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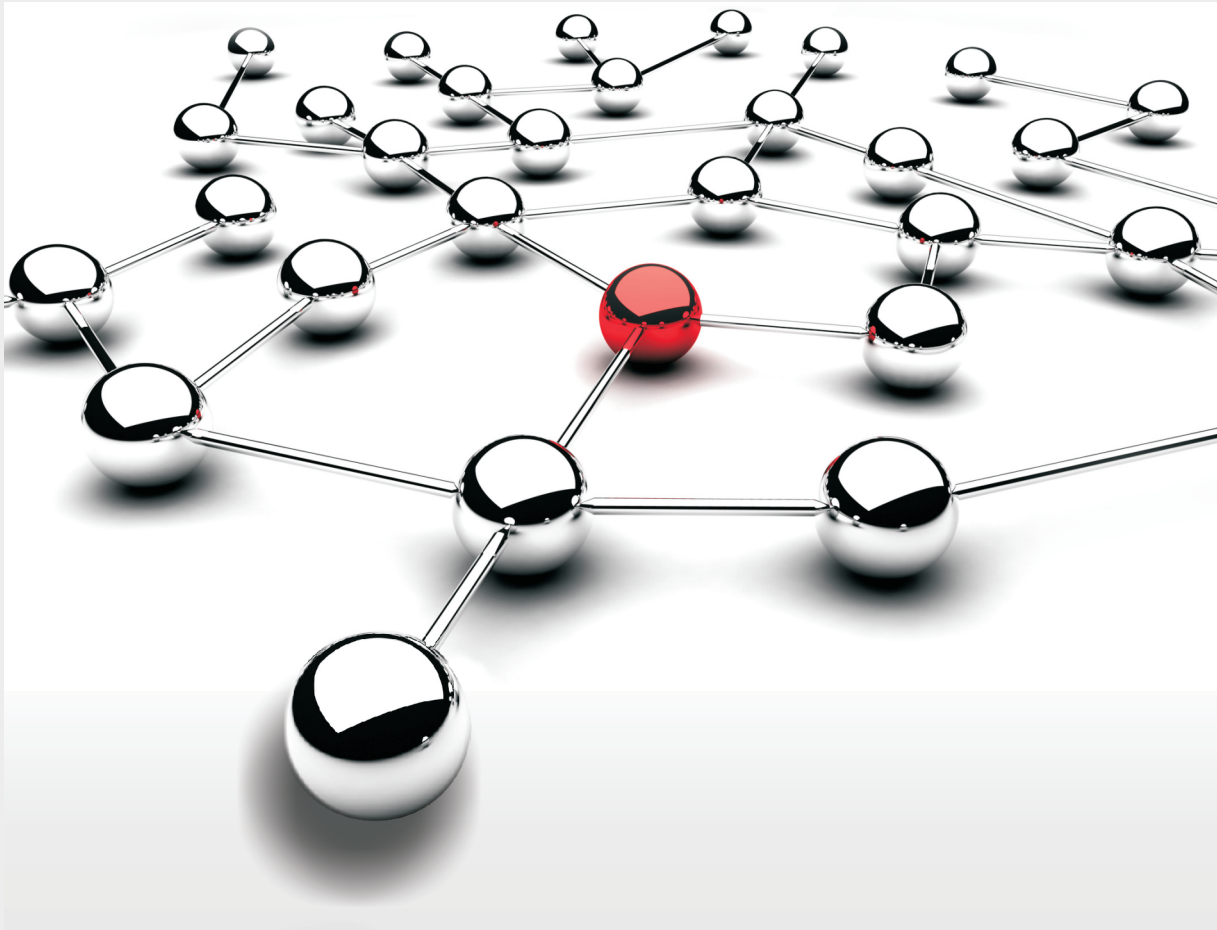

3rd round of mutual evaluation reports

Horizontal review

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

MONEYVAL(2010)2

Horizontal Review of MONEYVAL's Third Round of Mutual Evaluation Reports

Committee of Experts on the Evaluation of Anti-Money
Laundering Measures and the Financing of Terrorism (MONEYVAL)
Directorate General of Human Rights and Legal Affairs
Council of Europe

December 2010

Printed at the Council of Europe

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Foreword

This is the third horizontal review of MONEYVAL's evaluations rounds. The review of the first round of evaluations (1998-2001) was published in 2002. The review of the second round (2001-2005) was published in 2007. Both can be found on MONEYVAL's website, and it is instructive to read their conclusions in the context of this third review.

As the author of the first horizontal review, I know from personal experience the enormous amount of research and hard labour that goes into such a document. I would therefore like to pay tribute to the tremendous work done in this review by our three contributing consultants: Dr. Lajos Korona (legal issues), Mr. Herbert Zammit Laferla (financial issues) and Mr. Boudewijn Verhelst (law enforcement issues). MONEYVAL owes them a great debt of gratitude.

MONEYVAL began evaluations in 1998, and it is now in the thirteenth year of its existence as the Council of Europe's primary monitoring arm in anti money laundering and countering the financing of terrorism (AML/CFT).

The first point that clearly emerges from this review is that year on year progress is being made by all countries participating in MONEYVAL's evaluation process through development and consolidation of their AML/CFT defences. The progress is particularly striking on the preventive side. While some small number of countries still do not extend AML/CFT preventive obligations to all of the non-financial sector (including, in some cases, lawyers and accountants), all countries have in place broadly comprehensive AML/CFT preventive legislation. These laws typically address the important Customer Due Diligence and record keeping standards, which need to be in place in all financial and relevant non financial institutions, and other businesses and professions which are required to impose AML/CFT obligations. These obligations should be applied when accounts are opened and significant transactions are conducted by natural and legal persons. The progress reports show that most countries have enhanced their legislation appropriately during the course of the third round to ensure that these requirements apply also in respect of the identification and verification of the real "beneficial owners" of accounts even if these requirements were not fully in place at the time of the onsite visit. AML/CFT supervision and sanctioning in the financial sector, particularly in respect of banks, have also been intensified between 2005 and 2009. Compliance by the banks and the financial sector generally is much stronger than in the non financial sector, particularly the designated categories of businesses and professionals (DNFBP) where both compliance and AML/CFT supervision need enhancing. All countries in MONEYVAL also have a legal basis for the reporting of suspicious transactions by the private sector to a financial intelligence unit. In all MONEYVAL states this system is now fully operational.

During the third round MONEYVAL countries have slowly developed their systems to respond to the FATF Special Recommendations on Financing of Terrorism, though the measures in place for prosecution of terrorism financing and rapid freezing of terrorist assets had rarely been used. On the positive side most of the financial sector participants which the evaluation teams met were checking the relevant terrorist lists and were well aware of the need to freeze or report should they find a match.

On the criminal legal side, it is good to see that many MONEYVAL countries have now embraced concepts which ten years ago were not considered to be within their legal traditions, such as corporate liability for money laundering. Several countries, at MONEYVAL prompting, have gone beyond existing international standards in

criminalising negligent money laundering. Some countries are also introducing, where a criminal conviction has been obtained for serious proceeds-generating offences, the reversal of the burden of proof in establishing whether assets in the possession of a defendant have been unlawfully obtained (and therefore subject to confiscation). Other countries are exploring innovative ways of addressing, through an appropriate legal process, the problems of "unexplained wealth" in countries where organised crime and corruption remain active.

While progress on preventive measures has gathered pace, and legislative enhancements have been made to facilitate the investigation and prosecution of money laundering and to develop freezing, seizing and confiscation regimes, the results from the law enforcement/prosecutorial side frequently remain modest. This review repeatedly notes the difficulties evaluators faced in obtaining meaningful statistical data which would demonstrate effective implementation of the legal standards, notably in respect of investigations, prosecutions and convictions for serious money laundering offences and the achievement of major deterrent confiscation orders. On the latter issue, while some statistical data was generally available in most countries to show in total how much money had been frozen or seized, corresponding information on final confiscation orders was frequently lacking. In these circumstances it was often unclear to evaluators whether courts were ultimately making confiscation orders or not. This is critically important, as a good test of a performing AML/CFT system is how extensively proceeds are being taken away from those that make profits (and sometimes very large profits) from crime. It should be stressed that it is not for the evaluators themselves to establish effective implementation, though this review shows much effort was made by evaluation teams to try to do so. The onus is on the countries themselves to demonstrate effectiveness under FATF procedures. Countries preparing for the 4th round evaluations should have this firmly in mind.

From available statistical data it appears that at any one time there is a much larger number of money laundering investigations ongoing than convictions being achieved. Many of the investigations appear very protracted (sometimes several years can elapse). That is not to say that there has been no success is achieving convictions in major money laundering cases, with occasionally some long and deterrent sentences. As at the time of writing this foreword all MONEYVAL countries have now achieved convictions for money laundering. Indeed in some countries some serious money laundering convictions have been achieved. But convictions for serious and major money laundering offences still appear to be the exception, rather than the rule. Most money laundering cases that are prosecuted continue to be the easy ones, typically self laundering charged together with the underlying predicate offence. Many of the money laundering cases prosecuted still show an over-emphasis on the tax predicate, at the expense of other serious proceeds-generating offences which frequently are identified by the countries themselves as the largest sources of domestic criminal profit. This review notes, with concern, how few cases are being brought for autonomous money laundering on behalf of organised crime by "professional" launderers or other third parties, when it is clear that organised crime is active in many MONEYVAL countries. This is disappointing. Success in such cases can really demonstrate that money laundering is being taken seriously and is being effectively pursued in the way envisaged by the international community, when money laundering was created as a distinct offence in its own right under the international conventions. This review details the problems and challenges that investigators and prosecutors still face, particularly regarding the levels and types of evidence that may be needed in autonomous money laundering cases. Uncertainties about the level of evidence required and hesitancy to test existing legal provisions continue in too many countries. A number of these stubborn legal and evidential problems revealed through the MONEYVAL evaluation process are addressed directly in the 2005 Council of Europe convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198), and ratification of this instrument should assist the prosecutorial effort.

Perhaps a more systemic problem on the law enforcement side is noted in this review. That is the need for greater priority to be given routinely by law enforcement to "following the money" in parallel with the investigation of the predicate offence in major profit-generating cases. This investigative approach can and does lead to the identification of major money laundering activity and serious, deterrent confiscation orders. By the third round many MONEYVAL countries were conscious that they need more resources and training in modern financial investigative methods and techniques, and were beginning to address this issue. Nonetheless this still remains a priority need in many MONEYVAL countries.

The 2nd horizontal review, which was undertaken by Professor William Gilmore, legal scientific expert to MONEYVAL concluded:

> *More fundamentally, it is apparent that while an increasing number of jurisdictions are achieving some concrete results in terms of prosecutions and convictions for money laundering and (though this is less clear) in obtaining serious confiscation orders in respect of major proceeds generating criminal offences, much room for improvement remains. While legislative, technical and resource insufficiencies and restraints play their part, the second round reports serve to demonstrate how far we still have to travel in order to create and entrench a culture within national systems as a whole in which going after criminal proceeds is appropriately expressed as a priority and facilitated in practice.*

While some steps are being taken to this end in some MONEYVAL countries, across the board, this third horizontal review underlines again that more still needs to be done to create and entrench a culture which proactively goes after criminal proceeds. Greater demonstrable success in this area by law enforcement more generally in MONEYVAL countries would be a major step forward. Indeed more success in asset recovery, and more significant results in autonomous money laundering cases involving professional laundering, arguably, would better support and complement the considerable effort and resources being applied to implementation of the preventive measures by the private sector, the FIUs and other authorities responsible for AML/CFT supervision.

John Ringguth
Executive Secretary to MONEYVAL
November 2010

I. Introduction

1. At the conclusion of each of the first and second Evaluation Rounds a horizontal review of all of the adopted mutual evaluation reports was undertaken. These reviews were published and are available on the MONEYVAL website. The aim of these reviews was to identify common themes arising out of the mutual evaluation reports, identify major areas of weakness, and issues to address going forward.

2. MONEYVAL's third round of evaluations began in January 2005 with the onsite visit to Slovenia and was concluded with the adoption of the mutual evaluation reports on Serbia and Bosnia and Herzegovina at MONEYVAL's 31st Plenary Meeting on 7-11 December 2009. 29 countries participated in MONEYVAL's third round.[1]

3. The review covers all third round mutual evaluation reports, each of which followed the global template for AML/CFT assessment, agreed by the FATF and FATF style regional bodies and the international financial institutions in 2004 (the 2004 Methodology for Assessing compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations – hereafter the Methodology). All progress reports adopted up to and including MONEYVAL's 30th Plenary meeting on 21-24 September 2009 were taken into account also by the reviewers and references are made in the text to relevant subsequent progress.

4. While the review covers compliance with FATF Recommendations, there are references to the European Union's Third Money Laundering Directive (Directive 2005/60/EC). The review does not analyse compliance with this Directive even though MONEYVAL, as a distinctly European monitoring mechanism, additionally addressed compliance issues in respect of key standards in this Directive, particularly where they depart from FATF standards. This additional analysis was undertaken in all MONEYVAL countries, irrespective of their current or potential EU membership status (though without giving ratings). For further information on these issues the reader will need to examine the individual reports and progress reports on MONEYVAL's website.

5. All of the FATF Recommendations are considered. However, the primary focus is on the Core Recommendations (R.1, R.5, R.10, R. 13, SR II, and SR.IV) and Key Recommendations (R.3, R.4, R. 23, R.26, R. 35, R.36, R.40, SR.I, SR.III, and SR.V).

6. The full implementation of the preventive standards by some countries which were assessed early in the third round process was affected in particular, as several MONEYVAL EU member countries (and some MONEYVAL non-European Union Member States), were waiting for the finalisation and implementation of the Third Directive before upgrading and amending their laws. This was reflected mainly in the ratings for the preventive Core and Key Recommendations. However, most of these countries duly adopted and implemented the Directive, as evidenced in the Progress Reports, thus enhancing their compliance with the international standards.

7. The review frequently refers to the ratings given in the 3rd round reports for individual Recommendations. Country ratings were a new feature of MONEYVAL's evaluation process in the third round. The ratings used by MONEYVAL follow the 2004 AML/CFT Methodology. In this review references to the upper range of the

1. 28 Council of Europe member States were evaluated: Albania, Andorra, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Georgia, Hungary, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Montenegro, Monaco, Poland, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, "the former Yugoslav Republic of Macedonia", Ukraine. Additionally Israel, as an active observer to MONEYVAL since 2006, was also subject to evaluation using the AML/CFT Methodology.

ratings refers to Compliant (C) and Largely Compliant (LC). References to the lower range of the ratings refers to Partially Compliant (PC) and Non-Compliant (NC). The FATF definition of each possible rating is set out in the table beneath:

Compliant (C)	**The Recommendation is fully observed with respect to all essential criteria.**
Largely compliant (LC)	**There are only minor shortcomings, with a large majority of the essential criteria being fully met.**
Partially compliant (PC)	**The country has taken some substantive action and complies with some of the essential criteria.**
Non-compliant (NC)	**There are major shortcomings, with a large majority of the essential criteria not being met.**
Not applicable (N/A)	**A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country.**

8. As is implied from the above definitions, the Methodology sets out a number of "essential criteria" which need to be in place for compliance with each of the FATF Recommendations and Special Recommendations. The Methodology also sets out for each Recommendation or Special Recommendation "additional criteria" which are non-mandatory.

9. Though the texts of the FATF Recommendations and Special Recommendations are set out in this review, the texts of each of the essential (or additional) criteria have not been included routinely, except where their content may provide further assistance to the reader in specific parts of the discussions. For a fully compliant rating each of the essential criteria needs to be met by the country concerned and the country has to have demonstrated effective implementation of the Recommendation as a whole in practice. As this was a third round of evaluations particular emphasis was given by the evaluation teams to effectiveness issues.

10. Ratings for each Recommendation and Special Recommendation (together with detailed action plans for achieving better compliance with each Recommendation and Special Recommendation) were published with each evaluation report. These were undoubtedly hard 'deliverables' of the third round. The ratings system clearly has brought some consistency and rigour to the evaluation process. Throughout the third round, the plenary meetings quite properly gave much time and attention to trying to ensure, as far as this was practically possible, consistency and equality of treatment for each country on ratings issues. Indeed, it became necessary to create a "jurisprudence" on decided issues. Specifically a system of review of each report before plenary discussion by a permanent review group, mainly comprising MONEYVAL's appointed "scientific experts", was created and tasked with examining each report for quality and consistency and advising the examiners, secretariat and chair. This was later also supplemented with an ad hoc review of each report by a nominated MONEYVAL country as well. Together it is considered that these processes have succeeded in improving the depth and quality of reports.

11. Perhaps one negative effect of the introduction of ratings was that they tended to shape (and often dominate) the agenda of issues for discussion in the plenary particularly where ratings given might be considered borderline between the upper range and the lower range. This sometimes meant that recommendations and comments of evaluators which had no impact on the ratings (but were nonetheless important for the evaluated country or, indeed, horizontally) received less attention from the plenary than they deserved.

12. While ratings are not ends in themselves, they do provide a snapshot of the state of a country's compliance at the time of the onsite visit or shortly thereafter. Detailed statistical analysis of the ratings given can be found in section VI of the review in tables 1-3. In considering the ratings given, it is always worth recalling the definitions in paragraph 7. NC does not necessarily mean that a country has done nothing. Equally it should also be borne in mind, that most countries will have made progress since their evaluation report was adopted, which would impact on the ratings given. To obtain a full picture of the progress of individual countries, the full adopted 3rd round mutual evaluation reports and each of the first progress reports (adopted one year after the adoption of the 3rd mutual evaluation report) and in many cases now the second progress reports

(adopted two years after the first progress report) are published on the MONEYVAL website, and can be consulted. All progress reports are subject to full peer review by the MONEYVAL plenary, though no re-rating is undertaken in the 3rd round progress report system.

II. Legal issues

(Incorporating Recommendations 1-3 and 33-39 and Special Recommendations I – III, V and VIII)

Core Recommendations (legal)

Recommendations 1 (and 2) – Criminalisation of Money Laundering[2]

Recommendation 1

Countries should criminalise money laundering on the basis of United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) and United Nations Convention against Transnational Organized Crime, 2000 (the Palermo Convention).

Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences. Predicate offences may be described by reference to all offences, or to a threshold linked either to a category of serious offences or to the penalty of imprisonment applicable to the predicate offence (threshold approach), or to a list of predicate offences, or a combination of these approaches.

Where countries apply a threshold approach, predicate offences should at a minimum comprise all offences that fall within the category of serious offences under their national law or should include offences which are punishable by a maximum penalty of more than one year's imprisonment or for those countries that have a minimum threshold for offences in their legal system, predicate offences should comprise all offences, which are punished by a minimum penalty of more than six months imprisonment.

Whichever approach is adopted, each country should at a minimum include a range of offences within each of the designated categories of offences.

Predicate offences for money laundering should extend to conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred domestically. Countries may provide that the only prerequisite is that the conduct would have constituted a predicate offence had it occurred domestically.

Countries may provide that the offence of money laundering does not apply to persons who committed the predicate offence, where this is required by fundamental principles of their domestic law.

Recommendation 2

Countries should ensure that:

a) The intent and knowledge required to prove the offence of money laundering is consistent with the standards set forth in the Vienna and Palermo Conventions, including the concept that such mental state may be inferred from objective factual circumstances.

b) Criminal liability, and, where that is not possible, civil or administrative liability, should apply to legal persons. This should not preclude parallel criminal, civil or administrative proceedings with respect to legal persons in countries in which such forms of liability are available. Legal persons should be subject to effective, proportionate and dissuasive sanctions. Such measures should be without prejudice to the criminal liability of individuals.

2. Recommendation 2 is neither a core nor key Recommendation, but is an 'other' legal Recommendation. As it is so closely linked with Recommendation 1 it has been reviewed together with Recommendation 1.

Overall statistics in MONEYVAL States

13. At the time of the third round evaluation, all aspects covered by R.1 and 2 had already been the subject of continuous review in most MONEYVAL member states for approximately a decade. Therefore, it was now anticipated that domestic legislation would broadly have achieved comprehensive and effective money laundering criminal offences. Indeed, only one country evaluated in the third round was rated below PC for R.1 and no country was rated below PC for R.2. The evaluations carried out in the third round therefore clearly show that recommendations made by evaluators of the previous round had been seriously taken into consideration.

14. Firstly, a statistical analysis shows no MONEYVAL member state was rated Compliant for R.1. More than half of the countries (15 out of 29) were rated LC. This arguably demonstrates the positive results of the previous two rounds of evaluation in this field in achieving more compliance with the relevant international standards (compared with the criminalization of terrorist financing, which was a relatively new phenomenon in criminal legislation, the assessment of which produced significantly poorer results). In the lower half of the ratings for countries in respect of R.1 (PC and NC) only one NC rating was given (for Azerbaijan) while the rest of the countries were rated "PC".

R.1	NC	PC	LC	C	N/A	NC	PC	LC	C
	1	13	15	0	0	3.4 %	44.8 %	51.7 %	0.0 %

15. Perhaps, because of its narrower scope and the fewer criteria to be fulfilled, or perhaps as a result of efforts made by MONEYVAL in previous rounds to promote development of appropriate legislation and jurisprudence, R.2 is one of the Recommendations in the legal sector where countries performed best with no non-compliant ratings and seven fully compliant ratings. 7 countries were rated below LC: Azerbaijan, Czech Republic, Georgia, Monaco, San Marino, Slovak Republic and Ukraine.

R.2	NC	PC	LC	C	N/A	NC	PC	LC	C
	0	7	15	7	0	0.0 %	24.1 %	51.7 %	24.1 %

Recommendation 1 – Criminalisation of Money Laundering

General

16. A summary overview of the mutual evaluation reports reveals that the main factors which led to ratings lower than LC typically related to:

- inadequate or deficient implementation of the Vienna and Palermo Conventions with regard to the physical/material elements of the money laundering offence;
- insufficient coverage of predicate crimes when assessed against the list of designated categories of offences provided in the Glossary to the 40 FATF Recommendations, of which the offences of insider trading and market manipulation were problematic in the great majority of the countries;
- the deficient criminalization of conspiracy to commit money laundering;
- and, most frequently, in practically every report, issues of effectiveness influenced the ratings. This was not always based on absence of statistics but also upon a closer review of the types and quality of the money laundering cases being brought.

17. Countries rated LC on R.1 were usually deficient in more than one of the above factors. Nonetheless, some countries were rated LC simply because of ineffective implementation of otherwise formally adequate legal provisions criminalizing money laundering. In countries rated LC insufficiently established effectiveness led to this rating in Cyprus, Malta, Slovenia and Romania.

Multiple Laundering Offences

18. The structural arrangement of the money laundering offence in national legislative framework can differ. In most of the countries money laundering is a separate, autonomous criminal offence, though approaches may vary according to whether there is one single offence or more (and equally autonomous offences). Multiple criminalization of money laundering is usually based on legal tradition which separates drugs money laundering from the general laundering offence. In countries where such an approach is found, such as Malta, Monaco and Ukraine, this apparently did not pose problems for the effective implementation of the Vienna and Palermo Conventions.

19. In other countries multiple laundering offences with partial coverage of the Convention provisions provide collectively for the criminalization of money laundering. In Hungary, for example, a separate additional offence covered self laundering activities, while in Lithuania or the Czech Republic there is one "laundering" offence plus 1-2 complementary offences mainly based on traditional "receiving" activities, i.e. there was more than one criminal offence to cover criminalization of money laundering in the round. In such cases special attention had to be paid by the evaluators as to whether all these complementary provisions actually covered what is required by the international standards.

20. The issue may arise in any jurisdiction where "acquisition/possession" conduct is criminalized in both types of offence without any clear distinction in legislation or jurisprudence or case law. One possible result is that money laundering activities may be treated more leniently than anticipated by the international standards on anti money laundering, using traditional criminal offences. It also raises potential issues of effectiveness in the national context and therefore it perhaps deserves more attention than it has received hitherto in future evaluations.

21. In a small number cases consideration of this issue had an impact on ratings, e.g. the Czech Republic (where the combination of various Criminal Code provisions was not fully satisfactory) and Lithuania (where insufficient criminalization caused the examiners to recommend unifying the two laundering offences).

22. Turning from general issues to those more closely related to the objectives of the MONEYVAL evaluation, the required range of offences which should give rise to money laundering charges (the "designated categories of predicate offence") is an important essential criteria. As expected, the large majority of the countries had already adopted the "all crimes" approach by the third round, with or without thresholds based on imprisonment terms. It should be mentioned that the few countries with a list approach to predicate offences (Israel, Monaco) proved to be compliant in this regard without any problem.

23. Some countries however introduced overly high thresholds to define predicates, which was typically noted as a deficiency in some reports. In this respect, the 3-year-threshold applied by Andorra and Ukraine for defining serious offences was noted. In the Ukraine, the threshold was criticized partly because it automatically exempted from the potential range of predicates a number of important proceeds-generating offences like fraud.

24. Total or partial exemption of fiscal offences were found in Liechtenstein, Russian Federation and Ukraine. In case of the last two member states, the evaluators noted that even if the exemption of financial (mainly tax-related) crimes from the scope of predicates did not constitute a direct shortcoming on the basis of the FATF Methodology, it could have a negative impact on the overall effectiveness of money laundering criminalization: "*While the exemptions are generally fiscal in nature it would be possible for defendants to state that the proceeds are the proceeds of one of these crimes. The possibility that a criminal might claim that the proceeds are from one of the exempted offences could discourage law enforcement from pursuing a money laundering investigation for fear of wasting valuable resources on an offence – money laundering – that may not be prosecuted.*" It was also noted that even if this approach had been taken in order to avoid a focus on tax recovery rather than on the fight against proceeds of crime, such a solution could have a negative effect mainly because tax evasion and similar offences had been and still remained major proceeds generating crimes in the Russian Federation and Ukraine.

25. An all-crimes approach does not necessarily mean all designated categories of predicate offence are covered in the Criminal Code of a country covering all glossary offences. Deficiencies in coverage of necessary predicate offences regularly contributed to lower ratings.

26. The predicate offences most frequently omitted in most of the jurisdictions were market manipulation and/or insider trading (sometimes counted together as a single offence). Both were missing in 7 countries while only one of them was criminalized in 4 further countries. Another typical example was the financing of terrorism as a predicate offence. Insufficient coverage proved to be problematic in 8 countries. Other missing predicates included smuggling, forgery, piracy and environmental crimes.

27. Only 11 countries provided for a full coverage of all relevant predicates (or rather 12 given the fact that, in Bosnia and Herzegovina, all relevant offences were provided for at both state and entity level while only one of them was left out of the criminal law of Brčko District) which means that gaps in criminalization of relevant predicate crimes were noted in the majority of jurisdictions. Countries with the most required predicate offences uncovered were Andorra and Liechtenstein with 5 and 4 missing offences, respectively. Recommendations made in the evaluation reports however, clearly pointed out these deficiencies which apparently triggered necessary legislative steps in a number of jurisdictions. Progress reports showed that countries had responded positively, criminalizing the missing predicate offences, e.g. in San Marino and Georgia.

Own proceeds or self laundering

28. The coverage of "self laundering", i.e. the laundering of own proceeds, also requires some analysis. This is one of the areas where recommendations made in previous MONEYVAL evaluation reports appear to have shown results. There was an increase in the number of countries that provided for this either at the time of the 3rd evaluation or at the time of their progress reports.

29. Self laundering was thus explicitly covered in 7 countries. Its implicit coverage was also accepted in not less than 15 further countries where the evaluators were satisfied by established judicial practice or at least some guiding court decisions, or any kind of official interpretation or guidance issued or provided to practitioners that laundering of own proceeds is, or should be covered by domestic criminal jurisdiction. Bosnia and Herzegovina was included in these 15 countries, even though only one of its four different criminal laws explicitly covered self laundering though the recent practice of the state-level judiciary recognized that laundering of own proceeds was a criminal offence.

30. In summary, the criminalization of self laundering was provided, either explicitly or at least implicitly, in the vast majority of the countries (22 out of 29, that is 75.8 %). In addition, there were 3 other countries where lack of both legal provisions and case practice led to some ambiguity but the legal framework appeared, at least in principle, to provide the practitioners with the potential for successful prosecution of self laundering.

31. On the negative side, self laundering was clearly not covered in San Marino and only for certain conduct in Liechtenstein, where acquisition, taking into custody, conversion, use and transfer of proceeds were only criminalized if the predicate offence had been committed by a third party. Andorra had apparently decided to de-criminalize the laundering of own proceeds. Hence this activity which had formerly been, at least implicitly, subject to criminal jurisdiction ceased to be punishable. This was described by the evaluation team as "a step back" particularly as own funds laundering had previously been investigated quite frequently (19 out of 21 inquiries during the period assessed in the second round.)

32. In all of the cases where the prosecution of self laundering was said to be impossible, the evaluators sought to clarify whether any fundamental principle of the domestic laws required the exemption of persons who had committed the predicate offence. The responses were similar in all three countries concerned, as all domestic authorities advised that this approach was based on the general principle of "ne bis in idem", under which a person cannot be prosecuted twice for the same conduct. To some extent, this argument was accepted in the case of Liechtenstein where the evaluation report drew the following conclusion: "Self-laundering is not criminalized for the acts of acquiring, taking into custody, converting, using, or transferring criminal proceeds. While the assessors accept that the fundamental principle of "ne bis in idem" precludes the criminalization of self laundering with respect to "appropriation and taking into custody", the argument cannot be

accepted with regard to "conversion, use and transfer" of proceeds. These acts clearly constitute crimes that are distinct from and go beyond the underlying predicate offence".

33. The above statement could arguably be applied to San Marino and Andorra. Both countries declined to criminalise the laundering of own proceeds, considering all such activities as a non punishable part of the predicate offence. The evaluators found that this generic reasoning appeared to negate the autonomous nature of money laundering. They were also not convinced that there was a fundamental principle of domestic law, according to FATF standards, which would entirely prevent the criminalisation of self-laundering in these two countries. In respect of Andorra, the evaluators drew attention to the fact that several other Roman law countries had already adopted self-laundering as a punishable offence.

Foreign proceeds

34. Criterion 1.5 provides *"predicate offences for money laundering should extend to conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred domestically"*. The issue here therefore is whether or not laundering activity committed on domestic soil can be qualified as money laundering even if the predicate offence is committed abroad. To put it another way, does the criminal law draw any distinction between the laundering of proceeds derived from domestic predicate crimes and offences falling out of the territorial scope of the domestic criminal legislation?

35. Which ever way the issue was approached, it is clear that foreign predicates were covered, either explicitly or implicitly, in almost every MONEYVAL country. In the case of the Czech Republic, the evaluation report found ambiguity about this issue (though there had already been a draft law to clearly provide for this, which was reported as adopted in the Progress Report). Further, in some countries other shortcomings of the domestic money laundering criminalization had an impact on this issue (as with Ukraine because of its threshold).

The offence should extend to any type of property that represents proceeds

36. The offence of money laundering should extend to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime. Here the picture was positive. The scope of the laundering offence was extended to a broad range of proceeds in the significant majority of countries. In this context, the respective terms (like "property") were, in ideal cases, clearly defined by law to an extent that their coverage directly reflected the requirements in the Vienna and Palermo Conventions (e.g. in Estonia). Nonetheless, even in the absence of such a statutory base, the evaluation teams established the actual scope of the relevant terms used in the member states, as they had been interpreted by judicial practice.

37. Where there were problems with this issue, one of the typical deficiencies was restrictive terminology that narrowed the range of property that can be subject to money laundering. This occurred when the object of the laundering offence was designated by terms such as "item" or "thing", as in Hungary (where the Progress Report noted that this term had subsequently been redefined in the Criminal Code so as to provide for a broader coverage) or "the former Yugoslav Republic of Macedonia" where some elements of the money laundering offence could only be committed with "money", which term was, at the time of the evaluation, restricted to cash (domestic and foreign coins and banknotes). In the latter case, the evaluators noted that even if judicial practice had apparently gone beyond the restrictive language of the law by developing a wider interpretation of the term (so as to extend it to money on bank accounts) such solutions were insufficient and legislative steps still needed to be taken.

Value Thresholds

38. A more serious deficiency was the introduction of a value threshold. This is a feature which is clearly not in line with Criterion 1.2 of the Methodology that requires that the *offence of money laundering extend to any type of property, regardless of its value*. In "the former Yugoslav Republic of Macedonia" the offence of money laundering could only be established if committed in relation to "money of greater value" (namely the amount of five average monthly salaries). As it was explained, this threshold had been introduced in order to focus on the most important money laundering. The second round evaluators had already advised that the then pro-

posed amendments were "a step backwards in that they would introduce a financial threshold" and urged revisiting this issue. Similarly, the third round report found that the application of such a value threshold was a shortcoming and reiterated that it should be abandoned. Israel also introduced a value threshold regarding certain elements of its money laundering offence (those related to acquisition, possession and use of criminal proceeds) about which the evaluators also expressed concerns, even though the domestic authorities were confident that this would not pose a major problem in practice.

Physical aspects of the offence

39. On the legislative side, the shortcomings that most frequently resulted in ratings in the lower range were deficiencies in the definition of the money laundering offence compared with the material and physical elements in the Vienna and Palermo Conventions. The frequency with which such problems was noted in various third round reports was surprising as these standards had been in place for many years.

40. On the positive side, a number of countries achieved full compliance in this particular respect such as Cyprus, Bulgaria, Liechtenstein or Malta, as well as Estonia (where this was a result of very positive legal developments since the previous round).

41. Most of the other countries had some deficiencies in this respect. No real judgment can be made as to which jurisdiction had the least compliant performance in this area, as deficiencies were usually country-specific, with a large variety of departures and interpretations of the international standards. In some cases the evaluators remarked on the "fairly complicated" structure of the respective money laundering offences.

42. Most jurisdictions omitted to criminalize "acquisition", "use" and "possession". Of these, "possession" appeared to be the most problematic, as it was not, or not adequately covered by the money laundering offence in 8 countries. "Acquisition" was covered in four countries and "use" in two countries. It rarely occurred that none of these three physical elements were covered, with Georgia being the only example (and this shortcoming was reported in the Progress Report as being remedied by legislation). Two of the 3 elements were clearly missing in other jurisdictions, such as Montenegro and San Marino. Differences in legal terminology and uncertainty in the language used in criminal legislation made the establishment of the extent to which these elements were covered difficult in a number of further instances (including Azerbaijan and Poland).

43. Neither "conversion" nor "transfer" was comprehensively provided for in a number of jurisdictions. Some countries omitted to provide for coverage of either of these conducts ("conversion" was missing in Andorra and "transfer" was missing in Croatia). In other cases some restrictions applied. Typically, in these cases, conversion or transfer were criminalized as money laundering if committed in the context of banking, financial or other economic operations (as in Hungary, Lithuania or Montenegro). As for the coverage of "concealment" and "disguise" no particular problems appeared to arise with any regularity.

Attempts and conspiracy

44. In the context of the coverage of attempted money laundering and the existence of appropriate ancillary offences, the evaluators did not come across particular deficiencies. Attempt, for example, was punishable in all the jurisdictions in case of intentional criminal offences, either on a general basis or with a limitation based on the minimum level of punishment applicable. Such a requirement was, in all of the cases, met by the offence of money laundering. In some countries attempt was already covered to some extent in the money laundering offence itself, as in Bosnia and Herzegovina, in respect of concealment ("conceals or tries to conceal").

45. The main problem the evaluators met most frequently was the deficient criminalization of conspiracy. The main reason has not changed since the 2001 Horizontal Review of the first round evaluation reports where it was noted that "several countries from the civil law tradition had difficulties with the common law notion of conspiracy as a basis for liability". In a number of jurisdictions where no specific provision expressly addressed this issue, the concept of "preparation" proved to be sufficiently applicable to what is normally understood as "conspiracy". In other cases, however, reference was made to other provisions which related

only to criminal organizations, which was an insufficient "functional equivalent" in several countries which would cover 'conspiracies' to commit "basic" money laundering offences.

46. In Estonia and Slovak Republic, conspiracy to commit money laundering per se appeared not to be a criminal offence unless related to the formation of a criminal group or organization consisting of minimum three persons whereas it remained unclear whether a conspiracy involving only two persons was also a crime. Equally, while the criminal law of Liechtenstein also criminalized the "association" of three or more persons for the purpose of, amongst other crimes, money laundering, the scope of the conspiracy offence did not extend quite far enough in that a conspiracy involving only two people was not covered. Conspiracy was not criminalized in Poland either and only in the context of organized crime in Azerbaijan.

47. No arguments put forward by countries that certain concepts were prohibited on the basis of fundamental principles of domestic law were accepted in this round by the evaluators and the plenary. For instance, Liechtenstein argued that a fundamental principle of its law, according to which only committed offences and attempts may be criminalized, would preclude the criminalization of conspiracy. This was not accepted for two reasons: first, that the principle did not seem to preclude criminalization of "association" of three or more people to commit money laundering and second, that other Criminal Code articles expressly criminalized conspiracy by two or more persons to commit murder, kidnapping and several other serious crimes.

48. Another example was Georgia, where criminalization of preparation (which concept was otherwise equal to the common law notion of "conspiracy") was only possible for the aggravated form of money laundering, based upon the principle that criminalization of preparation was reserved for the most serious crimes. However, the evaluators had not been provided with convincing arguments that fundamental principles were preventing full criminalization of this ancillary offence with regard to basic money laundering as the limitation appeared to be based merely on legal tradition and thus was not acceptable. Since then conspiracy to commit basic money laundering has been covered in Georgia.

Recommendation 2 – Mental element and liability of legal persons

49. Within the context of R.2 , the issue of corporate criminal liability is considered of crucial importance, and this issue was a large contributor to the ratings assigned for R.2.

50. It should be noted that criminal responsibility of corporate entities had already been addressed in the majority of the member states by the time of the 3rd onsite visit. This was fully in accordance with the progressive trend that had already been observed at the time of the 2007 Horizontal Review, which described it as "striking" how strong a trend in this direction had then emerged. 16 of the 29 countries submitting to MONEYVAL's evaluation process in the third round provided for some kind of criminal responsibility for legal persons (respectively 55.2 %of the countries participating in the evaluation process).

