MONEYVAL (2007) 22

HORIZONTAL REVIEW OF THE SECOND ROUND OF MONEYVAL MUTUAL EVALUATIONS

December 2007

This report has been produced by Professor William Gilmore, Professor of International Criminal Law at the University of Edinburgh, United Kingdom and Scientific Expert (Legal) to the MONEYVAL Committee at the request of the Council of Europe.

TABLE OF CONTENTS

1 BACKGROUND

1. The present report seeks to build upon a similar exercise conducted by Mr John Ringguth, in his then capacity as a consultant to the Council of Europe, which was published in March 2002. It was entitled *Setting up anti-money laundering systems: A Review of anti-money laundering systems in 22 Council of Europe member states 1998-2001*. It had as its focus the first round of evaluations. The participating countries were:

Albania	Hungary	Russian Federation
Andorra	Latvia	San Marino
Bulgaria	Liechtenstein	Slovakia
Croatia	Lithuania	Slovenia
Cyprus	Malta	"The former Yugoslav Republic of Macedonia"
Czech Republic	Moldova	Ukraine
Estonia	Poland	
Georgia	Romania	

2. It will be recalled that, in addition to the then FATF 40 Recommendations, member countries were also assessed against the following international standards:

- The 1988 UN drugs convention
- The 1991 EC Directive
- The 1990 Council of Europe convention

In this sense, therefore, the first round was more ambitious and exacting than similar exercises conducted in the FATF context.

3. Importantly those evaluations were not confined to issues of formal compliance. In the words of the March 2002 Report (para. 9) it was "decided at the outset that, though this was a first round of evaluations, its reports should not be limited to the existence (or otherwise) of legislation, guidance, and procedures which meet the international standards. It was also agreed that, so far as possible, the reports should provide an overview of the effectiveness (or potential effectiveness) of anti-money laundering regimes".

4. Under the arrangements then in place evaluators were provided with some latitude in the formulation of country reports and, in particular, in the articulation of recommendations for future action. As the March 2002 text notes: "The recommendations in reports were often pragmatic, and sometimes went beyond existing international standards and addressed local concerns in ways that might prove effective" (para. 184). Often this was done in anticipation of evolving international standards or expectations of best practice. Examples include the range of obligated institutions covered by preventive measures, and the nature, role and practices of FIUs.

5. This horizontal review also took appropriate account of the information provide by members in their progress reports to plenary meetings. Typically these would be submitted one year after the adoption of their mutual evaluation report and assisted, *inter alia*, in clarifying steps taken towards the implementation of the recommendations contained therein. The content of such reports, however, was not subject to a process of objective or impartial third party verification.

2 THE SECOND ROUND REPORTS: GENERAL ISSUES

2.1 Context

6. The second round of mutual evaluations of the member countries of MONEYVAL commenced with the on-site visit to Slovenia in July 2001 and was concluded with the adoption of the final reports in the course of 2004. During this period the core international standards continued to evolve. This was underlined by the alternations made to the Specific Terms of Reference of the Committee by the 799th Meeting of Ministers' Deputies on 13 June 2002.

7. Perhaps the most significant development was the extension of the MONEYVAL mandate to specifically embrace the financing of terrorism and the addition of the FATF Special Recommendations to the list of relevant standards. However, it was agreed that the monitoring of compliance with the Special Recommendations within a MONEYVAL context would initially be carried out through a process of self-assessment. This exercise, which looked at the position as of 30 September 2002, was finalised the following year and the text of the resulting analysis was thereafter made public via the MONEYVAL website. This data was updated in 2004. It was further agreed that the verification of compliance with and an assessment of the effective implementation of these new international standards would await the commencement of the third round of evaluations.

8. This is not to say, however, that the criteria for assessment in the second round were identical to those used in the first. It will be recalled in particular that, following an extensive dialogue between MONEYVAL and the FATF, the former decided to include within the scope of the second round compliance with the 25 NCCT criteria; in essence deeming them, for the purposes of this process, to fall within its terms of reference.

9. A more significant point of departure was represented by a decision taken at the December 2002 Plenary meeting. There, following detailed discussion, it was decided to utilise the AML/CFT common methodology (which had been elaborated for use in the 2002-2003 pilot project involving the FATF and the International Monetary Fund and the World Bank) for those new MONEYVAL members undergoing a first round evaluation. The common (revised) methodology would be applied to all member countries from the commencement of the third round which is now fully underway.

10. It will be recalled that the version of the common methodology in question adopted an approach both to format and to international standards which differed significantly from that used previously. By way of illustration, compliance with the FATF Special Recommendations was centrally relevant. This format was utilised in respect of the evaluations of four of the five new MONEYVAL members; namely, Armenia, Azerbaijan, Bosnia and Herzegovina, and Serbia and Montenegro (as it was then). For reasons of timing the first round report on Monaco followed the same broad methodology as that used in the second round more generally.

11. Given that these five member countries were subject to a first round evaluation of compliance with relevant international standards and that the methodology utilised differed significantly from that of the 22 states subject to the second round procedures the present

report excludes them from consideration. However, a summary analysis drawing upon the mutual evaluation and progress reports in question is to be found at Appendix F.

2.2 Process and Structure

12. Every country in the second round programme answered a common, agreed mutual evaluation questionnaire and provided copies of relevant legislative texts, decrees and guidance prior to an on-site visit, generally of four days, by the examination team. As in the first round the MONEYVAL team was accompanied by a colleague or colleagues from a FATF jurisdiction. The evaluators met all the major players in the national anti-money laundering regimes, and in most on-site visits met representatives of banks, banking associations and representatives of other professions and undertakings with anti-money laundering obligations. All countries fully cooperated with the evaluations process.

13. After the on-site visit a draft report was drawn up and sent to the country for comment. These comments were considered by the examiners. If they thought it appropriate, amendments were made to the draft report. The draft report was then debated in a plenary meeting in Strasbourg, which was attended by experts from all the member countries as well as observer countries and institutions. The draft reports and public summaries of those reports were adopted after sometimes searching debates at the plenary meetings.

14. It will be recalled that the overall objectives of the second evaluation round were to take stock of developments since the first round, to assess the effectiveness of the anti-money laundering regime in practice and to examine the situation in those areas which had not been covered during the first round evaluation. This required some modest alterations to the template followed by the second round reports. In particular, it was common practice to include a specific section devoted to following up issues which had been raised in the first evaluation.

15. As noted earlier, it was also decided to include within the scope of the second round the issue of compliance with the 25 NCCT criteria which had been formulated by the FATF. For that reason each of the 22 second round reports contains (in an annex) a table indicating the extent to which the jurisdiction in question adhered to these specific expectations.

