions

	2012		2013		2014		2015		2016	
	Investigations	Prosecutions								
PGOU	-*	-*	16	5	16	6	24	2	25	1
NABU	-*	-*	-**	-**	-**	-**	1	0	15	0
NP	-*	-*	105	63	116	67	101	36	64	21
SFS	-*	-*	107	27	72	20	47	8	37	8
Total	-*	-*	228	95	204	93	173	46	141	30

209. One of the main reasons for the low numbers of ML investigations is that ML is still seen by most interlocutors met onsite primarily as an adjunct to a predicate offence. Despite the technical position set out in the TC Annex under R.3, the Plenary Supreme Court Res. No 5 (15.04.2005) “On court practice of application of legislation on criminal responsibility for laundering of proceeds from crime” (hereinafter “the Supreme Court resolution”), which, though in need of complete revision and updating, was still applied by judges in ML cases. This Resolution appears to assume that a predicate offender would be identified before criminal responsibility for ML could be applied, although criminal liability for ML is said to be “not excluded” where the predicate offender was subject to statutory indemnity or was dead. Thus, in practice, the evaluators found that ML criminal proceedings were almost exclusively considered only when a predicate offence (and often in practice a predicate offender) was identified, or after a conviction for the predicate offence.

210. The first requirement of law enforcement in Ukraine traditionally has been to identify a predicate offence. Competence to investigate ML was before 2015 determined by whoever investigated the predicate offence. The decision to open all ML pre-trial investigations was made at the discretion of the agency conducting pre-trial investigations of predicate offences, under the superintendence of the prosecutor. The evaluators were advised that if an investigation into a predicate crime was closed, then, at present, there would be no ML investigation. It follows that, prior to the reforms to the CPC in 2015, if there was no identified predicate offence, in practice, there was no investigative body which could take on an investigation for ML - unless the prosecutor directed an investigative body to do so.

211. In the course of the 2015 amendments to Art. 216 of the CPC a reform was proposed to allow any investigative body that detected the crime (of ML) to be included in the bodies that could investigate ML. The adopted amendment on investigative competence now allows ML pre-trial investigations to be undertaken by an investigator of the authority that “initiated a pre-trial investigation” (which appears to allow for autonomous ML investigations where the predicate is unknown) or by investigators whose jurisdiction is the predicate offence (socially dangerous act preceding ML), as before.

212. The second part of Art. 216 par. 8 of the CPC is relevant to the issue of what constitutes the existence of a predicate offence for the purposes of opening ML pre-trial investigations. The authorities proposed that the reform of Art. 216 of the CPC should clarify that the identity of the predicate offender was not necessary to be proved to open ML investigations but this proposal was not included by Parliament.

213. Art. 216, as amended, does not state that a conviction for the underlying predicate offence is not a pre-requisite for ML criminal proceedings. It simply allows for the opening of investigations for ML without a preliminary or simultaneous charging of the underlying predicate offence, when:

- a predicate offence was committed outside Ukraine and the laundering was committed in Ukraine;
- the fact of a predicate offence was established by a court in “relevant procedural decisions” (i.e. court orders).

214. There is no “or” between these two paragraphs, but, as noted in the TC Annex, the authorities consider that the two conditions should be read disjunctively, so ML pre-trial investigations can now be opened for both foreign and domestic predicates where the predicate offences are revealed in procedural decisions. As noted in the TC Annex, there are examples in other legislative acts (including the AML/CFT Law) which support this construction. However no binding authority from

an appellate court has been provided which confirms that Art. 216-8 applies to pre-trial investigations in both domestic and foreign predicates³⁵.

215. Thus, to commence a ML pre-trial investigation, LEAs do not need a conviction and sentence for the predicate offence. They consider that pre-trial investigations for ML can be opened, in parallel with investigations into the predicate offences, where there are findings which assume the existence of predicate crimes in court orders. LEAs also advised that they can open ML pre-trial investigations under certifications from a prosecutor, that there is sufficient information to suspect underlying foreign or domestic predicate crime (until any contrary ruling by the courts on the application of Art. 216-8 of the CPC to domestic predicate crimes).

216. However there was universal agreement onsite that law enforcement are unable to transfer a ML investigation to court on this basis, and that even a completed ML enquiry would have to be put into abeyance until the predicate offence is completed with a conviction. Thus, while in some circumstances it appears law enforcement commence ML pre-trial investigations without a conviction for the predicate offence, most law enforcement officers still firmly believed that they need a conviction for the predicate offence if the ML is to go to court. When asked if ML can be pursued where a predicate offender is dead or proceedings for the predicate offence are time-barred, the evaluators were told (by experienced investigators) that they would need a person responsible for the predicate offence before criminal proceedings could be taken for ML. An appellate judge also advised the evaluators that if a defendant is acquitted of an identified predicate offence a ML case cannot go ahead in the Ukrainian system. It follows that if the underlying predicate criminality is unidentified (whether foreign or domestic), generally speaking, nothing would happen in terms of ML investigations.

217. There is one caveat. There appears to have been at least 1 recent case where the court accepted a “recognition of guilt” of ML by a person charged with (autonomous) ML, which implied his acceptance that proceeds came from predicate offences (without the prosecution independently proving those acts in the ML hearing). It was unclear whether the predicate offence(s) were capable or incapable of proof independently. What seems clear is that, if a person is alleged to have laundered proceeds from unidentified predicate offences and is not prepared to “recognise” his guilt in relation to ML, current practice would be not to prosecute him for ML.

218. Proceeding with a ML contested trial without a conviction for the predicate offence, by establishing in the ML trial that underlying predicate offences had occurred from which proceeds were derived (either through independent evidence or by inferences) has still not been tested. Some authorities were convinced that this was impossible. Thus, going forward, prosecutors are strongly urged to challenge the notion that a conviction for the predicate offence is the only basis upon which underlying predicate criminality can be established in contested ML cases. The evaluators consider that a clear legislative amendment is required to make this happen.

Financial investigations

219. The prosecutors advised that LEAs are obliged to obtain their approval to conduct financial investigations. The authorities emphasised that financial investigations could always be opened where there is evidence of “lifestyle” issues – such as when a person with no formal income acquires or transfers significant property to others, or spends large sums on entertainment. In the last 2 years

³⁵ Case examples were provided after the onsite visit which show that pre-trial investigations for Art. 209 ML offences have been opened in respect of foreign predicate offences

prosecutors advised that in ML cases they would seek to apply the new Special Confiscation orders, which require financial investigations.

220. The Prosecutors referred to the 2012 Methodological Recommendations on Organisation of prosecutors' supervision on fictitious businesses, conversion centres and legalisation of the proceeds of crime as mandating financial investigations in these cases. They are posted on the official site of the PG's Office and are available to law enforcement. They are lengthy, general guidance documents, which set out elements of these offences. However they do not appear to contain any mandatory requirements to prosecutors to direct ML investigations in these or other major proceeds-generating cases. The authorities also pointed to Art. 214 CPC as an authority for mandating financial investigations. Art. 214 requires investigators/prosecutors to enter immediately into the Register of Pre-Trial Investigations circumstances likely to indicate the commission of a criminal offence, including ML. This does not, of itself mandate financial investigations.

221. There was some confusion between LEAs as to what is meant by financial investigation – investigation into ML, or investigation into other financial offences, or investigation of proceeds derived from offences. There are no common instructions on when to start a financial investigation and what should be its aim.

222. In practice, in depth financial investigations appear to be few and far between. The evaluators were surprised that there were no ML related financial investigations being conducted by two units which the team met (one investigating organised crime predicate offences, and one investigating human trafficking). The evaluators considered that both units lacked the resources and capacities to conduct financial investigations, and that opportunities to identify ML were being missed. By contrast, there appeared to be some financial investigations being undertaken by investigators of drug related predicate crimes leading to limited use of the discrete drug-related ML offence (Art. 306 CC).

223. Scarce resources for ad hoc financial investigations are sometimes found by the NP, using accountants in government service. Some squads have economic crime officers with basic training in financial investigation. But there are no dedicated financial investigators available as a single resource to the NP. There also appears to be little systematic training in modern financial investigative techniques for most officers and prosecutors investigating proceeds-generating crime. It is advised that a dedicated team of financial investigators (with access to accountancy advice) should be developed within the NP as a single resource which can be called upon by units within the NP.

224. It was a matter of concern that there was a shortage of trained financial investigators in NABU. During the onsite visit, NABU had 300 pre-trial investigations opened - some involving current Ministers³⁶, MPs and judges. However, it appeared at that time that they were not systematically following up ML aspects in high level corruption cases, though some significant restraints of assets had been achieved (see beneath under IO 8). As NABU beds down, the evaluators consider that real emphasis should be placed on following up significant ML schemes identified in their cases, with a view to prosecuting those that launder on behalf of high officials in the same proceedings.³⁷ To do

³⁶ 2 Ministers, 1 MP and the former Commissioner of the SFS had been made suspects at the time of the onsite visit

³⁷ Since the onsite visit the evaluators were advised of steps being taken by NACBU and anti-corruption Prosecutors to investigate/prosecute more ML cases in parallel with corruption.

so, more detectives need to be recruited by NABU and trained in financial investigative techniques and in complex ML investigations.

225. One area where ML cases can no longer be pursued is in relation to certain aspects of smuggling. As noted in the TC Annex, following the partial decriminalisation of offences that can apply to smuggling in 2015, there is no longer a possibility of investigating the laundering of proceeds from bulk smuggling of some significant taxable goods. This is unfortunate. The authorities are strongly encouraged to review this policy decision and restore the possibility of ML investigations and prosecutions for this type of smuggling.

How well are the ML cases being investigated?

226. The inefficient investigation of ML, organised crime, tax crimes and predicate crimes are considered as major risks 20-23 in the NRA.

227. The NBU considers that generally banks provide provisional access to bank secrecy information to LEAs in a timely way. However some law enforcement authorities encounter problems in this area. Under Ch. 15 CPC provisional access to such information is possible for 30 days following a court order. The procedure under the CPC is for the court to summon the party holding the documents to an access hearing, together with the applicant. It is permissible for the banks, when summonsed, to notify the suspect and for the suspect and/or his advisers to attend a provisional access hearing, which appears to defeat the object. The evaluators were advised that the mere fact of such applications being made can trigger tipping off as networks of persons offering conversion centre services are said to operate through some of the court staff administering these applications.

228. It is possible under Art. 163(2) and (7) CPC for the court not to summon the person holding documents where a “real threat” exists of their destruction. While the authorities were generally of the view that this was not an insurmountable hurdle, some LEAs consider that establishing a “real threat” is so difficult that they rarely use these provisions. Even if these provisions are used (without the intervention of any criminal networks), all court orders (including provisional access orders) were at the time of the onsite visit subject to immediate publication³⁸.

229. In some of the case examples provided, where provisional access orders were granted, the documents were not provided in full by the entities or the entities did not comply with the court order at all. The authorities consider the number of refusals of temporary access to be de minimis³⁹ though no figures have been provided which show how many denied applications were made after inter partes hearings. A denial by the court of a provisional access order (or the provision of incomplete information under such an order) does not stop the investigators applying for a general house search warrant under Art. 166 CPC. However, this further delays investigations and increases the risks of vital documents being removed or destroyed.

230. The authorities had no statistics on the numbers of applications for house searches made as a result of their inability to obtain provisional access to documents. However, some examples were given of such applications being made where provisional access had been denied, or where orders on provisional access were not followed. Failure to execute court rulings on provisional access is the

³⁸ This has since been rectified.

³⁹ The authorities provided after the onsite visit official figures showing 4635 petitions for provisional access out of 855 906 applications were denied between 2014 and the first half of 2017

basis upon which data was entered on to the Register of Pre-Trial Investigations under Art. 382 CC (failure to execute a court decision) in 20 ongoing pre-trial investigations⁴⁰.

231. The police also advised that they frequently use the FIU to provide them with necessary financial intelligence, rather than use the CPC provisions. If the FIU is able to assist, the police still have the challenge of turning such material into admissible evidence under the CPC.

232. The evaluators advise that the operational effectiveness of Ch. 15 CPC (and related sanctioning for breaches of court orders) should be reviewed at least in the context of ML cases, given the risks involved in these cases. The aim should be to remove requirements for parties holding relevant documents to attend *inter partes* hearings and thus being alerted to possible proceedings. At the very least, the evaluators consider such hearings should be exceptional in ML (and FT) investigations and that Law enforcement should more proactively use in ML (and FT) investigations Art.163 (2) CPC, which allows for provisional access hearings without summoning the holder of the documents. This review of the effectiveness of these LE powers should also consider practical solutions to minimise tipping off in the investigative process and to ensure that non-compliance with related court orders, when proved in criminal proceedings, is appropriately sanctioned by the courts (the sentence in the conviction referred to in footnote 42 seems hardly dissuasive).

233. If the courts ultimately are resistant to a more proactive use of the *ex parte* provisions under Art.163 (2) CPC in ML (and FT) cases, then the authorities should consider a formal legal review of this part of the CPC and statutory revisions of Ch. 15 CPC.

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

234. The evaluators considered whether ML investigations and prosecutions address two of the highest risks that Ukraine faces, namely corruption and theft of state assets by senior state officials and fictitious entrepreneurship/conversion centres.

Senior state officials, and politically exposed persons

235. In 2014, complex and sensitive pre-trial investigations involving corruption, misappropriation, embezzlement of state property, and abuse of power (with ML as an ancillary offence in 4 cases) were opened by the PGOU and conducted by that office, together with the FIU, in respect of former high officials from the previous regime. Significant assets were restrained in 2014 at the outset of these investigations. It is alleged by prosecutors that the former head of state, together with some of his most senior associates, operated to commit especially grave crimes against state property for personal enrichment. Some of these persons currently within Ukraine have admitted their complicity in such a criminal organisation following consideration by the courts.

236. Some information was provided about the status of these delicate cases. It is understood that the first person to be convicted in this context was citizen "C" in the Obolonskyi district court of Kyiv on 22/12/2016 for offences under Art.255 CC (creation of a criminal organisation), Art.28 CC (participating in a criminal organisation operating on a particularly large scale) and Art.191 CC (misappropriation) but not of ML.

⁴⁰ Of the 97 criminal proceedings since 2012 for Art.382 offences (failure to execute a court decision) the authorities advised that 71 were closed against the legal person on the basis of absence of a crime. Indictments were sent to court in 2 cases (1 resulted in an acquittal and 1 in a conviction, with a fine of ~EUR 453).

237. The authorities also advised the team after the onsite visit of one further important plea agreement involving another member of this organisation. This plea agreement was approved by the Kramatorsk City Court on 28.3.2017, during the onsite visit. The person concerned was convicted (during in camera proceedings) under Part 4 of Art. 28 CC (participating in a criminal group operating on a particularly large scale), and of ML by this group on a particularly large scale under Art. 209-3 CC. The evaluators were advised that the particulars of these offences are classified as secret and that the court judgment is not subject to publication⁴¹. The authorities explained that in view of this plea agreement the person concerned was sentenced to 5 years imprisonment, and released on a probation order for 3 years under Art. 69 CC (imposition of a punishment milder than prescribed by law). It is possible to apply Special Confiscation where there are court rulings releasing persons from criminal liability. Special confiscation was applied in this case⁴².

238. To date these are the only convictions arising from the major pre-trial investigations which began after the fall of the previous regime. Investigations remain ongoing in this context with regard to other persons.

239. At the time of the onsite visit, NABU had made 2 current Ministers, 1 MP and the former Commissioner of the SFS suspects in criminal investigations, but no indictments had been issued at that time.

240. The SAPO has also been active with regard to current PEPs. In February 2017 this office gave procedural guidance to investigators in respect of a current Ukrainian MP, R. It is said that R, in 2013, with a view to appropriating state funds, created a criminal organisation involving officials of the state enterprise "U". From January 2013 to June 2016, it is alleged that this group illegally took possession of funds received from the sale of natural gas in the amount of UAH 1,613,224,251.69 (~EUR 52,886,443.57). This is estimated to have caused losses to the state of UAH 740,065,924 (~EUR 24,261,632.99). It is alleged that an official of the state enterprise, acting on instructions, laundered the proceeds by transferring funds to accounts of fictitious enterprises. Subsequently these funds are said to have been converted into cash or transferred to accounts abroad⁴³. The indicted defendants appear to be missing. The MP and other members of the group have been declared wanted in separate criminal proceedings.⁴⁴

Officials of state enterprises

241. While ML itself did not appear to be within the sights of NABU investigators with whom the team met during the onsite visit, the team was subsequently advised of a pre-trial investigation in criminal proceedings involving officials of a state-owned enterprise and officers of private companies that was initiated on 04.12.2015 by detectives of NABU. This involves a range of offences including Art. 255 CC (participation in an organised crime group), Art.209-3 CC (ML by an organised group/in large amounts), Art. 364 CC (abuse of authority)⁴⁵.

⁴¹ The court judgment has since been shown to the evaluators.

⁴² On 28 March 2017 a confiscation order was made in respect of funds and securities totalling UAH 34,973,266,108.65 equivalent to EUR 1.12 billion. This order was enforced on 28 April 2017 in favour of the state budget of Ukraine.

⁴³ Following the results of the pre-trial investigation, an indictment in criminal proceedings including Art. 209-3 ML was sent to Solomyansky district court of Kyiv on 30.05.2017.

⁴⁴ As of 13 June 2017, prosecutors of the Specialized Anti-Corruption Prosecutor's Office are carrying out procedural guidance in 24 criminal proceedings for laundering under Art. 209.

⁴⁵ The indictment in this case was sent to the court on 30.05.2017.

242. The SAPO also pointed to another major case which is currently awaiting trial. It is alleged that V, who is the ultimate UBO/controller of a group of businesses (LLC S and LLC I), in conspiracy with the director of the state enterprise "U" (and others) acquired UAH 20,272,524 (~EUR 664,595.57) belonging to the state enterprise as a corrupt reward. It is alleged that two of the defendants - the financial director of LLC "S" and the director of LLC "I" illegally took possession of funds of the state enterprise, following the instructions of V. The funds are alleged to have been laundered through transfers to the accounts of fictitious enterprises. The indictment, which includes counts of misappropriation, ML and tax evasion was sent to the Solomyansky District Court of Kyiv on 30.03.2017. V is wanted also in other criminal proceedings.

243. A second case was highlighted involving A, an acting head of a state enterprise of the Ministry of Defence. He was prosecuted for Art. 209 (1) CC (ML), Art. 364 CC (abuse of position), and Art. 367 (2) CC (negligence in office) and convicted. A received funds in his official capacity from a Building Finance Fund Z in foreign currency, in the amount of UAH 1,113,433.41 (~EUR 38,572.19) to build houses. The funds were not used by A for the intended purpose. With a view to legalising in part some of the funds he had appropriated, A, in his private capacity, took out an interest fee loan for UAH 230 000 (~EUR 7,540.11) with a view to repaying it with the appropriated funds. He was sentenced to 5 years, with deprivation of the right to hold official positions for 3 years and ordered to pay compensation to the Ministry. Art. 75 CC was also applied and he was released under a probation order of 3 years. The table beneath indicates that 3 heads of state companies have been convicted.

244. Between 2010 and 2016 the authorities also pointed to ML investigations and convictions in respect of middle ranking officials of state companies and their subordinates. The ML charges, however, do not appear to have added much to the overall sentences.

Example 1

245. The Krasnolutsky City Court of Lugansk Region considered a case in 2013 involving the formation of a criminal group by the chief of a station assembly and dismantling works (person A), his assistant (person B) and a mining worker (person C) to appropriate funds of the company by falsifying time records for personal gain. Person A was convicted of misappropriation, falsification of documents and ML. Misappropriated funds totalled UAH 335, 488.11 (~EUR 109,983.53). Person A admitted his guilt and was sentenced to 5 years for misappropriation and 3 years for ML with deprivation of the right to hold a management position for 1 year and a fine. The total sentence was 5 years. According to Art. 75 CC person A was released on probation under Art.75 CC. The others were not charged with ML

Example 2

246. This involved a director of a State Enterprise who was prosecuted for abuse of authority and ML. Knowing that the State Executive Service had placed an arrest on all current accounts of the company (to repay creditors) the Director opened accounts into which money from the State budget was channelled for his personal enrichment. He legalised proceeds totalling UAH 254, 810 (~EUR 8,353.45). He was convicted in July 2010 of abuse of authority and sentenced to 3 years 6 months for that offence, and convicted and sentenced to 2 years 5 months under Art. 382 CC (failure to comply with a judgment). For ML he was convicted and sentenced to 3 years imprisonment with deprivation

of the right to hold management positions in State enterprises for 1 year 8 months (with no confiscation of property). The total sentence was 3 years 6 months.

Judges, prosecutors and LEA

247. No convictions have been achieved for ML in respect of judges and prosecutors, where corruption perception levels are reported in the NRA to be high. However there are several pre-trial investigations ongoing. As of January 21, 2017, NABU was conducting investigations regarding 23 such persons. Some examples have been provided of pre-trial investigations in this risk category which predate NABU, and which also remain ongoing. In 2015, the PGOU commenced a pre-trial investigation of a judge and associates for Art. 368-2 (Illegal enrichment) and Art. 209 (ML). The PGOU also began criminal proceedings in 2016 in respect of persons in the Rivne region, including 5 employees of law enforcement, and representatives of state authorities. They are alleged to have committed grave crimes related to illegal mining of minerals of state importance (amber). Relevant offences under investigation include Art.255 (criminal organisation), Art.368 (bribery), Art. 426-1 (excess of power), Art. 191 (misappropriation), and Art. 209 CC (ML). The PGO is also conducting pre-trial investigations with regard to 2 employees of the prosecutor's office under Art. 368 of the CC (obtaining a bribe) and illegal profit. The named officials are suspected of demanding and obtaining bribes in the amount of USD 200 thousand.

Corruption in local government

248. Official corruption in local government sectors (involving misappropriation, embezzlement or taking public funds through abuse of power, forgery of official documents, and illegal enrichment) are prevalent. Numerous investigations, which led to ML charges, have been brought involving mayors and other local officials in respect of their dealings with the private sector. A typical example of this is described beneath.

Example 3

249. This relates to a conviction in the Melitopol City Court of Zaporizka in 2015. In summary, the Mayor, Deputy Mayor and a Head of Sector of the City Council (deemed for these purposes as an organised group) abused their powers and extorted and laundered UAH 858,515.4 (~EUR 28,144.77). They were all indicted under Art. 209 3 ML (by organised group or in large amounts). In operative sentences, the Deputy Mayor received 6 years for abuse of authority, and with the application of Art. 69 CC, 5.5 years for ML – with a final defined sentence of 6 years, with confiscation of funds and other proceeds and confiscation of property and a fine of UAH 8500 (~EUR 278.66). The Mayor received 5 years for abuse of authority and 5.5 years for ML with a final defined sentence of 5.5 years with confiscation of funds and other proceeds and confiscation of all property. The Head of Sector received 8 years on the abuse of authority and 8.5 years on the ML with a final defined sentence of 8.5 years, with confiscation of funds and other proceeds and confiscation of property and a fine of UAH 13, 600 (~EUR 445.85).

250. While it is appreciated that convictions and significant dissuasive sentences were obtained in this case, including under Art. 209, it is illustrative of others already noted where ML is joined with other serious offences. That is to say much the same outcome would have been achieved, even in the absence of a ML charge. Where a slightly longer sentence was given for ML here, it was a very marginal addition of 6 months.

Fictitious entrepreneurships

251. The evaluators sought to establish how aggressively ML charges were being pursued in respect of the major AML risks arising from the creation of fictitious enterprises/conversion centres. The first case highlighted in this context was initiated in 2006 and was not heard until 2013. The main defendants were 2 officials of lawful businesses in the Lviv region who formed a criminal association with 4 others to obtain from the state budget illegal refunds of VAT. They purchased and registered a number of separate business entities, through which they ran non-existent transactions, for which they claimed and received VAT refunds from the State of UAH 15,539,841.18 (~EUR 538,350.327) between 2002 and 2005. 6 persons were found guilty of offences under Art. 209 3 CC (laundering in especially large amounts), embezzlement and fictitious entrepreneurship. Operative sentences ranging from 3-7 years were passed. Though confiscation was not applied, the sums involved were fully compensated through a civil law suit.

252. The evaluators were also advised of a 2014 case in the Melitopol District Court in 2014, where 2 people were convicted of ML and tax evasion through fictitious companies that they set up, and through which they legalised UAH 2.3 million (~EUR 75 401). The final operative penalties for ML were significant ones – higher than the penalties imposed for tax evasion. For ML they received 7 and 7.5 years respectively with property confiscation and fines of UAH 255 000 (~EUR 8,359.68) each, and deprivation of the right to hold leading positions in enterprises for 3 years.

253. A further case involving a lawyer who created fictitious enterprises to launder proceeds is discussed beneath in the context of sentencing.

254. One ongoing case involving the creation of a fraudulent enterprise for the purposes of assisting tax evasion began as a pre-trial investigation, with Art. 205 CC (forgery) as the initial subject of the enquiry. The investigation established that a group of 3 persons created enterprises to provide “conversion centre” services to conceal unlawful activities. Three persons are now being prosecuted for ML and other offences. Property to a total value of UAH 100 million (~EUR 3.28 million) has been arrested. The case is being reviewed by the court.

255. The evaluators welcome these developments. But they are only 4 cases since 2006 responding to this major AML risk, accounting for 22% of predicate crime. The authorities are strongly urged to continue to prosecute robustly under Art. 209 the formation of these enterprises for the laundering of proceeds, to challenge inappropriately lenient sentences that may be issued for ML in these types of cases, and also to seek the radical amendment of Art. 205 CC, so it too is sanctionable with proportionate and dissuasive penalties of imprisonment.

Types of ML cases pursued

Convictions for ML

256. As noted, indictments and convictions for ML have been declining, though the authorities attach some responsibility for this to changes in the CPC and delays in receipt of international MLA. The statistics referred to in the published version of the NRA show that indictments reviewed with a verdict were 150 for 2013, 91 for 2014, and 45 for 2015. The following natural persons shown in the NRA as convicted for ML, 131 for 2013, 73 for 2014 and 40 for 2015 (244 persons in total).

257. The table beneath was provided after the on-site visit. It shows the types of cases and persons proceeded against where there were convictions. Some of the statistics are somewhat inconsistent

with those in the NRA and other information received. But the table is illustrative of the types of cases pursued. There were 524 convictions for the period 2010-2016. For the years covered by the NRA (2013-2015) it shows 166 convictions under Art. 209 (78 less than appears in the NRA).

Table 7: Different types of ML convictions

	Art. 209 (1)	Art. 209 (2)	Art. 209 (3)	Self-laundering	3 rd Party ML	Autonomous ML	ML with a predicate foreign offence	Former or current high-level official	Convicted person is oligarch	Head of state company	Head of other company	Convicted person is a judge	Convicted person is a prosecutor	Other
2010	50	17	5	71	1					1	34			37
2011	57	41	10	108							37			71
2012	72	38	48	157			1				71			87
2013	41	20	3	58	6						24			40
2014	30	18	11	57	1	1				1	19			39
2015	25	6	12	43						1	9			33
2016	15	4	1	19	1						6			14
Total	290	144	90	513	9	1	1	0	0	3	200	0	0	321

258. The authorities subsequently confirmed that the most accurate figures are those that appear in the NRA, and they provided a further table set out beneath, based on information recorded by the State Judicial Administration. These figures also differ slightly from those published in the NRA.

Table 8: ML convictions

No	Indicator (according to court decisions which entered and not entered into force)	Year									
		2013		2014		2015		2016		Total 2013 - 2016	
		Articles of the CC									
		209	209-1	209	209-1	209	209-1	209	209-1	209	209-1
1	Number of criminal proceedings (cases) under which the sentences were imposed)	148	2	90	1	45	0	27	0	310	3

2	Number of persons sentenced for commission of the mentioned criminal offences	130	1	72	1	40	0	19	0	261	2
3	Acquitted persons for commission ML crimes	97	2	48	0	35	0	19	0	199	2
4	Including sentence under the other Article of the CC	91	2	35	0	26	0	6	0	158	0
5	Amount of the legalised proceeds (money, property) from crime is determined according to the court decision (UAH)	200,487,591 (~EUR 6,572,598,73)	0	35,507,110 (~EUR 1,164,032.07)	0	3,148,164 (~EUR 103,602.48)	0	34,212,293 (~EUR 1,121,584)	0	273,355,158 (~EUR 8,961,421.28)	0
6	Number of persons regarding whom a decision on confiscation of money and property was taken	75	0	29	0	10	0	4	0	118	0

259. The one area where all the statistics agree is that convictions for ML have steadily declined from 2013 onwards. While the limitations on starting ML enquiries and the perceived need for an established predicate offence inhibit ML prosecutions and convictions, part of the declining conviction rate seems also attributable to acquittals.

260. The NRA notes that from 2013 to 2015, of the 286 ML criminal cases reviewed with a verdict, there were, 182 acquittals for ML. This indicates an approximate acquittal rate of 43% in those years (which is the same % of acquittals as in the table above for 2013-2016). The evaluators discussed the acquittal rate with prosecutors. It was not disputed. It was explained that there were convictions for other offences in the CC in respect of 154/158 persons acquitted of ML. The evaluators were told that some judges, particularly in smaller courts, were poorly informed about ML cases, preferring to convict defendants for other offences rather than consider the ML aspects, and complex issues around fictitious companies. Moreover, as noted, it was understood that most judges still follow the Plenum of the Supreme Court Res. No. 5, even though the domestic law on which it was based has changed, and Ukraine has since accepted wider obligations in ML following its ratification of the Warsaw Convention.

261. An Appellate judge indicated that prosecutors should have appealed more of the decisions made following this Resolution if they were considered to be inconsistent with current legislation and Ukraine's international obligations. This is a view with which the evaluators concur. However, information subsequently gathered from 379 verdicts in the Unified State Register of Court Decisions from 2010-2016 found only 9 references to the interpretative Supreme Court Resolution. This information and the ML acquittal rates published in the NRA prima facie lead the evaluators to conclude that at least some of the ML cases prosecuted from 2013-2015 may not have been strong evidentially or were poorly investigated/presented.

262. The evaluators consider that a national system of specialisation of prosecutors in ML (and complex financial cases) should improve conviction rates. Prosecutors at senior levels in each

Prosecution Area, properly trained in AML prosecution (and the provisions of the Warsaw Convention), could act as local reference points or “champions” for their colleagues on these cases. Where there are grounds for believing ML cases were wrongly decided, appeals should be taken forward. Such area champions could also be tasked with reviewing all ML acquittals in their areas to establish what lessons, if any, need to be learned for the investigation process in future in ML cases if there are no grounds for appeal. Resulting guidance needs to be fed back to other prosecutors involved in ML cases both locally and fed up to the PG Headquarters for wider promulgation to ML specialists in all Prosecution areas and to investigators.

263. Everyone seemed to accept that the Supreme Court Resolution needs updating if the results of ML investigations are to be properly considered by the courts. It should be revised as soon as possible after the new Supreme Court is in place. It would be helpful if the PG and senior colleagues had some engagement at their levels with the new Supreme Court, particularly on the implications of Ukraine’s ratification of the Warsaw Convention for evidential issues in autonomous and other ML cases, before a new Resolution is promulgated.

264. As already noted, in the evaluators’ view a clearer legislative amendments to the CC/CPC are required to clarify beyond doubt that a conviction for a predicate offender is not a prerequisite for a conviction in court for ML. In the meantime, the PG and his staff should be proactive in bringing cases to the appeal courts to establish clearly that the existence of underlying predicate criminality in ML cases can be established by facts and circumstances, without convictions.

265. While the evaluators consider that responsibility for the high acquittal rate in ML cannot be placed simply on the judiciary, interlocutors from a range of bodies referred to the perceived low professional quality of some Ukrainian judges. After the new Supreme Court Resolution is promulgated a programme of basic judicial training on ML cases should also be pursued for all judges so they are all comfortable with handling straightforward ML cases.

266. However, if meaningful results are to be achieved in complex ML cases in Ukraine, as with the prosecutors, more specialisation of judges should be actively considered. It may assist if a small group of specialist judges with the skill-sets to handle complex financial crime and ML cases are trained to handle the most complex ML cases (including those involving the creation of fictitious enterprises in Ukraine and/or the use of foreign corporate vehicles, shell companies and trusts).

267. The links between high level corruption and ML are clearly understood in Ukraine and these linkages need to be followed through in prosecutions. In the evaluators’ view, if Special anti-corruption Courts are set up in Ukraine to deal with corruption cases involving high level officials (as was advocated by some interlocutors onsite), the same specialised judges should be similarly trained in complex ML - so they can, within the anti-corruption courts, also handle major ML cases involving the associates/ professional advisers of the high officials who are prosecuted for corruption.

Types of cases

268. Several types of cases pursued have been discussed above in the context of national risks. Clearly addressing the highest risks in the national ML risk profile should be a priority in ML investigations. However the rising level of other proceeds-generating crime (human trafficking etc.) and the falling numbers of ML cases brought, indicates that priority also needs to be given to pursuing ML investigations and prosecutions in all major proceeds-generating cases, as well as those involving theft of state assets/high level corruption.

269. The large majority of cases brought are own proceeds laundering. Each of the 11 other cases set out in Table 7 as 3rd party ML, autonomous ML, and laundering with a foreign predicate have been considered by the evaluators. Examples were given of ML investigations in foreign predicate offences were also provided.

270. The one so-called autonomous conviction arises out of a plea agreement between the prosecutor and the defendant. From the commentary provided the person who was the subject of the plea agreement had previously been convicted of fraud, sentenced to 3 years and released on probation under Art. 75 CC. During his trial for fraud it was established he had set up a fraudulent enterprise to provide long term loans, receiving advance payments, which he did not intend to repay. One of these advance payments from x of UAH 4000 (~EUR 130) was transferred into his account and marked as expenditure on office equipment and rent to conceal the alleged criminal nature of their receipt. He subsequently accepted a plea agreement under Art. 209-1 for ML and was again sentenced to 3 years and released on probation under Art. 75 CC. Quite what this prosecution was intended to achieve is unclear. Its precedent value for autonomous ML is dubious as he had already been convicted of fraud. If it is intended to be a precedent because the prosecution was relieved on that day of establishing the underlying predicate crime, when accepting his plea to ML, it may be of some value. But it does not address the real problem in Ukraine – which is establishing underlying predicate criminality in an autonomous ML case where the defendant does not plead guilty.

271. As also noted, in 2011 Ukraine ratified the Warsaw Convention. This instrument contains a mandatory provision (Art. 9[5]) requiring States to ensure that a prior or simultaneous conviction for the predicate offence is not a prerequisite for a conviction for ML. The courts appeared to be unaware of this international obligation. It is clear that Prosecutors have not been instructed by the PG or his senior staff on how to approach ML cases following their international commitments under Art. 9 (5) of the Convention.

Effectiveness, proportionality and dissuasiveness of sanctions

272. The sanctions for Art. 209 have the potential to be dissuasive for both natural and legal persons⁴⁶. The NRA places inconsistency/ (lack of) severity of ML punishment as a high risk.

273. There are isolated examples of potentially dissuasive ML sentences against natural persons under Art. 209 (2) and (3), though they all appear to be accompanied by a conviction for a grave offence for which the sentence was as high, or higher. One experienced LE officer noted that even where 3rd party ML is on the same indictment as the predicate offence, the penalties for ML are lower than for the predicate crime.

274. The evaluators asked if ML sentences were ever made consecutive to sentences for other offences for which the defendant is convicted. The normal practice is that the lesser sentence is subsumed with the greater. The greater sentence is usually given for the predicate offence. The SFS advised of one case where a defendant was prosecuted for ML after his conviction for fraud. A sentence of 7 years was given on the fraud. In the subsequent ML case the defendant received 8 years - in practice, an extra year for ML.

275. Where a sentence imposed involves restraint of liberty or imprisonment not exceeding 5 years, the court may, under Art. 75 CC discharge the convicted person from serving the sentence imposed and substitute for the prison term a probation order for 1-3 years.

⁴⁶ As there are no ML cases against legal persons no comment can be made on dissuasiveness of sanctions.

276. In the majority of cases brought under Art. 209 (1) CC (including some involving senior officials) the provisions of Art. 75 CC were applied. The authorities advised that from 2010 to the first quarter of 2016 152 persons were convicted under Art. 209 (1) where the judge settled on a sentence of 5 years (i.e. below the statutory maximum of 6 years), thus bringing the case within Art. 75. Probation orders followed so these 152 convicted persons served no prison sentences. 110 individuals in the same period received effective sentences of 5 years or less.

277. It may be that the use of Art. 75 for offences which carry up to 5 years is no greater in ML cases than in any others. But what was rather concerning from the judgments read on Art. 209 (1) ML offences was the degree of automaticity of the imposition of probation orders, with scant information as to why the judge considered that in the particular case he should exercise this discretion.

278. The wide use of Art. 75 for Art. 209 (1) ML offences is not dissuasive to potential money launderers. Arguably it offers opportunities for attempted (or actual) judicial corruption. No information was available as to whether any judge had been accused of corruption in this context. Some interlocutors noted that the higher the official facing prosecution, the lighter is the final sentence. Many shared our concerns about the potential of Art. 75 for judicial corruption.

279. Art. 69 CC allows for imposition of a punishment milder than prescribed by law. It can be used in aggravated ML. In one case a lawyer who had created sham businesses for laundering was prosecuted for ML under Art. 209 (2) [ML committed repeatedly or in large amounts, which carries 7-12 years]. The team was surprised that the judge applied Art. 69 CC and reduced the sentence to one which is normally given under Art. 209 (1) (5 years), and thereafter applied Art. 75 CC. The result was a probation order for 3 years, plus deprivation of occupational functions for 3 years and confiscation. While the lawyer may have been in custody earlier in the case, it is still difficult to understand how the final disposal was proportionate and dissuasive, given that the creation of sham companies is a national AML risk.

280. An appeal by the prosecutor against inappropriate decisions under these provisions is possible and had been used (though it was unclear whether this case triggered such an appeal). No statistics were provided on these appeals.

281. The evaluators advise that it may increase public confidence if an independent review is conducted on the operation of Art. 69 of the CC, and Art. 75 of the CC in serious cases, including ML (and FT). Its purpose would be: to ascertain whether sufficient reasoning is given to justify milder disposals; and to establish whether the provisions of Art. 69 and Art. 75 may be overused or misused. Depending on its findings, legislative modifications may be required. At least clearer guidance should be given to judges handling sensitive cases involving major national AML risks.

Extent to which other criminal justice measures are applied where conviction is not possible

282. Given the continuing need for a conviction for the predicate offence for ML court proceedings many offences of ML will be impossible to prosecute. Where such laundering cases involve the use of sham businesses Art. 205 CC may be used.

283. Art. 205 is not an appropriate alternative measure, as it is an administrative offence and fines under it are not dissuasive. When it is used in its aggravated form at least freezing and Special Confiscation can apply. The recent reforms to Confiscation are designed in part to address Risk 7 in

the NRA – inconsistency of appropriate punishment for ML. As noted below, the use of Special Confiscation is only just developing.

284. The evaluators were also advised that opening pre-trial investigations against 3rd persons as accomplices to the predicate offence could sometimes cover laundering activity. Where this is possible, this activity would be tried with the predicate offence. The evaluators were not provided with figures showing how regularly this approach is used or what sentences were imposed on 3rd parties who aid and abet the predicate offence (via ML).

Conclusions

285. Before 2014, ML prosecutions rarely confronted Ukraine's highest AML risks (top level corruption and theft of state assets). Prosecutions generally involved local officials/mayors, where ML was added to indictments containing other counts (which attracted higher penalties). Since March 2014, active steps are being taken (primarily to confiscate assets stolen by senior officials of the former regime) through complex pre-trial investigations for misappropriation and laundering of state assets. They appear to have resulted so far in 2 court convictions, though only 1 of these is for ML, albeit in very significant amounts. At one level it is hard to see how a 5 year sentence with a release on a probation order for 3 years can be seen as an effective, proportionate and dissuasive outcome to address one of the highest national ML risks.

286. It is welcome that the SAPO is now taking action against current senior politically exposed persons for corruption (and to some extent ML). He should routinely also focus on the ML aspects alongside corruption offences. More resources are needed for financial investigation in his office and in law enforcement generally. It is equally important for the PGOU aggressively to prosecute ML by those who create fictitious companies.

287. The perceived operational need to establish that there has been a conviction for a predicate offence before a ML case can be brought to court is a major obstacle to overall effectiveness of ML criminalisation. It requires a legislative solution. Most of the general ML convictions are either self-laundering or 3rd party laundering, where the 3rd parties are charged in the same proceedings, avoiding the necessity of establishing predicate criminality independently. It is necessary to challenge the courts with (contested) autonomous ML cases where underlying predicate crime has to be established by independent facts and circumstances. Until that is possible ML criminalisation will not be really effective. The sentences in many ML cases, particularly under A. 209-1, are unlikely to dissuade potential criminals from ML. Indeed some may actually reinforce a public perception that the higher the defendant, the more lenient is the sentence.

288. Overall the results achieved in ML prosecutions by the end of the onsite visit did not indicate that ML was being used systematically as an effective criminal justice tool to address the significant ML risks to which Ukraine is exposed, though more cases were in the pipeline. The low level of parallel financial investigations, the low number of ML investigations, the low level of ML prosecutions that align with the highest national risks, the declining level of ML indictments and the fact that ML sentences are almost always less than for predicate offences (and are not dissuasive in themselves) indicate that fundamental improvements are needed in terms of effectiveness. **Ukraine has achieved a low level of effectiveness for IO 7.**

Immediate Outcome 8 (Confiscation)

Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

289. Since the last evaluation in 2009 Ukraine has updated and improved its legislative base to ensure freezing, seizing and confiscation of property which represents the direct and indirect proceeds of crime and, where this is not possible, property of corresponding value. The amended confiscation legislation, in force since 2015, now also extends the reach of confiscation to proceeds in the hands of 3rd parties. All these new developments fall under the broad term “special confiscation”. The pre-existing sanction of confiscation as an additional punishment remains on the statute book for most grave proceeds-generating crimes in the CC. Thus, when the authorities speak of confiscation results before 2015, they usually mean confiscation as an additional penalty, as opposed to the actual proceeds of the given offences.

Financial Investigations to trace proceeds

290. It was accepted by the authorities that before the events of Euromaidan in 2014 the amount of confiscations achieved did not reflect the number and cost of predicate offences. With the new legal tools and, in the post 2014 environment, the authorities consider that they are slowly improving their effectiveness in this area. They advised that the policy objective to pursue confiscation of proceeds through financial investigation is now reflected in A 170 of the revised CPC, which mandates the investigator and the prosecutor to take the required actions to identify and find assets that may be arrested in criminal proceedings by requesting information from a variety of sources.

291. The execution of this policy objective is largely in the hands of the prosecutors, as LEAs are obliged to come to them to open a financial investigation. The prosecutors pointed to their 2012 Methodological Recommendations in this context. As previously indicated under IO 7, this guidance document, while useful for supervision of the types of cases they cover, does not constitute mandatory policy instructions to prosecutors to direct the police to conduct financial investigations in all major proceeds-generating crimes. It does not directly stipulate as policy objectives the confiscation of proceeds, instrumentalities and property of equivalent value. Neither does it really explain the issues that law enforcement need to consider in following what has happened to proceeds. It does not appear to explain the practical differences between direct and indirect proceeds or what may constitute instrumentalities liable to confiscation in proceeds-generating offences.

292. The PGOU needs to ensure that all supervising prosecutors in proceeds-generating cases are trained in modern financial investigative techniques and are capable of directing investigating officers in financial investigations where necessary. As noted under IO 7, short and clear mandatory instructions for prosecutors on when and how to direct law enforcement authorities to pursue financial investigations in major proceeds-generating cases need developing.

293. As was also noted under IO 7, in practice thorough parallel financial investigations in major proceeds-generating cases are few and far between, though considerable efforts are made in this regard in the biggest cases - through ad hoc involvement of other economic crime officers or government accountants. Art. 170(2) CPC, since 2015, mandates every officer investigating crimes to identify and find assets. However, the huge workload in investigating the predicate offences themselves means that financial investigations cannot be done effectively by each investigating officer in all major proceeds-generating cases.

294. The evaluators consider that financial investigations into the sources of alleged proceeds should be routinely undertaken in proceeds-generating cases, using trained financial investigators working in parallel with the investigators of the predicate offences. The evaluators also consider that financial investigations should not simply be reserved for the biggest cases. As noted under IO 7, it is recommended that a pool (or pools) of financial investigators (fully trained in modern financial investigative techniques) should be available as resources to the NP and other LE bodies (and to prosecutors) - from which expert financial investigative assistance can be formally assigned to investigative units to follow up the financial aspects in major proceeds-generating crimes. This recommendation is re-iterated in the context of tracing proceeds for IO 8.

295. As noted, financial investigations are focused on the biggest cases and are achieving some significant restraints. NABU, for instance, has its own discrete powers to obtain (under Art. 269-1 of the CPC) orders for surveillance of accounts (account monitoring). This places it in a strong position to identify potential proceeds as well as to identify laundering activities, if it has sufficient resources for financial investigation. It had insufficient resources for this at the time of the onsite visit. As noted earlier, NABU investigators had not really focused on ML at the time of the visit, so their discrete powers to apply for the monitoring of accounts for ML investigations appeared not to have been used. It was unclear whether they had been used to trace assets in corruption investigations with a view to confiscation. NABU should utilise these powers regularly for effective asset tracing in its cases.

296. The problems to which some law enforcement officers drew the evaluators' attention (in less high profile cases than those involving NABU) regarding timely provisional access to financial information under Art. 163-166 CPC (outlined under IO 7) have the potential to compromise financial investigations into alleged proceeds or instrumentalities in predicate offences, and financial investigations into proceeds/laundered property in ML cases. Law enforcement concerns on this issue should be addressed in the review of Ch. 15 CPC recommended above, to ensure parallel financial investigations to identify proceeds are able to be conducted effectively with minimal risk of compromise.

297. To further assist with financial investigations to trace proceeds the UAs should consider further developing the register of beneficial ownership, as recommended under IO 5.

Instrumentalities

298. In the absence of a clear policy instructions on the confiscation of instrumentalities, the authorities provided some anecdotal case examples to demonstrate that instrumentalities can be subject to confiscation. These examples arise out of the pre-trial investigations into high level officials of the former regime, who were alleged to be part of an overall conspiracy to misappropriate state assets. Convictions were achieved against 3 persons in different cases in the second half of 2016 for offences (from 2012 and 2013) which involved misappropriation, forgery, and participation in an OC group. The modus operandi in each case was the appropriation of state funds and movement of them into accounts of fictitious companies, as VAT refunds (they were not lawful VAT refunds). In 2 of the cases the sentences included orders to repay the sums involved, which were described as "compensation to the state" of UAH 130 million (~EUR 4.26 million), and UAH 500,000 (~EUR 16,391.53) respectively.

299. Though these orders were badged as compensation, arguably these sums were instrumentalities of the offences. Had ML been charged (which it was not) the funds could have also constituted laundered property. In any event, however described, the effect of the orders was to

deprive the defendants of the funds and return them to the state. Other than these rather unique cases involving former high level officials, no further examples have been presented involving confiscation of instrumentalities. It therefore remains debatable whether confiscation of instrumentalities in cases involving proceeds-generating cases is really embedded in the criminal justice process as yet. Therefore the proposed mandatory instructions to prosecutors should include explanations of what can be covered for confiscation purposes by the term “instrumentalities”.

Value orders and orders against 3rd parties

300. The authorities have not provided any figures or anecdotal examples of value order confiscations, so it is unclear whether prosecutors are applying for such orders, where proceeds have been dissipated, or whether any value orders have been made. Likewise, the team has not been advised of any confiscation orders in respect of 3rd parties to whom proceeds have been transferred. Statistical information going forward needs to be available on the numbers of such applications and orders for a proper understanding by the authorities of their own performance in confiscation.

Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad

301. There are no reliable figures in relation to overall economic loss from crime year on year. Given this, it is difficult to make an informed judgment as to how effective the competent authorities are in confiscating proceeds of crime in the generality of criminal prosecutions for proceeds-generating crimes. As noted beneath, there are encouraging signs since 2014 of a working provisional measures regime, particularly in high profile cases involving senior officials of the former regime, and also now in relation to high profile suspects who are current politically exposed persons. In particular, on 28 March 2017 one high official of the former regime was convicted for ML and participation in a criminal group funds and securities totalling UAH 34,973,266,108.65 (equivalent to EUR 1.12 billion) were confiscated under a court verdict⁴⁷.

ML cases

302. The authorities provided some indicative figures on numbers of confiscation orders and total amounts of confiscated assets in ML cases for the years under review. They are set out below. These figures are unlikely to include many special confiscation orders as these only came into force at the end of the period, so most figures are more likely to relate to confiscation as an additional punishment.

Table 9: Confiscation orders for ML

	Criminal cases involving crimes under Art. 209 with the adoption of a sentence, total (as of the end of the reporting period)	Convicted for crimes under Art. 209 of the CC	The number of people convicted of crimes under Art. 209 of the CC whose sentence has come into force in the reporting period	therefrom	
				Persons which the court decision on confiscation of funds or other property obtained by crime and confiscation of	Amount of legalised income (money, property) crime, established a court decision (UAH million)

⁴⁷ The confiscation order came into force on 28 April 2017, after the end of the on-site visit.

				property	
2010	185	190	91	35	93.8 (~EUR 3.08M)
2011	192	189	92	51	114 (~EUR 3.74M)
2012	195	182	100	47	56.8 (~EUR 1.86M)
2013	148	130	63	38	138 (~EUR 4.52)
2014	90	72	52	23	27.8 (~EUR 0.91M)
2015	45	40	14	7	3.4 (~EUR 0.11M)
2nd Q of 2016	11	6	4	2	34 (~EUR 1.11M)
Total	866	809	416	203	467.8 (~EUR 15.34M)

303. It should be noted that these statistics do not correspond with some of the statistical information provided under IO 7. The table above shows less confiscation orders in 2013 and 2014, so the earlier figures provided under IO 7 should be treated with caution⁴⁸.

304. A striking feature of this table is the difference between the number of reported convictions under Art. 209 CC and the number of confiscation orders. The evaluators would have expected that all or almost all defendants would have received such orders, and not approximately 50% of defendants, as appears to be the case.

305. Notwithstanding Special Confiscation, all the offences under Parts 1-3 of Art.209 carry confiscation as an additional penalty. The evaluators were told that confiscation as an additional penalty was mandatory, but the numbers above would indicate a more discretionary use of confiscation as an additional penalty. The authorities should examine why so many ML cases appear not to result in confiscation orders.

Early provisional measures

306. As a lack of confiscation orders can frequently relate to lack of early provisional measures, the authorities were asked to provide some statistics to show how regularly provisional measures were applied in ML cases. The following table was provided. Unfortunately, it contains only rolled-up annual figures of the sums involved, and not the numbers of cases in which provisional measures were applied for (and obtained).

Table 10: Provisional measures

Year	Seized proceeds from crime during the pre-trial investigation (UAH million)	Arrested proceeds and property from crime (UAH million)	Total
2010	38.02 (~EUR 1.25M)	1691.22 (~EUR 5.55M)	1729.24 (~EUR 56.69M)
2011	74.21 (~EUR 2.43M)	1817.98 (~EUR 59.60M)	1892.19 (~EUR 62.03M)
2012	51.30 (~EUR 1.68M)	214.81 (~EUR 7.04M)	266.11 (~EUR 8.72M)

⁴⁸ The authorities advised that from 2010-2012 all LEAs kept their own ML statistics but since 2013 they are kept solely by the PGO.

Total	163.53 (~EUR 5.36M)	3724.01 (~EUR 122.08M)	3887.54 (~EUR 127.45M)
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Figures by PGOU

Year	Seized proceeds from crime during the pre-trial investigation (UAH million)	Arrested proceeds and property from crime (UAH million)	Total
2013	0.02 (~EUR 655.66M)	11.92 (~EUR 0.39M)	11.94 (~EUR 0.39M)
2014	5.22 (~EUR 0.17M)	11.28 (~EUR 0.37M)	16.50 (~EUR 0.54M)
2015	0	2.79 (~EUR 0.09M)	2.79 (~EUR 0.09M)
2016	0	1.70 (~EUR 0.06M)	1.70 (~EUR 0.06M)
Total	5.24 (~EUR 0.17M)	27.69 (~EUR 0.91M)	32.93 (~EUR 1.68M)

307. Given the lack of clarity on the extent of the use of early restraints in ML cases (and also in predicate crimes) the authorities need to take steps to ensure that early provisional measures are routinely taken in all proceeds-generating cases. More focused guidance on the importance of early restraint and seizure, in the confiscation of proceeds should be issued to all prosecutors. In this context it could also be considered whether investigators should have the power of early restraint, subject to fast tracked reviews of such restraints by the prosecutors.

Predicate offences

308. In order to determine how embedded confiscation and particularly the new special confiscation provisions are in the general criminal justice system the authorities were invited to provide the evaluators with a statistical overview of convictions and associated confiscation orders for predicate offences in the CC 2014-2016. An extract from the statistics provided on 158 offences in the CC is set out beneath.