51. There were only three countries (Azerbaijan, Georgia and San Marino – 10.3 % of evaluated states) where no responsibility (either criminal, civil or administrative) for the commission of criminal offences by legal persons had been provided at the time of the 3rd evaluation.[3]

52. In 10 countries (34.5 % of evaluated states) criminal liability of legal persons was excluded but alternative administrative or civil liability for criminal offences (including money laundering) was provided for. Exclusively administrative and/or civil responsibility of legal entities was noted in Armenia, Bulgaria, Russian Federation, and Slovak Republic. The same approach could be found in the Czech Republic and Ukraine, where liability of corporate entities only extended to breaches of compliance with the preventive anti-money laundering regime and not for criminal offences in general. Also in this group was Andorra. Andorra, as noted above, had already been criticized for de-criminalizing the laundering of own proceeds in its new Criminal Code. Criminal liability of legal persons had also been deleted from the new Criminal Code, even though it had been included in the previous one. Courts were nonetheless entitled to order "ancillary measures" against legal persons, including dissolution of the company, association or foundation, or suspension of its activities for a time period. Thus some administrative liability for criminal offences was provided for.

3. Since then Georgia has introduced corporate criminal liability and San Marino has introduced corporate liability of legal persons.

53. In this context, no arguments as to whether any fundamental legal principles existed which would prevent such liability were successfully made out by countries concerned. Armenia, for instance, referred to criminal law principles such as "personal liability" and "nullum crimen sine culpa" that they considered would preclude the criminal liability of legal persons, but the assessors could not confirm the fundamental character of such principles, especially as the statutory introduction of corporate criminal liability in the area of corruption had already been in the drafting phase in Armenia.

54. In a number of other countries the incomplete or at times self-contradictory legal backgrounds appeared to contribute to the problem. Introduction of corporate criminal responsibility was, at the time of the onsite visit, hampered by lack of the necessary secondary legislation in Albania, though it was subsequently reported to be adopted. Liechtenstein civil law (Persons and Companies Act) provided for criminal liability of corporate entities, while the relevant criminal law did not. It was explained by the Liechtenstein prosecutors that, in such a situation civil law could not, by itself, and without a provision in the Criminal Code to that effect, be used as a basis for the initiation of criminal proceedings. In Monaco, as a general rule, corporate entities were only subject to administrative sanctions but could not be held criminally responsible for offences. This was despite two pieces of legislation related to implementation of international treaties on suppression of terrorism and terrorist financing, which contained explicit references to criminal responsibility and sanctionability of legal entities. A draft law had moreover been presented to introduce criminal liability of legal persons and, as was reported back in the progress report, this law had since been successfully adopted.

55. Even in those countries where corporate criminal liability had adequately been introduced, some reservations remained about the effective application of the provisions, both in general terms and in money laundering cases. For example, Cyprus, Croatia and "the former Yugoslav Republic of Macedonia" had not yet undertaken any money laundering prosecution in respect of legal entities at the time of the evaluation. It was noted in some other countries that there were impressive rules on corporate criminal liability, and criminal proceedings against legal entities appeared to be a widely and successfully applied practice in those countries in other cases.

56. In Bosnia and Herzegovina there had been prosecutions and convictions against legal persons, including at least one verdict in which a corporate entity was found guilty of money laundering and its dissolution was ordered. Nonetheless, the evaluators noted that "the number of prosecutions and convictions against legal persons in money laundering cases could and should be higher, taking into consideration that the vast majority of such cases are related to laundering of proceeds derived from tax evasion, that is committed through legal persons".

Effectiveness

57. Assessing how effectively the anti money laundering and terrorist financing legal framework was actually implemented in MONEYVAL countries was (as noted) one of the main goals in the third round of evaluations. All third round evaluation teams paid specific attention to issues related to effectiveness.

58. While compliance with the legislative requirements set out in R.1 and 2 can be readily assessed against the legal framework of the country, no such readily available information facilitates the evaluation of how laws are actually implemented. Certainly, statistics are always a starting point in assessing the volume and types of money laundering cases investigated, prosecuted and adjudicated. Nevertheless, as in the previous rounds, the evaluators often found that statistics, to the extent they were made available to the evaluation teams, were either incomplete or unreliable, especially where annual figures had to be established upon the basis of separate (and often irreconcilable) statistics provided by different authorities.

59. While there is a further discussion of money laundering and terrorist financing statistics from the law enforcement perspective a number of points are made in this section as well. Apart from a small number of positive examples, criminal statistics were typically not disaggregated so as to demonstrate whether the money laundering offence was committed by the author of the predicate offence or a third party, and did not indicate which major proceeds-generating criminal predicates were the subject of money laundering prosecutions. Thus the possibility of obtaining reliable information on case practice in money laundering cases (beyond the bald statistical figures) was frequently supplemented by information (sometimes anecdotal) pro-

vided by domestic practitioners. Only in a few exceptional cases had the evaluators the opportunity to review the characteristics and development of case law themselves, e.g. in Bosnia and Herzegovina, where most of the money laundering convictions were available in English on the website of the state-level court. Notwithstanding that it is for the country to establish effective implementation and not for the evaluators, frequently examiners posed as many questions to domestic practitioners (law enforcement officers, judges and prosecutors) as possible during an onsite visit to "look behind the statistics". The great majority of reports showed that the evaluators had put considerable efforts into this.

60. The chart that summarizes the numbers of convictions (i.e. of persons convicted for money laundering) is attached to the present Review and it clearly shows that the positive trends that had already been noted in the previous Horizontal Review had appeared to continue in a number of countries. The proportion of those that had not been in a position to achieve a conviction for a money laundering offence (ever or, at least, in the last few years subject to assessment) has significantly decreased since the previous round.

61. However, the outcome of the previous Horizontal Review in this respect should to be reiterated: *"Caution is necessary in drawing conclusions as to the overall effectiveness of the national criminal justice effort even in those countries in which convictions for money laundering had been secured"*. In the 3rd round, examiners noted that money laundering, for example in Cyprus, were still, in practice, targeted on the comparatively easy cases of "own proceeds" laundering involving domestic predicates (as opposed to the potentially more difficult cases involving proceeds of foreign predicate offences) which was described as "surprising" given the nature of the financial sector in that country. Another example was Poland, where the statistics for money laundering convictions were high and rose to 105 persons a year in 2007 but the report noted that self laundering appeared to be the principal basis for these money laundering convictions.

62. Establishing indicators of effectiveness in the use of the money laundering offence by a country is not easy. One measure against which the numbers of prosecutions and convictions might be assessed or put into context is by looking at the size of the country's financial sector and the degree to which it is integrated into the global financial system. Attention can also be given to the volume and characteristics of proceeds-generating criminality in the country and the total economic loss from proceeds-generating crime. Do the numbers and types of money laundering cases being brought indicate that money laundering is being used successfully to deter and disrupt the activities of those that make major profits from domestic predicate crime? If there is a problem in the country with organised crime, what successes have the authorities had in identifying those who are laundering proceeds on behalf of organised crime groups? Similarly if corruption is a major domestic problem, how effective are the authorities in detecting the laundering of proceeds this offence?

63. From the mutual evaluation report of the Russian Federation, for example, it was clear that it had progressively improved its effectiveness in implementing the money laundering offence (with the number of investigations rising from 618 in 2003 to 7 957 in 2006 and with the number of money laundering cases sent to court rising from 465 to 6 880 respectively). Nevertheless, the evaluators noted that "in a country where, based on the information available, corruption is a significant problem, including corruption in the police and the judiciary, and where there is an acknowledged problem with organised crime, there should be higher numbers for both the number of money laundering cases being investigated and cases going to court".

64. In Armenia, the examiners found that the number of investigations instigated for money laundering (which was 22 in the period subject to assessment) was too low, compared to the overall number of cases instigated for the proceeds-generating predicate offences (which amounted to 15,000), giving rise to questions regarding the effective implementation of the money laundering provisions.

65. Whereas for most of the countries evaluated the efficient performance of the criminal legal framework could primarily be measured upon the number of domestic investigations, prosecutions and convictions for proceeds-generating cases, this approach was not always appropriate in some smaller member states of MONEYVAL with less domestic criminality, but more international financial business.

66. Specific problems occurring in this subset of states were thus mainly related to the investigation and prosecution of money laundering based on foreign predicates. In this respect there appeared to the evaluators to be

still some lack of expertise to routinely conduct parallel financial investigations and a hesitation to address this resource-intensive area of money laundering in some countries (e.g. Malta). The Liechtenstein authorities referred to two main reasons for the low number of prosecutions and convictions. Firstly, in typical money laundering cases, neither the location of the predicate offense nor the location of the offender was Liechtenstein. Secondly, cases might be linked to Liechtenstein through a single transaction, the use of a front company incorporated in Liechtenstein, or a Liechtenstein financial intermediary. In such cases, it could be difficult to collect the necessary evidence, in particular from countries outside Europe. Bearing efficiency issues in mind, the evaluators considered it reasonable to transfer cases to other countries where essential information was available in those countries. However, they also considered it important that Liechtenstein develops its own case law to establish that money laundering is a stand-alone offence and may be prosecuted independently from prosecutions relating to the predicate offence.

67. As noted in the second round, the evaluators in the third round also came across numerous instances where there appeared to be significant mismatches between the underlying predicate offences in reported money laundering cases (and primarily, those in which convictions were achieved) and the predicate offences which had been identified as being the major sources of criminal proceeds in the jurisdiction, particularly in countries where organised crime was known to be active.

68. In the Czech Republic, for example, the evaluators were informed of certain relatively sophisticated money laundering modus operandi being used, including by organized crime groups: conducting of illegal financial activities, use of businesses to integrate dirty money, use of transactions or operations involving significant amounts of cash etc. By contrast the type of cases prosecuted successfully at the date of the visit for money laundering were basic ones involving stolen goods of minor importance. As was pointed out in the report: *"The spirit of money laundering provisions in general, and the reasons why the international community has insisted on the need to criminalize money laundering is primarily in order to tackle complex and significant operations that are used to launder larger amounts of proceeds generated by organized crime and other serious crime-related activities."*

69. Mismatches between the actual money laundering predicate offences and the money laundering crime situation and the apparently modest law enforcement/prosecutorial response were also noted in a number of other reports. In Bosnia and Herzegovina the evaluators found that the general perception of money laundering did not appear to go beyond the laundering of proceeds of tax evasion. Hence there was hardly any final conviction for money laundering related to predicates other than tax crimes, particularly for cases where organized criminality was involved such as in drug crimes, trafficking etc., which were reported as prevalent in the country. In Serbia, all judgments received by the evaluation team equally related to concealing of cash proceeds derived from tax evasion, while there had been no convictions obtained in relation to other proceeds-generating predicate offences, in particular none related to organised drug trafficking, human trafficking and human smuggling, despite the information and statistics available on the extent of these predicate offences.

70. The same situation was observed in Lithuania, where all money laundering cases, in which charges had been brought in the period subject to assessment, dealt with VAT fraud despite relatively important organised crime activity present in a variety of traditional proceeds-generating offences such as drugs and extortion. It needs to be noted, however, that the first final conviction for money laundering was also achieved in the same time period where the respective proceeds were actually derived from organized crimes committed abroad and this was an encouraging sign.

71. The 2007 Horizontal Review detected a number of common themes that might have provided reasons for the then disappointing outcomes in terms of the number and quality of convictions secured in MONEYVAL countries. The analysis of the reports made in the third round produced significantly similar outcome in terms of factors underlying the actual performance of the criminal jurisdiction in money laundering cases, as well as its deficiencies.

72. Effective functioning of criminalisation can depend on approaches taken to issues of proof. One of the major issues is the level of proof required to establish that proceeds were derived from a criminal offence. That is, whether and to what level of certainty it needs to be established that there had been a predicate crime committed and, consequently, that the property was the proceeds of that crime. This is particularly important

if countries are to achieve any success in autonomous money laundering cases where the perpetrator of the proceeds-generating offences is not identified and the money laundering offence is not prosecuted together with the predicate offence. Overall few examples were given of truly autonomous money laundering cases being brought, which was disappointing. It was, however, notable that Georgia had achieved some success in this area with some significant sentences.

Proof of the predicate offence

73. All evaluation teams put significant efforts into ascertaining what level of proof was required in this respect. The standard was set in Criterion 1.2.1 of the Methodology according to which proving that property is the proceeds of crime should not require, at any stage of the proceedings, that a person be convicted of a predicate offence. This criterion usually is covered outside the scope of statutory provisions and is reliant on judicial or jurisprudential interpretation. The minimum level of proof of this element thought to be required does have a direct impact on the performance of the entire anti money laundering regime.

74. Examination of the third round reports shows that in numerous countries, the jurisprudence and judicial practice appeared to recognise that a conviction for the predicate offence was not necessary, which was a positive development. Only a handful of member states considered that they had difficulties with this at the time of evaluation report: in Azerbaijan (and also in Latvia), initiating an investigation for money laundering required a prior conviction. In some other jurisdictions, the evaluators found ambiguity and diverse opinions among practitioners on this issue, e.g. in Romania or Slovak Republic (where no conviction was required but judicial practice implicitly requested a previous indictment) or Andorra (where the judicial practice also tended to rely on previous convictions). On the other hand, the positive example of Armenia is noteworthy, where the former, more demanding approach of the national authorities had changed shortly before the time of the third round onsite visit and therefore it was no longer required that a person should be convicted of a predicate offence to prove the illicit origin of proceeds (as was demonstrated by a recent case in which parallel charges had been brought for both the predicate and the money laundering offence).

75. Inability to define the original crime was reported as a major cause for termination of money laundering proceedings in Poland, which might have implied that prosecutors were requiring a high degree of specificity in respect of the particular predicate offence. Most cases appeared to be self laundering and the problem of the proof of the predicate offence was often addressed by prosecuting it together with the money laundering in the same indictment. Equally, the high level of proof thought to be required in respect of the underlying predicate offence led to the lack of autonomous money laundering prosecutions in Slovak Republic. Likewise, in Ukraine, judicial practice was that all convictions were achieved simultaneously with a conviction for the predicate offence or were directly linked to a conviction for the predicate offence.

76. In Slovenia, there still had been no final money laundering conviction at the time of the onsite visit. Here proof of the predicate offence appeared to be the major challenge to successful prosecutions. As noted in the report *"Even if this situation is not the result of a deficient legislative framework, but rather of the hesitant attitude of the courts in respect of the proof of the predicate offence, it negatively affects the efficiency of the system"*. Slovenia was recommended to create case law by confronting the courts with as many money laundering prosecutions as possible and thus challenge the present jurisprudence on the evidential requirements. In the case of Cyprus the examiners advised that it could be helpful *"to put beyond doubt in legislation that a conviction for money laundering can be achieved in the absence of a judicial finding of guilt for the underlying predicate criminality. Additionally, it may be useful to make it clear in legislation (or guidance) that the underlying predicate criminality can also be proved by inferences drawn from objective facts and circumstances. For criminalisation to be fully effective, it may also be helpful if prosecutors and law enforcement have a common understanding that a Court may be satisfied that the laundered proceeds come from a general type of predicate offence (like drug trafficking – and not necessarily from a particularised drug trafficking offence on a specific date)"*.

Mental element

77. Among the issues mentioned in this context in the previous round of evaluations with the same frequency were those of proof of the requisite mental element of the money laundering offence. This is covered by R.2 where one essential criterion is that the intentional element of the offence can be inferred from objective

factual circumstances. This concept appears to have been commonly understood in a great majority of MONEYVAL member states as its association with traditional principles of criminal procedural laws such as the "free assessment of evidence" was commonly acknowledged among practitioners (and explicitly referred to in Estonia, Montenegro and elsewhere).

78. The lack of this possibility was however noted in a number of countries such as Azerbaijan, and arguably Bulgaria and Monaco. Greater willingness by the courts to apply this principle was urged in the Malta report. In the case of Poland, the evaluators acknowledged the principle of free evaluation of evidence in order to prove the intention; nevertheless they considered that the law did not expressly permit the mental element to be inferred from objective factual circumstances.

79. A mental element based on the negligence (should have known) standard was adopted by a number of jurisdictions in order to assist this aspect of prosecutions. This solution was applied in Croatia, Cyprus, Hungary and other countries (whereas negligent money laundering was de-criminalized in Andorra when introducing its new Criminal Code). Developments such as this exceeded the relevant international standards and were welcomed by evaluators. Nonetheless, it was noted, for example in Croatia, that the full potential of these developments had not been made use of, as there were no investigations or prosecutions involving negligent money laundering.

Plea bargaining

80. In any case, difficulties in proving the predicate crime and particularly the mental element of the laundering offence may have led to the introduction of the principle and practice of plea bargaining in the criminal procedural law of a number of MONEYVAL member states, including in respect of money laundering cases.

81. In Moldova the examiners noted that the use of plea bargaining had led, at least in one case, to the discontinuation of the proceedings in exchange for recognition of the offences of smuggling and laundering and payment of a sum equivalent to tax revenue foregone with no other penalties, even though a fictional body was used to give the appearance of legality to income from smuggling. It was thus recommended to place certain limits on the powers conferred by this legal instrument to avoid abuses in laundering cases. Equally in Bosnia and Herzegovina, it was noted that the state-level prosecutors appeared to seek plea agreements frequently that is, in 10 out of 16 money laundering cases in which verdicts were issued, the court decision had been based on a guilty plea agreement as a result of which evidentiary issues such as inference from objective factual circumstances became irrelevant. In fact, some representatives of the prosecution were critical of what they thought might be an excessive use of plea bargaining in criminal cases.

Delay

82. Other factors of mainly technical or logistical character were also often mentioned as contributing to the current level of underperformance of domestic authorities. In Romania, the low number of final criminal convictions in money laundering cases appeared to be the result of the unreasonable length of the period of court hearings (the timeframe between indictment and final conviction) and therefore the evaluators urged reconsideration of this procedure.

83. The examiners in Croatia, when analyzing the reasons for the low number of convictions, were in agreement with the domestic authorities that an explanation lay in the enormous backlog in money laundering cases pending at courts. Overly long court trial periods in such cases appeared to arise from the general overloading of courts, together with the lack of both experience and specific education of judges, particularly in economic crimes and a limited availability of competent forensic financial experts. The examiners were seriously concerned that backlogs generally in criminal cases impacted on the current effectiveness of money laundering criminalization, particularly as such delays in achieving final results in cases also reduce the potential for making confiscation orders. The same problems were detected elsewhere.

Law enforcement still concentrating on the predicate offence and not the proceeds

84. A final and overarching feature, which was described as the most troubling in the 2007 Horizontal Review, was *the "identification of the failure among many member states to develop an overall culture among investiga-*

tors and prosecutors of proactively focusing on criminal proceeds". This means that countries were still focussing on the predicate offence and not on what had happened to the proceeds. This problem had not disappeared by the third round of evaluations. The problem was summed up in the report on Bosnia and Herzegovina thus *"prosecution of predicate offences (other than tax crimes) only targets the predicates while no further investigation takes place to follow the money trail and to discover laundering activities. As a result, proceeds of organised and other proceeds-generating crimes remain uncovered."*

85. This is mind-set which still needs to be changed if countries are to achieve real success in uncovering major money laundering cases.

Special Recommendation II – Criminalisation of Financing of Terrorism

Special Recommendation II – Criminalising the financing of terrorism and associated money laundering

Each country should criminalise the financing of terrorism, terrorist acts and terrorist organisations. Countries should ensure that such offences are designated as money laundering predicate offences.

86. Criminalization of the financing of terrorism was a relatively new issue in the third round of evaluations for most of the MONEYVAL countries, except for a small number of countries which joined MONEYVAL after 2002 and which were evaluated for the first time by MONEYVAL in 2003-2004 under the 2002 FATF Methodology.

87. Financing of terrorism is a criminal offence, the significance of which was perhaps only fully recognised after the 11th September 2001 terrorist attacks in the United States of America, together with all the preventive issues related to the suppression of international terrorism (including the requirement to detect and freeze funds of terrorists or terrorist organizations as prescribed by the relevant UN Security Council Resolutions). The events of the 11th September 2001 also added impetus to the ratification and implementation of the 1999 International Convention for the Suppression of the Financing of Terrorism (hereinafter referred to as the "FT Convention"), the criminal provisions of which are at the heart of requirements under SR.II.

88. There was only one country in the third round, namely Israel, that was rated as compliant (C) with all requirements under SR.II.

89. The overall picture of compliance with SR.II is not as positive as with R.1. Out of the 29 states evaluated by MONEYVAL, 3 countries were found non-compliant (NC) (Georgia, Poland and Slovak Republic, comprising 10 % of evaluated countries) and 20 countries (almost 69 %) were rated PC, while only 5 had a LC rating.

	NC	PC	LC	C	NC	PC	LC	C
R.1	1	13	15	0	3.4 %	44.8 %	51.7 %	0.0 %
SR.II	3	20	5	1	10.3 %	68.9 %	17.2 %	3.4 %

General comments

90. The funding of terrorist acts, on the one hand, and terrorist groups and individual terrorists on the other should all equally be covered by the offence. SR.II requires countries to criminalize the financing of terrorism firstly in respect of the offences created under Art. 2 of the FT Convention. This Article is complex in structure (see beneath). One particular difficulty with SR.II is that implementation of the FT Convention is not sufficient to meet all aspects of SR.II as SR.II goes further. This was demonstrated in the Cyprus report, where the legislators had achieved total harmonisation with the Convention by criminalizing the financing of terrorism by means of a single clause in the Ratification Law providing that all offences contained in Art. 2 should be directly applicable and thus punishable in Cyprus. However, this solution left uncovered the obligations in SR.II which go beyond the Convention, namely the collection of funds in the knowledge that they are to be used for any purpose by a terrorist organization or an individual terrorist.

Autonomous offence

91. As a starting point, terrorist financing should be an autonomous criminal offence. Footnote 48 to the Methodology and the FATF Interpretative Note to SR.II make it clear that criminalization of financing of terrorism solely on the basis of aiding and abetting, attempt or conspiracy would fail to meet the standard.

92. The results of the third round of evaluations showed that at the time of the onsite visits terrorist financing was frequently not criminalized as a stand-alone (autonomous) offence (whether this deficiency was explicitly addressed among the respective factors underlying the rating or not). This was the case in more than one third (11) of the member states, including three NC countries and others, such as Czech Republic or Lithuania. In the upper range of the ratings, however, there were countries such as Israel and Malta with more than one *sui generis* terrorist financing offence.

Collection and provision

93. With regard to the two basic activities of "collection" and "provision", the evaluators had to confirm that both of these elements were covered as distinct activities. Collection was, in a number of instances, more problematic to establish than "provision". "Provision" has clear links with the general aiding and abetting of terrorism. As such, provision should have been covered by ancillary offences, even before the introduction of any autonomous terrorist financing offence. By contrast, the collection of funds arguably goes beyond aiding and abetting principles. This is one reason why terrorist financing criminal coverage was expected to require an autonomous offence which goes beyond any aiding-abetting activities.

94. Criminalization of collection or raising of funds was reported as missing, with a consequent direct impact on the rating, in Estonia and "the former Yugoslav Republic of Macedonia" and also in Lithuania, Poland and Slovak Republic. Apart from those countries where collection or raising of funds was simply missing, serious uncertainty in respect of this issue was noted in San Marino and similarly deficient coverage was found in Czech Republic and Ukraine.

Funds

95. The object of the terrorist financing offence, i.e. to what extent the notion of "funds", as defined in the FT Convention, was also subject to scrutiny. A wide definition of "funds" is given in the Convention and compatibility with this definition was required as an essential criterion, partly because of the potential involvement in terrorist financing offences (unlike in money laundering) of legitimate assets. Thus evaluators had to pay attention to whether and how this term was defined or interpreted in member states. It was only in the minority of countries that this issue posed no problem. A clearly compliant definition in the Criminal Code (or other law, or at least in jurisprudence/case law) was found in less than one third of the countries including Cyprus, Estonia and Israel. At the lower end, no or a deficient definition and/or unclear coverage of "funds" was noted as a key factor or, at least, covered in recommendations and action plans in the evaluation reports in more than 10 countries. There were also apparent deficiencies or serious ambiguity in this respect in other ones.

Terrorist acts

96. Countries are first required, in general terms, to criminalize FT so that it extends to the wilful provision or collection of funds, directly or indirectly, with a view that they be used to carry out a terrorist act or acts. This feature of the offence was clearly provided for in the majority of the countries. Indeed, this requirement was met by far more countries than the funding of terrorist organizations or individuals.

97. The coverage of "terrorist act" needed careful scrutiny in each jurisdiction, i.e. whether the domestic definition was fully in line with the one provided by Art. 2(1)a-b of the FT Convention. Compliance with requirements in subparagraph a), which relates to the funding of specific terrorist acts set out in various conventions annexed to the FT Convention, was mainly dependent on the implementation by the country undergoing evaluation of the treaties annexed to the Convention and/or their formal criminalization of the acts described therein. In this respect, clear deficiencies were noted in a number of countries. At least two of the underlying treaties/offences were missing in Azerbaijan, Ukraine and elsewhere, while one or some of them were missing

in the Russian Federation, Moldova and others. There were certain shortcomings noted in other countries, such as Liechtenstein, which applied a further purposive element to restrict the notion of terrorist act to offences "committed with the intention of intimidating the population in a grave way, to coerce public authorities or an international organization into an act, acquiescence, or omission, or to seriously unsettle or destroy the fundamental political, constitutional, economic, or social structures of a State or international organization" while under the Convention, the funding of the acts that constitute offences defined in the nine UN Conventions is prohibited regardless of such circumstances. A purposive element of the terrorist financing offence was also noted in Armenia.

98. The requirement in subparagraph b) of the FT Convention is the general criminalisation of *"any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context is to intimidate a population, or to compel a government or an international organisation to do or abstain from doing any act"*.

99. In Montenegro only acts intended to cause harm (to the constitutional order of Montenegro, or the foreign state/international organisation) were criminalised, while the Convention required the incrimination of any acts of violence the purpose of which is to intimidate a population or compel a government or international institution (to do/to abstain from doing any act). Liechtenstein's criminal law also insufficiently covered the general offence in subparagraph b).

Provision or collection of funds to be used by a terrorist organisation or individual terrorist

100. Provision or collection of funds with the intention (knowledge) that they are to be used by a terrorist organization or by an individual terrorist, regardless of any concrete terrorist act and thus for any purpose (including a legitimate purpose) was a difficult issue for most of the countries. As noted, this went beyond the standards set in Art. 2 of the FT Convention.

101. Simple funding of a terrorist organization (that is, for any purpose) was not covered in more than half of the countries (17 out of 29, that is 58.6 %) but when added together with 3-4 other countries where this coverage was unclear or very limited, it seems that the majority of MONEYVAL states had problems with this issue. Even in cases where some legislative attention was given to this question, the provisions primarily focused on financing the establishment and activities of terrorist groups or organizations. Furthermore, the situation was starker with regard to the funding of an individual terrorist (irrespective of terrorist acts committed or prepared by him). Coverage of this aspect was only provided for in one tenth of the MONEYVAL countries (namely Israel, Latvia and Malta). The rest failed to meet this requirement. **The extent to which countries have taken corrective action on this aspect of the terrorist financing offence** will need careful consideration in the fourth round of evaluations.

No requirement for use of funds to carry out or attempt a terrorist act

102. The essential criteria states that terrorist financing offences should not require that the funds were actually used to carry out or attempt a terrorist act or be linked to a specific terrorist act. This requirement refers to all the three separate activities described in paragraphs 100 and 101 above.

Provision or collection by any means directly or indirectly

103. Countries that succeeded to meet (explicitly or implicitly) the requirements set out in paragraph 102 also had to extend the criminalization of terrorist financing to circumstances, even where collection and provision of funds was committed indirectly, with a view that those funds being used in full or in part for a terrorist act or by a terrorist organization or by an individual terrorist. Deficiencies in this more specific area were noted in the Czech Republic and, to some extent, in other countries, including Malta, where it was unclear if provision or collection of funds could be done indirectly, not to mention a number of other countries where the evaluators also expressed uncertainty in this respect (Albania, Estonia, Hungary and others).

Extraterritoriality

104. Compliance with SR.II also requires that terrorist financing offences apply regardless of whether the person alleged to have committed the offence is in the same country or a different country from the one in which the

terrorist/organisation is located or the terrorist act occurred/will occur. This extraterritorial feature of SR.II was generally respected, at least in principle, in most of the member states. The only notable exception was Cyprus, where legislation inadvertently failed to meet this requirement. This shortcoming was reported to be subsequently remedied.

Terrorist financing required to be a predicate offence to money laundering

105. The requirement according to which terrorist financing has to be a predicate offence to money laundering was met in almost every jurisdiction mainly as a result of the generic "all crimes" approach of most MONEYVAL countries to money laundering criminalisation. Nevertheless, compliance with this criterion was affected by the limitations of the respective terrorist financing criminalization themselves, as was noted in the three NC countries and Montenegro. Ukraine had no stand alone terrorist financing offence. As a consequence, it could not be included in the scope of predicate offences for money laundering.

Corporate criminal liability

106. Criminal liability for legal persons should also extend to the financing of terrorism offence. Where this is not possible civil or administrative liability should apply. The problems in this area discussed under Recommendation 2 were regularly picked up in the reports under SRII as well and contributed to lower ratings also for SRII in the countries which had no such possibilities to prosecute terrorist financing by legal entities.

Effectiveness

107. To what extent effectiveness of implementation on counter terrorist financing issues can be assessed in the countries which reported no or extremely low risks of terrorism or terrorist financing being committed on home soil, remains an open question. In such cases, the lack of investigations/prosecutions/convictions is not necessarily an indicator of low effectiveness for which countries could reasonably be held responsible, if there is no clear sign of the underlying criminality. Indeed, the evaluators had hardly any statistics or other information in this respect, with the exception of Israel and the Russian Federation, where there had been case practice on terrorist financing related criminality. There were 24 convictions in the Russian Federation in the time period subject to evaluation. A number of convictions were pointed to in Israel under various criminal provisions, all of which were available for the prosecution of terrorist financing in its orthodox sense. Convictions were also noted in Albania (8 persons convicted) and in Azerbaijan (4 persons convicted).

Key Recommendations (legal)

Recommendation 3 – Confiscation

Recommendation 3
Countries should adopt measures similar to those set forth in the Vienna and Palermo Conventions, including legislative measures, to enable their competent authorities to confiscate property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value, without prejudicing the rights of bona fide third parties.
Such measures should include the authority to: (a) identify, trace and evaluate property which is subject to confiscation; (b) carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property; (c) take steps that will prevent or void actions that prejudice the State's ability to recover property that is subject to confiscation; and (d) take any appropriate investigative measures.
Countries may consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction, or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law.

General

108. Given that one of the objectives of a performing anti money laundering system is to deprive criminals of their gains (and so deter more proceeds-generating crime), confiscation and Recommendation 3 should be at the heart of legal measures.

109. MONEYVAL countries were broadly split between upper and lower range of the ratings. In two countries, namely Cyprus and the Russian Federation, the rating was C, while the remainder were rated either LC or PC. It was positive that there were no NC ratings. This was to be expected as confiscation and seizure rules have been for many years an essential part of modern criminal legislation and because of the emphasis that MONEYVAL has given to this issue in the last 10 years. On the other hand, however, it must be noted that the results still lean towards the lower end of the rating range, with 15 countries (46.2 %) rated only partially compliant (PC).

R.3	NC	PC	LC	C	N/A	NC	PC	LC	C
	0	15	12	2	0	0.0 %	46.2 %	46.2 %	7.7 %

110. It is difficult to draw conclusions on typical trends or areas of insufficient compliance in respect of national legislative responses to the requirements under R.3. Some criteria were usually not met in most countries. Of more importance in the context of Recommendation 3 is the effectiveness issue. It should be noted here that this Recommendation is not simply directed towards confiscation and provisional measures in money laundering cases, but also to all predicate offences. Again, lack of statistics was noted. It should be reiterated, particularly in the context of confiscation, that it is not for the evaluators to establish effectiveness; it is for the country to demonstrate it. Unfortunately most countries could not demonstrate success in this area, which remains troubling, particularly in relation to other proceeds-generating predicate offences.

111. As for the legislative requirements, in some countries the evolution of the confiscation regimes had resulted often in a rather complex sets of rules which, together with issues of legal terminology, had not helped assessment in the previous rounds. Now, in the third round, the examiners were generally in a position to demonstrate clearly, in most if not all jurisdictions, separate sets of rules for confiscation upon conviction, and separate rules for provisional measures.

112. As noted above, R 3 extends to all predicate offences. The overall scope of the confiscation regimes was found insufficient in a number of countries where confiscation was not available for all designated categories of predicate offence, even if money laundering and terrorist financing were apparently covered for these purposes. In Azerbaijan, only certain predicates had an associated power of confiscation (and even in such cases on a discretionary basis). Similar problems were noted in Armenia and Ukraine. In Israel, the examiners found a modern, robust and innovative confiscation regime available for money laundering, drugs crimes and organized criminality, as opposed to the pre-existing procedures available for the rest of the predicates, which only inadequately provided for, among others, the confiscation of indirect proceeds and property of corresponding value.

Confiscating laundered property

113. The main requirements under R.3 are set out in Criteria 3.1, according to which laws *should provide for the confiscation of property (i) that has been laundered or (ii) which constitutes proceeds from (iii) instrumentalities used in and (iv) instrumentalities intended for use in the commission of any money laundering, FT or other predicate offences*. The wording of this Criterion clearly specifies that confiscation of property *"that has been laundered"* is a separate issue, clearly distinct from proceeds and instrumentalities. This differentiation deserves further attention in the forthcoming round of evaluations, as numerous evaluation reports showed that this distinction was not always made and confiscation of property that has been laundered was not clearly provided for, which is important where money laundering is charged as an autonomous offence.

114. In this contex it is worth underlining that the property that has been laundered cannot automatically be considered as proceeds of money laundering. The term "proceeds" denotes property that is derived from or obtained through the commission of an offence. In this context "offence" necessarily means a predicate offence and not the actual money laundering offence. The property that has been laundered would normally be derived from a predicate crime and hence it would constitute the object of the laundering activity. The distinction is particularly relevant in "classic" third-party money laundering cases, which are not prosecuted together with the predicate offence. The proceeds of a predicate offence are received and, once "cleaned" or legalised, returned by the launderer. The payment or percentage the latter is given for his/her action is all that

could be considered as "proceeds" derived from money laundering. In such cases, an adequate confiscation regime should be capable of targeting criminal proceeds from both aspects – the laundered property in an autonomous case and any actual "proceeds" of the laundering by way of commission etc.

115. There were some countries in which this differentiation was clear already in legislation. The laundered property was rendered subject to confiscation under general provisions as "objects of crime" or "corpus delicti" in a number of countries such as Malta, Hungary or Monaco. Even more countries chose to introduce offence-specific provisions, typically attached to or inserted in the money laundering offence, to prescribe the confiscation of the laundered property, as was noted, among others, in Croatia, "the former Yugoslav Republic of Macedonia", Bulgaria and Israel. A third solution was found in other countries (e.g. Lithuania) where the apparent lack of legislative clarity in this respect had already been remedied by judicial practice and therefore no recommendation needed to be made in the evaluation report. Nonetheless, there were notable examples where the lack of clear provisions for confiscation in this respect proved to be, at least in principle, an obstacle to effective confiscation of laundered assets, as was noted in Liechtenstein, Georgia, Moldova, Estonia and Azerbaijan.

Proceeds and instrumentalities, substitutes, and value confiscation

116. The third round reports showed that the requirement to provide for the confiscation of proceeds of crime as well as instrumentalities used or intended for use in the commission of a criminal offence are now generally covered in most of the jurisdictions. Some exceptions occurred, which are mentioned below.

117. The confiscation of proceeds of crime (which, as noted above, may refer either to the proceeds of the predicate offence or the proceeds obtained specifically from the laundering offence or both) was adequately provided for in almost all countries. Nevertheless, the discretionary character of this measure posed a problem in Andorra (where specific money laundering-related confiscation rules were subject to discretion, while the general provisions proved to be mandatory), and also in Georgia and arguably in Croatia. San Marino was recommended to remove the limitation according to which this measure had only been applicable to property belonging to the defendant (according to the progress report this restriction was subsequently abandoned).

118. Despite recommendations made in the previous round of evaluations, many jurisdictions still did not (or not clearly) provide for the confiscation of indirect proceeds of crime. Assets not directly derived from a criminal offence proved not to be covered in Ukraine and Croatia. Uncertainty in some legislation and lack of adequate jurisprudence led to the same conclusion in a number of other jurisdictions, such as Bulgaria (where prosecutors apparently refrained from applying for confiscation of indirect assets but pursued them through separate money laundering investigations) or Lithuania and, to some extent, also in Slovenia where the coverage of incomes and yields from criminal offences remained unclear. Despite some judicial practice in this field, the same applied to Azerbaijan and Latvia. In most of these cases the evaluators urged legislative steps and/or proper guidance on this issue and, according to the progress reports, these recommendations were being addressed.

119. Confiscation of substitute assets and/or assets of corresponding value was provided for, to some extent in the majority of jurisdictions, sometimes as a relatively new measure introduced in the light of recommendations made in previous rounds. No value confiscation was available in the Czech Republic (where a limited pecuniary punishment was applied) nor in Armenia, Andorra, Ukraine and Monaco, while San Marino only provided it for money laundering and terrorist financing offences. Croatian law contained multiple restrictions in this respect both in the general and the money laundering specific rules. Progress reports showed, however, that Andorra, Croatia, San Marino and the Czech Republic subsequently adopted all the necessary amendments to their legislation and a similar draft law was reported by Monaco.

120. Regimes available for confiscation of instrumentalities were criticized in countries such as Ukraine where, apart from a specific provision related to the offence of money laundering, there was no generic rule as regards other criminal offences. In Liechtenstein, instruments could only be confiscated if their specific nature would be likely to lead to the commission of further offences.