16. MONEYVAL, early in its existence, introduced a system of progress reports for all countries in the mutual evaluation process. Each country, on the first anniversary of the adoption of its report, outlined to the plenary meeting what action had been taken in respect of its recommendations. They provided detailed answers to a further questionnaire which focussed on issues raised by the examiners.

3 THE SECOND ROUND: SUBSTANTIVE ISSUES

3.1 General

17. In the 2002 report it was concluded that the mutual evaluation process had “clearly produced results”. It continued (para. 302) thus: “As the programme has developed, and as the progress reports show, PC-R-EV has seen conventions being ratified by its members, anti-

money laundering legislation being passed where none previously existed, laws being amended, and guidance being put into place or revised, in response to PC-R-EV reports".

18. This positive impression of a general momentum towards formal compliance with the relevant international standards is confirmed by the second round reports. Indeed, in many instances the reports confirm that member states had taken action which went beyond that required by the then reference texts.

19. The evidence for these conclusions is many and varied and will be further elaborated in subsequent sections of this report. By way of illustration, it will be recalled that by the end of the first round five countries had still to enact legislation dealing with preventative issues. By way of contrast by the time of the adoption of the second round reports only one jurisdiction (Georgia) had still to take this basic step though it was actively preparing to do so. This it did in June 2003 and the legislation entered into force in January of the following year. In only one second round report did the evaluators adopt a negative characterisation of a country's response to the recommendations which had been formulated in the first round text.

20. In addition to the common underlying factor of a shared political commitment to addressing the issue of the threat posed by money laundering, manifested in MONEYVAL membership, the reports note various other contributory factors to the progress which has been achieved. One such was the encouragement to further action provided by the Committee's compliance enhancing procedures.

21. It will be recalled that MONEYVAL has had such procedures in place since 1998. They were endorsed by the committee as possible steps to be taken in respect of its members "not in compliance with the reference documents or the Recommendations in the mutual evaluation reports". They were modelled to a large extent on FATF precedents and were designed to be invoked on a graduated basis.

22. These procedures were not resorted to during the first round. However after the adoption of the 2002 horizontal review, MONEYVAL adopted a basic check list of minimum international standards which needed to be in place in all of its member states. These were: money laundering criminalisation; domestic measures for seizure and confiscation (including value confiscation); customer identification procedures; suspicious transaction reporting or unusual transaction reporting regimes; preventive laws; and, the capacity to give and receive international cooperation.

23. All jurisdictions which had participated in the first round were reviewed against this checklist and criteria were developed for deciding which members should be followed up on an intensive basis. The procedures were subsequently invoked in respect of several jurisdictions until the plenary was satisfied that appropriate remedial action had been taken by them.

24. It is of interest to note that at the end of the last round of evaluations this process was applied in respect of the five new member countries and measures to enhance compliance were invoked as necessary.

25. A similar impetus was provided by the FATF's NCCT process which had been launched in 2000. It will be recalled that this highly controversial initiative resulted in a range of countries and territories in different parts of the world being listed by the FATF as being non-

cooperative. Several MONEYVAL members were so listed (Hungary, Liechtenstein, Russia, and Ukraine). All entered into an intense dialogue with the FATF, addressed relevant shortcomings, and were subsequently de-listed.

26. By way of illustration, the FATF found that Hungary met fully two of the 25 criteria and five other criteria partially, while the assessment of one criterion was inconclusive. By way of contrast, it will be seen from Annex A to this report that by the time of the formulation of its second round MONEYVAL report Hungary was positively assessed ("not met") against all 25 of the same criteria.

27. In a similar fashion the Russian Federation was identified by the FATF as non-cooperative in this context in 2000 and was delisted in 2002. It became a full member of the FATF at the Berlin Plenary in June 2003 whilst remaining a full participant in the MONEYVAL process. As will be seen from Appendix A, the second round MONEYVAL report also positively assessed the Russian Federation against all 25 of the NCCT criteria.

28. More generally Annex A demonstrates a commendable degree of overall compliance by MONEYVAL members with the expectations embodied in the NCCT criteria. Indeed, only just over 3 per cent of the compliance ratings given in the course of the second round were in the lowest category ("met"). Of these exactly half were accounted for by one jurisdiction.

29. It is also clear from an examination of the reports that policy makers in many countries were aware of, and wished to respond to, evolving international standards or expectations of best practice irrespective of whether these went beyond the requirements reflected in the reference texts for the second round. It will be recalled in particular that in the time frame in question the FATF not only adopted its Special Recommendations on the financing of terrorism it also formulated its extensive revisions to the core 40 Recommendations in 2003. While both fell beyond the scope of the MONEYVAL evaluations there is no doubt that each had its own impact on legislative and policy developments on the countries in question.

30. That said it is clear that the most profound impact throughout the time-frame was the 2001 Directive amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering (Directive 2001/97/EC). Commonly known as the 2nd Directive, it was adopted on 4 December 2001 – nearly six months after the commencement of the first on-site visit – and was to be brought into force by EU Member States no later than 15 June 2003.

31. Since 2001 twelve MONEYVAL countries have become Member States of the European Union and placing themselves in compliance with the requirements of the 2nd Directive was a necessary part of the process of preparing for accession. Other states had legal or policy reasons for aligning themselves with the important amendments embodied in this text. In addition, all had by virtue of their membership of MONEYVAL a shared awareness of the significance of this text in the context of the evolving mandate of the Committee.

32. For the purposes of appreciating the information contained in the remainder of this horizontal review it is necessary to bear in mind that each evaluation report provides but a snapshot in time of the stage which the state concerned had reached in its efforts to secure formal compliance with and the effective implementation of relevant international anti-money laundering standards. As the progress reports help to underline, the process is an inherently dynamic and ongoing one. This fact, when taken in conjunction with the multi-year time-

frame in which the second round processes were carried out, illustrates the limits within which comparisons between countries can be properly drawn.

33. It should also be emphasised that this is far from being a homogenous grouping of states. There are marked differences in terms of geographical size, population, political orientation, and economic development. Their national anti-money laundering regimes thus had to respond to widely differing circumstances and practical realities. The regimes themselves were, perhaps inevitably, at varying levels of development.

34. It is also of importance to appreciate that evaluators invariably took as the point of departure for their work the first round evaluation reports as approved by Plenary. It is not surprising, therefore, that the resulting product of their labours could often only be fully appreciated in conjunction with the original report. In a similar fashion this horizontal review is designed to be read in conjunction with the March 2002 text. In an important sense it aims to supplement that very comprehensive study rather than to replicate its nature, scope and ambition.