Table 11: Confiscation orders for Predicate Offences

<i>Offences</i>	2014		2015		2016	
	<i>Convictions (persons)</i>	<i>Confiscation orders</i>	<i>Convictions (persons)</i>	<i>Confiscation orders</i>	<i>Convictions (persons)</i>	<i>Confiscation orders</i>
Art.185-1 Theft	13 618	4	14 019	5	12 216	3
A.185-1 Theft (gross amounts)	122	84	22	19	27	14
Art.191-5 Misappropriation, embezzlement	113	48	45	22	38	14
Art.201-2 smuggling	5	0	5	3	2	0
Art.212-1 Evasion of taxes, duties or other compulsory payments	29	0	29	0	18	0
Art.212-2 Evasion of taxes, duties or other compulsory payments	9	0	6	0	1	0
Art.212-3 Evasion of taxes, duties or other compulsory payments (large amounts)	35	24	18	10	4	3

Art.255-1 Creation of a criminal organisation	5	0	0	0	7	6
Art.307-2 production, transportation, sale of drugs	2014	912	1379	716	618	335
Art.368-2 Taking an unlawful benefit by an official/illegal enrichment	159	13	32	3	11	1
Art.369-2 Abuse of powers	53	1	91	5	138	0

309. So far, the evaluators have not seen either estimated or finalised total amounts in monetary terms of all confiscation orders made by courts in each of these years. Neither have the evaluators seen any estimates or finalised figures of realised confiscation orders in each of these years.

310. The overview of convictions and confiscations provided does not distinguish between special confiscation and confiscation as an additional penalty. It shows that for many proceeds-generating offences in these years there were convictions, but with no recorded confiscation orders. Some of the offences where no confiscation orders were made also carry confiscation as an additional penalty. The position seems therefore to be the same as with ML – a more discretionary approach to confiscation as an additional penalty appears to be taken.

311. For some offences the picture was slightly better (theft in gross amounts and drugs offences) though the number of confiscation orders in drugs cases which relate to the proceeds of the offences, rather than the drugs themselves, is unclear. The low numbers of confiscation orders in illegal enrichment and abuse of powers cases was surprising.

312. These figures generally seem to support a conclusion that where financial investigations do not occur in proceeds-generating cases there are no Special Confiscation orders as, without such investigations, the court will never know how profitable the crimes were. The statistics, of course, do not show where resources for financial investigations have been put into a case and what sums were involved in the orders made in those cases. For that we have had to rely on anecdotal case examples.

Examples of Provisional Measures, and Confiscations of proceeds and instrumentalities for predicate offences

313. Regarding restraints in domestic predicate offences of assets located in Ukraine and abroad, the authorities firstly pointed to examples of large orders of attachment under Art. 170 of the CPC, in the most high profile cases being considered currently. As noted, significant assets were restrained in the 2014 investigations of misappropriation of state funds by an organised group of senior officials in the former administration allegedly under the control of the former President and Prime Minister which has led to 2 convictions, one of which was on 28 March 2017.⁴⁹

314. The PGOU continues to conduct pre-trial investigations into the alleged appropriation of state property by the former Prime Minister and former President of Ukraine, and persons under their control. The property of these suspects has been seized, including the former Presidential residence

⁴⁹ This conviction triggered a subsequent confiscation order on April 2017 in respect of funds and securities totalling UAH 34,973,266,108.65 equivalent to USD 1.32 billion or EUR 1.12 billion.

"Mezhyhiria", movable and immovable property, cars, for a total amount of more than UAH 2 billion (~EUR 65,566,140).

315. The PGOU is also conducting pre-trial investigations into alleged criminal acts of the former President and Chairman of a political party. During house searches cash totalling USD 4 800 000 was seized and is restrained.

316. The PGOU has also conducted pre-trial investigations into alleged criminal offences of embezzlement in respect of a former Chairman of the NBU. During this investigation the court arrested funds totalling more than UAH 200 million (~EUR 6.56 million) placed on current accounts in Ukrainian banks of the suspect and his family, funds totalling USD 1.37 billion on accounts in more than twenty offshore companies controlled by the suspect, and funds totalling USD 49.51million on the accounts of non-resident companies abroad.

317. The PGO has also been investigating since May 2014 alleged criminal offences by the former Head of the State Agency of Forestry Resources of Ukraine and an accomplice who (from 2011 to 2014) are alleged to have received illegal benefits from importers of wood products totalling over UAH 141 million (~EUR 4.62 million). These funds are alleged to have been moved to offshore companies controlled by the suspect and his wife. Funds totalling USD 1.4 milion and EUR 1.2 million are seized under an order of the Pechersk district court of Kyiv.

Foreign Assets

318. As part of the same ongoing enquiries into the alleged crimes by high level officials of the former regime, Ukraine has sought international assistance where apparent criminal funds have been traced abroad. In this context, Competent Authorities of the Swiss Confederation have executed a MLA request by Ukraine. This has resulted in funds totalling USD 1.4 million placed in Swiss banks being seized as alleged instrumentalities of crime, upon a decision of the competent Swiss authorities.

319. Similarly, arising out of the investigations into the former officials moving illegal VAT refunds to accounts of fictitious companies in Ukraine, some of these funds were traced to accounts of 16 companies in Liechtenstein, of which the accused person in Ukraine and a relative are alleged to be the BOs. Over USD 26 million have been blocked on these accounts.

320. It is simply noted that many of these restraints of property, allegedly connected to high officials of the former administration, have been outstanding for quite lengthy periods. Criminal proceedings will need to follow soon if the authorities are to avoid legal challenges to what may at some point be considered as indefinite property arrests.

Cases not connected to actors in the former administration

321. The authorities are also able to point to several more recent examples of substantial restraint or seizure orders in other cases, not connected with the former regime. For example, in a recent investigation into embezzlement and abuse of office in the SFS, assets of suspected persons were arrested totalling UAH 2.58 million (~EUR 800,000). 3 other cases were cited: a fraud case; a tax evasion case; and a forgery/ML case. In these cases seizure orders or property arrests have been made of UAH 16.6 million (~EUR 0.54 million), UAH 12.3 million (~EUR 0.40 million), and UAH 7.9 million (~EUR 0.26 million) respectively. In another case being considered by the court currently a group of 3 persons are alleged to have created fictitious enterprises to cover illegal activities. ML and Art. 205 offences are on the indictment and UAH 100 million (~EUR 3.28 million) has been restrained.

Conclusions on provisional measures

322. To conclude, since 2014 provisional measures are being used effectively, but there is an imbalance. There remains at present a very large gap between provisional measures being obtained since 2014, and final confiscation orders being achieved. While it is understood that many of these enquiries are lengthy and may require MLA, the evaluators were still concerned that hardly any of the cases mentioned above have been concluded (with confiscation orders).

323. With the exception of the case referred to above which resulted in a significant confiscation order, the evaluation team lacks overall information on total amounts ordered by the courts to be confiscated in each of these years and corresponding statistics on the amounts actually realised in each of these years. Though the Assets Recovery Office has been created it is not yet operational, so most restrained assets are not under management. The Office needs to become operational as soon as possible. Given this situation, and bearing in mind that there is wide use of Art. 75 CC allowing defendants to be released on probation when significant confiscation orders are made, it is necessary that there should be dissuasive sanctions for defendants (particularly those who serve no prison term) who fail to fulfil confiscation orders. It is unclear what the sanctions are for defendants where the confiscation order is unrealised.

The new provisions in practice

324. There are thus several issues which still need clarifying and developing by the authorities to create a fully effective confiscation system, where restraints are regularly followed through with effective confiscation orders. Assuming that a financial investigation has traced assets liable to special confiscation, the burden of proof for provisional measures and for confiscation remains on the prosecutor to show that the proceeds came from crime, presumably to the criminal standard. Ukraine has no separate Code of Evidence. The prosecutors consider that they can import a slightly lower standard of evidence from the Civil Code into this process, and that they have to be creative in persuading judges that the property for which a confiscation order is requested was linked to the crimes on the indictment. There are no reverse onuses or assumptions as to the provenance of alleged assets that can be made by courts in the Ukrainian system.

325. The evaluation team was told that the PGOU plans in big cases to try to use the “mules” that lend their names to fictitious enterprises to connect defendants with criminal property for the purposes of freezing and confiscation. Such initiatives may assist in individual cases. But there still needs to be uniformity of practice. As part of the judicial reform process, the evaluators advise that a workable policy should be developed between the Judiciary and the PG on the level of evidence needed to determine whether assets are the proceeds of crime, after conviction for proceeds-generating crimes. This policy should be consistently applied by the courts.

326. It is also unclear who should raise the confiscation question at the end of a trial to ensure this issue is covered in court – the judge or the prosecutor. Some think, for the avoidance of doubt, that the confiscation issue should be clearly indicated on the indictment. The evaluators would support such an approach, as no clear directive has so far been given to prosecutors by the PG directing them always to raise the confiscation issue at the conclusion of trials. The evaluators consider the PG should issue such directions to all prosecutors. In the longer term the authorities should decide whether the law needs amending to include a clause on the indictment covering the confiscation issue.

327. It is also unclear whether judges use the new provisions, or whether they still fall back on traditional property confiscation where this is possible, and which may not truly reflect the real

proceeds of the crimes. No statistics are available or significant anecdotal examples of the new provisions being used by judges were offered by the authorities. The prosecutors consider that there is no uniform legal position on these issues within the judiciary, and that many judges still need convincing of the need for such orders and demonstrate a lack of knowledge of the new provisions. Clearly more judicial training is needed in this area. The authorities should review training that is provided to judges on the new confiscation provisions and where necessary pursue further awareness-raising and education of the judiciary on these issues.

328. Arguably prosecutors may only raise the confiscation issue currently when financial investigations have been conducted and they have a financial statement in respect of the defendant's assets to present to the court. Without this, it is perhaps inevitable that judges will fall back on general property confiscation orders. This underlines the crucial need for more routine financial investigations to be undertaken.

329. Overall, with regard to the new provisions, the evaluators recommend that after 1 year the PGOU and the Judiciary together with the Assets Recovery Office should review how effectively the new confiscation provisions are being applied and take any necessary remedial action. To support this review the authorities should maintain accurate, reconciled statistics. It is suggested these cover the use of special confiscation with regard to property, instrumentalities, value orders and orders in respect of 3rd parties, the use of confiscation as an additional penalty, and the extent of the use of provisional measures. Thereafter any remedial action should be taken in collaboration with all the parties to the review.

Confiscation of falsely or undeclared cross-border transaction of currency/BNF

330. Non-declared cash at the borders is seized by Customs and a protocol is sent by them to the courts for the confiscation of the cash and imposition of administrative fines of 100% of the value of confiscated cases or in larger amounts 3 times the value of the property seized.

331. In 2016, Customs seized USD 2.3 m, EUR 1.4 m, and RUB 1.5 billion. All persons involved were subject to administrative liability and arrested funds were confiscated under court decisions. The table beneath shows amounts involved in detected non-declarations at the border. While the totals have risen since 2010 the UAs advised that overall totals of detected non-declarations amount to 8-10% of the totals of assets declared by persons crossing the borders. The administrative penalties appear not particularly proportionate and dissuasive.

Table 12: Cash confiscated at the borders

Year	USD	Euro	RUB	UAH and other Currencies		Total
	Amount (USD)	Amount (EUR)	Amount (RUB)	Amount	Value (UAH)	Amount
2010	2,244,328	963 825	42,634,375	366 620	594 856	39,687,827⁵⁰
2011	5,279,784	1,252,768	14,696,702	248 943	1,272,598	61,804,681
2012	4,847,791	1,007,707	42,682,960	392 124	961 818	61,200,175

⁵⁰ EUR 1,307,054.0

2013	7,187,174	1,955,192	115,705,840	243 013	599 738	107,801,850
2014	5,564,554	897 565	3,282,482	1,079,178	753 095	83,454,742
2015	3,331,753	653 368	7,050,863	7,903,795	2,950,648	102,278,873
2016	2,282,024	1,430,630	150,234,670	1,877,186	1,406,697	161,571,632⁵¹

332. As noted in the TC Annex, the Customs have powers to stop and restrain currency in order to ascertain whether ML/FT may be found. If the Customs receive operational information/signals from law enforcement that persons believed to be carrying property or cash for ML or FT will cross the border, the Customs can seize such suspected property as evidence and refer the case to the law enforcement authorities and the FIU. In 2016, the Customs made 103 such case referrals to law enforcement authorities and the FIU. In practice, Customs have no formal responsibility as a law enforcement agency to investigate ML by cash couriers at the border autonomously.

Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities

333. In Ukraine, the most urgent and important ML risks involve top level corruption and theft of State assets. Before 2014 these risks were not confronted by the authorities. Since 2014, this has changed. Officials from the previous regime and current top officials and politically exposed persons are being investigated and made suspects in cases and their assets are being restrained with a view to confiscation.

334. As already seen, there are now some very significant restraint orders in place in many of the cases involving high level officials of the former regime and their associates. The primary focus of these investigations has been to find and return state assets alleged to have been stolen by these persons. This has necessitated complex (and far-reaching) asset tracing through accounts of numerous companies, both in Ukraine and abroad. In respect of pre-trial investigations of persons in Ukraine believed to be connected to the former President, it was said at the time of the onsite visit that UAH 35 billion (~EUR 1.15 billion), EUR 1 billion, apartments, cars and even islands were under restraint. The Agency responsible for Asset Recovery, which has been created, is not yet operational, so these assets are not all under management.

335. These investigations appear to have resulted in 2 court convictions so far, one of which was for ML in very significant amounts.⁵² We were told that other trials should be forthcoming and that confiscation requests would be made.

336. As noted, acts of terrorism (as defined in Ukrainian law) and separatism related to events in east Ukraine, plus the risks of being used as a transit country for FTFs, are seen as the main FT risks. Confiscation has been used in the domestic cases which have been brought, though the size of such orders is unclear. Indictments relating to international terrorism are awaiting court consideration.

337. Credit is given for the determined work that is now ongoing to restrain and confiscate funds in cases of top level corruption and theft of state assets, in line with national ML risks. Nonetheless

⁵¹ RUR 5,323,072.0

⁵² On 28 April 2017, one month after convictions on 28 March 2017 of one high official of the former regime for ML and participation in a criminal group, funds and securities totalling UAH 34,973,266,108. 65 (equivalent to EUR 1.12billion) were confiscated under a court verdict. This decision is being enforced in favour of the state budget of Ukraine.

more restraints and dissuasive final confiscation orders in respect of those persons that create and use fictitious enterprises/conversion centres for laundering purposes need to be pursued with equal vigour. The persons behind conversion centres present high national ML risks. They incentivise not only corruption and theft of state assets by high officials, but also all other proceeds-generating crime in Ukraine. Currently these persons facilitate the laundering process on a very wide scale throughout the country.

Conclusions

338. It is difficult to assess systematically whether the new system is fully established in practice in all proceeds-generating cases. It is unclear how regularly the new provisions are being used by the judges and how many final special confiscation orders have been made as most information on this is anecdotal. Not all ML convictions result in confiscations. However, there was one very significant confiscation order during the on-site visit in relation to one high official of the former regime.

339. There are issues that still need to be addressed by the prosecution and judiciary on the practical implementation of the new Special Confiscation provisions in the courts. A workable standard of proof in confiscation proceedings on the linkages of alleged proceeds to the offences for which there are convictions needs to be established and consistently applied.

340. There also appear to be some problems in conducting financial investigations, and a lack of resources for them across the board. More financial investigations to ascertain the direct and indirect profits in all major proceeds-generating crimes need to be undertaken, and not just in the highest profile cases.

341. The evaluators consider therefore that the new Special Confiscation regime still needs time to bed down and achieve the objectives of the CPC amendments of 2015 on a consistent basis. While many significant restraint orders are in place, more final confiscation orders, particularly those using the new special confiscation provisions, are necessary. Additionally it is important that the opportunities provided by the new provisions on value confiscation orders and confiscation from 3rd parties are used by prosecutors and courts widely in future. **Ukraine has achieved a moderate level of effectiveness for IO 8.**

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 9

- Ukraine has an operational system on FT offences and activities which shows a certain degree of effectiveness in practice. However, the FT offence is still not entirely in line with the Standards.
- The SSU, which is in charge of FT investigations, has developed significant expertise in terrorism-related offences, including financing, and is assisted by the FIU in the identification of FT cases. Parallel financial investigations with a view to identifying FT offences are conducted alongside all terrorism-related investigations.
- Following the emergence of ISIL-related risks in 2014, the SSU has refocused its activities considerably. A number of pre-trial investigations have been initiated in line with the risk profile of

the country. These efforts had, at the time of the on-site visit, resulted in 1 ISIL-related indictment, though no convictions as yet for FT. Concerns remain about the speed with which both relevant investigations and indictments were being taken forward.

- Where in ISIL-related cases insufficient evidence of FT was found, other significant criminal justice measures have been taken by the UAs involving, variously, indictments for criminal offences under Ch. IX, XIV and XV of the CC, as well as extradition, and deportation measures.
- Ukraine has in place a counter-terrorism strategy which, as part of its objective to detect and terminate terrorist activities, includes the identification of FT sources and the identification of individuals, groups and organisations whose actions are directed at the preparation or commission of terrorist acts. FT investigations are integrated with, and are used to, support counter-terrorism investigations. The yearly AML/CFT action plans invariably include measures to improve FT investigations.

Immediate Outcome 10

- Ukraine has a broadly sound legal and institutional framework to identify targets and make proposals for designations to the relevant UN Sanctions Committee. However, despite the SSU having identified persons connected to ISIL on the territory of Ukraine and thwarted their activities, no proposals for designations had been made at the time of the on-site visit.
- UAs, FIs, and the majority of DNFBPs are aware of their obligations to implement restrictive measure as prescribed by the UNSC, and do so without delay. Some FIs have said that they have stopped transactions pursuant to sanctions measures, which have been found, upon further analysis by the SSU, to be false matches. However, technical deficiencies undermine Ukraine's ability to fulfil all its obligations under the UN framework. No funds or other assets have been frozen in relation to designated persons or entities.
- Authorities are acutely aware that NPOs are vulnerable to abuse by illicit financial actors and to FT. The FIU has conducted a review of the sector and identified some specific vulnerabilities related to the NPOs in Ukraine.
- Although the risk classification used by the SFS is mainly focused on the risk of NPOs being misused for commercial purposes, it also includes AML/CFT considerations. The scope of potential risk in the NPO sector is understood in greater depth by the SSU, but this understanding does not appear to be communicated to the other authorities or the private sector.

Immediate Outcome 11

- Ukraine demonstrates several aspects of an effective system with regards to PF. UAs, FIs, and the majority of DNFBPs are aware of their obligations to implement UN measures, although understanding of more recent sectoral restrictions, such as those introduced in the context of DPRK, appears weaker.
- Because Ukraine is a producer of weapons, materiel, and dual-use goods, Ukrainian security and financial authorities have developed a sophisticated system to oversee and restrict the illicit movement of goods. Customs and export control authorities appear to cooperate effectively with the SSU as far as proliferation is concerned. Authorities were able to provide two examples of successful interdictions. However, resource limitations among border and customs authorities may undermine efforts to prevent the physical transport of goods (and related financing) out of Ukrainian area of control.

- There is limited operational cooperation in practice between export control authorities and other competent authorities (law enforcement, FIU, supervisors) in the area of counter-PF.
- Despite considerable efforts to detect and interdict the movement of restricted items, UAs are likely not equipped and lack adequate resources to address the financial aspect of proliferation, such as sanctions evasion, due to the widespread use of cash and fictitious companies.

Recommended Actions

Immediate Outcome 9

- A fast-track system which is rigorously applied within the courts should be actively considered for terrorism and FT cases.
- To remedy deficiencies identified in the TC Annex under R.5, legislative amendments are recommended to ensure that there is a clear linkage in the language of Art. 258⁵ of the CC (the FT offence), or in Art. 258 of the CC, which ensures that the financing of all treaty offences under Art. 2 (1) Terrorist Financing Convention (TFC) is covered (whether or not they are in the CC and regardless of their consistency with the wide mental element in Art. 258 of the CC). It should also be clearly provided that financing of terrorism in connection with a treaty offence does not require the wide mental element provided for in Art. 258. Harmonisation of the definition of FT in the CC, the AML/CFT Law and the Law on the fight against terrorism is also urged to resolve remaining uncertainties described in the TC Annex under R.5.
- Ukraine is strongly advised to ratify (and subsequently implement) the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (on FTFs).
- Some guidance on sentencing for Art. 285 –285⁵ offences by the Supreme Court should be considered coupled with relevant judicial training to ensure a greater degree of consistency.

Immediate Outcome 10

- The SSU, in conjunction with the MFA, should be more proactive in proposing persons or entities to the 1267/1989 and 1988 Committees, where they are identified as targets for designation.
- The following technical deficiencies should be addressed: (1) the FT TFS freezing obligation should extend to all funds or other assets referred to under C. 6.5(b); (2) all natural and legal persons should be required to freeze the funds or other assets of designated persons or entities (not only FIs and DNFBPs); (3) to ensure full compliance with C.6.5(c), there should be a clear prohibition for Ukrainian nationals and any person or entity within Ukraine from making any funds or other assets, economic resources, or financial or other related services, available to designated persons or entities.
- Streamline the AML/CFT Law and the Law “On Sanctions” in order to remove any ambiguity in the legal basis for the implementation of the relevant UNSCRs and improve the TFS regime.
- Reinforce interagency efforts to mitigate FT risks in the NPO sector, including by emphasising outreach to NPOs, REs and donors and enhancing monitoring. This should be informed by an in-depth review of the ML/FT risks associated with the NPO sector (taking into account the various categories of NPOs’ respective risks), which should also strengthen the application of a risk-based approach.

Immediate Outcome 11

- Address technical deficiencies related to R.7.
- Export control authorities and other competent authorities should make greater use of available communication and coordination channels for the purposes of addressing PF.
- Develop Ukraine-specific PF indicators.
- All authorities should collaborate to provide more outreach to REs.
- Supervisory authorities should assign adequate priority to PF issues when monitoring REs' compliance with PF TFS obligations.

342. The relevant Immediate Outcomes considered and assessed in this chapter are IO 9-11. The recommendations relevant for the assessment of effectiveness under this section are R.5-8.

Immediate Outcome 9 (TF investigation and prosecution)

Prosecution/conviction of types of TF activity consistent with the country's risk-profile

343. The 2009 MONEYVAL MER stated that Ukraine did not appear to suffer from international terrorist incidents. The impression of the previous evaluators was confirmed during the present assessment as far as the period until 2013 is concerned, as all relevant authorities that the present team met considered the risks from terrorism and FT then as small. The offences under Art. 258 CC had rarely been used during that period.

344. However, since 2014, Ukraine has found itself used as a transit country for those seeking to join ISIL fighters in Syria. In the face of this emerging risk, the SSU has concentrated on the consequences of terrorism involving the fight against ISIL and has refocused its priorities substantially. The SSU advised that its work has increased by a third since these risks have started materialising. A number of pre-trial investigations have been initiated in line with the risk profile of the country. These efforts had, at the time of the on-site visit resulted in 1 ISIL-related indictment, though no convictions as yet for FT under Art 2585 CC. Many FT-related investigations are still ongoing. Details are provided under core issue 9.2. While the efforts of the SSU are to be commended, concerns remain about the speed with which both relevant investigations and indictments are being taken forward. It seems to the evaluators that FT (and all terrorism) cases would benefit from a fast-track system which is rigorously applied within the courts.

345. There is now an autonomous FT offence which meets or mostly meets 10 of the 11 relevant criteria. However, a few significant deficiencies remain outstanding, as noted under the TC Annex. It remains to be seen whether these deficiencies will have an impact on the effective prosecution of ISIL-related and other eventual FT prosecutions. The authorities are urged to remedy these deficiencies as a priority.

FT identification and investigation

346. In practice, the Office for Combatting Terrorism in the SSU, with specialist expertise in FT is the main player in the identification and investigation of FT and other terrorism-related offences. All law enforcement operational units are required to monitor the daily listings in the Unified Register of pre-trial investigations for FT, not only for prioritisation and consolidation of linked investigations within law enforcement, but also for ensuring that all FT pre-trial investigations are brought to the

attention of prosecutors, so that they can make decisions as to which units should be responsible for the investigations. The prosecutors may assign FT investigations or their oversight, as appropriate, to the investigative unit of the SSU, with its specialist expertise in FT. Currently the NP does not have an investigative competence for offences under Art. 258-258⁵ CC. Prior to the 2015 amendments to Art. 216 CPC the NP could investigate cases of this category. Where suspicion of FT now arises, the NP transfers these cases to the SSU.

347. FT is in practice detected by LEAs using intelligence information, investigative measures, operational investigations, financial investigations, information from the private sector and the FIU information and upon receipt of information from foreign counterparts. Operational and investigative measures concerning FT are carried out by the following operational units of SSU: counterintelligence; protection of national statehood; special units for combating corruption and organised crime; and the fight against terrorism.

348. The SSU advised that parallel financial investigations with a view to identifying FT offences are conducted alongside all investigations of terrorist acts. The authorities state that the primary aim of the financial investigation is to identify the sources of financing of the terrorist activity, develop a financial profile of the suspected person, identify any potential criminal networks, and obtain evidence to be used during criminal prosecution. A financial investigation typically involves checks on the suspected persons in internal databases and other law enforcement databases to determine whether the suspect has any criminal record; inquiries into state databases (e.g. SFS account database) to identify bank accounts and other assets belonging to the suspect; requests for information to FIs; requests for information to the FIU in relation to suspicious or threshold-based transactions connected to the suspect; requests for information to foreign counterparts to identify property of the suspect located outside of Ukraine; and the application of special investigative techniques to identify links between the suspect and other persons, in particular the source of the financing of terrorist activities.

349. Financial investigations are conducted by the information and analysis units of the SSU that manage databases and develop software tools for the search and analysis of information. These units appear to be suitably equipped with computer facilities that provide high-speed data processing, rapid information searches, access to vast information sources. The SSU referred to such software as “IBMI2 Analyst’s Notebook”, “Microstrategy” and other programmes adapted to the needs of the SSU. It was noted that the SSU internal training programme covers financial investigation including, in particular, the use of IT tools, collection, evaluation, analysis, monitoring and dissemination of data. Unlike some other members of law enforcement, the SSU did not consider timely receipt of banking information had been a problem in their cases.

350. During 2015 and 2016, the SSU uncovered the activities of four transnational logistical networks of ISIL operating in Ukraine. These networks identified, recruited, trained, financed and sent natives of the Caucasus, Central Asia and European countries to fight in Syria. They also facilitated the return of trained terrorists from Syria to their countries of origin. Three members of ISIL were among the sixty-nine persons detained. They were said to have been in charge of one of the logistical centres and were active participants in the recruitment, training and financing of the travel of fighters to Syria and Iraq. These three were referred to the criminal courts under Art. 258³, 258⁵ (FT), 263 and 358 CC on 30 November 2015, and proceedings are ongoing. The indictment refers to three persons charged with the commission of crimes in Part 1 of Art. 258³ and Part 2 of Art. 258⁵ of the CC. In this case, through a parallel financial investigation, the SSU obtained evidence on the funds received by the accused to finance the travel and subsistence of the FTFs (including

rental money, purchase of false passports, airfare, foodstuffs, etc). The organisers of the other logistical centres were charged with other criminal offences (see core issue 9.5) but not FT. Financial investigations in their regard revealed that they had not provided, collected or received any terrorism-related funds.

351. During this period, seventeen “transit points” (i.e. apartments or residences) were also identified within Ukrainian territory, which were used as temporary accommodation of ISIL FTFs in Ukraine. These were closed down and sixty-nine persons were apprehended by the SSU (fifteen of whom were on the Interpol wanted list). A large amount of cash was seized from them, which is said to have been destined for ISIL. Bank payment cards, weapons, storage media with instructions on production of improvised explosive devices were also among the items found and seized from these persons. Parallel financial investigations revealed that the suspected FTFs had self-funded their activities.

352. Other significant criminal justice measures have been taken by the UAs against the remainder of the group involving, variously, other criminal offences in Ukraine (under Ch. IX, XIV and XV of the CC), extradition, and deportation. Further details are outlined beneath in the section on alternative measures. The SSU continues actively to monitor over 900 other persons with a view to FT offences.

353. As noted in the TC Annex, there are still some uncertainties as to whether all aspects of financing of travel for terrorist purposes are covered by existing legislation. The authorities consider that they can successfully prosecute the organisation and movement of FTFs under Art. 2583 CC. Whatever the outcome of this case, Ukraine is strongly advised to ratify (and subsequently implement) the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism to ensure that all aspects of the international standards on the FTF issue are within the Ukrainian legislative framework.

354. In 2016, charges were filed against a French citizen accused of illicit handling and attempted smuggling of weapons, ammunition and explosives and involvement in the preparation of an act of terrorism. The SSU determined that the suspect, who had a radicalised mind set, had conspired with persons on the territory of France to commit a terrorist attack and had travelled to Ukraine to purchase weapons, ammunition and explosives illegally using his own funds. Special investigative techniques were used by the SSU to detain the suspect in flagrante delicto as he was smuggling the weapons outside of Ukraine. A parallel financial investigation had been carried out which involved extensive formal and informal cooperation with foreign counterparts. No FT charges were brought against the accused as no evidence was found that financing had taken place in Ukraine.

355. The FIU, on a daily basis, analyses reports on financial transactions related to suspicions in FT, received from REs, as well as received in the form of information from LEAs. In addition, FT investigation is carried out on the basis of a quarterly strategic analysis. From 2014 to 2016, the SSU sought FIU assistance 171 times regarding suspicions of FT. The FIU receives information on suspicions of FT from other state bodies. In particular, during the above-mentioned period, 9 notifications were received from the PGOU.

356. The majority of disseminations are sent directly to the SSU. The SSU prioritises all FT case referrals by the FIU. Between 2014 and the first half of 2016 the FIU prepared and sent 124 case materials resulting from FIU analyses. These materials include analyses of those FT STRs related to suspicion of terrorism, of which 17 were specifically related to suspicions of FT. The materials sent also include the results of FIU operational and strategic analysis of all information available in the FIU databases, which may indicate FT. The FIU also disseminated to the SSU all the FT STRs it

received during the relevant years arising from presumed matches with UN lists. In the years under consideration they all proved to be false positives, after checks by the SSU. Therefore, they were not relevant for the purposes of the identification of FT investigations.

357. The FIU has also identified in its analyses possible FT issues in relation to some NPOs and has passed these materials to the SSU. In 2014, 6 materials disseminated by the FIU contained information on financial transactions involving NPOs. The SSU took forward one of these referrals involving NPOs as a case for investigation. Accounts were seized under a court order and the pre-trial investigation is still ongoing. In 2015, 7 disseminations involved NPOs. The SSU is considering 2 of these case referrals within criminal proceedings for suspicion of FT. Pre-trial investigations are also ongoing. In 2016, 2 materials disseminated to the SSU contained information on financial transactions conducted by NPOs. Both are being taken forward as pre-trial investigations and accounts are seized under court orders.

358. The evaluators have been advised that the State Border Guard Service sent reports connected to potential offences under Art. 285 - 285⁵ to the SSU in 2015 and 2016. On the basis of these reports the SSU provided information to the Unified Register of Pre-Trial Investigations and opened criminal proceedings. While the SSU also regularly advises border authorities of wanted persons (the names of 5 persons wanted for FT offences have been circulated to border authorities) no FT investigations (other than the FTF cases) appear to have resulted in criminal proceedings as yet arising from the activities of border authorities. The authorities indicated that none of the mentioned persons crossed the borders.

FT investigation integrated with -and supportive of- national strategies

359. The UAs advised that by a Decree of the President of Ukraine in April 2013, a counter-terrorism strategy, 'Concept of the Fight against Terrorism', for the period 2013-2020 was approved, providing for the implementation of a range of measures. A plan for the implementation of the strategy was also approved in 2013. Although the strategy pre-dates the change in Ukraine's risk profile in 2014, it aims to counter terrorism as a serious threat to international peace and security and therefore its objectives have continued to be relevant. Since 2014, the application of the measures in the strategy has intensified.

360. The strategy sets out six objectives: (1) preventing terrorist activity; (2) detection and termination of terrorist activity; (3) elimination and minimisation of the consequences of terrorist activities; (4) provision of information, scientific and other support to the fight against terrorism; (5) strengthening international cooperation in the area of combatting terrorism; and (6) ensure domestic co-ordination in the fight against terrorism. As part of its second objective, 'detection and termination of terrorist activities', the strategy includes the identification of FT sources and the identification of individuals, groups and organisations whose actions are directed at the preparation or commission of terrorist acts.

361. As noted under core issue 9.2, FT investigations are integrated with, and are used to, support counter-terrorism investigations. Successive AML/CFT action plans have invariably included measures to improve FT investigations. However, the relevant authorities conceded that no consideration had been given as to whether Ukraine should make any nominations for designations

by the UN of key players detained in the context of the organisation of the transnational FTF travel networks⁵³.

Effectiveness, proportionality and dissuasiveness of sanctions

362. As stated above, an indictment concerning FT is pending before the criminal courts, but has not yet resulted in a conviction. There was some concern expressed by the authorities about inconsistent sentencing between regions on terrorism cases generally. Some guidance on sentencing for Art. 285 –A285⁵ offences by the Supreme Court should be considered, coupled with relevant judicial training to ensure a greater degree of consistency. This would also be beneficial for those cases involving Art. 258⁵ CC concerning international terrorism which are currently pending.

Alternative measures used where FT conviction is not possible (e.g. disruption)

363. In relation to the successful operations to close down the 17 ISIL transit points, 10 supporters of ISIL were investigated (where FT offences appeared not to be possible on the evidence) for other crimes within the jurisdiction of Ukrainian courts. These related to Art. 255 CC (creation of a criminal organisation for the purpose of committing a grave offence/leadership or participation in such an organisation), Art. 258³ CC (creation of a terrorist group or terrorist organization) and Art. 263 CC (unlawful handling of weapons, ammunition and explosives). One person has been found guilty so far under Art. 258¹ and sentenced to 5 years imprisonment. 4 persons were convicted under Art. 263³; three of them were sentenced to 3 years imprisonment and 1 to 3 years imprisonment subject to a probationary term. 5 persons, currently in custody, face accusations under Art. 255 - 263 CC. The judicial investigation is ongoing.

364. It is understood that 18 other persons remained at the time of the onsite visit under pre-trial investigation by the SSU for committing crimes under Art. 258³ (which the authorities themselves consider fully covers financing of travel for terrorist purposes), Art. 263 (unlawful handling of weapons, ammunition and explosives), Art. 332 (illegal movement across the State border), Art. 333 (violation of procedures for international transfer of goods subject to export controls), and Art. 358 CC (use of forged identification documents). The SSU opened 18 criminal proceedings: 15 persons have pre-trial investigations still ongoing; 3 persons were found guilty under Art. 332 of the CC and sentenced to 8 years of imprisonment.

365. The 15 FTFs on the Interpol wanted list for offences committed outside Ukraine were referred to the PG's Office for extradition procedures and were remanded in custody. 38 other foreign citizens were deported from Ukraine.

Conclusions

366. There has been significant investigative activity by the SSU on international terrorism in the context of the movement of FTFs across Ukrainian territory. Though the investigations into the movement of FTFs have not yet come to fruition in finalised court cases, weight has been given by the evaluators to the steps which have been taken by the UAs so far in this important area. Concerns

⁵³ The authorities stated that Ukraine submitted three designations to the 1267 UNSCR linked to ISIL/Al Qaida after the on-site visit.

remain about the speed with which both relevant investigations and indictments are being taken forward. **Ukraine has achieved a moderate level of effectiveness for IO 9.**

Immediate Outcome 10 (TF preventive measures and financial sanctions)

Implementation of UN Sanctions Lists

367. Ukraine has a broadly sound legislative and institutional framework for the identification and designation of persons or entities pursuant to FT TFS. As regards the identification of targets for designation under the 1267/1989 and 1988 sanctions regimes, the SSU has been actively monitoring the territory of Ukraine to uncover the activities of persons linked to ISIL, which have presented a growing risk since 2014. While the SSU was successful in exposing the activities of four ISIL transnational logistics networks and disbanding a number of transfer points used for the temporary accommodation of foreign terrorist fighters (see IO 9), no proposals had been made for designation to the 1267/1989 or 1988 Committees⁵⁴ at the time of the on-site visit. The evaluation team took the view that the authorities had not yet fully grasped the usefulness of sanctions as a powerful tool in deterring FT, preferring instead to pursue law enforcement measures. Ukraine has not designated persons or entities that meet the designation criteria under UNSCR 1373, either at its own motion or at the request of another country. However, designations have been made at Ukraine's own motion under Ukraine's second legal mechanism for designation, the Law on Sanctions (see R.6), in relation to a sanction regime not related to FT. This suggests that UNSCR 1373 could be applied effectively, should the need arise.

368. Ukraine implements FT TFS without delay. According to the AML/CFT Law, when new UN sanctions are introduced under UNSCR 1267, the MFA must communicate any new designations to the FIU within 5 working days, which must subsequently publish these amendments within 3 working days after receipt. While this potential gap far exceeds the requirement for implementation "without delay" as required by the FATF standard, in practice, the FIU monitors the UN website on a daily basis and the Ukrainian Permanent Mission to the UN in New York will communicate changes to the list of designated persons on the same day. Uniformly, REs consulted by the team were aware of the FIU's online resources, where UN and domestic lists are compiled on a daily basis. This aspect of Ukraine's sanctions framework appears highly effective.

369. As indicated under R.6, Ukraine's UN sanctions legislation does not cover all the requirements under the FATF Standards. Some significant technical deficiencies negatively impact the effectiveness of the TFS regime. The freezing obligation does not extend to all natural and legal persons but only to REs (see C. 6.5(a)). Critically, the freezing obligation relies on the suspension of a transaction involving a party or beneficiary that is a designated person or entity. REs are therefore not required to freeze all the funds or other assets that are owned or controlled by the designated person or entity, which are not linked to a specific transaction (see C. 6.5(b)). It is also unclear how the freezing of funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, as well as funds or other assets of persons and entities acting on behalf of, or at the direction of designated persons or entities, would be subject to freezing (see C. 6.5(b)). Moreover, Ukraine does not prohibit its nationals or any persons and

⁵⁴ The authorities stated that Ukraine submitted three designations to the 1267 UNSCR linked to ISIL/Al Qaida after the on-site visit.

entities within its jurisdiction from making funds or other assets, economic resources, or financial or other related services, available for the benefit of designated persons or entities (see C. 6.5(c)).

370. Despite these technical deficiencies, FIs and DNFBPs are aware of their respective TFS obligations. All banks consulted by the evaluation team explained that their compliance officers employed software that automatically screens all incoming and outgoing transactions for names and entities listed by the UN. With regards to Ukraine's domestic sanctions list, all institutions indicated that they regularly receive updates from the FIU and were able to make immediate amendments to their screening mechanisms. Other FIs and DNFBPs consulted by the evaluation team uniformly emphasised their attention to both international and domestic sanctions. However, many rely on open source research to ensure that their business would not service designated individuals or entities. This approach may be less comprehensive.

371. FIs were able to provide numerous examples where transactions were temporarily frozen and cases were forwarded to the FIU and SSU in the form of STRs. The vast majority of these cases involved a false match due to discrepancies in the transliteration of names. However, two banks were able to recall that, during the reporting period, transactions were permanently blocked because compliance officers had drawn a link to UN-designated individuals from Saudi Arabia and Pakistan, respectively. However, the authorities were unable to provide further information on the outcome of these two cases. It is unclear whether funds are still frozen. According to the authorities, to date, no funds or other assets have been frozen in Ukraine pursuant to the FT TFS regime.

372. The NBU, the SC and the NC (which together supervise the entire financial sector) monitor compliance with TFS obligations as part of their routine AML/CFT on-site inspections. They consider that FIs have a high level of understanding of FT. No breaches of TFS have been identified by any of these supervisors. It is not clear how the other supervisors review adherence to FT lists by the entities they supervise. Guidance has been provided to REs on FT-related TFS. Typological studies are published every year on the FIU website, where a separate section covers FT typologies. The section "Detection of Financial Operations" on the website contains relevant information on how to detect suspicious financial transactions regarding the risks of FT and TFS. The employees of the FIU and supervisors are in constant liaison with REs via a dedicated telephone line. The Training Centre of the FIU, and other educational institutions, together with the state regulators, conduct training for REs, in particular regarding the identification of the risks of FT and TFS.

Non-Profit Organisations

373. In the NRA and the 2016 National review of the FT risks affecting the non-profit sector, Ukraine identifies NPOs uniformly as vulnerable to abuse by illicit financial actors and to FT. According to both reports, the threat of international terrorism combined with the widespread use of cash has created an environment where NPOs could either be abused by or on behalf of illicit financial actors, or could be established as sham organisations whose sole purpose is to move money under the pretence of charitable giving. However, the understanding of the associated risks could benefit from deeper analysis. The risk classification used by the SFS as a basis for monitoring the sector is unduly focussed on whether NPOs are being misused for commercial purposes, which also denotes an incomplete understanding of FT risk. The SSU was able to articulate better why charities posed a significant FT risk but this understanding has not been communicated to other authorities, private sector or the NPO sector. In addition, with the recent introduction of the Register of NPOs, the whole sector has been subject to a re-registration obligation, which the authorities indicate has

allowed for the identification of “dormant” NPOs and improved the reliability of statistics. However, it is difficult, in this transition period and based on the statistics currently available, to form a clear picture of the scope of the NPO sector, its various categories, and its size.

374. Several interlocutors also noted the sheer number of NPOs in the country as a stand-alone risk factor. When asked to make a broad estimate, some authorities estimated that up to a quarter of all NPOs registered have been established without a clear legal purpose. When pressed, they identified these NPOs “established for illegitimate purposes” as the principle risk for FT, but could not elaborate further.

375. The FIU has organised several outreach activities specifically aimed at raising awareness on NPO-related risks both to the NPO sector itself and REs. Financial transactions involving the crediting or receiving of funds by NPOs are subject to mandatory reporting by REs. REs cannot or do not distinguish between NPO clients that pose a higher risk and those whose operations appear legitimate or transparent. The ongoing review of the sector, which over the past several years has stripped many NPOs of their status as such, likely undermines the ability of private institutions to understand this client base. When consulted during the onsite visit, all private sector institutions indicated that they applied EDD to NPO clients, or chose not to service them altogether, because of high FT risk in the sector. Yet, they were not able to name further criteria that would characterise a risky NPO client. While the private sector is to be commended for its close adherence to advice provided by authorities, the evaluation team deduced from these interviews that further outreach was necessary, particularly if the SSU is in the position to share any typologies involving FT. In addition, the implementation of the risk-based approach should be improved, in order to ensure that the NPO sector is protected from terrorist abuse without disrupting or discouraging legitimate charitable activities.

Deprivation of TF Assets and Instrumentalities

376. The amount of FT-related assets and instrumentalities seized by the authorities is indicated below.

Table 15: FT-related funds suspended by the FIU, seized by LEAs and confiscated

	FIU FT case referrals to LEAs	Property suspended by the FIU		Property seized		Property confiscated	
	Cases	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)
2014	13	2	3,836	-	-	-	-
2015	6	3	85,360	-	80,534	-	-
2016	4	1	2,424	-	1,389,313	-	-
1st Q 2017	1	0	0	-	-	-	-

377. The FIU blocked a total amount of EUR 91,620 on accounts held by banks in 6 different cases. These funds were eventually seized by LEAs. In total, LEAs seized EUR 1,469,847 in relation to FT. The number of cases this figure relates to is unclear. As noted under core issue 9.2, the SSU seized large amounts of cash in relation to 4 transnational logistical networks of ISIL operating in Ukraine. Figures for confiscation were not made available. As also indicated under IO 9, the SSU has seized instrumentalities (bank payment cards, weapons, storage media with instructions on production of improvised explosive devices) from the 4 networks.

Consistency of measures with overall TF risk profile

378. As highlighted above, UAs and private sector participants pay close attention to national and international sanctions lists. Indeed, awareness of sanctions and sanctions compliance requirements has increased due to the conflict in the eastern part of the country. This is commensurate to the FT risks as set forth in Ukraine's NRA.

379. The effectiveness of this implementation, however, is almost certainly offset by the size and scope of Ukraine's shadow economy and the widespread use of cash to conduct commercial operations. The creation of fictitious companies is commonplace and schemes to launder funds across international borders are sophisticated and well documented by local civil society organisations as well as international watchdog groups. These factors increase Ukraine's inherent exposure to sanctions evasion. International actors seeking to use Ukraine as a transit jurisdiction on behalf of sanctioned individuals and entities could exploit the same permissive environment that allows for high levels of public corruption and elaborate financial schemes in the domestic context.

Conclusion

380. UAs, FIs and DNFBPs are aware of and appear to effectively implement their respective obligations related to FT sanctions lists. Authorities should also be recognised for the guidance they have provided to FIs and DNFBPs on their sanctions obligations, including through implementation guidance with regards to the relevant UNSCRs that target FT. However, technical deficiencies noted under R.6, concerning the scope of funds and other assets that can be frozen undermine the effectiveness of Ukraine's sanctions regime.

381. While the SSU understands the risks posed by the NPO sector, it does not share the more granular understanding of the sector it has developed with other authorities and the private sector. More in-depth research could be conducted on the various threats, typologies and vulnerabilities of specific categories of NPOs, in order to develop a RBA to protecting NPOs from FT. Currently, supervision by the SFS is mainly tax-oriented and only prioritises FT risks to some extent. The FIU has established effective communication channels with FIs and DNFBPs, and addresses FT risks in the sector in the context of the training provided to REs, only limited formal guidance is provided in that respect. The private sector appears to treat all NPO customers as high risk for FT in the context of the mandatory reporting of NPO transactions under Art. 15 of the AML/CFT Law. **Ukraine has achieved a moderate rating for IO 10.**

Immediate Outcome 11 (PF financial sanctions)

382. Although the UAs indicate that the country has no formal trade relationships with Iran or DPRK (and no export licence has been issued or requested in relation to those countries), as a producer of dual-use goods, chemicals and weaponry, Ukraine may be exposed to proliferation risks, which constitute a direct PF risk factor.⁵⁵ In that context, the country appears to have developed a sophisticated institutional framework to interdict goods that could be exported from or transiting

⁵⁵ The evaluation team has assigned particular weight to export controls and movement of controlled goods due to Ukraine's risk profile and the need to account for recent UNSCRs targeting DPRK that go beyond the traditional definition of PF. In the DPRK context an explicit link is made between available revenue streams and the country's nuclear program. The evaluation team did not take into account UN measures passed since the time of the onsite visit.

the jurisdiction by or on behalf of illicit actors and weapons proliferators. The UAs were able to demonstrate effective cooperation between customs and export control procedures, as well as their collaboration with security services. The UAs have also shown awareness and understanding of proliferation risk. Ukraine has actively contributed to the UNSCR reporting obligations on non-proliferation, by submitting implementation reports to the relevant UN committees.

383. The UAs provided several cases of successful interdiction of illicit shipments associated with higher-risk jurisdictions, including Iran. The first, which has been well publicised in Ukrainian and international media, concerned an illegal shipment of weaponry from the Kyiv Zhulyany airport. The SSU and customs explained that, during a routine sweep of outgoing aircraft to Iran, they uncovered three containers that were not declared on the plane's manifest. Upon further investigation, they determined that the contents were unregistered anti-tank guided missiles produced by a third country. The UAs have confiscated the weaponry in accordance with UNSCR 2231, which maintains restrictions on arms sales to Iran. The SFS also provided the assessment team with two cases where authorities seized restricted chemicals that had been delivered to the Black Sea port of Odessa. In February 2017 and March 2015, respectively, customs authorities inspecting incoming cargo uncovered shipments of controlled precursor materials that had been falsely labelled on customs documents. Cargo marked as containing unrestricted goods was shipped from a Chinese address. Criminal proceedings were opened in both instances for violations of the Ukrainian customs code. However, no information was provided on the outcome of these proceedings, or whether authorities assessed that these chemicals were intended for use in the proliferation context either in Ukraine or a secondary jurisdiction.

384. Despite these successes, efforts to mitigate proliferation risks are hindered by the fact that the control of Ukraine's external borders remains weak, especially those in the eastern part of Ukraine. The Border and Customs authorities appear to be resource-strapped and understaffed and encounter difficulties in carrying out their duties. In addition, on the basis of onsite discussions, the evaluation team formed the view that the understanding of sectoral restrictions called for under more recent UNSCRs, particularly in the context of DPRK, was considerably weaker. It is likely that the UAs have not yet fully transcribed non-TFS related UNSCR requirements.

Implementation without delay

385. As regards, the financial aspect of combating PF, as with IO10, the PF-related TFS regime is based on two mechanisms provided by, respectively, the AML/CFT Law and the Law on Sanctions. As noted under IO10, the mechanisms in place seem to ensure that changes to the UN lists are included in national legislation and communicated to REs without delay. However, the deficiencies in R.7 highlighted in the TC Annex are likely to have an impact on the effectiveness of the PF-related TFS regime in Ukraine. In particular, the overlapping and complex legal bases restrict the scope of the freezing obligation and do not provide for a clear prohibition to make assets available to designated persons or entities, as required by the FATF Standards.

Identification of funds or other assets and prevention of designated persons or entities from operating or from executing financial transactions related to proliferation

386. The UAs report that no cases of PF have been identified in the country. The implementation of the PF-related screening obligations has not resulted in any "hit". No STR has been filed in relation to proliferation or PF. There have been no investigations and prosecutions on the financing of

proliferation, including in relation to the detection of illicit shipments mentioned under Core Issue 11.1. Although information exchange mechanisms are in place, in practice, there is little cooperation between export control and customs authorities and other competent authorities (other law enforcement, the FIU, supervisors) when handling PF UNSCRs. When asked, supervisors did not demonstrate a concrete understanding of UNSCR obligations that extend beyond screening for listed names and entities.

387. Ukraine's cash-intensive economy and pervasive shell company activity, as well as the limited effectiveness of CDD measures related to beneficial ownership identification, increase the risks of TFS evasion, and undermine the effectiveness of Ukraine's ability to detect complicated, multi-tiered payments structures related to PF, or to uncover the involvement of a sanctioned individual and entity. This may more generally have a negative impact on the effectiveness of the export controls regime. The ability for authorities to intercept illicit goods is also premised on the availability of financial and other transactional records. Authorities cannot do so if cash is used to conduct commercial operations. This factor is particularly important in the context of illegal weapons trade.

388. The UAs indicate that sanctions evasion is among the issues discussed within the Interdepartmental Expert Working Group on the issues of counteraction of the proliferation of weapons of mass destruction and terrorism, and the protection of critical infrastructure under the National Institute for Strategic Studies. Analytical studies on counteraction of proliferation are covered by the National Institute for Strategic Studies.

FIs and DNFBPs' understanding of and compliance with PF-related TFS obligations

389. As discussed under IO10, the Ukrainian FIs and DNFBPs consulted by the assessment team were aware of their obligations to screen for names and entities subject to sanctions imposed pursuant to the relevant PF-related UNSCRs. The communication mechanisms in place in the FT-related TFS context, such as dissemination and guidance from the FIU, are in place in this context as well. The FIU regularly relays relevant information on PF risks (including FATF public statements) to the REs through its official website. In 2016-2017, the FIU's Training Center conducted various awareness-raising events for REs, which covered the issues PF. The FIU is encouraged to continue reaching out to the private sector, particularly in consultation with security services and the MFA.

Competent authorities ensuring and monitoring compliance

390. The mechanism for ensuring compliance by REs with the requirements on PF is determined by each supervisor pursuant to their respective regulations on the implementation of financial monitoring. The UAs indicate that all supervisors include the verification of PF-related TFS obligation in their respective inspection procedures. No violations of those requirements have been detected. It remains unclear what level of priority is assigned to verifying PF-related obligations, and to what extent the analysis of risks which informs the inspection programmes include PF. In addition, resource issues faced by supervisors, as highlighted under IO3, also have an impact on the effectiveness of the monitoring of PF-related obligations.

Conclusion

391. The UAs have a sophisticated institutional framework to handle the transit of controlled or prohibited goods, and to monitor sanctioned entities when presented with a specific case of illicit

commercial transaction or trans-shipment. However, Ukraine appears to have a weaker understanding of the most recent UNSCRs concerning DPRK. The country implements PF-related TFS without delay, and REs appear to have a good understanding of, and level of compliance with, related obligations. However, there are important technical gaps in those requirements, and the moderate level of effectiveness noted under IO4 may have a negative impact on the implementation of the TFS obligations. In practice, there is little cooperation between export and customs control authorities and other competent authorities when handling PF UNSCRs. The level of priority and the amount of resources assigned to the verification of the implementation of PF-related obligations by supervisors is unclear. In the context of the particular risks faced by Ukraine, the prevalence of cash and ubiquitous use of fictitious companies may also contribute to sanctions evasion. **Ukraine has achieved a moderate rating for IO 11.**

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

- The understanding of the risks outlined in the AML/CFT Law and those additional risks which were highlighted in the NRA was generally good by all sectors. However among the non-banking sector, broader typologies such as foreign terrorist fighters, cash couriers and sector-specific risks are mostly not considered.
- The CDD processes are consistent across all parts of the private sector. Where exemptions are allowed for low value transactions, often CDD is undertaken anyway. However, the application of adequate CDD measures is hindered because of legislative shortcomings connected with the time limitation of PEPs.
- The procedures undertaken by the private sector, outside of banking institutions do not appear to effectively verify the ultimate beneficial owner (“UBO”) of a legal person. This stems from the fact that the processes undertaken involves comparing the data submitted by a customer to that held on the Unified State Register (“USR”) which is accepted by many of those interviewed not to be a reliable source.
- Procedures for reporting to the FIU are generally well understood by the private sector. However, REs are not focusing on suspicious transaction reporting and reporting seems to be largely based on specific indicators included under the AML/CFT Law. Among the non-banking REs, the actual levels of reporting seems to be very low.
- Adequate measures to prevent tipping-off were inconsistently applied outside the banks. The dangers of front office staff tipping-off that they have made an internal report to the Officer Responsible for Financial Monitoring are not generally recognised by REs.