121. In a number of countries, confiscation of instrumentalities was discretionary (or rendered mandatory only for certain serious crimes) and/or were bound by various conditions. Limiting conditions included that the

instrumentalities be owned by the perpetrator (hence excluding third party confiscation) and/or further requirements, such as the necessity to show a state or public interest in their confiscation or the danger of them being used again. The discretionary character of this measure together with sometimes overly vague preconditions was noted in "the former Yugoslav Republic of Macedonia" and Croatia. In Estonia, such confiscation was subject to discretion, restricted to property items belonging to the offender and instrumentalities merely intended for the commission of a criminal offence were further restricted to offences the preparation for which had specifically been criminalized (and neither money laundering nor terrorist financing fell under this scope). The other country where intended instrumentalities were noted not to be properly covered was Latvia, where such items could only be forfeited in case of preparation or attempt. It needs to be noted at this point that confiscation of instruments not actually used but intended for use for committing a criminal offence is of crucial importance when it comes to property intended to finance terrorism and, hence, this particular part of the confiscation regime will deserve further attention in the fourth round of evaluations.

Third party confiscation

122. Confiscation from third parties was generally accepted, at least to some extent, throughout the countries. As a general rule, it was subject to specific knowledge standards, i.e. whether and to what extent the third person was or should have been aware of the illicit origin of the property or object. Sometimes there were different standards depending on whether proceeds of crime or instrumentalities were involved (Estonia, Hungary). In common law countries, such as Malta and Israel, the principal standard was whether the property remained under the control of the defendant.

123. Nevertheless, there were still numerous examples of the exclusion of (or at least reluctance to apply) third party confiscation, together with deficient protection of bona fide third parties. Third party confiscation was excluded in Albania (where no significant changes could be seen in the 2 progress reports either), in Ukraine and arguably in the Slovak Republic and, as far as the general regime is concerned, in Georgia. Further, third party confiscation was allowed by law in the Czech Republic though there was no possibility to confiscate from legal persons (considering the lack of corporate criminal liability). These shortcomings were adequately addressed by subsequently adopted legislation. In Andorra and Bulgaria there was no explicit legislation governing this issue and, in the latter, different views emerged among practitioners on this issue (disputes were subsequently reported as settled and proper guidance was issued). In San Marino, confiscation from bona fide third parties was generally not possible but, as far as money laundering and terrorist financing cases are concerned, it could effectively be replaced by confiscation of equivalent value from the offender. Third party confiscation appeared very limited in Poland and Romania.

124. Deficiencies in third party confiscation had an obvious negative impact on the protection of bona fide third parties in Albania and Slovak Republic and enhancement of such rights was recommended in the Czech Republic. Estonia provided for the protection of bona fide third party rights only in context of confiscation, while no specific legislation was in place as regards seizure orders. Insufficient protection was reported in Moldova as well but, according to the progress report, all amendments necessary to meet the standards of the Palermo Convention were subsequently adopted.

Voiding actions likely to prejudice confiscation

125. Among the few areas not, or not properly, covered by many jurisdictions was the requirement for authority to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation. This criterion (3.6) was not met by 8 countries (Bosnia and Herzegovina, Slovak Republic, Serbia, San Marino, Romania, Montenegro, Latvia and arguably Andorra) while Croatia only provided for it in the context of money laundering criminalization, in a specific provision attached to the money laundering offence. Some doubt arose in the case of Georgia, where no explicit statutory base was pointed to. Of these countries, San Marino properly addressed this issue in the subsequently adopted legislation.

Provisional measures

126. The standard requires an effective regime of provisional measures: such as temporary seizure of property or freezing of bank accounts, which can be taken in the early stages of proceedings (before assets are hidden successfully or dissipated) with a view to subsequent confiscation of the property. The examiners found detailed sets of procedural rules for provisional measures in most of the countries.

127. Nonetheless, in many countries these regimes were considered by the evaluators to be overly complicated. Alternatively, or in some cases additionally, some temporary measures could only be taken once the formal investigation had been initiated: an example was "the former Yugoslav Republic of Macedonia", where the evaluators found uncertainty (overlaps and apparent duplications) in respect of the exact range of provisional measures as well as in the related terminology. Lack of explicit coverage of provisional measures beyond material assets (objects) and, arguably, bank deposits was noted in Andorra, but the progress report demonstrates improvement in the relevant legislation.

128. The ability to make "ex parte" applications without prior notice to freeze accounts in case of emergency was evident in practice in almost all countries, apart from Croatia and "the former Yugoslav Republic of Macedonia", where measures such as seizure in the pre-investigative phase of the proceedings was only possible in certain situations. Freezing of bank accounts, on the other hand, required the initiation of a formal investigation which was noted in that report as a shortcoming, and also in the Czech Republic and Albania. In another group of countries, the utility of otherwise strong measures was restricted by procedural barriers, such as short time limits for application. The latter was noted, for example, in Lithuania (in case of "non serious" crimes, which term embraced some forms of the money laundering offence) or Malta where the 30-days limitation of attachment orders was considered to be too short by the examiners. Another example was Albania, where appeals against provisional measures might automatically lead to cessation of the order if an appeal is not decided within a 15-day deadline (with regard to which no subsequent improvement was noted in the progress reports).

Suspension or postponement

129. In more than half of the jurisdictions, that is, in 16 countries (plus Albania where the measure was introduced subsequently) provisional measures provided in criminal procedural rules were effectively supported by administrative mechanisms by which suspicious transactions could be suspended or postponed by the FIU or another similar authority. Other mechanisms in which suspension had to be carried out by the obliged entity with a view to initiating further FIU actions were criticised in Hungary, where the FIU was recommended to be granted statutory authorization to impose such measures.

130. The timeframes for such suspensions ranged between 12 hours in Monaco, which could be prolonged, to a period of 5 working days (Liechtenstein). Mostly they were set around 72 hours or 3 days. Conditions under which suspension can take place were found problematic in: Croatia (limited to cases where the content of the report had to be verified); "the former Yugoslav Republic of Macedonia" (bound to an overly high standard of suspicion), and where additional practical problems were also present (e.g. the scope of possible further measures provided in the preventive law and in the Criminal Procedure Code were not harmonised). Effectiveness problems regarding the application of such measures were noted in the Czech Republic (preliminary analyses took too much time before forwarding – which now has been remedied) and in Moldova (where the low number of such measures identified by the evaluators showed a significant increase subsequently).

Effectiveness

131. Issues related to effectiveness were also naturally taken into account in assessment of the confiscation and provisional measures regime. Apart from some positive examples, the evaluators **did not have significant opportunities to examine properly the performance of these regimes due to a general lack of proper or any statistics**.

132. The lack of statistics was one of the most frequent factors resulting in a lower rating for R.3 (where the formal requirements were broadly met) in almost every jurisdiction. The countries where such problems did not emerge were Cyprus (with comprehensive statistics that clearly showed regular and successful use of the con-

fiscation regime), Moldova, Estonia and Liechtenstein. In all other countries there was either a general lack of comprehensive statistical information on the performance of the confiscation and provisional measures regime (or it was only partially available and/or partially adequate), which made the assessment of effectiveness difficult, or sometimes impossible. This was also the case in countries where the evaluators might have otherwise established a well-functioning system. **Absence of information on the performance of confiscation regimes can therefore be considered as a general deficiency in the vast majority of MONEYVAL countries**. Thus it must be among the key priorities when assessing compliance with R.3 (and also R.32) in the fourth round of evaluations.

133. Among other factors contributing to lack of effectiveness were: the high evidential standards applied by trial courts (e.g. Bosnia and Herzegovina); the structure of the confiscation regime (e.g. "the former Yugoslav Republic of Macedonia"); and, as noted at the outset of this review, one of the greatest concerns, was **the apparent lack of routine financial investigations into the criminals' property**.

134. This review shows also, worryingly, that not all possibilities provided by statutory law (even implicitly) were regularly exploited by practitioners. This particularly applies to use of provisional measures. On the basis of either statistics or statements made by interlocutors, the evaluators found, in many countries, that **provisional measures were seldom used** by the competent authorities which automatically presented an obstacle to successful confiscation in the later stages of proceedings. To overcome this, examiners often encouraged domestic law enforcement and prosecutorial authorities to apply such measures regularly. This again reflects the continuing need to entrench a culture that routinely goes after criminal proceeds.

Reverse burdens, etc.

135. Greater success in financial investigation, and in depriving major proceeds-generating criminal offenders of criminally obtained assets may equally depend on the extent to which jurisdictions are prepared also to adopt new and innovative measures (which currently are optional "additional criteria" rather than "essential criteria" under the Methodology). These include: civil forfeiture, in addition to the system of confiscation triggered by a criminal conviction; the confiscation of property that belongs to criminal organizations; and the possibility of reversing the burden of proof by requiring an offender to demonstrate the lawful origin of his property post conviction. It is therefore welcomed that many countries can meet some of these additional standards.

136. Of these "additional criteria", the reversal of the burden of proof has gained the most recognition in MONEYVAL countries since the previous round. More and more countries adopted rules allowing for such a measure, particularly in specific cases such as serious or organized criminality. This possibility was introduced, to some extent, by more than one third of the countries (10/29) and the scope of its application usually but not necessarily covered money laundering and terrorist financing. Consideration of these standards was frequently proposed by examiners in countries where no such initiatives had yet taken place.

137. Confiscation of the property of organisations that are found to be primarily criminal in nature was provided for in countries including, among others, Albania, Estonia, Georgia, Ukraine, Slovenia and also Liechtenstein, though the examiners were seldom, if at all, provided with specific statistics on the actual application of the relevant rules. Civil confiscation or forms of it occurs in a much smaller number of MONEYVAL countries, where recently adopted, innovative legislation has been introduced. However practice with these provisions had not developed at the time of the evaluations to allow for full assessments of their impact. Nonetheless, the examiners welcomed these pioneering initiatives in Albania, Bulgaria and Georgia. MONEYVAL countries more generally may wish to draw inspiration from these developments in future.

Recommendation 35 and SR.I – Judicial International Cooperation (Ratification of Conventions and Other UN Instruments)

Recommendation 35

Countries should take immediate steps to become party to and implement fully the Vienna Convention, the Palermo Convention, and the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism. Countries are also encouraged to ratify and implement other relevant international conventions, such as the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the 2002 Inter-American Convention against Terrorism.

Special Recommendation I –Ratification and implementation of UN instruments

Each country should take immediate steps to ratify and to implement fully the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism.

Countries should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373.

138. On the legal side of MONEYVAL mutual evaluations, compliance with the international cooperation FATF Recommendations appears to be very high. As far as Recommendations 35 – 39 and SR.I and SR.V are concerned, no country was rated less than PC, except for two countries rated NC for SR.I (Andorra and Ukraine). The proportion of full compliance was the greatest on the legal side, with more than a quarter of all countries marked compliant on R.36 (8 /29, that is 27.6 %) and more than half of them were so rated for R.37 [4] (15/29, that is 51.8 %).

139. The key Recommendations that require member states both to become a party to the main international conventions that set standards in the fight against money laundering and terrorist financing are R.35 and SR.I. In order to comply with these, all countries need to sign and ratify (or otherwise become a party to) and fully implement the Vienna and the Palermo Conventions, as well as the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (the Terrorist Financing Convention). In addition, the full implementation of the United Nations Security Council Resolutions that relate to the prevention and suppression of terrorist financing (including the adoption of any necessary laws, regulations or other measures) is also required under SR.I. All these issues are divided between R.35 and SR.I, with the sole exception of ratifying and fully implementing the Terrorist Financing Convention, which is clearly required by both Recommendation 35 and SR.I. Apart from these, it is now an additional element in the current Methodology to ratify or fully implement other relevant international conventions, such as the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the ratification of and compliance with which has already been subject to assessment in the previous rounds and which now can be considered as a common legal base for mutual assistance in all MONEYVAL member states.

140. By the time of the third round, all MONEYVAL member states had already signed and ratified the Vienna Convention and, in the great majority of the countries, ratification had taken place of the Palermo and the Terrorist Financing Conventions. Some deficiencies were nevertheless noted. Neither of these Conventions was signed and ratified by Andorra and the Czech Republic by the time of the onsite visit and only the FT Convention in Georgia, Hungary, Liechtenstein and San Marino. Naturally, the lack of ratification of one or more of the respective Conventions was among the key factors resulting in lower ratings for all the countries mentioned above. It needs to be noted, however, that the ratification of the Palermo Convention took place by the time of the Progress Reports in Georgia and Hungary and the Terrorist Financing Convention had been ratified in Andorra and the Czech Republic by the time of their Progress Reports.

141. Full implementation of the FT Convention also involves the ratification and implementation of the 9 other treaties annexed to it, and referred to in Art.2(1)a of the Terrorist Financing Convention. Nevertheless, this requirement was expressly addressed only in a minority of the reports (for example in the Russian Federa-

4. Rendering mutual legal assistance notwithstanding the absence of dual criminality.

tion) and therefore it should be subject to a somewhat more focused scrutiny in the forthcoming round of evaluations.

142. In total, ratings given for R.35 were quite balanced: almost half of the countries were rated C or LC (altogether 14/29, i.e. 48.3 %) with no NC ratings at all. The picture was less positive in the case of SR.I, where less than one third of the countries (9/29, that is 31 %) were rated C or LC while the great majority received a PC rating (18/29, that is 62 %) with two countries rated non-compliant.

	NC	PC	LC	C	NC	PC	LC	C
R.35	-	15	12	2	-	51.7 %	41.3 %	7 %
SR.I	2	18	7	2	7 %	24 %	62 %	7 %

143. The main deficiency noted in most cases was the insufficient criminalization of money laundering and terrorist financing. This shortcoming was usually referred to in general terms, as all the related details had already been discussed in previous parts of the evaluation reports under R.1-2 and SR.II respectively. There is a direct relation between Recommendations 1 and 2, SR II and R.35 and SR.I. Recommendations 1 and 2, and SR II fundamentally focus on meeting the criminalization standards set in the Conventions, the implementation of which is subject to evaluation under the R. 35 and SR I. Therefore any relevant shortcoming noted, for example, under R.1 automatically had an impact on R.35 with a consequential effect upon the R. 35 rating.

144. As for the criminalization of money laundering, both the Vienna and Palermo Conventions provide for a standard definition of this offence in similar ways. In case of non compliance with these standards, some reports did not differentiate in terms of which of these Conventions was affected. Therefore either a common reference was made to both of them or it was not specified which was found to be not fully covered ("the Conventions"). This was particularly the case in respect of general deficiencies in the scope of the money laundering offence relating to, for example, the necessary physical and material elements of the offence (e.g. "the former Yugoslav Republic of Macedonia"), doubts whether a conviction or indictment for the predicate crime is a prerequisite (e.g. Estonia) as well as generic problems in respect of the provisional measures and confiscation regime (e.g. Serbia). In other reports it was more clearly specified, to the extent possible, whether the Vienna or Palermo Convention was affected. Insufficient criminalization of terrorist financing equally led to direct consequences when assessing the implementation of the Terrorist Financing Convention. The lack of corporate criminal liability was specifically noted in a number of countries including Armenia, Bulgaria, Georgia. Similarly, the deficiencies in the temporary measures and confiscation regime were also noted in the context of incomplete implementation of the respective conventions in a number of countries such as Albania, Bulgaria, the Czech Republic, Malta and Monaco.

145. Within the context of SR.I there was a separate subset of key factors as well that covered incomplete implementation of the respective UNSCRs on the freezing of assets related to terrorists and terrorist organizations, where deficiencies detected under SR.III were subsequently noted with consequences for the ratings on SR I. Indeed, this part of the key factors appeared to have had more of a negative impact on overall ratings for SR.I, which led to the comparatively weak results in most of the countries.

Recommendation 36 – Mutual Legal Assistance

Recommendation 36
Countries should rapidly, constructively and effectively provide the widest possible range of mutual legal assistance in relation to money laundering and terrorist financing investigations, prosecutions, and related proceedings. In particular, countries should: *a) Not prohibit or place unreasonable or unduly restrictive conditions on the provision of mutual legal assistance.* *b) Ensure that they have clear and efficient processes for the execution of mutual legal assistance requests.* *c) Not refuse to execute a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.* *d) Not refuse to execute a request for mutual legal assistance on the grounds that laws require financial institutions to maintain secrecy or confidentiality.* *Countries should ensure that the powers of their competent authorities required under Recommendation 28 are also available for use in response to requests for mutual legal assistance, and if consistent with their domestic framework, in response to direct requests from foreign judicial or law enforcement authorities to domestic counterparts.* *To avoid conflicts of jurisdiction, consideration should be given to devising and applying mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country.*

146. Turning to the specific Recommendations that cover particular important aspects of international cooperation, R.36 on the general aspects of mutual legal assistance, was rated quite positively in most countries.

R.36	NC	PC	LC	C	NC	PC	LC	C
	-	6	15	8	-	20.7 %	51.7 %	27.6 %

147. Deficiencies in the criminalization of money laundering and/or terrorist financing also directly impacted on the ratings for R.36, as it did for R.37 and SR.V (see beneath under Other Recommendations-legal). In such cases, a typical reason for lower ratings was that the deficiencies in criminalizing either or both of these offences might limit mutual legal assistance based on the principle of dual criminality. This potential limitation in providing the widest legal assistance in criminal matters was noted as a factor leading to lower rating in the evaluation reports of Cyprus, Slovak Republic, Romania, Serbia (in relation to terrorist financing) and Estonia (also in relation to money laundering).

148. The direct connection between the incompleteness of the criminalization of the two key offences and the potential limitations on the provision of mutual legal assistance on the basis of dual criminality is clear. This had consequences in terms of ratings. A question that appears unresolved is whether these consequences should apply in relation to R.36 or R.37 or both. The evaluation reports show examples of both, though R.36 appears to have been referred to frequently in this context.

149. It seems certainly appropriate in the case of Recommendation 36. The principle of dual criminality is at the core of potential shortcomings here.

150. Perhaps it is worth noting for the future that even if the deficient criminalization of money laundering or terrorist financing apparently had the potential to limit the provision of effective mutual legal assistance and also extradition, it was largely a hypothetical risk, as generally there was no evidence that there had been refusals of foreign requests on this basis. The fourth round countries to which this issue applies may need to be more closely examined in respect of whether any foreign requests have actually been refused on the basis of such deficiencies in the legislation.

Special Recommendation III – Freezing of Terrorist Assets

Special Recommendation III –Freezing and confiscating terrorist assets
Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts. *Each country should also adopt and implement measures, including legislative ones, which would enable the competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations.*

151. Countries performed poorly in respect of SR.III, with 24 countries (82.7 %) receiving ratings in the lower range and none were rated as "compliant". More than a quarter of MONEYVAL countries were found to be "non compliant". This is problematic in terms of the general readiness of jurisdictions to freeze terrorist assets. Progress on this issue should be addressed with particular care in the 4th round.

Number of ratings					Percentage of ratings				Number of ratings		Percentage of ratings	
NC	PC	LC	C	N/A	NC	PC	LC	C	NC+PC	LC+C	NC+PC	LC+C
8	16	5	0	0	27,6 %	55,1 %	17,2 %	0,0 %	24	5	82,7 %	17,2 %

152. For SR.III there were significant differences in compliance ratings between countries which were members of the European Union (and thus bound by EU legislation, so far as it went) and those that were not members of the European Union.

153. In non-EU MONEYVAL member states the overall situation was rather mixed. The picture here includes some moderately prepared jurisdictions and a significant number of non-compliant ones. In most countries with a NC or PC rating, the legislators appeared to be unaware or not particularly aware of a need to embed these Resolutions into the existing legal framework.

Generic issues

154. Generic problems that led to non-compliance comprised, in most cases, the lack of a dedicated legal structure for the practical conversion into domestic law of designations under UNSCRs 1267 and 1373 (including consideration of designations by third countries) and the lack of a national designating authority for UNSCR 1373. Apart from such basic structural and institutional deficiencies, the countries' potential to freeze assets of designated (listed) persons and entities was often based on an unfounded or, at least, unproven reliance on pre-existing legal structures, such as coercive temporary measures available in the Criminal Procedure Code or the authority to suspend suspicious transactions pursuant to the respective preventive legislation. In some cases a close examination of the legal texts proved or, at least, showed it likely that the provisions relied on were inapplicable in this respect. For example, the criminal procedural rules could not have been applied without initiating a formal criminal procedure, which requires a criminal offence subject to the jurisdiction of that country whereas the mere appearance of a name on the terrorist list does not necessarily constitute a domestic criminal offence. Moreover once a criminal procedure is initiated, the freezing action would then depend on the outcome of the proceedings.

155. Where this approach was taken, the reports regularly criticised the country concerned, pointing out the unlikelihood of a freeze being capable of being sustained by criminal process.[5] In other cases, the preventive law did not (properly) cover the suspicion of terrorist financing or the definition of "transaction" was not applicable to deposited assets. And where specifically constructed legal bases existed, they had rarely ever been applied for actual freezing of terrorist funds. Even if specific legislation was adopted for the execution of

5. The debate as to whether criminal process could properly fulfil the requirements of SR.III was not fully concluded until the issue of an FATF Best Practices Paper in June 2009 (after the conclusion of the MONEYVAL 3rd round onsite visits) which indicated that measures to freeze terrorist assets may complement criminal proceedings but are not conditional upon the existence of such proceedings.

international restrictive measures (including those under UNSCRs 1267 and 1373) it was noted in a number of reports (including Croatia, and "the former Yugoslav Republic of Macedonia") that such generic laws did not contain any "effective and publicly known procedures" as required by SR.III. The legal basis for authorization of such publicly known procedures in secondary legislation existed but had not then been adopted. Serious uncertainty about the applicable legal structure was noted in Bosnia and Herzegovina with its two parallel and entirely separate sets of legislation, both drafted and adopted with the intention to provide a legal basis for freezing of terrorist assets.

Performance of MONEYVAL EU States generally

156. The performance of the MONEYVAL EU member states was significantly better as one third of them (4 of 12) received a 'largely compliant' rating, while the rest (8 of 12) were rated 'partially compliant'. An obvious reason for this was that the measures foreseen in the relevant UN Security Council Resolutions 1267 and 1373 (and successor resolutions) had already been harmonised at EU level at the time of the third round of evaluations by virtue of two EU Council Regulations (881/2002 and 2580/2001) which are immediately effective on national legal systems of EU member states. As a result, MONEYVAL members which are EU member States mainly relied on the mechanisms of the European Union, though in certain instances they failed to adopt additional legislation, where the EU Regulations were insufficient in themselves for a complete preventive system.

EU internals

157. Within the context of UNSCR 1373, the lack of a national mechanism to consider requests for freezing from other countries or of a separate mechanism to freeze the funds of persons, groups and entities having their roots, main, activities and objectives within the European Union ("EU internals") was a recurring deficiency. In this respect, EU member states relied on EC Regulation 2580/2001 and Common Position 2001/931/CFSP for the implementation of UNSCR 1373 and its successor resolutions. However, to fully implement this UNSCR, EU Member States also need to have national systems in place as Council Regulation (EC) Regulation 2580/2001 only deals with freezing the funds or other assets of "non-EU nationals" (persons/entities that have a connection outside of the EU). The list in Council Regulation 2580/2001 includes only the names of the persons and entities linked or related to third countries as well as those who otherwise are the focus of the CFSP aspects of Common Position 2001/931/CFSP. European Union "internals" may only be listed in an Annex to the Common Position 2001/931/CFSP, where they are marked with an asterisk, showing that they are not covered by the freezing measures but only subject to increased police vigilance and judicial co-operation by the member States. To achieve full compliance with UNSCR 1373 (and hence SR.III) EU member states must have domestic procedures or mechanisms in place to freeze the funds or other assets of these "EU internals".

158. Most of the MONEYVAL EU member states failed to adopt any additional national legislation in this respect and thus could not impose freezing measures against "EU internals", which was an important shortcoming. Explicit lack of such a possibility or, at least, serious uncertainty as to the existence of a clear domestic legal mechanism in this field were noted among the factors contributing to the ratings in Estonia, Latvia, Lithuania, Malta and Poland. At the time of the evaluation, the Czech Republic, Hungary and Slovenia were also lacking such specific legislation and national mechanisms. On the positive side, the Slovak Republic at the time of the 3rd round appeared to have established legal capacity to act in relation to European Union internals and on behalf of other jurisdictions and, from a more practical perspective, the same applied to Cyprus. Romania was able to designate "EU internals" but its legislation did not cover freezing on behalf of a foreign jurisdiction, while Bulgaria appeared to lack a domestic procedure for EU internals.

"Funds"

159. The other typical deficiency in EU member states was not to cover the full notion of "funds" beyond the language of the relevant EC Regulations where, as explained below, the scope of this term falls short of providing the coverage that is required by UNSCR 1267 and/or UNSCR 1373 and successor resolutions. First and foremost, both EC Regulation 2580/2001 and 881/2002 define the funds and economic resources to which freezing may be applied by referring to assets belonging to, owned or held by a designated person. However

neither of them covers funds **"controlled"** by such designated persons or those acting on their behalf or at their direction, as is required by UNSCRs 1267 and 1373. Furthermore, as was explained in some of the reports, neither of the two EC Regulations mention funds/assets that are **jointly "owned"** by designated persons or organizations as well as funds/assets **derived or generated** from other funds/assets owned or controlled by such persons.

160. Examination of the reports shows that few MONEYVAL members which are EU member States had taken any legislative action to address this deficiency. In fact, there were only a few countries, for example Malta, that had a definition of terrorist property sufficiently broad to cover the full notion of assets under the control of listed persons, as set out in the UN Resolutions. These definitional problems were even more apparent in other non EU MONEYVAL member countries, particularly those which placed heavy reliance on the criminal justice system for covering the various elements contained in SR.III.

Criteria III.5, 6 and 13

161. Regardless of the question of EU membership, a number of more generic factors leading to lower ratings were noted in all MONEYVAL countries. The first group of these deficiencies related to the preventive regime, in which area the evaluators typically found no practical guidance provided to financial institutions and DNFBP (Criterion III.6)[6] or effective (if any) systems for communicating actions under the freezing mechanisms to the financial sector immediately upon taking such action (III.5)[7] or effective monitoring of compliance with the implementation of obligations under SR.III with the power to impose sanctions (III.13)[8]. The level of compliance in these respects was generally low in almost every jurisdiction, even in those rated 'largely compliant' such as Albania or Malta (where problems in respect of guidance and communication were the major identified problems).

Criteria III. 7-III.10

162. The other group of generic issues related to the requirements listed in Criteria III.7 to III.10 which oblige countries to provide remedies against freezing actions taken under SR.III, in respect of de-listing requests and for unfreezing the funds/assets of de-listed persons or entities (III.7)[9], unfreezing the funds/assets of persons or entities inadvertently affected by a freezing mechanism (III.8)[10] and, more generally, the requirement to provide a legal remedy for those whose funds/assets have been frozen with a view to having this measure reviewed by a court (III.10)[11]. To some extent, Criterion III.9 needs also to be discussed here: according to it, access should, under appropriate circumstances, be given to frozen assets/funds to the extent determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses. In addition, countries were required to introduce "effective and publicly known procedures" (III.7-8) or "appropriate procedures" (III.9-10) for the actual implementation of these Recommendations which were wholly or partially lacking in the majority of the jurisdictions.

163. On the positive side, the requirement to provide a legal remedy against freezing actions appeared to be considered and, to some extent, met by most MONEYVAL countries. It was not typical, however, to adopt specific procedural rules for this purpose. Instead of that, most countries relied on generic appeal rights and procedures provided by pre-existing procedural legislation. This included general rules of administrative pro-

6. Criterion III.6 provides: "Countries should provide clear guidance to financial institutions and other persons or entities that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms."
7. Criterion III.5 provides: "Countries should have effective systems for communicating actions taken under the freezing mechanisms referred to in Criteria III.1 – III.3 to the financial sector immediately upon taking such action."
8. Criterion III.13 provides: "Countries should have appropriate measures to monitor effectively the compliance with relevant legislation, rules or regulations governing the obligations under SR III and to impose civil, administrative or criminal sanctions for failure to comply with such legislation, rules or regulations."
9. Criterion III.7 provides: "Countries should have effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international obligations."
10. Criterion III.8 provides: "Countries should have effective and publicly-known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person."
11. Criterion III.10 provides: "Countries should have appropriate procedures through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a court."

cedure (in countries where an administrative freezing mechanism was introduced) or those of the Criminal Procedure Code (where freezing actions involved the application of criminal procedural rules). Furthermore, in most instances, the evaluators could only consider the existence and hypothetical applicability of these appeal rules as they had hardly, if at all, been applied to review freezing actions taken under the respective UNSCRs.

164. Handling of requests for de-listing and unfreezing, as described by Criteria III.7 and III.8, appeared to pose a problem in almost every MONEYVAL country. In those being EU member states, this issue had largely been addressed under the above mentioned European Union mechanism for de-listing and unfreezing requests. Apart from that, the examiners rarely encountered an awareness of these issues.

Effectiveness

165. In most countries, the freezing regime had not yet been applied in practice and hence there was a very limited possibility for the assessment of its effectiveness. While fuller analysis of SR.III in the financial sector can be found later in this report under Part III (financial issues) it can be noted here that in most countries there was awareness of the terrorist financing lists, and recognition of the importance of checking those lists for matches by the banks. This was less apparent in some part of the non banking financial sector and awareness of lists was much more sporadic among DNFBP in many countries. In some countries the greater understanding of SR.III in the banking sector was apparent more as a result of group instructions from Headquarters in banks controlled by the larger banking groups, rather than local procedures put in place. Even if reporting by financial institutions or other obliged entities of assets/funds related to designated persons or organizations had taken place, few, if any, freezing actions had followed. In countries, where other parts of the existing legal framework, such as criminal procedural law, were said to be capable of covering freezing under the respective UNSCRs, the lack of actual practice impeded an assessment not only of the effective implementation but also of the applicability of the freezing regime. On the other hand, SR.III is among those Special Recommendations and Recommendations, the effective implementation of which cannot be determined on the sole basis of statistics. Therefore attention had to be paid to country specific aspects, such as whether terrorist assets had ever been identified or, more generally, whether and to what extent terrorism or terrorist financing was in practice an actual threat in the country. Nevertheless, a number of countries reported that freezing actions had already taken place, such as Israel (with increasing statistical figures), Russian Federation (where all freezing orders took place under a national terrorist list) or Croatia (with practical results despite a questionable legal base).

Special Recommendation V – International Co-operation (Financing of Terrorism)

Special Recommendation V – International cooperation
Each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organisations. *Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations, and should have procedures in place to extradite, where possible, such individuals.*

SR.V		PC	LC	C	NC	PC	LC	C
	-	12	12	5	-	41.3 %	41.3 %	17.3 %

166. The main shortcomings of a general character that had been detected in relation to Recommendations 36 to 39 were almost automatically and identically reflected in respect of SR.V as well, together with other issues specific to terrorist financing. This included generic issues, such as the lack of corporate criminal liability, deficiencies in the confiscation and provisional measures regime that impacted here as well. Due recognition was given where non compulsory aspects of mutual legal assistance were provided subject to dual criminality. Other key factors, which related primarily to the financing of terrorism, included the deficient criminaliza-

tion of terrorist financing as a potential impediment to provision of assistance, both in terms of letters rogatory or extradition requests.

167. Ratings for SR.V did not always appear to reflect the somewhat limited preparedness on counter terrorist financing issues that was noted in context of Special Recommendation II. That is to say the ratings were not significantly worse than those given for R.36 and were comparable to those under R.38, as no country received NC, while 58.6 % of the countries were C or LC. That said, the average ratings given to SR.V appeared to be close to the average of all the mutual legal assistance FATF Recommendations which was in line with the cumulative character of SR.V. On the other hand, one might have expected something a bit lower, given lower compliance levels generally with SR.II.

Average Ratings for Core and Key Legal Recommendations

168. The ratings given to the core[12] and key[13] Recommendations relevant to legal issues as analysed in this Horizontal Review, including Special Recommendation III, the rating of which is also influenced by preventive and law enforcement measures, have been further examined to identify an overall average compliance position:

Average Ratings for Core and Key 'Legal' Recommendations (number of countries)

Category	Not Applicable	Non Compliant	Partially Compliant	Largely Compliant	Compliant
Core	-	2	17	10	-
Key	-	2	14	10	3
Overall Average Compliance Position	-	2	14	10	3

169. According to the above table, compliance with the FATF 40+9 'legal' core Recommendations is heavily biased towards the lower end of the ratings spectrum with 19 (65.5 %) countries falling within the 'non-compliant' and 'partially compliant' ratings. The majority of countries (17) however fall within the latter rating. Further analyses of the results indicate that this position is heavily influenced by the low ratings registered for Special Recommendation II, although closely followed by Recommendation 1. However, the ratings for Recommendation 1 heavily influence the 10 countries falling within the 'largely compliant' rating.

170. The analyses show a similar, though more balanced, position for the key legal Recommendations with 16 (55.2 %) countries falling within the lower range. Likewise, the majority of countries (14) falling within the 'partially compliant' rating range are heavily influenced by Special Recommendation I and Special Recommendation III in that order. These are closely followed by Recommendation 3 and Recommendation 35. On the other hand, Recommendation 36, closely followed by Recommendations 3 and 35 and Special Recommendation V have strongly influenced the ratings for the 10 countries within the 'largely compliant' range.

171. The overall position, though concentrated in the mid-range of the ratings spectrum, remains slightly more biased towards the lower end of the spectrum at 16 (55.2 %) countries within the 'non-compliant' and the 'partially compliant' rating range. It is interesting to note that the 'non-compliant' position is mostly influenced by Special Recommendation III and Special Recommendation V.

12. Core Recommendation 1 and Special Recommendation II.
13. Key Recommendation 3, 35, 36 and Special Recommendations I, III, V.

Other Recommendations (legal)

Recommendation 33 – Legal Persons – Beneficial Owners

Recommendation 33

Countries should take measures to prevent the unlawful use of legal persons by money launderers. Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares should take appropriate measures to ensure that they are not misused for money laundering and be able to demonstrate the adequacy of those measures. Countries could consider measures to facilitate access to beneficial ownership and control information to financial institutions undertaking the requirements set out in Recommendation 5.

R.33	Number of ratings				Percentage of ratings			
	NC	PC	LC	C	NC	PC	LC	C
	3	17	6	3	10.3 %	58.6 %	20.7 %	10.3 %

172. More than two-thirds of countries (20/29 = 69 %) were rated in the lower range. Almost all of these (17 out of 20) were found 'partially compliant'.

173. Analysis of all third round reports shows that the main problem in most of the countries was simply that verified information on the "beneficial owner", as it is defined in the Glossary to the FATF Recommendations (i.e. the person who ultimately owns or has effective control), was not transparent and readily available in a timely way. In a large number of countries, the company registration system did not contain provisions requiring the recording and registering of any data specifically related to the beneficial owners (as defined by FATF) and thus no such information had ever been registered. This was the case in all MONEYVAL countries with a PC rating and also in certain others.

174. Countries had introduced preventive AML/CFT legislation that frequently obliged reporting entities to establish the identity of the beneficial owners but, generally, they failed to amend the body of corporate legislation to require transparency of this information, or to introduce a general obligation to disclose this information to the register of companies.

175. Undoubtedly, financial institutions and DNFBP performing a CDD procedure can ask their corporate clients to produce data on their ownership structure and this information may possibly subsequently be made available to law enforcement, assuming that law enforcement powers are adequate. That information should normally be capable of being verified from independent, authoritative sources. But whether this amounts to timely access is debatable.

176. One of the very few MONEYVAL countries where the company registration procedure extended to requesting and recording relevant information concerning beneficial ownership of legal entities was Armenia, where the recently adopted corporate legislation required that information on beneficial ownership of legal entities must be declared to the State Registry upon registration or upon changing the statutory capital, within the deadline of 2 business days. In Romania, information on all shareholders but also on beneficial owners was apparently requested during the company incorporation procedure, but registration of beneficiary ownership data in the Trade Register was not mandatory. There were a number of other positive examples of countries where transparency and availability of such information was provided by other means. In Malta, company service providers (lawyers and accountants) were subject persons to the AML legislation and as such required to obtain, verify and retain records of the beneficial ownership and control information on the companies they formed. Companies could only access the financial sector by providing this information and all this data was available to the authorities on a timely basis. A similar approach was found in Cyprus, but with a somewhat narrower coverage as it only obliged lawyers (when forming and administering companies) but not all company service providers.

177. Assuming that the information was not readily available through the Company Register, MONEYVAL countries had to rely on the investigative route to try to track down this information. All in all, in the vast majority of MONEYVAL countries, it appeared difficult, lengthy and cumbersome for the competent law enforcement authorities to obtain the necessary information on actual ownership and control structure of a legal entity, relying mainly on their investigative powers to produce from company records the ultimate owners of companies. Obtaining such information through investigative procedures, especially in the case of shareholders with legal personality and/or with residence or seat in another country rarely be achieved (if at all) in a timely way (even assuming, where enquiries abroad are necessary, that the foreign country will in fact provide the information through mutual legal assistance). Doubts in any event may still remain as to whether information obtained by this investigative route is adequate, accurate and verifiable.

178. Criterion 33.3 requires that countries which have legal persons able to issue bearer shares should take appropriate measures to ensure that they are not misused for money laundering. This was not a relevant issue in 13 countries (37.9 %) where legal persons were not allowed to issue such instruments. In some of these countries this was a result of a governmental initiative to prohibit and eliminate bearer shares that had previously been allowed, typically with a specific deadline for exchanging bearer shares for registered ones. By the time of the third round, this transition period had already expired in some countries (such as Estonia or Hungary) or was already under way (Monaco). Likewise, Ukraine prohibited the issuing of bearer shares in 2006 and put all transactions with previously issued bearer shares subject to compulsory financial monitoring.