3.2 Legal Issues

35. In the revised FATF Recommendations of 1996 - which formally applied to the second round evaluations - the scope of the criminal offence of money laundering was addresses in Recommendations 4 to 6. The first of these called on jurisdictions to criminalise money laundering as provided for in the 1988 Vienna Convention and to extend the offence of drug money laundering to one based on serious offences. Pursuant to Recommendation 5 the offence "should apply at least to knowing money laundering activity, including the concept that knowledge may be inferred from objective factual circumstances". Recommendation 6 encouraged states to adopt the concept of corporate criminal liability.

36. It will be recalled that the 1991 EC Directive adopted a similar approach to that of the FATF in defining money laundering by reference to criminal activity as specified in the 1988 UN text and any other criminal activity designated by each member state. The 1990 Strasbourg Convention called on contracting states to criminalise money laundering on an "all crimes" basis (subject to a specific reservation procedure).

37. The table at Annex B compares the situation in each MONEYVAL state on a range of issues relating to their money laundering offences. In particular, it sets out whether a state has separate criminal legislation covering money laundering or whether it relies (alternatively or additionally) on general criminal provisions. It compares the situations in each country so far as the physical elements and mental elements of the offences are concerned. On the physical aspects it examines how closely the offences follow the language of the international texts. It compares the position in each country so far as "own proceeds" laundering is concerned and sets out, in respect of each country, whether the money laundering offence can be prosecuted where the predicate offence is committed abroad. It describes how wide the range of predicate offences is in each country: whether they have adopted the "all crimes" approach; whether they have a "list" approach of enumerated offences; whether the range of offences is determined partly by the existence of other aggravating features (such as commission as part of an organised group) or whether the list of offences is determined to some extent by the length of sentence which can be imposed for the predicate offence.

38. The data demonstrates continued progress since the March 2002 report. All countries have now taken the basic step of criminalising money laundering though it should be noted that two members (Andorra and the Czech Republic) were regarded as having "partially met" NCCT criterion 19. This is worded as follows: "Failure to criminalise laundering of the proceeds from serious crimes".

39. Annex B similarly indicates that the great majority of countries have undertaken the criminalisation of laundering on an all crimes basis and permit (or are thought to) prosecutions where the predicate crimes have been committed in a third country. By way of contrast, and notwithstanding the frequency with which first round reports urged consideration of adopting a negligence standard in this context, only a fairly static minority had adopted this non-mandatory element of the 1990 Strasbourg Convention. A slight increase in the number of states where the prosecution of "own funds" or "self laundering" is either expressly provided for or is thought to be possible is recorded in the second round as compared to the first.

40. A constant theme which ran through the first round reports was that member countries should consider the introduction of corporate criminal liability in a money laundering context. The great majority (Andorra and Cyprus being notable exceptions) at the time of the March 2002 report did not, for a variety of reasons, embrace that concept.

41. It is striking, given the conceptual and legal tradition issues involved and the light touch wording of FATF Recommendation 6, how strong a trend in this direction has now emerged. By the time of the second round report several countries including Estonia, Lithuania, Malta and Slovenia had embraced this approach. In others, such as Croatia, Hungary, Poland and Moldova, the process of doing so was underway and in a range of others this radical step was receiving serious consideration.

42. While in these and many other ways the membership of MONEYVAL has demonstrated a seriousness of purpose in building robust national criminal justice approaches to money laundering the practical results of these efforts in terms of prosecutions undertaken and convictions secured has been disappointing.

43. The results, as reflected in the course of the first round, the second round reports and relevant progress reports are set out in Annex C. By way of caution it should be noted that, as in the first round, obtaining reliable statistical information on a whole range of issues proved to be extremely difficult in many evaluations and the data presented should be read in that light.

44. It will be seen that nearly one-third of all MONEYVAL countries had, throughout the combined period of the first and second rounds, not been in a position to secure a single conviction for a money laundering offence. Interestingly, in all but one of these examples national legislation either explicitly extended to self-laundering or the jurisdiction in question believed that prosecution on this basis was possible.

45. It is true to say that since the first round (see, 2002 Report, para. 34) we have witnessed a significant increase in the number of MONEYVAL countries which have now secured convictions for money laundering. However, it is clear from Annex C that many have achieved very few such positive results over the years in question.

46. On the basis of the reports it is possible to look behind the statistics in this regard with greater frequency and clarity than was the case in the first round. This is due in part to the fact that many evaluation teams and evaluated jurisdictions followed the recommendation in the 2002 Report (para. 49) to disaggregate prosecution statistics "to show whether the offence was committed by the author of the predicate offence or a third party". Similarly the great majority of reports go some way towards meeting the goal set in the same Report (para. 59) of indicating and examining "which major proceeds - generating criminal predicates are the subject of money laundering prosecutions".

47. Looked at in these ways a number of second round reports suggest that 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 launder had been secured.

48. By way of illustration, the Cyprus report (para. 120) notes that with one exception all of the convictions secured related to self-laundering; all the persons convicted were Cypriot residents; and, none of the cases involved any sophisticated activity. Similarly in the case of Slovakia (para. 7) it was note that: "No convictions were reported for money laundering as a 'stand alone' offence or in the absence of a conviction for the predicate offence". The Ukraine report (paras. 158-159, and 256) indicates that 94.4% of relevant cases address instances of self-laundering and that no "stand alone" convictions had been secured. In Andorra out of 21 inquiries initiated between 1999 and 2001 19 were related to own-funds laundering.

49. Furthermore, in numerous instances there was no significant connection between the underlying predicate offence in cases in which convictions were secured and the spheres of criminal activity which were identified as being the major national sources of criminal proceeds.

50. The reason for this rather disappointing outcome in terms of the number and quality of convictions secured vary from country to country. There are, however, a number of common themes which emerge from the second round reports.

51. The first of these relates to the technical legal issues associated with proof of money laundering; a subject exposed to detailed analysis in the 2002 Report. As the mutual evaluation of the Russian Federation noted (para. 260): "the proof of money laundering offences is a universal problem for investigators and prosecutors".

52. Among the issues most often mentioned in this context were those of proof of the underlying predicate offence and of the requisite mental element of the money laundering offence. The Malta report (para. 174) was one of many which pointed to the reluctance of the judiciary "to draw the necessary conclusions from circumstantial evidence, which is very often the only available evidence in money laundering prosecutions, concerning the existence of the predicate offence and its link to the laundering of related proceeds".

53. Of the other factors identified as contributing to the current level of underperformance those mentioned most frequently included: an over cautious attitude on the part of prosecution authorities; a failure to fully exploit the product of the suspicious transaction reporting (STR) regime (Estonia being one of several exceptions to this); and, lack of appropriate resources and experience at the level of law enforcement.