Recommended Actions

- Supervisors and/or the FIU should broaden their training regimes to REs which aims to provide an understanding of what underpins risk factors and to encourage a risk-based approach (RBA) to AML/CFT procedures.

- Supervisors and/or the FIU should broaden their training regimes to REs on distinct risks facing each sector as well as more general threats of handling the proceeds of crime by Ukraine residents and non-PEPs.
- The authorities should ensure that all FIs and DNFBPs are applying adequate specific measures in relation to PEPs commensurate with the FATF recommendations.
- The authorities should ensure that all FIs and DNFBPs are applying adequate specific measures in relation to new technologies.
- The authorities should continue their outreach and education to all FIs and DNFBPs and expand the syllabus to cover specific TF threats and vulnerabilities.
- Authorities should continue to work with FIs and DNFBPs to increase the STR reporting and the quality of STRs. Consideration should also be given to the cost and benefit in relation to the mandatory reporting regime.

Technical deficiencies (listed in the TC annex) relating to preventive measures should be addressed.

392. The relevant Immediate Outcome considered and assessed in this chapter is IO 4. The recommendations relevant for the assessment of effectiveness under this section are R9-23.

Immediate Outcome 4 (Preventive Measures)

393. The banking sector makes up the majority of the financial services sector in Ukraine. The NRA identified that the public trust in the banking system has deteriorated in recent years which appears to have led to a rapid growth in payment services businesses which fill the service demands for transferring cash without the need for a banking relationship. In 2013, the NBU had licenced 5 payment services businesses and in 2016 there were 19 licenced to undertake that activity. As this sector is growing 50 % year on year, the sector is becoming increasingly material to the financial sector of Ukraine.

394. Interviews with the private sector and reviews of statistical information submitted by the authorities demonstrate that the provision of financial services in Ukraine are provided largely to residents of the country. International business makes up a very small part of the overall customer base and sits generally within the remit of larger institutions.

395. One of the most significant dangers in the minds of the private sector, besides corruption, is the size of the shadow economy. Many licenced or registered FI's and DNFBP's suggested that the laundering of the proceeds of criminality will be undertaken through this shadow or grey economy which was felt to be substantial and relatively easily accessible.

Understanding of ML/TF risks and AML/CFT obligations

396. Art. 6(4) of the AML/CFT Law requires that REs treat certain customers as presenting a higher risk which include inter-alia:

- PEPs;
- Entities from countries which do not apply the FATF standards;
- Certain Foreign Entities; and
- Sanctioned Persons.

397. All of the REs interviewed appeared to understand their obligations under the AML/CFT Law and the additional measures required under the law were consistently applied to customers who met the Art. 6(4) criteria.

398. Many of the REs the evaluation team met with had some involvement in the NRA process and the understanding demonstrated of the assessment was generally good with most REs supporting the findings in general terms. Moreover, a high proportion of the sector has taken the higher risk factors identified in the NRA and have begun integrating them into their existing AML/CFT procedures. This was evidenced by many businesses identifying NPOs as posing a higher risk, a factor which is presently absent from Art. 6(4) of the AML/CFT Law. Such communication to, and acceptance by, the private sector in the short time the NRA has been published is a positive indication of the constructive relationship between the FIU and the private sector.

399. The banking sector appeared to have comprehensive knowledge of the ML/FT risks facing their organisations and demonstrated a sound understanding of the rationale behind each of the risk factors identified in the AML/CFT and in the NRA. Most of the REs outside the banking sector were well aware of the prescribed matters which posed a higher risk, were able to demonstrate a sound understanding of their legal obligations and explained what customers pose a higher ML/TF risk. However, when questioned, many of those entities, in particular the smaller entities, were not able to articulate why such persons presented a higher risk. For example, while the NRA examined the risks of NPOs facing Ukraine and that many businesses were aware that NPOs had to be treated as higher risk as a result of the NRA's findings, but few understood what dangers NPO's posed to them, and what types of activity were more suspicious than others.

400. Furthermore, very few non-banking REs were able to explain what sector-specific risks faced their sector beyond the more general threats facing Ukraine as a whole. Examples of some of the potential risks that the evaluation team expected the private sector to consider include:

- a) Money Services Businesses – where customers are using their representatives and counterparties or networks of customers, or where customers travel unexplained distances to locations to remit funds. Additionally, as stated in the Materiality section in Ch. 1, the volume of incoming remittances is significant. None of the private sector entities considered that this posed any elevated risks;
- b) Life Insurance – Where agents or representatives act, or purport to act on behalf of clients, especially when premiums are being paid through those third parties;
- c) Lawyers – establishment of fictitious companies, particularly how companies formed under Ukrainian Law may be abused (the use of fictitious companies was highlighted as one of the major risks in the NRA).
- d) Lawyers where the customer is seeking advice on matters which are outside the advisors expertise, and considering the potential abuse of legal privilege.

401. Some REs do not appear to document their ML/FT risk assessments, while most of those interviewed confirmed that they do indeed periodically review their own risk criteria, they only do so when legislation or regulations are amended and this process is not documented. REs are categorising risk which is based on certain categories prescribed in law or from guidance given by the authorities (e.g. type of services, geographic location). However the RBA rarely takes into account risks specific to the sector or institution.

402. When discussing the process around the assessment of ML/FT risks, consideration is given to those factors which are detailed under Art. 6(4) of the AML/CFT Law. Art. 6(4) obliges the FI or

DNFBP to treat any customer meeting any of those criteria as posing a higher risk for ML/FT. Beyond this prescribed list, only NPOs and customers who are unable to provide completed CDD are considered as a ML/FT threat.

403. The statutory framework around PEPs allows for a person to be de-recognised as a PEP three years after they leave public office. This definition appears to be applied almost universally in practice, with PEPs routinely de-recognised immediately after the three year anniversary has passed. Because the private sector were unable to articulate an understanding of the dangers posed by PEPs they remain vulnerable to exploitation by persons who have been de-recognised as PEPs because those persons are no longer subject to enhanced monitoring despite the risk posed by PEPs remaining very much alive after three years.

404. FT risks faced by the MVTs sector, which include those seeking to use Ukraine as a transit country or by returning foreign terrorist fighters, appear to be well understood by the SSU. The MVTs sector, however, considers that the lower levels of transaction amounts associated with their business model insulates the sector from ML and in particular FT threats with some describing these threats as “impossible” to materialise. This appears to be a comfort which could not be rationalised when published and well-documented typologies were discussed. The knowledge of ML/FT by the private sector seems to be heavily reliant on the dissemination of information by regulators and LEAs.

405. Among the private sector, there was a good understanding of what processes should be undertaken when customers were identified as posing a higher risk, however, in practice there were actually very few higher risk cases actually identified- approximately 0,5%-1%.

406. The REs interviewed discussed under which circumstances they would decline to act for a customer or otherwise cease providing services. The procedures discussed were comprehensive and appeared reasonable. However, there were virtually no such denials or terminations of business among the non-banking REs on AML/CFT grounds. While this is positive for financial inclusion, such feedback further supports the conclusion that non-banking RE do not adequately understand the ML/FT risks facing them.

407. The FIU and the supervisors undertake frequent outreach sessions to the private sector which includes updates in legislation and current AML/CFT matters. The evaluation team understood from interviews with the private sector that the outreach by the FIU in particular is very useful. The relationship with the FIU and the supervisors was generally described by those interviewed as very good.

Application of risk mitigating measures

408. The controls and mitigation factors which apply to the risks identified for REs under the AML/CFT Law are broadly understood. The private sector is aware that additional screening of clients and enhanced monitoring is required for those customers who are identified as posing a higher risk. Controls implemented are broadly consistent and appear to be based on the risks as prescribed. Interviews with some Officers Responsible for Financial Monitoring indicated that informal networks of counterparts are used to identify potential risks posed by customers.

409. Regulators and FIU provide regular training for the private sector on existing risks, emerging risks and techniques, the purpose of which is to aid the private sector in the control and the mitigation of those risks. The private sector representatives spoke highly of the training and the

open dialogue between the FIU, the regulators and themselves with queries often answered quickly and satisfactorily.

410. As noted above, the banking sector demonstrated a more detailed understanding of the rationale behind the risks specified in the AML/CFT Law. As such, the banks generally appeared to have more comprehensive mitigation controls in place which, while varied, better identified threats posed and controlled those threats. Non-banking REs demonstrated narrower mitigation measures in response to risks identified.

411. Such controls would generally involve either refusing to provide the client with services, or in the case of PEPs, wait until three years following the departure from office has passed and the person would no longer meet the definition of a PEP. Evaluation of this process was limited to procedural discussions as very few non-banking REs confirmed they had any customers who posed a higher risk. Other controls identified by the assessors include undertaking more detailed monitoring of the customer's financial activity and more detailed investigation into the customer's history and background.

412. Given the number of REs the evaluation team met with and the overall numbers of customers reported, there appears to be an unusually low number of customers identified as posing a higher risk for ML/FT.

Application of CDD and record keeping requirements

413. The CDD procedures implemented by the private sector are comprehensive and consistent across all sectors.

414. All customers (legal and natural) are required to present their identity verification documents to the RE in person, those documents are then examined and recorded by the business. When establishing business relationships, information is obtained by the REs in the form of either questionnaires, interviews, discussions or combinations of these. This information is used to establish a profile of the customer against which their ongoing activities will be monitored. These steps appear to have been useful in identifying unusual and suspicious transactions which have resulted in STRs being filed with the FIU.

415. Where customers are natural persons, all REs reported very similar processes. Customers are required to provide basic identification information with copies of supporting verification documents retained on record in most cases. Exemptions are available under the AML/CFT Law for small transactions which are consistent with the FATF recommendations. However, these exemptions are actually rarely used in practice by most of those parties interviewed.

416. Where a customer is a legal person, the identification and verification is expanded to obtain information on the structure of the entity, details of those persons charged with the governance of that entity and its UBO. This information is verified, typically, through the use of open source databases, namely the USR. The banking sector, generally, will seek additional verification at this time on the UBO of the legal person. The information obtained on natural persons associated with the legal person is then verified in the same manner as the natural persons in the paragraph above.

417. Where a customer is identified as posing a higher risk, additional information is sought to determine that customer's "financial condition". This appears to include information relating to the source(s) of that customer's wealth and information to allow for the RE to develop a financial profile in order to more closely monitor the financial transactions of that customer.

418. Record keeping does not seem to be consistent across all entities interviewed. All REs agree that records of transactions must be retained for 5 years from the date that the transaction took place. In respect of CDD records, all of the banks and most of the non-banking businesses interviewed advised that the records are retained for 5 years from the termination of business relationship in line with R. 11. However, a significant minority of other REs advised that they retained the CDD records only for 5 years from the date the records were created (i.e. from when the client was taken on). In mitigation, many of those interviewed by the evaluation team advised that in practice, records were held indefinitely.

419. As noted above, the private sector utilise the information held by the USR to verify the UBO of the client. This is a positive measure employed by the industry and shows that they are taking reasonable steps to test the information provided to them by clients. Such professional scepticism is a healthy trait in an effective system. Unfortunately, the information held in the USR is generally accepted by some authorities and representatives of the private sector to be poor quality and unreliable. As a consequence, some of the larger firms interviewed undertake additional checks such as reviews of other open sources to further test the validity of the UBO information, particularly where the ML/FT risk is identified to be higher. While the authorities and industry broadly agree that the information in the USR lacks reliability, quantification of this unreliability varies. Most respondents agreed that approximately 20% of legal persons listed on the USR have false, inaccurate or misleading information attributed to them on the register.

420. Reliance on third parties to undertake CDD is not permitted under the Ukrainian legislation and does not appear to occur in practice.

Application of EDD or specific CDD

421. Application of specific measures required under recommendations 12 through 16 were generally applied in a consistent manner across all REs.

a. PEPs

422. Application of specific and EDD where a PEP has been identified by the RE is broadly consistent with the AML/CFT Law.

423. All REs noted that where a PEP is identified, a senior officer of the organisation is required to give consent to establishing a business relationship, or undertaking a one-off transaction with that customer. None of those interviewed by the evaluation team had withheld such consent.

424. The detection of PEPs varies across the REs because a substantial amount of reliance is placed on self-declaration with some entities relying on customer facing staff recognising a person as a PEP. Verification of PEP status is undertaken by many REs and this involves the review of open source databases of varying quality. The databases used by REs, in particular smaller entities, are limited in their ability to identify foreign PEPs. Given the very small number of PEPs identified by those REs interviewed, these procedures may have an adverse impact on the private sector's ability to effectively identify PEPs – particularly foreign PEPs. It should be noted that this risk is mitigated by the relatively small international customer base among Ukrainian REs.

425. Where PEPs have been identified by a REs, generally additional measures are undertaken which establish the customer's source of wealth as well as undertaking more detailed or enhanced ongoing monitoring. That being said, the deficiencies identified under recommendation 12, namely

definition of a PEP and the limitation period has a material impact on Ukraine's effectiveness under the specific measures.

b. Correspondent banking

426. Correspondent banking relationships are relatively uncommon in Ukraine. Where relationships are established, the controls appear to be consistent and compliant with R. 13.

427. Where correspondent relationships are established, generally the banks in Ukraine are the respondent banks themselves utilising foreign institutions to access banking markets in the US, Eurozone and Russia. A small number of banks do act as correspondents for institutions in CIS countries and Eurozone jurisdictions to allow access for those institutions into the Ukrainian market.

428. Where such relationships are established, the banks interviewed outlined procedures which appear to be compliant with R. 13. It should be noted that Ukrainian Law does not allow for payable through accounts, and these do not appear to be operated within the jurisdiction in practice.

429. There did not appear to be similar correspondent type relationships among the private sector outside of the banking institutions.

c. New technologies

430. Art. 6(23) of the AML/CFT Law requires REs to manage the risks associated with the introduction and use of new and existing products, business practices or technologies. In terms of new or developing technologies, systems development formed a substantial and seemingly robust control framework among the entities interviewed by the evaluation team. The control systems as described appeared to be comprehensive and positive. However, none of the REs outside the banking sector had undertaken any assessment of the potential ML/FT risks that may arise. When the matter was probed in more detail, only potential IT system failures were identified as a matter of possible concern.

d. Wire transfer rules

431. The banks and non-banking MVTs who met with the evaluation team appeared to have a generally good understanding of the Wire Transfer Rules and the requirements imposed under the Ukrainian legislative framework. On the face of it the requirements under recommendation 16 appear to be followed in practice.

432. Much of the Ukrainian MVTs market is domestic in nature and cross-border transactions make up only a very small part of the registered, non-banking MVTs sector. Those MVTs authorised to undertake cross-border transactions are almost entirely with neighbouring CIS countries. Larger transactions (over UAH 150,000 in a single or series of linked transactions)(~EUR 4,917.46) are undertaken by banks, who will only serve established customers which reduces the potential impact of ML/FT risk.

433. Where persons act as agents for an MVTs, the principal remains wholly responsible for that entity's reporting and compliance with the relevant requirements of the AML/CFT Law. Such arrangements appear to be uncommon in Ukraine, those reviewed by the evaluation team appear to be adhering to the same control framework as a similar sized operation structured as a single economic entity.

434. Finally, of the firms interviewed who used bespoke and off-the-shelf software applications, the analysis of those reports was encouraging, while significant reliance was being placed on the systems, the effective and relatively efficient use of such systems, in practice came across as positive.

e. Targeted Financial Sanctions

435. Since 2014, screening of potential customers is commonplace with almost all REs having a screening process integrated into their client on-boarding procedures, during the provision of one-off transactions and on an ongoing basis. Re-screening of existing clients is undertaken on a regular basis, either on an at least annual basis or when a transaction is undertaken (whichever occurs first). It was further observed that some REs screen their entire client base on a more regular basis with some larger entities screening daily. The FIU publish sanctions lists which incorporate domestically sanctioned persons as well as integrating some international lists including UN sanctions and EU sanctions. These lists are then used by REs to update internal systems regularly, typically on a daily to weekly basis.

f. Higher Risk Countries

436. Those REs who are involved in international business, appeared to have a very good understanding of countries which have been identified as posing a higher risk for ML/FT by the FATF and advised that enhanced measures would be applied in these cases. Even among those businesses whose client base is domestic, a good awareness of the risks in more general terms was demonstrated in particular from countries where the FATF has called for EDD to be applied. Some FIs advised that they would not accept clients from the higher-risk countries identified by FATF.

Reporting obligations and tipping off

437. Reporting requirements are divided into 2 forms: “mandatory reporting” (explained in greater detail under IO 6) and “internal monitoring reporting”, which represents the traditional concept of suspicious activity reporting. The principles of reporting of suspicious activity and attempted suspicious activity seem to be broadly understood by all of those interviewed. However, in practice, the number of disclosures appears to be at the lower end of the scale, having regard to the risks, sizes of the businesses and the volumes of financial transactions. The team was advised that approximately 96% of all reports made to the FIU are submitted by banks. Contextually it should be noted that the majority of financial transactions in Ukraine are undertaken by banking sector. The authorities consider this is consistent, given the significantly higher volume of financial transactions conducted by banking institutions in comparison with non-banking. The evaluation team would still expect a greater proportion of STRs to be submitted by non-banking FI’s and DNFBP’s than appears to be occurring in practice. Suspicion based reporting by DNFBPs has remained low.

Table 16: Suspicion-based reports filed by each category of RE

Reporting entity	2012		2013		2014		2015		2016 (1 st Q)	
	ML	FT	ML	FT	ML	FT	ML	FT	ML	FT
Banks	335 930	4	316 537	6	491 041	1	413 279	2	77 465	4
Credit institutions and currency Exchange Offices	4	0	31	0	126	0	183	0	28	0
Securities traders	164	0	7	0	10	0	190	0	34	0
Asset management companies	1380	0	678	0	1125	0	671	0	235	0

Other professional participants of the stock market	651	4	17	0	0	0	1	0	0	0
Insurance companies and brokers	1870	0	2394	0	2462	0	523	0	60	0
Other financial institutions	209	0	124	0	301	0	240	0	45	0
Commodity exchanges	0	0	0	0	0	0	0	0	0	0
Real estate intermediaries	0	0	0	0	0	0	0	0	0	0
Precious metals and precious stones dealers	0	0	0	0	0	0	0	0	0	0
Lawyers, law offices and legal services providers	0	0	0	0	0	0	0	0	0	0
Notaries	337	0	89	0	29	0	0	0	10	0
Accountants, Auditors and audit firms	2	0	0	0	0	0	0	0	0	0
Business entities which conduct lotteries	0	0	0	0	0	0	0	0	0	0
Post office	37	0	37	0	28	0	131	0	11	0
Business entities which conduct financial transactions with goods for cash	130	0	3	0	0	0	0	0	0	0
Total	340 714	8	319 917	6	495 122	1	415 218	2	77 888	4

438. The restrictions around tipping-off are detailed in Art. 12(11) of the AML/CFT Law and are broadly understood by those persons interviewed. The controls implemented by the REs do appear to be proportionately consistent across the private sector. The internal control systems developed to meet the Art. 12(11) obligations are designed compartmentalise and ring-fence the records pertaining to a report being made to the FIU. Access to such records is limited to the Officer Responsible for Financial Monitoring and often certain members of Senior Management. Such controls limit the ability for a suspect to be tipped-off that a disclosure has been made to the FIU. However, there were weaknesses identified where a member of staff (in particular, a customer facing member of staff) has reported their suspicions internally to the Officer Responsible for Financial Monitoring. For instance controls to prevent that member of staff from disclosing that they have reported their suspicions internally are much weaker. The larger organisations, such as the banks interviewed by the evaluation team, recognised this as a potential risk (a risk which in some cases had crystallised) and appropriate training is put in place, however other entities did not acknowledge that tipping off by a member of staff was even possible.

Internal controls and legal/regulatory requirements impending implementation

439. All businesses interviewed had appointed an Officer Responsible for Financial Monitoring in line with Art. 6(1) which met the requirements of the legislation. All of those interviewed appeared

to the evaluation team to enjoy support from their senior management and were adequately resourced. Reports are made by the officer to the management board in all cases on a monthly basis. These reports include inter-alia; changes to legislation and regulations, legislative breaches incurred by the RE, training undertaken by the officer and training provided to the staff.

440. Staff members are subject to vetting prior to their appointment, the scope of the vetting varies across sectors and REs. There are, however, a number of common considerations given by all those interviewed by the evaluation team. Generally, vetting will include a review of an applicant's employment history and qualifications as well as reviewing their Labour Book. Moreover, the RE will scrutinise that person's reputation against open source materials such as court records and will obtain references from past employers. These screening procedures appear to be sufficient to ensure a high standard when hiring employees, it should be noted that most REs interviewed do go beyond these processes.

441. REs require that AML/CFT training is undertaken at, or shortly after recruitment and also on an ongoing basis. The training provided and delivery methods varied across all entities interviewed. The common matters described by all REs include changes to legislation, and key AML risks as identified by the AML/CFT Law, in particular sanctions and PEPs. Ongoing training is undertaken on a regular basis with the most common periods ranging between quarterly and annually for all staff.

442. The Internal control systems appear to be generally based on Art. 6 of the AML/CFT Law and pertain, mainly, to CDD processes and to the identified and treatment of higher risk customers (in particular PEPs). The Responsible Officer has, almost universally, unrestricted access to all information within the RE. There are no barriers on sharing information within the wider group structures, or any prohibitions on those group structures undertaking their own audit programs. It should be noted that the AML/CFT Law prohibits the details of both mandatory reports, and internal monitoring reports (STRs) which have been made to the FIU from being shared with the wider group, although high level statistics, including numbers of such reports can be (and do appear to be) shared with other entities within the economic groups.

443. The internal control systems are tested by an Internal Audit function which reports, in part, to the Officer Responsible for Financial Monitoring. In the case of smaller REs which may lack a dedicated internal audit function, an independent audit is undertaken by the Officer Responsible for Financial Monitoring. The audits include an assessment of the effectiveness of ML/FT controls within the auspices of the internal procedures and within the AML/CFT Law. Amendments to processes are made as a result of deficiencies identified, such changes or updates are normally passed on to staff through training, procedural updates or a combination of both.

Conclusion

444. Overall, application of legally mandated or defined procedures of preventative measures appears to be well applied. However, the understanding of the ML/FT risks facing Ukraine was much weaker, although the banking sector were able to demonstrate a better understanding of risks that the non-banking sector. As such it would be reasonable to conclude that should a potential ML or FT risk crystallise which falls outside the normal definitions of the AML/CFT Law, it is likely that such a risk would be overlooked by most of the private sector. An example of this where PEPs are declassified after 3 years of leaving office, while the risks remain very much alive, due to the definitions and weak understanding of those risks, most of the private sector would not be in a position to identify such an issue. **Ukraine has achieved a Moderate level of effectiveness for IO 4.**

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

- Very significant efforts have been made by the NBU in relation to ensuring transparency of beneficial ownership of banks and in removing criminals from control of banks; these efforts have been complemented by the DGF. The SC has made strong efforts to ensure that BOs and controllers are not criminals. However, other supervisory authorities cannot, or do not, verify whether or not relevant REs are beneficially owned or controlled by criminal elements with the limited exception that the FIU has checked the records of real estate agents during onsite inspections.
- The NBU and the SC have a good understanding of ML risks in the banking and investment sectors respectively and a broad understanding of FT risks in those sectors. The FIU appears to have a similar level of understanding of the real estate agent sector as a whole. The NC has a good understanding of ML risks. At the time of the evaluation team's visit to Ukraine other supervisors demonstrated a basic understanding of risks or, in the case of the MoI and the MEDT, understanding was lacking.
- The NBU is undertaking comprehensive onsite and offsite supervision for banks and follows a mainly RBA to AML/CFT supervision.
- With respect to all the other REs, the supervisory authorities, except the MoJ and the NBU for non-banks, were the subject of a moratorium on supervision from the summer of 2014 until 1 January 2017 (with the moratorium on MoF supervision ceasing in 2015). Together with shortfalls in staff, the moratorium has limited supervision since 2014 although the effects on the SC and the NC have been limited to a partial extent as the moratorium's effect on these two supervisory authorities has allowed supervision of larger licensees since July 2015; in practice the level of supervision by the SC and the NC since that time has been quite limited. Except for the NBU which has carried out limited offsite supervision for non-banks, and the limited supervision by the SC and the NC, none of these authorities has been conducting routine offsite supervision. Other than the MoJ, overall, onsite supervision has been limited. In addition, with the partial exception of the SC, while REs appear to have been classified into risk categories, the statutory criteria and the time frames for onsite inspections mean that supervision can be only partially ML/FT risk-based. The intensity of supervision between non-bank licensees by supervisory authorities other than the NBU is varied in a very limited way or not at all.
- The NBU has applied a range of sanctions to banks, including revocation of licences. It has also applied strong sanctions (prohibitions) to individuals but not other penalties. Outside the banking sector, the level of fines is too low and only the SC has applied strong sanctions in addition to the imposition of fines. There are significant technical gaps and the sanctions framework outside the banking sector can be only partially effective.
- The NBU has made a demonstrable difference to the level of compliance in the banking sector. The SC has made a difference in relation to BO and control of licensees, and the NC, the MOF and the MOJ have been able to point to elements of better compliance due to their outreach or supervisory activities. However, there is scope for improvement outside the banking sector (facilitated by improved levels of risk based supervision and a better framework for sanctions) for non-bank

supervisors to undertake further efforts routinely to make a comprehensive and systematic difference.

- The large majority of supervisory authorities have undertaken outreach to promote understanding of obligations and risks. Particularly strong and positive activity has been carried out by the FIU, the NBU (for banks) and the NC, with the FIU's activity allowing all RE sectors to be covered. The MoI and MEDT have carried out no outreach.

Recommended Actions

- With regard to ensuring criminals or their associates are not, or do not become, BOs or controllers:

- for sectors currently the responsibility of the NC, and for which the NBU and the SC will assume supervisory responsibility, policy makers should ensure that the existing legal deficiencies which apply to the NC will not apply to the NBU and the SC;

- for these sectors, the NBU and the SC should apply high standards to verify that BOs and controllers are not criminals or associates of criminals. As part of this, they should develop systems for checking the BOs and controllers of existing NC licensees;

- the SC should develop a system for liaising with foreign supervisory authorities to ascertain whether they have information relevant to keeping criminals out of the system;

- as planned, Ukraine should introduce legislation governing standards for real estate brokers and accountants;

- the MOI, MOF, FIU, MED and MOJ (and the NBU for MSBs) should introduce systems to ensure that criminals and their associates do not enter the markets for which they are the supervisory authorities;

- all supervisory authorities should develop systematic approaches to "policing the perimeter" and detect breaches of licensing or registration requirements;

- The existing approach to supervision should be revised by:

- increasing budgets and the number of staff for all supervisory authorities;

- outside the NBU, re-focussing training so that it is systematic and comprehensive;

- amending the statutory criteria which apply to all supervisory authorities so that the criteria are focussed solely on ML/FT and, outside the banking and investment sectors, ensuring that the criteria are sufficiently comprehensive to be meaningful;

- revising the statutory time lines for onsite inspections where they are specified for risk categories so that they do not specify a maximum frequency of inspection;

- amending the onsite inspection methodologies which apply to the supervisors to allow intensity of supervision to differ between licensees of different risks;

- supervisors undertaking systematic offsite supervision and analysing material received so as to inform their understanding of the risk profile of individual licensees (and of sectors) and to inform approaches to onsite inspections;

- With regard to sanctions:

- as is already planned, the legislative provisions on sanctions should be revised for all supervisory authorities to ensure that there is a good range of powers of sanction and much stronger fining powers for individuals as well as REs;
- there should be coordination of revisions to procedures for the authorities so as ensure that the range of powers is used, including use of the stronger fining powers, when appropriate;
- Systematic outreach to REs should be undertaken by MoI and MEDT.
- Address the technical deficiencies identified in relation to R. 26 to 28 and 35.

445. The relevant Immediate Outcome considered and assessed in this chapter is IO 3. The recommendations relevant for the assessment of effectiveness under this section are R.26-28 & R.34-35.

Immediate Outcome 3 (Supervision)

Licensing, registration and controls preventing criminals and associates from entering the market

446. All FIs and DNFBPs subject to the AML/CFT framework must register with the FIU. This is a notification framework.

NBU

447. The NBU has a separate licensing department. At the application stage completed questionnaires are obtained by the NBU in connection with the bank, its BOs, legal owners and senior management, together with supporting documentation. The depth of information collected allows the NBU to review business reputation, experience, financial position (including taxes paid and tax liabilities) so as to allow checks on source of funds, and the substantial interests of relatives, including companies beneficially owned by relatives. Internet searches of all BOs, owners and senior managers are carried out and certificates of non-conviction obtained, together with references from credit reference agencies. The licensing department checks the reputation of individuals with other NBU departments and, where there is anything potentially negative, liaises with other authorities in Ukraine. Input is sought from supervisors in other jurisdictions where there is a link by the applicant or a person involved with the applicant during the previous three years although this is extended on risk grounds. Except where individuals are well known to the NBU, interviews are held with the chief executive, financial monitoring officer, auditor and chief accountant, and, where considered appropriate on grounds of risk, other individuals. Interviews have been held with 80% of BOs during the last two years. The NBU also checks whether BOs, legal owners and senior managers are associated with criminals. All checks have been undertaken within the statutory time frames.

448. Proposed changes of beneficial ownership, legal ownership and senior management must be advised to the NBU in advance. Breaches have been rare and in these cases the NBU has suspended voting rights and imposed financial penalties. During 2015 and 2016, the NBU verified compliance of all banks' ownership structures with transparency requirements. It established that sixty banks had features of non-transparency, while twenty-four banks were recognised as having a non-transparent structure. While most cases were resolved through restructuring, six banks were closed down by the NBU. All non-transparent situations had been resolved by the evaluation team's visit to Ukraine.

449. From the beginning of 2015 to the end of the first quarter of 2017, the NBU has taken 66 decisions to prohibit the acquisition or increase of a qualifying holding in a bank; did not proceed with 83 applications to acquire or increase a qualifying holding as a result of withdrawal of the application; took 112 decisions not to approve the appointment of managers or to confirm the

appointment of persons holding managerial positions; and did not proceed with 146 other appointments/confirmations based on withdrawal by the individuals concerned.

450. In all, 88 banks have been put into liquidation by the NBU, six being closed down for lack of transparency of beneficial ownership. However, a number of these are subject to court processes and the implications of this are not clear. Over 1,300 individuals have been prohibited from ownership of, or management positions in banks (300 BOs, 988 senior managers, 50 nominees among the senior managers of banks and 25 applicants for beneficial ownership).

451. The NBU is not aware of any criminal infiltration or misuse of remitters and bureaux de change. Since the beginning of 2016 the NBU has refused to issue five licences to non-bank FIs to undertake currency transactions as a result of non-compliance with ownership structure requirements. The general approach of the NBU to MSBs is the same as for banks although it has adopted a much less detailed approach, the main difference being in relation to the assessment of business reputation, improvements to which are being developed. The NBU will become completely responsible for both MSB registration and supervision in the future.

452. From 2015 to the end of the first quarter of 2017, the NBU refused to issue licences in connection with 24 applications for remitters and bureaux de change (with 39 other applications being withdrawn); five of which are those referred to above for non-compliance with ownership structure requirements.

453. The NBU is aware of the need to ensure that all remitters and bureaux de change are registered and supervised and would take action if any unregistered entity were to be discovered. While it does not actively police the perimeter for any unlicensed activity with regard to remitters the NBU has indicated that it would be difficult for an unlicensed remitter to operate in the market, and that it is alert to the potential for unlicensed business and would note such business through the counterparties in noted during its supervision of licensed entities. With regard to currency exchange bureaux, the NBU has mobile units which actively look for unlicensed activity.

454. For both banks and MSBs beneficial ownership, legal ownership and controllers are checked during onsite inspections. Information held by the FI is verified with the NC and the USR.

DGF

455. The DGF has established a department of illegal activities to detect actions of a criminal or civil nature which have taken place in banks in administration or liquidation. The department has undertaken 60 onsite inspections of banks since its establishment in February 2016. Statements on some 3,500 potential offences have been provided to LEAs, of which 1,862 have been entered into the Unified Register of Pre-Trial Investigations. The results of those pre-trial investigations which have been undertaken suggest that fourteen individuals should be charged and charges have been filed with the court in relation to nine of them. The DGF has made complaints that actions by LEAs are not timely and that they refuse to register offences and initiate investigations. The DGF feels obliged to undertake investigation work which should be undertaken by LEAs.

SC

456. The SC's proactivity in tightening access to the securities market by improving the quality of participants is a major reason for the significant reduction in the number of licensees. Information on beneficial and legal owners of legal persons must be provided as part of the application for a licence, including information on business reputation (provided by way of a completed questionnaire), previous employment and experience. Identification information for all prospective

employees is also provided to the SC. Such information for foreign individuals must be notarised. Documents confirming source of wealth for the capital of applicants are analysed. Information received is checked against the SC's databases and internet searches are undertaken. Input is requested from other domestic supervisory authorities where they might hold information and, for Ukrainian residents, the national police are asked to confirm whether or not individuals have a criminal record. References are obtained from the previous employer of CEOs. Requests for information have not been made to foreign supervisors but additional information on income and tax paid is required in relation to non-residents. Where the foreign jurisdiction is not a signatory to the Hague Convention, the SC seeks confirmation from the relevant embassy of the bona fides of documentation provided. The SC considers that its checks on the national police registry, the internet and other checks such as those with other supervisory authorities would establish whether or not an individual is an associate of a criminal. The statutory time frames for dealing with applications have not presented a problem.

457. The SC confirmed that it has refused to issue licences due in large part to the non-disclosure of ownership structures and the lack of identification of UBOs.

458. Changes to beneficial and legal owners and senior management must be notified to the SC so that it can undertake checks before a position is occupied. There have been only a few cases of late filings and these have been subject to penalties. The accuracy of beneficial ownership, legal ownership and senior management information held by the SC is checked during onsite inspections (including themed inspections dedicated to this activity). It also analyses information at the USR periodically.

459. The SC polices the perimeter to some extent. It sees the discovery of counterparties of firms subject to inspection as the most likely way of identifying unlicensed activity. It also considers complaints from customers and information received from the FIU. It has uncovered two unlicensed trading firms, one in 2015 and one in 2016. Penalties were applied in both cases.

460. There is a limitation on the ability of the SC to exchange information when the subject is an individual; this has led to an inability for the SC to provide information to other authorities except to the FIU. The SC is restricted in its work as a result of limitations in being able to obtain information in relation to banks. Legislation is being drafted to address this issue.

NC

461. The NC has 14 staff (including 7 for insurance) devoted to licensing in the sectors it is supervising. It has insufficient resources to police the perimeter actively and detect potential breaches of licensing requirements.

462. Completed questionnaires are received from BOs, legal owners and management as part of the application to be recognised as a FI and provided with a licence. This includes confirmation of whether the individual has a criminal record. The process for the first stage (recognition as a FI) must be completed within ten days. However, this deadline, and the limited nature of the information required to be provided by legislation does not allow for the NC to ask for clarifications, to verify the information or to seek further information, places the NC in a difficult position. In practice, the issue of a licence is automatic. This regime has been in place at least since legislative changes in 2015.

463. By way of context, only a very small number of licensed entities have any non-Ukrainian owners of management. In these cases, the NC occasionally seeks information outside Ukraine and provided an example to the evaluation team in relation to a Bulgarian authority in 2016.

464. Since the beginning of 2016 there are examples of three applications for insurers which were not taken forward by the NC albeit not for AML/CFT reasons. From the beginning of 2015 to the end of the first quarter of 2017, the NC has rejected 226 applications for licences by insurers and 38 prospective legal and BOs.

465. The NC checks information on beneficial and legal ownership and senior managers during onsite inspections and also uses public sources (the USR) and complaints.

466. The NC advised that it is not aware of any issues in relation to criminality since the change of legislation in 2015 but is also of the view that it is too early to form a conclusion as to whether there are any issues in practice. In December 2015 the NC required all the entities it supervises to provide information on its BOs, legal owners and management and is analysing the answers. The delay in completing this work demonstrates the NC's lack of resources.

MoI

467. With regard to postal operators, during onsite inspections by the MOI, the reputations of the heads of departments, including information on whether they have convictions, are checked, together with whether the reputation of senior management has been checked by the operator itself.

MoF

468. Auditors and audit firms are required to be certified by the Chamber of Auditors. Following the onsite element of the evaluation, the evaluation team was advised that there is at least some (AML/CFT) enforcement of the Law on Auditing in relation to the requirement that auditors must not have criminal records or have received an administrative penalty for a corruption offence within the last year in that, before providing a certificate of practice, the Chamber of Auditors must receive a certificate from the MIA on the absence of convictions. There is no liaison between the MoF and the Chamber. There are no other standards of fitness and propriety required of accountants and there is no law governing the requirements for accountants. Only five individuals have registered with the MoF as accountants, suggesting a very significant shortfall when compared with the number of accountants falling within the scope of the AML/CFT Law that can be assumed to be operating in Ukraine. There are no requirements preventing criminals from owning or controlling DPMS.

469. Due in part to its policy role, the MoF does not have sufficient resources to actively seek breaches of licensing requirements but it has advised audit firms it has inspected to register with the FIU.

FIU

470. Registration is by way of notification; in practice, only a small number of real estate brokers have registered with the FIU. The FIU checks beneficial ownership and management of registered brokers during inspections; business reputation is checked as well as the criminal record of the compliance officer (but not other individuals). There are no checks on whether or not persons are associates of criminals. The FIU advised that it had not uncovered any examples of criminality infiltrating the real estate sector. It is uncertain whether brokers are operating in the shadow economy – the FIU considers that a dedicated law on governing brokers will be the foundation for ensuring high quality standards. The FIU has not proactively sought to find unregistered brokers on

the basis that business activity specified in the USR and in the tax authority database (examined by the FIU) is so general that the existence of real estate brokerage business would be difficult to verify.

MEDT

471. The MEDT indicated that a substantial number of commodity exchanges (some 175 to its knowledge) are not registered with the FIU. It has written to them to advise them to remedy this position. In addition, a large number has ceased operation as the market cannot support such large numbers. There are no licensing requirements or checks on the criminality of BOs and controllers although a law which will address this deficiency is planned.

MoJ

472. Notaries can only engage in notarial activities upon receipt of a certificate from the MOJ, which is provided on submission of the requisite qualification. The main bulk of notaries were registered in 2011 by the FIU when the Notaries Law came into force although it is not clear to the evaluation team that all notaries have registered with the FIU. Following the onsite element of the evaluation, the evaluation team was advised that there is at least some (AML/CFT) enforcement of the Law on Notaries in that, before providing a certificate of practice to a notary, the MoJ must receive a certificate from the MIA on the absence of convictions. The MoJ is aware there have been cases of withdrawal of certificates and an example of a withdrawal due to a criminal conviction was advised to the team.

473. Advocates must receive a certificate from the MOJ to engage in advocacy. It is not clear that all lawyers undertaking activity engaged by the AML/CFT Law have registered with the FIU. Following the onsite element of the evaluation, the evaluation team was advised that there is at least some (AML/CFT) enforcement of the Law on Advocates in that, before providing a certificate of practice to an advocate, the MoJ must receive a certificate from the MIA on the absence of convictions. Statistics on the withdrawal of certificates by the MoJ are not maintained but the MoJ is aware there have been cases and an example of a withdrawal due to a criminal conviction was advised to the team.

Supervisors' understanding and identification of ML/TF risks

474. Each of the FI supervisory authorities is provided each quarter by the FIU with information on new registrations, transactions in which it has an interest, AML/CFT breaches in relation to reporting obligations and any other breaches, and potential ML/FT schemes.

NBU

475. The NBU seeks to ensure that banks understand the nature of transactions and obtains significant information in relation to the banking sector to inform its understanding and identification of ML risk. The NBU's role in relation to currency transactions and the currency control requirements and the related activities by banks provides input to facilitate understanding of transactions. ML from the proceeds of corruption, abuse of fictitious companies and the desire to remove cash from the system are primary concerns. Corruption risk is considered both from the prism of ownership or control of banks by criminals as well as use of bank services and products for laundering purposes. The NBU has an informed view of the ML risks of each bank and a good understanding of the risks in relation to the banking sector.

476. The NBU also receives significant information to provide it with a broad understanding of FT risks of the risks of each bank and the sector in light of its knowledge of TFS screening by supervised entities and other onsite and offsite supervision, published indicators on sending money abroad and

training it has received, albeit that further exploration of the risk is needed. FT risk must also be categorised by banks into domestic and international risk. The NBU is aware that there are continuing international risks. Nevertheless, the knowledge held but not shared by the SSU (see IO1 and IO9) militates against full understanding by other actors.

477. The NBU receives less information from onsite and offsite supervision and external sources on MVTs and it has a less developed view of the risks of each entity and the MVTs sectors. The NBU sees these FIs as having an enhanced corruption risk profile. With reference to remitters, the NBU sees the risk of fragmentation of transactions into smaller amounts as a particular risk.

478. The NBU has endeavoured to understand any potential risks emanating from the situation in east Ukraine.

SC

479. The SC considers the main ML risks to the investment sector to be those articulated in the NRA through the predicate criminality occurring in the sector. The sector is vulnerable to ML arising from the proceeds of fraud, corruption and tax evasion; there is also a small amount of insider dealing and market manipulation. The number of participants in the securities market has reduced significantly, facilitating understanding of risk. Some transactions linked with corruption and PEPs have been noted by the SC although it is of the view that use of the investment sector by PEPs for laundering the proceeds of corruption is not high. There is no evidence of the securities sector being used for FT. FT risk is considered to be low as the sector is regulated and use of stock markets presents risks to terrorist financiers as the sector does not involve the unregulated channels attractive for FT. The SC was also aware of TFS and the sector's response to the lists of designated persons. Given the factors described below, the SC is not in a position to have a developed view of the risk presented by each licensee.

NC

480. Of the sectors it supervises, the NC sees the highest risks as being in the insurance sector. This is reflected in the questionnaires received from 44 entities for NRA purposes and, therefore, the NRA; breaches found by the NC during onsite inspections; its conclusions on transactions reviewed during onsite inspections (including lack of understanding by REs in relation to some transactions); STRs received by the FIU from REs and the NC; and monthly reports provided to the NC by the FIU on breaches of reporting requirements by REs. The NC perceives differences between the ML/FT risks of each of the sectors it supervises but in light of the factors described below is not in a position to have a developed view of the risks presented by each licensee. The NC has not articulated a view on FT risk to the evaluation team.

MOI

481. The MOI unit was not in a position to provide information to the evaluation team on risk.

MEDT

482. Overall, while the MEDT was uncertain as to the ML/FT risks presented by commodity exchanges, it suggested that the intermediary role of exchanges and the fact that they are party to investor contracts presents a risk.

MoF

483. The MOF sees differences in the risks of the sectors for which it is AML/CFT supervisor but considers the sectors it supervises to be low risk. Auditors are not involved in transactions but there is the potential that they might not provide reliable information in audit reports. Risk in the DPMS sector is seen as mitigated by the maximum limit of UAH 50,000 (~EUR 1,639.15) for cash transactions. The MoF has a basic understanding of sectoral risk.

FIU

484. The FIU considers the real estate broker sector to be low risk. Brokers do not participate in property transactions and all transactions above UAH 50,000 must be made through a bank. Each transaction is notarised by a notary. The FIU is not aware of any transactions having been made in cash and, based in part on its quite significant liaison with the notaries sector, the FIU's general impression is that there are not any systemic problems in that sector. In light of the factors described below, the FIU is not in a position to have a developed view of the risks presented by each RE. Like the NBU, the FIU has taken steps to endeavour to understand the ML risks emerging from the situation in eastern Ukraine.

MoJ

485. The MOJ considers the main risks of its supervised sectors to be present in the notary sector although its view is that there is no risk in practice of notaries being used for ML/FT purposes as they understand their ML/FT risks, the application of CDD and the noticeable participation by notaries in training organised by the FIU and the MoJ. The evaluation team is not convinced that the MoJ has a rounded view of risk of individual entities or the sectors which it supervises.

Risk-based supervision of compliance with AML/CFT requirements

NBU

486. Eighty-seven staff in the NBU's supervision department are devoted to AML/CFT. Management and other staff have substantial private sector experience. A comprehensive AML/CFT training programme is in place, which includes ML and FT risk.

487. The NBU modified its approach to supervision in 2015/2016 and has established a largely ML/FT RBA to supervision from April 2016, using specialised software to give each bank a ML/FT risk classification, with focus being directed towards areas of greatest risk. Structural and business risks of banks are evaluated to conclude a ML/FT risk rating for each bank. Structural risks include an evaluation of bank capital, the ownership of the bank, the board of directors and supervisory board and any affiliation with PEPs. Business risk considerations include types of customer (including whether the customer is an individual or a legal person/arrangement or resident/non-resident), whether PEPs are involved (there is particular focus on this), the volume of transactions, the location of payments made (including whether they are domestic or to a foreign jurisdiction and the system used for transfers, the risk presented by the jurisdictions to which payments are made, whether cash is involved, non-face to face services, developing technologies, use of collateral, correspondent accounts and AML/CFT policies/procedures.

488. Offsite questionnaires, completed by banks each quarter, are analysed and the results used to inform the onsite inspection programme, which is developed on an annual basis. Unplanned inspections are undertaken regularly. Inspections also take account of information provided to the NBU by the SSU on FT and the NBU's access to the MIA database on lost documents and

administrative offences. There is very good liaison with the FIU, which has provided the NBU with information on breaches by banks, which the NBU uses to inform its supervision.

489. A reduction in the number of onsite inspections has enabled increased quality of inspections. AML/CFT inspections for large banks take some three months by 4-5 members of staff while small banks might take 4-6 weeks for 3-4 officers in most cases. The NBU focuses on the products/services of the bank and how it operates, potential ML schemes, PEPs, BOs, fictitious companies and FT. In a small bank all PEP files are reviewed, together with a sample of files for other customers. In a large bank files are sampled on a pro rata basis for the type of customer although this is the only differing element of intensity as between banks in relation to the NBU's supervision. A statutory methodology governs the content of onsite inspections. In the Spring of 2016 the NBU introduced thematic inspections for the review of PEPs. These appear to be thorough. There is particular focus on PEPs with the largest accounts. The length of time of the inspection depends on the size of the bank but the use of two or three inspectors for a month would be typical.

490. All banks must be subject to inspection at least every three years and, while the statutory factors which must be taken into account go beyond AML/CFT, in practice, during the last year the NBU has been able to undertake onsite inspections largely on the basis of ML/FT risk as not all the statutory factors have been relevant to every bank and the AML/CFT factors apply to all banks, and also as the NBU has been undertaking PEP themed inspections.

Table 17: On-site visits to banks

Banks	Number of licensed entities*	Risk category	Number of visits to entities in each risk category			
			2014	2015	2016	2017**
	92 ⁵⁶	High	38	16	17	-
		Significant	6	12	12	2
		Medium	16	16	6	2
		Low	55	15	9	3
		Total number of inspections	115 (planned – 81, unplanned – 34)	59 (planned 41, unplanned 18)	44 (planned 41, unplanned 3)	7 (planned 7, unplanned - 0)

* Number of licensed entities as of 31.03.2017

** Number of inspections from 1 January 2017 to 31 March 2017

491. NBU resources appear to be directed at the areas of greatest risk in relation to banks and the quality of its supervision is highly regarded

492. The NBU supervises currency exchange offices separately from its other activities. This process started in September 2016. Since then the number of inspections has been as follows: 270 inspections in 2016 and 260 in the 1st quarter of 2017. The figures are high as one bureau may have a number of sub-divisions providing currency exchange services and these are considered as

⁵⁶ Number of FIs in each risk category: High – 32; Significant – 36; Medium 5; Low – 19.

separate entities for statistical purposes. It appeared to the evaluation team that a mainly AML/CFT supervision is taken.

493. The NBU has undertaken a limited number of inspections of non-bank remitters in 2015 and 2017 (three in 2015 and three in 2017). The NBU has confirmed to the evaluation team that the level of supervision is based on risk but the team has a concern that the overall level of supervision of remitters is still too low. Within this level of supervision, the approach taken appears to be mainly AML/CFT risk-based.

494. The approach to planning onsite inspections for remitters and bureaux de change is broadly the same as for banks although the inspections appear to be less detailed. The NBU recognises that the different risks in relation to remitters and bureaux de change sectors require different supervision. Representatives of the NBU's AML, security and cash circulation departments are present during inspections of bureaux de change operations.

495. The level of onsite inspections suggests that the NBU does not have as many staff as are necessary to undertake full risk based supervision of remitters. In any case, the more pressing concern is that the NBU does not have sufficient staff resources to deal with the additional licensees for which it will become responsible when responsibility for the supervision currently supervised by the NC is transferred to it.

Moratorium on Supervision

496. In August 2014 a moratorium was introduced on onsite and offsite inspections by supervisors except for the NBU and the MoJ. Inspections could only be undertaken with the permission of the Government or at the request of the business. In July 2015 the moratorium was modified so that entities with more than UAH 20 million of income annually could also be subject to inspection. In practice, only some SC and NC licensees had sufficient income to enable supervision by those authorities under the moratorium. The moratorium expired on 1 January 2017 (although the MoF was able to restart onsite inspections in 2016).

SC

497. The SC has seven staff devoted to AML/CFT activity (onsite inspections, policy, liaison with the FIU and other authorities, and engagement with REs. There are sixteen other individuals in offices outside Kiev who have some involvement with AML/CFT. The SC is under resourced for AML/CFT and, notwithstanding the reducing number of investment sector licensees, this issue will become worse when it takes on responsibility for some 2,000 entities currently supervised by the NC. While 28 staff in 2015 and 6 staff in 2016 attended training events put on by the FIU, the SC does not appear to have a systematic and comprehensive training programme for AML/CFT.

498. Legislation enables some elements of a ML/FT RBA to be undertaken by the SC in classifying licensees and, also positively, there is no statutory time frame limiting the frequency of inspections (see R.26). All SC licensees have been classified into risk categories at the time of the team's visit to Ukraine, with 10% being high risk. Unplanned onsite inspections were undertaken after the revision to the moratorium in July 2015 (30 in 2015 and 27 in 2016) after the FIU or LEAs had advised the SC of potential breaches in relation to the reporting of suspicion. Historically, the schedule of inspections has been planned each quarter. Inspections are sufficiently in depth to reveal AML/CFT violations and to allow provision of STRs to the FIU and liaison with LEAs on potential criminality. The SC advised that its routine programme of onsite inspections had not yet restarted at the time of the evaluation team's visit to Ukraine but it advised that that it can still inspect all high risk licensees

during 2017, together with some medium and low risk entities. The evaluation team considers this to be very ambitious.

499. Two or three staff undertake each inspection, which lasts some 30 days. The SC devotes attention to the reasons for transactions and who makes them. While the procedure for an inspection is specified in legislation the SC has advised that the level of risk affects the volume of documents it reviews (this is the only element of supervision where intensity differs according to risk). More generally the SC is subject to a methodology which does not allow for the more than a limited difference of intensity of supervision). A sample of customer files is reviewed with the volume of business guiding how many files are sampled. The SC does not undertake offsite AML/CFT supervision. Like the NBU, the SC will need greater staff resources to deal with the licensees for which supervisory responsibility will be transferred to it from the NC.

500. The SC cannot write to a bank itself where it wishes to obtain information on a trade by a customer. Instead, the SC relies on information it obtains from the trader. The evaluation team agrees with the SC that this is a shortcoming. Also, the SC does not have powers to conduct inspections on behalf of other supervisory authorities. It sees this as an important gap.

501. The SC is well regarded by the private sector as an effective supervisory authority.

NC

502. The NC has five staff devoted to AML/CFT. This is insufficient by a significant margin for the number of entities it supervises.

503. REs have been classified by risk using recently developed software although the nature of the risk factors and the prescribed timing of onsite inspections means that the framework for risk assessment and the pattern of inspections can only be partially ML/FT risk based.

504. There is no routine offsite supervision, although four licensees were subject to offsite inspection in 2016 following specific issues raised by the FIU. Onsite supervision was carried out in relation to 135 entities in 2013 and 30 entities in 2014. No inspections have been undertaken in 2015 and only 11 were undertaken in 2016. The focus is on risk management, corruption and PEPs but the NC considers that the statutory methodology it must follow does not allow for an entirely risk based focus. A sample of customer files is reviewed although the number sampled appears to be the same for each inspection. Outside this, licensees with different risks are not subject to different intensity of supervision (and a different intensity of approach cannot be achieved under the statutory methodology). Inspections take some ten days and, on average, two staff undertake each inspection.