179. In some countries that allowed for bearer shares, the evaluators noted that bearer shares were a marginal issue, being very rare and not representing any major capital, either due to the restrictions envisaged by domestic legislation (e.g. Croatia or Slovenia) or their suspicious or uncertain character (e.g. Azerbaijan or Bulgaria). Nevertheless, the existence of bearer shares was found problematic even in these less serious situations, as well as in the other group of countries, where frequent issuing and circulation of bearer shares raised more concerns. In approximately half of the MONEYVAL countries legal entities did not appear to be restricted in issuing bearer shares and no governmental plans to phase out such instruments were mentioned to the evaluators. It can be concluded that existence and transparency of bearer shares was found more or less problematic in most of these countries, which also contributed to the low ratings for the countries concerned. Some jurisdictions claimed it was possible to trace bearer shares in circulation as shareholders have to identify themselves to exercise their rights, but this was not accepted by evaluators as appropriate measures in place to ensure transparency given the ease of transfer of bearer shares. In any case, company registers were, at most, able only to verify how many companies had issued bearer shares (sometimes not even this information was registered, such as in Israel or Latvia) but not the number of bearer shares issued and in existence.

180. In conclusion on R.33, the standard is difficult to meet (and to rate) because there is no clear definition of what is "adequate" transparency. Examples are cited in the Methodology of mechanisms that might be used in seeking to ensure adequate transparency, most of which are referred to in the previous paragraphs as being used in MONEYVAL countries to greater or lesser extents. Countries in the higher range of ratings appeared to have been operating a combination of all the mechanisms referred to in the Methodology as effectively as is possible in the current environment and were able to demonstrate firm sanctioning where new information was not provided to the company register in the appropriate time, so that the register was as up to date and accurate as possible, in so far as it went.

181. That said, the standard needs revisiting, perhaps to ensure that there is a clearer requirement to provide verified full beneficial ownership information upfront on the register and to keep it updated. Recourse to the investigative route, as mentioned in the Methodology as an option (while practically necessary in most cases at present), does not really seem to be a practical solution in for the longer term (particularly in respect of multiple layers of companies around the globe owning significant shares of legal persons in other countries) if the aim of the standard is to ensure timely access to real beneficial ownership information.

Recommendation 34 – Legal Arrangements – Beneficial Owners

Recommendation 34
Countries should take measures to prevent the unlawful use of legal arrangements by money launderers. In particular, countries should ensure that there is adequate, accurate and timely information on express trusts, including information on the settlor, trustee and beneficiaries, that can be obtained or accessed in a timely fashion by competent authorities. Countries could consider measures to facilitate access to beneficial ownership and control information to financial institutions undertaking the requirements set out in Recommendation 5.

182. Recommendation 34 was unusual in that more than three quarters of the countries, that is, 22 of 29 were rated as 'not applicable' doubtless because trusts and other legal arrangements could not be established in the relevant jurisdictions, which also apparently did not register foreign trusts. Of the remainder, 3 countries which recognised such arrangements were rated in the upper range and the remaining 4 in the lower range. Many of the problems that apply to R.33 apply even more sharply in relation to R.34 in countries which recognise trusts and similar arrangements. In the general absence of registers of trusts and similar legal arrangements, the investigative route was the only real option to track such information and in many countries trust and company service providers had either no CDD obligations or were not supervised sufficiently (or at all) in connection with CDD measures.

R.34	Number of ratings					Percentage of ratings				
						against the number of 'applicable' ones				against the total
	NC	PC	LC	C	N/A	NC	PC	LC	C	N/A
	1	3	2	1	22	14.3 %	42.9 %	28.6 %	14.3 %	75.8 %

183. Because of its limited applicability and hence its very sporadic occurrence among the MONEYVAL countries, compliance with R.34 cannot serve as a sufficient basis for a real horizontal comparison and overview.

Recommendation 37 – Mutual Legal Assistance: Dual Criminality

Recommendation 37
Countries should, to the greatest extent possible, render mutual legal assistance notwithstanding the absence of dual criminality. *Where dual criminality is required for mutual legal assistance or extradition, that requirement should be deemed to be satisfied regardless of whether both countries place the offence within the same category of offence or denominate the offence by the same terminology, provided that both countries criminalise the conduct underlying the offence.*

184. The overall level of compliance with R.37 apparently reinforces the impression that the negative impact of deficient criminalization of money laundering and terrorist financing were taken into account in R.36 rather than in R.37 ratings, as there were some positive results for R.37, with C and LC ratings together representing 96.6 % of the countries.

R.37	NC	PC	LC	C	NC	PC	LC	C
	-	1	13	15	-	3.4 %	44.8 %	51.8 %

185. Dual criminality was generally the principal basis upon which international cooperation could be provided. This was particularly true in case of extradition but also to a large extent in mutual legal assistance relations, even if this requirement was not always entirely prescribed by positive law (as was noted in Armenia and Bosnia and Herzegovina).

186. Rendering mutual legal assistance in the absence of dual criminality does not appear to be a fully mandatory requirement under the relevant FATF standards, bearing in mind that countries are only expected to meet it

"to the greatest extent possible" and, in particular, in cases of less intrusive and non compulsory measures. However, once it is established that assistance can be provided (which should primarily be in the sphere of non-coercive measures as noted above) the country is expected to adopt legislation or at least practice to provide mutual legal assistance on demand without meeting the standard of double criminality. This is why a number of countries like Armenia, Serbia or Ukraine received lower ratings on this issue, because rendering mutual legal assistance in the absence of dual criminality was not possible even for less intrusive and non compulsory measures. On the other hand, a much larger proportion of countries, including e.g. Malta, the Czech Republic and Slovenia, were reportedly able to provide assistance in such situations. In light of all three round reports, however, this particular area appears to deserve more attention in the fourth round (also in context of R.36 and 38).

187. Generally no country was reported as not giving the widest interpretation to its criminal substantive law when it came to the application of dual criminality. Certainly, this was, in all instances, the information provided by the country undergoing evaluation. This was one of the areas where external information (from other states) would have been extremely helpful to the evaluators. Nevertheless, the limited feedback from other MONEYVAL and FATF countries that was usually available for evaluation purposes seldom, provided evidence of any negative approach to this issue by the countries undergoing evaluation (i.e. requested countries). Therefore, the general approach requested of countries appeared to be not to create legal or practical impediments to rendering assistance based on technical differences, which is encouraging.

188. Apart from these issues, practically all countries appeared to have no particular problem in providing the widest possible range of mutual assistance in a timely, constructive and effective manner without any unreasonable, disproportionate or unduly restrictive conditions. The domestic powers of competent authorities were in all instances reported as being fully available for use in response to requests for mutual legal assistance. The effectiveness and timeliness of such assistance, however, was hardly, if at all, measurable due to the lack of statistical information, disaggregated to demonstrate the time taken in executing foreign requests. This was particularly noted in Poland and the Czech Republic. However, other reports implied that execution of foreign requests had been treated as a priority which, according to the domestic authorities, meant an average turnaround of requests in 2-3 months in most cases.

189. This is again an area where external information from other countries on the ability and readiness of the assessed country to provide timely legal assistance could have been helpful in a number of mutual evaluations. Only in a handful of reports were evaluators provided with such information (e.g. Bosnia and Herzegovina and Ukraine). This source needs exploiting to a much larger extent in the fourth round of evaluations.

190. The provision of legal assistance beyond diplomatic channels and enhancement of direct cooperation between judicial authorities is a priority issue that was to a certain extend respected in a number of jurisdictions pursuant to the non-mandatory recommendation in additional element 36.8 of the Methodology[14]. Nonetheless, this issue was raised in Albania's report, where the exclusive use of diplomatic channels for incoming requests for legal assistance was the subject of negative comment, as such practices impact on the timely, constructive and effective provision of legal assistance (though the Progress Report noted some improvement in this area). Similar features of the Monegasque legislation were also the subject of negative comment in that report. This is not to imply that this non-mandatory element was taken into account in the ratings.

191. Refusal of requests for mutual legal assistance on the sole ground that the offence is considered to involve fiscal matters was noted in Liechtenstein, where this limitation appears to have had consequences for the rating on R.36. Foreign requests relating to facts that are "exclusively" qualified as fiscal offences under Liechtenstein law cannot be complied with because of an express prohibition in domestic law. In this respect the evaluators noted that the fiscal exception was still interpreted too extensively as "serious and organized robbery and fraud by way of fiscal means, such as VAT carousels, where the fiscal aspect is completely subordinated to the main purpose of robbing society, still profit from the amnesty Liechtenstein provides for fiscal

14. Criterion 36.8 provides : "Are the powers of competent authorities required under R.28 available for use when there is a direct request from foreign judicial or law enforcement authorities to domestic counterparts?

offences". It should be noted that the Progress Report indicates that Liechtenstein subsequently amended its legislation in this respect.

192. Laws that at the time of the onsite visits imposed secrecy or confidentiality requirements on financial institutions or DNFBP (beyond the sphere of legal professional privilege or legal professional secrecy) reportedly restricted the potential to provide mutual legal assistance in relation to such data in Andorra, Armenia, San Marino and to some extent in Bosnia and Herzegovina.

Recommendation 38 – Mutual Legal Assistance on Freezing, Seizing and Confiscation

Recommendation 38
There should be authority to take expeditious action in response to requests by foreign countries to identify, freeze, seize and confiscate property laundered, proceeds from money laundering or predicate offences, instrumentalities used in or intended for use in the commission of these offences, or property of corresponding value. There should also be arrangements for co-ordinating seizure and confiscation proceedings, which may include the sharing of confiscated assets.

193. At the time of the third round visits, all MONEYVAL member states had ratified and had had in force for several years the 1990 Strasbourg Convention, the provisions of which cover in a legal instrument the mandatory requirements of R.38. Hence there were grounds to expect that all countries had implemented its provisions in their national legislation, including the authority to take expeditious action in response to requests for international cooperation in restraint and criminal confiscation. Indeed, the ratings appear to show a high level of compliance with this requirement. No country was found non-compliant, while the vast majority received C or LC ratings.

R.38	NC	PC	LC	C	NC	PC	LC	C
	-	9	16	4	-	31.1 %	55.1 %	13.8 %

194. The shortcomings identified in the domestic provisional measures and confiscation regimes also had a direct impact on ratings related to international cooperation. In many instances this not only affected R.38 but also R.36, depending on the nature of the deficiencies. This led to lower ratings in a number of countries, including the Czech Republic, Slovak Republic and Armenia. Specifically in Azerbaijan, the very limited range of offences susceptible to confiscation domestically, together with the requirement of dual criminality, were reported to be a potential obstacles.

195. As for effectiveness issues, meaningful statistical information on the extent of practice on areas covered by this Recommendation was frequently (or, at least, more often than was general in the context of R.36) either unavailable or only partially available. In most instances, the statistics related to mutual legal assistance, to the extent they were maintained at all, were not or not sufficiently refined to, include requests for seizure or freezing of assets or confiscation of property. Therefore, no specific assessment was possible. Assessors were in many instances told that countries had not received relevant requests in this area (for instance in Albania or the Russian Federation), which might have demonstrated effectiveness of implementation.

196. Enforcement of civil or non-conviction based confiscation orders in respect of property which is the product of crime was already mentioned as being "not covered in much detail" the first Horizontal Review (2002) with an additional remark that this is an area which may bear attention in future international standard setting as more countries in Western Europe and elsewhere develop such systems. Indeed, the number of countries where civil or non-conviction based confiscation has already been introduced into national legislation was notable in the third round. Hence, a number of countries were capable of providing mutual assistance in enforcement of civil confiscation orders, even though this capacity is not required as an essential criterion under the current Methodology, and thus does not count for ratings purposes. The growing proportion of countries voluntarily providing the capacity to recognise and enforce non-criminal confiscation orders may add further support to the view that this critical area of international cooperation also needs to be considered for inclusion in the essential criteria for R.38 in future.

197. There were approximately 6 member states where foreign civil confiscation orders were reported to be enforceable under domestic law. Namely, these were the Russian Federation, Israel (where it was explicitly provided that the law covers forfeiture orders made by a foreign judicial authority "either in a criminal or in a civil proceeding") as well as the Czech Republic (where evaluators noted that foreign non-criminal confiscation orders could be recognised and executed under certain conditions prescribed in the national legislation on international private and procedural law). A few other countries allowed for the theoretical possibility of enforcing foreign civil confiscation orders by application of relevant national legislation, but this opinion had not been tested in practice. Among them was Albania, where legislation On Preventing and Striking at Organized Crime provided for new, non criminal measures to target the proceeds from crime. It was unclear, however, whether these are also applicable in the framework of requests from abroad. Another example was Bulgaria, where the newly created agency for civil confiscation (CEPACA) was said to be authorized to take foreign civil forfeiture orders to the Bulgarian court for enforcement pursuant to the Private International Law Code. However, as this procedure dealt with private requests for recognition of foreign civil sentences and particularly due to the lack of any case practice in this field, this was uncertain.

198. There is a further subset of essential criteria within R.38 that are arguably quite weak. They only require states to consider establishing asset forfeiture funds and to think about authorising the sharing of confiscated assets with other countries. This means that these criteria can be considered as fulfilled, once the national authorities of the country are able to demonstrate that consideration has been given to these issues regardless of the outcome.

199. Despite this rather soft standard, some countries had problems in this area. These were noted in the factors underlying the ratings for R.38. Neither criteria was reported as having been considered, for example, in Croatia, Estonia, Georgia, Slovak Republic, or San Marino, while the lack of consideration of an asset forfeiture fund was noted, among others, in Croatia, Bulgaria, Romania, Lithuania, Monaco and "the former Yugoslav Republic of Macedonia".

200. The same applied to Liechtenstein, but with a remark from the evaluators, which sheds some light on a problem that may, to some extent, prevent the full implementation of both Criteria 38.4 and 38.5 in member states with similar characteristics. In Liechtenstein, the prosecution authorities had been of the opinion that establishing a forfeiture fund would not be worthwhile as most assets were seized and forfeited at foreign request and transferred to or shared with the foreign jurisdictions. As it was underlined in the report, the sharing of confiscated assets had become a successful feature in the international cooperation system in Liechtenstein for many years. The evaluators shared this view, questioning whether the existence of such a fund would really make much difference as the amount of confiscated assets and values in domestic cases was not very high.

201. Apart from Liechtenstein, there were numerous countries where the evaluators obtained not only some generic statement but factual information that such consideration had actually taken place and, more importantly, the results of that consideration. Sharing of confiscated assets with other countries is explicitly enabled in Israel, where an asset forfeiture fund had successfully been established. The Russian Federation had already established its assets forfeiture fund as well, while in Ukraine a similar draft bill was pending before the Parliament. Sharing of confiscated assets appeared to be provided by domestic legislation in Serbia and "the former Yugoslav Republic of Macedonia". In the light of such a trend of legal development in MONEYVAL member states, it does not appear unreasonable to consider strengthening both of these Criteria to require not only considering these issues but taking some concrete action.

Recommendation 39 – Mutual Legal Assistance and Extradition

Recommendation 39
Countries should recognise money laundering as an extraditable offence. Each country should either extradite its own nationals, or where a country does not do so solely on the grounds of nationality, that country should, at the request of the country seeking extradition, submit the case without undue delay to its competent authorities for the purpose of prosecution of the offences set forth in the request. Those authorities should take their decision and conduct their proceedings in the same manner as in the case of any other offence of a serious nature under the domestic law of that country. The countries concerned should cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecutions. *Subject to their legal frameworks, countries may consider simplifying extradition by allowing direct transmission of extradition requests between appropriate ministries, extraditing persons based only on warrants of arrests or judgments, and/or introducing a simplified extradition of consenting persons who waive formal extradition proceedings.*

202. Countries performed extremely well for the Recommendation 39.

203. Both money laundering and terrorist financing were, to the extent they were covered by domestic criminal legislation, extraditable offences in all 29 states undergoing evaluation. This and other aspects of overall compliance were clearly reflected in terms of ratings, as 11 countries were Compliant and 16 Largely Compliant (altogether 27/29 that is 93.1 %) with only 2 countries receiving a PC rating.

204. As with R.36 , one of the main factors contributing to ratings in the lower the range related to the incomplete criminalization of money laundering and terrorist financing, which might have had a negative impact on the execution of extradition requests related to such crimes. General remarks made in this respect under R.36 are also valid in this context.

205. In the absence of complete statistics, the evaluation teams were prevented from assessing the timeliness of the extradition procedure in the great majority of the countries and thus could not determine with certainty whether extradition was without any undue delay even if domestic legislation (which in most of the countries, provided for clear and sometimes quite strict deadlines for executing foreign requests for extradition). In fact, this was a typical factor contributing to a rating below compliant (usually C to LC). This was the case in Azerbaijan, Bosnia and Herzegovina, the Czech Republic, Poland and Estonia.

206. Of the two options provided by Criterion 39.2[15], almost all countries chose paragraph b), according to which they refused the extradition of their own nationals and provided for their domestic prosecution instead. Considering that all but two MONEYVAL countries had ratified and implemented the European Convention on Extradition (ETS 024) by the time of the third round visit, this was not unexpected as the Convention clearly requires the introduction of such a procedure. The two non-ratifying countries were San Marino and Monaco, both of which have ratified this convention now. Nonetheless, the lack of explicit provisions to require submission of the case without delay to the competent national authorities was noted as a shortcoming in Estonia and in a number of other countries.

207. No countries applied restrictions in terms of minimum punishment requirements that would have precluded the application of this procedure to the offences of money laundering and terrorist financing. However, some differences were noted in terms of domestic authorities taking steps *ex officio*, that is, without any further explicit request from the country seeking extradition of the person. In Lithuania, for example, in cases when extradition of a Lithuanian citizen is not possible, the judicial authorities may initiate the criminal proceedings either on their own initiative or upon the request of the country seeking extradition. In most of the cases, however, countries would submit the case to their competent authorities for the purpose of prosecution of the offence at the request of the foreign country. Again, the lack of statistical or other practical information

15. Criterion 39.2 provides: "Countries should either:
a. extradite their own nationals or,
b. where a country does not extradite its own nationals solely on the grounds of nationality, that country should, at the request of the country seeking extradition, submit the case without undue delay to its competent authorities for the purpose of prosecution of the offences set forth in the request. In such cases, the competent authorities should take their decision and conduct their proceedings in the same manner as in the case of any other offence of a serious nature under the domestic law of that country."

on which evaluators could have assessed whether the transfer of the case to the domestic authorities took place without undue delay was a typical shortcoming. It was noted in all instances that the competent domestic authorities took their decision and conducted their proceedings in the same manner as in the case of extradition requests for any other relevant offence under the domestic law of the country. With no particular exception, all countries appeared open to cooperate with each other in this respect to ensure the efficiency of the prosecution. In most of the cases this was achieved in the framework of mutual legal assistance. Nevertheless, some countries (e.g. Romania) appeared to demand the transfer of the foreign criminal case. Such a procedure is not likely to fulfil the requirement to avoid undue delays.

208. A regional problem was identified which impacts on effectiveness of extradition provisions in Bosnia and Herzegovina and Serbia (but which is also relevant to other countries in the same region). Dual citizenship can be problematic for extraditions between the countries in the region in cases of defendants and accused who are nationals of neighbouring countries. As such they can evade the legal consequences of their acts committed in the country by residing in the country of their other nationality, to which a request might be made. The evaluators noted that this phenomenon, known as the "the regional impunity gap", appeared most problematic in organised crime and war crimes cases, and was the subject of ongoing negotiations in the framework of bilateral or regional extradition agreements.

209. Several MONEYVAL countries, as EU members, apply the European Arrest Warrant (EAW). The EAW is beyond the applicable FATF standards. Therefore it might only count as a factor enhancing effectiveness. The EAW facilitates extradition between the EU-member states. Following an EAW, a person found in one of the EU member states may be arrested and surrendered for criminal proceedings or the execution of a sentence in the requesting member state. The requested person shall be surrendered without verifying the otherwise required dual criminality, for the (categories of) offences listed in the respective Framework Decision and thus in the implementing national legislation. For the purposes of MONEYVAL evaluations, it needs to be pointed out that this list expressly contains money laundering offences but not specifically the financing of terrorism. In the context of the EAW even own nationals can be surrendered for prosecution (usually if the state guarantees that after being heard, they are to be returned to the state of their citizenship for execution of the sentence). As such, the EAW appears to meet all requirements contained in the additional element in 39.5[16] and thus provides, to some extent, a functioning example for potential legal developments in this field also in other regions or in bilateral relations.

210. Apart from the EAW, a great number of MONEYVAL member states have introduced simplified procedures of extradition in respect of consenting persons who waive formal extradition proceedings. This was expressly noted in EU countries as being provided beyond the scope of the EAW in the three Baltic States, Hungary and Romania, as well as in many non-EU countries such as Bosnia and Herzegovina, Serbia or Liechtenstein. Widespread application of simplified extradition procedures may raise the issue of whether it is time to consider requiring this issue to be raised to the level of essential criteria of R.39.

16. Criterion 39.5 provides: "Are simplified procedures of extradition in place by allowing direct transmission of extradition requests between appropriate ministries? Can persons be extradited based only on warrants of arrests or judgements? Is there a simplified procedure of extradition of consenting persons who waive formal extradition proceedings in place?"

Special Recommendation VIII – Non Profit Organisations

Special Recommendation VIII – Non-Profit Organisations
Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organimsations are particularly vulnerable, and countries should ensure that they cannot be misused: ◆ *by terrorist organisations posing as legitimate entities;* ◆ *to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and* ◆ *to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.*

211. The NPO sector is large and very diverse. It is therefore recognised that implementation of this Special Recommendation is far from easy for countries. Many countries, rightly or wrongly, indicated that as they did not consider their country to be a TF risk, full attention had not yet been given to this Special Recommendation.

212. It was far from clear in many countries that the authorities nationally responsible for NPO oversight had a complete picture of the whole sector, particularly as to which were the potentially risky NPOs in TF terms. On the more positive side though, it was frequently apparent that law enforcement were aware of any potential risks at a national level in this sector and were able to take action where necessary through criminal, or in some cases, civil process.

213. That said, apart from R.12 and R.16, SR.VIII was the lowest rated Recommendation with 27 countries (93.1 %) in the lower range, of which 12 (41.3 %) were found 'non-compliant'.

SR.VIII	Number of ratings				Percentage of ratings			
	NC	PC	LC	C	NC	PC	LC	C
	12	15	1	1	41.4 %	51.7 %	3.4 %	3.4 %

214. Few countries had really established appropriate measures to ensure that funds or other assets collected by or transferred through NPOs were not diverted to support the activities of terrorists or terrorist organisations. Deficiencies in this area were detected in many countries, regardless of their overall preparedness in AML/CFT matters. The only country found compliant was Latvia, which had recently adopted modern and comprehensive legislation governing the NPO area and a monitoring regime. The only 'largely compliant' country was Israel, where very positive steps had been taken in line with the majority of the essential criteria under this Special Recommendation (particularly in terms of ongoing monitoring of sector vulnerabilities) but the NPO legislation had not yet been formally reviewed and an outreach programme to the sector had yet to be commenced.

215. Carrying out a comparison was difficult as the Methodology was substantially amended during the course of the third round. In June 2006 the Methodology was aligned with the new Interpretative Note on SR.VIII and, at the same time, the former Criteria VIII.1 to VIII.4 (dated February 2004) were deleted and a complete set of new essential and additional criteria were adopted and introduced for SR.VIII, together with the completion of the Glossary with some new definitions, such as "non-profit organisation" or "associate NPOs".

216. In most MONEYVAL countries, the NPO sector largely comprises civil associations, foundations, endowments, and charities. They were generally regulated by specific legislation that had typically been enacted for a considerable time, usually focusing on formal registration requirements. The main problem the evaluators encountered in almost every country was the lack of sector specific reviews undertaken first, to assess the adequacy of domestic laws and regulations that relate to NPOs and second, to gain an adequate overview of all relevant aspects of the NPO sector for the purpose of identifying those organizations that are or may be at risk of being misused for terrorist financing. In a large majority of MONEYVAL countries some of the relevant registering authorities also appeared not to have any real awareness of the importance of the terrorist financing issue.

217. Most countries were therefore unable to demonstrate that any formal and targeted assessment of the adequacy of their NPO-specific legislation had taken place. Comparisons were possible here as the relevant criterion appeared in both versions of Methodology.

218. Equally, national authorities of almost every lower-rated country failed to perform either a periodic or any review of the NPO sector with the objective of assessing its exposure to the threat of terrorist financing. This was despite the sources of information available which could have provided a basis for such reviews: the existing structures of reporting and supervision within the NPO sector (typically performed by the ministry or other governmental body responsible for the area to which the main activity of a particular NPO belongs); or, if applicable, the annual audits or other financial information the NPOs submit to the domestic tax authority (usually when applying for exemption from taxation). There were some signs of *ad hoc* reviews: Cyprus, for example, took some action after 11 September 2001 (that is, before the commencement of the third round) in checking NPOs with significant participation of foreign individuals. Nevertheless, there appeared a general lack of a systemic approach in this area by countries.

219. The apparently low level of governmental terrorist financing awareness resulted in generally insufficient, if any, outreach to the NPO sector. This feature was specifically required only in the amended version of the Methodology but, even in countries evaluated under the original version of the Methodology, the descriptive information provided an insufficient basis for drawing general conclusions. As a result, the reports show only sporadic awareness- raising activity in this field. A notable example, again, was Latvia, where an extensive public awareness campaign had been conducted "to inform NPOs of their obligation to register and to educate the public of its responsibility to know who they are donating money to and what those funds are being used for".

220. Requirements in Criterion VIII.3[17] and its sub-criteria in the present version of the Methodology are one of the major differences between the standards before and after the 2006 amendment. As far as countries evaluated under the amended Methodology are concerned, the evaluators did not encounter any specific or special treatment of NPOs accounting for significant portions of the financial resources under control of the sector and a substantial share of the sector's international activities (which should be subject to effective or targeted oversight under Criterion VIII.3), and the overall compliance with these requirements was poor.

221. Examination of the third round reports shows that obligatory licensing or registration, as prescribed in VIII.3.3, had already been part of the ordinary procedure for establishing NPOs in most MONEYVAL countries but for purposes other than the fight against terrorist financing. Likewise, the requirement of financial transparency in VIII.3.4 had been part of the ordinary regime in a number of countries for many years but also for other, typically tax-related purposes. Nonetheless, this means that there is, in most countries, a legislative foundation to build on when developing compliance with SR.VIII. Whether and how these opportunities are leveraged for CFT purposes will need to be tested and verified in the fourth round.

17. Criterion VIII.3 provides: "Countries should be able to demonstrate that the following steps have been taken to promote effective supervision or monitoring of those NPOs which account for: (i) a significant portion of the financial resources under control of the sector; and (ii) a substantial share of the sector's international activities."

Average Ratings for Other Legal Recommendations

222. A similar exercise has been carried out for the other relevant legal Recommendations, including SR VIII.[18] The table below shows the average position for these Recommendations.

Average Ratings for other 'Legal' Recommendations (number of countries)

Category	Not Applicable	Non Compliant	Partially Compliant	Largely Compliant	Compliant
Other Legal	3	2	9	10	5

223. The results expressed in the table are heavily influenced by the high number of countries where Recommendation 34 (legal arrangements) was found to be not applicable. It is encouraging to note the low number of countries in the 'non-compliant' range. Indeed, the bias of the rating for these categories of Recommendations is towards the higher end, with some mid-range concentration. Indeed, out of the 15 (51.7 %) in the upper end of the range, 10 (34.5 %) countries fall within the 'largely compliant' rating. This is closely followed however by the 9 (31 %) countries within the 'partially compliant' rating.

224. The high scoring in the 'largely compliant' rating range is mainly driven by the high ratings given to Recommendations 38 and 39, closely followed by Recommendation 2. Recommendation 33 and Special Recommendation VIII were the leading influences on the ratings of those marked 'partially compliant'.

Overall Average Ratings for Legal Recommendations

225. The following table summarises the overall average ratings position for MONEYVAL countries for the 'legal' Recommendations:

Overall Average Ratings for 'Legal' Recommendations (number of countries)

Category	Not Applicable	Non Compliant	Partially Compliant	Largely Compliant	Compliant
Core & Key	-	2	14	10	3
Other	3	2	9	10	5
Overall Average Compliance Position	1	2	12	10	4

226. The results of the exercise as depicted in the above table give a very interesting picture of the compliance position of MONEYVAL countries for those FATF 40 + 9 Recommendations reflecting the legal obligations. Excluding 1 country that, on average, falls in the 'not-applicable' category, the other MONEYVAL countries are evenly spread throughout the lower and the upper end of the rating range with a concentration in the middle range (PC and LC). This is encouraging but one must not exclude that there may be wide divergences between individual countries.

18. Recommendations 2, 33, 34, 37, 38, 39 and Special Recommendation VIII.

III. Financial issues

(Incorporating Recommendations 4-12, 15, 17-25, 29-32 and 40 and Special Recommendations III, VI and VII)

Core Recommendations

Recommendation 5 – Customer Due Diligence

Recommendation 5

Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.

Financial institutions should undertake customer due diligence measures, including identifying and verifying the identity of their customers, when:

- *establishing business relations;*
- *carrying out occasional transactions: (i) above the applicable designated threshold; or (ii) that are wire transfers in the circumstances covered by the Interpretative Note to Special Recommendation VII;*
- *there is a suspicion of money laundering or terrorist financing; or*
- *the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.*

The customer due diligence (CDD) measures to be taken are as follows:

a) Identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information.

b) Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions taking reasonable measures to understand the ownership and control structure of the customer.

c) Obtaining information on the purpose and intended nature of the business relationship.

d) Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, including, where necessary, the source of funds.

Financial institutions should apply each of the CDD measures under (a) to (d) above, but may determine the extent of such measures on a risk sensitive basis depending on the type of customer, business relationship or transaction. The measures that are taken should be consistent with any guidelines issued by competent authorities. For higher risk categories, financial institutions should perform enhanced due diligence. In certain circumstances, where there are low risks, countries may decide that financial institutions can apply reduced or simplified measures.

Financial institutions should verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers. Countries may permit financial institutions to complete the verification as soon as reasonably practicable following the establishment of the relationship, where the money laundering risks are effectively managed and where this is essential not to interrupt the normal conduct of business.

Where the financial institution is unable to comply with paragraphs (a) to (c) above, it should not open the account, commence business relations or perform the transaction; or should terminate the business relationship; and should consider making a suspicious transactions report in relation to the customer.

These requirements should apply to all new customers, though financial institutions should also apply this Recommendation to existing customers on the basis of materiality and risk, and should conduct due diligence on such existing relationships at appropriate times.

227. R.5 is complex, with eighteen essential criteria, three of which are further subdivided into a number of sub-criteria. In addition, certain elements of the criteria that are considered as being the basic obligations are required to be provided for under law or regulation as defined in the FATF Methodology. The remainder could be implemented through 'other enforceable means', again as defined in the Methodology.

228. R.5 however can be considered as the backbone to the whole of the preventive measures under the FATF 40 Recommendations. R.5 provides all the necessary information and processes upon which the reporting of suspicious transactions is developed within the context of the rest of the Recommendations. It is because of this that the third round assessments attached high importance to effective implementation of and compliance with R.5. This may however have also been the reason for the low degree of overall compliance by MONEYVAL countries.

229. Customer due diligence requirements for R.5 go beyond the traditional concept of 'knowing-your-customer' through an identification process. The identification requirements are only a component, although an important one, of the customer due diligence process and, in themselves, they do not meet the criteria under the Recommendation. Indeed the three main stages of R.5 can be summarised as the customer *due diligence* process, the *risk* element, and the *verification* process.

230. The identification process is in turn subdivided into various elements. First is the identification of the applicant for business or the person who seeks to establish a business relationship with the obliged person or entity. The applicant for business may be acting in his personal capacity, in which case the identification is a straightforward process if the applicant is a natural person. But the applicant for business may be either acting on behalf of a third party or representing a legal person. This gives rise to the identification of the beneficial owner, which has been one of the main shortcomings identified in the third round process.

231. The issue of bearer accounts consistently required a thorough assessment and analysis in the Mutual Evaluation Reports and often became one of the main topics for debate in the Plenary. The third round process showed that a number of MONEYVAL countries still allowed the opening and maintenance of bearer accounts in some form or other. The Mutual Evaluation Reports consistently recommended the termination of bearer accounts which indicate that the Plenary was consistent in its approach for the removal of these accounts. The main principles applied for the repeated recommendations to countries to terminate the availability of bearer accounts has consistently been an assessment of the characteristics of bearer accounts and, in particular, the transferability characteristics which render bearer accounts as *quasi* cash. Progress Reports presented to the Plenary following the adoption of the Mutual Evaluation Reports indicate that in the majority of countries measures were put or were being put in place to address this matter.

232. According to the definition of *beneficial owner* in the Methodology this refers to either the natural person(s) who ultimately owns or controls a customer being a legal person and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over other forms of legal arrangements. The assessments of R.5 have very often identified that countries give a different interpretation to the way the obligation to identify the beneficial owner is understood – often being in relation to the third party on behalf of whom a transaction, including the opening of account, is undertaken. This narrow interpretation of the concept of beneficial owner at times gave rise to very thorough analysis of the legal provisions, if any, and the application of the concept of the beneficial owner in practice. Indeed a number of countries outright, or to a limited extent, lacked a full definition of beneficial owner reflecting that adopted in the Glossary to the FATF 40 at the time of the evaluation visit.

233. The risk element in R.5 where there is the obligation to perform enhanced customer due diligence for higher risk categories of customers, business relationships or transactions has further implications for R.6 – 8. The application of an effective risk based approach to customer due diligence was often found lacking in the earlier evaluations under the third round process although countries evaluated in the latter part of the process were applying a more effective risk based approach. Indeed there is a common trend in the overall rating given to R.5 and R.6-8, as is detailed further in this section of the Review.

234. In as much as the identification process on its own was very often interpreted by countries evaluated as meeting the full customer due diligence process, the verification process was often not identified as being a

process different and separate from, but complementary to, the identification process. Likewise timing issues in respect of the independent verification process were very often not addressed for by the majority of MONEYVAL countries.

235. Against this background it can be concluded that compliance with R.5 is not an easy process, rendering the assessment under the Methodology complex and difficult to apply consistently while allocating a fair rating. The complexity of the assessment arises from the need to apply all the essential criteria of the Recommendation to all of the sectors that constitute the financial system. [The same is true for R.12 in respect of different categories and professions which constitute the designated non-financial businesses and professions, (DNFBP in the country)].

236. It is generally accepted – and quantitatively proven – that the banking sector is often the dominant component in a country's financial system. Hence the sector is often better regulated, not only because of its impact on the economy but also because international prudential and regulatory standards may indeed be stronger for banks. As a result it has often been identified in the course of the third round evaluations that countries focused more, and hence applied stricter anti-money laundering and financing of terrorism monitoring, on their banking sector. This had an impact on the ratings given to R.5, even though the Plenary consistently took into consideration the dominant position of the banking sector.

237. As indicated above, MONEYVAL countries did not obtain good overall results for compliance with R.5 for a number of reasons. Statistical data shows that 86.2 % of countries evaluated received a 'non-compliant' or a 'partially compliant' rating while the rest (13.8 %) were 'largely compliant' or 'compliant'. More specifically, none of the members had a 'compliant' rating, while 31 % and 55.2 % had a 'non compliant' and 'partially compliant' rating respectively. In absolute terms, 9 countries received a 'non-compliant' rating[19], 16 countries a 'partially compliant'[20] and 4 countries a 'largely compliant'[21] rating.

238. An analysis of the factors underlying the ratings as detailed in the respective Mutual Evaluation Reports provides some interesting reasons for this spread of ratings – even though the overall pattern appears to be quite similar to that in FATF countries.

239. Other than the overall general weakness in effectiveness of implementation often resulting from lack of full awareness of obligations and guidance thereto,[22] the main common weaknesses underlying the 'non-compliant' and 'partially compliant' ratings are as follows (in no particular sequence or priority):

- majority of key elements of the essential criteria not present in primary or secondary legislation;
- no reference to a full customer due diligence process as opposed to a customer identification process;
- customer due diligence not applied as and when required in accordance with the Recommendation;
- no obligation to apply customer due diligence to existing customers;
- lack of provision for an independent verification process separate from the identification process and its appropriate timing;
- insufficient legal prohibitions on anonymous and/or bearer accounts (or other instruments) and accounts in fictitious names;
- customer due diligence requirements insufficiently applied to sectors of the financial system other than the banking sector;
- definition of beneficial owner not fully understood by all financial institutions and, at times, the authorities themselves;

19. Albania, Andorra, Azerbaijan, Bosnia and Herzegovina, Croatia, Moldova, Poland, San Marino, the former Yugoslav Republic of Macedonia".
20. Armenia, Bulgaria, Cyprus, Czech Republic, Georgia, Latvia, Liechtenstein, Lithuania, Montenegro, Monaco, Romania, Russian Federation, Serbia, Slovak Republic, Ukraine, Israel.
21. Estonia, Hungary, Malta, Slovenia.
22. At times this may have been the result of newly introduced legal obligations on customer due diligence in general

- consequent lack of legal or other provisions to identify and verify the beneficial owner, in particular for legal entities;
- lack of the application of a risk based approach and hence non application of enhanced due diligence for higher risk customers;
- insufficient requirements for the ongoing monitoring of customer due diligence and transactions.

240. The main positive elements that rendered the 4 'largely compliant' ratings can be summarised by the fact that the essential criteria are adequately covered by law, regulation or 'other enforceable means' as appropriate. In all MONEYVAL countries falling within this category the principle of customer due diligence clearly establishes the identification and the verification processes as independent yet complementary, where the concept of the beneficial owner is clearly defined in the law and apparently effectively applied by the industry.

241. Drawing on the positive elements of the better rated countries, there are some lessons for countries trying (or wishing) to improve compliance with R.5. First of all, it may be best to have overarching requirements in primary AML-CFT Law covering the key elements of the Recommendation. Customer due diligence procedures should appropriately define customer identification as being one, though extremely important, component of the CDD procedures and the verification process should be established independent of the identification obligation. Regarding beneficial owners, a clear definition of who constitutes a beneficial owner, with a mandatory obligation to identify and verify the ultimate beneficial owner and ensuring awareness and understanding by industry is needed.