54. However, perhaps the most concerning feature was the identification of the failure among many member states to develop an overall culture among investigators and prosecutors of proactively focusing on criminal proceeds. In the words of the Slovenia report (para. 17): "The second round evaluation has also shown that the law enforcement effort is still predominantly crime-oriented. A more asset-oriented approach, in particular in relation to financial and fiscal crime, is likely to contribute to the reversal of the current law enforcement approach".

55. The centrality of an assets oriented approach to the overall AML regime is, of course, given particular emphasis in the context of confiscation and provisional measures. The relevant standards connected with these issues were summarised in the 2002 Report (para. 99) as follows:

- The positive obligations on contracting parties, under Article 5 of the Vienna Convention, to take measures to confiscate proceeds derived from drugs offences set out in the Vienna Convention, and the positive obligations on contracting parties to take measures to identify, trace and seize or freeze proceeds, property or instrumentalities etc., in proceedings for relevant drugs offences for the purpose of eventual confiscation.

- FATF Recommendation 7, the broad terms of which require countries to adopt similar measures to those in the Vienna Convention, i.e. to enable their competent authorities to confiscate property laundered, proceeds from, instrumentalities used in or intended for use in the commission of any money laundering offence, or property of corresponding value, without prejudicing the rights of bona fide third parties.

- The wider positive obligation on contracting parties, under Article 2 of the Strasbourg Convention, to adopt such legislative and other measures as may be necessary to confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds, with the extended meaning of "proceeds" provided for ("any economic advantage from criminal offences").

- The broad positive obligation on contracting parties, under Article 3 of the Strasbourg Convention, to adopt such legislative and other measures as may be necessary to enable it to identify and trace property which is liable to confiscation and to prevent any dealing in, transfer or disposal of such property.

56. It will be recalled that the 2002 Report examined in some detail the challenges faced by several MONEYVAL countries in securing full formal implementation of the existing international standards in this sphere and in making them operationally effective. It concluded (para. 122) thus:

> Improvements in legislation on confiscation and much greater demonstrable operational success in obtaining major confiscation orders will be critical indicators of the success, or otherwise, of national anti-money laundering regimes in PC-R-EV countries in the next few years. Both issues will need to be carefully considered by examination teams in the second round in assessing the real effectiveness of national systems.

57. All evaluation teams sought to address these issues and approximately half of the second round reports included detailed coverage of the legal regime in question. This was especially the case where the jurisdiction in question had sought to improve and modernise its legal framework in the period since the first round evaluation. The overall impression in this sphere was one of incremental progress towards formal compliance with international standards.

58. Efforts to assess the effectiveness of the systems in question were, however, often frustrated by the inadequacy (and in some instance the complete unavailability) of relevant statistical data. As Annex C of this study clearly demonstrates, in the majority of instances information on the frequency of use of confiscation orders in relation to proceeds generating offences was either unavailable or unclear. Perhaps even more disturbing was the frequency with which simple statistical data was absent on the use of confiscation and associated provisional measures in money laundering cases.

59. The overall impression in the second round as in the first, was that national confiscation systems were under-used (see, eg Estonia Report, pars 166-167) and the results obtained, even in relation to money laundering cases, were disappointing. One report even characterised the lack of confiscations in respect of profit generating criminal conduct as "astonishing".

60. While in some jurisdictions technical legal imperfections clearly contributed to this unsatisfactory situation, a number of reports pointed directly to the need for a major shift in attitudes within the criminal justice system. In the Lithuania report, for example, it is noted (para. 228) that: "One of the reasons is that the law enforcement is still predominantly crime-oriented and the recovery of criminal assets is not a priority . . . .". The evaluators of "The former Yugoslav Republic of Macedonia" were by no means alone in concluding (para. 163) that: "There is no culture of 'following the money' in the investigation of major proceeds – generating criminal offences".

61. To the extent that the confiscation of criminal proceeds is a serious indicator of the effectiveness of national AML systems on the repressive side the second round of MONEYVAL evaluations does not paint the most positive of pictures. As was noted earlier, several reports have also pointed to the significance of this cultural dimension in their analysis of the outcome of national efforts to prosecute and convict those who engage in money laundering. The need for further national and collective reflection on this important aspect of the AML strategy is of self-evident importance.

3.3 Preventive Strategy Issues

62. As noted at an earlier stage of this analysis, only one MONEYVAL member had failed to put in place a money laundering preventive law by the time of the second round on-site visit. That country, Georgia, subsequently took this highly important step and the relevant legislation entered into force in 2004. This constitutes a significant improvement over the position revealed in the March 2002 Report.

(i) Scope and Range of Coverage

63. The relevant preventive recommendations in the 1996 version of the FATF 40 Recommendations applied mandatorily to banks. Moreover FATF members were also required to apply them to non-bank financial institutions, including those which are not subject to a formal prudential supervisory regime for example bureaux de change.

64. The then 40 Recommendations also invited countries to consider applying certain relevant recommendations (including customer identification and record-keeping rules) to the conduct of financial activities undertaken as a commercial undertaking by businesses or professions, which are not financial institutions, where such conduct is allowed or not prohibited. A list of twelve examples of financial activities, which could be considered, was annexed to the Recommendations. This list was not intended to be exhaustive. It includes:

- Financial leasing;
- Money transmission services;
- Trading in money market instruments;
- Life insurance and other investment related insurance;
- Money changing.

65. EC Directive 91/308 applied a preventive regime with broadly similar obligations as appear in the preventive parts of the 1996 FATF 40 Recommendations, to credit and financial institutions, as defined in the Directive. However, the 2nd Directive of 4 December 2001 greatly extended the range of obligated institutions and professions. This measure now includes, for example, the following:

- auditors, external accountants and tax advisors
- real estate agents
- notaries and other independent legal professionals in specified circumstances
- dealers in high value goods when payment is made in cash and in an amount of €15,000 or more
- casinos

66. In large measure due to the influence of the 2nd Directive one of the most significant developments of the second round was the extent to which member countries of MONEYVAL moved to extend the scope of their anti-money laundering preventive laws. This can be clearly seen by comparing the data contained in Annex E with that provided in Annex D of the 2002 Report.

(ii) Customer Identification and Record Keeping

67. The relevant formal international standards applicable to the second round were embodied in FATF Recommendations 10 to 12 and in Articles 3 and 4 of the 1991 Directive.

68. Few problems were uncovered in the second round reports in relation to record keeping. However, the position was somewhat more complex in the case of identification

requirements. Here the issue of difficulty which was encountered with the greatest frequency was that of weaknesses in the system as it relates to the identification of beneficial owners especially in relation to legal persons.