505. The NC is of the view that some of the legal requirements to which it is subject are outdated and not wholly effective. For example, it considers that the grounds for conducting an inspection are limited and that it cannot supervise on the basis of risk. The evaluation team has been advised that five items of new legislation are being considered by parliament, which should help to remedy these deficiencies.

MoI

506. The MoI has two officers responsible for AML/CFT supervision within the prevention of corruption, internal investigations and state monitoring department. Both officers have been in post for two months and had replaced a single individual, who held responsibilities in addition to AML/CFT. It appears that very limited AML/CFT supervision was undertaken in practice. The

department consists of individuals with legal, tax or other professional backgrounds. While almost all members of the department have attended some AML/CFT training held by other authorities, this does not constitute a systematic and comprehensive training programme.

507. The statutory risk factors and timing for onsite inspections mean that the MoI can have only a partially ML/FT RBA to supervision (see R.26). Onsite inspections have been undertaken (three in 2012, eight in 2013, two in 2014, one in 2015 and none since then). Inspections included particular attention on PEPs, FT, and information on originators and beneficiaries of money transfers. Also, the historic combination of a shortfall in resources and an absence of penalties applied following onsite inspections provides the evaluation team with a concern that the quality of inspections has not been robust. The statutory methodology for inspections means that the intensity of supervision cannot be adjusted for individual licensees except for the number of customer files sampled. There is no offsite supervision.

508. The appointment of the new unit has been welcomed by representatives of the sector it supervises.

MoF

509. The MoF has a team of five staff involved with AML/CFT. However, this team is also responsible for the drafting of legislation and the coordination of legislative initiatives. The team has the capacity for the coordination and drafting roles (which occupies most of its time) but it is significantly under resourced for effective operational supervision. While members of the team have taken part in AML/CFT training events organised by the FIU and have participated in training with domestic authorities and with international bodies, a systematic and comprehensive training programme is not in place.

510. REs have been classified into statutory risk categories but these categories and the specified time frames for onsite inspections mean that only a partially RBA can be taken to AML/CFT supervision (see R.28).

511. Onsite inspections were reinstated in 2016 based on inspection plans formulated each quarter. Twelve inspections to audit firms were carried out in 2016 on the basis that none had been inspected for five years and in light of the receipt of intelligence by the MoF from the FIU and its own analysis of the internet that there had been AML/CFT breaches. This demonstrates that limited offsite supervision has been undertaken but it is not systematic (and not to entities captured by the FATF description of DNFBP). The MoF cannot meet the requirements to inspect high risk entities every year, medium risk entities every two years and low risk entities every three years with the current number of staff of the unit involved in AML/CFT issues. The methodology for inspections is specified in legislation, which, therefore, would not seem to allow the intensity of inspections to be based on risk except to the extent that the number of customer files reviewed can differ in light of the scope of activities of the firm (although in practice the MoF pays attention to all customers during onsite inspections). The authorities advise that PEPs and beneficial ownership are a focus of attention, and that a risk-oriented approach is taken but evidence has not been provided to the evaluation team of a systematic RBA. Inspections are undertaken by two to three officers and usually take some 20 days (although this period can be extended by 10 days).

FIU

512. The FIU has six staff engaged in AML/CFT supervision but these officers are also engaged in numerous other activities. It too is significantly under resourced. Routine offsite supervision is not undertaken three offsite inspections took place in the first quarter of 2017.

513. The statutory criteria for risk classification and the time frames for onsite inspections means that only a partially RBA can be taken (see R.28). Onsite inspections were undertaken in 2012 to 2014 from which time the FIU was subject to the moratorium. Five onsite inspections took place in the first quarter of 2017. Open source information such as the URS is used to inform supervision. The inspection plan will be devised quarterly. Inspections must follow the methodology required by legislation and therefore the intensity of the inspection cannot be changed for individual licensees. Every customer file is checked in relation to the period since establishment of the brokerage or since the last inspection. Inspections are undertaken by two officers for a period of up to two or three weeks.

MEDT

514. The MED has a department of five, three/four of which deal with the MEDT's role in AML/CFT supervision. In practice AML/CFT is a minor part of the department's activities. Training has comprised attendance at a course at the FIU by two staff and is therefore not systematic and comprehensive. The statutory risk criteria and time frames for onsite inspections indicate that supervision can only be a very limited RBA to ML/FT. The methodology for onsite inspections also means that the intensity of supervision cannot be altered. While 10 onsite inspections took place in 2013 and 2014, inspections have yet to be restarted after a significant moratorium and are planned from the second half of 2017. By way of offsite supervision, the MEDT has written to ten exchanges to require remediation of breaches detected by the FIU and advised by it to the MEDT.

MoJ

515. Four staff at the MOJ are involved with supervision in Kiev with some four staff also being involved in each Ukrainian region (some 45 staff in total). Staff are trained every year by the FIU but it is unclear how many staff are trained and it would not appear that training is systematic and comprehensive.

516. The MoJ undertakes offsite supervision by obtaining statistics every six months from notaries on the number of transactions falling within the scope of the AML/CFT Law and the types of transaction. It appears that this information is not amalgamated into aggregated statistics or analysis. Each region analyses the individual notary information separately, assembles the data and prepares quarterly onsite inspection schedules for approval by the head office in Kiev. Each region also submits quarterly reports on its findings to head office for review, together with explanations provided to notaries. It was not demonstrated to the evaluation team that there is proactive rather than reactive coordination and use of this information. The processes for onsite inspections are defined by legislation and therefore the intensity of supervision cannot be altered between licensees on the basis of risk; customer files are checked but it is not clear whether the number differs for different licensees. The prescribed criteria for classifying licensees and specified time frames for onsite inspections allow for a partially ML/FT RBA. Inspections are planned on a quarterly basis. The MoJ has not been subject to a moratorium on supervision. From the beginning of 2012 to the end of the first quarter of 2017 it undertook 7,986 onsite inspections to notaries. It is unclear how many notaries have been inspected more than once or whether all notaries or all high risk notaries have been inspected.

517. The same approach and issues articulated above for notaries also apply in relation to lawyers.

Remedial actions and effective, proportionate, and dissuasive sanctions

NBU

518. In addition to the strong enforcement activity described above on controls to prevent criminal entry to the market, the NBU has withdrawn ten licences for AML/CFT reasons, including two in 2016. The NBU has used a range of sanctions.

Table 18: Sanctions imposed on banks

Enforcement actions applied to banks for violation of the AML/CFT legislation:	2013	2014	2015	2016	1 st Q 2017
Written demands ⁵⁷	83	93	46	37	6
Written warnings	18	19	8	28	10
Number of fines	81	94	36	28	3
Total amount of fines, UAH	794,850 (~ EUR 26,057.62)	1,263,080 (~ EUR 41,407.64)	4,670,714 (~ EUR 153,120.34)	9,321,023 (~ EUR 11,146.24)	2,444,529 (~ EUR 80,139.17)
Temporary suspension of an official of the bank from office	-	2	-	1*	-
Replacement of an officer due to reputational issues	-	-	-	1*	-
Limitation on transaction carried out by the bank	-	7	1	2	-
Revocation/liquidation of licence	-	-	1	3	-

*This decision applied to 2 officials of a bank.

519. Penalties have been imposed within the statutory deadline both in relation to banks and individuals. The average fine for banks in 2015 was UAH 129,742 (~ EUR 4,253.34) while that for 2016 was UAH 332,893 (~ EUR 11,090.28). The largest financial penalty issued by the NBU was UAH 5 million (~ EUR 0.16 million). It is not clear to the evaluation team what kind of breaches by banks would be needed for significantly higher fines to be used given the nature of breaches found and it would appear that there is scope for larger fines to be imposed as the maximum fine available is UAH 500 million (~ EUR 16.39 million).

520. Only fines have been imposed by the NBU in relation to remitters. The average for fines imposed in 2016 and 2017 are UAH 8,500 (~ EUR 278.66) and UAH 21,250 (~ EUR 696.64). No sanctions have been imposed by the NBU in relation to bureaux de change. The NBU sees the sanctions framework available for non-banks as insufficient.

⁵⁷The written demand is not considered as a type of sanction and is issued in cases when minor deficiencies are identified and the bank can eliminate the infringement.

SC

521. The SC considers that the maximum financial penalty available is not dissuasive and that the variety of sanctions should be improved. Sanctions are normally imposed four to seven weeks after an onsite inspection and are the responsibility of a separate enforcement unit, mainly comprised of lawyers, and which appears to have adequate experience. The one appeal against a sanction was won by the SC. Fines averaging UAH 119 (~ EUR 3.90) and UAH 95 (~ EUR 3.11) were applied by the SC in 2015 and 2014 respectively. These figures are very low. It has also used the wider palette of sanctions available to it, including the stronger powers of licence withdrawal; it has issued some penalties (i.e. protocols, which are applications to the court on breaches based on which penalties are considered by the court) against individuals. The outcomes of the protocols are not clear. The SC has also referred recent cases to the police; an arrest has been made in connection with one of these and assets confiscated.

NC

522. All sanctions have been applied within the time frame specified in legislation. The NC considers that the sanctions framework is partially effective, not least because of the low maximum level for fines available. In addition, the NC advised that other State authorities have the ability to complain to it and overturn a decision by the NC. Fines were last imposed by the NC in 2014, namely 91 fines averaging UAH 10,500 (~ EUR 344.22). It also issued 18 protocols in 2014, nine in 2015, seven in 2016 and two in the first quarter of 2017. The authorities have not provided further information on the outcomes of the court process. The NC has not used other powers of sanction.

MoF

523. Sanctions in the form of fines are imposed for all infringements discovered by the MoF. Sanctions have not been imposed against individuals. The potential imposition of sanctions on individual cases is considered by a separate Commission, which appears to be suitably experienced. Sanctions are normally imposed within two or three months, well within the six month statutory deadline. The MoF is of the view that, while penalties applied have some effect, the framework for sanctions is not sufficiently effective. In 2013 eleven fines averaging UAH 5,294 (~ EUR 173.55) were issued by the MoF, followed in 2014 with twelve penalties averaging UAH 21,958 (~ EUR 719.85). In 2016 12 fines averaging UAH 263.500 (~ EUR 8639) were issued by the MoF.

FIU

524. Sanctions, mostly fines, were imposed prior to the moratorium, well in advance of the statutory deadline. A separate panel, which appears to be suitably experienced is responsible for considering and issuing sanctions. The regime for fines appears to have no impact on the real estate agent sector and is considered by the FIU to be low. Sanctions, in the form of financial penalties, were last imposed by the FIU in 2014, namely three fines averaging UAH 170 (~ EUR 5.57). The FIU has advised that the breaches were negligible and that it considers the fines to be proportionate in these cases. Following the onsite element of the evaluation, the FIU also advised that it had issued 54 protocols in 2015 and 2016 to compliance officers for late submission of information. The outcomes of the court process have not been advised to the evaluation team.

MEDT

525. In light of the absence of onsite inspections, no sanctions have been applied by the MEDT.

MoJ

526. Sanctions have been imposed within the statutory deadline. The MoJ considers that the financial penalty framework is too low and that the framework as a whole might be too general. The average financial penalty imposed was UAH 297 (~ EUR 9.74) in 2015, UAH 319 (~ EUR 10.46) in 2016 and UAH 201 (~ EUR 6.59) for the first quarter of 2017. Other sanctions have not been used and fines have not been imposed in relation to individuals.

Impact of supervisory actions on compliance

NBU

527. The NBU's actions described above on transparency of ownership and control of banks and removing criminality for ownership and control has had a positive effect on compliance by banks. Banks have been forcibly removed from the market. It considers that its RBA and requiring banks to focus on risk, combined with the introduction of stronger sanctions, has prevented ML schemes. At the NBU's suggestion, a time consuming coding system for each transaction has been removed, freeing resources for more effective AML/CFT. The NBU has seen evidence that its supervision is leading to banks analysing the essence of transactions and rejecting potential ML schemes.

SC

528. As mentioned above, the SC has tightened access to the securities market, which has led to an increase in the quality of participants. Beyond this, the SC has not been able to point to specific areas where it has made a difference in terms of AML/CFT compliance.

NC

529. The NC considered that risk management systems within REs had improved and that the willingness of entities to participate in training initiatives indicates that it is having a positive impact on compliance. Entities met by the team varied in their views between noting that the NC carried out its functions satisfactorily and recognition that the NC's lack of capacity has had a demonstrable effect.

MoI

530. Feedback from the private sector suggested to the evaluation team that the appointment of the new team is positive compared with the previous supervisory framework.

MoF

531. The MoF is strongly of the view that progress by REs has been made since 2011 (when a different authority was responsible for supervision). Risk management is taking place, the quality of CDD documentation seen during inspections has improved and representatives of REs attend training.

MEDT

532. Supervision by the MEDT is not at the stage where it can make a difference to compliance by commodity exchanges.

MoJ

533. The MoJ considers that the significant decrease in the number of AML/CFT breaches by notaries evidences that its supervision is making a difference.

Promoting a clear understanding of AML/CFT obligations and ML/TF risks

NBU

534. The NBU upgraded its training programme eighteen months ago. It has conducted workshops for banks, which include the risks of distance services. Twenty-three workshops, attended by almost 2,000 bank officers have been run since 2010. It also undertakes training on a regular basis at its offices, attended by representatives of every bank. The training has covered various types of corruption, source of wealth and source of funds, beneficial ownership, fictitious companies, identification of PEPs, FT, frauds (including computer frauds), and payment systems. The NBU also has regular meetings with banking associations and places information such as regulatory changes on its website. Since August 2016, it has published the findings of onsite inspections and the sanctions applied on banks. The NBU also liaises with the FIU on seminars. More generally, the NBU provides guidance routinely by issuing clarifications and responding to queries.

SC

535. The SC's website has a section dedicated to AML/CFT. It also provides information on one of the social media and conducts training via workshops (including participation in the FIU training centre) and webinars, and responds to questions from the private sector. Key issues on which guidance has been provided include identification and verification of identity and reporting of suspicion.

NC

536. The NC has focussed considerable energy on training and has worked with the FIU and the SC. It has concluded formal arrangements with training institutes and contributed significantly to the curricula. The NC has also focussed on supporting the FIU training centre and, in addition, its staff have given numerous lectures, engaged in working groups, and run roundtables on, for example, TFS screening. During the period January 2014 to June 2016, during visits to the offices of REs, almost 2,000 individuals attended talks by the NC. It participated in 67 educational events in 2016 and has continued its programme in 2017. The NC places information on its website on its supervisory approach, including its annual report and circulars, and routinely provides guidance in response to enquiries. In general, FT has been a particular focus.

MoI

537. Prior to the appointment of the new officers there was no outreach to postal operators by the MoI.

MoF

538. In conjunction with a financial management academy, the MoF has provided training courses for 256 compliance officers of REs during the period 2011 to 2016. It also promotes attendance at courses. In addition, it met working groups of auditors on two occasions in recent years, arranged a conference for auditors and accountants in 2015 and held a meeting with firms of accountants on AML/CFT issues. It also places information such as guidance on identifying PEPs and monitoring of transactions, questions and answers, and news on its website. In addition, the MoF has cooperated with the FIU, providing information to the FIU for the latter's training.

FIU

539. The establishment of the FIU training centre was a positive and very significant step. The FIU devotes significant and positive energy to operating the training centre (for use by all RE sectors).

540. It used the moratorium to advantage by preparing and publishing publications on its website and by promoting use of the training centre by real estate agents – 65 individuals have attended events since the beginning of 2014. This number might be accounted for by the existence of the moratorium. Particular suspicion is drawn to the reporting of suspicion, typologies in the real estate sector (developed by the FIU in 2008 and still considered by the FIU to be relevant) and risk management. There is liaison by the FIU with real estate sector associations on typologies and, more generally, providing them with information; the FIU has a MOU with one of the associations. Most recently, the FIU organised an event for brokers. Brokers are advised to pay particular attention to the subject of transactions such as whether they are PEPs or subject to TFS and whether the financial status of the customer would allow for the purchase of a property. The FIU also responds to questions.

MEDT

541. The MEDT has placed an announcement on its website promoting attendance at the FIU's training centre.

MoJ

542. Annual workshops are held by the MoJ at which typologies and guidance is provided to notaries. Information (for example, recommendations, AML/CFT breaches, material from workshops and current issues) is also placed on its website. In 2016 65 “methodological recommendations” were provided to notaries and the MoJ participated in 46 seminars (including seminars at the FIU training centre). The head office informs the branches of events it is hosting. The MOJ plans to publish a document on notaries' activities.

Conclusion

543. Very significant efforts have been made by the NBU in relation to ensuring transparency of beneficial ownership of banks and in removing criminals from control of banks; these efforts have been complemented by the DGF. The SC has made strong efforts to ensure that BOs and controllers are not criminals. However, other supervisory authorities cannot, or do not, verify whether or not relevant REs are beneficially owned or controlled by criminal elements or their associates with the limited exception that the FIU has checked the records of real estate agents during onsite inspections.

544. The NBU and the SC have a good understanding of ML risks in the banking and investment sectors respectively and a broad understanding of FT risks in those sectors. The FIU appears to have a similar understanding of the real estate agent sector as a whole. The NC has a good understanding of ML risks. At the time of the evaluation team's visit to Ukraine, other supervisors demonstrated a basic understanding of risks or, in the case of the MoI and the MEDT, understanding was lacking.

545. The NBU is undertaking comprehensive onsite and offsite supervision for banks. It follows a mainly RBA to AML/CFT supervision. Other supervisory authorities (and possibly the NBU in relation to remitters) have insufficient staff. Except for the NBU and the MoJ, supervisors have been the subject of a moratorium on supervision (none was in force when the evaluation team visited

Ukraine). These factors have limited supervision since 2014. None of the non-bank supervisory authorities (except the NBU in a very limited way for non-banks) has been conducting routine offsite supervision. Other than the MoJ, onsite supervision outside the banking sector has been limited. Hence, outside the banking sector overall levels of supervision have not been sufficient. In addition, with the partial exception of the SC, the statutory criteria for classifying REs into risk categories and the time frames for onsite inspections mean that supervision can be only partially ML/FT risk based. The intensity of supervision between non-bank licensees by supervisory authorities other than the NBU is varied in a very limited way or not at all.

546. The NBU has applied a range of sanctions to banks, including fines and revocation of licences. It has also applied strong sanctions (prohibitions) to individuals but no other penalties. Outside the banking sector, the levels of fines are too low and only the SC has applied strong sanctions in addition to the imposition of fines. There are significant technical gaps and the sanctions framework outside the banking sector can be only partially effective.

547. The NBU has made a demonstrable difference to the level of compliance in the banking sector. While the SC has made a difference in relation to beneficial ownership and control of licensees, overall, the evidence that non-bank supervisory authorities are routinely making a comprehensive and systematic difference on levels of compliance is not strong, with two of the supervisors making no difference. Apart from supervision of the banking sector, the levels of supervision and sanctions militate against supervisors making a difference in levels of compliance by REs.

548. The large majority of supervisory authorities have undertaken outreach to promote understanding of obligations and risks. Particularly strong and positive outreach activity has been carried out by the FIU (covering all RE sectors), the NBU (for banks) and the NC. However, provision of information by the MoI and the MEDT is lacking.

There are number of technical deficiencies in relation to relevant recommendations, including in particular R. 26 to 28 and 35. **Ukraine has a moderate level of effectiveness for IO 3.**

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

- The extent to which legal persons can generally be misused for ML/FT is well understood. However, the NRA does not specifically consider how legal persons established under Ukrainian law can be used to launder the proceeds of crime.
- The USR in respect of beneficial ownership is intended to promote transparency of legal persons and is a positive step towards this aim. The private sector routinely uses this resource when identifying or verifying the UBO of a legal person. This information is not verified and it is believed by most of those interviewed from both the private sector and the authorities who use the resource that a proportion of the information in the USR is inaccurate.
- There was no process or legislative power identified which obliges the authorities to ensure that all information stored on the USR is correct, accurate and up to date.

- Some gaps in the framework have been identified under recommendation 24, and addressing these weaknesses will strengthen measures to prevent the misuse of legal persons for ML and FT purposes. In particular, there are gaps in the application of preventative measures (see IO 4) and supervision for nominee shareholders and directors (see IO 3).
- Sanctions for failure to supply accurate beneficial ownership information to the USR are both administrative in nature and criminal. Due to the limited nature of the administrative sanctions, criminal the SFS will generally refer recalcitrant entities for criminal investigation. The low number of prosecutions which have resulted from the overall number of potential offences identified by the SFS do not appear to be proportionate.

Recommended Actions

- The UAs should take reasonable steps to verify the information submitted to the USR is correct, accurate and up to date in a timely manner;
- The authorities should conduct an exercise to verify the information contained on the USR for legal persons already incorporated in order to quantify the level of inaccurate information
- The threats presented by the use of Ukrainian legal persons should be identified in order to strengthen the risk mitigating framework;
- More dissuasive sanctions should be applied to persons who either fail to supply adequate, accurate and current basic and beneficial ownership information or fail to supply information in a timely manner.
- Technical deficiencies identified in the TC annex should be addressed, in particular in relation to the use of nominee directors, shareholders and owners.

549. The relevant Immediate Outcome considered and assessed in this chapter is IO 5. The recommendations relevant for the assessment of effectiveness under this section are R24 & 25.⁵⁸

Immediate Outcome 5 (Legal Persons and Arrangements)

550. The legal framework which underpins the creation of legal persons, or legal persons, in Ukraine appears to be well structured and easy to understand. Furthermore, the requirement for legal persons to be registered by the MoJ through the USR promotes transparency of such entities. However, certain deficiencies in parts of the application of those laws, in particular the lack of verification of beneficial ownership information held by the USR, appears to have a material impact in the effectiveness of their intent.

Public availability of information on the creation and types of legal persons and arrangements

551. Guidance on how to create a legal person under the Civil Code of Ukraine can be found on the MoJ website. Incorporation of a legal person was generally considered by those interviewed from the private sector to be a straightforward and simple process for residents of Ukraine. Those persons who are non-resident are required to use the services of a notary or other authorised person to form a legal person. Notaries are able to provide guidance to non-residents and give assistance in the

⁵⁸ The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.

creation of a Ukrainian legal person. Non-residents who are the BO of a legal person or will hold any office within that entity are required to register with the SFS and obtain a Tax Identification Number prior to the registration of the legal person.

552. Ukrainian Law does not provide for the creation of legal arrangements, while it does not prohibit the management of such arrangements by persons resident in the jurisdiction, in practice this appears to not be happening on a wide scale. The USR also contains the details of private entrepreneurs who are natural persons undertaking economic activity either individually, or as a partnership. Although registered on the USR, such persons are not legal persons in their own right and partnerships are neither legal persons nor do they constitute legal arrangements. Therefore these business arrangements do not meet the definitions under IO.5.

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

553. The NRA identified the risks around the lack of verification of the BOs, this identifies that there is a gap on the USR in respect of the ownership information for certain legal persons established for particular purposes. In addition, it recognises that the lack of verification in the USR leaves Ukrainian legal persons vulnerable to the use of “straw men”. The assessment of this vulnerability appears to be reasonable and commensurate with the risks identified by the evaluation team.

554. Wider vulnerabilities of legal persons were noted when assessing the overall ML/FT risks in Ukraine. These were not specific assessments of legal persons, but considerations of typologies which happened to include legal persons. Moreover, the unique risks posed by each of the types of legal persons which can be formed under Ukrainian Law have not been assessed in depth.

555. The understanding of a “fictitious company” differs slightly among the private sector and the authorities, however it is generally agreed that such entities are those established to be abused for the laundering of the proceeds of crime or to facilitate FT. Some sectors of the private sector believe the issue is small, others believe it more is serious. Overall, the private sector report that they believe around 20% of all companies registered in Ukraine may have declared false or inaccurate information to the USR, this information agrees with the data provided by the authorities.

556. The statistics provided in the NRA and to the evaluation team suggest that the problem of the misuse of legal persons is widespread and such legal persons are believed by FIU and LEAs to be key to the successful operation of so-called “conversion centres”. The evidence gathered by the evaluation team appears to suggest that legal persons in Ukraine pose a higher risk for laundering the proceeds of crime and the vulnerabilities of Ukrainian legal persons stem from sources much broader than the weaknesses identified in the verification of the BOs.

Mitigating measures to prevent the misuse of legal persons and arrangements

557. Ukraine has made a number of positive legislative changes to promote the transparency of legal persons and make them less attractive instruments to obscure the proceeds of crime or to finance terrorism. The most fundamental changes in achieving this aim include publication of the central register of beneficial ownership (the USR) and the abolition of bearer shares.

558. Joint Stock Companies were prohibited from issuing new bearer shares in February 2006, in 2014 new regulations were introduced to require that bearer shares in circulation pre-2006 were immobilised by the issuing company and then registered to the legal owner in a de-materialised

form. The authorities have advised the evaluation team that there are no longer any bearer shares currently in circulation; the team has not identified any evidence to the contrary.

559. The USR was established in July 2004 and in 2015 most of the information held by the USR was made publically available through an online portal (with the exception of the Tax Identification Numbers). This is a positive development by the UAs and is clear evidence which shows political support to promote transparency of legal persons.

560. The identities of the controllers, directors and BOs are recorded on the USR which can be accessed by any authority or member of the public. Furthermore, training by the supervisory authorities and the FIU has highlighted this resource to the private sector who explained to the evaluation team that they routinely use it as part of their due diligence process, in particular to verify the BO of any legal persons they enter into a business relationship with.

561. Moreover, some larger REs will undertake additional checks to verify the veracity of the data held in the registry in order to satisfy themselves that the information provided to them by their customer is true. However, many of the smaller REs are relying solely on the registry as a key part of their CDD procedure on the basis of a belief that the information is accurate and in some cases, are tacitly assuming that the information has been verified by the authorities.

562. When taking steps to verify the BO of a customer that is a legal person, REs will compare the information submitted by a customer with that held on the USR as the verification process. On the basis that the information stored on the USR has not been verified by the REs this effectively means that beneficial ownership information is not actually being verified by any party. Prima facie this reliance results in a material deficiency in the overall regime given the widely accepted level of inaccurate information stored on the register.

563. Further to this, the MoJ is only authorised to undertake administrative checks on corporate applications, checking that the forms are complete and to ensure that all documents have been submitted. There does not appear to be any discretion afforded to the administrators of the USR where they suspect that information submitted may be inaccurate or misleading.

564. In mitigation of this gap, at the same time the SFS takes its own steps to identify when such information is false, inaccurate or misleading by analysing the tax records of persons declared as being connected with the legal person where a legal person is considered by the SFS to be higher risk. In addition, the SFS receives the financial statements of the legal person and compares financial outflows such as salaries and distributions of reserves (dividends) to the incomes declared on the tax returns of those persons who are recorded as entitled to receive them pursuant to the records held by the tax authorities. Where discrepancies are identified which cannot be explained, the cases are reported to LEAs. This happens on a daily basis. Gaps occur in circumstances where a person may be controlling a legal person, but not receiving direct financial benefit, such persons are unlikely to be identified by the SFS's process.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons/arrangements

565. The basic information of every legal person established under the laws of Ukraine as well as the information about the UBO is stored on the USR. Access to the USR is available unrestricted 24 hours a day; information can be sought instantly by those who require it including competent authorities.

566. In circumstances when LEAs require the identification of UBO information, it in the first instance analyses its own records as well as the USR. LEAs have unrestricted and direct access to the records of the other competent authorities including the SFS. Where beneficial ownership information cannot be provided by these means, LEAs have the power to seek the information from REs directly.

567. In circumstances when the FIU requires the identification of UBO information, it in the first instance analyses its own database and will request additional information from other competent authorities, including the SFS as well as directly from REs. Where the FIU has received a request for information from a foreign FIU, the FIU of Ukraine is empowered to request the beneficial ownership information from REs, LEAs and the SFS. To date these requests for information have always been fulfilled.

568. LEAs have the power to seek an order from the Courts under Art. 164(7) of the CPC to obtain beneficial ownership information and records directly from REs. These Orders have a validity of thirty days from issue. However in practice, the evaluation team identified that these orders are not fulfilled until the end of the thirty day period. Because in practice the beneficial ownership information under these circumstances often takes around thirty days to obtain, it would not be reasonable to conclude that the competent authorities are able to obtain this information in a timely manner.

569. The SFS holds, pursuant to Art. 168 of the Tax Code, registration data for all persons, legal and natural, who are resident in Ukraine or have economic ties to Ukraine. The SFS will use information gathered under the Tax Code and the USR to calculate expected tax revenue payable by taxpayers. Where information supplied by legal persons or its associated natural persons does not match the expected financial flows identified by the SFS, the discrepancies are investigated. The SFS is therefore in a position to be able to identify where false, misleading or inaccurate information has been submitted to the USR. The SFS discussed with the evaluation team that unexplained discrepancies like this are identified, investigated and referred for law enforcement action on an almost daily basis. This further supports the evaluation team's findings that the scale of inaccurate information held on the USR is significant. However, although the USR is not a reliable source of information, the evaluation team is satisfied that through the SFS, the competent authorities can "obtain adequate, accurate and current information".

570. Finally, as noted under the analysis of R.24 in the technical annex, the provision of nominee services is not, in and of itself, activity subject to financial monitoring. The evaluation team found evidence of a number of businesses, typically lawyers and accountants, based in Ukraine or abroad offering guidance and support on the creation of Ukrainian legal persons. Generally, these services are offered in order to facilitate external investment into Ukraine. Moreover, some of these businesses offer to provide further ongoing support such as the provision of a registered office, nominee shareholders and nominee directors. The MoJ advised the evaluation team that they are unable to identify the traits of instances when nominees are used in order to manage the risks appropriately.

571. The AML/CFT law considers a legal arrangement to be the same as a legal person. The powers applied to legal persons would therefore, in theory, apply to the legal arrangements. The deficiencies identified under R.25, however, would have a material impact on the ability of LEAs to obtain access to adequate, accurate and current basic and beneficial ownership information on legal arrangements.

572. The assessors were not able to test the effectiveness of the timely access to information related to legal arrangements because there is little information available on persons acting as trustee (or similar) within Ukraine. The evaluation team did not meet any persons on-site who are in the business of acting as trustee (or similar) within Ukraine.

Effectiveness, proportionality and dissuasiveness of sanctions

573. The Law of Ukraine “On State Registration of Legal Persons and Individuals–Entrepreneurs” stipulates that failure by a legal person to submit information on its UBO (controller) to the State Registrar, results in administrative liability under the Code of Ukraine on Administrative Offences. To date there appears to have been a low number of such sanctions.

574. In addition to administrative sanctions, the SFS has the power to apply criminal sanctions where false information has been submitted to the SFS. Because all persons identified in the USR must hold a valid Tax Identification Number, the submission of false information to the USR is viewed as submission of false information to the SFS; this has the indirect effect of making the submission of false information to the USR a criminal offence. The sanctions, which are applied under Art. 205(1) of the Criminal Code, include imprisonment and more significant fines than those available under the administrative offences applicable by the registrar directly.

575. In 2016 approximately 86,000 new legal persons applied for a Tax Identification Number. Of that number, the SFS has referred around 17,200 of these entities for prosecution on the grounds that the information submitted was suspicious, approximately 20% of all new applications. These statistics support the wider findings that around 20% of the register may be inaccurate.

576. In 2016, only 190 cases have then been referred by LEAs to the courts for criminal action. This equates to approximately 1.1% of all cases identified being prosecuted. The total number of convictions coming out of these prosecutions for 2016 was unavailable.

577. Whilst the SFS is taking positive reactive action to such failings, and ostensibly appears to have more dissuasive sanctions available to it, only 1% of cases are being prosecuted, therefore it is difficult to assess the sanctions regime as being effective.

578. Finally, where a Court order is sought to compel a RE to provide law enforcement with beneficial ownership information that entity has 30 days to comply with that order. For the production of beneficial ownership information, 30 days is not considered to be a timely manner by the evaluation team.

Conclusion

579. The public register of beneficial ownership is a very positive move towards a transparent and open culture in respect of legal persons. However, a significant proportion of the information held on the register is agreed to be inaccurate or otherwise unreliable, this undermines the effectiveness of such a regime. The private sector are heavily reliant on the register and use it to verify the beneficial ownership of their customers, given the unreliability of the register, this has a material impact on the effectiveness of the private sector to, in turn, verify the BOs of legal persons they enter into business relationships with. While the register is not actively policed, only 1.1% of infractions which are identified are prosecuted which further undermines the effectiveness of the regime. **Ukraine has achieved a moderate level of effectiveness for IO 5.**

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

- Ukraine has a comprehensive legal framework to provide and receive MLA in relation to ML, predicate offences and FT. In general, Ukraine's foreign counterparts consider the quality of the MLA provided as satisfactory in terms of both quality and timeliness.
- Available data on MLA provided by Ukraine however tends to suggest that effectiveness is limited in certain areas, in particular the seizure and confiscation of assets.
- A number of factors limit the effectiveness of incoming MLA requests, in particular:
 - The authorities involved in responding to MLA requests are vulnerable to corruption. Information leakage is not uncommon, a practice which sanctions for tipping off fail to dissuade.
 - Issues highlighted under IO 7 in relation to provisional access to information.
 - Ukraine has not yet established a prioritisation system for incoming MLA requests.
- Ukraine is generally prolific in seeking MLA. The number of outgoing requests has recently increased in the area of anti-corruption. However, the process to request MLA in relation to confiscation has not proven to be effective in the period under review.
- Beyond MLA, the UAs appear to be active in other forms of cooperation with foreign authorities, especially as far as the FIU and SSU are concerned.
- Cooperation in relation to BO information is of limited effectiveness in light of the deficiencies noted under IO 5 in relation to access to this type of information. However, the UAs indicate that other sources, including data available to the SFS and the financial supervisors, may be used for the purpose of responding to these types of requests.

Recommended Actions

- The MoJ should establish a clear system for the prioritisation of incoming MLA requests. The PGOU should adopt and implement the internal order on prioritisation it has started to develop.
- The authorities should apply measures to ensure that the effectiveness of incoming MLA requests is not hindered by tipping off and other practices concerning provisional access to information (referred to under IO 7).
- Ensure that requests seeking the temporary seizure of assets are followed up by receipt of a confiscation order by the prosecution and timely provision of the order to the foreign authority that has restrained the assets.
- Add a guideline to ensure that an incoming MLA for information on the UBO will be processed after the matter is verified, inter alia, with the SFS and the FIU.

580. The relevant Immediate Outcome considered and assessed in this chapter is IO 2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40.

Immediate Outcome 2 (International Cooperation)

Providing constructive and timely MLA and extradition

581. The CPC sets out a suitably comprehensive legal framework for MLA, which enables the authorities to provide a broad possible range of assistance in relation to investigations, prosecutions and related proceedings concerning ML, associated predicate offences and FT. MLA is to be provided in accordance with the requirements set out in international treaties and domestic legislation.

582. The MoJ and the PGOU are the central authorities for the receipt, processing and allocation of MLA requests. During the investigation stage, the competent authority for incoming and outgoing MLAs is the PGO, who disseminates the requests to the relevant LEA in accordance with the subject-matter of the request. At the stage of the court review, the competent authority is the MoJ for both incoming and outgoing MLA requests.

583. In general, requesting countries are satisfied with the level of cooperation received from Ukraine. However, three countries shared negative feedback with the evaluation team, two on the grounds of major delays in receiving the assistance sought and one on the grounds that the assistance was not rendered.

584. The authorities provided the statistics regarding incoming MLA requests. The evaluation team faced some difficulties in obtaining comprehensive statistics from the UAs in relation to international cooperation, as well as in reconciling the data provided, as reflected throughout this chapter.

Table 19: Incoming MLAs handled by the PGOU broken down by types of predicate offences

	2010	2011	2012	2013	2014	2015	2016
ML	22	26	23	19	39	36	67
FT	-	-	-	-	-	-	2
Corruption	4	2	-	2	2	32	35
Drugs	32	47	61	57	50	102	146
Tax evasion	38	37	28	40	50	50	79
Organised crime	No statistics available	1					
Banking offences	7	2	2	4	3	6	11
Theft	63	37	66	55	145	198	168
Embezzlement	26	26	12	10	11	13	28
Robbery	11	8	10	10	13	53	19
Computer offences	18	11	28	46	75	77	94
Smuggling	59	53	53	39	43	40	46
Brigandage	6	7	14	9	16	21	12
State-related corruption-offences	25	15	29	21	12	19	26
Fraud	87	109	103	95	107	166	260
Other (non-proceeds-generating crimes: road traffic accident, hooliganism, military offences, sexual crimes, etc.)	308	303	358	360	365	374	392

Table 20: Incoming MLAs handled by the MoJ broken down by type of assistance requested (excluding seizure and confiscation)

	2010	2011	2012	2013	2014	2015	2016
MLA	732	832	679	919	750	811	882
Extradition	96	116	90	65	30	38	80

Transfer of criminal proceedings	9	8	3	14	1	10	1
Transfer of execution of sentences	34	9	11	10	2	5	10

585. The MoJ indicates that none of the incoming MLA requests were denied. The PGOU provided the statistics contained in Table 21 and explained that the majority of requests for assistance were denied on the grounds that they were of a political nature. As of October 2017, the NABU received (through the PGOU) 15 MLA requests. 8 have been executed in full; 4 in part and 3 are being processed.

Table 21: Number of incoming MLA requests denied by the PGOU

2012	2013	2014	2015	2016
12	17	33	56	64

586. The UAs indicate that 7 MLA requests were received in relation to the confiscation of assets between 2010 and 2016.

Table 22: Incoming MLAs - Seizure and confiscation of assets

	2010	2011	2012	2013	2014	2015	2016
Total of foreign arrest requests	-	-	Hardware	Shares of 14 economic entities, 28 property objects	-	-	-
Total arrested assets based on foreign requests	-	EUR 2.26M; apartment in Kyiv; 6 land plots in Odessa Oblast	Hardware	Shares of 14 economic entities, 28 property objects	-	-	-
Total foreign confiscation requests	-	£ 70,125*	-	-	EUR 82,517; Lith. litas 87,090*	Lith. litas 457,397.86 *	-
Total confiscated assets based on foreign requests	-	-	-	-	Info. not available**	-	-
Total assets forwarded to requesting country after final confiscation	-	-	-	-	-	-	-

*The requests have not been executed either because the assets could not be identified by the UAs based on the information provided or because the crimes were not punishable in Ukraine

** A Ukrainian court has recognised a foreign court decision on confiscation (EUR 82 517) as being enforceable in Ukraine. However, the MoJ has not yet provided an update on the implementation of the request

587. Between 2010 and 2016, the Ukrainian courts adopted one resolution (2014) recognising a foreign court decision on asset confiscation as being enforceable in Ukraine. The other 6 requests were rejected, including 5 on the grounds that smuggling or contraband (customs offence) were partially decriminalized in Ukraine in 2011 (see analysis under R.3 in the TC annex). Another request was not executed due to the fact that the ownership and real estate assets mentioned by the

requesting party did not exist on the basis of Ukraine's information. The UAs provided statistics demonstrating that other types of assistance (questioning of witnesses, seizure of documents...) has been provided in relation to MLA requests related to smuggling since 2010. However, the absence of full criminalisation of smuggling offences restricts the possibility of providing the widest possible MLA.

588. From 2010 to the first quarter of 2016, the MoJ received 8 MLA requests on criminal extradition in relation to ML or FT cases. 5 incoming requests were satisfied; 1 dismissed as the person was a Ukrainian citizen; and 2 are being processed.

IO 2 Case Example: Extradition

On 14 January 2015, the Tribunal de grande instance of Lyon, France issued a warrant for the arrest of a French and Israeli citizen, charged with offences including fraud, participation in an organised crime group and ML suspected of having been committed between January 2012 and February 2014. On 3 April 2015, the Boryspil District Court had applied a 40-day temporary arrest decision to the suspect. On 17 April 2015, the PGOU received a request from the Prosecutor of the Tribunal de grande instance de Lyon concerning the extradition of the suspect. On 22 April 2015, the Prosecutor's Office of the Kyiv region was requested to conduct an extradition inspection. On 6 May 2015, the Shevchenko District Court of Kyiv rendered decision on the application of an extradition arrest to the suspected. On 25 May 2015, the Prosecutor's Office of the Kyiv region, considering that no circumstances preventing extradition could be found, transmitted the case to PGO. On June 2, 2015 the PGOU made a decision on the extradition of the suspect. On 26 June 2015, the person was extradited to France.

589. Pursuant to Art.558 of the CPC, MLA requests shall be executed within one month from the date of receipt. If necessary (depending, in particular, on the complexity and scale of the request), the term of execution may be prolonged (Art. 545of the CPC).Pursuant to Art.560 of the CPC, the central authority shall send the materials obtained to the requesting party within ten calendar days after receipt. In 2010, such requests were executed on average in 60 days, in 2011 – 60 days, in 2012 – 60 days, in 2013 – 90 days, in 2014 – 90 days, in 2015 – 90 days, in 2016 – 60 days. Although an average execution time of a few months may be adequate in complex cases, the lack of a clear system of prioritisation of the requests both at the MoJ and the PGOU may slow down the processing of request. The PGOU is in the process of adopting an internal order aimed at establishing a prioritisation system. A similar initiative from the MoJ, which indicates that prioritisation is established on a case-by-case basis, could also be useful to ensure more effective investigation and prosecution of ML/FT and, in particular, restraint and confiscation of criminal proceeds.

590. A number of general issues which characterise the application of certain law enforcement powers, which are described in further detail under IO 7, also appear to have a negative impact on the quality and effectiveness of the legal assistance rendered by the UAs, especially in the areas of provisional seizure of documents. In addition to issues in relation to the full criminalisation of smuggling offences, which were noted above, concerns over corruption in public institutions, as highlighted in the NRA, can undermine the ability of Ukraine to satisfy such requests in an effective and timely manner. In discussions with the authorities, the evaluators were made aware of several typical scenarios where confidentiality issues undermined or impeded the effective implementation of a MLA requests. The authorities provided several examples of cases where by the time the authorities sought to seize assets or bank accounts in pursuance of an MLA request, the assets had already dissipated as a result of tipping off. Challenges reported by several authorities met onsite in seizing documents, also analysed under IO 7, appear to hinder Ukraine's capacity to provide MLA.

Seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements

591. Ukraine has been proactive in seeking international co-operation through outgoing MLA requests with regards to investigations of domestic ML or other major predicate crimes (inter alia, corruption, economic crime, organised crime, drug trafficking and human trafficking). The authorities indicate that the increase in the number of outgoing MLA requests in 2016 in relation to ML and corruption is the result of the intensification of the pre-trial investigation of criminal proceedings related to ML and requests for additional information on criminally-obtained assets in foreign countries.

592. The PGOU indicates that, in total, from 2010 to 2016, LEAs sent 1,059 MLA requests (see detail in Tables 23 and 24 below). 792 of them were granted; 231 were being processed; and 36 were refused. Assistance was denied because, according to the requested state there were insufficient linkages with the subject of the investigation; the execution of the requests could threaten state interests; the investigated offences were tax offences; and the requested actions contravened the legislation of the country.

Table 23: Outgoing MLA requests from the PGOU by type of requested assistance (in connection to ML, PO or FT)

Nature of assistance	2010	2011	2012	2013	2014	2015	2016
Obtaining documentary evidence	145	131	86	90	104	75	181
Examination of witness	497	396	267	319	314	245	243
Arrest of assets	5	12	3	10	2	20	29

Table 24: Outgoing MLAs from the PGOU of Ukraine by type of predicate offence (with a connection to ML or FT only)

	2010	2011	2012	2013	2014	2015	2016
ML	9	5	11	30	6	25	86
FT	-	-	-	-	-	-	2
Corruption	7	9	11	2	23	154	211
Drugs	38	29	27	40	19	9	19
Tax evasion	40	39	39	52	54	32	43
Organised crime	No statistics available						

593. From 2010 to the first quarter of 2016, the MoJ sent 6 MLA requests on criminal extradition in relation to ML or FT cases (the UAs provided an example of a Ukrainian citizen extradited from Germany in 2011 in connection with ML charges). The MoJ also provided the following general statistics on outgoing MLA requests:

Table 25: Outgoing MLA requests from the MoJ by type of requested assistance (all types of crime)

	2010	2011	2012	2013	2014	2015	2016
MLA	15	3	15	9	17	19	16
Extradition	197	223	164	183	97	46	27
Transfer of criminal proceedings	6	10	23	12	12	9	2
Transfer of execution of sentences	2	2	-	5	4	1	-

594. NABU investigators and prosecutors have followed a proactive approach for perusing legal assistance in foreign countries through MLA requests on corruption issues. Since it became operational, the NABU has sent 248 outgoing MLA requests, including 74 MLA in 2016. Overall, in all above mentioned cases petitions were granted by court.

595. Between 2010 and 2016, Ukraine sent 30 MLA requests (most of them in 2016) in relation to asset arrests, but none with a view to requesting the final confiscation of assets⁵⁹. Substantial amounts of assets were arrested in foreign countries on the basis of a request from the UAs. However, based on meetings with the authorities, and as also substantiated by open sources, the evaluators have been made aware of cases in which Ukraine had not been effective with regard to outgoing MLA requests, by failing to provide requested countries with sufficient evidence in a timely manner to enable them to render a final confiscation order. In particular, it seems that Ukraine has not yet been able to provide requested countries with a Ukrainian final court decision on confiscation, so as to allow foreign courts to render a final confiscation decision. Nevertheless, it should be noted that the current lack of court decisions on the confiscation of seized assets is connected with the ongoing pre-trial investigations into relevant criminal proceedings, since the investigated crimes are complex, requiring a large amount of investigative and other procedural actions.

596. There is no obligation for competent authorities, except for the FIU, to provide feedback on the assistance received in the context of international cooperation nor are there any legal constraints that would impede authorities to do so. The authorities report letters of gratitude (including information on the use of the assistance received) have been sent to a number of countries, and that feedback has been provided to countries upon their request (for example to Canada, British Virgin Islands, Austria, etc.).

Seeking and providing other forms international cooperation for AML/CFT purposes

597. Beyond MLA, UAs actively engage in other forms of cooperation with foreign authorities.

FIU

598. The FIU is a member of the Egmont Group and adheres strictly to the Group's Principles for the Exchange of Information. The FIU does not need to enter into bilateral or multilateral agreements to co-operate with its counterparts. Nevertheless, the FIU has entered into a MoU with 73 foreign FIUs to facilitate co-operation. Exchange of information is conducted through the Egmont Secure Web. In 2014-2016, the FIU sent 1,547 requests to, and received 1,144 responses from foreign FIUs. 103 letters related to spontaneous dissemination of information were sent to foreign counterparts. The FIU received 725 requests and 205 letters containing spontaneous dissemination of information and provided 784 responses to FIUs of foreign states.

599. As a requested authority, the FIU's response time varies depending on the type and urgency of the request. On average, the FIU responds within 30 days with respect to normal requests and 5 days with respect to urgent requests. For example, between January and September 2016, the FIU received and dealt with 14 urgent requests within 5 days. The FIU also sends informative letters to foreign FIUs in relation to unauthorised border movement of cash, money and credit documents, precious metals, etc., as well as cultural values in the amount being equal to or exceeding the amount

⁵⁹ The UAs indicate that, following the onsite visit, requests related to confiscation were sent to Latvia in April 2017 and to the US in October 2017.

of UAH 150, 000 (~EUR 4,917.46) or the amount in foreign currency, bank metals, other assets equal to UAH 150, 000 (~EUR 4,917.46).

600. The FIU continues to collect intelligence on ML and embezzlement by the former President of Ukraine, his relatives, members of the former Government and affiliated persons, as well as in regard to persons accessory to the organisation of 'wilful hecatomb'. The FIU is particularly involved in tracing and freezing related assets abroad. Requests have been sent to the FIUs of 136 countries for the detection and freezing of assets. 8 FIUs provided information on and froze assets for a total value of USD 107.2 million, EUR 15.9 million and CHF 135.0 million.

Law enforcement authorities

601. The PGOU has signed 43 agreements with the competent authorities of foreign countries on non MLA cooperation, as well as with the International Center for Asset Recovery of the Basel Institute of Management ICAR (2014). In January 2017, 26 working meetings with specialists from the Basel Institute of Management were held by the PGO to investigate criminal proceedings against former high officials of Ukraine, as well as to identify and return their assets. In 2012, Ukraine became an observer to CARIN, which aims at strengthening international cooperation among LE and judicial authorities in search, freezing, seizure and confiscation of the proceeds of crime. PGO has experience in establishing joint investigative teams (for example, to investigate the crash of Malaysian Airlines flight MN17). NABU has signed international treaties with 5 countries (USA, Poland, Romania, Latvia and Lithuania) and OLAF in 2016.

602. 72 bilateral conventions on the avoidance of double taxation and prevention of fiscal evasion of taxes on income have been signed, as well as the Convention on Mutual Administrative Assistance in Tax Matters (2009) and the Protocol on amendments and additions on mutual administrative assistance in tax matters (2013). Ukraine has also signed bilateral agreements on cooperation and exchange of information in combating violations of tax laws and the multilateral agreement between the states CIS-members on cooperation and mutual assistance on compliance with tax laws and combating violations in this area. In 2015, SFS dealt with 1,856 requests on fiscal information exchange.

Financial supervisory authorities

603. The UAs indicate that financial supervisors actively cooperate with foreign counterparts for the purpose of supervision on a consolidated basis and the exchange of information on activities FIs in accordance with the procedure specified by relevant international treaties of Ukraine, including interagency agreements.

604. Currently, NBU engages in international cooperation in the framework of 17 agreements with foreign financial supervisors for cooperation in AML/CFT supervision. Authorities indicate that:

- In 2014, several requests were sent to the UK financial supervisor regarding legal persons residents of the UK, their registration status, financial activity in the UK as well as BOs and reputation;
- In 2015, requests were sent to the financial supervisor of Latvia regarding the activity of one bank;
- In 2016, 8 requests were sent to several foreign supervisors on AML issues (Poland, Latvia, New Zealand, UK, British Virgin Islands, Republic of Seychelles).

605. Information received from these authorities was used by the NBU in courts to substantiate the unlawfulness of banks' actions. The NBU also responded to the requests of foreign supervisors

(Latvia in 2015, Estonia in 2016) providing information regarding findings formed in the context of AML supervision.

606. The SC has signed 13 memorandums on cooperation with the competent authorities of foreign countries: Armenia; Azerbaijan; Belarus; China; Egypt; Georgia; Kyrgyz Republic; Jordan; Malta; Republic of Moldova; Romania; Turkey; UAE. In 2015, SC received 216 requests. All requests were processed and resulted in a response. On average, SC responded within 7 days (3 days in urgent cases).

607. In 2012 and 2013, the NC sent requests to 77 foreign regulators of financial services markets to conclude cooperation memorandums. In 2013, agreements were signed with Armenia, Poland, Latvia and Lithuania. In 2014, the NC sent requests to counterparts in India and Germany and received requests from the Financial Regulatory Body of Malta. Taking into account the transfer of functions of the NC to the NBU and the SC, active work on formalising interaction with foreign regulators and concluding corresponding agreements on cooperation was suspended in 2014, but authorities indicate this did not hinder cooperation interaction with foreign regulators of non-banking financial services markets. In response to requests from the competent foreign authorities to verify the business reputation of business entities in 2012-2016, the NC has prepared more than 50 letters to the supervisory bodies of foreign countries, in particular the UK, Georgia, Ireland, Spain, Kazakhstan, Germany, New Zealand, Turkey, the Czech Republic, Switzerland, Sweden, in addition to e-mail communication.

International exchange of basic and beneficial ownership information of legal persons and arrangement

608. Although the UAs do not keep specific statistics on incoming requests relating to beneficial ownership information, they indicated that the number of this type of requests is relatively minor. Such requests generally aim at determining the identity of the BO of enterprises, and to interrogate them, which Ukraine notes is unconditionally pursued by the competent authorities. An incoming MLA request for information on beneficial ownership will mainly be executed by verifying the requested information with the USR which, as stated under IO 5, may not hold true or accurate information on 20% - 30% of legal persons. As already noted, there is no mechanism in place to verify the quality and accuracy of the information, as opposed to the information on beneficial ownership held by the SFS. However, the UAs indicate that other sources, including data available to the SFS and the financial supervisors, are also used for the purpose of responding to this type of requests.

Conclusion

609. Although foreign authorities seem satisfied with the quality of MLA provided by Ukraine, effectiveness is hampered by a number of obstacles. Ukraine has proactively sought legal assistance with respect to various criminal offences. However, few requests were made with a view to confiscation. It appears that Ukraine's competent authorities including, in particular, the FIU and financial supervisors, are actively engaged in other forms of cooperation. Cooperation in relation to beneficial ownership is of limited effectiveness in light of the deficiencies noted under IO 5 in relation to domestic access to this type of information. **Overall, Ukraine has achieved a moderate level of effectiveness with IO 2.**

TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerical order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report (MER).
2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2009. This report is available from <https://rm.coe.int/mutual-evaluation-report-anti-money-laundering-and-combating-the-finan/168071532f>.