242. Progress Reports presented to the Plenary by Member States one year following the adoption of the Mutual Evaluation Report in accordance with the Rules of Procedure of MONEYVAL show extensive progress. Although the ratings of the Mutual Evaluation Reports are not changed on the basis of the Progress Reports, in almost all cases the Plenary has been satisfied with the progress achieved.

243. In their Progress Reports most countries have reported that they are either in the process of enacting new legislation or that they had enacted new legislation, including amendments to existing legislation as appropriate. In all instances MONEYVAL countries appear to have responded positively to the MONEYVAL recommendations or were seriously taking them into consideration.

244. Another element that has contributed to the progress achieved by MONEYVAL countries was the finalisation of the European Union Third Anti Money Laundering Directive which has been taken on board by both EU member and many non-member states that are evaluated by MONEYVAL. This is encouraging as it demonstrates the willingness[23] of MONEYVAL countries to enhance their money laundering and financing of terrorism preventive regimes, particularly as some of the EU standards go further than the FATF standards.

23. Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing. This text is with relevance to the European Economic Area. *OJ L309 of 25.11.2005 pp15-36.*

Recommendation 10 – Record Keeping

Recommendation 10
Financial institutions should maintain, for at least five years, all necessary records on transactions, both domestic or international, to enable them to comply swiftly with information requests from the competent authorities. Such records must be sufficient to permit reconstruction of individual transactions (including the amounts and types of currency involved if any) so as to provide, if necessary, evidence for prosecution of criminal activity. *Financial institutions should keep records on the identification data obtained through the customer due diligence process (e.g. copies or records of official identification documents like passports, identity cards, driving licenses or similar documents), account files and business correspondence for at least five years after the business relationship is ended.* *The identification data and transaction records should be available to domestic competent authorities upon appropriate authority.*

245. R. 10 on record keeping has three main essential criteria for the retention of records for a period of five years: the retention of transaction records that are sufficient to reconstruct individual transactions to provide evidence for prosecution of criminal activity; the retention of identification data including account and correspondence records; and the availability of these records to the relevant authorities on a timely basis.

246. R.10 further provides for the establishment of the commencement of the five year retention period. In brief, for transaction records the retention period of five years follows the completion of the transaction while for the identification and other records the period follows the termination of an account or business relationship.

247. Finally, the Methodology requires that the obligation to retain the above records should be imposed through law or regulation.

248. The overall ratings for R.10 are satisfactory although again one can notice some spread in the ratings, ranging from 1 country (San Marino) with a 'non compliant' rating to 5 countries with a 'compliant' rating.[24] The majority of MONEYVAL countries therefore were within the 'partially compliant' – 9 countries –[25] and the 'largely compliant' – 14 countries –[26] ratings. In aggregate 34.5 % of MONEYVAL countries are within the 'non compliant' and 'partially compliant' range with 65.5 % being in the 'largely compliant' and 'compliant' rating range. Although these figures are encouraging for MONEYVAL countries, with the majority of ratings lying within the 'largely compliant' range, there are a significant number of countries within the 'partially compliant' range.

249. It is positive to note that in some countries the retention period is set longer than the 5 year requirement under the FATF 40. But then no obligations are in place for the retention of records for a longer period than that established by law or regulations if requested to do so by a competent authority in specific cases and upon proper authority or outright where a suspicious transaction report is filed.

250. Some of the main shortcomings underlying the 'partially' and 'largely' compliant ratings can be grouped under four main points, which are set out below – though not in any sequential or priority order:

- No specific obligation under the anti-money laundering laws for the retention of records but the obligation is often derived either from the specific financial legislation (Laws on Bank, Insurance, or Securities) or from general archiving or accounting obligations, which however often lack the specific requirements of the essential criteria.
- Indication of the commencement of the five year retention period often lacking and insufficiently defined.
- Insufficient detail on the information to be retained, often as a result of lack of general guidance.
- The timely requirement for the availability of the information to the authorities is lacking.

24. Hungary, Liechtenstein, Lithuania, Malta, Slovenia.
25. Albania, Azerbaijan, Georgia, Latvia, Moldova, Poland, Romania, "the former Yugoslav Republic of Macedonia", Israel.
26. Andorra, Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Montenegro, Monaco, Russian Federation, Serbia, Slovak Republic, Ukraine.

251. San Marino, being the only MONEYVAL country with a 'non compliant' rating for R.10 had two main factors underlying the rating, namely:

- *The obligation that records of the identification data, account files and business correspondence should be kept for at least five years after the closure of the account or termination of the business relationship (or longer if requested by a competent authority in specific cases and upon proper authority) should be included in law or regulation.*

- *Also, financial institutions should be required in law or regulation to ensure that all customer and transactions records and information are available on a timely basis to the competent authorities.*

252. In its first Progress Report[27] San Marino reported that a new anti-money laundering and financing of terrorism law was adopted on 17 June 2008 (Law No. 92 – *Provisions on Preventing and Combating Money Laundering and Terrorism Financing*) and came into force on 23 September 2008. Article 34 of the new law now provides for the retention of records in accordance with R.10. The implementation of these new obligations is governed by the Implementation Instructions of the financial intelligence unit (the FIA). Article 34 of the new law also obliges financial institutions to make such information available to the FIA *without delay.* To this effect Article 35 of the law requires financial institutions to have electronic systems in place that enable them to respond promptly and quickly to requests for information from the relevant authorities.

253. Drawing on the above conclusions it is again apparent that an overarching provision in the main AML-CFT law covering the record retention obligations and establishing the period, its commencement and the details on the documents to be retained, supported by guidance from the relevant authorities should assist other MONEYVAL countries at the lower end of the rating spectrum to achieve higher ratings.

254. Indeed measures similar to the above (and various other measures) have been taken by MONEYVAL countries in the 'partially compliant' range to upgrade their anti-money laundering regimes, as recommended in the respective third round Mutual Evaluation Reports. As reported in their Progress Reports, some countries (e.g. Latvia, Moldova, Poland) have adopted and implemented new legislation. Others (e.g. Albania) had draft laws prepared, while other countries (e.g. Georgia) undertook extensive amendments to existing laws to provide for the recommendations in the Mutual Evaluation Reports.

Key Recommendations

255. Seven Recommendations out of the FATF 40 and three out of the FATF 9-Special Recommendations are considered as 'Key' Recommendations for the assessment of the adequacy of a country's anti-money laundering and financing of terrorism framework.

256. R.4 (secrecy), R.23 (regulation and supervision) and R.40 (international cooperation) together with SR.III (freezing and confiscating terrorist assets) are relevant to a country's preventive regime. The following paragraphs will examine the overall assessment of the adequacy of the implementation of these Recommendations in MONEYVAL countries with specific reference to common findings that affected the overall ratings.

257. Satisfactory compliance with R.4, 23 and 40 appears to have been achieved overall, although R.40 is influenced by other criteria not necessarily related to the preventive measures in the financial and the non-financial (DNFBP) sectors. The same cannot be said for SR.III, which is strongly influenced by other legal and law enforcement factors that are not directly related to preventive measures.

27. The Progress Report was adopted by MONEYVAL at its 29th Plenary Meeting (Strasbourg, 16-20 March 2009).

Recommendation 4 – Secrecy Laws

Recommendation 4
Countries should ensure that financial institution secrecy laws do not inhibit implementation of the FATF Recommendations.

258. R.4 is brief and specific, requiring that countries should ensure that financial institutions, secrecy laws do not inhibit implementation of the FATF Recommendations. The Methodology identifies three areas of particular concern:

- The ability for competent authorities to access information they require to perform their anti-money laundering and the financing of terrorism related functions;
- The sharing of information between competent authorities both domestically and internationally; and
- The sharing of information between financial institutions themselves in fulfilling their obligations under the respective Recommendations.

259. It is encouraging to note that none of the MONEYVAL countries received a 'non compliant' rating while 14 countries[28] or 48.3 % gained a 'compliant' rating. Of the remaining countries, 11 (37.9 %) had a 'largely compliant' rating[29] while the remaining 4 or 13.8 % had a 'partially compliant' rating.[30]

260. By way of general comment, the appropriate legal provisions governing financial institution secrecy differ in MONEYVAL countries. Some countries, and in particular those in the 'compliant' rating range, have specific overarching provisions in their anti-money laundering and financing of terrorism laws lifting any secrecy imposed by other laws on financial institutions and other obliged entities and persons in respect of sharing information and cooperating with the authorities in combating money laundering and the financing of terrorism.

261. In other countries there is a mixture of provisions in the preventive laws and in the specific laws. Indeed in these instances the evaluators consistently recommended the need to harmonise the provisions under the respective laws lifting confidentiality, preferably through an overarching provision in the main AML-CFT law. This is because gateways for disclosures are found in different laws. Very often they are in the specific financial legislation for banks, insurance and the securities sectors, at times leading to an uneven lifting of secrecy laws in relation to the specific requirements under R.4. In other cases, the lifting of confidentiality relates only to the submission of suspicious transaction reports to the relevant authorities. This leaves a gap which, in some instances, is said to be covered by other legislation. Hence the consistent recommendation of the evaluators for harmonisation is very relevant and is best addressed by specific overarching provisions in the preventive laws as this would apply to all sectors subject to the law on an equal and level basis.

262. Progress Reports submitted to the Plenary following the adoption of Mutual Evaluation Reports indicate that most countries have taken relevant measures as recommended, although it is not always clear from the replies whether overarching provisions have been included in the preventive laws for all countries.

28. Albania, Bosnia and Herzegovina, Bulgaria, Cyprus, Hungary, Latvia, Malta, Montenegro, Monaco, Poland, Romania, Russian Federation, Slovenia, Israel.
29. Andorra, Azerbaijan, Croatia, Czech Republic, Estonia, Georgia, Liechtenstein, Lithuania, Serbia, Slovak Republic, "the former Yugoslav Republic of Macedonia".
30. Armenia, Moldova, San Marino, Ukraine.

Recommendation 23 – Regulation and Supervision

Recommendation 23
Countries should ensure that financial institutions are subject to adequate regulation and supervision and are effectively implementing the FATF Recommendations. Competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a financial institution. *For financial institutions subject to the Core Principles, the regulatory and supervisory measures that apply for prudential purposes and which are also relevant to money laundering, should apply in a similar manner for anti-money laundering and terrorist financing purposes.* *Other financial institutions should be licensed or registered and appropriately regulated, and subject to supervision or oversight for anti-money laundering purposes, having regard to the risk of money laundering or terrorist financing in that sector. At a minimum, businesses providing a service of money or value transfer, or of money or currency changing should be licensed or registered, and subject to effective systems for monitoring and ensuring compliance with national requirements to combat money laundering and terrorist financing.*

263. R.23 requires that financial institutions are adequately regulated and supervised on their effective implementation of the FATF 40+9 Recommendations. In particular R.23 requires countries to ensure that financial institutions are adequately regulated and supervised on their implementation and compliance with their anti-money laundering obligations, and that supervisory authorities ensure that financial institutions are not owned or controlled by criminals. This implies a regulatory and supervisory regime not only for the banking, insurance and securities sectors which, in accordance with the relevant Core Principles[31] are often already regulated for prudential purposes, but also for other financial services, such as money or value transfer services and currency exchange.

264. MONEYVAL countries are fairly evenly matched in the ratings for R.23, with the bias being towards the lower end of the range. While 58.6 %, or 17 countries,[32] have been given a 'non compliant' or a 'partially compliant' rating, 41.4 %, (12 countries)[33] have received either a 'largely compliant' or a 'compliant' rating. Indeed only one country (Andorra) has been given a 'non compliant' rating and only one country (Liechtenstein) had a 'compliant' rating. Otherwise the majority of MONEYVAL countries (55.2 %) fall within the 'partially compliant' rating, closely followed by the 'largely compliant' at 37.9 %.

265. Many factors underlay the ratings for R.23. Some underlying factors are common to a number of countries while others seem to be specific to one country or a subset of countries.

266. For some countries (e.g. Cyprus, Croatia, Hungary and Malta) the reports show a cascading effect from the fact that at the time of the evaluation the reporting obligation did not include the financing of terrorism. Consequently one of the underlying factors was the lack of supervision for financing of terrorism compliance.

267. On the positive side, all MONEYVAL countries appear to have adequate regulatory and supervisory regimes in place for the banking, insurance and securities sectors, although to different degrees. Indeed the effective application of the regulatory and supervisory regimes varies, with more emphasis being placed in practice on the banking sector.

268. The same cannot be said for the other components of the financial sector, e.g. money transmission services and currency exchange. A number of countries – Albania, Azerbaijan, Bosnia and Herzegovina, Croatia, Estonia, "the Former Yugoslav Republic of Macedonia", Poland, Romania, Serbia and Ukraine – either have a weak regime or no regime at all in place to regulate and supervise these areas.

269. An important element of R.23 is market entry. Countries are expected to have in place measures to prevent criminals from owning or managing financial institutions. The majority of MONEYVAL countries have pro-

31. Issued by the Basle Committee on Banking Supervision, the International Association of Insurance Supervisors and the International Organisation of Securities Commissions respectively for the banking, insurance and securities sectors.
32. Albania, Andorra, Azerbaijan, Bosnia and Herzegovina, Croatia, Czech Republic, Georgia, Moldova, Monaco, Poland, Romania, Russian Federation, Serbia, Slovak Republic, "the former Yugoslav Republic of Macedonia", Ukraine, Israel.
33. Armenia, Bulgaria, Cyprus, Estonia, Hungary, Latvia, Liechtenstein, Lithuania, Malta, Montenegro, San Marino, Slovenia.

cedures in place that effectively prevent ownership or management by criminals – although such procedures are often not applicable to all components of the financial sector, or applied to different degrees. These procedures have some common weaknesses for the relevant competent authorities to monitor and approve ownership not only at market entry but also in the course of changes in ownership. Financial legislation very often provides for a scaled or stepped process whereby the acquisition of shareholding in stages of 10 %, 20 %, 25 %, 30 % etc up to subsidiary status requires the approval of the relevant competent authority following a thorough 'fit and proper' assessment of the shareholder. Likewise authorisation and 'fit and proper' procedures are in place in most MONEYVAL countries for the senior management of financial institutions. Such measures are applied as part of both the licensing process and the ongoing monitoring of the ownership and prudent management of financial institutions. Unfortunately the latter requirement is found to be often understood to cover both instances of preventing criminals from market entry.

270. For some countries (e.g. Andorra, Croatia, Czech Republic, Estonia, "the former Yugoslav Republic of Macedonia", Georgia, the Russian Federation, and Ukraine) however the market entry regimes have been found to be either weak or for some sectors, non-existent, in particular for non-bank financial institutions.

271. Progress Reports indicate that a number of countries have taken measures to rectify identified weakness and implement recommendations made in the Mutual Evaluation Reports. In some cases at the time of this review draft laws were in place for eventual submission to Parliaments. In other instances some countries maintain that the position is different from the conclusions in the Mutual Evaluation Report and that the current legislative provisions already provide for the recommendations made. This may be the case, although at the adoption of the report the Plenary must have decided otherwise. Such claims will need to be verified and confirmed in the course of the Fourth Round of Mutual Evaluations.

Recommendation 40 – International Co-operation

Recommendation 40

Countries should ensure that their competent authorities provide the widest possible range of international co-operation to their foreign counterparts. There should be clear and effective gateways to facilitate the prompt and constructive exchange directly between counterparts, either spontaneously or upon request, of information relating to both money laundering and the underlying predicate offences. Exchanges should be permitted without unduly restrictive conditions. In particular:

a) Competent authorities should not refuse a request for assistance on the sole ground that the request is also considered to involve fiscal matters.

b) Countries should not invoke laws that require financial institutions to maintain secrecy or confidentiality as a ground for refusing to provide co-operation.

c) Competent authorities should be able to conduct inquiries; and where possible, investigations; on behalf of foreign counterparts.

Where the ability to obtain information sought by a foreign competent authority is not within the mandate of its counterpart, countries are also encouraged to permit a prompt and constructive exchange of information with non-counterparts. Co-operation with foreign authorities other than counterparts could occur directly or indirectly. When uncertain about the appropriate avenue to follow, competent authorities should first contact their foreign counterparts for assistance.

Countries should establish controls and safeguards to ensure that information exchanged by competent authorities is used only in an authorised manner, consistent with their obligations concerning privacy and data protection.

272. R.40 is broad and calls for countries to ensure that their competent authorities provide the widest possible range of international co-operation to their foreign counterparts. Consequently the ratings given for this Recommendation are influenced by other factors including co-operation by competent authorities other than those of the financial sector. The following paragraphs will therefore only address the level of co-operation between supervisory competent authorities in the financial sector.

273. Overall MONEYVAL countries have scored highly for R.40 with only 27.6 % or 8 countries[34] having a 'partially compliant' rating. No country has been given a 'non-compliant' rating. The other 21 countries[35] or

34. Azerbaijan, Liechtenstein, Lithuania, Moldova, Monaco, San Marino, Serbia, "the former Yugoslav Republic of Macedonia".

72.4 %, have 'largely compliant' or a 'compliant' ratings, the latter consisting of 6 countries.[36] The results obtained however appear not to be consistent with practice.

274. In some countries (Cyprus, Georgia, Poland, Slovenia and Slovak Republic) there is broad capacity for the exchange of information between supervisory authorities and their foreign counterparts. However it has been noted that often supervisory authorities may not be in possession of relevant information relating to money laundering or the financing of terrorism. In most countries this is overcome through the ability of supervisory authorities and financial intelligence units to share relevant information.

275. In other MONEYVAL countries (Azerbaijan, Croatia, "the former Yugoslav Republic of Macedonia", Liechtenstein, Lithuania, Moldova and San Marino) there are gaps in the framework for the exchange of information. This is mainly related to the lack of an appropriate legal basis for supervisory authorities to cooperate and share information on money laundering and the financing of terrorism issues, at times hampered by financial secrecy provisions (e.g. Armenia). Some countries have put in place MoUs but it appeared difficult for the evaluators to determine whether such MoUs do provide for the exchange of information related to money laundering and the financing of terrorism beyond the exchange of supervisory information for prudential purposes. Most countries however maintain that requests for information are often forwarded to their financial intelligence unit for the necessary action.

276. Progress has been achieved by most countries as indicated in their Progress Reports presented to the Plenary one year following the adoption of the Mutual Evaluation Report. In some cases countries have made legislative provision for the exchange of information by supervisory authorities with their foreign counterparts or have provided for national structures to meet this requirement.

Special Recommendation III – Freezing and Confiscating Terrorist Assets (Financial Aspects)

Special Recommendation III – Freezing and confiscating terrorist assets
Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts. *Each country should also adopt and implement measures, including legislative ones, which would enable the competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations.*

277. The essential criteria under SR.III require countries to have effective systems in place to communicate actions taken under the freezing mechanisms to their financial institutions immediately upon taking such action. Countries are also required to provide clear guidance to financial institutions that may be holding targeted funds or other assets concerning their obligations in taking action under freezing mechanisms. This includes the availability of designated lists to the financial sector. Otherwise the essential criteria for SR.III go beyond the preventive measures in the financial sector.

278. Consequently the ratings given for SR.III are influenced by other factors relating to co-operation by non financial sector competent authorities. The following paragraphs will therefore only assess and comment on the level of the application of those essential criteria related to the financial sector.

279. The overall ratings for SR.III show that the majority of MONEYVAL countries (16 or 55.2 %) are 'partially compliant'[37]. None are 'compliant' with 8 (27.6 %) countries[38] falling within the 'non compliant' rating and 5 within the 'largely compliant' rating.[39]

35. Albania, Andorra, Armenia, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Georgia, Latvia, Montenegro, Poland, Slovak Republic, Slovenia, Ukraine, Israel.
36. Bulgaria, Estonia, Hungary, Malta, Romania, Russian Federation.
37. Andorra, Czech Republic, Estonia, Georgia, Hungary, Latvia, Liechtenstein, Lithuania, Monaco, Poland, Romania, Russian Federation, San Marino, Slovak Republic, Ukraine, Israel.
38. Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Moldova, Montenegro, Serbia, "the former Yugoslav Republic of Macedonia".
39. Albania, Bulgaria, Cyprus, Malta, Slovenia.

280. The main underlying factors from the preventive aspect that contributed to the above ratings can be broadly summarised as being the lack of guidance to the financial sector on its obligations in the freezing mechanisms; the insufficient distribution of lists of designated persons; lack of supervision on compliance with the relevant obligations under SR III, probably resulting from the lack of guidance; and the lack of a comprehensive system for the freezing of terrorist assets, which includes the role of the financial sector, and which is further affected by the lack of corporate criminal liability whereby assets of legal entities may not be frozen.

281. Unfortunately there is little information in the Progress Reports of all MONEYVAL countries on progress achieved in relation to the role of the financial sector in the effective implementation of SR.III.

Average Ratings for Core and Key Preventive Recommendations

282. The ratings given to the core and key recommendations[40] relevant to preventive measures as analysed above, (including SR.III, the rating for which may be more influenced by legal and law enforcement measures) have been further analysed to identify an overall average compliance position.

Average Ratings for Core and Key Preventive Recommendations (number of countries)

Category	Not Applicable	Non Compliant	Partially Compliant	Largely Compliant	Compliant
Core	-	5	13	9	2
Key	-	2	11	11	5
Overall Average Compliance Position	-	3	12	10	4

283. As can be inferred from the above table, the overall ratings position for the Core Recommendations for MONEYVAL countries is biased toward the lower range of ratings, i.e. the 'non-compliant' and the 'partially compliant' at 18 countries or 62.07 %. This reflects the very low compliance level for R.5 with 86.2 % in the lower range, though balanced to an extent by R.10 at 65.5 % at the upper end.

284. The position however is slightly reversed for the Key Recommendations, where there is a bias towards the upper end at 16 countries or 55.2 % falling within the 'largely compliant' and 'compliant' ratings. In this case the position is closely balanced with 13 countries within the ratings at the lower end of the spectrum. This clearly reflects the higher compliance by MONEYVAL countries in this regard as evidenced by the higher overall compliance ratings achieved for R.4 and R.40, though partly counterbalanced by R.23.

285. The overall average ratings however are encouraging to an extent even though, in aggregate, they are slightly more biased towards the lower end at 51.72 % or 15 countries. This overall position confirms the concerns about individual Recommendations and in particular R.5 and R.23 expressed in the respective Mutual Evaluation Reports. At the same time it indicates a balanced level of compliance for the core and key recommendations.

40. Core Recommendations 5 and 10 and Key Recommendations 4, 23, 40.

Other Financial Recommendations

286. The paragraphs that follow will address all the other Recommendations in the FATF 40 and the 9 Special Recommendations that are of relevance for the preventive measures that should be in place as part of the anti-money laundering and the financing of terrorism regime. Although the ratings for all Recommendations will be analysed and horizontal issues examined, more emphasis will be placed on those Recommendations where the overall rating is low.

Recommendation 6 – Politically Exposed Persons

Recommendation 6
Financial institutions should, in relation to politically exposed persons, in addition to performing normal due diligence measures: *a) Have appropriate risk management systems to determine whether the customer is a politically exposed person.* *b) Obtain senior management approval for establishing business relationships with such customers.* *c) Take reasonable measures to establish the source of wealth and source of funds.* *d) Conduct enhanced ongoing monitoring of the business relationship.*

287. R.6 requires enhanced customer due diligence to be applied where the customer is identified as a politically exposed person. The Recommendation defines the additional due diligence required in these circumstances. Indeed compliance with R.6 is dependent on the level of effective implementation of R.5, in particular as regards the assessment of risk. However it is generally noted that a number of MONEYVAL countries had not even included a definition of a politically exposed person in their legislation. The reason often cited for this is that countries were in the process of implementing the EU Third Anti-Money Laundering Directive. Indeed this has been confirmed through the Progress Reports eventually presented to the MONEYVAL Plenary.

288. The overall rating for R.6 is similar to that for R.5 with 79.3 % of MONEYVAL countries falling within the lower range of ratings. This leaves 20.7 % with 'largely compliant' ratings as none of the MONEYVAL countries was found to be 'compliant' with this Recommendation.

289. However the spread of ratings in R.6 differs from that for R.5. Indeed the majority of MONEYVAL countries (15 or 51.7 %) have been found to be 'non-compliant'[41] followed by 8 countries in the 'partially compliant' range.[42] Consequently only 6 countries have a 'largely compliant' rating.[43]

290. As stated, the main reason for the low overall compliance with R.6 appears to be that, in the majority, countries were waiting for the EU Third Anti Money Laundering Directive before introducing enhanced customer due diligence measures in their legislation. Indeed the common factors underlying the ratings are mostly related to either the absence or the inadequacy of legislative provisions. It is interesting to note however that in some countries (e.g. Cyprus) the competent authorities had issued regulations in this regard but the effectiveness of implementation was found to be weak. In general, moreover, there appeared to be a complete lack of awareness in the financial sector as to their obligations in identifying politically exposed persons – very often there is no definition or the definition is weak – and in maintaining their accounts under a higher level of monitoring.

291. According to the Progress Reports most countries have adopted or were in the process of adopting new anti-money laundering legislation, in most instances transposing the EU Third Anti Money Laundering Directive. In all cases the new laws have, albeit to different degrees, adopted a definition of politically exposed persons – mostly in relation to foreign persons – and instituted the necessary procedures in accordance with the essential criteria. Going forward in the Fourth Round of Mutual Evaluations, R.6 appears to be one of the Recommendations where higher compliance is expected to be achieved throughout MONEYVAL countries.

41. Albania, Andorra, Azerbaijan, Bulgaria, Croatia, Czech Republic, Georgia, Moldova, Poland, Romania, San Marino, Slovak Republic, Slovenia, "the former Yugoslav Republic of Macedonia", Ukraine.
42. Bosnia and Herzegovina, Latvia, Liechtenstein, Lithuania, Malta, Montenegro, Russian Federation, Israel.
43. Armenia, Cyprus, Estonia, Hungary, Monaco, Serbia.

Recommendation 7 – Cross Border Correspondent Banking

Recommendation 7
Financial institutions should, in relation to cross-border correspondent banking and other similar relationships, in addition to performing normal due diligence measures: *a) Gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action.* *b) Assess the respondent institution's anti-money laundering and terrorist financing controls.* *c) Obtain approval from senior management before establishing new correspondent relationships.* *d) Document the respective responsibilities of each institution.* *e) With respect to "payable-through accounts", be satisfied that the respondent bank has verified the identity of and performed on-going due diligence on the customers having direct access to accounts of the correspondent and that it is able to provide relevant customer identification data upon request to the correspondent bank.*

292. R.7 requires financial institutions to undertake enhanced due diligence on respondent banks when providing cross-border banking services. The recommendation details the enhanced steps that should be in place to comply with the essential criteria.

293. An analysis of the Mutual Evaluation Reports with respect to R.7 indicates that in some countries there was an element of misinterpretation of the provisions of the Recommendations such that the necessary provisions in this regard addressed the obligation with respect to correspondent banks (R.21) as opposed to respondent banks.

294. Some of the factors underlying the lower ratings support this conclusion:

- No measures on relationships with correspondent banks (Andorra).
- Article 5 of the AML-CFT Law unduly provides a blanket exemption for correspondent banks from OECD countries (Latvia).
- No requirement for respondent and correspondent banks to document their respective AML-CFT responsibilities (Liechtenstein).

295. The following paragraphs examine R.7 and its applicability to *respondent* banks as opposed to *correspondent* banks.

296. In principle R.7 is directed towards building on the customer due diligence process as articulated in the recommendations and in particular under R.5. Indeed the introduction to R.7 ends with the words *in addition to performing normal due diligence measures* and R.7 is one of the recommendations requiring enhanced due diligence measures to be applied.

297. The question as to whether R.7 refers only to *respondent banks* – and that means to accounts opened by a bank in country B (respondent bank) with a bank in country A (correspondent bank) from the point of view of the latter – or also to *correspondent banks* – with reference to accounts opened by a bank in country A (respondent bank) with a bank in country B (correspondent bank) still from the point of view of the bank (respondent) in country A – remains debatable and may *prima facie* lend itself to interpretation. R.21 can also shed some light on the matter. Unfortunately the Essential Criteria in the Methodology are not of much help as they simply repeat the Recommendation itself. The best way to show how the Recommendation applies is to try to define some of the key words.

298. There are two words particularly which are key to understanding and interpreting the Recommendation – *correspondent banking* (or *correspondent relationship)* and *respondent institution.* The Glossary to the FATF Methodology provides a definition of *correspondent banking* which, also provides a definition of *respondent institution* as follows:[44]

44. For the purposes of this note the words 'institution' and 'bank' are used interchangeably.

> *"Correspondent banking* is the provision of banking services by one bank (the "correspondent bank") to another bank (the "respondent bank"). Large international banks typically act as correspondents for thousands of other banks around the world. Respondent banks may be provided with a wide range of services, including cash management (e.g. interest bearing accounts in a variety of currencies), international wire transfers of funds, cheque clearing, payable through accounts and foreign exchange services."

299. Applying the definitions to R.7 one can extrapolate that, in general, the introductory part of the Recommendation could refer to *correspondent banking relationships* as defined in the Methodology. Hence, up to this point, the Recommendation would appear to be applicable to all types of services as defined above, and hence to both instances where the institution concerned is either a *respondent* or a *correspondent* one, again as defined in the Methodology.

300. However, whereas the rest of R.7 specifically refers to *respondent institutions* – and hence that institution receiving the services of correspondent banking – in items (a), (b) and (e), the recommendation seems to put the customer due diligence responsibilities on those financial institutions providing the correspondent banking services – hence the *correspondent bank* which, although not specifically mentioned, would be the "financial institution" referred to in the opening sentence of the Recommendation. This would be the financial institution as an obliged entity under the laws of its domiciled country. This is further supported by the provisions of item (e) of the Recommendation which basically allows the *correspondent bank* to rely on the identification procedures applied by the *respondent bank* for 'payable through accounts'.

301. So it appears that R.7 is addressed to *correspondent banks* providing *correspondent banking services* to *respondent banks.* Hence the obligation to comply with the essential criteria of the Recommendation lies with the bank providing the service (the correspondent bank) to a customer that is another bank (the respondent bank).

302. This conclusion is supported by the EU Third Anti-Money Laundering Directive under the introduction to Article 13(3) on *Enhanced Customer Due Diligence* which states... (the Third Directive then follows the language of the FATF standard quoted in the box above):

> 'In respect of cross-frontier correspondent banking relationships with respondent institutions from third countries, Member States shall require their credit institutions to:'

303. It again appears here that the onus for undertaking customer due diligence is placed on the *correspondent institution* (their credit institutions) when providing correspondent banking services to a *respondent institution.*

304. An analysis of the ratings given to the MONEYVAL countries shows compliance with R.7 is rather low. Overall 69 % of the assessed countries fall in the range of 'non-compliant' to 'partially compliant' ratings with the majority, 37.9 % or 11 countries, having a 'non-complaint' rating.[45] The rest, 31 %, fall within the 'largely compliant' and the 'compliant' range, with the majority of 20.7 % or 6 countries[46] were given a 'largely compliant' rating. Only 3 countries, Armenia, Hungary and Lithuania, have been found to be compliant with R.7.

305. The analysis of the underlying factors shows that for those countries in the 'non-compliant' range basically all the essential criteria for the Recommendation were in whole or in part absent. On the other hand, for those countries that were 'largely compliant' the main underlying factors concerned the absence of guidance on payable through accounts (Cyprus); need for scope of application to go beyond the banking sector (Czech Republic); and scope limited to institutions outside the European Union (Montenegro). As to the latter it may be worth noting that the requirement under the EU Third Directive is limited to correspondent relationships with respondent institutions from 'third' (non EU) countries.

306. All MONEYVAL countries that have presented a Progress Report to the Plenary have said that they have either enacted new laws or amended existing ones in line with the European Union Third Anti-Money Laundering Directive and hence the requirements of R.7 have been covered. It remains to be seen through the next

45. Albania, Andorra, Croatia, Georgia, Latvia, Malta, Moldova, Poland, San Marino, Slovak Republic, "the former Yugoslav Republic of Macedonia".
46. Cyprus, Czech Republic, Estonia, Montenegro, Slovenia, Israel.

round of evaluations for the Plenary to confirm how R.7 has been addressed. It should be expected however that if countries have faithfully transposed the EU Directive then R.7 should be adequately covered.

Recommendation 8 – Risks from New Technologies

Recommendation 8
Financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity, and take measures, if needed, to prevent their use in money laundering schemes. In particular, financial institutions should have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions.

307. R.8 has a twofold objective. First the requirement to pay special attention to money laundering threats arising from new or developing technologies that might favour anonymity. Second is the requirement for financial institutions to have policies and procedures in place to address risks associated with non-face-to-face business relationships or transactions.

308. It may be worth mentioning here that the requirements under R.8 differ from those under the EU Third Directive. Under Article 13(2) the EU Third Directive recognises the application of enhanced customer due diligence where the customer has not been physically present for identification purposes (non-face-to-face business). However, under Article 13(6) – which is the counterpart to the first objective of R.8 – the EU Third Directive requires financial institutions to pay special attention to products and transactions, as opposed to technologies, that may favour an onymity.

309. MONEYVAL countries have been evaluated on both the FATF 40 and the EU Third Directive. However this section will only review the assessment under the FATF 40.

310. The overall rating for R.8 tends towards the 'non-compliant' and 'partially compliant' ratings at 69 % with the balance of 31 % in the 'largely compliant' and 'compliant' range. Only 3 countries (Hungary, Malta, and Romania) have been found to be 'compliant' with R.8 with another 6 countries falling in the 'largely compliant' rating.[47] The majority – 13 countries – fall in the 'partially compliant' range[48] while the rest – 7 countries – falling within the 'non-compliant' rating.[49]

311. An analysis of the factors underlying the ratings shows that for those countries in the 'non-compliant' range none of the essential criteria was found to be met. For those countries in the 'partially compliant' range either one or the other of the two objectives of R.8 was found missing along with other shortcomings. It is interesting to note that even for those countries in the 'largely compliant' rating policies and procedures to monitor new or developing technologies were found either missing or inadequate. In all instances nearly all countries have claimed that modern technology for services provided in their financial system is not widespread and mainly limited to certain activities through internet banking. With regard to non-face-to-face business most countries also claim that a person always has to be present to open an account – although in some cases this was not supported by any legislative provisions or other regulations. However, if these assertions by national authorities are accurate, then these two factors would explain the low compliance with R.8.

312. Countries that have presented their first Progress Report to the Plenary have either said that new legislation is in place (e.g. Bulgaria, Croatia, and San Marino) or that a draft law is under discussion (e.g. Liechtenstein and the Slovak Republic). In other instances (e.g. Moldova) it is claimed that current legislation is adequate.

313. An overall analysis of the Progress Reports however indicates that in general progress has been achieved by a number of countries.

47. Armenia, Cyprus, Lithuania, Monaco, Serbia, Israel.
48. Albania, Bulgaria, Czech Republic, Estonia, Latvia, Liechtenstein, Montenegro, Poland, Russian Federation, San Marino, Slovenia, "the former Yugoslav Republic of Macedonia", Ukraine.
49. Andorra, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Moldova, Slovak Republic.

Recommendation 9 – Third Party Reliance and Introduced Business

Recommendation 9
Countries may permit financial institutions to rely on intermediaries or other third parties to perform elements (a) – (c) of the CDD process or to introduce business, provided that the criteria set out below are met. Where such reliance is permitted, the ultimate responsibility for customer identification and verification remains with the financial institution relying on the third party. *The criteria that should be met are as follows:* *a) A financial institution relying upon a third party should immediately obtain the necessary information concerning elements (a) – (c) of the CDD process. Financial institutions should take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to the CDD requirements will be made available from the third party upon request without delay.* *b) The financial institution should satisfy itself that the third party is regulated and supervised for, and has measures in place to comply with CDD requirements in line with Recommendations 5 and 10.* *It is left to each country to determine in which countries the third party that meets the conditions can be based, having regard to information available on countries that do not or do not adequately apply the FATF Recommendations.*

314. R.9 allows countries to permit their financial institutions to rely on intermediaries or other third parties to perform those elements of the customer due diligence process relating to the identification and verification of the customer, the identification of the beneficial owner and the verification thereof, and the acquisition of the information on the purpose and intended nature of the business relationship. R.9 further extends this to introduced business.

315. Further to the overriding principle that the relying financial institution retains ultimate responsibility for the customer due diligence process, the Recommendation however imposes two criteria that must be present for a country to allow such reliance on third parties. First that the relying financial institution should immediately obtain the information and satisfy itself that a copy of the relevant documentation will be made available by the third party immediately upon request. Second that the financial institution relied upon is regulated and supervised and has measures in place to comply with the customer due diligence procedures in line with R.5 and R.10. Also the Recommendation leaves discretion for countries to determine in which countries the third party that meets the above conditions can be based.

316. Finally the Interpretative Notes to the FATF 40 and the Methodology state that R.9 is not applicable to outsourcing and agency relationships and to business relationships and transactions between financial institutions on behalf of their clients.

317. It is worth noting here that there are some divergences from the relevant provisions in the EU Third Directive for third party reliance. Although Section 4, Articles 14 – 19 of Chapter II of the EU Third Directive very closely reflects the requirements of R.9, the EU Directive is more specific on how and between whom reliance can be made. In this respect it specifically distinguishes between reliance on financial institutions and reliance on other non-financial businesses and professions. In the case of the FATF 40 such a distinction can only be deduced in applying R.9 to designated non financial businesses and professions (DNFBPs) under R.12. Moreover, while R.9 leaves discretion to individual countries to determine the country base of the financial institution being relied upon, under Article 17 the EU Third Directive reserves the right for the EU Commission to adopt decisions (pursuant to Article 40(4)) prohibiting financial institutions and persons subject to the Directive from relying on third parties from certain third countries. However, as explained earlier, for the purposes of this review only compliance with the FATF 40 requirements will be considered.

318. Further to third party reliance R.9 also provides for introduced business. In principle introduced business differs from third party reliance. Whereas for third party reliance it is the financial institution that initiates the process through its requests to a third party to undertake parts of the customer due diligence process on its behalf, in the case of introduced business it is often the introducing institution that may initiate the process. In both cases however the conditions for R.9 apply.