69. The extent to which this challenge has manifested itself within the MONEYVAL community is in turn well illustrated by the comparatively poor outcome of the assessment of compliance with relevant NCCT criteria. For instance, in respect of both criterion 5 and criterion 13 the outcome was: "Met" 2; "Partially Met" 9; "Not Met" 11. A further area in which countries encountered particular challenges was that of ensuring appropriate identification in the context of non face-to-face transactions. These are problems of general application and are by no means unique to the MONEYVAL membership.

70. An associated issue is the prohibition, flowing from FATF Recommendation 10, of anonymous, fictitious and bearer accounts. The last of these had emerged as a source of concern during the first round both in its own right and as a consequence of the emphasis placed on the matter in the context of the application of NCCT criterion 4 by the FATF. It will be recalled that, as a consequence of certain historical factors, bearer accounts had been a common feature of banking practice in several MONEYVAL countries and especially among those which at an earlier stage had been part of the Austro-Hungarian Empire.

71. While some progress had been achieved even during the first round to restrict or prohibit this practice it was clear that more remained to be done. In the words of the March 2002 Report (para. 161) the Committee "will also carefully examine progress on this issue in the second round, as action on this issue remains an important test of a state's willingness to make fundamental change to its systems to combat money laundering".

72. Save where the issue was clearly non applicable to local circumstances, second round mutual evaluation reports directly addressed the matter and often in some detail. The overall impression was of an active willingness of the states concerned to take appropriate action to prohibit the opening of such accounts and to phase out those already in existence. For example, of the two members with preventive laws in place which attracted a "met" classification in respect of criterion 4 (Slovakia and the Czech Republic) both were – as the respective reports made clear – in the process of addressing the complex issues concerned with a view to bringing themselves more into alignment with international requirements. Indeed, in the case of the Czech Republic a clarifying footnote (report, note 20, at p. 66) states that as a consequence of legislative change after the on-site visit "the relevant criterion on the date of the adoption of the report is only partially met".

73. It should be noted that, on occasion, concerns over certain forms of bearer passbooks had an impact on the compliance classification awarded in respect of NCCT criterion 5 on the effectiveness of laws and regulations concerning identification of clients and beneficial owners. For example, both San Marino (report, p. 50, note 25) and Slovenia (report, p. 37, note 17) "partially met" criterion 5 due to the existence of such passbooks which were transferable from one person to another allowing the subsequent transferees to remain completely unidentified as long as their transactions were below a set value threshold. Subsequent to the onsite visit but prior to the adoption of its report Slovenia took steps to prohibit the opening of new passbooks and made identification mandatory for existing ones (report, p. 28, note 13).

74. As in the first round, several second round reports also addressed the problems associated with numbered accounts. Although international standards are not explicit in this area, it has been the practice of the MONEYVAL Plenary to regard such accounts with some caution. In the words of the 2002 Report (para. 153) "the ability of financial institutions holding such accounts to have a comprehensive control procedure for identifying suspicious transactions is greatly restricted by the fact that the customers identity is withheld from almost everyone dealing with transactions across those accounts".

75. In the case of Latvia, for example, the evaluators recommended (para. 166) that such accounts be suppressed. "Alternatively, Latvia should put in place strengthened supervision on these accounts, including adopting guidelines on the identification of suspicious transactions in the context of the operation of these accounts. It is also strongly suggested that there should be a written rule or a guidance note requiring all transactions on these accounts to be made through the officers in the bank who are aware of the identity of the account holder". A similarly robust approach is adopted in other reports including those for Andorra and Liechtenstein.

76. This ability and willingness of examiners and the Plenary to range beyond existing international standards was also, as noted earlier, evident in numerous first round reports. This ability is, or course, severely circumscribed by the nature of the common methodology now in use in round three.

(iii) Suspicious Transaction Reporting and Related Issues

77. A further critical element in any modern preventive strategy which complies with international expectations and standards is to have in place a robust system for the reporting of suspicious (and less frequently unusual) transactions to an appropriate national authority. In the case of MONEYVAL that disclosure receiving agency is the Financial Intelligence Unit (FIU) and at the time of the on-site visit only one member had failed to create such a specialised body (see Annex A in respect of criterion 25). Formal compliance with international STR expectations was high as evidenced by the fact that only one member country "Met" NCCT criteria 10 and 11at the time of the second round report.

78. In several instances, as with Slovakia and the Ukraine, major changes had been introduced in efforts to improve the system since the first round. In many others alterations of a lesser magnitude had been made to the same ends.

79. While formal compliance was thus widespread the challenges faced by member countries were very real. Of these by far the most frequently – indeed near universally – mentioned was that of highly uneven patterns of reporting from obligated entities and professions. Indeed, as in the first round, the vast majority of second round reports noted that actual reporting remained dominated by the bank's and other credit institutions. It was not uncommon for them to account for (well) in excess of 80% of all reports.

80. While within the banking sector some reports indicted concerns about uneven reporting this appeared to be of a lesser magnitude than during the first round. Increasingly FIUs were in a position to monitor the spread of reporting among banks and to address under-reporting when it became apparent.

81. Although it must be recalled that for many the extension of reporting obligations to non-financial institutions and the professions is relatively new, and in the latter case both complex and often controversial, the same can no longer be said of non-bank financial institutions. Here reporting obligations have frequently been in place for sometime but the actual pattern of reporting rarely reflects that reality in terms of practice by the sector participants concerned.

82. Given the nature and extent of the problem the MONEYVAL Committee will no doubt wish to monitor this issue with care in the course of the third round and seek to identify and disseminate best practice in this important area where appropriate.

83. In this regard it should also be noted that many second round reports continued to highlight the need for the articulation of high quality sector specific guidance outside of banking. This is somewhat disappointing given the priority which was afforded to this issue by PC-R-EV in the first round. That said the second round reports provide both insights into the problems which flow from the absence of appropriate guidance to the private sector and coverage of examples of good and apparently effective practice.

84. There is an obvious link between the provision of high quality guidance to obligated institutions and professions and the ability to discharge in an effective manner the education and training obligations in respect of staff members.

(iv) Regulation and Supervision

85. As with the first round, all of the second round mutual evaluations addressed in some detail a range of issues relevant to regulation and supervision of obligated financial institutions. Given what has been said above in respect of the STR system it will come as no surprise that these matters were generally viewed as being most adequately treated in the banking sector.

86. By way of contrast, numerous country reports both detailed the existing licensing, regulatory and supervisory regimes applicable to other parts of the financial system and routinely called for them to be reinforced. As in the first round several reports continued to stress the vulnerability of bureaux de change in this context.

87. The extent to which such concerns were shared is well illustrated by Annex A. It is particularly disappointing to note that over half of the second round reports classified the MONEYVAL countries concerned as having "partially met" NCCT criterion 1. This, it will be recalled, focuses on the absence or ineffectiveness of the regulation and supervision of financial institutions with respect to international AML standards.