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

3. This is a new Recommendation which was not assessed in the 2009 MER.
4. *Criterion 1.1* – The authorities have undertaken a NRA and completed a ML/FT NRA report on the findings at the end of 2016. According to the NRA Procedure⁶⁰, the purpose of the NRA is to identify, analyse, evaluate and develop measures to mitigate the risks of ML/FT those risks. The NRA was carried out according to a methodology prepared by the FIU and approved by the MoF. It included the use of sectoral questionnaires issued to a sample of REs and took account of both qualitative and quantitative data, including from independent sources. The NBU also took a leading role by helping the FIU prepare the NRA methodology and consolidating information received from banks. All AML/CFT authorities were involved in the NRA process.
5. *Criterion 1.2* – The FIU is responsible for co-ordinating the actions taken to identify and assess risk (Art.18.1 and 18.2 AML/CFT Law).
6. *Criterion 1.3* – The NRA will be conducted regularly and at least once every three years (Art.21 AML/CFT Law, Art.6 NRA Procedure).
7. *Criterion 1.4* – The full version of the NRA was published on the websites of the FIU and the MoF. The NRA report was presented at a meeting in December 2016 to senior government officials, competent authorities and relevant NGOs.
8. *Criterion 1.5* – There are no “whole of system” policies/procedures or policies/procedures at the level of authorities for a RBA to be taken to allocating resources and implementing measures. However, a draft comprehensive action plan to manage the risks specified in the NRA has been developed and issued to the CoM for approval. For example, supervisory authorities should ensure that they use a RBA to identify and analyse client transactions and in also in performing a risk assessment of REs and to use this in planning audits (onsite and offsite).
9. *Criterion 1.6* – Ukraine has not taken a decision to disapply any of the FATF Recommendations requiring FIs or DNFBPs to take actions.
10. *Criterion 1.7* – REs are obliged to apply enhanced measures to higher risk clients (Art.6(5) AML/CFT Law). Additional specific provisions must be applied in relation to correspondent banking relations with foreign FIs and national and foreign PEPs. However, there is no requirement for FIs

⁶⁰ Government of Ukraine Res. No. 717 (16.08.2015)

and DNFBPs to take enhanced measures to manage and mitigate the higher risks identified in the NRA or to incorporate information on those risks into their risk assessments.

11. *Criterion 1.8* –

Art. 9 of the AML/CFT law provides for regulators and supervisors to allow reporting entities (REs) to apply “simplified identification” in prescribed circumstances. At the date of the evaluation, only the NBU had exercised this power under Cls. 58 of the NBU Res. No.417. Cls. 58 requires that banks apply “simplified identification” on the following clients:

- 1) Ukrainian state authorities;
- 2) international agencies or organisations in which Ukraine participates under international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine;
- 3) institutions, bodies, offices or agencies of the European Union;
- 4) diplomatic missions of foreign states accredited in Ukraine in prescribed manner.

Cls. 59 details the identification requirements for these bodies, the only concession pertains to the identification of the UBO. Under the definition of “UBO” under Art. 1 (21) of the AML/CFT law, there is unlikely to be any person who would meet the definition of UBO of these bodies. Therefore it would appear that Cls. 58 provide more of a clarification of identification requirements rather than “simplified due diligence” intended under C.1.8.

Under Art.9(3) AML/CFT Law, it is not obligatory to carry out client identification and verification in connection with:

- (a) insurance contracts other than life insurance subscribed by an individual, with a total insurance payment does not exceed UAH 5,000, or its amount is equivalent to the specified amount, including in foreign currency; (~EUR 163.92)
- (b) business relations which arise on the basis of the agreements on participating in lotteries provided the size of the player’s bet does not exceed UAH 5,000; (~EUR 163.92)
- (c) the payment organisation, participant or member of the payment system, bank, branch of a foreign bank conducting financial operations without opening an account in the amount which is less than UAH 150,000 (~EUR 4,917.46) or in the amount which is equivalent to the specified amount, including in foreign currency, precious metals, other assets, and units of value);
- (d) transactions between banks registered in Ukraine.

12. Those provisions do not seem unreasonable and are not inconsistent with the NRA, but they were not introduced based on the prior identification of lower risks.

13. *Criterion 1.9* – Supervisory authorities are required to supervise compliance by REs with AML/CFT requirements and whether the AML/CFT measures undertaken by such entities to limit the risks posed by their operations are sufficient (Art.14.2(1) and (3) AML/CFT Law).

14. *Criterion 1.10* – There is a 3-tier approach to requiring REs to identify, assess and understand risk: AML/CFT Law; MoF Order 584 (July 2016) for all REs; and a series of supervisory Reg. and Orders (SROs) applying to specific SAs and the sector(s) they administer⁶¹.

(a) and (b) First tier – As per Art. 6(4) and (23) AML/CFT Law, REs must develop policies and programmes including, in particular, risk management measures. Second tier – Art.1 of MoF Order 584 specifies that REs must use the Order’s criteria to classify clients’ risk. Art.1-4 of part II. address overall risk assessment. Art.1-4 of part III. address risk assessment by country. Art. 1-4 of part IV. address client type risk. Part V. addresses risk by product types and services provided. Part VI. addresses transaction risks. Part II. states that the risk level must be recorded, together with the risk assessment method and procedure (RAMP). Third tier – Each SRO also contains criteria for risk assessment measures to be carried out when establishing and during business relations. These criteria are expressed in identical terms across the SROs. For example, under MoJ Order 999/5, notaries and lawyers/advocates must assess customers’ risks, taking into account the criteria set out by MoF Order 584 and the MoJ Order itself. SROs do not refer to distribution channels. In addition, REs must develop their own risk criteria, taking into Order 584 criteria, the relevant SROs and their specific activities.

(c) REs must periodically review their risk criteria and risk management measures (Art.3-II. of MoF Order No. 584). Under the SROs, each customer’s risks should be reassessed at least annually with respect to high risk customers (2 to 3 years for low and medium) and in a number of situations, e.g. consideration that transactions might be linked to ML/FT; or legislative changes. REs should document the results of such (re)assessments.

(d) Under Art.6(16) AML/CFT Law, REs are obliged to ensure access of the respective SAs and, upon request, by LEAs, to documents or information.

15. *Criterion 1.11* – C.1.11 is addressed by Ukraine at the level of supervisory Orders.

(a) For instance, NBU Reg. 417 requires banks to develop and approve internal AML/CFT documents, to be updated against legislative changes and events that may affect ML/FT risk. The documents include the programme for AML/CFT compliance-risk management (CRM), describing the risk management system and risk assessment methods at both bank and customer level. The documents must be approved by a management body or the bank’s executive body’s manager (or a foreign bank’s branch manager) on the proposal by the compliance officer. The other SROs contain similar provisions.

(b) Under Art.35 of NBU Reg. 417, management must be informed (in quarterly reports) of the results of client risk monitoring; analysis of the bank’s risk assessment; measures taken; and precautionary measures in the programme for AML/CFT CRM. NBFIs have similar obligations under NBU Reg. 388.

(c) Under Art.6 AML/CFT Law, MoF Order 584 and the SROs, REs are obliged to assess and manage clients’ risk. The MoF Order specifies criteria to be automatically treated as high risk. Clients must be classified into low, medium or high risk (for banks and NBFIs supervised by the NBU: low, medium, high and unacceptably high). REs must take precautions/pay increased attention in relation to high risk clients, which includes in-depth client checks; verifying client

⁶¹ E.g. NBU Res. 417 for banks; NBU Reg. 388 for NBFIs engaging in fund transfers (15.09.2016); NC Order 25 (05.08.2003) for insurers; MoF Order 1160 (22.12.2015) for auditors and accountants; MoJ Order 999/5 (18.06.2015) for notaries and lawyers/advocates; MoF Order 662 (23.07.2015) for real estate brokers.

information by obtaining additional information from the client or public sources; collecting information on the client's activities and financial status from public sources; refusing to establish or continue business relations; informing the FIU of the client's financial transactions. REs can also undertake additional measures but this appears to be optional.

16. *Criterion 1.12* – Although the situations specified in C.1.8 have not been established on the basis of lower risk, authorised simplified measures are very restricted in nature as stated under C.10.18, and not permitted in case of a ML/FT suspicion. C.1.9-11 are broadly met.

Weighting and Conclusion

17. Most criteria are met or mostly met. Only C.1.5 is partly met, since the action plan which requires all authorities to apply a RBA to their activities is still in draft form. Other minor deficiencies have been noted. While there are requirements to apply enhanced measures to higher risk situations, there is no specific requirement to manage and mitigate the higher risks identified in the NRA or incorporate information on those risks into risk assessments. The situations to which restricted simplified measures apply have not been determined on the basis of a lower risk and consistency with the NRA. There is no requirement for REs to identify, assess and understand ML/FT risks in relation to distribution channels. **R. 1 is rated LC.**

Recommendation 2 - National Cooperation and Coordination

18. Ukraine was rated LC with these requirements in the 2009 MER. While existing mechanisms pointed in the right direction, further feedback and accountability, and greater co-ordination and co-operation (particularly at the operational level and between SAs), were required.

19. *Criterion 2.1* – Since 2003 AML/CFT policies have been advanced through the national ML/FT strategy and the AML/CFT action plans implementing the strategy. These legal instruments, issued by the CoM and agreed by all policy and operational AML/CFT authorities, reflect risks identified at the time of their completion. A new strategy is approved every 5 years and, to date, a new action plan annually. The current strategy dates from 2015. The action plan based on the NRA awaits final approval from the CoM. Progress against the action plan is reviewed quarterly.

20. *Criterion 2.2* – The MoF is responsible for the above policies (CoM Reg. 375).

21. *Criterion 2.3* – The 'Council for Research into Methods and Trends related to Laundering of Proceeds of Crime and Financing of Terrorism' (hereinafter "the Council⁶²"), established by CoM Res. 25 (2010), facilitates coordination and cooperation between the relevant competent authorities with respect to AML/CFT policies and activities. The Council also serves as a coordination platform for the operational activities of SAs, with two working groups (one for banks and one for non-banks) including the relevant SAs, private sector representatives and the FIU.

22. *Criterion 2.4* – Mechanisms referred to in C.2.1 and 2.3 and the AML/CFT Law also apply in relation to PF. The AML/CFT statutory role of the FIU referred to in C.2.2 explicitly includes PF. PF is included in the February 2016 action plan, which was developed by the FIU jointly with the relevant

⁶² The Council comprises representatives of FIU, the MoF, MEDT, MFA, MoJ, MI, SFI, SFS, Antimonopoly Committee, State Treasury, SBS, SRS, Foreign Intelligence Service, SSU, NSSMC, NC, Presidential Administration, National Security and Defence Council, NBU, National League of insurance organisations, Ukrainian banks Association, High Specialised Court of Ukraine For Civil and Criminal cases, CoM.

state bodies (MEDT, MI, NSSMC, NCSRFSM, SSU, SFS, SRS, National Agency on Civil Service, Administration of the State Border Guard Service, State Committee for Television and Radio Broadcasting, State Financial Inspection, NBU, Foreign Intelligence Service, PGO and NABU).

Weighting and Conclusion

23. **R.2 is rated C.**

Recommendation 3 - Money laundering offence

24. Ukraine was rated PC with the previous R. 1 and 2. Gaps related to the physical elements of the ML offence and the scope of the definition of property and of predicate offences.

25. *Criterion 3.1* – ML is criminalised under Art.209 CC. Amendments were made in 2015. With regard to the physical elements of “conversion or transfer of property” (Art.6(1)(a)(i) Palermo Convention (PC)), the provision covers effecting a “financial or legal transaction” involving funds or other property (obtained as a result of a socially dangerous act). In the context of the Supreme Court Resolution, which is still followed by the judges, effecting a “financial” transaction means conducting any transaction involving processing or securing any payment through a RE. The Resolution clarifies that the list of types of transaction is not exhaustive and can be processed through any types of economic entity. Effecting “legal” transactions means commitment of any legal actions regarding proceeds from crime. The Resolution gives as an example any actions directed at acquiring, changing, or suspending civil rights and obligations (citing Art.202 Civil Code, applied in criminal proceedings, as it is considered the special law dealing with economic and financial relationships). The notion of legal transaction or legal deed was explained to be wider than actions effected through a written agreement or contract, under Art.202 Civil Code. While no case examples were provided, the authorities confirmed that a simple transfer of an asset from a criminal to another person, and any “conversion” of an asset, depending on the circumstances, can constitute ML offences, without any written agreements or legal deeds. Art.6(1)(a)(ii) PC is also fully covered by Art.209. The authorities also confirmed, though without giving case examples, that acquisition, possession or use of proceeds under Art.6(1)(b)(i) PC is covered by the wide Civil Code definition of legal transaction. The mental element of the offence embraces direct and indirect (reckless) intent. Art.306 CC also criminalises the placing of proceeds from drug trafficking into FIs or use of these proceeds to continue trafficking.

26. *Criterion 3.2 and 3.3* – Ukraine applies a threshold approach to determine underlying predicate criminality. Art.209 refers to funds or property obtained from ‘a socially dangerous unlawful action which preceded the laundering’, which, under Note 1 to Art.209, is now an action punished under the CC “with imprisonment” of any length (thus removing the former 1-year threshold) or a fine exceeding 3000 times the individual income tax exemption limit (equivalent to EUR 1,768). Predicate offences now include any imprisonable offence and this covers a range of offences in all the designated categories of predicate offences. It appears that some aspects of the FT offence involving TF prosecutions in respect of Art. 2(1)(a) terrorism offences annexed to the TFC may not be completely covered and thus would not be predicate offences to ML. Additionally, some cross-border smuggling offences have been decriminalised which could have been predicate offences to ML. Smuggling under Art.201 CC now applies to cultural values, a range of dangerous materials and explosive substances, weapons and ammunition. While smuggling of drugs etc. remains an offence under Art.305 CC, the smuggling of other goods to which duties apply are administrative offences, which are not predicates to ML.

27. *Criterion 3.4* – Under Art.209 ML is the use of “funds or other property”. In the AML/CFT Law, “assets” cover “money, property, property and non-property rights”, while “proceeds” mean “any benefit obtained by committing a socially dangerous act which may consist of movable or immovable property, property and non-property rights irrespective of their value.” “Property” is defined as “a thing or set of things as well as property rights and obligations” in Art.190 Civil Code and covers intellectual property rights. The authorities consider that these definitions cover any type of property as defined by the FATF. This is reinforced by the Supreme Court Resolution which clarifies that criminal courts should follow the AML/CFT Law on this point (and presumably the Civil Code).

28. *Criterion 3.5* – Formally, there is nothing in Art. 209 CC which requires a conviction for a predicate offence in order to prove that property is the proceeds of crime. Ukraine has ratified the Warsaw Convention. Art. 9(5) of that Convention (which is not subject to any reservation or declaration procedure) requires each Party to ensure that a prior or simultaneous conviction for the predicate offence is not a prerequisite for a conviction for ML. The authorities advised that the mandatory provisions of binding international treaties to which Ukraine is a Party can be referred to in criminal cases in its domestic courts.

29. The only relevant domestic provision relating to this criterion is found in Art.216-8 CPC. Despite the authorities’ attempts to place Art. 9(5) Warsaw Convention clearly into domestic law, Art. 216-8 CPC does not directly cover the issue of whether a conviction for the predicate offence is a prerequisite for ML criminal court proceedings. Art. 216(8) CPC stipulates that ML pre-trial investigations may be conducted without preliminary or simultaneously charging the person with a socially dangerous unlawful act (predicate offence) when: the predicate offence was committed outside Ukraine and the laundering took place in Ukraine; the fact of a predicate offence was established by a court in relevant procedural decisions. The authorities consider that, despite the absence of “or” between the 2 conditions, they should be read disjunctively and not conjunctively. They point to Art. 9 part 3 AML/CFT Law as a precedent for a disjunctive legislative intention without the use of “or”. If Art. 216-8 CPC is so interpreted, then it applies to the opening of ML pre-trial investigations in domestic and foreign predicate offences without charging the predicate offence. There is no binding court ruling on this interpretation of Art. 216-8 CPC. The impact of this provision upon whether there still has to be a conviction of a person for a predicate offence before a ML prosecution can be brought to court is discussed under IO7 (bearing in mind firm views expressed onsite that in practice a conviction for the predicate offence is a prerequisite for a ML case being transferred to court).

30. *Criterion 3.6* – Under Art.209(1), an action committed abroad is considered a socially dangerous unlawful action which preceded laundering, subject to the dual criminality principle.

31. *Criterion 3.7* – Art.209 does not exempt persons who committed the predicate offence from being liable to ML.

32. *Criterion 3.8* – The prosecution is required to prove the guilt of the offender, the form of guilt, the motive and the purpose of the offence (Art.91(1) CPC). Proof is established by collecting, verifying and evaluating evidence to establish the circumstances relevant to the criminal proceedings (Art.91(2) CPC). Evidence in criminal proceedings is the actual data obtained in the manner prescribed by the CPC which determines the presence or absence of facts and circumstances that are relevant to the criminal proceedings (Art. 84 CPC).

33. *Criterion 3.9* – Natural persons convicted for the basic ML offence are subject to 3 to 6 years imprisonment, disqualified from certain positions or activities for up to 2 years, and subject to

property confiscation (Art. 209(1) CC). For aggravated ML (repeated actions, conspiracy or large amounts), sanctions are 7 to 12 years imprisonment, disqualification from certain positions or activities for up to 3 years and property confiscation (Art.209(2) CC). If ML is committed by an organised group or in large amounts, the offender may be sentenced to imprisonment for a term of 8 to 15 years and disqualified from certain positions or activities for up to 3 years, including property confiscation (Art. 209(3) CC). Sanctions appear proportionate on paper and can be stricter than for other economic crimes, although Art. 209(1) basic ML carries a lesser penalty than Art. 306 drug ML.

34. *Criterion 3.10* – Since 2013, Art.96³ CC provides for criminal liability for legal persons for specific offences, including ML. Criminal sanctions may include fines, confiscation or the liquidation of a legal person.

35. *Criterion 3.11* – Art.14, 15 and 27(4)(5) CC provide for appropriate ancillary offences as indicated in the 2009 MER.

Weighting and Conclusion

36. All criteria are met or mostly met. The partial decriminalisation of offences in the 2015 amendments means that bulk smuggling of some taxable goods (e.g. cigarettes) cannot found ML charges, which may create a ML risk. There remain some issues as to whether all FT offences within the scope of R.5 are capable of being prosecuted as FT and thus can be predicate offences to ML. **R.3. is rated LC.**

Recommendation 4 - Confiscation and provisional measures

37. In the 2009 MER, Ukraine was rated PC with previous R.3. The following gaps were noted: confiscation of instrumentalities, property of corresponding value, income, profits or other benefits from the proceeds of crime involved in the commission of ML are not covered; property from the commission of certain predicate offences cannot be confiscated; legislation cannot ensure confiscation of property used in or intended for use in FT.

38. *Criterion 4.1* -

(a) This sub-criterion is met by Art.96²(1) (2) and (3) CC.

(b) Art.96²(1)(1) covers direct and indirect proceeds; Art.96²(1)(2)(4) cover instrumentalities. Sub-criterion met.

(c) Where a FT offence is capable of proof the sub-criterion would be met (Art. 96²(1)(2) and (4)CC). As some FT acts involving the treaty offences under Art. 2 1 (a) FT Convention may be incapable of proof because of the definition of acts of terrorism in Art.258 CC (see R.5), confiscation as envisaged under this sub-criterion would be impossible. This has been marked as a deficiency under R.4, albeit that it may be *de minimis*.

(d) Art.96²(2) relates value confiscation to all types of property and assets covered by Art.96²(1) that are unavailable at the moment of court decision. It is a deficiency that value confiscation does not extend to instrumentalities, since instrumentalities are not covered by Art.96²(1) CC.

39. *Criterion 4.2* -

(a) Ukrainian legislation provides a range of measures to identify and trace property subject to confiscation. Since 2015, investigators and prosecutors have a statutory duty to take the necessary measures to identify and trace property that can be seized to enable special confiscation or confiscation of property as punishment in criminal proceedings (Art.170(2) CPC)⁶³. For this purpose, they may request any necessary information from other state or local self-governance bodies, and natural and legal persons. Provisional access to information containing secrecy is permissible.

(b) The FATF requirement to carry out provisional measures ex parte (once a person is declared a suspect in the Ukrainian context) is met. Art.172(2) CPC provides that the request of the investigator, prosecutor or civil plaintiff for attachment of property that has not been provisionally seized can be considered without notification of the suspect, another property owner, their lawyer, representative or legal representative, where appropriate to ensure seizing. In urgent cases, and solely to preserve physical evidence or provide possible confiscation or special confiscation in criminal proceedings concerning a grave or especially grave crime, by the decision of the Director of NABU (or his deputy), approved by the prosecutor, preliminary seizing of property or accounts may be imposed, for up to 48 hours. No later than 24 hours after such decision, the prosecutor shall request the attachment of property under Art.170(2) to the investigating judge.

(c) This criterion is addressed under Art. 27(2) of the AML/CFT Law. Deeds aimed at ML, FT or PF can be recognised as null and void in a manner prescribed by law. Under Art.228 Civil Code transactions that violate public order can be considered invalid. Under Art.215 Civil Code, a transaction can be voided by court where one party disputes its validity. The National Agency for Asset Management and NABU have specifically been empowered to initiate declarations of transactions as invalid. Prosecutors may initiate in court issues related to the protection of the interests of the state, including the cancellation/voiding of deeds that would prejudice a confiscation order.

(d) As noted, the authorities consider that Art.170(1) now is the statutory authority for financial investigations into assets and proceeds. With regard to other investigative measures, under Art.234(1) CPC investigative searches of property by the prosecutor/investigator can include searches for assets obtained as a result of the crime and locating instruments used in the CO upon the ruling of the investigating judge, following consideration of a request by the investigator. In addition, if there is reasonable suspicion that the person is committing criminal activities with the use of a bank account, or to search or identify the property which is subject to confiscation or special confiscation in NABU criminal proceedings, under Art. 269(1) CPC the prosecutor is entitled to apply to the investigating judge for issuing a ruling on bank account monitoring.

40. *Criterion 4.3* – The rights of bona fide third parties are protected under Art.962(4) and (5) CC and Art.100(10) CPC.

⁶³ The constitutive laws of the various LEAs also contain provisions for access to information held by state authorities: Art.23, 25 and 27 Law on NP, Art.16, 17 Law on NACBU, Art. 4(11),(37),(57),(58),(59),(60), 5(9) and 6(2),(4),(7),(14) Law on SFS, Art.8, 24, 25 Law on SSU, Art.6(3),(4),(8),(9),(10), Art. 7 (1),(2),(7),(10), Art.22 Law on SBI, Art. 2(1), Art.9(1)(1) to (9), Art.10, 11, 15, Art.16(1)(1) to (3), Art. 16(2) Law on ARO, Art.8(4), (15). Law on Operational and Search Activities, Art.7(2)(5) Law on Counterintelligence, Art.12 (2) Law against Organised Crime.

41. *Criterion 4.4* – Currently, there is a mechanism for the disposal of confiscated assets through the State Executive Service in the MoJ, which does not become involved before a conviction. Management of seized assets was, at the time of the onsite visit, still largely the responsibility of the authorities of pre-trial investigation. According to Art.20 of the Law “On the National Agency of Ukraine for detection, investigation and management of assets derived from corruption and other crimes” (hereinafter the Agency) management of funds seized in criminal proceedings is carried out by this Agency, in all criminal cases. While the legislation to create the Agency was in place at the time of the visit, the Agency was not yet operational and thus no frozen/seized assets were then under its management⁶⁴. There are procedures, based on Art. 100 CPC, for the management and disposal of physical evidence and instrumentalities seized in criminal proceedings but it was unclear how far active management of seized proceeds (such as cars/luxury goods etc.) was undertaken by pre-trial investigative authorities at the time of the onsite visit.

Weighting and Conclusion

42. There have been major improvements in the confiscation regime, which appears now to cover a wide range of predicate and other offences. The majority of the most important criteria are met or mostly met, though value confiscation does not apply to instrumentalities. At the time of the onsite visit, there were no mechanisms for systematic management of restrained property by pre-trial investigative authorities. **R.4 is rated LC.**

Recommendation 5 - Terrorist financing offence

43. In the 2009 MER, Ukraine was rated PC with SR.II as some requirements were not covered or covered only partially (e.g., all acts under Art.2(1) of the Terrorist Financing Convention (TFC) not covered by the terrorism offence, no autonomous criminalisation of FT). Ukraine amended the CC in 2010 to criminalise FT as a stand-alone offence.

44. *Criterion 5.1* – Pursuant to amendments to the CC, FT is now criminalised as a wide, autonomous offence under Art. 258⁵ CC: “acts committed with the purpose of financial or material support to an individual terrorist or a terrorist group (organisation), organisation, preparation or commission of an act of terrorism, involvement in a terrorist act, to facilitate the commission of a terrorist act, the creation of a terrorist group (organisation)”. The formulation does not explicitly cover provision or collection of funds. However, the FT definition in the AML/CFT Law is more closely modelled on the TFC language and uses the terms “providing or collecting (any assets for terrorist purposes)”. The authorities advised that courts may follow the relevant definitions in the AML/CFT Law in criminal proceedings.

45. Acts of terrorism are defined under Art.258 CC as “the use of weapons, explosions, fire or any other actions that expose human life or health to danger or caused significant pecuniary damage or any other grave consequences, where such actions seek to violate public security, intimidate a population, provoke an armed conflict, or international tension, or to exert influence on decisions made or actions taken or not taken by government agencies or local government authorities, officials and officers of such bodies, associations of citizens, legal persons, or to attract attention of the public to certain political, religious or any other convictions of the culprit (terrorist), and also a threat to commit any such acts for the same purposes.”

⁶⁴ It is understood that since the onsite visit UAH 8.6 billion is under management by the Agency.

46. With regard to the consistency of FT criminalisation with Art. 2(1)(a) TFCC there are some problems. Art.258 CC (defining acts of terrorism) in the context of FT offences conflates those acts which constitute offences covered by Art. 2(1) (a) TFC (annexed treaty offences) and other acts covered by Art. 2(1)(b) TFC. Given the definition of acts of terrorism in Art. 258, it is difficult to see whether, in all FT prosecutions based on offences within the scope of Art.2(1)(a) TFC, the prosecution could establish that a particular terrorist offence falls within the ambit of the FT offence. Some treaty offences that are in the CCU may not meet the definition of terrorist acts in Art. 258. In a FT prosecution the existence of a terrorist offence under the treaties as an offence in the CC is not essential so long as such offences can be established in other ways in a FT prosecution. Nonetheless it may be easier to do so if the relevant treaty offence is in the CC. The evaluators consider that the prosecution may experience problems in practice linking treaty offences that are in the CC to FT, because of the language of Art.258. It may be especially difficult where, as is the case with some of the treaty offences, they are not clearly covered in the CC⁶⁵. The authorities indicated that they could also prosecute financing of treaty offence that is in their CC by charging the financier with aiding and abetting the relevant treaty offence in the CC. This solution, however, would be contrary to footnote 14 in the Methodology.

47. Reliance on Art.258 for FT purposes creates additional requirements for the prosecutor in a FT offence. Art. 258 CC has alternative mental elements, one of which at least needs need to be established to prove an act of terrorism (violating public security, intimidating a population, etc.) Thus an FT offence based on Art.2(1)(a)TFC treaty offences would also require proof of one of these mental elements, whereas most treaty offences do not contain a terrorist purpose. While it is said that the notion of violating public security would be broadly interpreted and thus easily provable in most FT cases, the unnecessary, additional mental element required remains a technical deficiency in an FT offence based on Art. 2(1)a TFC treaty offences.

48. Turning to Art.2(1)(b) TFC, Art.258⁵, read together with Art.258 CC, is consistent with most of the basic elements of the “definition” of terrorism in Art.2(1)(b) TFC. It covers acts to “exert influence on decisions by government and local government and legal persons”. The evaluators understood that Art. 96⁴ CC (liability of legal persons) implicitly recognises international organisations as legal persons in that they are a legal person specifically excluded from criminal liability. Thus, arguably, financing of actions seeking to influence an international organisation that is a legal person is generally covered by reference to legal persons in Art. 258 CC. A minor deficiency is that such an interpretation would appear to exclude financing of acts aimed at influencing international organisations which are not legal persons.

49. Art. 258⁵ and Art. 258 together appear wide enough to cover financing of acts intended to cause death or serious bodily injury to a civilian. However, Art.258 does not specifically reference that part of the TFC which in Art.2(1)(b) limits financing of acts intended to cause death or serious bodily injury to a civilian “or any other person not taking an active part in the hostilities in a situation of armed conflict”.

50. *Criterion 5.2* - Art.258⁵ CC does not specify that FT is committed if funds are provided or collected “directly or indirectly” so it is unclear if can be committed indirectly through a chain of transactions. The UAs consider that the AML/CFT Law, which extends the definition of FT beyond

⁶⁵Specifically: 1 of the offences under the 1988 Protocol for the Suppression of Unlawful Acts of Violence at airports; at least one of the offences under the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation; and at least 2 offences under the Fixed Platforms Protocol.

funds to the collection or provision of any assets with the knowledge that they will be used in whole or in part for any purpose by a terrorist or terrorist organisation does not limit the forms and methods of collecting funds and that this can be done directly or indirectly and that they could prosecute on the basis of indirect provision/collection. No decided case was provided by the authorities covering indirect provision or collection. The requirement that the act should be performed “unlawfully and wilfully” seems to be covered by Art.1(1)(51) AML/CFT Law, which requires that the “provision or collection” of assets should be made with the knowledge that they will be used for any purpose by a terrorist, terrorist group or terrorist organisation. The Law “On counterterrorism” also indicates that FT should be done “knowingly”. The requirement that FT should be possible where there is an intention that funds should be used in full or in part to carry out the acts set out in Art.2 (1)(a) and (b) TFC is covered in Art.1(1)(51) AML/CFT Law by use of the language “wholly or partly”. As noted, the evaluators accept the assurances of the authorities that the AML/CFT Law FT definition would be admissible in criminal proceedings.

51. The FT offence on its face seems broad enough to cover support for the preparation or commission of a terrorist act or other support to an individual terrorist or terrorist organisation without a link to a particular terrorist act. Though not clearly stated in the criminal legislation, this view is reinforced by Art.1(1)(51) AML/CFT Law, under which FT is committed when funds are provided with the knowledge that they will be used for any purpose by a terrorist, terrorist group or organisation.

52. *Criterion 5.2 bis* – The FT offence covers i.a. material support to a terrorist or terrorist group. The authorities consider that Art.258⁵ would be interpreted broadly by LE and judicial authorities to cover the financing of travel for the purpose of providing or receiving terrorist training, but this has not been tested. Art. 258³ CC (headed creation of a terrorist group or terrorist organisation) includes the broad criminalisation of “organisational or other support to the creation or activity of a terrorist group”. This provision is currently being used for in the context of the prosecution for arranging travel for foreign terrorist fighters, though the case has not been concluded. While the law on the fight against terrorism defines FT *inter alia* as providing or collecting assets of every kind knowing that they will be used for “any other terrorist activities”, “recruiting, arming and training” of terrorists are included in this law as “terrorist activities”. Until there are some decided cases it remains debatable whether the present offences meet all of the requirements of this criterion (particularly financing the travel of individuals for the purpose of providing or receiving terrorist training). Ukraine has, of course, signed the Additional Protocol to the CoE Convention on Terrorism. Once the Protocol is ratified they may be able to argue in court that relevant provisions should be read in the light of Ukraine’s obligations under the Protocol. Again a binding court decision on this point would be necessary to put the matter beyond doubt.

53. *Criterion 5.3* – The FT offence does not use the expressions “funds” or “assets” but “actions with the aim of financial or material support”. The AML/CFT Law defines assets as “money, property, property and non-property rights”. While legislation does not specify that funds can be “corporeal or incorporeal, tangible or intangible, movable or immovable, however acquired”, the Supreme Court Resolution, which is followed by the courts in defining property and assets for ML, would presumably be applied *mutatis mutandis* to the definition of property and assets for the purposes of FT. Thus relevant definitions in the AML/CFT Law and Civil Code would be followed by the criminal courts to ensure the widest possible application to “funds” and “assets”. The FT offence does not expressly specify whether the financial or material support extends to any funds coming from a

legitimate or illegitimate source. However, the FT offence language appears capable of embracing “material support” coming from legitimate as well as illegitimate sources.

54. *Criterion 5.4* – Under Art.258⁵ there is no requirement that the funds (a) were actually used to carry out or attempt a terrorist act or (b) be linked to a specific terrorist act.

55. *Criterion 5.5* – Under Art.94 CPC, the evaluation of evidence by investigator, public prosecutor, investigating judge or court is based on a comprehensive, complete and impartial examination of all circumstances in criminal proceedings. Evidence is evaluated from the point of view of adequacy, admissibility, and in respect of the aggregate of collected evidence, sufficiency and correlation.

56. *Criterion 5.6* – A natural person convicted of FT is liable to imprisonment between 3 -8 years for basic offences and up to 10 and 12 years depending on aggravating features. The natural person, is disqualified from holding certain positions or engaging in certain activities for up to 3 years and confiscation of property. The sanctions for FT offences appear broadly similar to those for other crimes against public order (establishment and participation in criminal association, banditry, and terrorism) and can be considered dissuasive and proportionate. However the same concerns that apply to ML sentencing regarding the application of Art.75 CC can be applied to FT.

57. *Criterion 5.7* – On 23 May 2013, the Parliament adopted the Law “On Amendments to Certain Legislative Acts to Implement the Action Plan for the EU Liberalisation of the Visa Regime for Ukraine Regarding Liability of Legal Persons” N314-VII which introduced the concept of corporate criminal liability. Under Art.96-3 CC criminal sanctions now apply to legal persons, including fines (from 5000 times to 75000 times the minimum wage); confiscation of property; and the liquidation of legal persons convicted for FT. These appear to be dissuasive.

58. *Criterion 5.8* - The Ukrainian CC fully covers the FT ancillary offences: attempt (Art.15 CC); participation as an accomplice in FT or attempted FT (Art.27-29 CC); organising and directing others to commit FT (Art.30 CC); contribution to the commission of one or more FT offences or attempted offences by a group of persons acting with a common purpose (Art.28 CC).

59. *Criterion 5.9* – Any CO in Ukraine punishable by imprisonment is a PO for ML. The FT offence, punishable by a minimum of 5 years of imprisonment, falls into this category.

60. *Criterion 5.10* – Art.258⁵ does not require that the financier is in the same country in which the terrorist(s)/TO is located or the terrorist act(s) occurred/will occur. Moreover, given that FT is a serious offence against the rights and freedoms of the Ukrainian citizens and national interest of Ukraine and derives from an international convention, citizens of Ukraine, foreigners or persons without citizenship in a foreign country, are subject to the jurisdiction of the criminal courts in Ukraine with respect to FT offences committed in a foreign country as well. (Art.7 and 8 CC).

Weighting and Conclusion

61. There is now an autonomous FT offence which meets or mostly meets 10 of the 11 relevant criteria. However, Art.258 CC, which defines acts of terrorism for FT purposes, conflates acts which constitute offences covered by Art.2(1)(a) TFC (annexed treaty offences) and offences covered by Art.2(1)(b) TFC. Given the definition of acts of terrorism in Art.258, Art. 2 (1)(a) TFC offences would require an unnecessary purposive element that is relevant only to Art. 2(1)(b) TFC offences. It is difficult to see how linkages to acts covered by offences in the treaties annexed to the TFC can be made in FT prosecutions involving Art. 2(1)(a) TFC offences without some clarification in the CC, that all offences created by the treaties annexed to the TFC are terrorist acts for the purposes of

Art.258⁵ CC (whether or not they are criminalised in the CC and regardless of the language of Art.285). There are still some uncertainties as to whether all aspects of financing of travel for terrorist purposes are covered by existing legislation. Less weight has been given to the minor weaknesses and potential deficiencies. **R.5 is rated PC.**

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

62. In the 2009 MER, Ukraine was rated PC with SR.III. The assessors noted that (1) authorised state agencies were not able to temporarily suspend financial transactions on their own initiative; (2) the suspension did not clearly extend to funds owned or controlled by persons who committed, or attempted to commit, terrorist acts or participate in or facilitate the commission of terrorist acts, where no national court decision or appropriate foreign decision existed; (3) there were no procedures authorising access to funds for basic expenses; (4) it was not possible to suspend funds or other assets unless they were linked to financial transactions; (5) terrorist-related funds could not be confiscated in the course of criminal proceedings of terrorist-related offences; (6) the FIU and other competent authorities (except for the SSU) were not able to promptly determine and suspend terrorist funds on the basis of foreign requests; and (7) there were no detailed publicly-known procedures for de-listing requests and for un-freezing funds of de-listed persons in a timely manner, including cases in which persons or entities were inadvertently affected by a freezing mechanism. Since then the authorities have taken legislative measures but some of those concerns remain.

63. The main legal provisions governing Ukraine's FT TFS, particularly those relating to proposals for designation, the formation of a national list, freezing measures to be taken by the private sector, communication of designations and de-listing/unfreezing measures, are found in the AML/CFT Law, CoM Res. 966 (25.11.2015) (procedure for compiling the list of persons related to terrorist activities or subject to international sanctions), Order 475 of the MoF (26.05.2016)(procedure for communicating lists to the private sector), and CoM Res. 509 (08.08.2016) (procedure for giving effect to the request of another country). In addition, CoM Res. 351 (11.04.2001) (concerning UNSCR 1267 and 1333) and CoM Res 1800 (28.09.2001) (concerning UNSCR 1373) impose obligations on state authorities to implement the relevant UN resolutions and report to the MFA on actions taken for onward transmission to the relevant UN Committees. The Law on Sanctions (14.08.2014) may also be resorted to by the authorities to designate persons at the country's own motion. However, it has never been used in the context of terrorism and FT.

64. *Criterion 6.1*⁶⁶ –

a) Pursuant to Art. 23(4) AML/CFT Law, the SSU in conjunction with the MFA can submit proposals for designation to the 1267/1989 Committee and the 1988 Committee.

b) Based on the Laws “On Operative and Investigative Activities (on counter-intelligence)” and “On counterterrorism”, which regulate the SSU's operational activities, the authorities have developed procedures to monitor terrorist activity. Internal instructions further specify how to detect, identify and counteract FT. The authorities collect information from open

⁶⁶ At the time of the on-site visit, Ukraine had not yet made any proposals for designation. It was therefore difficult to confirm with certainty whether the procedures and mechanisms for proposals were in line with the Standards. Thereafter, Ukraine submitted three designations to the 1267 UNSCR linked to ISIL/Al Qaida and confirmed that C. 6.1 (a) to (e) were followed.

sources and informants, etc. The SSU has established lists of targets to be monitored, including a list of individuals suspected of having affiliations to Al Qaida/Taliban and others. Once a person is so suspected, the information is communicated to the MFA and the Defence Council.

c) In determining whether a proposal for designation should be made, the SSU in conjunction with the MFA apply an evidentiary standard of proof of reasonable grounds.

d) The authorities confirmed that the UNSC procedures and standards forms for listing are followed when submitting proposals to the relevant committee.

e) The authorities confirmed that they endeavour to provide as comprehensive information as possible when submitting proposals.

65. *Criterion 6.2 -*

a) Pursuant to Res. 966, the FIU is in charge of compiling and modifying the list of designated persons, either on the country's own motion or at the request of another country. A designation based on Ukraine's own motion is made either by an administrative decision of a court based on information gathered by the SSU or by a decision of the National Security and Defense Council pursuant to the Law on Sanctions⁶⁷. A designation based on a request of another country is made by the Council of Ministers on the recommendation of the MFA in consultation with the MoJ, SSU, MoF, MEDT and the FIU.

b) See C.6.1(b).

c) The procedure for examining and giving effect to a request by another country is governed by CoM Res. 509. In brief, after the MFA receives official documentary evidence supporting an international request, makes a prompt determination (within one month) and submits a recommendation to the CoM. Once a decision is taken by the CoM, the MFA sends the relevant information to the FIU for inclusion of the natural or legal persons in the list no later than 5 working days (Cls. 5 par. 2 of Res. 966).

d) The inclusion of natural persons or legal persons in the national list is not predicated on the existence of a criminal proceeding. For designations on the country's own motion, Res. 966 lists as grounds for inclusion a court decision (as opposed to conviction) on determining that a person is related to the pursuit of terrorist activities (Cls. 2(1)). The authorities also refer to the Law on Sanctions, in accordance to which a person who is engaged in terrorist activities may be designated by a decision of the National Security and Defence Council of Ukraine which decision is then enacted by a decree of the President of Ukraine (Art.5(3)). For designations based upon a request of another country, Reg. 966 requires a decision by a competent foreign agency that a person is related to the pursuit of terrorist activities (Cls. 2(3)).

e) Ukraine has never requested another country to give effect to freezing actions initiated domestically. However, there is nothing in the law, which would precludes Ukraine from providing as much identifying information and specific information supporting the designation. This is also supported by Art 23 AML/CFT Law, which regulates international cooperation in the AML/CFT area generally and provides that UAs shall provide the widest range of assistance to its foreign counterparts.

⁶⁷ It is not clear how a designation made under the Law on Sanctions would be included in the list compiled by the FIU pursuant to Res. 966, since Cls. 2 in Res. 966 does not include a decision made under the Law on Sanctions as a ground for listing.

66. *Criterion 6.3 –*

a) The Laws “On counterterrorism” and “On the SSU” establish legal authorities and procedures for the SSU to collect or solicit information to identify persons and entities that meet the criteria for designation.

b) There is no requirement to notify a person or entity who has been identified and whose (proposal for) designation is being considered. The process for identification and designation falls within the competence of the SSU which is subject to strict confidentiality requirements in relation to its operations and activities (Art. 7 Law on the SSU).

67. *Criterion 6.4 –* The FIU monitors changes to UNSCR 1267/1989 and 1988 sanctions regimes on a daily basis (Cls. 5 par. 3 Res. 966) and where new designations are identified they are immediately (within a matter of hours) included in the list and become binding. For designations based on UNSCR 1373, the SSU (in the case of domestic designations) and the MFA (in the case of designations based on a foreign request) are required to transmit information to the FIU within five working days of the designation decision (Cls. 5 par. 2 Res. 966). The FIU is required to update the list by no later than 3 working days from the receipt of information from the SSU or the MFA. In practice, the FIU updates the list immediately. The evaluation team is of the view that this process satisfies the requirement to implement TFS under UNSCR 1373 without delay, taking into consideration the time that is reasonably needed to examine and give effect to the request of another country and for the authorities to be satisfied that a person meets the designation criteria.

68. *Criterion 6.5 –*

a) Art.17 (1) AML/CFT Law requires REs to suspend financial operation(s), where a customer or beneficiary is a person included in the list of designated persons involved in terrorist activity or subject to international sanctions and to notify the FIU on the same day. This obligation does not cover all natural and legal persons in the country. The FIU suspends the operation for up to 30 days. Where the funds involved in the transaction are determined to be subject to TFS, the FIU refers the case to the SSU, which applies to the administrative courts for an indefinite freezing order under Art 1834 Code of Administrative Procedure.

b) The freezing obligation (Art. 17(1) AML/CFT Law) does not extend to all natural and legal persons but only to REs and only applies to a party or beneficiary involved in a financial operation. REs are therefore not required to freeze all the funds or other assets that are owned or controlled by the designated person or entity, which are not linked to a specific transaction. It is also unclear how the freezing of funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, as well as funds or other assets of persons and entities acting on behalf of, or at the direction of designated persons or entities, would be subject to freezing (Partly Met)

c) There is no such explicit prohibition in Ukraine. This is only partly mitigated by Art.10(3) AML/CFT Law, which prohibits REs from establishing business relations, or carrying out certain types of occasional transactions (currency exchange; ‘banking metals’ or cash transactions) with designated persons. (Partly Met)

d) The mechanism for communicating designations is described in Art.3 and 4 of MoF Order 475. The updated list is posted by the FIU in the news section of its website no later than the next working day from the date of approval. Freezing modalities are defined by supervisors in

respective regulatory documents. Authorities indicate that guidance on UNSCR obligations is regularly provided as part of general outreach and training to FIs and DNFBPs.

e) In accordance with Art.17(1) AML/CFT Law, the RE, when suspending financial operation(s), should notify the FIU on the day of the suspension. Where an attempted transaction is identified REs are required to submit a STR.

f) The rights of bona fide third parties are protected pursuant to Art.17(10) and Art.27(3) AML/CFT Law.

69. *Criterion 6.6 –*

a) As per Art.23(4) AML/CFT Law, the SSU and the MFA are responsible for submitting de-listing requests to the relevant UNSC committees. The authorities maintain that the procedures and criteria for de-listing requests as adopted by the 1267/1989 would be followed, should the need arise in the future. These procedures and criteria are published on the website of the FIU.

b) Art.17(11) AML/CFT Law defines the authorities responsible and grounds for removing a person/entity from the national list. Res. 966 (Cls. 10) specifies the process to be followed by the FIU in that context.

c) A review with regard to designations pursuant to UNSCR 1373 is carried out by the FIU according to Cls. 10 of Res. 966. The FIU is required to complete its review within 30 days. In addition, under the legislation of Ukraine, any natural or legal person has the right to appeal the regulatory acts, as well as acts or omissions of state authorities in administrative courts Art. 2(2) and 17(2) Code of Administrative Legal Proceedings.

d) The FIU has posted and brought to the attention of citizens by placing on its official website a description of the procedures for the de-listing from the list of persons associated with the commission of terrorist activities. Description of the mechanism for the exclusion of individuals or legal persons in / from the UNSCR 1267 and 1988 is posted on the official website of the FIU in the section Combating Terrorism/Information of International Organisations and Institutions. Individuals may submit de-listing requests in accordance with procedures determined by Committee 1267/1989 or Committee 1988 directly to the Focal Point of the UN Security Council Committee or through the MFA.

e) The official website of the FIU, in the section Combating Terrorism/ Information of international organisations and institutions, provides information on the availability of the UN Office of Ombudsperson and the procedures for sending petitions to this office.

f) As noted under C. 6.5(a), freezing only occurs where the funds involved in a transaction suspended by the RE are determined to be subject to TFS by the FIU, which then refers the case to the SSU for an application for an indefinite freezing order to be applied for under Art 1834 Code of Administrative Procedure. Therefore, in practice, freezing occurs only where the person involved in the transaction has been confirmed by the FIU and SSU as being designated person. (Met)

g) the same procedure referred to under c 6.5(d) applies.

70. *Criterion 6.7 –* Under Art. 11-2 of the Law “On counterterrorism” access to suspended assets can be granted on the basis of a court decision to cover basic and extraordinary expenses.

Weighting and Conclusion

71. Ukraine has implemented most of the criteria under R.6. However, there are important gaps under C.6.5, which is a fundamental component of R.6: the freezing obligation does not apply to all natural and legal persons in the country; the freezing obligation does not extend to all the funds or other assets referred to under C. 6.2 (b)(i) to (iv); the absence of a prohibition referred to under C. 6.2 (c) is only partly mitigated by an obligation to refrain from establishing business relationships and certain types of occasional transactions with listed persons or entities. **R.6 is rated PC.**

Recommendation 7 – Targeted financial sanctions related to proliferation

72. The PF-related TFS regime is based on two different legal mechanisms. TFS related to DPRK are governed by the AML/CFT Law; CoM Res. 966 (procedure for compiling “the list of persons related to terrorist activities or subjected to international sanctions”, which includes PF-related TFS); Order 475 of the MoF (procedure for communicating the list to the private sector); and CoM Res. 746 (16.05.2007) (concerning UNSCR 1718), which imposes obligations on state authorities to implement UNSCR 1718 and report to the MFA on actions taken for onward transmission to the UNSC. TFS related to Iran appear to be based *both* on the same regime as for DPRK *and* on the Law on Sanctions as well as CoM Res. 360 (29.04.2016) (concerning UNSCR 2231); and NBU Res. 654 (01.10.2015), which imposes obligations on FIs on the basis of CoM Res. 360. The evaluation team is of the view that the overlap between both mechanisms under the Iran/PF-related TFS regime may cause ambiguities in the nature of requirements and procedures in effect.

73. *Criterion 7.1* – As noted under c.6.4, in practice, under the AML/CFT Law, UN designations are published by the FIU and are applicable in the country without delay.

74. *Criterion 7.2* –

a) Under Art.17(1) AML/CFT Law, REs shall suspend the execution of financial operation(s) involving a party or beneficiary designated under the relevant UNSCRs. On the same day the REs shall notify the FIU. The FIU suspends the operation for up to 30 days. Where it is determined that the funds involved in the transaction are subject to TFS, the FIU refers the case to the SSU, which applies to the administrative courts for an indefinite freezing order under Art.1834 Code of Administrative Procedure. This obligation does not cover all natural and legal persons. There is no requirement to give prior notice to designated persons or entities. Under the Law on Sanctions, which also applies to the Iran-related TFS regime, CoM Res. 360 appears to apply to any natural or legal persons. There is no obligation to give prior notice to designated entities or persons under that regime. It remains unclear whether the Law on Sanctions would allow for the implementation of Iran/PF-related TFS to Ukrainian nationals, as Art.1(2) seems to exclude nationals from the scope of sanctions, except for “entities involved in terrorism”.

b) As noted under C.6.5.b, under Art.17(1) AML/CFT Law, the freezing obligation only applies to a party or beneficiary involved in a financial operation and thus not to all required types of funds. In relation to Iran, on the basis of the Law on Sanctions, CoM Res. 360 provides for the “arrest (stopping of expenditure operation on accounts) on funds, other financial assets and economic resources placed on the territory of Ukraine and owned or controlled by [designated natural and legal persons], or legal persons controlled by them or acting on their behalf...”, which does not cover all categories defined under cC7.2.b, in particular (ii) to (iv). (Partly Met)

c) In the AML/CFT Law, there is no provision that prohibits making funds or assets available, directly or indirectly, wholly or jointly, for the benefit of designated persons and entities. In relation to Iran, on the basis of the Law on Sanctions, CoM Res. 360 provides for a “prohibition on the provision of funds, financial assets and economic resources to [designated natural and legal persons] by citizens of Ukraine or any natural or legal persons on the territory of Ukraine or for use in their interests (...) or natural or legal persons that are controlled by them or acting on their behalf, and legal persons controlled by them or staying owned by them, including by illegal means”. The scope of the prohibition is not clearly reiterated in NBU Res. 654, which may create ambiguities in the obligations imposed to FIs in that regard.

d) On the basis of the AML/CFT Law, the mechanism for communicating designations is described in MoF Res. 475. The list shall be made available to the REs on the FIU website, no later than the next working day from the date of approval which seems reasonable. The authorities indicate that guidance on UNSCR obligation is regularly provided as part of general outreach and training to FIs and DNFBPs. In relation to Iran, on the basis of the Law on Sanctions, no specific communication mechanism seems to be in place for the implementation of UNSCR 2231 in Ukraine. (Partly Met)

e) Under Art.17(1) AML/CFT Law, on the same day that FIs/DNFBPs suspend a financial operation involving a designated party or beneficiary, they shall notify the FIU. In relation to Iran, on the basis of the Law on Sanctions, Cls. 2 of NBU Res. 654 requires FIs to inform the NBU, on a monthly basis, of the assets frozen and attempted transactions in relation to UNSCR 2231 designations.

f) The rights of bona fide third parties are protected pursuant to the Art.17(10) and Art.27(3) AML/CFT Law. In relation to Iran, on the basis of the Law on Sanctions, such provision does not seem to be in place. (Partly Met)

75. *Criterion 7.3* – Compliance with obligations under the AML/CFT Law is monitored by the respective AML/CFT supervisors as per Art.14. Pursuant to Art.24(1) AML/CFT Law, FIs and DNFBPS unable to fulfil their obligations under the Law shall bear criminal, administrative and civil responsibility. As per Art.24(2), those entities which executed ML, FT or PF financial transactions may be liquidated based on a court order. Art.24 further specifies the sanctions that can be applied for failure to comply (or properly comply) with AML/CFT requirements. In relation to Iran, on the basis of the Law on Sanctions, the NBU monitors compliance with Iran TFS. However, it is unclear whether and to what extent other natural or legal persons are subject to monitoring and sanctioning for breaches of the Iran TFS obligations.

76. *Criterion 7.4* – Art.17(11) AML/CFT Law and Res. 966 contain provisions on the grounds and procedures to be followed for removing a person or an entity from the list.

- a) The UAs indicate that the FIU’s website provides information on the procedure for submitting a request for de-listing, either directly to the relevant UNSC contact centre or through the MFA. The adequacy of the information could not be verified by the evaluation team. (Not Met)
- b) The unfreezing procedure for persons or entities inadvertently affected by a freezing mechanism remains unclear. The UAs indicate that, under Art. 3 of the Civil Procedure Code, any person can apply to court for the protection of their violated, unrecognised or disputed rights, freedoms or interests. (Partly Met).

- c) As per Art. 17(9) of the AML/CFT Law, access to FT assets related to financial transactions suspended pursuant to a decision adopted on the basis of UNSC Resolutions should cover basic or extraordinary expenses. In relation to Iran, on the basis of the Law on Sanctions, access to frozen assets when the conditions set out in UNSCR 2231 are met is mentioned in Cls. 1(3) of CoM Res. 360.
- d) Under the AML/CFT Law, the procedure referred to under c.7.2.d applies. In relation to Iran, on the basis of the Law on Sanctions, no specific communication mechanism seems to be in place.