319. Statistics on the ratings given to the individual MONEYVAL countries indicate that for 16 countries[50] R.9 has been considered as 'not applicable'. For the rest, 3 countries[51] (23.1 %) fall within the 'partially compliant' rating, 4 countries[52] (30.8 %) within the 'largely compliant' and 4 countries[53] (30.8 %) are considered as 'compliant'. On the other hand, 2 MONEYVAL countries are 'non-compliant'.[54] For these two, most of the essential criteria for R.9 are absent.

320. An analysis of the factors underlying the 'non-applicable' rating given to the 16 countries shows that in 9 instances there are no underlying factors quoted while in the remaining 7 instances it is generally stated that the law does not allow such reliance. A closer assessment of the detailed analysis in the respective Mutual Evaluation Reports however indicates that in most cases the law is silent and does not specifically prohibit third party reliance – such prohibition, where it does exist, being often derived from the requirement for obliged entities to identify their customers. Indeed, most countries confirmed that although the law may not specifically prohibit third party reliance, in practice third parties reliance was not happening. Such statements sometimes have been confirmed by the evaluators in discussion with the industry.

321. All cases all Mutual Evaluation Reports state that whereas the law does not specif ically allow for third party reliance yet it does not prohibit it either. Consequently the Mutual Evaluation Reports take into consideration the fact that under these circumstances the industry may in practice rely on third parties without being in breach of any laws – unless prohibited otherwise. To this effect it is encouraging to note that the Mutual Evaluation Reports consistently recommend that, as financial institutions could in future consider relying on intermediaries or other third parties to perform some of the elements of the customer due diligence process or to introduced business, the relevant authorities should cover all the essential criteria under R.9 in their anti-money laundering legislation. This however does not appear to have been taken into consideration in allocating a rating to the recommendation.

322. For those countries with a 'non-applicable' rating there are no developments, if any, reported in the Progress Reports submitted to the MONEYVAL Plenary. However for those countries with a 'partially compliant' or 'largely compliant' rating the Progress Reports submitted indicate that the authorities have taken or are taking measures to address the recommendations made. The position of those MONEYVAL countries in the 'not applicable' range therefore remains unclear.

Recommendation 11 – Complex, Unusual Large Transactions

Recommendation 11
Financial institutions should pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. The background and purpose of such transactions should, as far as possible, be examined, the findings established in writing, and be available to help competent authorities and auditors.

323. R.11 requires that financial institutions pay special attention to complex, unusual large transactions and all unusual patterns of transactions that have no apparent economic or visible lawful purpose. The recommendation imposes three main obligations. First the examination of the background and purpose of such transactions. Second the documentation and retention of the findings. Third the availability of this documentation to the competent authorities and auditors.

324. The purpose of R.11 goes beyond the scrutiny of transactions as part of the ongoing due diligence under R.5 or the normal procedures for identification of suspicious transactions. Notwithstanding, the obligations under R.11 could assist to the identification of suspicious transactions rendering the objective of this recommendation complementary to the philosophy of the customer due diligence and the reporting processes

50. Albania, Andorra, Azerbaijan, Bulgaria, Croatia, Czech Republic, Georgia, Latvia, Moldova, Montenegro, Poland, Russian Federation, San Marino, "the former Yugoslav Republic of Macedonia", Ukraine, Israel.
51. Liechtenstein, Monaco, Romania.
52. Estonia, Lithuania, Serbia, Slovak Republic.
53. Cyprus, Hungary, Malta, Slovenia.
54. Armenia, Bosnia and Herzegovina.

under the FATF 40. Therefore the obligations under R.11 go beyond any cash transaction reporting regime or the maintenance of any (threshold based) transactions register by financial institutions, as appears to have often been the case in the past. The obligation for the retention of the findings of the examination of the background and purpose of these transactions also goes beyond the normal record retention obligations under R.10. It is important to note that the obligations under R.11 require special attention not only to large complex transactions but also to unusual patterns of transactions.

325. Moreover, R.11 is closely related to R.21 which in part carries a similar obligation for transactions with persons, including companies and financial institutions, originating from countries which do not or insufficiently apply the FATF Recommendations. It is worth noting however that there are large divergences on the ratings given to the two recommendations – see table under R.21 below.

326. Only 1 country (Hungary) has been found to be compliant with the recommendation. An analysis of the ratings given shows that 8 countries[55] (27.6 %) have been given a 'largely compliant' rating; 13 countries[56] (44.8 %) are 'partially compliant' while 7 countries[57](24.1 %) fall in the 'non-compliant' range.

327. Review of the Mutual Evaluation Reports confirms that R.11 *per se* is difficult to assess on a consistent methodology possibly due to its ambiguous text which is very much subject to interpretation. In most of those countries within the 'largely compliant' or 'compliant' range the obligation is very often linked to indicators of suspicious transactions or registers of large transactions. For all these countries, at the time of the evaluation, only a few (Hungary, Malta, Romania, Israel, and Ukraine) have an obligation under the law that meets the requirement for financial institutions to examine complex, unusual large transactions and, for some (Romania and Israel) only in relation to banks. Moreover almost all MONEYVAL countries within this rating range do not have a legal or other obligation to examine in detail the background of such transaction, document findings and make such findings available to the authorities. This indicates that compliance to R.11 may be lower in practice than Mutual Evaluation Reports might indicate.

328. As the process in the third round evaluations progressed, the evaluators and the Plenary in general acquired more experience in the interpretation of the recommendations, with consequential impact on the ratings. To this effect, further analysis of the statistics on ratings given to R.11 show that out of the 7 evaluations for the initial period of the Third Round (2005 – 2006), 3 countries have been given a 'largely compliant' rating with 1 country being given a 'compliant' rating – and indeed remaining the only country with a 'compliant' rating. On the other hand, out of the 22 evaluations for the following period (2007 – 2009) only 5 countries were given a 'largely compliant' rating with the majority of 10 countries falling within the 'partially compliant' range.

329. Progress Reports presented to the Plenary indicate that most countries given 'partially compliant' rating (e.g. Bulgaria, Georgia, Liechtenstein and Lithuania) have reported that draft legislation has been prepared, or is being prepared, transposing the EU Third Directive which will address the requirements under R.11 separately. In other instances some countries still consider that the current provisions of their respective laws cover the relevant requirements despite the findings of the evaluators.

55. Andorra, Armenia, Cyprus, Latvia, Malta, Romania, Slovenia, Ukraine.
56. Albania, Bulgaria, Czech Republic, Estonia, Liechtenstein, Lithuania, Moldova, Monaco, Poland, Russian Federation, San Marino, Serbia. Israel.
57. Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Montenegro, Slovak Republic, "the former Yugoslav Republic of Macedonia".

Recommendation 12 – Customer Due Diligence and Record Keeping (DNFBPs)

Recommendation 12
The customer due diligence and record-keeping requirements set out in Recommendations 5, 6, and 8 to 11 apply to designated non-financial businesses and professions in the following situations: *a) Casinos – when customers engage in financial transactions equal to or above the applicable designated threshold.* *b) Real estate agents – when they are involved in transactions for their client concerning the buying and selling of real estate.* *c) Dealers in precious metals and dealers in precious stones – when they engage in any cash transaction with a customer equal to or above the applicable designated threshold.* *d) Lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their client concerning the following activities:* ◆ *buying and selling of real estate;* ◆ *managing of client money, securities or other assets;* ◆ *management of bank, savings or securities accounts;* ◆ *organisation of contributions for the creation, operation or management of companies;* ◆ *creation, operation or management of legal persons or arrangements, and buying and selling of business entities.* *e) Trust and company service providers when they prepare for or carry out transactions for a client concerning the activities listed in the definition in the Glossary.*

330. R.12 is broad and far reaching. R.12 applies the customer due diligence and record keeping requirements to designated non-financial businesses and professions – DNFBPs. R.12 is therefore concerned with the application of R.5, 6 and 8 to 11. R.12 establishes the circumstances by sector of the DNFBPs under which these recommendations are to be applied. It may be worth mentioning at this stage that there are some differences in the scope of applicability between the FATF 40 and the EU Third Anti-Money Laundering Directive. This mainly applies to the accountancy profession where the EU Third Directive applies the requirements to the profession in its entirety while the FATF 40 apply the requirements to the profession when accountants carry out transactions for their clients as identified in R.12 and as also applied to the legal profession. The review that follows will be based on the FATF 40 only.

331. The overall ratings show that, with 96.6 % of MONEYVAL countries falling within the 'non-compliant' and 'partially compliant' range, compliance with R.12 is rated as one of the worst. It is second only to R.16 (applying the reporting obligations to DNFBPs) where 100 % of MONEYVAL countries fall within this rating range. At the outset, these ratings indicate a very worrying position for the compliance of the DNFBPs with the FATF 40.

332. Further analysis of the ratings shows that 17 countries[58] (58.6 %) are 'non-compliant' while 11 countries[59] (42.3 %) are 'partially compliant', leaving only 1 country (Malta) in the 'largely compliant' rating.

333. An analysis of the underlying factors for the poor performance registered by the majority of MONEYVAL countries in complying with R.12 shows that there are a number of common weaknesses – although to different degrees – that may be grouped under different headings, and not necessarily in any sequential order of importance, as indicated below:

- The scope of coverage differs from that of the FATF 40;
- The same concerns expressed for the application of the relevant recommendations to the financial sector also apply to DNFBPs, very often to a higher degree;
- Not all recommendations relevant to R.12 are applicable to DNFBPs in part or in full by the legislation of the respective MONEYVAL countries;
- There is an overall general lack of awareness and knowledge of obligations throughout the whole sector;
- There is a general lack of guidance given by the relevant authorities to DNFBPs;

58. Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Czech Republic, Georgia, Moldova, Monaco, Poland, Romania, San Marino, Serbia, Slovak Republic, "the former Yugoslav Republic of Macedonia", Ukraine, Israel.
59. Andorra, Bulgaria, Cyprus, Estonia, Hungary, Latvia, Liechtenstein, Lithuania, Montenegro, Russian Federation, Slovenia.

- Some DNFBPs, and in particular the legal profession, protest against their anti-money laundering and financing of terrorism obligations;
- There is general lack of awareness and knowledge of customer due diligence and in particular in relation to the identification of the beneficial owner;
- There is an overall weakness in the implementation of the anti-money laundering and financing of terrorism obligations throughout the whole DNFBP sector.

334. The analysis of the application of R.12 in the individual Mutual Evaluation Reports indicates that, in general, there is compliance in the casinos sector than in any other business or profession in the DNFBPs coverage range. It is acknowledged that compliance by the various businesses and professions may be difficult to measure. Yet, as indicated above, there still appears to be less concentration by some countries on ensuring compliance by the DNFBPs as opposed to the financial sector.

335. Progress Reports presented to the Plenary by the relevant MONEYVAL countries indicate that most countries are taking measures, either through new or revised legislation or regulations or through discussions with the industry for eventual guidance, to ensure that DNFBPs comply with the obligations under the anti-money laundering legislation to the same degree as is expected of financial institutions.

336. Notwithstanding, the results obtained for R.12 still raise huge concerns on the adequacy and effectiveness of the system in general and to different degrees in MONEYVAL countries specifically. This situation calls for a more thorough assessment of R.12 in the Fourth Round of Mutual Evaluations.

Recommendation 15 – Internal Controls and Training

Recommendation 15
Financial institutions should develop programmes against money laundering and terrorist financing. These programmes should include: *a) The development of internal policies, procedures and controls, including appropriate compliance management arrangements, and adequate screening procedures to ensure high standards when hiring employees.* *b) An ongoing employee training programme.* *c) An audit function to test the system.*

337. R.15 targets three objectives that are essential to the internal control procedures and programmes that financial institutions are expected to have in place. First it requires appropriate compliance management arrangements including the development of adequate internal policies, procedures and controls and also provide for the designation of a compliance officer. Internal controls are expected to include screening procedures that ensure high standards when hiring employees. Secondly, the recommendation requires ongoing training programmes to be in place for all employees. Finally an audit function should be maintained to test the system.

338. Consequently R.15 is demanding, possibly onerous, on financial institutions, and even more on DNFBPs. To this effect the Methodology recognises that its application should be commensurate with the risk of money laundering and terrorist financing and the size of the institution, entity or person concerned.

339. Overall the concept of proportionality has been consistently respected in the Third Round Mutual Evaluation Reports but emphasis has been placed throughout the process on the adequacy of the measures in place. This in particular as regards training, the appointment or designation of a compliance officer as a minimum in meeting the compliance management arrangements and the audit function to ensure the appropriateness and effectiveness of the internal control process. It is however generally noted that in a number of MONEYVAL countries the concept of proportionality for the application of R.15 has been based on the number of employees as opposed to risk and size. Thus in some countries the law specifies that for entities with less than a specified number of employees (e.g. Bosnia and Herzegovina, Serbia, and Slovenia for less than four employees) full internal control procedures need not be in place. Consequently, since 'size' has been defined in relation to the number of employees, this has been taken as a deficiency for rating purposes.

340. Statistics on ratings given are not very encouraging. 65.5 % of MONEYVAL countries fall within the 'non-compliant' and 'partially compliant' range, with the absolute majority being 'partially compliant'. Indeed only 2 countries[60] have been found to be compliant with the recommendation. On the other hand only 2 countries[61] have been rated as non-compliant. 17 (58.6 %) countries[62] are 'partially compliant', with the other 8 (27.6 %) countries[63] being 'largely compliant'.

341. Analysis of the factors underlying the ratings to all MONEYVAL countries, with the exception of those in the 'compliant' rating, shows some interesting results. A high degree of consistency has been applied in the ratings, even though, as explained above, the interpretation of "proportionality" as allowed by the FATF 40 may have varied. Consequently, the results raise some concerns for particular elements of the recommendation. What is interesting is that almost all the deficiencies identified point towards sectors other than the banking sector, which has always been found to be the dominant component of the financial system.

342. Although the above may be a mitigating factor, yet the analysis of the findings call for further monitoring of compliance with R.15. Although to different degrees, out of the 27 MONEYVAL countries within the rating range other than 'compliant', 16 have been found to have deficiencies in relation to the appointment and function of the compliance officer, 25 have problems with the screening of new employees, 11 in training, 14 in the audit function and 12 in the general development of internal controls and procedures. However only 2 countries with a 'partially compliant' rating carried one underlying factor related to effectiveness. Weaknesses identified in relation to the compliance officer, screening of employees and the audit function are particularly concerning as these may have further implications on the effectiveness of the implementation of other recommendations.

343. Progress Reports presented to the Plenary indicate that the majority of countries had taken or were taking measures at the time to address the weaknesses in their system within the context of R.15. Such measures mostly related to new or amended laws or regulations.

Recommendation 17 – Sanctions

Recommendation 17
Countries should ensure that effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, are available to deal with natural or legal persons covered by these Recommendations that fail to comply with anti-money laundering or terrorist financing requirement.

344. In general the focus of the compliance analysis for R.17 has consistently been whether criminal, civil or administrative sanctions were in place and to what extent these could be considered as being effective, proportionate and dissuasive. All Mutual Evaluation Reports show that although the evaluators sought to make use of statistics for an assessment of the sanctioning regime, at times statistics (or adequate ones) were not available.

345. A statistical analysis of the range of ratings in MONEYVAL countries for R.17 is not encouraging at 21 (72.4 %) countries falling within the 'non-compliant' and 'partially compliant' range. Only 2 countries (Armenia and Israel) have been rated as 'compliant'. On the other hand, only 3 countries[64] have been rated as 'non-compliant'. The majority of countries, 18 (62.1 %) were 'partially compliant'.[65]

346. An analysis of the factors underlying the ratings indicates a certain degree of consistency applied throughout the Mutual Evaluation Reports. Some common factors underlying the ratings refer to the lack of a comprehensive sanctioning regime; effectiveness issues, ranging from the non application of sanctions to the type of

60. Hungary and Malta
61. Azerbaijan and Monaco
62. Albania, Andorra, Armenia, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Georgia, Moldova, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, "the former Yugoslav Republic of Macedonia", Ukraine, Israel.
63. Bulgaria, Estonia, Latvia, Liechtenstein, Lithuania, Montenegro, Poland, Slovenia.
64. Azerbaijan, Moldova, "the former Yugoslav Republic of Macedonia".
65. Albania, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Estonia, Georgia, Latvia, Liechtenstein, Montenegro, Monaco, Poland, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Ukraine.

sanctions (such as for example the ability of the supervisory authorities to withdraw operating licences); non application to corporate bodies or to directors and senior management; and the degree of proportionality and dissuasiveness. All Mutual Evaluation Reports indicate that the situation is weaker for DNFBP. Reliance appears to have been placed on statistics but statistics from most countries were not fully forthcoming.

Recommendation 18 – Shell Banks

Recommendation 18
Countries should not approve the establishment or accept the continued operation of shell banks. Financial institutions should refuse to enter into, or continue, a correspondent banking relationship with shell banks. Financial institutions should also guard against establishing relations with respondent foreign financial institutions that permit their accounts to be used by shell banks.

347. The ratings for R.18 are encouraging with 65.5 % or 19 MONEYVAL countries falling within the 'largely compliant' (11)[66] and 'compliant' (8)[67] range. None of the countries was 'non-compliant', but 10 countries[68] were a 'partially compliant'.

348. The factors underlying the ratings indicate that in almost all MONEYVAL countries there are provisions that prohibit the setting up of shell banks. In particular this was very evident in European Economic Area (EEA) countries, where the transposition of the relevant European Union Directives on prudential regulations, including licensing obligations, is in force. For some countries, although there is no specific legal provision prohibiting the establishment of shell banks, this is inferred from licensing requirements. The ratings were more affected by the non compliance, to different degrees, with Essential Criterion 18.2 (correspondent banking relationships) and Essential Criterion 18.3 (respondent banking relationships). Indeed, excluding the 8 countries with a 'compliant' rating, of the remaining 21 countries 12 have been found not to comply with Essential Criterion 18.2 while 16 are not in compliance with Essential Criterion 18.3. Out of these, 12 countries are not compliant with both criteria, while 1 country (Georgia) is not fully compliant with all three essential criteria.

349. Overall there appears to be a certain degree of consistency in the allocation of ratings for R.18.

350. Progress Reports submitted to the Plenary by most of the MONEYVAL countries indicate that the relevant recommendations in their Mutual Evaluation Reports have been taken on board by the countries concerned through amendments to existing legislation, policies and regulations. Hence it appears that good progress has been registered here.

Recommendation 19 – Cash Transaction and Other Reporting

Recommendation 19
Countries should consider the feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount, to a national central agency with a computerised data base, available to competent authorities for use in money laundering or terrorist financing cases, subject to strict safeguards to ensure proper use of the information.

351. Compliance with R.19 is relatively easy for countries if they can prove that consideration has been given to the introduction of a cash reporting system above an established fixed threshold.

352. Indeed the 'compliant' rating for R.19 for MONEYVAL countries is very high, 82.8 % (24 countries). Only 1 country (Albania) had a 'partially compliant' rating with 3 other countrie[69]s being given a 'non-compliant' rating – the reason being lack of evidence that the country had considered the feasibility of introducing a cash reporting system.

66. Armenia, Cyprus, Czech Republic, Estonia, Latvia, Liechtenstein, Monaco, Slovak Republic, Slovenia, Ukraine, Israel.
67. Bosnia and Herzegovina, Bulgaria, Hungary, Lithuania, Montenegro, Romania, Russian Federation, Serbia.
68. Albania, Andorra, Azerbaijan, Croatia, Georgia, Malta, Moldova, Poland, San Marino, "the former Yugoslav Republic of Macedonia".
69. Andorra, San Marino, Slovak Republic.

353. The Progress Reports submitted to the Plenary by the three non compliant MONEYVAL indicate that all 3 countries have since carried out a feasibility study on the introduction of a cash reporting system. Albania (PC rating) has also reported good progress in addressing the shortcomings identified in the Mutual Evaluation Report in this regard.

Recommendation 20 – Other Non-Financial Businesses and Professions and Use of Cash

Recommendation 20
Countries should consider applying the FATF Recommendations to businesses and professions, other than designated non-financial businesses and professions, that pose a money laundering or terrorist financing risk.
Countries should further encourage the development of modern and secure techniques of money management that are less vulnerable to money laundering.

354. R.20 basically contains two essential criteria. The first relates to considering extending the scope of application of the FATF Recommendation to other businesses and professions that are likely to be used for the purpose of money laundering or the financing of terrorism. The second relates to measures of money management that would reduce the use of cash. The results for R.20 are again encouraging for MONEYVAL countries, with 21 (72.4 %) falling within the 'largely compliant' and 'compliant' rating range. The main deficiencies in the 11 countries with a 'largely compliant' rating[70] relate largely to the effectiveness of the extension of the scope of application to other DNFBPs (7 countries); while in the other 4 countries the underlying factors relate to a continuing high reliance on cash in the economy.

355. Only 1 country (Albania) was 'non-compliant' with R.20, as it did not meet both essential criteria. In its Progress Report however Albania indicates that at the time of reporting measures were in progress to address all deficiencies as identified in the Mutual Evaluation Report.

356. Similar progress has been reported by the 6 MONEYVAL countries[71] with a 'partially compliant' rating, which at the time of writing had already presented their Progress Reports.

Recommendation 21 – Business Relationships and Transactions

Recommendation 21
Financial institutions should give special attention to business relationships and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply the FATF Recommendations. Whenever these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, the findings established in writing, and be available to help competent authorities. Where such a country continues not to apply or insufficiently applies the FATF Recommendations, countries should be able to apply appropriate countermeasures.

357. R.21 requires financial institutions to give special attention to business relationships and transactions with persons, including companies and financial institutions, from countries which do not adequately apply anti-money laundering and financing of terrorism measures. It further requires the analysis of transactions that have no apparent economic or visible lawful purpose.

358. R.21 is therefore partly linked to R.11, in so far as there is a requirement for the examination of the background and purpose of those transactions that have no apparent economic or visible lawful purpose – although qualified. To a large extent therefore, the position on R.11 would be expected to be reflected in R.21. Indeed, the number of countries falling within the 'non-compliant'[72] and 'partially compliant'[73] range for R.21 remains high at 23 countries or (79.3 %). Roughly half were partially compliant and the other half were non

70. Bosnia and Herzegovina, Czech Republic, Georgia, Malta, Montenegro, Romania, San Marino, Serbia, Slovenia, "the former Yugoslav Republic of Macedonia", Ukraine.
71. Andorra, Azerbaijan, Croatia, Moldova, Slovak Republic, Israel.
72. Andorra, Bosnia and Herzegovina, Croatia, Estonia, Montenegro, Monaco, Poland, Romania, San Marino, Slovak Republic, "the former Yugoslav Republic of Macedonia", Ukraine.
73. Albania, Azerbaijan, Bulgaria, Czech Republic, Georgia, Latvia, Liechtenstein, Malta, Moldova, Russian Federation, Israel.

compliant. On the other hand, the 6 MONEYVAL countries falling within the 'largely compliant'[74] and 'compliant'[75] were mostly rated largely compliant.

Comparative Table for R.11 and R.21 ratings

Recommendation	NC	PC	LC	C
	Countries	Countries	Countries	Countries
R. 11	7	13	8	1
R. 21	12	11	4	2

359. Predominantly the main underlying factors for the low ratings given to MONEYVAL countries under R.11 also feature under R.21. They mainly relate to the lack of provision of an obligation for examining the background and purpose of those transactions that have no apparent economic or visible lawful purpose, with written findings being retained and made available to the relevant authorities. Further weaknesses identified for R.21 relate to the lack of obligations to give special attention to business relationships and transactions with legal and natural persons, including financial institutions, from or in countries that apply insufficient anti-money laundering and financing of terrorism measures.

360. Indeed although there appears to be an overall high degree of consistency between the ratings for R.11 and R.21, with the overall ratings for both Recommendations tending towards the lower end of the rating range. However there are also some country specific differences in the ratings for both of the Recommendations.

361. Compliance with R.21 assumes a higher importance in the context of Public Statements issued by MONEYVAL on its members or by other bodies, including the Financial Action Task Force. Hence it is a concern that many countries fall within the lower range of ratings. In the 4th round of evaluations particular attention needs to be given to this issue.

Recommendation 22 – Cross-Border Branches and Subsidiaries

Recommendation 22

Financial institutions should ensure that the principles applicable to financial institutions, which are mentioned above are also applied to branches and majority owned subsidiaries located abroad, especially in countries which do not or insufficiently apply the FATF Recommendations, to the extent that local applicable laws and regulations permit. When local applicable laws and regulations prohibit this implementation, competent authorities in the country of the parent institution should be informed by the financial institutions that they cannot apply the FATF Recommendations.

362. In brief, R.22 requires the application of the anti-money laundering and financing of terrorism principles of an institution to its branches and majority owned subsidiaries abroad. R.22 is one of those Recommendations where high number of MONEYVAL countries were in the lower range of the ratings.

363. 20 (71.4 %) MONEYVAL countries were either 'non-compliant' or 'partially compliant'. For the 9 countries with a 'non-compliant' rating[76] the underlying factors for the rating are basically the lack of adequate provisions, legal or otherwise, for institutions to comply with the essential criteria, irrespective of the fact that in most countries their financial institutions did not have branches or subsidiaries abroad at that time. For some of the 11 countries with a 'partially compliant' rating[77] the factors underlying the rating were at times quite similar.

74. Armenia, Cyprus, Lithuania, Serbia.
75. Hungary, Slovenia.
76. Azerbaijan, Czech Republic, Georgia, Malta, Monaco, Poland, Russian Federation, San Marino, "the former Yugoslav Republic of Macedonia".
77. Andorra, Bosnia and Herzegovina, Croatia, Latvia, Liechtenstein, Lithuania, Romania, Slovak Republic, Slovenia, Ukraine, Israel.

364. Notwithstanding this, it is worth noting that in their Progress Report most countries have reported that measures were being taken or had already been taken to rectify the situation, irrespective of whether financial institutions had branches or subsidiaries abroad.

Recommendation 24 – Regulatory and Supervisory Measures (DNFBP)

Recommendation 24

Designated non-financial businesses and professions should be subject to regulatory and supervisory measures as set out below.

a) Casinos should be subject to a comprehensive regulatory and supervisory regime that ensures that they have effectively implemented the necessary anti-money laundering and terrorist-financing measures. At a minimum:

- *casinos should be licensed;*
- *competent authorities should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest, holding a management function in, or being an operator of a casino;*
- *competent authorities should ensure that casinos are effectively supervised for compliance with requirements to combat money laundering and terrorist financing.*

b) Countries should ensure that the other categories of designated non-financial businesses and professions are subject to effective systems for monitoring and ensuring their compliance with requirements to combat money laundering and terrorist financing. This should be performed on a risk-sensitive basis. This may be performed by a government authority or by an appropriate self-regulatory organisation, provided that such an organisation can ensure that its members comply with their obligations to combat money laundering and terrorist financing.

365. R.24, dealing with the regulatory and supervisory measures for DNFBP, complements and confirms the overall low compliance rating for those Recommendations specifically related to DNFBP. Statistics show that 26 or 89.7 % of MONEYVAL countries have major deficiencies in their AML-CFT system in respect of monitoring of compliance by DNFBP, and thus fall within the 'non-compliant' or 'partially compliant' range. More specifically, 12 countries fall within the 'non-compliant' rating[78] while 14 countries fall within the 'partially compliant' rating.[79] None of the MONEYVAL countries was found to be 'compliant', with only 3 countries having a 'largely compliant' rating.[80]

366. The underlying factors for the percentage of ratings in the lower range indicate that for a number of countries either no monitoring and supervisory system is in place, or if such a system is in place, the system is weak and ineffective or not applied outright. Very few countries could demonstrate that they undertake on-site visits and hence the issue of effectiveness assumed even higher importance. For some other countries no authorities have been designated for the supervision of all or parts of the DNFBPs. Indeed, often, with the exception of casino regulators, regulation and supervision of DNFBPs remains very much fragmented in most MONEYVAL countries. Even for those countries that have adopted a reporting structure through self-regulatory bodies, such bodies often do not have supervisory competencies. Consequently the majority of the Mutual Evaluation Reports express concern on the overall effectiveness of monitoring and supervision of the non-financial sector (DNFBP).

367. As already indicated, the only exception in the majority of MONEYVAL countries appears to be in relation to casinos, where very often comprehensive regulatory and supervisory regimes have been identified as being in place and which appear to be effectively implemented. However, in the majority of cases, internet casinos are not included within the scope of coverage of the AML-CFT laws – either because they are not catered for under the law or because of the complexities of effective application. Indeed R.24 is particularly specific on casinos. The Recommendation requires that casinos should be licensed; that competent authorities take the necessary measures to prevent criminals or their associates from holding or being the beneficial owners of a significant or controlling interest in a casino or in its management function; and that casinos are effectively

78. Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Czech Republic, Moldova, San Marino, Serbia, "the former Yugoslav Republic of Macedonia", Ukraine, Israel.
79. Andorra, Bulgaria, Cyprus, Estonia, Georgia, Latvia, Lithuania, Malta, Montenegro, Monaco, Poland, Romania, Russian Federation, Slovak Republic.
80. Hungary, Liechtenstein, Slovenia.

supervised for their compliance with requirements to combat money laundering and the financing of terrorism. The regulatory and supervisory requirements on the relevant competent authorities reflect those required for the financial sector under R.23. It is precisely because of this that the Mutual Evaluation Reports make more emphasis on the supervision of casinos as opposed to the other types of DNFBP.

368. This situation, being consistent throughout all Mutual Evaluation Reports, raises serious concerns. It is difficult to conclude whether this is because countries have focused their resources more on the financial sector, which is often more vulnerable to money laundering or the financing of terrorism, or whether this is because the Recommendations themselves are difficult to implement and are more resource intensive than for the financial sector. In some countries it appears that a third reason could affect the situation. This is the fact that some professions, and in particular the legal and the accountancy professions, often appear reluctant to accept their obligations under the respective anti-money laundering and financing of terrorism laws. Another contributory factor is the sheer extent of persons falling, for example, under those dealing in precious metals or stones – under the EU Directive this is even greater as the EU Directive catches all those persons or entities trading in goods where payment is effected in cash for amounts equal to or above EUR 15,000. It is not surprising that in a number of countries no information is available to the authorities as to the number of operators in some sectors of the DNFBP. Notwithstanding, in addition to that for casinos, information on DNFBP appears to have been more available in the legal and the accountancy professions and real estate dealers.

369. In their Progress Reports almost all countries have reported that new legal or regulatory provisions have been or are being put in place to provide a stronger regime for the regulation and supervision of DNFBP. It remains however to be seen how these new provisions will be effectively implemented and applied in practice. This is because for those few countries in the 'largely compliant' category the issue of effectiveness was still found to be a major deficiency in the systems. A thorough review of compliance with R.24 may be necessary under the Fourth Round of Evaluations.

Recommendation 25 – Guidance and Feedback

Recommendation 25
The competent authorities should establish guidelines, and provide feedback which will assist financial institutions and designated non-financial businesses and professions in applying national measures to combat money laundering and terrorist financing, and in particular, in detecting and reporting suspicious transactions.

370. R.25 has two objectives that translate into two essential criteria meant to assist the industry in its reporting obligations, thus enhancing the quality of the reports. First the obligation on competent authorities to establish guidelines for financial institutions and DNFBPs that would assist them to implement and comply with their respective AML-CFT requirements, and in particular in the identification and reporting of suspicious transactions. Second that the competent authorities, and in particular the financial intelligence units, provide financial institutions and DNFBP with adequate and appropriate feedback on reported suspicious transactions having regard to the FATF *Best Practice Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons*. Such feedback should be either of a general type relating to statistics, techniques, methods, trends and typologies or of a specific nature on a case by case basis.

371. It is worth noting at the outset that none of the MONEYVAL countries has been found to be 'compliant' with this rating, although 10 countries (34.5 %) have a 'largely compliant' rating.[81]

372. The statistical analysis further shows that whereas 6 countries[82] have been found to be 'non-compliant' with the Recommendation since they do not have any systems in place to provide feedback and have not provided any adequate guidance to the system, the other 13 countries[83] were 'partially compliant'. A further analysis of the factors underlying the ratings indicates that in most countries the issue of guidance is very often related to

81. Andorra, Bulgaria, Cyprus, Hungary, Liechtenstein, Lithuania, Montenegro, Poland, Slovenia, Ukraine.
82. Albania, Azerbaijan, Czech Republic, Moldova, San Marino.
83. Armenia, Bosnia and Herzegovina, Croatia, Estonia, Georgia, Latvia, Malta, Monaco, Romania, Russian Federation, Serbia, "the former Yugoslav Republic of Macedonia", Israel.

the identification and filing of suspicious transactions and, in the majority of cases, this is through the issue of indicative indicators for identifying suspicious transactions. With regard to the provision of feedback in most countries this is often not provided for in the relevant laws, although it is not specifically prohibited. As a result, in relation to feedback most countries indicate that general feedback is given in the form of statistics in the annual reports of the financial intelligence unit, but more often than not no specific feedback is given. Consequently the majority of MONEYVAL countries do not appear to take account of the FATF Best Practice Guidance. For other countries in the lower rating range, although guidance has often been issued [in particular to the financial sector], the Mutual Evaluation Reports find that such guidance is often generic and not sector specific.

373. The provision of guidance and feedback helps to enhance the quality of the suspicious transaction reports filed by the industry and encourage further reporting. Indeed in a number of countries the demand for guidance and feedback is high and the relevant authorities do not appear to have yet met the expectations of the industry. In almost all countries lack of guidance or lack of appropriate guidance has resulted in low awareness among obliged entities of their anti-money laundering and financing of terrorism obligations.

Recommendation 29 – Monitoring and Supervisory Powers

Recommendation 29
Supervisors should have adequate powers to monitor and ensure compliance by financial institutions with requirements to combat money laundering and terrorist financing, including the authority to conduct inspections. They should be authorised to compel production of any information from financial institutions that is relevant to monitoring such compliance, and to impose adequate administrative sanctions for failure to comply with such requirements

374. R.29 has four main objectives. Firstly, it requires that supervisory authorities have adequate powers to monitor and supervise financial institutions to ensure compliance with their obligations and the relevant requirements to combat money laundering and the financing of terrorism. Secondly, supervisory authorities should have the authority to conduct on-site inspections at financial institutions to review all policies and documents and to carry out sample testing. Thirdly, supervisory authorities should have the right to compel the production of or have direct access to all records and documents without the need of a court order; and fourthly, that the supervisory authorities should have adequate powers of enforcement and sanctioning against financial institutions, their directors and their senior management.

375. It is against this background that MONEYVAL countries have been evaluated on their compliance to R.29. A reading of the analysis of R.29 in the various Mutual Evaluation Reports indicates the thoroughness within which R.29 has been examined across all MONEYVAL countries. This is reflected in the overall ratings given, where 75.9 % of the countries evaluated have been given a rating within the 'largely compliant' and 'compliant' range.

376. Despite the thorough assessment of the application of R.29, the analyses in the Mutual Evaluation Reports indicate certain issues that may need closer attention, particularly where the supervisory authority is the financial supervisor. This appears to be because in some assessments there is no clear separation of the requirements under R.29 for compliance with anti-money laundering and financing of terrorism obligations as to distinct from those related to prudential supervisory responsibilities of the relevant authorities. Although supervisory authorities apply their prudential and regulatory powers for monitoring compliance on anti-money laundering and financing of terrorism obligations it is often not clear whether statistics provided for on-site visits reflect focussed anti-money laundering and financing of terrorism examinations, or whether these reflect prudential visits with a component for anti-money laundering and financing of terrorism compliance, or whether at times they are purely for prudential examinations. The same applies to the sanctioning regime. At times it is not clear whether sanctions have been applied because of prudential non-compliance or because of non-compliance with anti-money laundering and financing of terrorism requirements.

377. Notwithstanding, all relevant supervisory authorities in MONEYVAL countries appear to have adequate powers to monitor and supervise financial institutions on their compliance with anti-money laundering and financing of terrorism obligations – albeit to different degrees.

378. An analysis of the statistics of the ratings for R.29 shows that at the extreme end only 1 country (Moldova) has been found to be 'non-compliant'. The main reasons for this rating are that there appeared to be some lack of clarity on the responsibilities and hence effectiveness. At the other extreme, 7 countries fall within the 'compliant' range.[84] In the mid-range, 6 countries[85] fall within the 'partially compliant' rating, while the other 15 countries fall within the 'largely compliant' rating.[86]

379. A review of the factors underlying these ratings indicates that they vary from the effectiveness of the whole regime to weaknesses inherent in the supervisory regime itself and hence its implementation. It can however be concluded that the underlying factors have been consistently applied for the given ratings, although some minor divergences may appear.

380. On the positive side, the analyses for R.29 in the Mutual Evaluation Reports show that for those MONEYVAL countries falling within the higher range of the ratings there are some common factors worth noting. For example these countries have strong legislative provisions that give adequate powers to the supervisory authorities to fulfil their supervisory responsibilities. For their part, supervisory authorities prepare annual inspection plans, in some cases using a risk based approach, that include adequate anti-money laundering and financing of terrorism examinations. In these cases this is often reflected in the type and level of statistics maintained by the relevant authorities.

Recommendation 30 – Resources (Financial Sector and DNFBP)

Recommendation 30
Countries should provide their competent authorities involved in combating money laundering and terrorist financing with adequate financial, human and technical resources. Countries should have in place processes to ensure that the staff of those authorities are of high integrity.

381. R.30 requires that all competent authorities involved in the combating of money laundering or the financing of terrorism should have adequate financial, human and technical resources. This part of the section on preventive measures of the review will focus on resources for supervisory authorities for the financial sector and DNFBP.

382. Although the overall rating for R.30 across all MONEYVAL countries appears to be encouraging, with 55.2 % of the countries falling within the upper end of the ratings range, the underlying factors for the individual ratings indicate some horizontal, cross-cutting issues for supervisory authorities as regards their allocation of resources for anti-money laundering and financing of terrorism supervisory functions. Only one country (Hungary) has been given a 'compliant' rating with 15 countries[87] falling within the 'largely compliant' rating. On the other hand, only one MONEYVAL country (Bosnia and Herzegovina) has been identified as being 'non-compliant' with R.30 due to an overall lack of adequate resources. On the other hand, 12 countries[88] have been given a 'partially compliant' rating, some of them with a notable number of weaknesses.