88. It is clear that this issue will continue to justify close attention by the Committee in the period which lies ahead. Indeed, given the progressive widening of the scope of AML obligations to include ever more categories of non-financial businesses and professions the need for the sharing of experiences and best practice can only increase in importance.

89. The evaluations also treated on a routine basis the important question of how countries guarded themselves against the criminal infiltration of relevant institutions in the financial and

non-financial sectors; an issue which is addressed by Recommendation 29 in the revised FATF Recommendations of 1996.

90. Here the outcome was somewhat more positive. That said 8 of the twenty-two MONEYVAL members involved in the second round were considered to have "partially met" NCCT criterion 3; ie, the absence of measures to guard against holding of management functions and control or acquisition of a significant investment in financial institution by criminals or their confederates. In this area also the most robust protections were provided in the banking sector.

3.4 International Cooperation

91. It will be recalled that compliance with the 1996 FATF Recommendations in terms of formal legal co-operation was already at an advanced stage during the first round of evaluations. By way of illustration, by the end of that process only three of the 22 members concerned had yet to ratify the 1990 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds of crime.

92. In this regard progress has continued to be made. The three jurisdictions in question, for example (Georgia, Moldova, and Romania) all ratified the 1990 text during the second round period. More generally considerable progress was recorded in the evaluation reports on the progressive ratification and implementation of other relevant instruments during this period. This was particularly so for the UN Convention against Transnational Organised Crime (the Palermo Convention) of 2000 notwithstanding the fact that it did not formally become part of the relevant international AML standard until the 2003 revisions to the FATF Recommendations.

93. Many second round reports accepted the invitation in the 2002 horizontal review (para. 227) to revisit the important issue of practices which can negatively impact on the provision of international judicial assistance in its various forms. Examples might include where bank secrecy provisions restricted the provision of cooperation or where assistance could not be provided in cases involving serious fiscal fraud. It was encouraging to note that in the overwhelming majority of cases no such impediments to cooperation were identified.

94. It was similarly pleasing to note the existence among MONEYVAL members of a highly positive attitude towards issues of cooperation in practice. This is underlined by the fact that no instances were uncovered of obvious unwillingness to respond constructively to mutual legal assistance requests as evidenced by, for example, a failure to take appropriate measures in due course, or long delays in responding (see Annex A, criterion 21).

95. The ability to provide judicial cooperation in relation to laundering and the search, seizure and confiscation of the proceeds of crime frequently received detailed attention. Evaluators were mindful of the fact that the completion of the ratification process could not be taken as a guarantee that foreign requests for provisional measures could, in practice, be granted or foreign confiscation orders enforced. Where doubts arose among the evaluators, as in the case of Slovenia, recommendations for legislative or other appropriate clarification would often follow (see, eg, Slovenia Report, para. 90).

96. It is regretted, however, that in the great majority of cases – as is demonstrated by an examination of Annex D – it was not possible to test abstract conclusions in this area against the realities of practice. Thus, in only three instances did second round evaluation reports point clearly to the existence of practice in respect to actual requests for the execution of foreign confiscation orders. In only five reports is clear evidence presented of the experience of dealing with foreign requests for provisional measures. Indeed, only in the case of Liechtenstein did the evaluators find a substantial body of positive practice in these critical spheres.

97. Given the earlier discussion in this study of the disappointing domestic successes in the securing of convictions for money laundering and in making resort to confiscation orders in proceeds generating criminal convictions (illustrated in Annex C) it is not surprising that the practice of cooperation has been so limited. Only when that fundamental domestic criminal justice reality is fully and effectively addressed will the benefit be derived from the architecture of cooperation provided in the Strasbourg Convention and other multilateral treaty instruments.

98. In a similar fashion, while numerous second round reports subject to analysis the ability or otherwise of MONEYVAL members to share confiscated assets on an international basis much of that discussion had, of necessity, a rather abstract quality.

99. By way of contrast a much more positive story emerges from the second round reports on "non-judicial cooperation". Here the primary focus was on the continued emergence within MONEYVAL of increasingly sophisticated and robust FIUs with a growing history of active international cooperation.

100. As noted earlier 21 of the 22 countries evaluated had in place, by the time of the relevant Plenary meeting, a FIU structure. Many had achieved membership of the Egmont Group – regarded as the "gold standard" in this area. Others were, at the relevant time, applicants for that status.

101. The majority of reports concentrated in the main on issues of internal organisation and of the domestic operation of such bodies. That said detailed discussion of information sharing between such bodies was common place.

102. It will be recalled that the NCCT process paid particular attention to obstacles to international cooperation by administrative authorities. Here criterion 15 through criterion 18 were directly in point. It is particularly encouraging to note from Annex A that no MONEYVAL country taking part in the second round of evaluations was classified as having "met" any of these criteria.

3.5 Other Issues

103. Throughout the second round, as in the first, evaluation teams paid considerable attention to the creation of FIUs and to their structure, powers, and influence. In this critical sphere the overall picture which emerges from the reports is a positive one.

104. As noted earlier, by the end of the first round the majority of MONEYVAL members (over two thirds) had created such structures or had in place functional equivalents. This

trend has continued and it may be safely said that there is now universal recognition within the Committee of the centrality of such bodies to the effective functioning of both the national AML architecture and of associated international cooperation.

105. Numerous reports also drew attention to the emergence of FIUs as influential actors in the formulation of national AML policy and as leaders in efforts to improve the coordination of thought and action at the strategic level. The existence of national bodies with a coordination function, bringing together the major-players in the anti-money laundering regime, was increasingly commonplace.

106. The second round evaluation process identified a range of factors which should be addressed in order to reinforce and strengthen the national systems in question. Some of these were of a technical character and peculiar to local circumstances; others were of a more generalisable nature such as the need for, and mechanisms to achieve, more appropriate patterns of STR reporting outside of the banking sector.

107. Reports frequently noted the highly positive role being played by the FIU in outreach and awareness raising and also in the provision of appropriate training for the staff of obligated institutions and professions. This was seen to pose particular challenges in relation to those entities not subject to prudential supervision. A recurring theme, even for banks and financial institutions, was the need to provide more meaningful feedback in order to achieve and sustain the trust, confidence and active engagement of obligated entities.

108. A common problem for second round evaluation teams was how to devise the means through which to judge the effectiveness of the FIU systems which had been put in place. Perhaps unfortunately, an important suggestion contained in the March 2002 horizontal review (see, para. 276) designed to assist with this process failed to find adequate reflection in the output of the second round; namely, the creation of performance indictors for FIUs and the sharing with the evaluation teams of the results obtained through their application. In only a (small) minority of reports was this matter addressed the clear implication being that more national focus on this matter will be needed in the years to come.