77. *Criterion 7.5 –*

- a) No relevant provision is in place under the AML/CFT Law. In relation to Iran, on the basis of the Law on Sanctions, Cls. 4 of CoM Res. 360 meets the elements of c.7.5.a. (Partly Met)
- b) The analysis under C.7.5.a also applies under b.

Weighting and Conclusion

78. There are many outstanding deficiencies, in particular gaps in the scope of funds covered by the freezing obligation, as well as the absence of a prohibition to make funds available to designated persons or entities and of clear procedures to delist/unfreeze funds. The articulation between the AML/CFT Law and the Law on Sanctions in relation to Iran/PF-related TFS should be clarified. **R.7 is rated PC.**

Recommendation 8 – Non-profit organisations

79. In the 2009 MER, Ukraine was rated PC with SR.VIII. The main deficiencies were: absence of a review of the domestic NPO sector in respect of its misuse for FT; lack of outreach to NPOs; shortcomings in NPO supervision or monitoring; no explicit legal requirement for NPOs to maintain the identity of person(s) who own, control or direct NPOs activities or to maintain records for a period of at least 5 years and make available such records to appropriate authorities.

80. *Criterion 8.1 -*

- (a) Art.1(26) AML/CFT Law defines NPOs as ‘legal persons (...) which are not FIs and were founded to conduct scientific, educational, cultural, recreational, environmental, religious, charitable, social, political and other activities to meet the needs and interests of the public (...), without the purpose of deriving profit’, which is broader than the FATF definition. In 2016, the FIU conducted a ‘National review on the activities of the non-profit sector to identify, prevent and counteract FT and define mechanisms for the prevention and countering of the proliferation of WMD’ (2014-2016). The National review presents an overview of the legislation governing the sector, describes the various categories of NPOs and contains an analysis of the FT threats and vulnerabilities faced by the sector as a whole, including typologies and recommendations for action. Although the National review does not clearly identify the subset of organisations falling within the FATF definition or the features and types of NPOs likely to be at risk of FT abuse, the higher FT risks posed by charities are highlighted in the document, which was also noted by the FIU and the SSU onsite. The understanding of risks could however benefit from more in-depth analysis of the specific risks posed by international terrorism to Ukraine. In addition, although the risk

classification used by the SFS takes into account risks of misuse for commercial purposes as a priority, it also includes clear AML/CFT considerations. (Mostly Met)

- (b) The National review, the NRA and the 2014 typology report on FT (which contains a chapter on NPOs), identify a number of terrorist threats and contain typologies. NPOs, in particular charities, are mostly misused to re-direct funds to terrorists. (Mostly Met)
- (c) The National review describes a number of measures, including legislative, which can mitigate risks of FT abuse faced by the NPO sector as a whole. These measures are mainly based on the laws governing the USSR, public associations, charitable organisations, as well as the AML/CFT Law and the Tax Code. The recommendations contained in the National review focus on LE action and increased CDD efforts for REs, which indicates that the adequacy of measures applying to NPOs has been reviewed.
- (d) The authorities intend to conduct a review of the NPO sector within 2 years. Following the on-site visit, Government Decision no.601 (30.08.2017) was adopted to this effect.

81. *Criterion 8.2 –*

- (a) Although there is no specific policy document on the promotion of transparency, integrity and public confidence in the administration and management of NPOs, the National review sets out clear and relevant policy objectives and includes recommendations for action. In addition, this objective is reflected in legislation, mainly in the laws mentioned under c.8.1.a.
- (b) The UAs report various initiatives aimed at raising awareness among NPOs about FT risks, including the publication of the National review on the FIU's website, training for NPOs at the FIU's Training and Methodological Centre, and letters from the FIU to NPOs and REs drawing attention to FT risks.
- (c) The UAs indicate that NPOs have been involved in the development of typologies and the development of educational material in the area of CFT and financial monitoring. (Mostly Met)
- (d) NBU Res. 637 (15.12.2004) sets a threshold above which, and delays within which, legal persons, including NPOs, have to transfer cash to a bank account, which makes it difficult for NPOs to operate without a bank account in practice. In addition, financial reporting obligations impose the detailed recording of cash transactions.

82. *Criterion 8.3 –* The UAs have imposed a broad range of obligations relating to NPOs, including charities, which cover most measures mentioned as examples in sub-par. 6(b) of INR.8. They include registration (in the USSR and the Register of NPOs – see analysis under R. 24); an obligation for NPOs to maintain a broad range of information and keep records; access of the public and LEAs to that information; an obligation for NPOs to issue financial statements; the possibility for donors to control the use of funds; the mandatory reporting of all NPO transactions by the REs; and monitoring for tax and AML/CFT purposes (on a risk basis) by the SFS. It is not clear whether these measures are risk-based.

83. *Criterion 8.4 –*

- (a) The SFS, in addition to being in charge of maintaining and monitoring the comprehensiveness and accuracy of the information collected by the Register of NPOs (Art.63(11) Tax Code), monitors the sector's activities both for tax and AML/CFT purposes.

In particular, under Order 230 (2015), the SFS conducts inspections on NPOs, analysing the source and use of their funds, with the objective to verify that they are not involved in ML/FT activities. Although risks of commercial abuse are prioritised, the inspection programme is also informed by an analysis of ML/FT risks based on the financial statements received by the SFS.

- (b) Under the Code of Administrative Offences, breaches of requirements on registration and providing information to the USR, as well as on financial reporting, are liable to fines. The use of an NPO for activities that are not consistent with its statutory objectives may entail the exclusion of the NPO from the Register of NPOs and the application of a fine. Under Art.963 of the CC, for criminal offences defined in Art.209 and 258-258⁵ of the CC committed on behalf of an NPO, the NPO may be subject to a fine, liquidation and confiscation of property.

84. *Criterion 8.5 –*

- (a) The majority of data regarding NPOs can be found in the USR and the Register of NPOs. Both are accessible to the general public free of charge through an electronic portal (except for registration numbers of taxpayer's record cards and passport details, to which LEAs have access). Art.8 Law "On counterterrorism" provides that, in general, all relevant authorities should cooperate to stop criminal activities of persons involved in terrorism, including international financing, support or commit terrorist acts and crimes committed with a terrorist purpose. Under Art.11 any obliged entity that uncovers a link to FT to immediately notify the SSU on any related financial transactions or terrorist assets found.(Met)
- (b) In the area of CT, Ukraine has established clear authorities with broad powers, notably under the Laws "On counterterrorism" and "On the SSU", and appears to have adequate investigative expertise and capability to examine NPOs suspected of being related to FT.
- (c) Pursuant to MoJ Decree 1657-5, state authorities, including judges, the NP, prosecution agencies, the SSU, as well as local government authorities and their officials are required to have electronic access to the USR, including underlying documentation in electronic format. Access to information maintained by NPOs, including on their management, is unrestricted.
- (d) No specific mechanisms for reporting suspected FT-related activity in the NPO sector exists. However, Ukraine does have several reporting channels that can facilitate information-sharing among relevant authorities. As discussed under (a), all governmental agencies are authorised to share and request information relevant to NPOs. As per Art.15 AML/CFT Law, financial transactions involving the crediting or receiving of funds by NPOs are subject to mandatory reporting by REs. Furthermore, banks and NBFIs providing services to NPOs are required to notify the FIU of a suspected link to FT within 3 working days from the date of registration or intent of execution. MoF Decree 584 obliges REs to conduct a risk assessment if the client is an NPO. In case of doubt, REs should notify the FIU, which, in turn, should immediately notify the SSU of any financial transactions or terrorist assets (Art.11 Law of Ukraine "On counterterrorism"). (Mostly Met)

85. *Criterion 8.6 –* Art.7 Law "On counterterrorism" obliges the Anti-Terrorist Centre operating under the SSU to cooperate with special services, LEAs of foreign states and international organisations with all CT matters, including in relation to NPOs. The SSU has access to the USR. Based on Art.27 Law "On counterterrorism", Ukraine provides information to foreign states

concerning the matters connected with international CT based on the request following the requirements of national legislation and international and legal obligations.

Weighting and Conclusion

86. Ukraine meets or mostly meets all criteria under the Recommendation. **R.8 is rated LC**

Recommendation 9 – Financial institution secrecy laws

87. In the 2009 MER, Ukraine was rated PC with the previous R.4. The MER noted limitations on the ability of LEAs to access information in a timely manner from some of the sectors and lack of knowledge of relevant procedures applicable in this area. There were significant concerns over the practical implementation of the banking secrecy provisions. Since then, Ukraine has made a number of legislative changes and has taken measures to provide professional training to LEAs so that they fully understand the procedures and the requirements to obtain a court order.

88. *Criterion 9.1* – Art.12(2) to (9) AML/CFT Law and parts of SL detailed below establish financial secrecy and data protection requirements and include a range of provisions to prevent these obligations from inhibiting the implementation of the FATF Rs.

89. SL:

- a. **Banking:** Art.62(1)(5)(9) Law on Banks oblige banks to disclose information on entities and persons at the request of the FIU concerning financial transactions.
- b. **Insurance:** Art.40(3) Law “On insurance” provides that information on entities and persons containing “any insurance secrets” shall be submitted to the FIU as per the AML/CFT Law.
- c. **Credit unions:** Art.21(5) Law “On credit unions” provides for the confidentiality of account holders information. Restrictions on provision of information by a credit union shall not apply in cases established by the AML/CFT Law.
- d. **Notaries:** Pursuant to Art.8 Law “On notary office”, submission of information by a notary to the FIU in accordance with the AML/CFT Law shall not be a violation of notary secret.
- e. **Lawyers:** As per Art.22 Law “On lawyers and lawyer activity”, submission of information to the FIU as provided by the AML/CFT Law shall not be a violation of attorney-client privilege.
- f. **Audit activity:** Art.19(1)(8) Law “On audit activity” obliges auditors to submit information to the FIU as established and provided by the AML/CFT Law. Provision of information by an auditor (audit company) to the FIU shall not be a violation of commercial secret.
- g. **Accounting:** According to Art.8 Law “On accounting and financial statements in Ukraine”, a chief accountant or a person performing financial accounting shall submit information to the FIU as established and provided by the AML/CFT Law.

90. No contradiction was noted in obligations for REs between the AML/CFT Law and the SL.

Weighting and Conclusion

91. Ukraine meets C.9.1. **R.9 is rated C.**

Recommendation 10 – Customer due diligence

92. In the 2009 MER, Ukraine was rated PC with the previous R. 5. Deficiencies were identified with respect to most of the criteria, ranging from the absence of the obligation to undertake CDD measures when carrying out occasional transactions that are wire transfers to deficiencies linked to the definition of beneficial ownership. Since then, Ukraine has addressed a number of gaps through the enactment of a new AML/CFT Law.

93. *Criterion 10.1* – According to Art. 64(1) Law on banks, banks are prohibited from opening and operating anonymous (numbered) accounts or accounts in obviously fictitious names.

94. Furthermore, according to Section III(13)(3) Provision on performing custody business approved by the decision №735 of the NCSS of Ukraine, any account in securities of any depositor or any client shall not be anonymous.

95. *Criterion 10.2* –

- a) Under Art. 9(3)(2) AML/CFT Law, REs shall identify and verify their clients (clients' representative) in case of establishing any business relations with them. As for the identification and the verification of the BO, Art. 9(18) requires the REs to identify and verify the person on whose behalf or instructions the financial operation is undertaken, and establish the beneficiary.
- b) and c) Pursuant to Art. 9(3)(6) AML/CFT Law, REs shall identify their clients in cases of executing financial transactions in the amount of 150,000 UAH (~EUR 4,917.46) or greater, whether such financial transaction is executed as a single transaction or as several connected financial transactions, money transfers (including international ones) made by an individual, individual entrepreneur without opening an account in the amount which equals or exceeds 15,000 UAH (~EUR 490), or the amount which is equivalent to the specified amount, including in foreign currency, precious metals, other assets, units of value, but is less than 150,000 UAH (~EUR 4,917.46)
- d) According to Art. 9(3) AML/CFT Law, client identification and verification shall be conducted in case of any doubt as to the information supplied or where the information gives risk to a suspicion; the same requirement is reiterated in the sectoral legislation for banks (Part 2 of Art. 64 of the Law on banks)
- e) Art. 9(4) AML/CFT Law provides the obligation of REs to conduct detailed client verification in case of doubt or suspicion about accuracy or completeness of client information provided.

Other CDD measures are undertaken as part of client examination process during identifying and/or servicing the client. These provisions do not however cover the full set of CDD measures, such as understanding the purpose and intended nature of the business relationship and performing on-going due diligence of the business relationship.

96. *Criterion 10.3* – Pursuant to Art. 9(1) AML/CFT Law, REs shall - conduct client identification and verification. Verification must be based on official documents or certified copies of documents provided by the client (or by the client's representative). This provision applies equally to natural and legal persons.;

97. *Criterion 10.4* – Art. 9(18) AML/CFT Law provides the obligation of REs to identify and verify a person on whose behalf or by whose order the financial transaction shall be executed, and identify the beneficiary. Art. 9(19) AML/CFT Law further requires that a RE uses available official documents to check that any person purporting to act on behalf of the customer is so authorised.

98. Art. 6(2) further requires that a RE identifies and verifies the identity of its client and the client's representative. Art. 1(35) goes on to define separately a "representative of the client" as an "individual [natural person] who legally has the right to perform certain actions on behalf of the client".

99. *Criterion 10.5* – Art. 69(218) of the AML/CFT Law requires REs to identify and verify the person by whose order the financial transaction shall be executed, and identify the beneficiary. Verification is defined under Art. 1(1)(3) as "verifying in the client's presence that the client (and the client's representative) matches the identification data received from it". Art. 9(7) AML/CFT Law, goes on to require the client and the client's representatives to "submit the information which is required to identify, verify, examine the client, clarify the information on the client. In order to establish the UBO (controller)". Art. 9(7) is written to compel the client, or any person acting on the clients behalf to provide such information when requested to do so by a RE under Art. 6(2).

100. Art. 1(21) of the AML/CFT Law defines an "UBO (controller)" as:

"the UBO (controller) - an individual who regardless of formal ownership may exercise decisive influence on management or economic activity of a legal person either directly or through other persons, which is carried out, in particular, through implementing rights of ownership or use of all assets or their significant Part, the rights of decisive influence on forming the structure, voting results, as well as taking actions which enable to determine the terms and conditions of business, give binding instructions or perform the functions of a management body, or which can exercise influence through direct or indirect (through another individual or legal person) possession by one person alone or together with associated individuals and/or legal persons a share in the legal person of 25 or more per cent of the share capital or voting rights in such legal person.

101. Besides, the UBO (controller) may not be the person who has the formal right to 25 or more percent of the share capital or voting rights of a legal person, but is an agent, nominal holder (nominal owner) or is only a mediator in relation to such right;"

102. The Ukrainian definition of BO includes the natural person or persons (as individuals) who ultimately owns controls a customer. It also includes those persons who exercise ultimate effective influence on management or economic activity (control) over a legal person or arrangement. This is applicable to a person exercising the control directly or indirectly, formally or informally. This appears to meet the definition of a BO in the FATF recommendations.

103. *Criterion 10.6*–Under the AML/CFT Law REs are required to undertake a "study of the client". While the requirements appear comprehensive, this regulation does not require that REs "understand the nature and the purpose of the business relationship". Sectoral Regulations in effect for those licenced and authorised by the NSSMC, NBU and NCSRFMS further require that the "intent of the business relations" is understood.

104. *Criterion 10.7* Art. 6(2)(2) AML/CFT Law obliges REs to conduct client identification and verification, client examination and clarifying the information held on the client. These requirements extend fully to the "client's representatives". However, this provision does not fully cover the requirement to scrutinise the transactions. In respect of the clients rated as posing a higher risk, Art.

6(5)(2)(e) mandates that the information is reviewed and updated at least once per year. NBU Reg. No. 417 and No. 388, include information to the “analysis of the financial transactions” which extends this requirement to all clients regardless of risk. This further provides a requirement for REs to scrutinise customer transactions for consistency with that customers activities, however the NBU resolution only applies to those entities supervised by the NBU.

105. *Criterion 10.8* – As noted in the analysis of the C. 10.5, Art. 9(7) AML/CFT Law contains an obligation to for the REs to establish the identity of any final beneficiary and to understand the ownership structure of such clients. The same requirement is found in sectoral legislation (par. 53 of the NBU Res. №417). However, as noted in C. 10.6, there is no requirement for REs not licenced and authorised by the NSSMC, NBU and NCSRFSM to understand the nature and the purpose of the customer’s business.

106. *Criterion 10.9* – Art. 9(9)(3) and Art.9(10)(2) AML/CFT Law requires that REs obtain identification data (of legal persons who are resident in Ukraine) which includes inter alia;

- a. the entity’s full name and identification code according to the Unified State Register of legal persons (which is sufficient to prove the person’s legal form and its existence see R.24 for details);
- b. information on the management bodies, details of a banking account, and current account number, the identification information of the persons who have the right to manage the accounts and/or property and sufficient information which allows for the determination of the UBOs; and
- c. the location of the entity.

107. Where a RE is seeking the identification and verification of non-residents, the REs must obtain identification data which includes inter alia;

- d. The entity’s full name, account number, a copy of a certified extract from the trade, banking or court register or certified registration certificate of the authorised body of a foreign state on registration of the relevant entity;
- e. information on the management bodies, details of a banking account, and current account number, the identification information of the persons who have the right to manage the accounts and/or property and sufficient information which allows for the determination of the UBOs;
- f. place or location of the entity’s business

108. These requirements do not, however, apply to legal arrangements. There is no evidence that legal arrangements form a material part of customers of the private sector.

109. *Criterion 10.10* – For the analysis of the definition of BO, see C. 10.5.

110. For the general requirements on identification and verification of the BO please refer to C. 10.5.

- a) Art. 9(9-10) AML/CFT Law, requires REs to request from the legal persons (whether they are resident to Ukraine or no) information which allows the RE to establish the UBO.
- b) and c) Pursuant to art. 9(9)(3) AML/CFT Law, during the identification and verification of residents the REs should establish for a resident and non-resident legal person the identification information concerning executive body, persons who are entitled to manage accounts and / or property. The definition of BO (please see analysis under 10.5) includes inter alia persons who perform the functions of a management body.

111. *Criterion 10.11* –

- a) According to Art. 9(10) AML/CFT Law, REs should find additional information on the trustees of Trusts. The law further requires that additional information is sought on the “trustees””, however the term “trustees” is not defined and has no contemporary meaning. However, the law does not:
- b) require REs to identify the settlor, the protector and the beneficiaries of the trust nor any person who may exercise ultimate effective control over the Trust.
- c) For other types of legal arrangements the banks are obliged to obtain information on and establish the UBOs of client, beneficiaries of financial transactions under par. 22 of the NBU Res. №417.

112. *Criterion 10.12* – According to Art. 9(11) AML/CFT Law, to identify the beneficiary of “life insurance contracts/policies, insurers (reinsurers), insurance (reinsurance) brokers” are required to:

- a) establish the last name, the first name and patronymic (if applicable) for the beneficiaries who are named in the contract or policy;
- b) gather sufficient information on beneficiaries for the RE to be satisfied that the beneficiary can be identified when the insurance payment is made. This is intended for the beneficiaries who are identified through their characteristics or category (for example, husband, wife or children at the time of the insured event) or by other means (e.g., by will);
- c) The above-mentioned Article also obliges insurers (to carry out identification and verification of the beneficiaries of life insurance contracts, when the insurance payment is made.

113. *Criterion 10.13(Met)* – REs are required to identify and verify the identity of all beneficiaries at the time of pay-out irrespective of the risk they pose, since the definition of beneficiaries (under Art. 1(1)(6) AML/CFT Law) extends to their beneficial owners..

114. *Criterion 10.14* – Under Art. 9(3) identification and verification of clients is required “when business relations are established” (subject to specific exemptions). Identification and verification of clients is also required when a suspicion is formed by the RE or when the financial transaction is subject to the financial monitoring controls, (money transfers equal to or over UAH 15000 (~EUR 491.75) and when a one-time financial transaction equal to or over UAH 150,000) (~EUR 4,917.46). There is no provision under the AML/CFT Law for deferring the identification or verification of the client.

115. The specific “exemptions” referred to are:

- 1) insurance contracts other than life insurance, under which the client is an individual, and the total insurance payment does not exceed UAH 5,000, (~EUR 163.92) or its amount is equivalent to the specified amount, including in foreign currency;
- 2) the business relations which arise on the basis of the agreements on participating in lotteries provided the size of the bet of the player does not exceed UAH 5,000 (~EUR 163.92);
- 3) the payment organisation, participant or member of the payment system, bank, branch of a foreign bank conducting financial operations without opening an account in the amount

which is less than UAH 150,000 (~EUR 4,917.46) or in the amount which is equivalent to the specified amount, including in foreign currency, precious metals, other assets, and units of value);

116. While these activities are “exempted”, such activities do not, in fact fall under the FATF definitions of FIs or DNFBPs.

117. Letters a), b) and c) – Not applicable

118. *Criterion 10.15* (Not applicable) –

119. *Criterion 10.16* – According to Cls. 62 the NBU Res. №388 and №417, the RE should apply CDD requirements to existing clients on the basis of their assessment of the risk that the client present while taking into account the measures that have been previously undertaken. The REs are also required to update that the information that they receive on a risk basis over a period not exceeding 3 years, and 1 year in higher risk cases.

120. *Criterion 10.17* – Pursuant to Art. 6(5) of AML/CFT Law, the REs are obligated to perform EDD on higher risk clients. There are also additional, specific provisions which must be complied with relating to foreign financial institutions with which correspondent banking relations and national & foreign PEPs. The same requirements can be found in the sectoral legislation on banks (Cls. 60 of the NBU Res. №417) and NBFIs (Cls. 45 of Regulation on exercise of financial monitoring of NBFIs)

121. *Criterion 10.18* – Art. 9 of the AML/CFT law provides for regulators and supervisors to allow REs to apply “simplified identification” in prescribed circumstances. At the date of the evaluation, only the NBU had exercised this power under Cls. 58 of the NBU Res. No.417. Cls. 58 requires that banks apply “simplified identification” on the following clients:

- 1) Ukrainian state authorities;
- 2) international agencies or organisations in which Ukraine participates under international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine;
- 3) institutions, bodies, offices or agencies of the European Union;
- 4) diplomatic missions of foreign states accredited in Ukraine in prescribed manner.

122. Cls. 59 details the identification requirements for these bodies, the only concession pertains to the identification of the UBO. Under the definition of “UBO” under Art. 1 (21) of the AML/CFT law, there is unlikely to be any person who would meet the definition of UBO of these bodies. Therefore it would appear that Cls. 58 provide more of a clarification of identification requirements rather than “simplified due diligence” intended under recommendation 10.18.

123. Furthermore, pursuant to Art. 9(3) of the AML/CFT law, it is not obligatory to carry out the client identification and verification in cases of:

- 1) insurance contracts other than life insurance, under which the client is an individual, and the total insurance payment does not exceed UAH 5,000, (~EUR 163.92) or its amount is equivalent to the specified amount, including in foreign currency;
- 2) the business relations which arise on the basis of the agreements on participating in lotteries provided the size of the bet of the player does not exceed UAH 5,000 (~EUR 163.92);

- 3) the payment organisation, participant or member of the payment system, bank, branch of a foreign bank conducting financial operations without opening an account in the amount which is less than UAH 150,000 (~EUR 4,917.46) or in the amount which is equivalent to the specified amount, including in foreign currency, precious metals, other assets, and units of value);
- 4) of transactions between banks registered in Ukraine.

124. Moreover, these “concessions” are disappplied in cases when the bank may have a suspicion of ML/FT, and/or when there are high-risk situations, as provided in CLs. 47, 49, 50-51, 53, 55, 64 – 65, 72.

125. *Criterion 10.19* – Under Art. 10 AML/CFT Law, in cases where it is impossible to identify/verify the client or determine the UBOs, the REs are obliged to refuse to (1) establish or keep business relationships and to (2) make an STR.

Criterion 10.20 – There is no specific legislative provisions that would allow REs to file an STR without identifying a customer who might be tipped off during the identification and verification process.

Weighting and Conclusion

126. Ukraine meets c.10.1, 10.3-10.5, 10.9, 10.10, 10.12- 10.14, 10.17 to 10.18 and 10.19, and mostly meets c.10.2, 10.6 to 10.8, and it does not meet 10.11 and 10.20.

127. The CDD requirements for natural and legal persons appear comprehensive and compliant with the recommendations. There remain weaknesses around the application of such provisions to legal arrangements. Other deficiencies have been in respect of those not bound by the NBU regulations in respect of a legal requirement to analyse financial transactions and also for CDD requirements to be applied to existing customers. **R.10 is rated LC.**

Recommendation 11 – Record-keeping

128. In the 2009 MER, Ukraine was rated LC with former R.10. The main deficiencies included the absence of requirement for NBFIs to maintain records of the identification data for at least 5 years following the termination of the account or business relationship; and of the requirement that transaction records should be sufficient to permit reconstruction of individual transactions. The obligation to keep documents is a narrow interpretation of the FATF standards, which require maintenance of all necessary “records on transactions”. Since 2009, Ukraine addressed these gaps by revising the AML/CFT Law and the application of the banking legislation provisions. The list of data that should be gathered both by banks and NBFIs is sufficient to reconstruct individual transactions. At the same time, the AML/CFT law still uses the term “documents” and not “necessary records”.

129. *Criterion 11.1* – Under Art. 6(2)(15) AML/CFT law, REs should keep “official documents, other documents (including the electronic documents) and their copies for no less than five years after the transaction is completed, the account is closed and business relations are terminated.” This obligation is repeated in the SL (Cls. 55(14)(13,14) of NBU Res. 417, Cls. 6,7,41 of the Regulation on the implementation of financial monitoring of the NBU for NBFIs)

130. *Criterion 11.2* – Under Art.6 AML/CFT Law (and as reiterated in SL), REs are responsible for keeping documents and their copies for at least 5 years after the transaction is completed, the account is closed and business relations are terminated. The documents include:

- a. customer identification materials;
- b. records on clients who are denied; services,
- c. customer analysis materials (including the results of any analysis to verify the client or conduct detail examination of the client); and
- d. documents that pertain to business relations.

131. *Criterion 11.3* – Art.6 (2) AML/CFT Law requires REs to retain all the necessary data and records on financial transactions which are sufficient to trace the progress of such operation, no less than five years after the transaction is completed.

132. *Criterion 11.4* –Art. 6(2)(16) AML/CFT Law details the type of information that REs should send to the law enforcement agencies. The “swift” provision is defined by timeframes specified per type of data. Under Art. 6(16) AML/CFT Law, REs must ensure free access to the respective state financial monitoring entities (FMEs), the FIU and LEAs. LEAs may receive documents and information constituting a commercial secret from banks as and in the amount established by the Law on Banks.

Weighting and Conclusion

133. Ukraine meets all criteria. **R.11 is rated C.**

Recommendation 12 – Politically exposed persons

134. In the 2009 MER, Ukraine was rated NC with the previous R.6. The assessors noted the absence of a clear and explicit definition of PEPs in line with the FATF glossary and of enforceable requirements for FIs to (1) put in place appropriate risk management systems (RMSs) to determine whether a potential customer is a PEP; (2) obtain senior management approval for establishing business relationships with PEPs; (3) take reasonable measures to establish the source of wealth and funds of PEPs; and (4) conduct enhanced ongoing monitoring on a business relationship with a PEP.

135. *Criterion 12.1* – Art.1(19) AML/CFT law defines foreign PEPs as “individuals who perform or performed prominent public functions in foreign countries during the last 3 years, namely: head of state or government, ministers and their deputies; deputies of the Parliament members of the Court, Constitutional Court or other judicial bodies whose decisions are not subject to appeal, except for appeal under exceptional circumstances; chairmen and members of management boards of central banks; special ambassadors and plenipotentiaries, persons charged by appointment, and heads of central military management bodies; leaders of the administrative, management or supervisory bodies of state enterprises, which are of strategic importance; leaders of governing bodies of the political parties represented in the parliament.”

136. The FATF defines PEPs as “individuals who are or have been entrusted with prominent public functions...”. While R.12 does not specify a time period during which an individual must remain defined as a PEP following the stepping down from prominent public function, FATF guidance points towards a more RBA and (specifically) not on prescribed time limits. The prescribed limitation periods of 3 years under Art.1 (19) AML/CFT Law is inconsistent with this approach.

- a) Under Art.6(4) AML/CFT Law, REs are obliged to treat national and foreign PEPs, their close or related persons and legal persons in which a PEP or a person acting on his behalf is the UBO as high risk. As per Art.6(5) AML/CFT Law, REs must apply additional CDD measures to such clients. As for the internal procedures for determining PEPs, under Art.6(3) AML/CFT Law, there is a general requirement for the REs to independently assess the risks of its clients subject to the risk criteria identified by the FIU and other agencies engaged in the AML/CFT supervision. In the case of banks, the description of the RMS additionally can be found in Ch. II(17) of NBU Res. 417. In addition, with the support of the IMF, the FIU has developed Guidelines (which are not enforceable) for detection and identification of PEPs and providing monitoring of their financial transactions. There is a list of information resources that contain list of domestic PEPs in Ukraine. There is no legislative or other binding requirement on other REs to implement similar RMS.
- b) The RE is required to obtain the permission of the head of the RE to establish business relations with PEPs pursuant to Art.6(5)(2)(b) AML/CFT Law. The same obligation is reflected in banking legislation (Ch. V(48) of NBU Res. 417).
- c) The REs are obliged to take measures to determine the source of funds of PEPs in order to “confirm the origin of their assets and the rights to such assets” under Art.6(5)(2)(c) AML/CFT Law. The same requirement is reiterated in Ch. V(50) of NBU Res. 417. This appears to include a requirement to establish the source of wealth of the customer
- d) REs are obliged to conduct “primary financial monitoring” of the financial transactions for and to update the information held on the customer at least once a year pursuant to Art.6(5)(2)(d) and (e).

137. *Criterion 12.2* – Art. 1(26) AML/CFT law defines a national PEP as the individuals who perform or performed special public functions in Ukraine during the last 3 years⁶⁸. The 3 year limitation is inconsistent with the FATF approach. Measures described under b) – d) of C.12.1 can be applied to foreign and domestic PEPs and persons with political functions in IOs.

138. *Criterion 12.3* - Under Art. 6(5) AML/CFT Law, requirements regarding PEPs also apply to their close or related persons. The related persons are defined as the persons with whom the family members of the national and foreign public figures and the figures who perform political functions in IOs have business or personal relations, as well as the legal persons whose UBOs are such figures or their family members or the persons with whom such figures have business or personal relations.

139. *Criterion 12.4* – Art.6(5)(2) AML/CFT Law requires that REs take measures to establish whether the beneficiary under a life insurance policy is a PEP. Where a PEP is identified, a detailed

⁶⁸ President, Prime Minister, members of the CoM; first deputies and deputies of Ministers, heads of other central executive bodies, their first deputies and deputies; people’s deputies; Chairman and members of the Board of the NBU, members of the Board of the NBU; heads and courts of the Constitutional Court, the Court, and higher specialised courts; members of the High Council of Justice; Attorney General and his deputies; head of the SSU and his deputies; Chairman of the Antimonopoly Committee and its deputies; Head and members of the Accounting Chamber; members of the National Council on Television and Radio Broadcasting; special ambassadors and plenipotentiaries; Head of General Staff - Commander-in-Chief of the armed forces, heads of army, air forces, naval forces; the state officials whose posts are referred to the first category of posts; leaders of administrative, managerial or supervisory bodies of state and public enterprises which the CoM refers to those of strategic importance; heads of governing bodies of political parties and members of their central statutory bodies”.

verification of the client holding the insurance policy is performed. Following the results of such verification, the decision is made whether to make a SAR to the FIU.

Weighting and Conclusion

140. Ukraine meets C.12.2 to 12.4 and partly meets C.12.1. The definition of a PEP under the AML/CFT law meets the FATF standards and applies to both foreign and domestic persons. The material weakness with the PEP definition under Ukrainian legislation is the limitation period of 3 years, after which person is declassified as a PEP. **R.12 is rated LC.**

Recommendation 13 – Correspondent banking

141. In the 2009 MER, Ukraine was rated PC with R.7. Gaps related to the gathering of sufficient information on a respondent institution; ascertainment of such institution's AML/CFT system's adequacy; and senior management approval for establishing new correspondent relationships.

142. *Criterion 13.1* – Pursuant to Art.6 (5) AML/CFT Law, REs are required to take the following additional measures with respect to foreign respondent FIs:

- a. ensure that information on their reputation is collected and determine if the respondent was subject to any supervisory measures (sanctions) with respect to its AML/CFT activities;
- b. establish the type of measures that the respondent has in place to prevent and counteract ML/FT and on the basis of the information received, determine whether the AML/CFT measures applied by the respondent are sufficient and effective;
- c. obtain the approval of the chief executive officer before opening the respondent account;
- d. pursuant to par.52, correspondent accounts for non-resident banks and in non-resident banks shall be opened with the permission of the manager of the executive body of the bank / manager of a foreign bank branch.

143. *Criterion 13.2* – (Not Applicable) Legislation does not provide for payable-through accounts.

144. *Criterion 13.3* – Pursuant to Art.64 Law on Banks, banks may not establish correspondence relationship with shell banks or banks and other non-resident FIs that maintain correspondence relations with shell banks. Pursuant to Art. 7 of the Law on Payment Systems and Money Transfer only banks may establish or maintain accounts. Therefore, other FIs may not maintain correspondent banking relationships with other banks.

Weighting and Conclusion

145. Ukraine meets all the criteria. C. 13.2 is not applicable. **R.13 is rated C.**

Recommendation 14 – Money or value transfer services

146. In the 2009 MER, Ukraine was rated PC with SR.VI. The main deficiencies were the following: no requirement for MVTs operators to maintain a current list of their agents; same preventive measures deficiencies as for banks; no statistics on sanctions imposed on MVTs.

147. *Criterion 14.1* – Under Art.7(27) of the Law “On the NBU”, the NBU may issue licenses to NBFIs applying to participate in the payment systems to transfer funds without opening accounts. The NBU

can also revoke those licenses. Also, Reg. 281 of the NBU Board on “Approval of the Procedure for Issuing General Licenses on Performing Foreign Exchange Transactions to Banks and Branches of Foreign Banks” (15.08.2011), CL. 1.2 states that NBFIs and the national postal operator have the right to carry out operations under Art.4 of the Law “On financial services and state Reg. of financial services markets”. Where the business involves currency transactions, the activity may only be undertaken after obtaining a general license in accordance with CL. 2 of Art.5 of CoM Decree 15-93 (19.02.93) “On the system of currency Reg. and currency control”.

148. *Criterion 14.2* – Under Art.164 Code on Administrative Offences, engagement in an economic activity without state registration or license entails a fine. There is, however, no mechanism or process to identify MVTS operators that carry out activities without a licence.

149. *Criterion 14.3* – Pursuant to Art.14(1)(1) AML/CFT Law, the NBU is the AML/CFT state Reg. and supervisor for the resident non-bank FIs that provide MVTS. This regime does not extend to postal operators in terms of them transferring money or to branches of foreign banks and other to banks as they are subject to other licencing requirements for those activities.

150. *Criterion 14.4* – Agents for MVTS providers are not subject to registration or licensing. According to NBU Res. 386 “On the approval of regulations in order of maintaining the register of commercial agents (commercial representatives) of banks” the NBU shall maintain that register and may establish requirements thereto.

151. *Criterion 14.5* – According to NBU Res. 42 “On Resolving the Issues of Accepting Cash for its Further Transfer” non-banking MVTS are not permitted to appoint agents.

Weighting and Conclusion

152. C.14.1, C.14.3, C.14.4 and C.14.5 are met, while C.14.2 is mostly met. **R.14 is rated LC.**

Recommendation 15 – New technologies

153. In the 2009 MER, Ukraine was rated PC with former R.8, as FIs were not required to have policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transactions.

154. *Criterion 15.1* – Under Art.6(23) AML/CFT Law, REs must manage the risks associated with the introduction and use of new and existing information products, business practices or technologies, including those allowing financial operations without direct contact with the client.

155. *Criterion 15.2* – - There is no explicit requirement for REs to undertake risk assessments prior to launching of new products, practices or technologies. Art.1 (44) AML/CFT Law defines risk management as “measures which PFM entities take to create and ensure the functioning of the RMS, which provides, among other things, determining (detecting), assessing (measuring), monitoring, and controlling risks to mitigate them”.

Weighting and Conclusion

156. Ukraine meets C.15.1 and does not fully meet C.15.2. REs are required to have general risk management policies in place which extend to technological systems, however there is no requirement to undertake an assessment of the risks when new systems are launched or implemented. **R.15 is rated LC.**

Recommendation 16 – Wire transfers

157. In its 2009 MER, Ukraine was rated PC with SR.VII. The main deficiencies were: Order 211 on Ukrposhta (Ukrainian State Enterprise of posts) did not meet the FATF requirements; there was no explicit requirement for FIs to adopt effective risk-based procedures for identifying and handling wire transfers not accompanied by complete originator information; competent authorities did not have the necessary powers to effectively monitor NBFIs and Ukrposhta with the requirements of NBU Res. 348 or the necessary mechanisms to impose sanctions for specific breaches to Res. 348.

158. *Criterion 16.1* – According to Art.9 (14) AML/CFT Law, REs must ensure that all transfers of EUR 502 (or equivalent) or more are accompanied with the following information:

a) information on the payer

i) for individuals - last name, first name and (if any) patronymic; number of the account from which money is drawn or, if no account is available, unique registration number of the financial transaction which enables to track the transaction; place of residence (or place of stay for residents or place of temporary stay for non-residents). Alternatively, the number of the taxpayer's registration card or the identification number according to the state registry of individuals who pay taxes and make other such payments may be provided. In cases where the person does not have an ID tax number, REs can request the passport series and number.

ii) for legal persons – name, location, USR identification code, number of the account from which money is drawn or, if no account is available, unique registration number of the financial transaction;

b) information on the recipient:

i) for individuals - last name, first name, and (if any) patronymic, number of the account to which the money is credited, and if no account is available, unique registration number of the financial transaction;

ii) for legal persons - full name, number of the account to which the money is credited, and if no account is available, unique registration number of the financial transaction.

159. *Criterion 16.2* (Not Applicable)

160. *Criterion 16.3* – There are no requirements for cross-border wire transfers below the applicable de minimis threshold. However, the threshold which applies in Ukraine is lower than the one prescribed in C.16.1 and applies to both domestic and cross-border wire transfers.

161. *Criterion 16.4* – Under NBU Res. 43 (CL.s 1 and 2) the NBU requires banks and NBFIs to verify the information on the initiator/recipient in cases of ML/FT suspicion on the transaction.

162. *Criterion 16.5* – Under Art.9(1&3) AML/CFT Law a RE must identify and verify the client or their representative, based on official documents from the client (or their representative) or certified copies thereof. Identification and verification apply to transfers (including international) between EUR 502 and 5020 (or equivalent) made by an individual or individual entrepreneur.

163. *Criterion 16.6* – Under Art.9(14) AML/CFT Law, REs must ensure that all transfers which equals or exceeds EUR 502, or equivalent, are accompanied with the “unique registration number” of the financial transaction which enables tracking of the transaction. In addition, Art.9(15) states that identification or verification of the client need not be performed a) if the financial transaction is

performed by the persons who have previously been identified or verified, and b) if transactions are performed between banks registered in Ukraine.

164. *Criterion 16.7* – Art.6 (2) and (15) AML/CFT Law stipulate that REs must keep documents (including electronic), which identify the clients (and their representatives), and the persons whose transactions have been denied. REs must retain these records no less than 5 years after the transaction is completed, the account closed, and business relation otherwise terminated.

165. *Criterion 16.8* – There is no explicit prohibition on executing wire transfers where C.16.1-7 cannot be met. However, if a RE is unable to comply with the relevant legal requirements, it cannot proceed with a wire transfer. In particular, NBU Res. 43 (Ch. II, Cls. 1 and 2) requires that transactions not containing relevant information under C.16.1-7 be suspended or denied.

166. In addition, Instruction 22 (Ch. II, Cls. 2.5) on the Regulations on non-cash payments in the national currency requires banks to return, without execution, settlement documents if information is not provided and no supporting documents submitted. Furthermore, NBU Res. 216 (Cls. 3.7-3.8) on the execution of bank remittance documents, provides that authorised REs are entitled to return the payment order in foreign currency or precious metals to the payer if the payer does not provide documents and information needed to determine the information.

167. At the same time, Art.10 AML/CFT Law states that REs must refuse to establish or keep business relationships or perform a financial transaction, where the identification and/or verification of the client is impossible. This includes where the RE has reason to doubt the information submitted or that the person acts on their own behalf.

168. *Criterion 16.9* – Art.9(14) (1) & (2) requires any REs undertaking wire transfers to ensure that all originator and beneficiary information is present. This would appear to bind intermediaries equally and apply where such information accompanies a cross-border wire transfer.

169. *Criterion 16.10* – – There are no specific requirements in the AML/CFT Law dealing with technical limitations of other MVTS. Art.9(14) requires that the information detailed under C.16.1 is provided with all wire transfers. The prima facie effect of this is that any wire transfer which does not contain all of the required originator and beneficiary information would have to be rejected. Transaction records must be retained for 5 years from the date of the transaction whether such limitations are present or not.

170. *Criteria 16.11 & 16.12* – The legal framework for the monitoring, rejection and suspension of financial transactions is established under Art.9, 10 and 15 AML/CFT Law. The obligations for FIs appear to apply equally whether the FI is acting as principal or as intermediary.

171. Art.9(14) AML/CFT Law requires that all REs ensure that transfers equal to or over EUR 502 contain the information detailed under C.16.1. Where the information on the originator or beneficiary is not present, the MVTS (acting as intermediary) is required to reject the payment and make a disclosure to the FIU.

172. In addition, NBU Res. 43 (Ch. II, Cls.1, sub-Cls. 3) requires banks to establish procedures for ensuring implementation of AML risk management procedures the obligation to refuse or suspend transfers, which contain limited information about the originator or the beneficiary. The same obligations are found in the 2016 NBU Statute on the implementation of financial monitoring of NBFIs (Sec.II, Cls. 17).

173. *Criteria 16.13 & 16.14* –

174. According to Art.9(14) AML/CFT Law the initial FMEs are required to ensure that all the transfers which equals or exceeds EUR 502 (or equivalent) are accompanied with information about the payer and the recipient, including their account details, and a unique account number for a financial transaction. However, the law does not explicitly require beneficiary FIs to take reasonable measures, which may include post-event monitoring or real-time monitoring where feasible, to identify cross-border wire transfers that lack required originator or beneficiary information.

175. *Criterion 16.15* – See the analysis for C. 16.11 and 16.12 above. Art.9(14) AML/CFT Law applies to beneficiary and intermediary institutions equally.

176. *Criterion 16.16* – Pursuant to Art.5 AML/CFT Law, MVTS providers are defined as REs, to which all requirements of the AML/CFT Law apply.

177. *Criterion 16.17* –

- a) The Reg. does specifically impose measures to be taken when the payment service provider acts both as the originating and beneficiary entity of the transfer. However, the 2016 NBU Statute on the implementation of financial monitoring of NBFIs (Sec.II, Cls. 17) stipulates that the internal documents of NBFIs must adhere to the requirements for verification of information on the originator/recipient. Precisely, in case of suspicion that a transaction is carried out with the aim of ML, FT or PF, FIs should provide relevant information to the relevant SA.
- b) There is no direct requirement to file a STR in any other country. However, given the principle of territoriality of AML/CFT Laws, when a payment service provider is established in several countries, performs a money transfer between two of its entities, and the transaction proves to be suspicious, it may be required to submit a STR to the FIU in each of these countries pursuant to their respective domestic laws.

178. *Criterion 16.18* – Art.17 AML/CFT Law provides detailed procedures for the suspension of financial transactions with certain features. Art.17(8) states that the lists of persons involved in terrorist activity or subject to international sanctions is made available to FIs by the FIU and FIs and the FIU are responsible for compliance with the types and conditions of enforcement of sanctions referred to in the lists. In addition, NBU Res. 417, (sec.VIII), defines the procedure of suspension of financial transactions and execution of decisions (orders) of specially authorised agencies. In particular, banks must suspend financial transaction(s), where a party or beneficiary is a person included in a list of designated persons involved in terrorist activity, and is obliged to use software that provides automatic detection and suspension of the financial transaction(s).

Weighting and Conclusion

179. Ukraine meets C.16.1 and C.16.3-16.18. . **R.16 is rated C.**

Recommendation 17 – Reliance on third parties

180. In its 2009 MER, Ukraine was rated NA with the previous R.9. As the law did not explicitly prohibit the use of third parties, it was recommended to introduce such a prohibition in law.

181. *Criterion 17.1* (Not Applicable) – Art.9(5) AML/CFT Law provides that the procedure for REs authorising third parties to identify and verify the client may be determined by Regulations of the state FMEs. To date no such Regulations have been developed by the supervisors. Art.9(5) can be read as stating that, without Regulations, any reliance on third parties would be frustrated.

182. *Criterion 17.2 and 17.3* (Not Applicable)

Weighting and Conclusion

183. Ukraine does not allow for the reliance on third parties. **R.17 is rated N/A.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

184. In its 2009 MER, Ukraine was rated PC with the previous R.15 and 22. Gaps were the following: no legal requirement or practice for NBFIs compliance officers to be at management level; no legal requirement nor practice for NBFIs to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls; low awareness of NBFIs of roles and responsibilities of the internal audit function; no adequate requirement for FIs to put in place screening procedures to ensure high standards when hiring employees or to pay particular attention to their subsidiaries and branches in countries which do not or insufficiently apply the FATF Recommendations; and no requirement to ensure implementation of the higher AML/CFT standard by their foreign subsidiaries and branches.

Criterion 18.1 – Under Art.6(1) AML/CFT Law, REs “develop, implement and constantly update” subject to the rules of financial monitoring, financial monitoring programmes and other financial monitoring internal documents; and designate an employee responsible of the implementation of these procedures (“responsible officer”).

- a. As per Art.7 (1 & 2) the responsible officer is appointed at the management level of the RE.
- b. Art.6(10) requires that state FMEs, which supervise REs, should set qualification requirements to the respective responsible employees; and requirements for REs to check whether candidates to posts of responsible officers meet such qualification requirements. At the same time, the Regs. of the state FMEs may set requirements on the “irreproachable business reputation” (as defined by Art.1 AML/CFT Law) of the responsible officer.
- c. Art 6(2)(20) AML/CFT Law obliges REs to take measures to ensure that the responsible officer received appropriate AML/CFT training within 3 months of appointment. REs must ensure that the responsible officer undertakes training at least every 3 years.
- d. Art.6(2),(19) AML/CFT Law requires that REs carry out an audit of their activities against the requirements of the AML/CFT Law. Alternatively, REs may commission an independent audit (except for banking activities). In addition, Art.7(6) stipulates that the responsible officer acts independently, reports only to the head of the RE, and must inform the head of the RE at least monthly of any financial transactions found to be subject to financial monitoring, and of responses taken.

185. *Criterion 18.2* –

- a) Art.6 (1) AML/CFT Law requires financial groups whose members include REs, develop and adopt common rules of financial monitoring, including the procedures for using information within the group for the purpose of financial monitoring. Such rules cover all REs, which form part of the financial group.

- b) The AML/CFT Law requires the appointment of a responsible employee under C.18.1(a), but it is not clear from the Law how much authority that employee has over the Group's REs located outside Ukraine. This is particularly noteworthy where the parent RE is outside Ukraine and does not have an equivalent role of the responsible employee at group level.
- c) Art.6(2)(14) requires that the details of any information submitted to the FIU is not disclosed to a third party outside the RE itself (this includes a prohibition of sharing details of STRs made within the group). While this covers details of information submitted to the FIU, the disclosure of aggregated statistical information between group entities for AML/CFT purposes (such as numbers of STRs submitted in a given period) does not seem covered.

186. *Criterion 18.3* – Art.6(7) AML/CFT Law provides that the requirements of the Law, are applied by the RE, its affiliates, other separated units and subsidiaries, including the ones located in the states in which the FATF Recommendations do not apply or apply insufficiently within the limits determined by the legislation of such State. In addition, REs with affiliates, other separate units and subsidiaries located in such states, are obliged to assess the measures taken in such countries to combat ML/FT. If such measures are not allowed by the law of the host country, the RE is obliged to inform the supervisor of the respective precautionary measures which it will take to limit the risks of identified. They must also take appropriate precautionary measures to: conduct in-depth verification of the client to establish business relations with individuals or companies of such countries; notify the FIU on the financial transactions with the clients of the respective states; warn the representatives of the non-financial sector that transactions with individuals or legal persons in the respective countries may contain the risk of laundering illegally derived income or FT or PF.

Weighting and Conclusion

187. Ukraine meets C.18.1 and 18.3 and partially meets C.18.2. The AML/CFT law requires that adequate internal controls are established by REs and these are tested by an internal audit function. However the confidentiality and secrecy rules inhibit effective group-level compliance and sharing of AML/CFT information. **R.18 is rated LC.**

Recommendation 19 – Higher-risk countries

188. In its 2009 MER, Ukraine was rated NC with the previous R.21. The main deficiencies were: no clear requirement for FIs to give special attention to all business relationship and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations; no explicit requirement that the examination of the background and purpose of the financial transactions with such countries should be extended as far as possible; and no enhanced mechanisms to apply full set of counter measures.

189. *Criteria 19.1 & 19.2* – Art.6 (4) AML/CFT Law requires REs to apply EDD where higher risks are identified. Art.6(4) requires the following clients to be considered as higher risk: the clients resident in states which do not apply or adequately apply the FATF Recommendations (or recommendations of other international bodies with AML/CFT responsibilities; foreign FIs (except for FIs registered in the EU and FATF Jurisdictions with which correspondent relations are established; national and foreign PEPs; and clients included in lists of persons related to terrorist activity, or on which international sanctions have been imposed. Although these provisions do not explicitly refer to

counter-measures, they are sufficiently broadly drafted to permit the imposition of counter-measures.

190. *Criterion 19.3* – FIU Decree 139 (01.10.2012) approved the 2012 FATF Public Statement “On the list of countries (territories) that do not or improperly fulfil the recommendations of international intergovernmental organisations engaged in AML/CFT”, under which state FMEs develop procedures for applying preventive measures in relation to such states. In particular, REs must apply preventive measures:

- a) when branches, representative offices or subsidiaries of REs are created in such countries;
- b) warn REs of the non-financial sector that any transactions with individuals or legal persons in the respective state may have a risk of laundering criminal proceeds or FT or PF; and
- c) limit business relations or financial transactions with such state or persons in such states. However, the authorities did not provide specific examples where such procedures took place.

Weighting and Conclusion

191. Ukraine meets all criteria. **R.19 is rated C.**

Recommendation 20 – Reporting of suspicious transaction

192. In its 2009 MER, Ukraine was rated PC with the previous R.13 and SR.IV. The technical deficiencies were: the reporting regime could not be regarded as suspicion-based and in line with the specifics of different sectors; no STR requirement applied in cases possibly involving insider trading and market manipulation; all types of attempted transactions were not fully covered; shortcoming in the criminalisation of FT limits the reporting obligation; and no STR requirement in law or Reg. for all types of attempted transactions.

193. *Criterion 20.1* – Art.6(2) AML/CFT Law obliges REs to ensure that financial transactions “subject to financial monitoring”, are detected, during or after they are conducted and reported on the day of the suspicion arising. Art.6(2) also includes an obligation to report should the client refuse to provide CDD. As per the AML/CFT Law, REs must notify the FIU of the following categories of transactions (Art.6(2)(6)):

- a. financial transactions subject to “mandatory financial monitoring” – i.e. threshold transactions that present one or more objective risk indicators provided by Art.15 AML/CFT Law. Under Art. 6(2)(6)(a) AML/CFT Law, these should be notified to the FIU within three working days from the day of their registration or attempt of their implementation;
- b. financial transactions subject to “internal financial monitoring” – i.e. suspicion-based, as well as information on their suspicions in relation to activities of persons or their assets, provided there is reason to believe that they are connected with a crime defined by the CC; such information should be reported to the FIU on the day of suspicion or attempt to conduct the financial transactions, but no later than the following working day from the date of registration of such financial transactions; and
- c. financial transactions where there is reason to suspect that they are related to, or intended for FT or PF; they should be reported to the FIU on the day of their discovery, but no later

than the following working day from the date of registration of such financial transactions. LEAs should be informed of such financial transactions and their participants.

194. *Criterion 20.2* – No threshold is specified in the AML/CFT Law for the suspicious transactions that should be notified to the FIU. While reporting ML attempted transactions is an express requirement under (a) and (b) of Art.6(2)(6) AML/CFT Law, there is no such explicit obligation on FT related suspicious transactions however (c) refers to financial transactions that are related or intended for FT which is interpreted as covering FT attempted suspicious transactions.

Weighting and Conclusion

195. Ukraine meets all criteria. **R.20 is rated C.**

Recommendation 21 – Tipping-off and confidentiality

196. In its 2009 MER, Ukraine was rated LC with the previous R.14. The AML/CFT Law did not explicitly provide protection of entities if they acted in a “good faith” and did not know what underlying criminal activity was involved, and regardless of whether illegal activity occurred. FIs were not covered by the tipping off prohibition.