383. In general it would be safe to comment that throughout the Mutual Evaluation Reports the indications are that it was rather difficult for evaluators to identify the resources of supervisory authorities specifically allocated to their anti-money laundering and financing of terrorism supervisory responsibilities. This again was because often this function forms part of the prudential supervisory function within these authorities and in

84. Cyprus, Czech Republic, Hungary, Lithuania, Montenegro, Slovenia, Israel
85. Andorra, Azerbaijan, Bosnia and Herzegovina, Russian Federation, Slovak Republic, Ukraine.
86. Albania, Armenia, Bulgaria, Croatia, Estonia, Georgia, Latvia, Liechtenstein, Malta, Monaco, Poland, Romania, San Marino, Serbia, "the former Yugoslav Republic of Macedonia".
87. Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Georgia, Latvia, Liechtenstein, Lithuania, Malta, Montenegro, Poland, Romania, Slovenia, Israel.
88. Albania, Andorra, Armenia, Azerbaijan, Moldova, Monaco, Russian Federation, San Marino, Serbia, Slovak Republic, " the former Yugoslav Republic of Macedonia", Ukraine.

particular for the financial sector supervisory authorities. Consequently, whereas, in general, supervisory authorities have been identified as being well resourced, resources assigned to anti-money laundering and financing of terrorism supervision is at times found to be inadequate (e.g. Azerbaijan, Bulgaria, Czech Republic, Israel and Poland). This again in particular was where the responsibilities for such supervision was vested in the financial sector supervisors. Other countries appear to have general resource problems, where the level of resources is inadequate for fulfilling their responsibilities (e.g. Albania, Croatia, Estonia, "the former Yugoslav Republic of Macedonia", Monaco and San Marino). Where financial intelligence units themselves carry the supervisory responsibilities, resources have in general been found to be inadequate or insufficient (e.g. Croatia, Czech Republic, Estonia, Liechtenstein, Moldova, Montenegro, Romania and the Slovak Republic). In the case of the Russian Federation and Ukraine the Mutual Evaluation Reports find that it was difficult to assess the availability of adequate resources, whereas in the case of Malta the Mutual Evaluation Report finds a weakness in resources for supervising DNFBP in general while the financial sector supervisory authority appears to be well resourced.

384. The lack of specific rules requiring the staff of the supervisory authorities to maintain high professional standards has been identified for Azerbaijan, Bosnia and Herzegovina and "the former Yugoslav Republic of Macedonia". The latter also carries an underlying rating factor dealing with the insufficient operational independence and autonomy of the supervisory authorities (except the National Bank).

385. An analysis of the Progress Reports submitted to the Plenary by most MONEYVAL countries indicates that measures have been taken to ensure that adequate resources are made available to the supervisory authorities in connection with the supervision of compliance with anti-money laundering and financing of terrorism obligations.

Recommendation 31 – National Cooperation and Co-ordination

Recommendation 31

Countries should ensure that policy makers, the FIU, law enforcement and supervisors have effective mechanisms in place which enable them to co-operate, and where appropriate co-ordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing.

386. National cooperation between policy makers, the financial intelligence unit, law enforcement agencies and supervisory authorities is an important element in the anti-money laundering and financing of terrorism architecture. Such cooperation should allow the relevant authorities to co-ordinate effectively on matters concerning the development and implementation of policies at the national level.

387. Statistics related to the ratings for R.31 are quite encouraging for MONEYVAL countries, with 65.5 % falling within the 'largely compliant' and 'compliant' rating range. Indeed 11 countries[89] received a 'largely compliant' rating with 8 other countries[90] receiving a 'compliant' rating. None of the MONEYVAL countries has been found to be 'non-compliant' with R.31. The other 10 countries[91] were given a 'partially compliant' rating.

R.31	Number of ratings				Percentage of ratings			
	NC	PC	LC	C	NC	PC	LC	C
	0	10	11	8	0.0 %	34.5 %	37.9 %	27.6 %

388. In almost all MONEYVAL countries rated as 'compliant' with R.31 there are a number of synergies that indicate common elements in the structures at the domestic level that enable the relevant authorities to effectively cooperate in addressing issues related to anti-money laundering and the financing of terrorism. For a number

89. Armenia, Estonia, Latvia, Lithuania, Moldova, Montenegro, Monaco, Romania, Russian Federation, Serbia, Ukraine.
90. Bulgaria, Croatia, Cyprus, Hungary, Liechtenstein, Malta, Slovenia, Israel.
91. Albania, Andorra, Azerbaijan, Bosnia and Herzegovina, Czech Republic, Georgia, Poland, San Marino, Slovak Republic, "the former Yugoslav Republic of Macedonia".

of these countries (e.g. Croatia, Cyprus, Hungary, Liechtenstein, Malta and Israel) there are legal provisions requiring such cooperation and coordination between the relevant authorities. All countries have established multidisciplinary working groups, task forces, advisory authorities or inter-ministerial committees comprising members from the relevant competent authorities, with the main objective of facilitating operational and strategic cooperation. Even though almost all such fora are often not decision or policy making bodies, they often contribute to policy matters. Further to this, some countries (Croatia, Liechtenstein and Malta) have liaison officers strategically placed within certain competent authorities – for example with law enforcement agencies – to facilitate further the exchange of essential information. Other countries (e.g. Croatia, Cyprus, Malta and Israel) have further strengthened cooperation and exchange of information through signing Memoranda of Understanding between the relevant authorities.

389. The bodies or fora established by MONEYVAL countries as indicated above are often multi-disciplinary and have common or similar objectives throughout. These objectives include some or all of the following tasks, functions and responsibilities:

- Co-ordination of activities;
- Elaboration of policies and procedures;
- Drafting of proposals for laws or amendments in relation to money laundering or the financing of terrorism;
- Systemic reviews of anti-money laundering or financing of terrorism preventive systems;
- Assessment of level of compliance by obliged persons with the relevant laws, rules and regulations;
- Assessment of effectiveness of preventive and enforcement systems;
- Strategic analysis of the threats and vulnerabilities; and
- Assessment of statistics.

390. An assessment of the position in all MONEYVAL countries rated as being 'largely compliant' with R.31 indicates that, similar to those countries falling within the 'compliant' rating, these countries have all established mechanisms for co-operation and co-ordination including for the exchange of information. Such mechanisms include either working groups or institutional arrangements that provide for such cooperation. In some countries however there may be more than one working group with sectoral membership complemented through other arrangements in place through memoranda of understanding. An analysis of the underlying factors for the 'largely compliant' rating indicates that the issue of effectiveness is a common feature, although reported under different factors. These factors range from lack of formal co-ordination to insufficient interaction with all supervisory authorities and the inadequacy of cooperation at the operational level with lack of feedback and accountability.

391. The analyses of R.31 in the Mutual Evaluation Reports for those MONEYVAL countries with a 'partially compliant' rating indicate a different position than that for those countries in the 'largely compliant' rating due to diverse and more serious factors underlying the rating. Some countries falling within this rating range have set up ways for cooperation and coordination in matters related to money laundering and the financing of terrorism. However the analyses indicate serious shortcomings that are often common to these countries. Further to the issue of the level of effectiveness of any arrangements in place, identified shortcomings include the lack of results on matters requiring cooperation and hence the lack of coordination and co-operation particularly on policy matters; inconsistency in approaches and lack of collective and regular review of the anti-money laundering and financing of terrorism systems in place.

392. It is not surprising therefore from the above analysis that the ratings are somewhat evenly spread with an overall stronger performance leading to ratings in the higher range.

393. According to the Progress Reports, and in particular for those countries falling within the 'partially compliant' range, most have taken, or at the time were taking, measures to establish more effective mechanisms for cooperation and coordination including the exchange of information. Such measures, once adopted and effectively implemented, should assist MONEYVAL countries to achieve an even higher level of effective

cooperation at national level. Such cooperation should in turn assist better cooperation at the international level.

Recommendation 32 – Statistics (Financial aspects)

Recommendation 32
Countries should ensure that their competent authorities can review the effectiveness of their systems to combat money laundering and terrorist financing systems by maintaining comprehensive statistics on matters relevant to the effectiveness and efficiency of such systems. This should include statistics on the STR received and disseminated; on money laundering and terrorist financing investigations, prosecutions and convictions; on property frozen, seized and confiscated; and on mutual legal assistance or other international requests for co-operation.

394. R.32 is one of the Recommendations with a composite rating. It calls upon countries to ensure that their competent authorities can review the effectiveness of their systems to combat money laundering and terrorist financing systems through the maintenance of comprehensive statistics on matters relevant to the effectiveness and efficiency of such systems.

395. With one of the main objectives of the Third Round Mutual Evaluation process being the measurement of the effectiveness of the anti-money laundering and financing of terrorism systems in place in MONEYVAL countries, the Mutual Evaluation Reports place high importance on, and give priority to, statistics. It is evident throughout all Mutual Evaluation Reports that the emphasis on statistics is a common factor in all sectors of the analysis, mainly as an objective basis for the measurement of the effectiveness of the system.

396. The overall ratings for R.32 are slightly biased towards the lower range of the rating system at 58.6 % followed by a 41.4 % in the upper range, although no country has been given a 'compliant' rating. However, 3 countries[92]have been found to be 'non-compliant' with R.32. The majority of MONEYVAL countries (14)[93] fell within the 'partially compliant' rating closely followed by the 12 countries[94] in the 'largely compliant' rating.

397. This part of the review will address statistics kept, or that should have been kept, by the relevant competent authorities for the financial sector.

398. According to the Mutual Evaluation Reports the main statistics expected by the evaluators for the financial sector refer to the size of the sector; the number of onsite examination visits relating to anti-money laundering and the financing of terrorism; quantitative and qualitative information on training sessions; and on the type and volume of sanctions applied.

399. With regard to the first set of statistics relating to the size of the financial sector it appears that all MONEYVAL countries were able to provide the necessary data. For some countries the data provided was more detailed, going beyond the size of the sector by number and type of operating institutions. Such additional information would include the relationship of the financial sector with gross domestic product (GDP) by balance sheet size, foreign and domestic operational activities, and structure and systemic importance of the sector for the countries' economies.

400. Statistics on on-site examinations by number of visits spread over the types of institutions were often forthcoming from almost all countries. It appears from the Mutual Evaluation Reports however that at times it was difficult for the evaluators to identify those on-site examination visits related to anti-money laundering and financing of terrorism separate from on-site prudential visits. This is because most countries did not have readily available statistics indicating on-site visits divided by objective into prudential examinations, focussed anti-money laundering and financing of terrorism examinations, and those prudential examinations with a component related to anti-money laundering and the financing of terrorism.

92. Armenia, Azerbaijan, Bosnia and Herzegovina
93. Albania, Bulgaria, Croatia, Cyprus, Georgia, Lithuania, Moldova, Montenegro, Poland, San Marino, Serbia, Slovak Republic, "the former Yugoslav Republic of Macedonia", Ukraine.
94. Andorra, Czech Republic, Estonia, Hungary, Latvia, Liechtenstein, Malta, Monaco, Romania, Russian Federation, Slovenia, Israel.

401. Within the context of quantitative and qualitative training statistics, it also appears that the majority of countries could provide statistics for training sessions where the relevant financial sector competent authorities were involved. Indeed some training statistics on anti-money laundering and financing of terrorism issues were also forthcoming from the industry itself.

402. The same cannot be said for statistics related to sanctions by type and volume. The indications from the Mutual Evaluation Reports are that, in general, supervisory authorities for the financial sector do not keep detailed statistics on sanctions applied – be it administrative or punitive – divided into those imposed for prudential compliance purposes and those related to anti-money laundering and financing of terrorism issues where the supervisory authority is the authority responsible to impose such sanctions.

Special Recommendation VI – Alternative Remittances

Special Recommendation VI – Alternative remittance systems
Each country should take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, should be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions.

403. The objective of SR.VI is to ensure that persons or legal entities providing a money or value transfer service are licensed or registered and made subject to all the FATF 40+9 Recommendations that apply to banks and non-bank financial institutions. Thus the Recommendation is composed of three elements: licensing or registration; the application of the FATF 40+9 relevant Recommendations; and the imposition of sanctions for failure to obtain the relevant licence or for non-compliance with the anti-money laundering and financing of terrorism obligations. According to the FATF Guidance Notes for the Special Recommendations the term *money remittance* or *transfer service* refers to a financial service whereby the funds are moved for individuals or entities through a dedicated network or through the regulated banking system. The requirements under SR.VI are further complemented by the relevant Interpretative Note and International Best Practice guidance. These form part of the supporting documentation for the assessment of compliance by MONEYVAL countries with SR.VI.

404. Statistics show that compliance with SR.VI for MONEYVAL countries is biased towards the lower end of the rating range at 64.3 %. This is made up of 5 countries[95] being 'non-compliant' and 13 countries[96] having a 'partially compliant' rating.

405. An assessment of the factors underlying the 'non-compliant' ratings indicates some common factors:

- No licensing or registration regime is present for the provision of money and value transfer services;
- Entities informally undertaking such activities are therefore not subject to anti-money laundering and financing of terrorism obligations;
- Lack of effectiveness of compliance supervision and sanctioning powers.

406. A similar assessment for those MONEYVAL countries falling within the 'partially compliant' rating likewise indicates some common factors underlying the rating given:

- Lack of adequate supervision in particular for non-bank financial institutions providing money transfer service and in particular where this service is provided by the Post Office;
- Informal systems present and not regulated;
- Effectiveness concerns.

95. Croatia, Poland, Romania, Russian Federation, San Marino.
96. Albania, Andorra, Azerbaijan, Bosnia and Herzegovina, Czech Republic, Georgia, Latvia, Moldova, Montenegro, Serbia, "the former Yugoslav Republic of Macedonia", Ukraine, Israel.

407. One MONEYVAL country – Slovenia – has been given a 'not applicable' rating. The reason for this conclusion as indicated in the analysis of the Special Recommendation in the Mutual Evaluation Report is that *there is a general prohibition in Slovenia against carrying out money remittance activities outside the regulated and supervised banking sector.*

408. On the other hand, 7 MONEYVAL countries[97] have been given a 'largely compliant' rating while only 3 countries[98] have been found to be 'compliant' with SR.VI.

409. An assessment of the underlying factors for those countries carrying a 'largely compliant' rating indicates that the lack of effective supervision, in particular as regards the Post Office when providing money transfer services, has been the main common underlying factor.

410. Essential Criterion SR VI.2 specifies those Recommendations to which entities or persons providing money transmission services should be subject. The analysis of the underlying factors further show that it is only for some countries that reference is directly made to the application of the specified Recommendations.

411. On the positive side, for those MONEYVAL countries falling within the 'compliant' rating the Mutual Evaluation Reports indicate that in these countries either the money transfer service can only be provided by banks and therefore in general the requirements under the anti-money laundering and financing of terrorism laws apply directly or there is a separate licensing regime supported by a supervisory function for all obliged entities.

412. An assessment of the Progress Reports for some of the MONEYVAL countries presented to the Plenary shows some interesting results. It is not clear for example for some countries (e.g. Albania and Poland) whether any measures have been taken so far to rectify identified deficiencies. For other countries (e.g. Andorra, Georgia, Latvia, Moldova and San Marino) the Progress Report indicates that some legislative and implementation measures have already been put in place as at the time of reporting. On the other hand, for some countries (e.g. Croatia and Czech Republic) the indication is that measures are being planned or being taken to cover SR.VI through the adoption of the EU Payment Services Directive.[99]

Special Recommendation VII – Wire Transfers

Special Recommendation VII – Wire Transfers
Countries should take measures to require financial institutions, including money remitters, to include accurate and meaningful originator information (name, address and account number) on funds transfers and related messages that are sent, and the information should remain with the transfer or related message through the payment chain. *Countries should take measures to ensure that financial institutions, including money remitters, conduct enhanced scrutiny of and monitor for suspicious activity funds transfers which do not contain complete originator information (name, address and account number).*

413. SR.VII imposes certain obligations on financial institutions, including money remitters under SR.VI, to include accurate and meaningful information on the originator of the transfer and that such information remains with the transfer or related message throughout the complete payment chain.[100] Moreover financial institutions and money remitters are required to conduct enhanced scrutiny and monitoring for suspicious funds transfer transactions that do not include complete originator information. The requirements under SR.VII are further supported by the FATF Revised Interpretative Note and the general Guidance to the Special Recommendations, all of which are reference documents for the assessment of compliance with SR.VII.

97. Armenia, Cyprus, Estonia, Liechtenstein, Lithuania, Monaco, Slovak Republic.
98. Bulgaria, Hungary, Malta.
99. Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC,2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC. The test of the Directive is with EEA relevance. *OJ L 319, 05.12.2007, pp. 1-36.*
100. Originator information is broadly, but not exhaustively, defined as including the name, address and account number.

414. Similar to the results for SR.VI, statistics show that compliance with SR.VII by MONEYVAL countries is biased towards the lower end of the rating range at 72.4 %. Within this range, 9 countries[101] have been found to be 'non-compliant' while 12 countries[102] have been given a 'partially compliant' rating.

415. An assessment of the underlying factors for those countries rated as 'non compliant' include:

- No or restricted requirements for originator, intermediary and beneficiary institutions in compliance with the relevant essential criteria;
- In some instance higher thresholds than the established limits have been set, in particular for occasional transactions;
- Deficiencies in sanctioning regime;
- Lack of compliance monitoring by supervisory authorities.

416. For those MONEYVAL countries falling within the 'partially compliant' range the main underlying factors include:

- Lack of full legal provisions but in practice there is an application of some of the requirements;
- No obligation for the verification of originator information;
- No risk based procedures in place.

417. At the upper end of the rating range registered by 27.6 % of MONEYVAL countries, 2 countries (Cyprus and Hungary) are 'compliant' with SR.VII with 6 countries[103] falling within the 'largely compliant' rating.

418. For most of the MONEYVAL countries falling within the 'largely compliant' rating the underlying factors mainly reflect the evaluators' view that *the implementation and effectiveness of the EU Regulation could not be assessed* further to the non-compliance with some of the essential criteria.

419. Within the European Union, the requirements under SR.VII have been transposed in Regulation (EC) No 1781/2006 of 15 November 2006 which came in force on 1 January 2007. The text of the Regulation is also of relevance to countries within the European Economic Area.[104]

420. In the light of the fact that EU Regulations are *de facto* law for EU Member States as from the date of coming into force, an assessment has been carried out to identify ratings given to EEA countries and the underlying factors. This however depends on the date of the mutual evaluation, since the EU Regulation came in force as from January 2007. The assessment indicates that only two EU Member States were mutually evaluated after the coming into force of the Regulation. Both countries (Bulgaria and Romania) were given a 'largely compliant' rating on the basis of lack of demonstrable effectiveness as the Regulation had only been in force for a short time. For all the other EU Member States which were evaluated prior to the coming into force of the Regulation, and which have been given different ratings depending on the specific underlying factors, the Mutual Evaluation Reports that were adopted during or after 2007 refer to the imminent or recent entry into force of the EU Regulation.

421. Indeed the Progress Reports for EU Member States refer to the EU Regulation as being part of domestic law, although the effectiveness of implementation cannot be measured through these reports. For those MONEYVAL countries that are not also EU Member States, the Progress Reports indicate progress on legislative measures which often also reflect the EU Regulation.

101. Albania, Georgia, Latvia, Liechtenstein, Moldova, Montenegro, Poland, San Marino, " the former Yugoslav Republic of Macedonia".
102. Andorra, Azerbaijan, Bosnia and Herzegovina, Croatia, Lithuania, Malta, Monaco, Russian Federation, Serbia, Slovak Republic, Ukraine, Israel.
103. Armenia, Bulgaria, Czech Republic, Estonia, Romania, Slovenia.
104. Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds. *OJ L 345 of 08.12.2006 pp 1-9.*

Average Ratings for Other Preventive Recommendations

422. As for the Core and Key Preventive Recommendations an analysis of the average of the ratings given for the other preventive recommendations has been carried as shown in the table below.[105,106]

Average Ratings for other Preventive Recommendations (number of countries)

Category	Not Applicable	Non Compliant	Partially Compliant	Largely Compliant	Compliant
Other Preventive	1	6	11	7	4

423. The above assessment indicates that the aggregate ratings for MONEYVAL countries for the non-core and non-key preventive Recommendations is biased towards the lower end of the ratings range at 58.6 % or 17 countries, with the majority (11 countries) falling in the 'partially compliant' rating. The study further shows that the four main Recommendations contributing to this low degree of compliance are R.12 (28 countries), R.24 (26 countries) and R.6 and 21 (23 countries each). This position is closely followed by R.17 and SR.VII at 21 countries each, and R.7, 8 and 22 at 20 countries each.

424. The above table further indicates that even for the 11 countries (37.9 %) falling within the upper end of the rating range, only 4 countries have been identified as being within the 'compliant' rating. The overall position is mainly affected by the high ratings applied to R.19 (25 countries), R.29 (22 countries) and R.20 (21 countries).

Overall Average Ratings for Preventive Recommendations

425. The following table summarises the overall average ratings position for MONEYVAL countries:

Overall Average Ratings for Preventive Recommendations (number of countries)

Category	Not Applicable	Non Compliant	Partially Compliant	Largely Compliant	Compliant
Core & Key	-	3	12	10	4
Other	1	6	11	7	4
Overall Average Compliance Position	1	5	11	8	4

426. The overall average compliance position by MONEYVAL countries with all the preventive Recommendations remains at the lower end of the range at 55.2 % or 16 countries. Within this range, the majority (11 countries) are in the 'partially compliant' rating. For the 12 countries rated within the upper end of the range, the majority (8 countries) are in the 'largely compliant' rating.

427. Overall this position raises some degree of concern in respect of MONEYVAL countries. There are however particular factors throughout the Third Mutual Evaluation Round that may have had implications on the ratings for preventive measures, such as:

- The complexity of the whole exercise itself through the Methodology as applied in general and as applied within the context of the complexity of certain Recommendations themselves, e.g. R.5;

105. Recommendations 6, 7, 8, 9, 11, 12, 15, 17, 18, 19, 20, 21, 22, 24, 25, 29, 30, 31, and 32.
106. Special Recommendations VI, VII.

- Differences that may have emerged between the earlier reports and the most recent ones as a result of more refined interpretation of both the Recommendations and the evaluation Methodology as developed through experience;
- The enactment of legislation either immediately before or immediately after the on-site visit that could have impacted the ratings to different degrees but left gaps on effectiveness;
- The position taken by most countries in not updating their legislation until the coming into force of the EU Third Anti-Money Laundering Directive.

IV. Law enforcement issues

(Incorporating Recommendations 13, 14, 16, 26-28 and 40 and Special Recommendations IV and V)

Core Recommendations

Recommendation 13 and Special Recommendation IV – Suspicious Transaction Reporting

Recommendation 13
If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, directly by law or regulation, to report promptly its suspicions to the financial intelligence unit (FIU).

Special Recommendation IV – Reporting suspicious transactions related to terrorism
If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations, they should be required to report promptly their suspicions to the competent authorities.

428. the overall ratings for R.13 tended towards the lower range of the rating system at 65.5%, followed by 34.3% in the upper range with only 1 country being given a 'compliant' rating. A similar pattern emerges for SR.IV, with 65.5% being rated in the lower range, followed by 34.3% in the upper range, with only 1 country being given a 'compliant' rating. It is notable, however, that for R.13, 2 countries were rated as 'non-compliant' whereas for SR.IV, 9 countries were rated as 'non-compliant', indicating that the impact of a Criterion SR IV.1[107] deficiency on the overall rating is generally higher than corresponding non-compliance with Criterion 13.2.[108]

429. With the exception of one country, all jurisdictions have complied with the minimal international standard by establishing a suspicious/unusual transaction reporting (STR) regime. Some countries have opted for additional reporting along objective, mostly threshold based cash transaction reports (CTR).

430. Although the reporting duty should apply at least to all suspected proceeds of the designated predicate offences, 7 countries were found lacking in this respect, as a result of a deficient coverage of the money laundering offence, mostly (as noted in the legal section of this review) in respect of the criminalisation of insider

107. Criterion IV.1 provides: "A financial institution should be required by law or regulation to report to the FIU (a suspicious transaction report – STR) when it suspects or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. This requirement should be a direct mandatory obligation, and any indirect or implicit obligation to report suspicious transactions, whether by reason of possible prosecution for a FT offence or otherwise (so called "indirect reporting"), is not acceptable."

108. Criterion 13.2 provides: "The obligation to make a STR also applies to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism."

trading and market manipulation. In addition, 17 countries were criticised for their failure to include attempted transactions in their reporting obligations.

431. The statistics show a preponderance of objective criteria based reports, particularly in the form of CTRs, with generally a much larger volume of them being received by the FIU than STRs. Countries that apply both systems generally view CTRs as an additional tool for the analysis of STRs. Some FIUs have difficulties in coping with the high volume generated by an automatic reporting system, and very few CTRs appear to give rise to further analysis and dissemination.

432. With regard to reporting of suspicions of terrorist financing (which was a comparatively new obligation for many countries in the 3 rd round), 19 jurisdictions were found deficient, either as a consequence of the absence of the criminalisation of terrorist financing and therefore of the corresponding reporting obligation, or because of insufficient coverage of both. However, progress reports indicate that jurisdictions are gradually taking corrective action to cover all predicate offences and to introduce terrorist financing related reporting.

433. The effectiveness of analysis is frequently hampered by the lack of or the poor quality of relevant statistics. In short, there is still potential for improvement in respect of the number and quality of STRs, particularly from the non bank financial sector, through better guidance by the FIU or other competent authority.

434. In countries which make reports to the FIU in the context of SR.III, it was frequently the case that no other reports were made in respect of SR.IV, which may indicate confusion in the minds of the financial sector about the wider ambit of SR.IV reporting, which may need addressing through more focused guidance on SR.IV.

435. Although not an FATF standard, the principle of *a priori* reporting before executing the suspect transaction[109] clearly enhances the effectiveness of the reporting system, inasmuch it allows for the FIU and the law enforcement authorities to intervene in a more timely way. It is encouraging to see that 16 jurisdictions have adopted this approach, although it is somewhat surprising that not all EU countries had at the time of their evaluations expressly imposed this rule.

Key Recommendations

Recommendation 26 – The FIU

Recommendation 26
Countries should establish a FIU that serves as a national centre for the receiving (and, as permitted, requesting), analysis and dissemination of STR and other information regarding potential money laundering or terrorist financing. The FIU should have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of STR.

436. Overall there was a high level of compliance with R.26, with 72.4% of ratings in the upper range. Only 2 countries were rated as 'non-compliant', one of which (Azerbaijan) had not established an FIU that met international standards at the time of the adoption of its evaluation report in December 2008.[110] The other country in this category (San Marino) made numerous modifications to the institutional framework of its FIU and to its operational practices the year following the adoption of its mutual evaluation report to address identified deficiencies.

437. Across all the reports, the main deficiencies identified were:

- Limitations on the legal remit of the FIU, in particular failure to include terrorist financing in its scope of responsibilities;
- Failure to provide guidance on the manner of reporting;

109. The EU Directive imposes an upfront STR reporting
110. Azerbaijan subsequently created an FIU which became operational on 2 November 2009.

- Lack of real independence or autonomy (in which each case had to be judged on its own particular facts);
- Failure to implement adequate confidentiality rules and other security system concerns;
- Periodic reports by the FIU were either non-existent or considered by the evaluators to be insufficient; and
- Failure to maintain or provide adequate statistics.

438. One of the most persistent criticisms made of FIUs with additional supervisory responsibilities[111] was the insufficiency of resources for such activities or that these supervisory activities had a negative impact on the overall capacity of the FIU to perform its role. This issue was also reflected in R.30, which deals overall with the obligation upon countries to provide AML/CFT authorities with adequate financial, human and technical resources.

439. The (legal) powers of the FIUs, particularly in respect of their access to additional information whether from the reporting entities or other outside sources, were largely deemed to be sufficient, although some critical remarks were made in this context in respect of 7 jurisdictions, mostly related to the more effective use by the FIU of its "investigative" powers.

440. As touched on earlier in the legal section, the majority of jurisdictions (17) provided for a mechanism for suspension of the suspect transaction or blocking of the assets. 15 FIUs had a direct power to do this, while 2 had to involve its hierarchy (usually the Minister or Prosecutor General) to initiate the measure. 3 jurisdictions applied a similar regime obliging the reporting entity itself to block/suspend the disclosed transaction.

441. Given the generally high ratings that were given, no searching analysis had been done in this review of the effectiveness of the FIUs in their core functions. Often the police, as customer of the FIU, had views on the FIU performance.

442. This review has not taken any position on whether receiving a large quantity of STRs is better or worse than receipt of a smaller number of better quality STRs. This debate was had in several reports when national performance under R.13 and R.26 was discussed. However it is suggested that one way to estimate or approximate the effectiveness of the functioning of the FIU is by an analysis of the statistics on the output from the FIU to law enforcement, compared with the input in terms of STRs received. The following table sets out the percentage of reports sent by MONEYVAL FIUs onwards to law enforcement agencies for investigation, compared with the number of STRs they received.

Percentage of Intelligence reports against number of STRs received

% of received Reports sent to law enforcement	<10%	10-20%	20-30%	30-40%	40-50%	>70%
FIUs (29 in total)	14	4	5	2	2	2

Although the figures may not be decisive *per se*, this comparison firstly shows a big difference between the FIUs, with almost half of them forwarding less than 10% of their STRs, after processing. This is not intended to offer a judgement on the performance of the 14 FIUs that send less than 10% of their STRs to law enforcement but, it is suggested, such a comparison may provide a basis for deeper analyses by the FIUs themselves of the way in which they are performing and perhaps of the quality of the STRs they receive. Analysing relevant figures domestically in this way is also worth undertaking perhaps, not just within an FIU, but between the FIU and law enforcement, which has to work with the material that they are sent.

111. This is not an issue which is directly covered by R.26 (which relates to the FIU core functions).

Recommendation 40 – Other Forms of Co-operation (Law Enforcement Aspects)

Recommendation 40
Countries should ensure that their competent authorities provide the widest possible range of international co-operation to their foreign counterparts. There should be clear and effective gateways to facilitate the prompt and constructive exchange directly between counterparts, either spontaneously or upon request, of information relating to both money laundering and the underlying predicate offences. Exchanges should be permitted without unduly restrictive conditions. In particular: *a) Competent authorities should not refuse a request for assistance on the sole ground that the request is also considered to involve fiscal matters.* *b) Countries should not invoke laws that require financial institutions to maintain secrecy or confidentiality as a ground for refusing to provide co-operation.* *c) Competent authorities should be able to conduct inquiries; and where possible, investigations; on behalf of foreign counterparts.* *Where the ability to obtain information sought by a foreign competent authority is not within the mandate of its counterpart, countries are also encouraged to permit a prompt and constructive exchange of information with non-counterparts. Co-operation with foreign authorities other than counterparts could occur directly or indirectly. When uncertain about the appropriate avenue to follow, competent authorities should first contact their foreign counterparts for assistance.* *Countries should establish controls and safeguards to ensure that information exchanged by competent authorities is used only in an authorised manner, consistent with their obligations concerning privacy and data protection.*

443. Overall there was a high level of compliance with R.40 with 72.4% of the ratings in the upper range. No country was rated as 'non-compliant'.

444. Information exchange at FIU level is generally operating satisfactorily, but this leaves open the question of the real value of the information exchanged and how effectively it is used in practice in investigations and prosecutions.

445. The main deficiencies identified were:

- Information exchange on terrorist financing related cases suffers from the deficiencies found in respect of the criminalisation of terrorist financing and the FIUs' remit;
- The powers to access other domestic databases at the request of counterpart FIUs are variable. It is however not always clear how far these powers actually reach, and to what extent law enforcement FIUs have access to financial information;
- Restrictions on or lack of clarity in respect of the power to conduct inquiries on behalf of counterpart FIU; and
- Shortage of complete and detailed statistics made an overall effectiveness assessment difficult.

Average Ratings for Core and Key Law Enforcement Recommendations

446. The table below provides an average compliance position for the ratings allocated to MONEYVAL countries for core[112] and key[113] law enforcement Recommendations.

Average Ratings for Core and Key 'Law Enforcement' Recommendations (number of countries)

Category	Not Applicable	Non Compliant	Partially Compliant	Largely Compliant	Compliant
Core	-	5	14	9	1
Key	-	-	9	14	6
Overall Average Compliance Position	-	2	11	12	4

447. The analyses in the table above show that overall average compliance by MONEYVAL countries with the core and key law enforcement Recommendations is more biased towards the upper end of the ratings spectrum at 16 (55.2%) countries. The overall position is however very much concentrated in the mid-range with an average of 12 countries falling within the 'largely compliant' rating closely followed by the 11 countries in the 'partially compliant' rating.

448. For the core Recommendations the bias is heavily towards the 'partially compliant' rating at 14 (48.3%) countries. At the other end, on average, 9 countries have registered a 'largely compliant' rating. More specifically the 'partially compliant' bias at the lower end is mostly influenced by the ratings for Recommendation 13. On the other hand, the bias at the upper end of the spectrum, in the 'largely compliant range, both Recommendation 13 and Special Recommendation IV have equally contributed to the average rating position. Special Recommendation IV has also strongly influenced the average position in the 'non-compliant' range. This is understandable since at the time of the evaluations most countries were still in the process of legislating for the prevention of the financing of terrorism and hence their reporting obligations were missing.

449. For the key Recommendations the average compliance position is more biased towards the upper end with 20 (69%) countries falling within the 'largely compliant' and 'compliant' ratings, 14 of which fall in the former category. This category reflects the high ratings for Recommendation 26, which also influenced the average 6 countries in the 'compliant' rating range. This is closely followed by Recommendation 40 as an influencing factor. On the other hand, Special Recommendation V has contributed equally to the 'partially' and the 'largely' compliant positions.

112. Core Recommendation 13 and Special Recommendation IV
113. Key Recommendations 26, 40 and parts of Special Recommendation V

Other Law Enforcement Recommendations

Recommendation 16 – Suspicious Transaction Reporting: DNFBP

Recommendation 16
The requirements set out in Recommendations 13 to 15, and 21 apply to all designated non-financial businesses and professions, subject to the following qualifications: *a) Lawyers, notaries, other independent legal professionals and accountants should be required to report suspicious transactions when, on behalf of or for a client, they engage in a financial transaction in relation to the activities described in Recommendation 12(d). Countries are strongly encouraged to extend the reporting requirement to the rest of the professional activities of accountants, including auditing.* *b) Dealers in precious metals and dealers in precious stones should be required to report suspicious transactions when they engage in any cash transaction with a customer equal to or above the applicable designated threshold.* *c) Trust and company service providers should be required to report suspicious transactions for a client when, on behalf of or for a client, they engage in a transaction in relation to the activities referred to Recommendation 12(e).* *Lawyers, notaries, other independent legal professionals, and accountants acting as independent legal professionals, are not required to report their suspicions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege.*

450. As noted earlier in this review, R.16 was undoubtedly the worst performing of all of the Recommendations, with 100% of the ratings being either 'non-compliant' or 'partially compliant'.

451. Apart from, to some extent, casinos and notaries, there is little or no compliance by the DNFBP in respect of their reporting duty. As touched on earlier, lawyers in many countries appear reluctant to comply with any rule which they consider to be an infringement of their legal professional privilege and this attitude translate into a general refusal to report. The reporting performance of real estate agents, dealers in precious metals and trust and company service providers is also very low to negligible. Furthermore, legal coverage of the full range of DNFBP that are required by the FATF standards to have AML/CFT obligations upon them was found to be incomplete in 6 countries (approximately 20% of the countries undergoing evaluation).

452. Underreporting by the DNFBP is a recurrent criticism. This is not only a question of the sector's lack of awareness and, arguably, disinterest, but it also raises the issue of the adequacy of supervision, about which negative comments have already been made under R.24 under financial issues above.

Recommendation 27 – Law Enforcement Authorities

Recommendation 27
Countries should ensure that designated law enforcement authorities have responsibility for money laundering and terrorist financing investigations. Countries are encouraged to support and develop, as far as possible, special investigative techniques suitable for the investigation of money laundering, such as controlled delivery, undercover operations and other relevant techniques. Countries are also encouraged to use other effective mechanisms such as the use of permanent or temporary groups specialised in asset investigation, and co-operative investigations with appropriate competent authorities in other countries.

453. Overall there was a high level of compliance with R.27, with 62.1% of ratings in the 'compliant' or 'largely compliant' range. No countries were rated as 'non-compliant'. This is unsurprising as the standard itself is not very demanding. The standard only requires the designation of law enforcement with responsibility for ensuring money laundering and terrorist financing are "properly investigated". All MONEYVAL countries have such bodies. However, the standards begs the question as to what 'properly investigated' means. It does not clearly call upon countries to proactively investigate money laundering cases by "following the money", and investigating the financial aspects of major proceeds-generating offences (in parallel with the investigation of the predicate offence). Parallel financial investigation using modern financial investigation techniques, as previously noted, can identify laundering activity and criminal proceeds which should be frozen and confiscated. **It is considered that this Recommendation needs seriously reinforcing before the FATF's 4th**

round to focus investigations in major proceeds-generating cases more in the importance of parallel financial investigations and asset recovery.

454. The most common deficiencies indicated under the current standard were:

- insufficient focus by the law enforcement authorities on money laundering and, financial crime and financial aspects of major proceeds-generating cases which could lead to money laundering charges and major confiscations;
- investigations overly focussing on tax matters (at the expense of other identified major proceeds-generating offences domestically);
- absence of clear or formal rules for postponement/waiving of arrests or seizures;
- autonomous money laundering largely untested; and
- insufficient use made of FIU material.
- and poor or undemonstrated effectiveness;

Recommendation 28 – Powers of Competent Authorities

Recommendation 28
When conducting investigations of money laundering and underlying predicate offences, competent authorities should be able to obtain documents and information for use in those investigations, and in prosecutions and related actions. This should include powers to use compulsory measures for the production of records held by financial institutions and other persons, for the search of persons and premises, and for the seizure and obtaining of evidence.