109. All reports commented on the resourcing of FIUs. While several noted and acknowledged enhancements in personnel and technical means since the first round, it was commonplace for calls to be included to ensure that further positive action was taken in this critical area. Given the trend towards significant increases in the scope of obligated entities during this period this was to be expected. The provision of adequate resources to the FIU was taken by evaluators as a signal of a country's real determination to fight money laundering. There was also a universal recognition that the resources issue has a direct bearing both on effectiveness in a narrow institutional sense and also ultimately on the quality of the overall compliance culture of obligated entities and professions.

110. In this regard it was disappointing to note the frequency with which the inadequacy of resources was identified as a feature of the national systems under review. This was not, however, a problem confined to FIUs; judicial, prosecutorial, law enforcement and supervisory bodies were often implicated. It will be recalled that the provision to administrative and judicial authorities of the necessary financial, human and technical resources for the proper discharge of their AML functions is the focus of NCCT criterion 23. It is sobering to see from Appendix A that over half of the second round reports formed an unfavourable view on this point (ten "partially met" and 2 "met" this criterion).

4 CONCLUSIONS

111. It is clear from the above that the member states of MONEYVAL have continued to make considerable progress in creating the complex and comprehensive architecture of the anti-money laundering system required by international expectations and standards. The extent of formal compliance was high and ever improving.

112. Member countries generally responded positively and constructively to the first round reports and the recommendations for action which they articulated. There was also a commendable willingness on the part of many to formulate and give effect to policies which went beyond the requirements established by international standard setters as reflected in the relevant reference texts.

113. In the March 2002 horizontal review, however, a somewhat more demanding benchmark was suggested (para. 315). It reads as follows:

> "In the second round it will be essential for examiners to try to establish whether or not the new preventative legislation has only proved in practice to be cosmetic. The examination teams will need to carefully assess whether a country has shown real political commitment to the legislation it has passed, by the provision of sufficient resources for effective implementation. Equally, it will be critical to establish whether the repressive systems are producing concrete results, by way of prosecutions and serious confiscation orders."

114. Viewed in these terms the outcome of the second round provides much food for thought. While there is no doubt that the preventive legislation has been a real rather than cosmetic addition to the anti-money laundering regimes of member countries, concern remains in a majority as to the adequacy of the resource base provided to meet the ever increasing scope and ambition of the AML system.

115. 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.

ANNEX A

COMPLIANCE WITH THE NCCT CRITERIA

CRITERION NUMBER	MET	PARTIALLY MET	NOT MET
1	1	12	9
2	0	4	18
3	0	8	14
4	3	1	18
5	2	9	11
6	0	4	18
7	0	1	21
8	0	0	22
9	0	0	22
10	1	2	19
11	1	4	17
12	0	3	19
13	2	9	11
14	3	5	14
15	0	2	20
16	0	0	22
17	0	0	22
18	0	2	20
19	0	2	20
20	1	2	19
21	0	0	22
22	0	3	19
23	2	10	10
24	1	4	17
25	1	0	21

ANNEX B

MONEY LAUNDERING OFFENCES

								RANGE OF PREDICATE OFFENCES			
STATE	SEPARATE CRIMINAL PROVISION FOR MONEY LAUNDERING	GENERAL CRIMINAL PROVISIONS USED FOR MONEY LAUNDERING PROSECUTIONS BECAUSE NO SEPARATE CRIMINAL OFFENCE IS IN EXISTENCE	PHYSICAL ELEMENTS OF MONEY LAUNDERING OFFENCES BROADLY FOLLOW ALL RELEVANT ASPECTS OF THE PRINCIPAL CONVENTIONS, (AND INCLUDE SIMPLE POSSESSION, USE OR ACQUISITION WITHOUT FURTHER RESTRUCTIONS (EG TO USE IN ECONOMIC ACTIVITY), NO RESTIRCTION TO "CONCEALMENT" OR "DISGUISE"	"OWN PROCEEDS" LAUNDERING COVERED	OFFENCE CAN BE PROSECUTED WHERE PREDICATE CRIME COMMITTED ABROAD	NEGLIGENT MONEY LAUNDERING CAN BE PROSECUTED	MENTAL ELEMENT COVERS REASONABLE SUSPICION OR SUSPICION GENERALLY	ALL CRIMES APPROACH	LIST APPROACH (INDIVIDUALLY SPECIFIED OFFENCES)	OTHER OFFENCES WITH PARTICULAR AGGRAVATING FEATURES (EG COMMITTED AS PART OF AN ORGANISED GROUP AND/OR IN LARGE AMOUNTS OR BY OFFICIAL PERSONS)	LIST BASED ON LENGTH OF SENTENCE FOR PREDICATE OFFENCES (EG 3+ YEARS OR 5+ YEARS)
ALBANIA	Yes		Yes	Thought possible	Yes – but only in limited circumstances	Yes	No	Yes			
ANDORRA	Yes		Uncertain	Thought possible	Yes	Yes	No		Yes		
BULGARIA	Yes		Broadly yes	Thought possible	Yes though subject to conditions	No	Yes	Yes			
CROATIA	Yes		Broadly yes	Yes	Yes	Yes	No	Yes			
CYPRUS	Yes		Yes	Yes	Yes	Yes	NK	Yes			
CZECH REPUBLIC	Arguably	Yes	Uncertain	No	Unclear	Unclear	No	Yes			
ESTONIA	Yes		No	Differing views	Yes	No	Unclear	Yes			
GEORGIA	Yes		No	Thought possible	Thought possible	No	No	Yes			
HUNGARY	Yes		Yes	No	Thought possible	No	No	Yes			
LATVIA	Yes		Yes	Thought possible	Thought possible	No	No		Yes		