197. *Criterion 21.1* – Art.12(3) AML/CFT Law stipulates that REs, their officers and other employees do not bear disciplinary, administrative, criminal and civil liability for submitting information on financial transactions which are subject to financial monitoring and any other information which may be associated with ML, FT or PF. Disclosures are made to the FIU and confer protection provided they act within the limits of the AML/CFT Law, even where such actions cause harm to legal persons or individuals, and other actions related to implementing the AML/CFT Law.

198. *Criterion 21.2* – Pursuant to Art.12 (11) AML/CFT Law the employees of REs, state FMEs and other state bodies which provide the FIU with any information on any financial transaction and its participants are “forbidden to inform the persons who take part in implementing such transactions, and any third parties.” Moreover, the Law introduces a prohibition of disclosure that an STR or related information is being filed with the FIU, to employees of REs, state bodies, local self-government bodies, officials, and to employees of economic entities, enterprises, institutions and organisations irrespective of their ownership form, which are not REs, who receive requests of the FIU concerning information on any financial transaction, and/or provide response to such requests.

199. Sanctions for breaching the disclosure prohibition are covered by the Code on Administrative Offences (Art. 166⁹) and CC (Art. 209¹). Sanctions available include fines from EUR 101 to 502 and other penalties.

Weighting and Conclusion

200. Ukraine meets all criteria. **R.21 is rated C.**

Recommendation 22 – DNFBPs: Customer due diligence

201. In the 2009 MER, Ukraine was rated NC with the previous R.12. The assessors identified a wide range of deficiencies regarding CDD measures in place for different types of DNFBPs. The new AML/CFT law addressed a number of gaps.

202. *Criterion 22.1* –

- (a) Under Art.15(1) AML/CFT Law, casinos would be required to identify and verify the identity of a client if the amount of a financial transaction equals and surpasses EUR 1004.
- (b) Under Art.8(2) AML/CFT Law, real estate agents involved in a transaction regarding the sale and purchase of real estate are obliged to comply with the CDD requirements.
- (c) Under Art.8(3) and 15(1) AML/CFT Law, dealers in precious metals and stones must comply with the CDD requirement if they engage in a cash transaction equal or above EUR 5020.
- (d) According to Art.8(1) AML/CFT Law, lawyers, law offices and associations, notaries, and persons who provide legal services as well as auditors, audit firms, economic entities which provide accounting services provided such services are used in clients' financial transactions must identify and verify the client's identify if preparing or carrying out transactions for their client related to the following activities: purchasing and selling real estate; managing the client's assets; managing a bank account or a security account; raising funds to form legal persons, ensure their activities and manage them; forming legal persons, ensuring that they operate (including audit) or manage them, as well as purchase legal persons (corporate rights).
- (e) The AML/CFT Law does not cover businesses which undertake the following activities:
 - acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - providing a registered office, business address or accommodation, correspondence or administrative address for a company, partnership or any other legal person or arrangement;
 - acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangements;
 - acting (or arranging for another person to act) as a nominee shareholder for another person.

203. Ukrainian Law does not provide for the creation of legal arrangements but there is no prohibition on Ukrainian persons or businesses from acting in Ukraine as trustee of a trust formed abroad.

204. *Criterion 22.2* – Art.6(2)(15) AML/CFT law applies to businesses listed under C.22.1. See R.11 for a description of record-keeping requirements.

205. *Criterion 22.3* – See R.12 for a detailed description of measures taken by Ukraine to comply with the PEPs requirements and the identified gaps.

206. *Criterion 22.4* – According to Art.6(2)(23) AML/CFT Law, the RE is obliged to manage the risks associated with the introduction or use of new and existing information products, business practices or technologies, including those that provide financial transactions without direct contact with the

client. See R.15 for a detailed analysis of the measures taken by the UAs and deficiencies linked to new technologies requirements.

207. *Criterion 22.5 (NA)* – See R.17 for a detailed analysis of the measures taken by the UAs and deficiencies linked to third-parties requirements.

Weighting and Conclusion

208. Ukraine meets 22.2, mostly meets C.22.1, 22.4 and 22.5. C.22.3 is partly met. **R.22 is rated LC.**

Recommendation 23 – DNFBPs: Other measures

209. In the 2009 MER, Ukraine was rated NC with the previous R.16. It was noted that the same deficiencies in the previous R.15 and 21 in respect of FIs apply equally to DNFBPs. Furthermore, the compliance and audit functions of DNFBPs were not in place. Since then, the Ukraine adopted a new AML/CFT law and the deficiencies in the R.15 & 21 were addressed in Art.6 and 8.

210. *Criterion 23.1* – DNFBPs are required to report suspicious transactions based on the same provisions of the AML/CFT Law as FIs. The AML/CFT Law (Art.8(5)) contains a legal privilege-based exemption to the reporting obligation by lawyers, lawyers offices and associations, the individuals providing legal services, auditors, accounting firms, economic entities providing accounting services which does not appear to unduly or unreasonably obstruct the requirement of a legal professional to submit an STR and so is in line with the FATF standards.

211. *Criteria 23.2 (R.18), 22.3 (R.19) & 22.4 (R.21)* – See R.18, R.19 and R.21.

Weighting and Conclusion

212. Ukraine mostly meets all criteria. **R.23 is rated LC.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

213. In its 2009 MER, Ukraine was rated PC with the previous R.33. It was noted that the existing system did not achieve adequate transparency of BO and control of legal persons. Relative ease with which fictitious companies could be established hindered AML/CFT efforts, while there were concerns on the timely access to adequate, accurate and current information contained in the USR.

214. *Criterion 24.1* – Guidance on how to create a legal person under the Civil Code of Ukraine can be found on the MoJ website. The legal framework which governs the different types, forms and basic features of legal persons in Ukraine is described in par. 61 to 71 of the MER. The Civil Code (Art.87) sets out the process for the creation of legal persons. In addition, the Law on Registration provides that the information on the UBO (controller) of legal persons and their founder is submitted to the USR.

215. *Criterion 24.2* – The authorities are required to assess the risks posed by each type of legal person (CoM Res. 717) and have done so in the context of the NRA. However, the NRA has only considered the risks posed by legal persons more generally rather than those formed under Ukrainian Law or those different types of legal persons permitted by the Civil Code.

216. *Criterion 24.3* – According to the Civil Code (Art.87) legal persons shall be deemed as created from the date of their state registration. The required information for the registration covers the

requirements under this criterion. The information contained in the USR is open and public (except for registration card account numbers of taxpayers and passport data). There is an exception to the above for state agencies and local governments as entities established by the Law “On Registration” (see C.24.4) and certain public associations such as lawyers’ associations, chambers of commerce, condominium associations or religious organisations.

217. *Criterion 24.4* – MoJ Res. 578/5 (12.04.2012) outlines the typical documents to be maintained by legal persons, which include: (a) constituent documents (constituent act of founding agreement provisions) and changes to them; (b) list of founders/participants (register of shareholders); (c) extract from the USR (on the company, proof of incorporation, legal form, address, list of directors, etc); and (d) other documents that include BO information. The information is stored by the legal person within the country. This requirement applies to all legal persons.

218. In addition, according to the Law “On the Depository System of Ukraine” (06.07.2012) (Art.1(16)) the issuer of registered securities maintains BO information of shareholders, as well as it maintains a register of the number of shares held by each shareholder and the categories of shares (including the nature of the associated voting rights). In this case, the designated depository institution is the NBU.

219. *Criteria 24.5 & 24.7* – The Law “On Registration” (Art.10), states that all documents and information that have been entered into the USR are valid and can be used in a dispute with a third party. However, the law does not provide for any specific mechanism or procedure for the registrar to verify and update on a timely basis the information referred to under C.24.3 and 24.4.

220. It should be noted that the SFS undertakes validation and verification on those legal persons that it considers to pose a higher risk for tax purposes. This verification is undertaken on a relatively expeditious basis. There remains no verification process for legal persons which are not higher risk.

221. *Criterion 24.6* – Art.64 Commercial Code obliges legal persons, except for state and municipal enterprises, to establish their UBOs (controllers), regularly update and store information on them and submit it to the USR in cases and in an amount provided by law. The Law “On Public Associations”, Art.9 (2), stipulates that the information on the BO and their founder is submitted to the USR (subject to those exceptions noted under C.24.3). In addition, the AML/CFT Law, Art.9(9), (3) requires REs to establish the information detailed under C.10.9 and 10 for legal persons.

222. *Criterion 24.8* – Although the Commercial Code and Law “On public associations” provides the requirement for the designation of the UBO, there is no specific provision that requires one or more natural persons resident in Ukraine or for the appointment of an accountable DNFBP to be responsible for maintaining BO and be accountable to the authorities. The Law “On Registration” stipulates that failure of a legal person to submit UBO information to the USR results in administrative liability under the Code on Administrative Offences (Art.166). These sanctioning powers are limited to being applied against the legal person and not against any individuals directly, however where a legal person has been shown to have committed an offence under the Commercial Code, the entity’s officers (directors) may also face liability in a personal capacity.

223. *Criterion 24.9* – The Law “On Registration”, Art.7, provides that the USR software should provide storage of information on legal persons, other organisations and individuals-entrepreneurs for a timeframe of 75 years from the date of state registration, of the termination of legal person, other organisation or termination of business activity of physical person-entrepreneur. In addition, REs are obliged to keep official documents, other documents (including electronic documents created by the PFME), their copies as to identifying the persons (clients, representatives of clients),

as well as the persons who are denied by the PFME to conduct financial transactions. REs are obliged to examine the client, clarify information on the client, as well as all documents, which pertain to business relations (conducting financial transactions) with the client (including the results of any analysis as measures are taken to verify the client or conduct detail examination of the client), no less than five years after the transaction is completed, the account is closed, and business relations are terminated. The normative legal act of the state FME which according to this Law, performs the state reg. and supervision functions over the PFME may provide for longer terms of keeping the documents (Art.6 AML/CFT Law, Cls. 2, sub-Cls. 15). Also, the Law "On Restoring Debtor's Solvency or Declaring it Bankrupt", Art.41, states that the liquidator stores the documents of bankruptcy, which according to legal documents are subject to compulsory storage for a period not less than five years from the indicated date of bankruptcy.

224. *Criterion 24.10* – Competent authorities have access to information on legal persons in order to exercise their powers as defined by law. Access to basic and UBO information is provided exclusively electronically, free of charge and in accordance with the procedure of providing information from the USR (Law "On Registration, Art.11, par. 7). Moreover, the FIU is entitled to request and receive additional information from REs as determined by the AML/CFT Law, Art.20 (par. 6).

225. *Criterion 24.11* – Ukraine does not have legal persons able to issue bearer shares, while according to the Law "On securities and stock market" shares have only a book-entry form. Under SC Decision 804 (24.06.2014) joint-stock companies were obliged to transfer issued certified shares into registered book-entry shares.

226. *Criterion 24.12* – The legislation of Ukraine does not provide for nominal activity (legal persons able to have nominee shares and nominee directors) and has no concept of nominal recipient. However, there is nothing in Ukrainian law which prevents a person acting as a nominee for another. The broad definition of UBO appears to look through most simple nominee type arrangements.

227. *Criterion 24.13* – As already noted, under the Law "On Registration", failure of a legal person to submit information on its UBO to the USR entails administrative liability under Art.166 Code on Administrative Offences. Sanctions available include fines between EUR 101 and 502 as well as administrative penalties. Sanctions at this level do not appear to be dissuasive in nature. Art. 205 CC provides that submission of false information and deliberate submission of such registration documents that contain false information by legal persons or natural persons-entrepreneurs shall entail criminal liability. The Code on Administrative Offences (CAO), Art.92, provides for administrative liability in case of negligent storage, damage, illegal destruction, concealment, illegal transfer to another person archival documents, and violation of the procedure for access to these documents.

228. *Criterion 24.14* –

- a) As already noted, under Art.9 Law "On Registration" UBO information is submitted to the USR, and this information is open and public through the portal of electronic services. In addition, the USR provides at the time of request relevant information on the issuance of permits and licenses, as well as the issued permits and licenses for the conclusion of civil contracts, including on the availability of records of state registration of the termination of the legal person or a state of suspension, state of registration of the suspension or state of the cessation of business of an individual-entrepreneur, location, activities, central or local executive authority, to the jurisdiction of which the state-owned enterprise or state share in the authorised capital of a legal person.

- b) & c) Art.23 AML/CFT Law authorises the authorities to provide international cooperation with foreign agencies to the extent of experience and information exchange on AML/CFT, in accordance with treaties signed by Ukraine, on the principle of reciprocity or upon its own initiative. The issues noted under R.31 with respect to access by LEAs to information may have an impact on their ability to provide international cooperation rapidly.

229. *Criterion 24.15* – The FIU sends feedback forms with foreign FIUs on the quality of the information provided, its use as well as on the results of the analysis carried out on the basis of the information received in case of the request of such FIU.

Weighting and Conclusion

230. Ukraine meets C.24.1, 24.3, 24.4, 24.6, 24.11 and 24.15. C.24.2 24.5 and 24.7 are partly met. C.24.8, 24.9, 24.10, 24.12, 24.13 and 24.14 being mostly met. Ukraine meets or mostly meets most of the criterion under R.24. Although the SFS undertakes validation and verification on those legal persons that it considers to pose a higher risk for tax purposes, material deficiencies exist in respect to the verification of legal and beneficial ownership information held on the USR and to its sanctioning powers in respect of recalcitrant legal persons. **R.24 is rated LC.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

231. In its 2009 MER, Ukraine was rated Not-Applicable with the previous R.34.

232. *Criterion 25.1* – According to Art.1(41) AML/CFT Law, a trust is a non-resident legal person which runs its operations on fiduciary terms where the “attorney” acts for the account of and in the interests of the principal, and is obliged to take certain legal actions for reward. The legislation of Ukraine does not provide for the establishment and operation of legal arrangements in the country. Ukrainian Law does not prevent persons resident in the country from acting as trustee of a trust formed under the laws of another jurisdiction. There is nothing in Ukrainian law which requires professional trustees based in Ukraine from maintaining the information referred under C. 25.1(a) and (b). Ukraine is not a signatory to the Hague Convention on Laws Applicable to Trusts and their Recognition.

233. *Criterion 25.2* – There is no such requirement.

234. *Criterion 25.3* – There is no explicit requirement on trustees to disclose their status. However, according to Art.9 AML/CFT Law, REs should identify and verify the client or the client’s representative. With respect to trusts, during the identification and verification, “REs shall identify the trustees.” Moreover, Art.9(18 and 19) stipulates that if the client acts as a representative or on behalf of another person, the RE is obliged, to identify and verify the person on whose behalf the financial operation is effected, and establish the beneficiary. In the case where the client acts as a representative, the RE uses available official documents to check the authority of such person. REs are also obliged to refuse to establish or keep business relationships or from performing a financial transaction where the identification and/or verification of the client (including the establishment of the data which enable to determine the UBOs) is impossible or the RE has reason to doubt that the person acts on its own behalf.

235. *Criterion 25.4* – There are no legal impediments preventing professional trustees from providing information referred to under this criterion.

236. *Criterion 25.5* – LEAs are empowered to request any information necessary for investigation within the competence determined by legislative acts. However, as noted under R. 31, certain onerous conditions apply where LEAs apply for a court order to obtain access to information.

237. *Criterion 25.6* – see C. 24.14.

238. *Criterion 25.7* – While Ukraine does not recognise trusts within the jurisdiction, there is no prohibition on the provision of trust services from within Ukraine.

239. *Criterion 25.8* – While Ukraine does not recognise trusts within the jurisdiction, there is no prohibition on the provision of trust services from within Ukraine.

Weighting and Conclusion

240. Ukraine mostly meets C.25.3 to 25.6, and does not meet C. 25.1, C.25.2, 25.7 and 25.8. The legal system of Ukraine does not recognise trusts and is not a signatory to the Hague Convention. A weak definition of legal arrangements and the parties to such an arrangement mean that there are material deficiencies in R.25. **R.25 is rated PC.**

Recommendation 26 – Regulation and supervision of financial institutions

241. In 2009 Ukraine was rated PC with the previous R.23. The assessors noted various deficiencies related to fit and proper criteria, risk-based approach (RBA) to AML/CFT and adequate AML/CFT framework for AML/CFT supervision over foreign exchange offices and payment systems.

242. By way of context, the AML/CFT supervisors and sectors they supervise are as follows: the NBU supervises banks, non-bank remitters and currency exchange bureau; the SC supervises investment sector entities; the MOI supervises the post office; and the NC supervises the other FIs covered by the framework. Licensing responsibility is the same except that the NBU and the NC licence remitters and currency exchange bureaux. The table under Ch. 1 articulates the position.

243. *Criterion 26.1* – Art. 14 of the AML/CFT Law specifies the authorities responsible for the AML/CFT supervision and the sectors for which they are responsible. In addition, Art. 63 of the Law on Banks provides the NBU with authority to conduct AML/CFT supervision for banks.

244. *Criterion 26.2* – Art. 17 of the Law on Banks provides that entities intending to carry out banking activity must be registered by the NBU. It also specifies the information to be provided. In addition, the requirements under Art. 30 onwards and Art. 69 on capital; corporate governance, risk management, bank management and internal control; meetings of shareholders; obligations to report to the NBU; banking activities mean that shell banks cannot be established or operated in Ukraine.

245. Res. 297 of August 2002 (Art. 1.2) requires non-banking FIs and postal operators to be licensed to undertake currency transactions while NBU Res. 281 of August 2011 requires banks undertaking currency transactions to be licensed. See C. 26.3 for analysis. Art. 10(10)(3) of the Law on Payment Systems and Money Transfer in Ukraine provides that NBFIs can perform money transfer services only with a licence issued by the NBU.

246. Art. 16 of the Law on Securities and Stock Markets provides that professional stock market activities⁶⁹ shall be conducted solely on the basis of a licence issued by the SC.

247. Under Art. 34 of the Law on Financial Services and State Regulation of Financial Services Markets the NC issues licences for the following activities of FIs: 1) Insurance activities; 2) Activities in providing accumulation pension provision services; 3) Provision of loans from raised funds; 4) Provision of any financial services involving direct or indirect raising of individuals' financial assets.

248. *Criterion 26.3* - Par. 11 to 13 of Art. 14(2) of the AML/CFT Law contain provisions on preventing the control or management of FIs by criminals. They require supervisory authorities to take measures: to check that the business reputation of managers, owners and BOs is irreproachable; to prevent persons with unspent criminal records from managing FIs; and to take measures to prevent monitoring entities from being funded with money whose source cannot be confirmed on the basis of official documents. Associates of criminals are not explicitly addressed by the AML/CFT Law.

249. In addition, there are relevant provisions in some sector specific legislation (see below).

250. Par. 14 and 15 of Art. 34 of the Law on Banks provide that the NBU can prevent a person from acquiring or increasing a qualifying holding (triggered at 10%, 25%, 50% and 75%) in a bank. legal persons intending to acquire or increase a qualifying holding must provide documents specified by the NBU on the business reputation of the legal person, its executive board and supervisory council members, and all entities through which beneficial ownership or control of the holding is likely to be undertaken. In addition, information on the financial standing of the entity: documents verifying the identity of the legal person and its BOs and controllers; together with information on the pattern of ownership must be provided. Individuals intending to acquire or increase a qualifying holding must also provide information on their business reputation and on the business reputation of a person through which ownership is likely to be exercised, source of funds and associates. This would appear to address the potential gap in the AML/CFT Law in relation to associates in relation to individuals who are potential legal and BOs but not the gap in relation to associates of management (although information required under the NBU Reg. 306 to be provided by the senior management covers basic details of the associated persons). Persons can be prevented from acquiring or increasing a qualifying holding, including where their business reputation does not meet the requirements of the NBU and where the transparency requirements of the NBU are not satisfied.

251. Art. 42 of the Law on Banks (supported by section 3 of NBU Reg. 306) states that bank managers (defined as the Chairman, his/her deputies and other members of the bank's council, the Chairman, his/her deputies and other members of the board of the bank, the chief accountant and his/her deputies and the managers of separate subdivisions of the bank) must have an irreproachable business reputation. The Chairman of the board and the chief accountant may only take office after consent has been given by the NBU. The appointments of the other officials described above must be notified to the NBU within one day of the appointment and full information on the nominated officials' business reputation must be provided to the NBU with one month of appointment. Based on the results of the analysis conducted, the NBU has the right to demand the removal and the replacement of any of the bank officials if his professional skills and business

⁶⁹ In the stock market, the following types of professional activities shall be conducted:

· activities on securities trading; activities on management of assets of institutional investors; depository activities; and activities on organisation of trading in the stock market.

reputation do not meet the requirements of the law. In addition Section 8 of Reg. 417 of the NBU includes a procedure of approval of the appointment and dismissal of the bank's compliance officer. There are similar provisions for the chief internal auditor.

252. Art.2 (para14) of section I of NBU Res. 306 provides examples of what the NBU can consider to be an absence of an impeccable business reputation. Art.4 of section II requires notice and information to be provided to the NBU on the potential acquisition of or increase in a qualifying holding and review by the NBU. Applications can be refused under Art.34 of the Law on Banks.

253. The NBU issues licences to non-bank FIs and the post office under NBU Reg. 297 of August 2002 to undertake currency transactions. Under Art. 2.1 and 2.2 of Ch 2 and 6 entities must apply for and receive a licence from the NBU before engaging in currency transactions. The information to be provided to the NBU includes information on the legal and BOs which meet the 10% threshold (qualifying owners) although the NBU may also ask for information on the ten largest participants in the ownership structure. The NBU can require to be provided with information to verify the ownership structure. The ownership structure must be transparent⁷⁰. The NBU may refuse to issue a licence where legal owners and BOs do not comply with Ukrainian legislation. It may revoke a licence where the ownership structure is non-transparent. However, there are no specific provisions in the Regulation on the fitness and propriety of legal or BOs.

254. Full (updated) information needs to be provided each year as at 1 January and within 10 business days after any change.

255. The primary regulators for non-bank FIs are the NSSMC (for securities markets), the NC (for other financial services markets), and MoI for the post office.

256. As for the licensing requirements procedures in relation to senior officials of the MSBs, the NBU applies the same procedures as described above for banks.

257. SC Decision 817 of May 2016 contains the procedure to be followed for a licence to be issued by the SC. The business reputation of individuals who directly or indirectly own a qualifying holding in the FI, the manager chief accountant, head of a separate subdivision of the financial institution and also must be irreproachable. Factors which dictate that a business reputation is not irreproachable, by way of example, include: a person with a criminal record for acquisitive crimes that is not spent and information that a person is included in the list of persons related to terrorist activity or to whom international sanctions have been applied. The manager, chief accountant and the head of each separate subdivision of the financial institution must meet professional requirements set by the SC. Not all management is covered by these provisions.

258. In addition, SC Decision 394 of March 2012 sets a framework for acquiring or increasing a qualifying holding in professional participants of the stock market (excluding banks) by any person who would directly or indirectly own or control 10, 25, 50 and 75 per cent of a licensee. This applies both before license has been issued and a qualifying holding in professional participants of the stock market is increased after issuing the license. Information on the business reputation of direct and indirect controllers must be provided. Examples of documentation required by the Decision include documents to identify an individual/legal person; documents on business reputation; a certificate on

⁷⁰ The UAs have developed amendments to NBU Regulation 297, which are currently being discussed within the NBU. The intention is for the amendments to be made before the end of 2017.

the absence or presence of convictions which have not been spent; documents on the level and source of funds. Adequate information must be provided before the issue of a licence by the SC.

259. The SC's requirements for members of the executive body and supervisory board of the licensee, together with the chief accountant and the head of internal audit, are also established by SC Decision 394. In particular, their business reputation during the last two years must meet a list of requirements, including an absence of a criminal record; an absence of administrative responsibility for violation of the legislation on the stock market more than two times during a year (this does not appear to be a strong provision); person is not included in the list of persons related to terrorist activity or to whom international sanctions were applied. The provisions apply only to an overly selection of management and the limitation of business reputation to a two year period is limiting

260. Government Decree 913 of December 2016 contains the procedure to be followed for a licence to be issued by the NC. The business reputation of individuals who directly or indirectly own a qualifying holding in the FI, the manager and chief accountant of the financial institution must be in line with the professional requirements. Factors which dictate that the quality the business reputation by way of example, include: a person with a criminal record for acquisitive crimes that is not spent and information that a person is included in the list of persons related to terrorist activity or to whom international sanctions have been applied. Information has not been provided to the evaluation team as to whether and when the NC must be notified of the appointment of a BO, LO or manager after a licence has been issued.

261. *Criterion 26.4 –*

- (a) According to Art. 9 of the Law on Banks consolidated supervision of the banking group must be carried out by the NBU to ensure the stability of the banking system and mitigation of the risks (including ML/FT risks) faced by a bank as a result of participation in the banking group; supervision must be achieved by regulation, monitoring and control of risks in the banking group in accordance with the procedure established by the NBU. Under Art. 2 of the Law on Banks, the definition of the banking group includes companies, that are FIs, or for which financial services is a predominant activity. Par. 144 to 146 of NBU Res. 417 of June 2105 also provides for common AML/CFT standards to be applied by banking groups in Ukraine. Similar provisions are not included in the sectoral legislation administered by the SC for the securities sector and the NC for the insurance sector. However, the NBU (for banks), the SC and the NC are required to conduct consolidated supervision under Art. 16 of Law 1792-VIII on financial services and state regulation of financial services markets. This article requires consolidated supervision to ensure stability of the financial system including ML/FT risks faced by a FI due to its participation in the group. Ukraine has not been subject to independent rated assessments of the Basel Committee Principles, the IAIS Principles or the IOSCO Principles and Responsibilities.
- (b) See C. 26.1 for the designation of supervisors. This sub-criterion applies to the NBFIs in relation to MSBs and the SC and the NC for the supervision of non-principles institutions. Par. 2 of Art. 14 of the AML/CFT Law requires supervision (onsite and offsite) to be undertaken by the designated supervisors and for the supervisors to take into consideration their risk assessment of individual institutions (but not necessarily the sectorial ML/FT risks). For the NBFIs supervised by the NBU the risk criteria in NBU Res. 197 mentioned below are applicable. For the SC and the NC there appear to be no specific, detailed provisions covering RBAs to offsite supervision but there are a series of

supervisory Orders and Resolutions which apply risk criteria for the purposes of onsite supervision. These criteria are prescriptive, not completely ML/FT risk-based for supervisory authorities cannot recalibrate their approaches unless the current legislation is revised (see C. 26.5).

262. *Criterion 26.5* - NBU Res. 191 of March 2016 includes the risk assessment methodology and matrix used by the NBU for banks. The following risk criteria under NBU Res. 197 are taken into account when forming the annual inspection plan, namely (a) whether the three year period will expire; (b) the fact that accounts have not been opened within twelve months of a licence from the NBU; (c) the ML/FT risk of each bank identified by the NBU; (d) banks where risk activities (not only ML/FT risk activities) have been identified in previous inspections; (e) banks which have foreign State ownership or where sanctions by international bodies threaten the interests of creditors such as depositors and/or the stability of the banking system; (f) information on potential AML/CFT breaches has been received. The NBU has discretion on how it weights the statutory factors and it has been able to weight the factors to take a mainly ML/FT RBA. For banks Res. 191 allows for the diversity and number of banks, the discretion they are allowed under the RBA and bank policies, internal controls and procedures to be considered. At the time of the on-site visit the diversity and number of banks, the discretion they are allowed under the RBA and bank policies, internal controls and procedures were not included in any legislation or procedure for NBFIs. In addition, under NBU Res. 197 from July 2011 all banks and money transfer businesses must be subject to inspection at least every three years (unscheduled inspections can also be conducted). Under NBU Res. 338 similar provisions are included for currency exchange offices. Par. 11 of Res. 197 provides for unscheduled onsite inspections to be undertaken. The NBU considers the ML/FT risks identified in the NRA. The NBU uses an "offsite technological card" which enables a RBA to offsite supervision for banks and NBFIs.

263. In relation to non-bank FIs the NBU Deputy Governor issued a document in December 2016 which states that the ML/FT risk of individual NBFIs should be assessed by means of indicators included in a risk matrix, namely structural risk (origin of capital, links between UBOs and PEPs or their connected persons, and transparency of ownership structure); geographical risk; volume of transactions; and whether or not any negative information has been received on the non-bank FIs, UBOs or managers. The evaluation team has not been provided with information on technical standards for the intensity of inspections undertaken for NBFIs. Nevertheless in practice the NBU operates a mainly AML/CFT risk-based approach for NBFIs.

264. SC Res. 617 of May 2016 defines criteria for the SC to assess the risk of its licensees. Risk categorisation is based on the type of activities undertaken (security brokers with depository operations being high risk), the period of time the monitoring entity has been in business (less than two years being high risk); AML/CFT breaches (infringements taking place during the last three years being high risk); transactions with non-residents registered in offshore zones (transactions of UAH 150,000 (~EUR 4917.46) or above being high risk); transactions with non-residents who have a place of registration in specified countries; and securities transactions beyond the bounds of the organiser of trade (transactions of UAH 1 billion or (where UAH are not used) USD1 billion or more being high risk). High risk entities must be visited annually, medium risk entities inspected no more than once every three years and low risk entities no more than every five years. The inspection frequency is specified in SC Procedure 1038 of July 2015. Overall, this is not a wholly RBA for the purposes of C. 26.5.

265. NC Res. 2481 of October 2015 contains criteria for assessing the risk of REs and the frequency for inspections. Risk is predicated on the period of time the business has been in existence (less than two years being high risk), breaches of AML/CFT requirements (two detected violations being high risk) and written information on potential AML/CFT breaches (five possible violations being high risk). Inspections to high risk entities must be carried out only once a year. Medium and low risk entities must be inspected no more than every two years or three years respectively. Only one of the criteria needs to be met for an entity to be classified as high risk. Unscheduled inspections are permitted by NC Reg. 26 (August 2003).⁷¹ Overall this is a partial AML/CFT RBA for the purposes of C. 26.5.

266. For MoI, the evaluation team has been advised that the statutory risk criteria for classifying licensees by risk are the period of operation of the business, whether there have been any AML/CFT breaches and the number of branches/subsidiaries. High risk entities are subject to onsite inspections every year with medium and low risk entities being subject to inspections every two and three years respectively. The team has not been provided with the legislation but this is a partial AML/CFT RBA for the purposes of C. 26.5.

267. With the exception for the NBU for banks, there is no specific legislation or a procedure which specifies that the policies, internal controls and procedures of an entity must be taken into account when assessing the ML/FT risk of an entity (albeit the effects of absence or failure of policies, internal controls and procedures through, for example, AML/CFT breaches are taken into account).

268. Except for banks, there is no legislation or procedure relating to the intensity of inspection.

269. *Criterion 26.6 -*

270. The technical standards referred to in C. 26.4 and 25.5 require risk classification of REs to be undertaken by supervisory authorities. A number of the statutes include the period of operation of the entity as a factor to be taken into account. This means that under these statutes, the increasing time frame for which an entity has been conducting business can in itself cause a change in risk rating. However, only the NBU, is subject to a specific requirement to reconsider a risk classification, as a result of Art. 7 of NBU Res. 191 and an internal procedure developed under the article. The NBU analyses the risk rating of each bank on a quarterly basis and operates a mainly ML/FT risk-based approach. There is no legislative provision which contains the same process to review of assessment of ML/FT risk profile of other entities supervised by the NBU.⁷²

271. Under NBU Board Decision 407 the NBU's AML Department receives information quarterly from the NBU's Supervision Department on enforcement measures undertaken. These enforcement measures (both the number and severity of breaches) are included in the NBU's review of the assessment of risk for each bank. The risks of non-compliance by the NBU for other entities and by

⁷¹ Unscheduled inspections may be conducted by the NCSRFSM, if at least one of the following grounds exists: written notification of signs of violation of the requirements of the AML/CFT legislation; upon execution of the court decisions and upon law enforcement agencies request; in case of violation of the AML/CFT legislation during the current activity as a result of the off-site inspections; revealing by the NCSRFSM new documents (conditions) that have not been (could not be) known during the scheduled inspection and that may affect the findings of the scheduled inspection (par. 1.6. of the Procedure for conducting the AML/CFT inspections, approved by the NC's Reg. No.26 (05.08.2003) registered in the MoI dated 15.08.2003 № 716/8037.

⁷² Since the evaluation team visited Ukraine, the NBU has revised its approach to wholly ML/TF risk-based.

other supervisors are partly considered to the extent that information on breaches committed (or potentially committed in the case of the NC) has been received but this limited consideration is reliant on receiving information from third parties or the supervisor undertaking an onsite inspection. Also, for supervisors other than the NBU and the SC, the risk classification is defined by the number of breaches, which does not take account of their severity.

272. Under NBU Reg. 191 the NBU receives information on structural and business risks quarterly, which means that major events or developments in the management and operations of the FI or group can be and are taken into consideration for reviewing the assessment of risk. Other SAs do not reconsider the risk profile of a RE when there are major events or developments in the management and operations of the FI or group – the statutory framework under which they operate is prescriptive (see C.26.5) and does not allow for such consideration.

Weighting and Conclusion

273. Ukraine meets C. 26.1 and 26.2, mostly meets C. 26.3, 26.4 and 26.5 and partly meets C. 26.6. There is no requirement by supervisors to reviewer the assessment of the ML/FT risk profile of a FI, except with respect to banks. **R.26 is rated LC.**

Recommendation 27 – Powers of supervisors

274. In the 2009 MER, Ukraine was rated PC with the previous R.29. The rating was based on (1) the absence of explicit scope of the AML/CFT supervision and enforcement powers over foreign exchange offices, (2) the fact that sanctions do not include the possibility for removal from office of directors and senior managers (apart from banks); (3) insufficient maximum fines against FIs; and (4) absence of a clear provision that would establish sample testing as a supervisory practice. Since then, Ukraine addressed the deficiencies by making changes in the AML/CFT Law and relevant SL.

275. *Criterion 27.1* – The power for supervisory authorities to supervise compliance by FIs with AML/CFT requirements is contained in Art.14 AML/CFT Law, which also specifies that supervisors may demand compliance by REs with AML/CFT legislation. In addition, Art.63 and 67 Law on Banks give power to the NBU to inspect banks' compliance with AML/CFT legislation.

276. *Criterion 27.2* – Art.14(2) AML/CFT Law empowers supervisors to conduct inspections in the manner established by sectoral legislation. NBU Res. 197 and 193 of March 2016 provide a framework for the inspection process. In addition, NBU Res. 194 provides a framework for thematic inspections which focus on PEPs.

277. *Criterion 27.3* – Under Art.14(3) and (4) AML/CFT Law SAs have the right to request information, documents and copies of documents from REs and other state authorities.

278. *Criterion 27.4* – All financial supervisors, except for the NBU, are authorised under Art. 24(8) AML/CFT Law to sanction REs for failure to comply with the provisions of the law. Art.24(3-6) AML/CFT Law stipulates the sanctions for failure of REs to comply with the law. These include fines, temporary suspension of an official of the RE (but only until a AML/CFT failure has been addressed), revocation of a licence (but only for any two repeated failures, no matter what the level of the failure) and other measures provided for in sectoral legislation.

279. Banks are subject to sanctions stipulated in the Law on Banks and Res. of the NBU. Under Art. 73 Law on Banks, the NBU, to an extent commensurate with the violation or the seriousness of the

threats posed, has the power to apply sanctions for AML/CFT breaches. Sanctions include written warnings; calling general meetings of shareholders, or the bank's supervisory council; entering into a written agreement with a bank (an enforceable undertaking) to take corrective actions and/or enhance the efficiency and adequacy of bank's RMS; suspend dividends or the distribution of capital; increase economic ratios; restrict, suspend or terminate transactions carried out by the bank; impose fines; temporarily suspend bank officials until the bank they have taken corrective action; revoke a licence for foreign exchange operations; declare the bank to be a problem bank; and revoke the banking licence and liquidate the bank. NBU Res. 346 (August 2012) contains procedures for the imposition of sanctions by the NBU.

280. In relation to NBFIs the NBU also has sanctioning powers under NBU Res.316. Under Art.5 of section I of the Res. these powers are limited to fines (tied by Art.1 of section II of the Res. to the levels in the AML/CFT Law); cancellation of a licence for special activities; and dismissal of the FI head.

281. Each of the supervisors is authorised to impose sanctions, including power to impose fines and withdraw licences/registrations. However, as indicate din R.35, overall the powers are partly proportionate and dissuasive.

Weighting and Conclusion

282. There are adequate powers for supervisors to supervise and monitor all FIs, including powers to conduct on-site inspections, compel the production of documents and impose sanctions. However, sanctioning powers are limited as sanctions are not proportionate and dissuasive. **R. 27 is rated LC.**

Recommendation 28 – Regulation and supervision of DNFBPs

283. In the 2009 MER, Ukraine was rated NC with the previous R.24. The main deficiencies were related to the supervisory and regulatory regime of the gambling industry, the inadequate resources of the MoF to perform AML/CFT supervision and the fact that the requirements outlined in the Ukrainian legislation did not cover all categories of DNFBPs.

292. *Criterion 28.1* – Under Art.2 of the Prohibition of Gambling Business Law, gambling, casinos and virtual casinos are prohibited in Ukraine.

293. *Criteria 28.2 and 28.3* –Art.14 AML/CFT Law specifies the authorities responsible for AML/CFT supervision and the sectors for which they responsible. Art.14(2) requires supervision (onsite and offsite) to be undertaken by the designated supervisors in the manner established by sectoral legislation. Table 2 and the section on DNFBPs in Ch. 1 indicate the number of DNFBPs present in Ukraine and summarise registration and supervisory coverage.

294. *Criterion 28.4* –

- a) Art. 6(2)(13) and Art.14(2) AML/CFT Law requires supervision to be undertaken by the designated supervisors in the manner established by sectoral legislation. Under Art.14(3) SAs may receive information, documents and copies of documents from REs. Under Art.14(4) SAs have the power to require information to REs. In addition, MoF Order 1168 (July 2015) specifies a procedure for the FIU in requiring information from REs. As indicated in R.35 the powers to require information and documents are not backed by

robust sanctions, which could have an effect on the ability to monitor compliance. Also see C.28.5(a) for the supervision framework established by supervisory Orders.

- b) Par.11 to 13 of Art.14(2) AML/CFT Law contain provisions on preventing the control or management of FIs by criminals. They require SAs to take measures: to check that the business reputation of managers, owners and BOs is irreproachable; prevent persons with unspent criminal records from managing DNFBPs; and prevent REs from being funded with money whose source cannot be confirmed on the basis of official documents. There are no legislative provisions regarding associates of criminals. There is no additional legislation which applies to accountants, DPMS or real estate brokers. Under Art.10 Auditing Law, auditors must be registered by the Chamber of Auditors and must not have an unspent criminal penalty, or have received an administrative penalty for a corruption offence within the last year. The Chamber may revoke registration under Art.22 of the law and has the power to issue warnings and suspend registration for a year, the latter power being potentially applicable in relation to Art.10. These provisions are relatively limited. Art.6 Bar Law requires that a person cannot be an advocate if he/she has an unspent conviction for grave or medium grave offences, been suspended from practising law in the previous two years or been dismissed from the position of judge, public prosecutor, investigator, notary, civil servant, or service in local government for breaking an oath or for committing a corruption offence within the last three years. Advocates are also subject to rules on ethics which require them to follow high ethical standards of behaviour but other than expecting compliance with legislation do not contain other provisions relevant to this. These provisions are relatively limited. Art.3 and 5 Notaries Law provide that a practising notary cannot have a conviction and must adhere to the notarial rules on professional ethics. These provisions are relatively limited.
- c) The provisions of Art.24 AML/CFT Law described in C.27.4 and the framework described in R.35 are applicable. In addition, MoF Order 465 establishes a high level protocol to be followed by the FIU when applying administrative sanctions.

295. *Criterion 28.5 –*

- (a) There are no specific provisions covering risk sensitive approaches to offsite supervision but a series of supervisory Orders with risk criteria for the purposes of onsite supervision. These criteria are prescriptive and the SAs cannot recalibrate their approaches unless legislation is revised. There is no legislation or procedure relating to the intensity of inspection. MoF Order 17 (January 2016) requires the MoF to categorise the risk of each entity it supervises (including auditors, accountants and DPMS) by virtue of the time they have been in operation (less than 3 years for high risk), AML/CFT breaches (2 or more breaches for high risk) and the existence of branch operations (more than 3 for high risk). All criteria must be met for the classification to be high risk. High risk entities must be inspected not more often than annually with medium and low risk entities being subject to inspection not more often than every 2 and 3 years respectively. There is a provision for ad hoc inspections under MoF Order 436 and MoF Order 489. Overall, this is a partially risk sensitive approach. MoF Order 18 (March 2016) requires the FIU to categorise each real estate broker's risk by virtue of the time they have been in operation (less than 3 years for high risk), AML/CFT breaches (2 or more breaches for high risk) and existence of branch operations (more than 3 for high risk). All criteria must be met to qualify as high risk. High risk entities must be inspected not more often than annually; medium and low risk entities are subject to

inspection not more often than every 2 and 3 years respectively. There is no provision for ad hoc inspections. This is a partially risk sensitive approach. As for the MoJ, the criteria for high risk are undertaking business for less than two years, the existence of AML/CFT breaches within the last three years and the undertaking of more than 15 transactions subject to the AML/CFT Law within a six month period. Only one of the risk criteria needs to be satisfied for a RE to be considered as high risk. High risk REs must be subject to inspections not more than once a year and medium and low risk REs must be subject to onsite inspections not more than two and three years respectively. There appears to be a procedure on ad hoc inspections under MoJ Order 673/5(II)(7). This is a partially risk sensitive approach.

- (b) There is no legislation or procedure expressly requiring SAs to take into account the degree of discretion allowed to REs under the RBA, when assessing the adequacy of AML/CFT internal controls, policies and procedures.

Weighting and Conclusion

296. Overall, the supervisory framework for DNFBCs is not compliant with the requirements. **R. 28 is rated PC.**

Recommendation 29 - Financial intelligence units

297. In the 2009 MER, Ukraine was rated C with these requirements.

298. *Criterion 29.1* – The FIU was created by Presidential Decree 1199 (10.12.2001) and became fully operational in 2003. Powers and duties of the FIU include the receipt and analysis of financial transactions subject to financial monitoring and information dissemination to LEAs (Art.18 AML/CFT Law).

299. *Criterion 29.2* - The FIU receives (1) STRs and reports on transactions subject to internal financial monitoring submitted under Art.6 (2)(6) (b) & (c) AML/CFT Law; and (2) any other information, such as threshold transaction reports submitted pursuant to Art.6(2)(6)(a) AML/CFT Law.

300. *Criterion 29.3* –

- a) The FIU may request and receive additional information from REs (Art.20(6) AML/CFT Law). At the request of the FIU, REs are required to provide (a) FT or PF-related information and information that may be related to the suspension of a financial transaction (be it ML/FT or PF related) within 1 working day after the receipt of the request (Art.6(2)(9)(a) AML/CFT Law); (b) any other information (not covered under (a)) within 5 working days from the receipt of the request or within a period agreed in a prescribed manner with the FIU (Art.6(2)(9)(b) AML/CFT); (c) any additional information necessary to fulfil the request of a foreign FIU, including information with restricted access within 5 working days from the receipt of the request or within a period agreed with the FIU (Art.6(2)(10) AML/CFT); and (d) information related to transaction monitoring carried out as a result of a monitoring order by the FIU (Art.6(2)(11) AML/CFT Law).
- b) The FIU may request any information (including copies of documents) from any state authority, other than the NBU (Art.18(2)(2) AML/CFT Law). In addition, the authorities are obliged to provide the FIU with access to their information resources and databases

(Art.12(6) AML/CFT Law). In order to implement this provision, a unified state information system was set up, which grants the FIU direct access to 14 state authority databases (Res. 299, 14.05.2015). The FIU exchanges information with the NBU on the basis of a bilateral agreement.

301. *Criterion 29.4* – The FIU conducts operational analysis of financial operations (Art.18(1)(1) AML/CFT Law); analysis of methods and financial schemes of ML/FT (Art.18(2)(7) AML/CFT Law); strategic analysis (Art.18(2)(8) AML/CFT Law); and typological research in the area of ML/FT/FP (Art.18(2)(11) AML/CFT Law).

302. *Criterion 29.5* - The FIU disseminates its analysis's results (“generalised materials”) and other information to LE and intelligence authorities spontaneously where there are reasonable grounds to believe that a financial operation is related to ML, FT and FP, or a reasonable suspicion that a financial operation or customer is associated with other crimes. The dissemination procedure is set in two ministerial orders⁷³, which also regulate the confidentiality of information.

303. *Criterion 29.6* – The FIU has adopted various security measures:

- (a) There are five FIU orders⁷⁴ dealing with the handling, storage, protection of, and access to information contained in the FIU's IT system – Complex Information Security System (CISS), which can only be accessed by FIU staff;
- (b) The CISS clearly defines user roles for access to information. The FIU maintains a list of employees permitted to handle specific categories of information. The Reg. on FIU Information Systems includes compulsory training for users of ITC bases, treatment and protection of IT systems and liability for any breaches related to the handling of classified information.
- (c) The offices of the FIU are subject to a security regime. A procedure is in place for staff access to the offices. Access to facilities is controlled by a video surveillance system. The offices are equipped with security alarms. Physical access to the FIU is restricted to persons holding special entry passes which are provided by law enforcement agencies and licensed security companies. Security policies are implemented and controlled by the rules of access to information resources and their information.

304. *Criterion 29.7* – The FIU is operationally independent and autonomous:

- (a) There are no legislative provisions which hinder the FIU from carrying out its functions freely. Under the AML/CFT law, the FIU has the power to receive process, analyse and disseminate information autonomously. On the basis of CoM Res. 537, the FIU is the central executive body, whose activities are directed and co-ordinated by the CoM through the MoF.
- (b) The FIU has the power to conclude interagency agreements with relevant authorities of other countries (Art.20(1)(9) AML/CFT Law). The FIU may engage independently with domestic competent authorities and does so on a regular basis (Art. 18(2)(3) AML/CFT Law).

⁷³Order of 02.12.2013 №1026/ 1184/739/484 registered in the MoJ on 23.12.2013 under №2170 24702 and Order of 01.12.2015 №1112/426/678/1533 registered in the MoJ on 17.12.2015 under №1583/28028.

⁷⁴ Order of 03.10.2011 №186, order of 27.01.2011 №11, order of FIU on 24.11.2015, order of 15.10.2010 № 189 and order of 24.12.2013 № 155.

- (c) The FIU is not located within an existing structure of another authority.
- (d) The FIU may not be used for party, group or personal interests. During their employment, officers and employees are required to suspend their membership in parties, movements and other public associations with political aims. The Head of FIU cannot be a member of a political party, movement and other public associations with political aims. (Art. 19 AML/CFT Law) The number of public officers and employees of the FIU is approved by the CoM Res. 537. The structure and budget of the FIU is approved by its Head in consultation with the MoF. The FIU is a LE of public law, which has a seal bearing the State Emblem of Ukraine and its name, as well as its own headed papers, and accounts in the Treasury.

305. *Criterion 29.8* - The FIU has been a member of the Egmont Group since 2004.

Weighting and Conclusion

306. All C. are met. **R.29 is rated compliant.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

307. In the 2009 MER, Ukraine was rated PC with the previous R.27. Deficiencies were all effectiveness-related: the practical implementation of the procedures for ML/FT investigations raised concerns, particularly the risk of duplication of efforts by LEAs; as did corruption; and statistics showed a decline in the number of criminal cases initiated and submitted to the court.

308. *Criterion 30.1* – The NP, NABU, SFS, SSU and SBI are responsible for the investigation of (associated) POs (Art.216(1)-(7) CPC) and of ML offences related to POs falling within their competence (Art.216(8) CPC). The SSU is responsible for the investigation of FT offences (Art.216(2) CPC). All pre-trial investigations are supervised the Prosecutor General’s Office of Ukraine (PGO).

309. *Criterion 30.2* – LEAs referred to under C.30.1 must pursue a parallel financial investigation in the context of a criminal investigation into ML, FT and POs (Art.170(1)(2) CPC).

310. *Criterion 30.3* – The ARO is empowered to identify and trace assets. In addition, during a pre-trial investigation, LEAs referred to under C.30.1 may use the powers granted under their constitutive laws to identify and trace property. LEAs may provisionally seize property if there are reasonable grounds to believe that such property (1) was used (or intended to be used) as an instrumentality to commit a crime; (2) is the object of a crime; (3) derives from the commission of a crime; or (4) is property into which such proceeds have been converted into, whether in full or in part (Art.167 CPC). Property shall continue to be seized until such time as an investigating judge or a court issues an order for the attachment of property during a trial (Art.170(2) CPC). In urgent cases, the Director of NABU may, with the approval of the PGOU, order the attachment of property or funds in accounts held by FIs during criminal proceedings of offences falling within NABU competence. Within 24 hours of issuing the order, the Director shall file a motion for the attachment of property with an investigating judge or a court (Art.170(2) CPC).

311. *Criterion 30.4* (Not applicable) – The authorities which are authorised to conduct financial investigations of POs are those referred to under C.30.1.

312. *Criterion 30.5* – NABU, which is the authority responsible for the investigation of ML/FT offences arising from corruption, has sufficient powers to identify, trace, and initiate freezing and seizing of assets as indicated under C.30.3.

Weighting and Conclusion

313. All criteria are met. **R.30 is rated C.**

Recommendation 31 - Powers of law enforcement and investigative authorities

314. In the 2009 MER, Ukraine was rated LC with the previous R.28. At the time, LEAs faced some challenges in obtaining all the necessary information for use in ML/FT investigations.

315. *Criterion 31.1* – Ch.15 (Provisional Access to Objects and Documents) and 20 (Investigative (Identification, Search) Actions) of the CPC provide the legal framework for LEAs to obtain access to documents and information for use in investigations and prosecutions.

- (a) Upon a ruling by an investigative judge or a court, LEAs may obtain provisional access to, examine and make copies of any object or document (Art.159(1)(1), CPC). This includes access to electronic information and mobile communication systems (Art.159(1)(2) CPC). Access to objects and documents may not exceed 30 days (Art.164(7) CPC). Information protected by banking, commercial or notarial secrecy may only be obtained where the LEA proves that (1) the information can be used as evidence; and (2) it would be otherwise impossible to prove the circumstances of the case without such information (Art.160(6) CPC). The authorities confirmed that LEAs are not required to provide extensive evidence to the court or investigative judge to satisfy these conditions⁷⁵.
- (b) LEAs may, upon a ruling of an investigating judge, search persons and premises to detect information regarding the circumstances surrounding the commission of a CO, detect the tools used to commit an offence, identify proceeds deriving from a CO and establish the location of a wanted person. The conditions for issuing a search order and the provisions on the manner in which the search is to be conducted are found in Art.234-237 of the CPC.
- (c) LEAs may summon a person to testify in criminal proceedings (Art.133, 224-227 of the CPC).
- (d) LEAs are empowered to collect evidence through the application of investigative search actions (Art.93(2) of the CPC). LEAs, upon a ruling of an investigating judge or court, may seize any objects or documents where the LEA proves that (1) sufficient grounds exist to believe that there is a real likelihood that objects and documents may be altered or destroyed and (2) access to objects and documents may only be secured upon their seizure (Art.163(7) of the CPC).

316. *Criterion 31.2* - LEAs have a wide range of investigative techniques at their disposal for the investigation of ML, associated POs and FT. These are set out under Ch.21 of the CPC, which also regulates the manner in which covert investigative operations are to be carried out. Covert operations may only be conducted in criminal proceedings concerning grave or especially grave crimes.

⁷⁵ Statistics were provided to demonstrate that a request for provisional access is rarely turned down by the court or investigative judge.

- (a) LEAs may conduct a number of covert operations, including surveillance of an individual, object or place, surveillance of bank accounts⁷⁶, inspection of publicly inaccessible places, control over the commission of a crime etc. (Art.260-275 of the CPC).
- (b) The CPC provides various tools for the interception of communications: audio and video monitoring (Art.260 of the CPC), seizure and inspection of correspondence (Art.261-262 of the CPC) and interception of telecommunications (Art.263 of the CPC).
- (c) LEAs may collect information stored in electronic information systems (Art.264 of the CPC).
- (d) LEAs may conduct controlled deliveries (Art.271 of the CPC).

317. *Criterion 31.3* – (a) The SFS maintains a register of accounts of all tax payers. LEAs may request information from the register under Art. 93 of the CPC. (b) Before making an order for provisional seizure, the court or investigating judge is required to summon the person against whom such order is made (Art. 163(1) of the CPC). This may be circumvented if the prosecution proves that there are sufficient grounds to believe that a real threat exists that the objects or documents may be altered or destroyed.

318. *Criterion 31.4* – LEAs may ask all relevant information from the FIU (Art.170(2) of the CPC).

Weighting and Conclusion

319. Ukraine meets all the criteria under R.31. **R.31 is rated C.**

Recommendation 32 – Cash Couriers

320. In the 2009 MER, Ukraine was rated PC with the previous SR.IX. The following technical gaps were identified: all BNIs not covered by the NBU Res. and the related explanatory form of the Customs Authority (CA); no power to stop or restrain cash or BNIs; absence of dissuasive and effective administrative fines for false or non-declarations; impact of shortcomings identified in relation to R.3 and SR.III; and inadequate human and financial resources and staff training.