455. Overall there was a very high level of compliance with R.28, with 96.6% of the ratings in the upper range.

456. Only one country (Armenia) was rated as 'partially compliant' as a result of:-

- Access to information limited by financial secrecy laws;
- Insufficient powers to compel the production of documents and information in all cases; and
- The lack of complete and accurate statistics on the number of money laundering cases forwarded or investigated by law enforcement meant that it was difficult to assess effectiveness.

457. The Armenia progress report indicates that steps are being taken to address these issues.

458. The only general criticism that arose related to the failure to make effective use of investigative powers in the AML/CFT context. Thus the problem largely was not a lack of legal powers to undertake enquiries in this area effectively. Most countries had sufficient powers and tools. The question was whether they were being used effectively in the AML/CFT context.

Recommendation 32 – Statistics

FIUs

Recommendation 32
Countries should ensure that their competent authorities can review the effectiveness of their systems to combat money laundering and terrorist financing systems by maintaining comprehensive statistics on matters relevant to the effectiveness and efficiency of such systems. This should include statistics on the STR received and disseminated; on money laundering and terrorist financing investigations, prosecutions and convictions; on property frozen, seized and confiscated; and on mutual legal assistance or other international requests for co-operation.

459. With regard to FIUs, 15 jurisdictions were criticised under R.26. This mainly related to the lack of detail, accuracy and completeness, hampering the effectiveness of the assessment of the FIU. Although most jurisdictions are formally compliant with the R.32.2 (a) criteria[114] on STR reporting, there was very little information on the predicate criminality or the reasons for the suspicions triggering the report. Inconsistency

between the FIU figures and the law enforcement statistics were in several cases also noted, as indicated earlier in this review.

460. With regard to R.27 and 28 it was particularly notable that only one country structured its statistics in such way as to differentiate between third-party laundering and self-laundering and to specify the number of stand-alone money laundering cases, which is a good indication of effective and proactive implementation of R.1. No country gave any indication of the predicate criminality (where applicable).

Statistics on Terrorist Financing

461. Except for one jurisdiction (with 28 convictions out of 33 prosecutions over some 4 years), very few convictions for terrorist financing are on record. One country reported 5 prosecutions with 3 convictions, another 3 prosecutions for terrorist financing arising from the STR system, with no corresponding convictions. One country reported 3 terrorist financing convictions in 2006.

462. Arguably, the low level of vulnerability to this specific form of criminality in most countries subject to this review is an important factor when considering these minimal figures. The exceptions (i.e. where there are a number of cases) arise mainly when countries have been confronted with a series of often large-scale terrorist activities. As noted under SR.IV, some jurisdictions introduced counter-terrorist financing measures only recently and still need to strengthen their reporting system further on this point. The number of FIU reports on terrorist financing is generally low, although the rate is slowly picking up. All in all, no FIU initiated cases led to a terrorist financing conviction. **Further awareness raising, elaborating typologies and developing indicators for the reporting community seem.**

Statistics on Money Laundering

463. The overall situation in respect of the law enforcement AML/CFT effort has definitely improved since the second round, with the number of prosecutions and convictions on the rise. However, in most countries the results in terms of convictions and criminal asset recovery remain disappointingly modest. Disregarding the problematic statistics, which revealed obvious anomalies, and focusing on the most reliable figures, some conclusions can be drawn:

- The law enforcement response to FIU disseminations is still an issue. In some countries no convictions were triggered by FIU reports, although it is not to be excluded that the FIU data was used as supporting material. Also, as highlighted in one report, the FIU information is not necessarily used for money laundering indictments, but can be instrumental in prosecuting other offences.
- In jurisdictions handling both CTR and STR systems, it is nearly impossible to determine the share or value of CTRs in the investigations/prosecutions triggered by a FIU report.
- Although to a varying degree, where the statistics show an active money laundering prosecution policy, the impact of the FIU reports on the number of money laundering indictments is variable but increasing: from low – the lowest representing 1.33% of the prosecutions, though relatively high in absolute numbers (456 in 4 years) – to quite substantial (between 80- 90%) in some countries. The average ratio lies between 12.5% and 50%. In financial havens the prosecutions are nearly exclusively triggered by information supplied by the FIU.
- The statistics need more specification in order to assess the effectiveness of the AML/CFT effort in general, and the impact of the FIU on the final law enforcement results in particular. **Ideally they should differentiate the stand-alone money laundering cases from those prosecuted together with the predicate offence, and also between third-party and self-laundering.** Furthermore, there should be an indication of the

114. Criterion 32.2 (a) provides: "Competent authorities should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorist finaning. This should include keeping annual statistics on:
(a) suspicious transaction reports, and other reports where appropriate under domestic law, received and disseminated
- STR received by the FIU, including a breakdown of the type of financial institution, DNFBP, or other business or person making the STR;
- Breakdown of STR analysed and disseminated;
- Reports filed on: (i) domestic or foreign currency transactions above a certain threshold, (ii) cross border transportation of currency and bearer negotiable instruments, or (iii) international wire transfers."

predicate offence where the burden of proof includes the identification of predicate criminality. In the global context it is important to have an indication of the international aspects of the cases where the predicate criminality and the money laundering activity occur in different countries. **It is critical that countries should be able to provide this type of disaggregated information on a routine basis in the fourth round.**

- In some instances the statistics give a flattering picture. Money laundering charges are systematically included in addition to the predicate offence, although they do not make any real difference in terms of outcomes, and the asset recovery can be dealt with through the predicate offence. **Sometimes the AML/CFT effort is predominantly tax-driven**, focusing on domestic tax offences, drawing attention away from serious criminality and particularly major proceeds-generating offences committed by organised crime. Laundering by or on behalf of organised crime appears, worryingly, to be rarely prosecuted in countries where organised crime is active, and in many countries not at all.

Special Recommendation IX – Cross Border Declaration and Disclosure

Special Recommendation IX – Cash couriers
Countries should have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including a declaration system or other disclosure obligation. *Countries should ensure that their competent authorities have the legal authority to stop or restrain currency or bearer negotiable instruments that are suspected to be related to terrorist financing or money laundering, or that are falsely declared or disclosed.* *Countries should ensure that effective, proportionate and dissuasive sanctions are available to deal with persons who make false declaration(s) or disclosure(s). In cases where the currency or bearer negotiable instruments are related to terrorist financing or money laundering, countries should also adopt measures, including legislative ones consistent with Recommendation 3 and Special Recommendation III, which would enable the confiscation of such currency or instruments.*

464. The overall ratings for SR.IX are in the lower range of the rating system at 75.9%, followed by 24.1% in the upper range, with only 1 country having a 'compliant' rating.

465. The main deficiencies identified were:

- Failure to introduce a declaration/disclosure system;
- Inadequate sanctions;
- Absence of a power to stop, restrain or seize; and
- Lack of statistics.

466. The difficulties typically experienced in the start up phase of a newly introduced system may provide some explanation for the low ratings, although most of the NC/PC findings were made in 2008-2009, some years after SR.IX became a standard. In some instances countries already had some sort of declaration system in place at their borders in the context of currency control, which did not, however, cover all SR.IX standards.

Average Ratings for Other Law Enforcement Recommendations

467. The analysis of the average ratings for MONEYVAL countries for other Recommendations[115] relevant to law enforcement is presented in the following table.

Average Ratings for other 'Law Enforcement' Recommendations (number of countries)

Category	Not Applicable	Non Compliant	Partially Compliant	Largely Compliant	Compliant
Other Law Enforcement	-	4	11	9	5

468. Compliance with the other 'law enforcement' Recommendations is similarly concentrated in the 'partially compliant' and the 'largely compliant' category, with a slight bias towards the former at an average of 11 (38%) countries. Overall the average position is evenly spread between both halves of the ratings range. Except for Recommendation 28, all the other law enforcement Recommendations have influenced the 'partially compliant' average rating, but mostly through Special Recommendation IX and Recommendation 32. Recommendation 16, on the other hand, whilst having some influence on the latter rating, has had a high impact on the 'non-compliant' countries. Indeed none of the MONEYVAL countries was given a rating higher than 'partially compliant' for Recommendation 16. On the other hand, the ratings for the countries within the 'largely compliant' category have been mainly influenced by Recommendation 30 followed by Recommendation 27 (which, as noted earlier, is not a particularly challenging Recommendation at present). Performance on Recommendation 28 has heavily impacted on the 'compliant' average rating with 79.3% of MONEYVAL countries falling within this range.

Overall Average Ratings for Law Enforcement Recommendations

469. The following table summarises the overall average ratings position for MONEYVAL countries for the 'law enforcement' Recommendations:

Overall Average Ratings for 'Law Enforcement' Recommendations (number of countries)

Category	Not Applicable	Non Compliant	Partially Compliant	Largely Compliant	Compliant
Core & Key	-	2	11	12	4
Other	-	4	11	9	5
Overall Average Ratings Position	-	3	11	10	5

470. The overall average position remains very evenly spread with a high concentration in the mid-range, again evenly spread between the 'partially compliant' and the 'largely compliant' ratings.

115. Recommendations 14, 16, 27, 28, 30, 32, and Special Recommendation IX

V. Average Ratings – Conclusions

471. The following table provides an overall average compliance position for MONEYVAL countries on the basis of the ratings given in the Third Round Mutual Evaluations.

Overall Average Ratings for the FATF 40 + 9 Recommendations (number of countries)

Category	Not Applicable	Non Compliant	Partially Compliant	Largely Compliant	Compliant
FATF 40	1	4	10	9	5
Special 9	-	6	15	6	2
Core	-	4	14	10	1
Key	-	1	12	11	5
Core and Key	-	2	13	11	3
Others	1	5	10	8	5
Overall Average Compliance Position	1	4	11	9	4

472. When each of the 40 Recommendations and the 9 Special Recommendations are analysed separately the results of the Third Round Mutual Evaluations indicate that MONEYVAL countries tend towards the 'partially compliant' rating.

473. The overall average rating compliance position remains biased towards the lower half of the rating range with 15 (51.7 %) MONEYVAL countries falling within this category, 11 of which fall in the 'partially compliant' rating. This position is closely balanced however with 13 (44.8 %) MONEYVAL countries falling within the upper rating, 9 of which are within the 'largely compliant' rating. The overall position clearly shows a concentration in the PC and LC ratings (20 countries are in this average bracket). This, of course, does not reflect the actual divergence in compliance by individual countries.

474. Given that the plenary decision between PC and LC can sometimes be finely balanced and taking into account that the ratings in the Mutual Evaluation Reports do not reflect the continuing progress achieved by individual MONEYVAL countries following their mutual evaluations, the overall position can be considered to be quite encouraging. Though, of course, there is a clear need for improvements in many countries on particular issues, especially in respect of national performance in relation to Recommendations involving DNFBP.

VI. Tables

Table 1: Statistics of Ratings by Recommendation

Rec.	Number of ratings					Percentage of ratings				Number of ratings		Percentage of ratings	
	NC	PC	LC	C	N/A	NC	PC	LC	C	NC + PC	LC + C	NC + PC	LC + C
R.1	1	13	15	0	0	3.4%	44.8%	51.7%	0.0%	14	15	48.3%	51.7%
R.2	0	7	15	7	0	0.0%	24.1%	51.7%	24.1%	7	22	24.1%	75.9%
R.3	0	15	12	2	0	0.0%	51.7%	41.4%	6.9%	15	14	51.7%	48.3%
R.4	0	4	11	14	0	0.0%	13.8%	37.9%	48.3%	4	25	13.8%	86.2%
R.5	9	16	4	0	0	31.0%	55.2%	13.8%	0.0%	25	4	86.2%	13.8%
R.6	15	8	6	0	0	51.7%	27.6%	20.7%	0.0%	23	6	79.3%	20.7%
R.7	11	9	6	3	0	37.9%	31.0%	20.7%	10.3%	20	9	69.0%	31.0%
R.8	7	13	6	3	0	24.1%	44.8%	20.7%	10.3%	20	9	69.0%	31.0%
R.9	2	3	4	4	16	15.4%	23.1%	30.8%	30.8%	5	8	38.5%	61.5%
R.10	1	9	14	5	0	3.4%	31.0%	48.3%	17.2%	10	19	34.5%	65.5%
R.11	7	13	8	1	0	24.1%	44.8%	27.6%	3.4%	20	9	69.0%	31.0%
R.12	17	11	1	0	0	58.6%	37.9%	3.4%	0.0%	28	1	96.6%	3.4%
R.13	2	17	9	1	0	6.9%	58.6%	31.0%	3.4%	19	10	65.5%	34.5%
R.14	2	9	11	7	0	6.9%	31.0%	37.9%	24.1%	11	18	37.9%	62.1%
R.15	2	17	8	2	0	6.9%	58.6%	27.6%	6.9%	19	10	65.5%	34.5%
R.16	16	13	0	0	0	55.2%	44.8%	0.0%	0.0%	29	0	100.0%	0.0%
R.17	3	18	6	2	0	10.3%	62.1%	20.7%	6.9%	21	8	72.4%	27.6%
R.18	0	10	11	8	0	0.0%	34.5%	37.9%	27.6%	10	19	34.5%	65.5%
R.19	3	1	1	24	0	10.3%	3.4%	3.4%	82.8%	4	25	13.8%	86.2%
R.20	1	7	11	10	0	3.4%	24.1%	37.9%	34.5%	8	21	27.6%	72.4%
R.21	12	11	4	2	0	41.4%	37.9%	13.8%	6.9%	23	6	79.3%	20.7%
R.22	9	11	4	4	1	32.1%	39.3%	14.3%	14.3%	20	8	71.4%	28.6%
R.23	1	16	11	1	0	3.4%	55.2%	37.9%	3.4%	17	12	58.6%	41.4%
R.24	12	14	3	0	0	41.4%	48.3%	10.3%	0.0%	26	3	89.7%	10.3%
R.25	6	13	10	0	0	20.7%	44.8%	34.5%	0.0%	19	10	65.5%	34.5%
R.26	2	6	14	7	0	6.9%	20.7%	48.3%	24.1%	8	21	27.6%	72.4%
R.27	0	11	14	4	0	0.0%	37.9%	48.3%	13.8%	11	18	37.9%	62.1%
R.28	0	1	5	23	0	0.0%	3.4%	17.2%	79.3%	1	28	3.4%	96.6%
R.29	1	6	15	7	0	3.4%	20.7%	51.7%	24.1%	7	22	24.1%	75.9%
R.30	1	12	15	1	0	3.4%	41.4%	51.7%	3.4%	13	16	44.8%	55.2%
R.31	0	10	11	8	0	0.0%	34.5%	37.9%	27.6%	10	19	34.5%	65.5%
R.32	3	14	12	0	0	10.3%	48.3%	41.4%	0.0%	17	12	58.6%	41.4%
R.33	3	17	6	3	0	10.3%	58.6%	20.7%	10.3%	20	9	69.0%	31.0%
R.34	1	3	2	1	22	14.3%	42.9%	28.6%	14.3%	4	3	57.1%	42.9%
R.35	0	15	12	2	0	0.0%	51.7%	41.4%	6.9%	15	14	51.7%	48.3%

Rec.	Number of ratings					Percentage of ratings				Number of ratings		Percentage of ratings	
R.36	0	6	15	8	0	0.0%	20.7%	51.7%	27.6%	6	23	20.7%	79.3%
R.37	0	1	13	15	0	0.0%	3.4%	44.8%	51.7%	1	28	3.4%	96.6%
R.38	0	9	16	4	0	0.0%	31%	55.2%	13.8%	9	20	31.0%	69.0%
R.39	0	2	16	11	0	0.0%	6.9%	55.2%	37.9%	2	27	6.9%	93.1%
R.40	0	8	15	6	0	0.0%	27.6%	51.7%	20.7%	8	21	27.6%	72.4%
SR.I	2	18	7	2	0	6.9%	62.1%	24.1%	6.9%	20	9	69.0%	31.0%
SR.II	3	20	5	1	0	10.3%	69.0%	17.2%	3.4%	23	6	79.3%	20.7%
SR.III	8	16	5	0	0	27.6%	55.2%	17.2%	0.0%	24	5	82.8%	17.2%
SR.IV	9	10	9	1	0	31.0%	34.5%	31.0%	3.4%	19	10	65.5%	34.5%
SR.V	0	12	12	5	0	0.0%	41.4%	41.4%	17.2%	12	17	41.4%	58.6%
SR.VI	5	13	7	3	1	17.9%	46.4%	25.0%	10.7%	18	10	64.3%	35.7%
SR.VII	9	12	6	2	0	31.0%	41.4%	20.7%	6.9%	21	8	72.4%	27.6%
SR.VIII	12	15	1	1	0	41.4%	51.7%	3.4%	3.4%	27	2	93.1%	6.9%
SR.IX	7	15	6	1	0	24.1%	51.7%	20.7%	3.4%	22	7	75.9%	24.1%

Remark : R.30 of Lithuania has a "C, LC, C" rating ; only the lowest has been taken into account.

Key : *Percentage of NC + PC ratings (for all Recommendations)*

Above 75%
Between 75% and 50%
Between 50% and 25%
Below 25%

Table 2: Statistics of Ratings by Country - All Recommendations & Core and Key Recommendations

		All Recommendations							Core and Key Recommendations								
		Number of ratings					Number of ratings		Percentage ratings		Number of ratings				Number of ratings		Percentage ratings	
	Country	NC	PC	LC	C	N/A	NC + PC	LC + C	NC + PC	LC + C	NC	PC	LC	C	NC + PC	LC + C	NC + PC	LC + C
	Albania	11	22	10	5	1	33	15	68.8%	31.3%	1	7	6	2	8	8	50.0%	50.0%
	Andorra	11	19	15	2	2	30	17	63.8%	36.2%	4	5	7	0	9	7	56.3%	43.8%
	Armenia	5	17	20	6	1	22	26	45.8%	54.2%	1	8	7	0	9	7	56.3%	43.8%
	Azerbaijan	19	22	5	1	2	41	6	87.2%	12.8%	6	8	2	0	14	2	87.5%	12.5%
	Bosnia and Herzegovina	13	18	14	3	1	31	17	64.6%	35.4%	2	7	6	1	9	7	56.3%	43.8%
	Bulgaria	1	14	19	13	2	15	32	31.9%	68.1%	0	4	7	5	4	12	25.0%	75.0%
	Croatia	14	18	12	3	2	32	15	68.1%	31.9%	3	8	5	0	11	5	68.8%	31.3%
	Cyprus	0	10	22	17	0	10	39	20.4%	79.6%	0	2	8	6	2	14	12.5%	87.5%
	Czech Republic	6	18	18	5	2	24	23	51.1%	48.9%	0	8	8	0	8	8	50.0%	50.0%
	Estonia	1	12	27	8	1	13	35	27.1%	72.9%	0	3	11	2	3	13	18.8%	81.3%
	Georgia	9	26	8	4	2	35	12	74.5%	25.5%	1	10	5	0	11	5	68.8%	31.3%
	Hungary	1	9	11	27	1	10	38	20.8%	79.2%	1	5	5	5	6	10	37.5%	62.5%
	Latvia	5	16	15	11	2	21	26	44.7%	55.3%	0	6	8	2	6	10	37.5%	62.5%
	Liechtenstein	2	26	14	7	0	28	21	57.1%	42.9%	0	11	3	2	11	5	68.8%	31.3%
	Lithuania	0	20	17	11	1	20	28	41.7%	58.3%	0	8	5	3	8	8	50.0%	50.0%
	Malta	4	8	18	19	0	12	37	24.5%	75.5%	1	1	8	6	2	14	12.5%	87.5%
	Moldova	13	23	7	3	3	36	10	78.3%	21.7%	3	11	2	0	14	2	87.5%	12.5%
	Montenegro	6	14	18	9	2	20	27	42.6%	57.4%	1	5	8	2	6	10	37.5%	62.5%
	Monaco	5	24	15	5	0	29	20	59.2%	40.8%	0	10	5	1	10	6	62.5%	37.5%
	Poland	11	18	13	5	2	29	18	61.7%	38.3%	2	9	3	2	11	5	68.8%	31.3%
	Romania	5	18	17	8	1	23	25	47.9%	52.1%	0	8	6	2	8	8	50.0%	50.0%
	Russian Federation	3	21	13	10	2	24	23	51.1%	48.9%	0	4	8	4	4	12	25.0%	75.0%
	San Marino	19	22	7	0	1	41	7	85.4%	14.6%	5	9	2	0	14	2	87.5%	12.5%
	Serbia	5	21	21	1	1	26	22	54.2%	45.8%	1	7	8	0	8	8	50.0%	50.0%
	Slovak Republic	12	23	12	1	1	35	13	72.9%	27.1%	2	8	6	0	10	6	62.5%	37.5%
	Slovenia	2	7	21	17	2	9	38	19.1%	80.9%	1	1	8	6	2	14	12.5%	87.5%
	"The former Yugoslav Republic of Macedonia"	13	21	11	2	2	34	13	72.3%	27.7%	2	11	3	0	13	3	81.3%	18.8%
	Ukraine	6	27	12	2	2	33	14	70.2%	29.8%	1	12	2	1	13	3	81.3%	18.8%
	Israel	3	16	18	11	1	19	29	39.6%	60.4%	0	5	8	3	5	11	31.3%	68.8%

Remark : R.30 of Lithuania has a "C, LC, C" rating ; only the lowest has been taken into account.

Key : *Percentage of NC + PC ratings (for all Recommendations)*

	Above 75%
	Between 75% and 50%
	Between 50% and 25%
	Below 25%

Table 3: Ratings by Country (All Recommendations)

	Country	R.1	R.2	R.3	R.4	R.5	R.6	R.7	R.8	R.9	R.10	R.11	R.12	R.13	R.14	R.15	R.16	R.17	R.18	R.19	R.20
1	Albania	PC	LC	PC	C	NC	NC	NC	PC	N/A	PC	PC	NC	PC	PC	PC	NC	PC	PC	PC	NC
2	Andorra	PC	LC	LC	LC	NC	NC	NC	NC	N/A	LC	LC	PC	LC	LC	PC	PC	LC	PC	NC	PC
3	Armenia	LC	LC	PC	PC	PC	LC	C	LC	NC	LC	LC	NC	LC	C	PC	PC	C	LC	C	PC
4	Azerbaijan	NC	PC	PC	LC	NC	NC	PC	NC	N/A	PC	NC	NC	NC	NC	NC	NC	NC	PC	C	PC
5	Bosnia and Herzegovina	PC	LC	PC	C	NC	PC	PC	NC	NC	LC	NC	NC	LC	LC	PC	NC	PC	C	C	LC
6	Bulgaria	LC	LC	PC	C	PC	NC	PC	PC	N/A	LC	PC	PC	PC	LC	LC	PC	LC	C	C	C
7	Croatia	PC	LC	PC	LC	NC	NC	NC	NC	N/A	LC	NC	NC	PC	NC	PC	NC	PC	PC	C	PC
8	Cyprus	LC	C	C	C	PC	LC	LC	LC	C	LC	LC	PC	C	PC	PC	PC	PC	LC	C	C
9	Czech Republic	PC	PC	PC	LC	PC	NC	LC	PC	N/A	LC	PC	NC	LC	LC	PC	PC	PC	LC	C	LC
10	Estonia	LC	C	LC	LC	LC	LC	LC	PC	LC	LC	PC	PC	LC	C	LC	PC	PC	LC	C	C
11	Georgia	PC	PC	LC	LC	PC	NC	NC	NC	N/A	PC	NC	NC	PC	PC	PC	PC	PC	PC	C	LC
12	Hungary	LC	C	LC	C	LC	LC	C	C	C	C	C	PC	PC	C	C	PC	LC	C	C	C
13	Latvia	LC	C	LC	C	PC	PC	NC	PC	N/A	PC	LC	PC	LC	C	LC	NC	PC	LC	C	C
14	Liechtenstein	PC	LC	LC	LC	PC	PC	PC	PC	PC	C	PC	PC	PC	PC	LC	PC	PC	LC	C	C
15	Lithuania	PC	LC	LC	LC	PC	PC	C	LC	LC	C	PC	PC	PC	LC	LC	PC	LC	C	C	C
16	Malta	LC	LC	LC	C	LC	PC	NC	C	C	C	LC	LC	PC	C	C	PC	LC	PC	C	LC
17	Moldova	PC	LC	PC	PC	NC	NC	NC	NC	N/A	PC	PC	NC	PC	PC	PC	NC	NC	PC	C	PC
18	Montenegro	PC	C	LC	C	PC	PC	LC	PC	N/A	LC	NC	PC	PC	C	LC	NC	PC	C	C	LC
19	Monaco	PC	PC	PC	C	PC	LC	PC	LC	PC	LC	PC	NC	PC	C	NC	NC	PC	LC	C	C
20	Poland	LC	LC	PC	C	NC	NC	NC	PC	N/A	PC	PC	NC	PC	LC	LC	NC	PC	PC	C	C
21	Romania	LC	LC	LC	C	PC	NC	PC	C	PC	PC	LC	NC	PC	PC	PC	NC	PC	C	C	LC
22	Russian Federation	LC	LC	C	C	PC	PC	PC	PC	N/A	LC	PC	PC	LC	PC	PC	PC	PC	C	C	C
23	San Marino	LC	PC	PC	PC	NC	NC	NC	PC	N/A	NC	PC	NC	NC	PC	PC	NC	PC	PC	NC	LC
24	Serbia	LC	LC	PC	LC	PC	LC	PC	LC	LC	LC	PC	NC	LC	PC	PC	NC	PC	C	LC	LC
25	Slovak Republic	LC	PC	PC	LC	PC	NC	NC	NC	LC	LC	NC	NC	PC	LC	PC	NC	PC	LC	NC	PC
26	Slovenia	LC	C	LC	C	LC	NC	LC	PC	C	C	LC	PC	PC	LC	LC	PC	LC	LC	C	LC
27	"The former Yugoslav Republic of Macedonia"	PC	LC	LC	LC	NC	NC	NC	PC	N/A	PC	NC	NC	PC	LC	PC	NC	NC	PC	C	LC
28	Ukraine	PC	PC	PC	PC	PC	NC	PC	PC	N/A	LC	LC	NC	PC	LC	PC	NC	PC	LC	C	LC
29	Israel	LC	C	PC	C	PC	PC	LC	LC	N/A	PC	PC	NC	LC	LC	PC	NC	C	LC	C	PC

Country		R. 21	R. 22	R. 23	R. 24	R. 25	R. 26	R. 27	R. 28	R. 29	R. 30	R. 31	R. 32	R. 33	R. 34	R. 35	R. 36	R. 37	R. 38	R. 39	R. 40
1	Albania	PC	C	PC	NC	NC	PC	PC	C	LC	PC	PC	PC	NC	LC	LC	LC	C	PC	LC	LC
2	Andorra	NC	PC	NC	PC	LC	PC	C	C	PC	PC	PC	LC	PC	N/A	PC	LC	LC	PC	LC	LC
3	Armenia	LC	C	LC	NC	PC	LC	LC	PC	LC	PC	LC	PC	LC	N/A	PC	PC	LC	PC	C	LC
4	Azerbaijan	PC	NC	PC	NC	NC	NC	PC	LC	PC	PC	PC	NC	PC	N/A	PC	LC	LC	PC	LC	PC
5	Bosnia and Herzegovina	NC	PC	PC	NC	PC	PC	LC	LC	PC	NC	PC	NC	PC	N/A	PC	LC	LC	LC	LC	LC
6	Bulgaria	PC	LC	LC	PC	LC	C	LC	C	LC	LC	C	PC	LC	N/A	LC	C	C	LC	C	C
7	Croatia	NC	PC	PC	NC	PC	LC	LC	C	LC	LC	C	PC	PC	N/A	PC	LC	LC	LC	LC	LC
8	Cyprus	LC	LC	LC	PC	LC	C	LC	C	C	LC	C	PC	LC	LC	C	LC	C	C	C	LC
9	Czech Republic	PC	NC	PC	NC	NC	LC	C	C	C	LC	PC	LC	NC	N/A	PC	LC	C	LC	LC	LC
10	Estonia	NC	LC	LC	PC	PC	C	C	C	LC	LC	LC	LC	LC	N/A	LC	LC	LC	LC	LC	C
11	Georgia	PC	NC	PC	PC	PC	LC	PC	C	LC	LC	PC	PC	PC	N/A	PC	LC	C	PC	C	LC
12	Hungary	C	C	LC	LC	LC	LC	LC	C	C	C	C	LC	C	N/A	PC	C	C	C	C	C
13	Latvia	PC	PC	LC	PC	PC	LC	C	C	LC	LC	LC	LC	NC	N/A	LC	C	C	PC	C	LC
14	Liechtenstein	PC	PC	C	LC	LC	LC	LC	C	LC	LC	C	LC	PC	PC	PC	PC	C	LC	PC	PC
15	Lithuania	LC	PC	LC	PC	LC	LC	PC	C	C	LC	LC	PC	PC	N/A	LC	C	C	LC	C	PC
16	Malta	PC	NC	LC	PC	PC	C	LC	C	LC	LC	C	LC	C	C	LC	C	C	C	C	C
17	Moldova	PC	N/A	PC	NC	NC	PC	PC	C	NC	PC	LC	PC	PC	N/A	PC	LC	C	LC	LC	PC
18	Montenegro	NC	C	LC	PC	LC	LC	LC	C	C	LC	LC	PC	PC	N/A	LC	C	LC	LC	LC	LC
19	Monaco	NC	NC	PC	PC	PC	LC	PC	C	LC	PC	LC	LC	LC	PC	PC	PC	LC	PC	LC	PC
20	Poland	NC	NC	PC	PC	LC	C	PC	C	LC	LC	PC	PC	PC	N/A	PC	LC	LC	LC	LC	LC
21	Romania	NC	PC	PC	PC	PC	LC	LC	C	LC	LC	LC	LC	LC	N/A	LC	LC	C	LC	C	C
22	Russian Federation	PC	NC	PC	PC	PC	C	LC	C	PC	PC	LC	LC	PC	N/A	LC	LC	C	C	LC	C
23	San Marino	NC	NC	LC	NC	NC	NC	PC	LC	LC	PC	PC	PC	PC	NC	PC	PC	LC	LC	PC	PC
24	Serbia	LC	LC	PC	NC	PC	LC	PC	LC	LC	PC	LC	PC	PC	N/A	LC	PC	LC	PC	LC	PC
25	Slovak Republic	NC	PC	PC	PC	NC	PC	LC	C	PC	PC	PC	PC	PC	N/A	LC	LC	PC	PC	LC	LC
26	Slovenia	C	PC	LC	LC	LC	LC	PC	C	C	LC	C	LC	C	N/A	C	C	C	LC	C	LC
27	"The former Yugoslav Republic of Macedonia"	NC	NC	PC	NC	PC	PC	LC	C	LC	PC	PC	PC	PC	N/A	PC	LC	LC	LC	LC	PC
28	Ukraine	NC	PC	PC	NC	LC	C	PC	LC	PC	PC	LC	PC	PC	N/A	PC	PC	LC	LC	LC	LC
29	Israel	PC	PC	PC	NC	PC	LC	LC	C	C	LC	C	LC	PC	PC	LC	C	C	LC	C	LC

Table 4: Convictions for Money Laundering[116]

Country		2005	2006	2007	2008	2009
Albania		0	0	4	4	11[a]
Andorra		3	0	0	2[b]	
Armenia		0	1 case	0	0	1 case[c]
Azerbaijan[d]		0	0	0	0	0
Bosnia and Herzegovina		6	3	1	0	
Bulgaria		0	4	9	23	
Croatia		0	2	4	5	0
Cyprus		1	18	6	18	
Czech Republic		7	10	7	2[e]	
Estonia		2 cases	1 case	5 cases	4 cases[f]	
Georgia		10	5	0	3	
Hungary		1	5	19	14[g]	
Latvia		6	4	12[h]	1[i]	
Liechtenstein		0	0	0		
Lithuania		1	1	5	1	
Malta		0	0	1	2	
Moldova		1	0	0	0[j]	
Monaco		0	1	0	0	0
Montenegro		1	1	0	0	
Poland		45	105	55		
Romania		5	1	27	18	16[k]
Russian Federation		59	118	134	136	
San Marino[l]		0	0	0	0	0[m]
Serbia		0	0	1 case	4 cases	
Slovak Republic		9	10	13	10	1[n]
Slovenia		0	3	0	1[o]	
"The former Yugoslav Republic of Macedonia"		2	34	2	0	0[p]
	Art. 209[q] of the CC	148	116	143	67	
Ukraine	Art. 306[r] of the CC	80	61	68	26	
	Total (art. 209 & 306)	228	177	211	93	
Israel		31 convictions 2003-2006		21	22	13

a. 01.01.2009 – 15.08.2009
b. 01.01.2008 – 30.10.2008
c. 01.01.2009 –15.02.2009
d. Azerbaijan reported a conviction in December 2009 for money laundering in respect of one person.
e. 01.01.2008 – 30.06.2008
f. 01.01.2008 – 30.11.2008
g. 01.01.2008 – 15.10.2008
h. 01.01.2007 – 30.10.2007
i. 01.01.2008 – 30.09.2008
j. 01.01.2008 – 30.09.2008
k. 01.01.2009 – 30.09.2009
l. The San Marino authorities have subsequently reported that they have achieved 4 final convictions, two of which relate to appeals in respect of cases within the period under review.
m. 01.01.2009 – 31.01.2009
n. 01.01.2009 – 23.09.2009
o. 01.01.2008 – 30.11.2008
p. 01.01.2009 – 30.09.2009
q. Art. 209 is the general money laundering offence.
r. Art. 306 covers drugs related money laundering.

116. The information is taken from each of the published 3rd round Reports and updated information where available from the published Progress Reports up to the cut-off date referred to in paragraph 3 (the 30th Plenary in September 2009). The figures in this table relate to persons who have been convicted. Where no information was available on persons, the number of cases in which there were convictions has been provided.

Table 5: Persons convicted for Terrorist Financing[117]

Country	2005	2006	2007	2008	2009
Albania[a]	0	0	0	0	0[b]
Andorra	0	0	0	0[c]	
Armenia	0	0	0	0	0[d]
Azerbaijan[e]	0	0	0	0	0
Bosnia and Herzegovina	0	0	0	0	
Bulgaria		0	0	0	
Croatia	0	0	0	0	0
Cyprus	0	0	0	0	
Czech Republic	0	0	0	0[f]	
Estonia	0	0	0	0[g]	
Georgia	0	0	0	0	
Hungary[h]	0	4	10	5[i]	
Latvia	0	0	0[j]		
Liechtenstein	0	0	0	0[k]	
Lithuania	0	0	0		
Malta	0	0	0	0	
Moldova	0	0	0	0[l]	
Monaco	0	0	0	0	0
Montenegro	0	0	0	0	
Poland	0	0	0		
Romania	0	0	2	0	0[m]
Russian Federation	15	7	1	1	2
San Marino	0	0	0	0	0[n]
Serbia	0	0	0	0	
Slovak Republic	0	0	0	0	0[o]
Slovenia	0	0	0	0[p]	
"The former Yugoslav Republic of Macedonia"	0	0	0	0	0[q]
Ukraine	0	0	0	0	0
Israel			0	6	1

a. "The evaluators were informed on site that in total, 6 convictions for the criminal offence of financing of terrorism had been pronounced so far (the examiners understood that these were mostly connected with the cases described under Section 2.4). The judge of the Serious Crime Court indicated that "one case on TF had been brought to court so far but before the creation of the Serious Crime Court". Due to the inconsistency, more detailed statistics were requested, and provided after the visit, indicating the following:
– investigations: 26; indictments: 10; Convictions: 8." Third Round Detailed Assessment Report on Albania. Anti-Money Laundering and Combating the Financing of Terrorism, paragraph 145.
b. 01.01.2009-15.08.2009
c. 01.01.2008-30.10.2008
d. 01.01.2009-15.02.2009
e. Paragraph 32 of the Third Round Detailed Assessment Report on Azerbaijan. Anti-Money Laundering and Combating the Financing of Terrorism, paragraph 32 points to 4 persons convicted on charges of terrorist financing in 2004.
f. 01.01.2008-30.06.2008
g. 01.01.2008-30.11.2008
h. Figures representing convictions for all forms of "terrorist act". No data is however available whether any of these cases were actually related to terrorist financing (see also paragraph 136 of the Follow-up Report of Hungary).
i. 01.01.2008-15.10.2008
j. 01.01.2007-30.10.2008
k. 01.01.2008-30.09.2008
l. 01.01.2008-30.09.2008
m. 01.01.2009-30.09.2009
n. 01.01.2009-31.01.2009
o. 01.01.2009-23.09.2009
p. 01.01.2008-30.11.2008
q. 01.01.2009-30.09.2009

117. The same approach has been taken on the figures provided as is used in the table for money laundering convictions (see footnote 116).

VII. Glossary of Abbreviations

AML/CFT	Anti money laundering and countering the financing of terrorism
Art.	Article
C	Compliant
CDD	Customer Due Diligence
CFSP	Common Foreign Security Policy
CFT	Countering financing of terrorism
CTR	Cash Transaction Report
DNFBP	Designated non financial businesses and professions
EAW	European Arrest Warrant
EC Regulations	European Community Regulations
EEA	European Economic Area
EU	European Union
FATF	Financial Action Task Force
FATF 40+9	Financial Action Task Force 40 Recommendations and 9 Special Recommendations
FIU	Financial Intelligence Unit
FT Convention	International Convention for the Suppression of the Financing of Terrorism (Terrorism Financing Convention)
GDP	Gross domestic product
LC	Largely Compliant
LE	Law enforcement
MoUs	Memoranda of Understanding
NA	Not Applicable
NC	Non-Compliant
NPO	Non Profit Organisation
OECD	Organisation for Economic Co-operation and Development
PC	Partially Compliant
R	Recommendation

SR	Special Recommendation
STR	Suspicious Transaction Report
TF	Terrorist Financing
UN	United Nations
UNSCR	United Nations Security Council Resolution
VAT	Value Added Tax

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