321. *Criterion 32.1* – Ukraine implemented a written declaration system which is regulated by NBU Res. 148 on “Transportation of Cash and Investment Metals Across Ukraine’s Customs Border”. The Resolution applies to outgoing and incoming transportation of cash, which includes banknotes and coins in Ukrainian or foreign currency and travellers’ cheques, and precious metals (Sec.1 and 2). Other forms of BNIs, such as cheques, promissory notes and money orders, are not covered. The Resolution also applies to cash transferred by mail (Sec.3) but not cargo.

322. *Criterion 32.2* – Ukraine applies the following thresholds:

Physical cross-border transportation of cash by travellers			
Residents & non-residents natural persons	< 10,000 EUR	Incoming/outgoing	• No declaration required
Resident natural persons	> 10,000 EUR	Incoming/outgoing	• Full customs declaration required • Provision of withdrawal receipt by bank required for amounts above EUR 10.000
Non-resident natural persons	>10.000 EUR	Incoming	• Full customs declaration required

⁷⁶ May only be applied by NABU (Art. 269¹)

		Outgoing	<ul style="list-style-type: none"> Full customs declaration required for amounts that exceed the amount declared by the individual at the customs office upon arrival in Ukraine
Resident/non-resident legal persons, through an authorised representative	Any amount	Incoming/outgoing	<ul style="list-style-type: none"> Full customs declaration required
Physical cross-border transportation of cash through mail			
Natural and legal persons	< 300 EUR	Incoming/outgoing	<ul style="list-style-type: none"> Full customs declaration required
Natural and legal persons	> 300 EUR	Incoming/outgoing	<ul style="list-style-type: none"> Prohibited – amount returned to sender

323. *Criterion 32.3* – This C. is not applicable.

324. *Criterion 32.4* – The CA does not have a specific power to request and obtain information from the carrier with regard to the origin or intended use of the currency or BNIs, upon discovery of a false or non-declaration. The authorities refer to Art.54 Customs Code, which sets out the power of the CA, inter alia, to verify the accuracy of a customs declaration⁷⁷. While this Art. includes the power to request additional documents or data from the declarant, it only applies to those situations where a declaration is made and does not specifically empower the CA to request information with regard to the origin or intended use of the currency or BNIs.

325. *Criterion 32.5* – Failure to declare cash or provision of inaccurate information in the prescribed form entails an administrative penalty consisting of a fine amounting to the value of the cash which was not declared or falsely declared and the confiscation of such cash (Art.472 and 483 of the Customs Code). In addition, the smuggling of large amounts of cash across the border is a CO punishable by imprisonment for a term of three to seven years (Art.201 of the CC).

326. *Criterion 32.6* – The FIU has direct electronic access to all cash declarations stored within the CA's database (Art.20(1)(5) AML/CFT Law). In addition, the CA is required to submit information to the FIU where cash is physically transported across the border without a declaration being submitted or where a false declaration is made (Art.12(5) AML/CFT Law).

327. *Criterion 32.7* – The CA, the SBS, the SSU and the NP co-ordinate their operations on an ongoing basis. A joint order was signed by the afore-mentioned authorities together with the MFA, the FIS and the Ministry of Social Policy to regulate inter-agency information-sharing on the monitoring of persons, vehicles and cargo crossing the border (Order 284\287\214\150\64\175\266\75, 3.04.2008).

328. *Criterion 32.8* – Currency may be temporarily seized where there is a false/non-declaration or where currency is moved across the border in breach of any other criminal offence (including ML and FT). This power may be applied where there is a suspicion of ML/FT or predicate offences (Arts. 511, 471 and 196 Customs Code).

329. *Criterion 32.9* – The CA shall ensure that international cooperation is provided to other countries in relation to the state's customs affairs (Art.543 Customs Code). In line with SFS Order 645 (28.08.2015), the CA maintains the following information on the transportation of cash: the amount of cash being transported, the currency of the cash, the date of the transportation of cash, whether cash is being imported or exported, the country of origin or destination and personal data of the person transporting the cash, including the date of birth and identification or passport number.

⁷⁷ Art.54 refers to the valuation of goods declared at the border. The definition of goods under Art. 57 includes currency valuables.

330. *Criterion 32.10* – Information relating to state customs affairs obtained by the CA may only be used for customs purposes and may not be disclosed save as set out in the Code and other laws of Ukraine (Art.11, 56 Customs Code). Penalties are envisaged for breach of confidentiality (Art. 419 Customs Code). The confidentiality requirements do not restrict trade payments between countries for goods and services and the freedom of capital.

331. *Criterion 32.11* – Persons who launder funds or finance terrorism through the transportation of cash are subject to the sanctions set out in Art.209, Art.258⁵ and articles criminalising predicate activity in the CC. Special confiscation under Art.961 CC applies.

Weighting and Conclusion

332. Ukraine meets most of the criteria under R.32. However, the declaration system does not apply to certain forms of BNIs and there are no rules concerning cash and BNIs transported by cargo. Moreover, the CA does not have a specific power to request and obtain information from the carrier with regard to the origin or intended use of the currency or BNIs, upon discovery of a false or non-declaration. **R.32 is rated LC.**

Recommendation 33 – Statistics

333. In the 2009 MER, Ukraine was rated PC with the former R.32. It was noted that the collective system performance review and strategic co-ordination was not developed enough and competent authorities did not maintain comprehensive annual statistics on the number of cases and amounts of property frozen, seized and confiscated related to ML, FT and criminal proceeds, cross-border currency and BNIs transaction reports as well as MLA and extradition requests.

334. *Criterion 33.1* - Under Art.18(3) AML/CFT Law, the FIU is required to maintain records on financial operations subject to financial monitoring.

(a) The FIU has a system to maintain statistics routinely on ML and FT STRs received and disseminated. This is facilitated by the requirements in Art.13 AML/CFT Law for the FIU to register each STR and in Art.18 to process and analyse STRs. Statistics are maintained for each reporting sector and include features contained in STRs, such as use of cash. Art.18 AML/CFT Law and FIU Order No.37 (March 2014) also provide for maintenance by the FIU of statistics on actions taken following the receipt of STRs, namely the results of pre-trial investigation; court decisions taken in relation to criminal proceedings, and the number of persons who have committed criminal offences or suspected of committing and convicted of crimes.

(b) Each LEA has a system for maintaining statistics on ML and FT investigations although the basis for the statistics is specific to each LEA, meaning that the statistics as between LEAs are not consistent. The GPO maintains a register of pretrial investigations although the system is not reliable; the reason for inclusion of information by prosecutors on the register is often not provided or, when provided, is based on practical considerations. Linked with this, the nature of the crime is not clear from the register. Under State Court Administration Orders No.55 (June 2006), 158 and 153 (November 2012), the SJA maintains statistics on all ML and FT prosecutions and convictions

(c) Under form 1-I the SJA is required to keep information on confiscated assets. However, the authorities were not in a position to provide statistics on FT confiscations.

(d) With regard to MLA, statistics are maintained by NABU, the PGOU and the MOJ on requests made and received. The MLA statistics for 2013 and 2014 have been destroyed, meaning that the available statistics are not comprehensive. With regard to other international requests for cooperation: the FIU, the SFS, the NBU, the SC and the NC maintain statistics on requests made and received; while the PGOU and the NABU do not have a system and statistics are not maintained.

Weighting and Conclusion

335. Many of the statistics provided to the evaluation team were not consistent. Differing figures in various areas were received by the evaluation team. **R. 33 is rated PC.**

Recommendation 34 – Guidance and feedback

336. In the 2009 MER Ukraine was rated LC with the previous R.25. The ML/FT guidance provided by certain supervisors to their respective sectors was regarded as insufficient.

337. *Criterion 34.1 –*

Feedback:

338. Pursuant to Art.18(2) and (16) AML/CFT Law, the FIU must provide feedback to REs on the outcomes relating to STRs. MoF Order 695 (July 2013) sets the procedure for providing information to REs on the existence of a preliminary investigation, the closure of a case after pre-trial investigation and decisions taken by courts.

Guidance:

339. Under Art.14(2)(2) AML/CFT Law SAs must provide methodological, procedural and other help to REs (including providing explanations on implementation of the law). IO3 includes information on the guidance and feedback provided.

340. The FIU has published the following guidelines on its website: Organisation of financial monitoring/Guidance on organisation of financial monitoring; Questions-answers; Typologies/Manuals and guidance; Information cooperation/STR forms.

341. The NBU, SC, NC, MoF, MoI, the FIU, and the MoJ have each undertaken training of REs (providing guidance and feedback), the method depending on their preferred approach, including workshops, webinars or roundtables. These SAs have also met with associations and provided training to REs onsite include information on their websites and respond to queries by REs. The FIU hosts a training centre and it and all SAs promote attendance by REs for training at the centre (which includes guidance and feedback). Typologies are published by the FIU and the SC.

Weighting and Conclusion

342. **R.34 is rated C.**

Recommendation 35 – Sanctions

343. In the 2009 MER, Ukraine was rated PC with the previous R.17. The assessors noted that the pecuniary sanctions under the AML/CFT laws were not dissuasive and proportionate to the severity of a situation. Furthermore, the AML/CFT Laws and the sectoral laws provided for different amount of fines, which could create uncertainty on the amount of fines that could be imposed. There were

also concerns linked to the efficiency of the sanctioning regime; the absence of appropriate sanctioning regime for foreign exchange offices and money transfer providers; and the impossibility to withdraw a bank license unless the bank suffered a significant loss of assets and income. The new AML/CFT Law and amendments to the Law on Banks have addressed some gaps.

344. *Criterion 35.1* –Art.24(3-6) AML/CFT Law stipulate the sanctions for failure of REs other than banks to comply with the law. These include fines, temporary suspension of an official of the RE (but only until a AML/CFT failure has been addressed), revocation of a licence (but only for any two repeated failures, no matter what the level of the failure) and other measures provided for in the sectoral legislation. The par. also specifies that supervisors may demand compliance by REs with AML/CFT legislation.

345. Supervisory Sanctions: Under Art.24(3) AML/CFT Law, in case of failure to perform (improper performance) by any RE of the requirement of the Law and any other AML/CFT legislation, the following fines can be imposed:

- failure to comply with requirements on identification, verification, KYC procedures in cases set forth in laws – up to EUR 295(for REs other than legal persons – up to EUR 59);

- failure to uncover, or late uncovering of, and inadequate registration procedure of, financial operations subject to financial monitoring in accordance with laws –EUR 472(for REs other than legal persons –EUR 59);

- failure to submit, late submission of, inadequate procedure of information submission, inaccurate information submission to the FIU – up to EUR 1179(for REs other than legal persons – up to EUR 118);

- failure to comply with the procedure of suspension of a financial operation(s) – up to EUR 1179(for REs other than legal persons –up to EUR 118);

- failure to submit, submission of incomplete, inaccurate information/documents (including STRs), submission of copies of documents with some details illegible, that may have been requested by a state FME and required for the performance of its functions of state Reg. and supervision in accordance with the AML/CFT Law, or for the loss of documents (including information about accounts and assets) – up to EUR 1179 (for REs other than legal persons – up to EUR 118);

- failure to carry out responsibilities set forth in the AML/CFT Law and/or AML/CFT Regulations and not described in paragraphs above – up to EUR 177 (for REs other than legal persons –EUR 59).

346. Under Art.24(8), for two or more failures by REs to comply with the requirements of the law or Regulations, the most severe penalty will be imposed.

347. The level of fines has limited proportionality and dissuasiveness. The power to revoke a licence in that law is overly restrictive. The overall sanctions' framework in the AML/CFT Law has limited proportionality and dissuasiveness. However, the NBU has additional powers, see below.

348. Art.24 does not apply to banks as, under Art.24(7), banks are subject to sanctions stipulated in the Law on Banks and NBU Res. No.346. Under Art.73 Law on Banks, the NBU, to an extent commensurate with the extent of the violation or the seriousness of the threats posed, has the right to apply sanctions for AML/CFT breaches. These include a written warning; calling general meetings of shareholders or of the bank's supervisory council or board; entering into a written agreement

with a bank (an enforceable undertaking) to take corrective actions and/or to enhance the efficiency and adequacy of the bank's RMSs; suspend dividends or the distribution of capital; increase economic ratios; restrict, suspend or terminate transactions carried out by the bank; impose fines (up to 1% of the bank's statutory capital); ; revoke a licence for foreign exchange operations; declare the bank as a problem bank; and revoke the banking licence and liquidate the bank (subject to Art.77 which states that the licence may be revoked if the bank has committed repeated breaches of AML/CFT legislation).

349. Overall the powers of sanctions available for the NBU on banks are not wholly proportionate and dissuasive, as a result of the limitation to 1% of the bank's statutory capital and the bank's ability to pay the penalty.

350. NBU Res. 346 and 316 contain procedures for the imposition of sanctions by the NBU for banks and NBFIs respectively.

351. In relation to NBFIs the NBU also has sanctions powers under NBU Res. 316 (May 2015). Under Art.5 of section I of the resolution these powers are limited to fines (tied by Art.1 of section II of the resolution to the levels in the AML/CFT Law); cancellation of a licence; and dismissal of the head of the FI. These powers have limited proportionality and dissuasiveness; the maximum level of fines is not sufficiently high and the powers of dismissal are limited.

352. Code of Administrative Offences: Sanctions in this Code are available to supervisory authorities and the FIU. Art.1669 Code of Administrative Offences provides sanctions for breaches of legislation related to preventing and countering legalisation (laundering) of proceeds of crime, financing of terrorism, including failure to submit information, late submission of information, submission of false information and disclosure of the fact that information (including STRs) has been submitted to the FIU. The fine ranges from EUR 57 to EUR 284 income tax-free. The Art. might not include all relevant documents. The level of fine is not proportionate or dissuasive. In addition, the sanctions for failure to provide information (as described above) can be applied under the AML/CFT Law.

353. CC: Art.209¹ CC applies to wilful violations of legislation related to AML/CFT, where there is failure to submit transactional information, submission of late or inaccurate information on transactions and disclosure of the fact that information (including STRs) has been submitted to the FIU but only in the circumstances that the actions caused substantial harm to the rights, freedoms or interests of individual citizens, individual legal persons or State or public interests. There is no definition of the concept of "substantial harm", it would be interpreted by the courts on a case by case basis. The penalty also applies only to transactional information. It can be a fine of EUR 570 to 2840, which is not proportionate or dissuasive given the seriousness of the offence. Overall, the range of sanctions has limited proportionality and dissuasiveness.

NPOs

354. See C.8.4(b).

TFS

355. Sanctions for violations of the requirements for UN sanctions regimes also fall under Art.24 AML/CFT Law. A RE (other than banks) which is a legal person can be subject to a fine of EUR 1179 for a failure to suspend the transaction of a designated person. This has limited proportionality and dissuasiveness.

356. Banks which fail to suspend financial operations in relation to TFS are liable to the penalties specified under Art.73 Law on Banks (see above). NBU Res. 316 (May 2015) applies to non-bank FIs.

357. Art.2091 CC (see above) also applies in relation to TFS.

358. *Criterion 35.2 –*

359. Only one of the powers available under Art.24 AML/CFT Law applies to individuals working within REs (other than banks), namely the power in Art.24(6) to suspend an official temporarily until the AML/CFT breach is rectified. (Individuals who are REs are subject to the fines specified in the table in C.35.1.) This power is too narrow and, overall, the provisions have limited proportionality and dissuasiveness.

Under Art.73 Law on Banks the NBU has the power to suspend an individual temporarily from office until he/she takes corrective action. In addition under Art.42 of the Law on Banks the NBU may demand the replacement of any of the bank managers if his professional skills and business reputation do not meet the requirements of that law.

360. Under Art.166⁹(1) CAO (see above) an official of the RE is subject to a fine ranging from EUR 57 to EUR 284 tax-free. This level of fine has limited proportionality or dissuasiveness. In addition, Art. 188³⁴ provides administrative liability for officials of REs for failure to comply with any legal requirements of the SAs is subject to a fine ranging from EUR 37 to EUR 114. This level of fine has limited proportionality and dissuasiveness.

361. Directors and senior management of REs violating AML/CFT legislation are also subject to criminal liability under Art.209¹ of the CC. The penalty can be a fine of EUR 570 to EUR 2840; prohibition from holding specified positions; and prohibition from engaging in specified activities for up to three years. These penalties have limited proportionality and dissuasiveness given the seriousness of the offence.

362. Overall, the range of sanctions has limited proportionality or dissuasiveness.

NPOs

363. See C.8.4(b).

TFS

364. The provisions mentioned above on the AML/CFT Law and the Law on Banks in the first paragraphs of this C.35.2 also apply in relation to individuals in relation to TFS. The financial penalty available for individuals under the AML/CFT Law is EUR 118.

365. In addition, under part 1 of Art.166⁹ CAO fines can be imposed on officials of REs, individual entrepreneurs, members of a liquidation committee, liquidators and authorised persons at the DGF for violation of the procedure to suspend financial transactions. The fine can be one hundred to two hundred times the individual income tax exemption limit (i.e. from EUR 57 to EUR 284). The penalty is not proportionate or dissuasive.

Art.209¹ of the CC (see above) also applies in relation to TFS.

The levels of fine and overall penalties have limited proportionality and dissuasiveness.

Weighting and Conclusion

366. Overall, sanctions for AML/CFT breaches have limited proportionality and dissuasiveness. The sanctions applicable to directors and senior managers are too narrow. **R. 35 is rated PC.**

Recommendation 36 – International instruments

367. In the 2009 MER, Ukraine was rated PC and NC for R.35 and SRI. The MER noted gaps in the implementation of the Vienna, Palermo and FT Conventions. The rating on R.35 was due to shortcomings in ML criminalisation, and uncertainties and shortcomings in the provisional measures and confiscation regimes and deficiencies in liability for legal persons. The rating on SRI was based on inconsistency with the TFC and UNSCRs 1267 and 1373. Since then, Ukraine has made considerable progress towards closer alignment of the ML and FT offences with international standards and with confiscation and provisional measures, including the introduction of criminal liability for legal persons.

368. *Criterion 36.1* – Ukraine has signed and ratified the following instruments:

Title	Signature Date	Ratification date
Vienna Convention	16.03.1989	28.08.1991
Palermo Convention	12.12.2000	21.04.2004 ⁷⁸
Terrorist Financing Convention	08.06.2000	06.09.2002
Merida Convention	11.12.2003	02.12.2009

369. Additionally, Ukraine has become a party to both the Council of Europe’s 2005 Warsaw Convention and 2001 Convention on Cybercrime.

370. *Criterion 36.2* - Some of the major provisions of the Vienna, Palermo, Merida and FT Conventions have now been implemented in domestic legislation. However, the implementation of the Conventions is still subject to the gaps described under R. 3, 4 and 5. Legislation covers most of the articles set out in footnote 64 in the Methodology on R.36. However provisions in the Vienna Convention (VC), notably Art.10 and 15, do not seem to be implemented in domestic legislation. MLA requests can be refused where the request pertains to an ongoing Ukrainian pre-trial investigation or trial. Art.559 of the CC also allows for the postponing of international legal assistance if execution would obstruct domestic investigations or proceedings, though there appears to be no provision reflecting Art.7 (17) VC and Art.18 (25 and 26) Palermo Convention (PC) allowing in such circumstances for a determination of whether (some) assistance can still be given at the time requested, subject to such conditions as the requested party deems necessary. It is also unclear whether there has been any consideration, as required by Art. 54 1 (c) Merida Convention (MC) of domestic measures to allow confiscation in the absence of a criminal conviction or whether MLA can be provided in these circumstances.

371. Ukraine improved the level of compliance with the PC by introducing criminal liability for legal persons in Art.963 CC. At the same time, legal persons cannot be subject to criminal liability for setting up a criminal organisation or obstruction of justice as required by Art. 5, 10 and 23 PC.

372. The level of compliance with the TFC has improved since the introduction of Art.258⁵ of the CC as an autonomous offence of FT. At the same time while Ukraine has ratified the majority of the treaties listed in the Annex to the TFC, it has not ratified the 2010 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft, the 2005 Protocol to the Convention

⁷⁸ With reservations and declarations to par.6 of Art.13 and par.b of Art. 2.

for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation.

Weighting and conclusion

373. A few of the provisions of the VC, PC and MC have not been implemented. The main concern is whether any continuing weaknesses relating to the prosecution domestically of ML and FT create difficulties in international cooperation. **R.36 is rated LC.**

Recommendation 37 - Mutual legal assistance

374. In the 2009 MER, Ukraine was rated PC with R.36 and SR.V. The assessors noted the absence of detailed procedures for the provision of various types of MLA, including timeframes for responses to MLA requests. Furthermore, a number of countries had indicated that the quality of materials received was low. Since 2009, Ukraine has made substantial progress by adopting a new CPC which contains a more comprehensive framework and elaborates further detailed procedures for the provision of various types of MLA as well as related guidance for all staff working on these matters. Such procedures stipulate detailed timeframes for responses to MLA requests.

375. *Criterion 37.1* – The legal basis for providing a wide range of legal assistance in criminal cases related to ML, associated predicate offences and FT is found in Ch. IX CPC and the ITs signed by Ukraine, including the European Convention on Mutual Assistance in Criminal Matters and its two additional protocols. MLA may also be granted on the basis of reciprocity. According to Art.561, any procedural act provided for in the CPC or an international treaty may be conducted in Ukraine to execute a MLA request. The UAs advised that, while not all mandatory obligations in ratified MLA instruments are necessarily replicated in Ukrainian law, Art.19 Law “On international agreements of Ukraine” stipulates that ratified treaties are part of the national legislation and are applied in the manner provided for in the national legislation. Under Art.558 CPC, MLA is to be provided within 1 month from the date of the receipt of the request, unless the MLA request involves complex or lengthy procedural actions. This is particularly relevant to MLA requests which are subject to approval by a prosecutor (e.g. examination of an individual) or the court (e.g. seizure of property, search, interference with private communications, surveillance, covert obtaining of samples). MLA may not be provided in relation to some cross-border smuggling offences, which have been decriminalised. Smuggling under Art.201 CC now applies to cultural values, a range of dangerous materials and explosive substances, weapons and ammunition. While smuggling of drugs etc. remains an offence under Art.305 CC, the smuggling of other goods to which duties apply are administrative offences.

376. *Criterion 37.2* – The authorities responsible for processing MLA requests are (1) the PGOU during a pre-trial investigation; (2) the NABU during the pre-trial investigation of financial and corruption offences falling within its remit; (3) the MoJ during a court trial; or (4) any other body, where the CPC or an international treaty specifies otherwise (Art. 545 CPC).

377. The PGOU and the MoJ, as Central Authorities, are required to refer material provided by way of MLA in NABU cases to NABU within 3 days. The provisions which regulate the transmission and execution of requests for MLA can be found in Art.548, 551 and 552 CPC. MLA requests are monitored through an electronic case management system which is maintained by the International Legal Cooperation and European Integration Unit of the Prosecutor’s Office. There is a similar system

within the MoJ. A similar system is operated by the NABU. The authorities indicate that there is no system of prioritisation of MLA requests.

378. *Criterion 37.3* – Art.562 states that if the procedural act in the CPC requires permission from a prosecutor or a court, a MLA request related to that procedural act may only be executed upon permission being granted, even if the laws of the requesting party do not specify such a condition. The evaluation team does not consider this to be unreasonable or unduly restrictive.

379. *Criterion 37.4* - The refusal of assistance on the sole ground that the offence is also considered to involve fiscal matters is not provided for in the CPC. Furthermore, Ukraine is a party to the 1978 Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. Art.1 Protocol explicitly removes this ground for refusal of assistance. Secrecy and confidentiality requirements are not grounds for refusal for MLA.

380. *Criterion 37.5* - Pursuant to Art. 558 (par.1 part 1), the UAs dealing with MLA requests must take the necessary measures to ensure the confidentiality of the request. In addition, in accordance with Art.556 CPC, at the request of the foreign authority, the UAs may take additional measures to maintain confidential (1) the fact that the request has been made; (2) the contents of the request; and (3) the information obtained as a result of the MLA request.

381. *Criterion 37.6* – Under ITs ratified by Parliament, MLA is granted even in the absence of dual criminality. However, as per Art.557 of the CPC, in the absence of an international treaty, dual criminality is required regardless of whether the request involves coercive actions.

382. *Criterion 37.7* - The dual criminality principle does not require the offence to be placed in the same category or be denominated by the same terminology by both countries.

383. *Criterion 37.8* - According to Art.561 of the CPC, any procedural actions on Ukrainian territory provided by in the CPC or in an international treaty may be applied to a MLA request as indicated under R. 31.

Weighting and Conclusion

384. Most of the criteria for this recommendation are met or mostly met. There is a clear legal foundation for MLA. There appear to be no clear prioritisation procedures. The other weakness relates to MLA where there is no international treaty relationship between Ukraine and the requesting State. In such circumstances MLA for non-coercive actions remains dependent on dual criminality. **R.37 is rated LC.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

385. In the 2009 MER, Ukraine was rated LC for R.38. Gaps were noted in identifying, freezing, seizing and confiscating relevant property which affect the ability of executing such actions for MLA.

386. *Criterion 38.1* – At the request of a foreign country, the authorities shall detect and arrest assets, money and valuables obtained as proceeds from crime (including ML, predicate offences and FT) and assets that belong to the suspect, accused or convicted person (Art.568(1) CPC). The arrested property may be confiscated following a final conviction by a court in the country of the requesting party (Art.568(3)(2) CPC). Art.23(8) AML/CFT Law provides that “Ukraine recognises court verdicts (decisions), decisions of other competent foreign agencies which have come into force in respect of persons that have derived proceeds from crime, and in respect of confiscation of

proceeds of crime or equivalent property located within Ukraine”. Authorities indicate that instrumentalities used in or (or intended for use in) ML, predicate offences and FT could be seized and confiscated on the basis of Art.568 CPC, which provides that “Any procedural actions as provided for in this Code or international treaty may be conducted in the territory of Ukraine to execute a request for international legal assistance”, and Art.100(9) of the CPC, which provides for the confiscation of instrumentalities (and property in corresponding value of instrumentalities).

387. As previously noted, Art.558 of the CPC stipulates that the time frame for processing and executing a foreign request should not exceed one month, which may be extended if the request involves complex and lengthy proceedings.

388. *Criterion 38.2* - The UAs consider that assistance with confiscation orders abroad can be provided in some circumstances in the absence of a conviction, so long as the request is based on a court decision on confiscation rendered as part of criminal proceedings: Art.568(3) of the CPC provides that assets detected on the basis of a foreign request for assistance may be confiscated on the basis of “a sentence or any other decision made by the court of the requesting Party which has entered into legal force”. The UAs also indicate that, under Art.602(8) of the CPC, which provides for the “recognition and enforcement of a sentence delivered by a court of foreign State in part of a civil claim shall be disposed as prescribed in the Code of Civil Procedure”, assistance could also be provided in relation to non-criminal non-conviction based confiscation proceedings. This not been tested in practice.

389. *Criterion 38.3* –

(a) The UAs stated that the arrangements for co-ordinating seizure and confiscation actions with other countries are contained in ITs signed by Ukraine. Art.571 of the CPC provides the legal basis for the setting up of joint investigative groups to conduct pre-trial investigations of criminal offences committed in the territory of several states or where the interests of such states is affected. Joint investigative groups are entitled to conduct the procedural actions set out in the CPC, including the seizure of assets. (b) Art.568(2) of the CPC requires the authorities to preserve the assets which are seized on behalf of a requesting country until such time as a court decision is taken with respect to such assets. The National Agency for detection, investigation and management of assets is said to be responsible now for the management/preservation of assets. The Agency had been established but not yet fully operational at the time of the on-site visit (see C. 4.4).

390. *Criterion 38.4* – As per Art.23(8) AML/CFT Law, confiscated proceeds of crime or equivalent property may, under a respective treaty of Ukraine, be transferred, in full or in part, to the foreign country whose court or other competent agency has made the confiscation verdict (decision). Under Art.568(6) of the CPC, at the request of the Central Authority of Ukraine, the court may decide to transfer property (or monetary equivalent) confiscated in the framework of MLA to the requesting party:

- 1) as compensation for victims of damage caused by the offense (once the requesting party has provided the UAs with a final court judgement);
- 2) as allowed by international agreements regulating the distribution of confiscated property or its monetary equivalent, to which Ukraine is a party., The UAs have provided examples of bilateral treaties including clauses allowing asset sharing, e.g. “upon mutually acceptable terms” or “in accordance with [the Parties’] domestic law, unless otherwise agreed between the Parties”. Although such clauses do not seem to have been implemented, the UAs report that *ad hoc* agreements on asset sharing were established and implemented with the Netherlands (2014), on the basis of a confiscation decision made by a Dutch court.

Weighting and Conclusion

391. All of C. are met or mostly met. **R.38 is rated LC.**

Recommendation 39 – Extradition

392. In the 2009 MER, Ukraine was rated LC with these requirements. The assessors found certain legal impediments which restricted the provision of extradition-related assistance. It was found that the limitations in ML criminalisation of impacted on Ukraine's ability to extradite persons sought for ML. It was also noted that the effectiveness of the extradition system could not be fully assessed.

393. *Criterion 39.1 –*

- (a) Ukraine is able to provide extradition on the basis of bilateral or multilateral agreements. Ukraine became a party to the European Convention on Extradition of 1957 and its 1st and 2nd Protocols. Extradition can also be provided on an ad hoc basis on the principle of reciprocity pursuant to Ch. 44 CPC. Both ML and FT are extraditable offences since both ML and FT are punished by imprisonment for more than 1 year, which is a necessary condition to consider a request for extradition. However continuing concerns outlined under R.3 and R.5 about the ambit of the ML and FT offences may mean that not all aspects of ML and FT, as they are understood internationally, may be the subject of successful extradition proceedings.
- (b) The PGO is responsible for extradition of suspects accused during the preliminary investigation. The MoJ is responsible for the extradition of defendants convicted in criminal proceedings during court proceedings or for execution of sentence (Art.574 of the CPC). Monitoring of execution requests on extradition is conducted using the specially designed system of electronic accounting and control maintained by the division of international and legal cooperation and European integration of the PGO. The evaluators were advised that a similar system exists in the MoJ. There appear to be no clear prioritisation procedures. The timely execution of extradition requests is ensured by Statute. There is a procedure for provisional arrest for 40 days pending arrival of a formal request for extradition. According to Art.584 of the CPC, after the formal request for extradition from a competent authority of a foreign state has been received, an extradition arrest warrant is made, which cannot last more than 12 months. Thereafter, under Art.587 of the CPC, an examination is undertaken by the Central Authority of Ukraine within 60 days to ensure that there are no circumstances that prevent extradition. Art.590 of the CC stipulates that a decision is then taken by the Central Authority of Ukraine surrender. If within ten days the extradition is not appealed to the court the actual delivery of that person to the competent authorities of a foreign country (part three of Art.590 of the CC) is organised. Any appeal is undertaken within five days of its receipt by the court.
- (c) The Constitution and, as noted, the CPC set limits to extradition which do not appear to be unreasonable or unduly restrictive. Under Art.573 of the CPC, extradition may only be carried out for the offences that are punishable by 12 months or more imprisonment and where a prison sentence to be enforced is at least 4 months.

394. A person in relation to whom Ukraine has granted refugee status, the status of a person in need of additional protection or temporary protection cannot be extradited. A person cannot be extradited to a foreign country where his or her health, life or freedom will be threatened based on

race, creed (religion), ethnicity, citizenship (nationality), membership of a particular social group or political opinion, except in the cases provided by ITs of Ukraine.

395. *Criterion 39.2* - According to Art.25 Constitution, Ukraine shall not extradite its own citizens. Art.10 of the CC also includes stateless persons permanently residing in Ukraine.

396. Art. 589(3) of the CPC stipulates that a refusal to extradite a person on grounds of citizenship, refugee status or for any other reason, does not exclude criminal proceedings in Ukraine. At the request of the foreign competent authority, the PGO shall initiate a pre-trial investigation with respect to the person subject to the extradition request. However the provision does not, on its face, require the PG to assume proceedings without undue delay.

397. *Criterion 39.3* – Under Art.589(2) of the CPC, a request for extradition can be denied if the act for which extradition is requested is not a crime in Ukraine. However, the law does not require the offence to be within the same category or to be denominated by the same terminology so long as both countries criminalise the conduct underlying the offence.

398. *Criterion 39.4* - Pursuant to Art.588 of the CPC, a simplified procedure for extradition is subject to the written consent of the defendant. In case of consent, the investigating judge sends the application to the CAU, which evaluates the request within three days and determines whether the simplified procedure may be applied. Once the approval for the simplified procedure is granted it cannot eventually be withdrawn.

Weighting and Conclusion

399. Concerns remain about the reach of the ML and FT offences and their impact on extradition. There appear to be no clear prioritisation procedures. There is also a question as to whether a refusal to extradite on grounds of nationality would (at the request of the country seeking extradition) be submitted to the competent authorities without due delay, as the legislation is silent on this point. **R. 39 is rated LC.**

Recommendation 40 – Other forms of international cooperation

400. In 2009 MER, Ukraine was rated LC with requirements that now fall under R.40. The MER noted gaps in the legal framework to enable exchange of information spontaneously.

401. *Criterion 40.1* – All competent authorities have mechanisms in place that allow them to rapidly provide the widest range of international cooperation in relation to ML, associated predicate offences and FT, both spontaneously and upon request. These mechanisms are described in more detail under C.40.9 to 40.19.

402. *Criterion 40.2* – All competent authorities have a legal basis for providing co-operation (AML/CFT Law: Art.22(1) on general power to co-operate, Art.23(1) on the FIU and Art. 23(6) on supervisors and LEAs; supplemented by relevant provisions in sectorial laws). There is nothing which hinders the competent authorities from using the most efficient means of co-operation. The following clear and secure gateways are used for the exchange of information: the Egmont Secure Web (FIU); Interpol and Europol (the NP); I-SECOM (NABU). By Regulation, the SSU must exchange information with foreign partners using means of communication that comply with the technical and cryptographic protection of information, but no specific information has been provided on the concrete arrangements established for that purpose. There do not appear to be systems for the

prioritisation or deadlines for the execution of requests in the area of informal cooperation. The FIU provides security and confidentiality of the received information under the principles of the Egmont Group. NBU Reg. 246 regulates the creation, processing and storage of documents that contain information subject to restricted access, including information received in the process of international cooperation. NC ensures the protection of information received in international cooperation in accordance with the requirements of Standard instruction on the procedure of registration, storage, use and destruction of documents and other media storages that contain proprietary information.

403. *Criterion 40.3* – Although the FIU does not need to enter into bilateral or multilateral agreements to co-operate with its counterparts, it has signed MoUs with 73 counterparts to facilitate co-operation. The NBU is authorised to cooperate with its foreign counterparts and other foreign competent authorities on the basis of reciprocity and international bilateral and multilateral agreements (17 international agreements on cooperation have been signed). The NABU, NSSMC, NC, PGOU and SFS have also concluded agreements with foreign counterparts.

404. *Criterion 40.4* - Being a member of Egmont Group, the FIU provides feedback in a timely manner to foreign counterparts from which they have received assistance, on the use and usefulness of the information obtained, in accordance with CL. 19 of the Egmont Group Principles for Information Exchange. Regarding the other competent authorities, Ukraine indicates that there are no specific legal provisions regulating explicitly the provision of feedback to the authority from which assistance was sought and providing this in a timely manner. However, there are no provisions which would pose an obstacle to doing so. This has happened in practice (e.g. OFAC, Serious Fraud Office of the UK).

405. *Criterion 40.5* – There are no prohibitions or restrictive conditions which apply to the provision of exchange of information or assistance. The legal bases for the exchange of information do not preclude the competent authorities from responding to a request on the grounds that it involves fiscal matters. Financial and other secrecy requirements do not restrict the exchange of information with foreign counterparts. Sector-specific legislation expressly provides that information subject to secrecy may be exchanged by the supervisors with their foreign counterparts (Law on Banks Art.62(22)). It is unclear whether an inquiry, investigation or proceeding underway in Ukraine would be a reason for refusing cooperation beyond MLA. The authorities may exchange information with their foreign counterparts irrespective of whether the nature or status of the requesting party is different.

406. *Criterion 40.6* – As regards the FIU, Art.12(12) AML/CFT Law and the principles of the Egmont group establish the mechanisms for safeguarding the information exchanged and ensuring that it is used only for the purpose for, and by the authorities, for which the information was sought or provided. The disclosure in any way of FIU secret information entails responsibility under the law or by court order. Any dissemination of information to other agencies or third parties, or any use of this information for administrative, investigative, prosecutorial and judicial purposes should be subject to prior authorisation requested FIU. Bilateral agreements on banking supervision and/or AML between the NBU and foreign authorities include a Cls. aimed at ensuring that the information received by either party cannot be transferred to third parties without the prior consent of the disclosing party. The general requirements and mechanisms of protecting classified information exchanged in international cooperation can also be found in Art.222 of the CPC.

407. *Criterion 40.7* – See 40.2 and 40.6.

408. *Criterion 40.8* – The UAs indicate that, based on the general provisions contained in Art.22 and 23 AML/CFT Law and authority-specific legislation, competent authorities can conduct inquiries at the request of and exchange any information obtained domestically with foreign counterparts. .

409. *Criterion 40.9* – Under Art.23 AML/CFT Law, the FIU can cooperate with relevant authorities of foreign countries for the purpose of preventing and fighting ML, FT and PF.

410. *Criterion 40.10* – The FIU should, if possible, provide feedback to foreign counterparts, upon request and whenever possible, on the use of the information provided, as well as on the outcome of the analysis conducted, based on the information provided. Moreover, as a member of Egmont Group, the FIU provides such feedback in accordance with Cls. 19 of the Egmont group Principles for Information Exchange.

411. *Criterion 40.11* – Art.23 (3) AML/CFT Law empowers the FIU, for the purpose of responding to a foreign counterpart's request, to obtain information from government agencies, enterprises, institutions, organisations and PFMEs (i.e. REs). This covers the categories of information referred to in C.40.11. Moreover, as a member of the Egmont Group, the Ukrainian FIU can exchange relevant information in accordance with Cls. 22 of the Egmont Group Principles for Information Exchange.

412. *Criterion 40.12* – Art.23 AML/CFT Law provides the general legal basis on which financial supervisors provide international cooperation on matters of AML/CFT, in accordance with ITs endorsed by Ukraine or upon their initiative. The legal basis is further detailed in Art. 62 (13) Law on Banks for the NBU and Art. 32 of the Law “On State Regulation of Financial Services Markets” for the NC. In both cases, the principles of reciprocity or cooperation in accordance with an IT apply. . The UAs report that, on those bases, the NBU, the NC and the SC all have entered into international agreements to provide cooperation, including for AML/CFT supervision purposes.

413. *Criterion 40.13* – Art.62 (13) Law on Banks provides the NBU has the right to share information obtained in the context of its supervisory activities with the banking supervision authority of another country and to receive such information from the banking supervision body of another country. The information provided (received) may be used exclusively for the purposes of banking supervision or the prevention of ML or FT. Art.32 of the Law “On State Regulation of Financial Services Markets” allows the NC, “on issues lying within its competence”, to provide and obtain, on a reciprocal basis, information on the supervision of financial markets and institutions, “which does not constitute a state secret and does not result in the disclosure of a trade secret”, as well as information on “*separate financial institutions as stipulated by relevant international treaties*”. The UAs indicate that the SC can also provide domestically available information to foreign counterparts on the basis of Art.22 and 23 AML/CFT Law and relevant bilateral agreements.

414. *Criterion 40.14* – There is no restriction on the exchange of information mentioned under C.40.14 by financial supervisors.

415. *Criterion 40.15* – The UAs indicate that the legal bases described under C.40.8 allow financial supervisors to conduct inquiries on behalf of foreign counterparts.

416. *Criterion 40.16* –The NBU has provided examples of agreements requiring prior authorisation of the requested party for the dissemination of information exchanged, unless the requesting supervisor is under the obligation to disclose or report such information. Similar information has not been provided by the NC and the SC.

417. *Criterion 40.17* – The PGOU is empowered to exchange information for pre-trial purposes on ML, associated predicate offences or FT, including the information on identification, tracking of

income and assets from crime. Such exchanges of information (if it does not contain secrets protected by law) can occur during direct contact representatives of official agencies. In addition, exchange of relevant information may take place via Eurojust channels. The NABU cooperates within its competence according to the legislation of Ukraine and ITs of Ukraine.

418. *Criterion 40.18* – Cf. C.40.8 for the information on the legal basis under which the LEAs can conduct inquiries and obtain information on behalf of foreign counterparts. As for the international regimes and practices that govern cooperation in the legal sphere, Ukraine signed agreements with Interpol, Europol and Eurojust. NABU operates in compliance with these agreements.

419. *Criterion 40.19* - Pursuant to Art.571 of the CPC, joint investigative teams may be created in the event of a pre-trial investigation of criminal offences committed in the territory of several states or in case the interests of these states are violated. The PGO considers and decides on the establishment of joint investigative teams at the request of bodies conducting pre-trial investigations, Ukraine's Prosecutor and the competent authorities of foreign states. The members of the joint investigation team directly interact with each other, agree on the main lines of pre-trial investigation, legal proceedings, exchange the information. Coordination of their activities shall be ensured by the party which initiated the creation of the joint investigation team or one of its members. Investigations (measures of inquiry) and other procedural actions are performed by the members of the joint investigation team of the State in which such actions are conducted.

420. *Criterion 40.20* – Pursuant to Art.23 (6) AML/CFT Law, financial monitoring agencies and LEAs are allowed to pursue international cooperation with “respective foreign agencies”, which seems to limit cooperation to counterparts only. However, the UAs report instances in which the PGOU requested and received assistance through cooperation channels that involved both the domestic and foreign FIUs.

Weighting and Conclusion

421. Ukraine has met or mostly met all criteria but one under the Recommendation. Conditions for the dissemination of information received by all financial supervisors could be further clarified by the UAs. **R.40 is rated LC.**

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	LC	<ul style="list-style-type: none"> • The action plan requiring all authorities to apply a RBA to their activities is still in draft form. • There is no specific requirement to apply enhanced measures to manage and mitigate the higher risks identified in the NRA or incorporate information on those risks into risk assessments. • The simplified measures concessions have not been determined on the basis of a lower risk and consistency with the NRA. • There is no requirement for REs to identify, assess and understand ML/FT risks relating to distribution channels.
2. National cooperation and coordination	C	
3. Money laundering offence	LC	<ul style="list-style-type: none"> • Not all required predicate offences are completely covered (partial decriminalisation of smuggling, and financing of some terrorism offences in the annex to the TFC are not clearly predicate offences to ML.
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> • Value confiscation does not apply to instrumentalities. • As yet there is no systematic management of restrained property.
5. Terrorist financing offence	PC	<ul style="list-style-type: none"> • FT offence does not clearly cover direct and indirect provision or collection of funds. • FT Offences based on Art. 2(1)(a)TFC would require an additional purposive element. • Some offences contained in the conventions and protocols listed in the annex are not clearly subject to prosecution. • International organisations which are not legal persons are not covered under the FT offence. • Incomplete criminalisation of all financing of travel for terrorist purposes under UNSCR 2178.
6. Targeted financial sanctions related to terrorism & FT	PC	<ul style="list-style-type: none"> • Mechanisms to identify, designate and de-list targets, and respond to requests from partner governments are insufficient. • All necessary categories of assets are not covered. • The freezing obligation does not apply to all natural and legal persons in the country. • The freezing obligation does not extend to all the funds or other assets referred to under C. 6.2 (b)(i) to (iv). • There is no explicit prohibition over nationals, or any persons and entities, except for REs, to refrain from making any funds or other assets, economic resources, or financial or other related services, available for the benefit of designated persons and entities.
7. Targeted financial sanctions related to proliferation	PC	<ul style="list-style-type: none"> • The freezing obligation does not cover all natural and legal persons. • The freezing obligation does not apply to all required types of funds. • There is no provision that prohibits making funds or assets available to designated persons or entities. • It is unclear whether sufficient guidance is provided. • There are no publicly known procedures to submit de-listing requests. • The rights of bona fide third parties do not seem to be in place with regard to Iran. • There are no adequate provisions on contracts, agreements or obligations that arose prior to the date on which accounts became subject to TFS.
8. Non-profit organisations	LC	<ul style="list-style-type: none"> • No detailed analysis of NPO risks has been conducted and it is unclear whether measures are appropriate to the risks.

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> There is no specific mechanism for reporting suspected FT-related activity in the NPO sector, apart from select reporting channels that can facilitate information-sharing among relevant authorities. Little guidance is provided to NPOs or donors.
9. Financial institution secrecy laws	C	
10. Customer due diligence	LC	<ul style="list-style-type: none"> There is no requirement for REs not licenced and authorised by the NSSMC, NBU or NC to understand the nature and the purpose of the customer's business. REs are not required to understand the nature of the customer's business and its ownership and control structure with regard to legal arrangements. The law does not require REs to identify the settlor, protector and beneficiaries of or any person who may exercise ultimate effective control over the Trust. No specific legislative provision allows REs to file an STR without identifying a customer who might be tipped off during the identification and verification.
11. Record keeping	C	
12. Politically exposed persons	LC	<ul style="list-style-type: none"> The limitation periods of 3 years following the end of PEPs functions is inconsistent with the FATF approach.
13. Correspondent banking	C	
14. Money or value transfer services	LC	<ul style="list-style-type: none"> There is no mechanism or process to identify MVTS operators that carry out activities without a licence.
15. New technologies	LC	<ul style="list-style-type: none"> There is no explicit requirement for REs to undertake risk assessments prior to launching of new products, practices or technologies.
16. Wire transfers	C	
17. Reliance on third parties	N/A	
18. Internal controls and foreign branches and subsidiaries	LC	<ul style="list-style-type: none"> It is unclear how much authority the responsible employee has over the Group's REs located outside Ukraine. Disclosure of wider information between group entities for AML/CFT purpose does not seem covered.
19. Higher-risk countries	C	
20. Reporting of suspicious transaction	C	
21. Tipping-off and confidentiality	C	
22. DNFBPs: Customer due diligence	LC	<ul style="list-style-type: none"> Most deficiencies noted in CDD requirements for FIs are valid for DNFBPs, especially the gap noted under R.12.
23. DNFBPs: Other measures	LC	<ul style="list-style-type: none"> Most deficiencies noted under R.18-21 are valid for DNFBPs.
24. Transparency and beneficial ownership of legal persons	LC	<ul style="list-style-type: none"> The risks posed by legal persons formed under Ukrainian Law or of those different types of legal persons permitted by the Civil Code have not been reviewed. There is no requirement for natural person(s) resident in Ukraine or the appointment of a DNFBP to be responsible for maintaining BO information and being accountable to the authorities. The law does not provide for any specific mechanism or procedure to verify and update on a timely basis the information referred to under C.24.3 and 24.4. Where information is required from REs, there are certain onerous

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		<p>conditions under which, LEAs may obtain information through a court order.</p> <ul style="list-style-type: none"> • There is no legal provision which prevents a person acting as a nominee for another. • The sanctions' level does not appear to be dissuasive in nature.
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> • There is no information on whether relevant information is kept accurate and up to date. • There is no requirement to keep information, pursuant to this Recommendation, accurate and as up to date as possible, and updated on a timely basis. • Trustees are not legally liable for any breach of their obligations; or subject to proportionate and dissuasive sanctions, whether criminal, civil or administrative, for failing to comply. • There are proportionate and dissuasive sanctions, whether criminal, civil or administrative, for failing to grant to competent authorities timely access to information regarding the trust.
26. Regulation and supervision of financial institutions	LC	<ul style="list-style-type: none"> • Not all management positions are subject to fit and proper testing in certain FIs. • For non core-principles financial institutions, the discretion of the supervisors to classify FIs according to risk is narrow. • No requirement by supervisors to reviewer the assessment of the ML/FT risk profile of a FI, except with respect to banks.
27. Powers of supervisors	LC	<ul style="list-style-type: none"> • Sanctioning powers limited as sanctions are not proportionate and dissuasive.
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> • Limited measures to prevent associates of criminals from controlling or managing DNFBPs. • Sanctions framework is not sufficiently robust. • No requirements covering risk-sensitive approaches to on-site and off-site supervision. • No requirements for SAs to take into account the degree of discretion allowed to DNFBPs under the RBA.
29. Financial intelligence units	C	
30. Responsibilities of law enforcement and investigative authorities	C	
31. Powers of law enforcement and investigative authorities	C	
32. Cash couriers	LC	<ul style="list-style-type: none"> • The declaration system does not apply to certain forms of BNIs. • There are no rules concerning cash and BNIs transported by cargo. • The CA does not have a specific power to request and obtain information with regard to the origin or intended use of the currency or BNIs, upon discovery of a false or non-declaration.
33. Statistics	PC	<ul style="list-style-type: none"> • Many of the statistics provided to the evaluation team were not consistent. Differing figures in various areas were received by the evaluation team.
34. Guidance and feedback	C	
35. Sanctions	PC	<ul style="list-style-type: none"> • Sanctions for AML/CFT breaches are not proportionate and dissuasive. • Sanctions for directors and senior managements are too narrow.
36. International instruments	LC	<ul style="list-style-type: none"> • The implementation of the Conventions is still subject to the gaps described under R. 3, 4 and 5.
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> • It is unclear whether there are case management systems in the

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		<p>MoJ. In any case there are no clear prioritisation procedures.</p> <ul style="list-style-type: none"> • Where there is no international treaty between Ukraine and the requesting State, MLA for non-coercive actions remains dependent on dual criminality.
38. Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> • Lack of clarity on the confiscation of instrumentalities, value confiscation and laundered property on behalf of other countries.
39. Extradition	LC	<ul style="list-style-type: none"> • Gaps in ML and FT offences have a negative impact on extradition. • There appear to be no clear prioritisation procedures. • It is unclear whether a refusal to extradite on grounds of nationality would (at the request of the country seeking extradition) be submitted to the competent authorities without due delay.
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> • There do not appear to be specific systems for the prioritisation of the execution of requests in the area of informal cooperation. • It is unclear whether an inquiry, investigation or proceeding underway in Ukraine would be a reason for refusing non-MLA cooperation. • Lack of clarity on the conditions of dissemination of information by the NC and the SC.

GLOSSARY OF ACRONYMS

AML/CFT	Anti-Money Laundering/Combating Financing of Terrorism
ARO	Asset Recovery Office
BNIs	Bearer Negotiable Instruments
BOs	Beneficial Owners
CA	Customs Authority
CAO	Code on Administrative Offences
CC	Criminal Code of Ukraine
CDD	Customer Due Diligence
CPC	Code of Criminal Procedure of Ukraine
CRM	Compliance-Risk Management
DGF	Deposit Guarantee Fund
DNFBPs	Designated Non-Financial Businesses and Professions
DPMS	Dealers in Precious Metals and Stones
EDD	Enhanced Due Diligence
EU	European Union
FATF	Financial Action Task Force
FIs	Financial Institutions
FIU	State Financial Monitoring Service of Ukraine
FMEs	Financial Monitoring Entities
ITs	International Treaties
Law on Banks	Law on Banks and Banking Activity
Law on Licensing	Law on Licensing of Economic Activities
LEAs	Law Enforcement Agencies
MEDT	Ministry of Economic Development and Trade of Ukraine
MER	Mutual Evaluation Report
MFA	Ministry of Foreign Affairs
MIA	Ministry of Internal Affairs
ML	Money Laundering
MLA	Mutual Legal Assistance
MoF	Ministry of Finance of Ukraine
MVTS	Money or Value Transfer Services

NABU	National Anti-Corruption Bureau of Ukraine
NBFIs	Non-Banking Financial Institutions
NBU	National Bank of Ukraine
NC	National Commission for State Regulation of Financial Services Markets of Ukraine
NGOs	Non-Governmental Organisations
NP	National Police of Ukraine
NPOs	Non-Profit Organisations
NRA	National Risk Assessment
NSSMC	National Securities and Stock Market Commission
PEPs	Politically Exposed Persons
PF	Proliferation Financing
PFMEs	Primary Financial Monitoring Entities
PGOU	Prosecutor General's Office of Ukraine
RBA	Risk-Based Approach
REs	Reporting Entities
RMSs	Risk Management Systems
SAR	Suspicious Activity Report
SAs	Supervisory Authorities
SBI	State Bureau of Investigation
SC	Securities Commission
SFS	State fiscal Service of Ukraine
SJA	State Judicial Administration of Ukraine
SL	Sectoral Legislation
SROs	Supervisory Regulations and Orders
SSU	Security Service of Ukraine
STR	Suspicious Transaction Report
TF	Terrorist Financing
TFC	Terrorist Financing Convention
TFS	Targeted financial sanctions
UAs	Ukrainian Authorities
UBO	Ultimate Beneficiary Owner
VC	Vienna Convention

WG

Working Group

WMDs

Weapons of Mass Destruction

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December 2017

Anti-money laundering and counter-terrorist financing measures

Ukraine

Fifth Round Mutual Evaluation Report

This report provides a summary of the AML/CFT measures in place in Ukraine as at the date of the on-site visit (27 March to 8 April 2017). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Ukraine's AML/CFT system, and provides recommendations on how the system could be strengthened.