MONEY LAUNDERING OFFENCES											
ANNEX B											
								RANGE OF PREDICATE OFFENCES			
STATE	SEPARATE CRIMINAL PROVISION FOR MONEY LAUNDERING	GENERAL CRIMINAL PROVISIONS USED FOR MONEY LAUNDERING PROSECUTIONS BECAUSE NO SEPARATE CRIMINAL OFFENCE IS IN EXISTENCE	PHYSICAL ELEMENTS OF MONEY LAUNDERING OFFENCES BROADLY FOLLOW ALL RELEVANT ASPECTS OF THE PRINCIPAL CONVENTIONS, (AND INCLUDE SIMPLE POSSESSION, USE OR ACQUISITION WITHOUT FURTHER RESTRUCTIONS (EG TO USE IN ECONOMIC ACTIVITY), NO RESTIRCTION TO "CONCEALMENT" OR "DISGUISE"	"OWN PROCEEDS" LAUNDERING COVERED	OFFENCE CAN BE PROSECUTED WHERE PREDICATE CRIME COMMITTED ABROAD	NEGLIGENT MONEY LAUNDERING CAN BE PROSECUTED	MENTAL ELEMENT COVERS REASONABLE SUSPICION OR SUSPICION GENERALLY	ALL CRIMES APPROACH	LIST APPROACH (INDIVIDUALLY SPECIFIED OFFENCES)	OTHER OFFENCES WITH PARTICULAR AGGRAVATING FEATURES (EG COMMITTED AS PART OF AN ORGANISED GROUP AND/OR IN LARGE AMOUNTS OR BY OFFICIAL PERSONS)	LIST BASED ON LENGTH OF SENTENCE FOR PREDICATE OFFENCES (EG 3+ YEARS OR 5+ YEARS)
LIECHTENSTEIN	Yes		Yes	Not in an orthodox manner	Yes	No	No				All crimes (punishable by 3 or more years) plus specified misdemeanours
LITHUANIA	Yes		No	Thought possible	Thought possible	No	No	Yes			
MALTA	Yes		Yes	Yes	Yes	No	Yes		Yes		
MOLDOVA	Yes		Largely	Yes	Yes	No	No	Yes			
POLAND	Yes		Yes	Yes	Yes	No	No	Yes			
ROMANIA	Yes		Yes	Yes	Yes	No	No		Yes	Yes, eg, offences committed as part of a criminal association	N/A

MONEY LAUNDERING OFFENCES											
ANNEX B											
								RANGE OF PREDICATE OFFENCES			
STATE	SEPARATE CRIMINAL PROVISION FOR MONEY LAUNDERING	GENERAL CRIMINAL PROVISIONS USED FOR MONEY LAUNDERING PROSECUTIONS BECAUSE NO SEPARATE CRIMINAL OFFENCE IS IN EXISTENCE	PHYSICAL ELEMENTS OF MONEY LAUNDERING OFFENCES BROADLY FOLLOW ALL RELEVANT ASPECTS OF THE PRINCIPAL CONVENTIONS, (AND INCLUDE SIMPLE POSSESSION, USE OR ACQUISITION WITHOUT FURTHER RESTRUCTIONS (EG TO USE IN ECONOMIC ACTIVITY), NO RESTIRCTION TO "CONCEALMENT" OR "DISGUISE"	"OWN PROCEEDS" LAUNDERING COVERED	OFFENCE CAN BE PROSECUTED WHERE PREDICATE CRIME COMMITTED ABROAD	NEGLIGENT MONEY LAUNDERING CAN BE PROSECUTED	MENTAL ELEMENT COVERS REASONABLE SUSPICION OR SUSPICION GENERALLY	ALL CRIMES APPROACH	LIST APPROACH (INDIVIDUALLY SPECIFIED OFFENCES)	OTHER OFFENCES WITH PARTICULAR AGGRAVATING FEATURES (EG COMMITTED AS PART OF AN ORGANISED GROUP AND/OR IN LARGE AMOUNTS OR BY OFFICIAL PERSONS)	LIST BASED ON LENGTH OF SENTENCE FOR PREDICATE OFFENCES (EG 3+ YEARS OR 5+ YEARS)
RUSSIAN FEDERATION	Yes		Yes	Yes	Thought possible	No	No	Yes but with limited specific exceptions			
SAN MARINO	Yes		Yes	No	Thought possible	No	No	Yes			
SLOVAKIA	Yes		Yes	Yes	Thought possible	No	No	Yes			
SLOVENIA	Yes		Yes	Yes	Yes	Yes	No	Yes			
"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"	Yes		No	Thought possible	Thought possible	Yes	No	Extent of broad coverage dependent upon judicial interpretation			
UKRAINE	Yes		Yes	Yes	Yes	No	No				Yes (minimum of 3 years)

ANNEX C

COUNTRY	1st ROUND	2nd ROUND					PROGRESS REPORT
	CONVICTIONS FOR ML	CONVICTIONS FOR ML	ACQUITTALS FOR ML	PROVISIONAL MEASURES IN ML CASES	CONFISCATION MEASURES IN ML CASES	CONFISCATION ORDERS GENERALLY	ADDITIONAL ML CONVICTIONS
ALBANIA	0	2	NK	0	NK	NK	NK
ANDORRA	1	1	NK	NK	NK	NK	3
BULGARIA	0	0	0	0	0	NK	0
CROATIA	0	1	0	1	1	NK	1
CYPRUS	0	5	NK	NK	NK	NK	1
CZECH REPUBLIC	101 (Arts 251a and 252)	73 (on basis of Art 251a and 252 - Annex 2) Para 84 of the Report stipulates 0	48 (on basis of Arts 251a and 252 - Annex 2)	NK	NK	NK	Unclear
ESTONIA	0	0	NK	7	0	NK	0
GEORGIA	0	0	0	0	0	NK	8
HUNGARY	0	1	1	NK	NK	NK	1
LATVIA	0	0	0	1	0	NK	1
LIECHTENSTEIN	0	0	0	7	0	NK	0
LITHUANIA	0	0	0	1	0	NK	0
MALTA	0	0	2	NK	0	NK	0
MOLDOVA	0	0	0	0	0	NK	0
POLAND	0	1	NK	NK	1	NK	3
ROMANIA	0	21	NK	NK	NK	NK	3
RUSSIAN FEDERATION	36	214	NK	NK	NK	NK	214 (figures for second half of 2005 not provided)
SAN MARINO	0	0	0	0	0	0	1
SLOVAKIA	2	9	30	NK	0	NK	12
SLOVENIA	0	1	1	11	0	NK	4
"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"	0	0	0	0	0	NK	0
UKRAINE	0	152 (See Report, para 256)	NK	NK	NK	NK	446

ANNEX D

REQUESTS RECEIVED FOR EXECUTION OF FOREIGN CONFISCATION ORDERS AND RELATED PROVISIONAL MEASURES

STATE	CONFISCATION ORDERS	PROVISIONAL MEASURES
ALBANIA	0	0
ANDORRA	NK	NK
BULGARIA	NK	NK
CROATIA	0	1
CYPRUS	0	10
CZECH REPUBLIC	NK	NK
ESTONIA	NK	NK
GEORGIA	0	0
HUNGARY	1	2
LATVIA	0	0
LIECHTENSTEIN	3	54
LITHUANIA	0	NK
MALTA	0	0
MOLDOVA	0	0
POLAND	0	0
ROMANIA	0	0
RUSSIAN FEDERATION	0	0
SAN MARINO	1	2
SLOVAKIA	0	0
SLOVENIA	0	0
“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”	0	0
UKRAINE	0	NK

ANNEX E

Range of Coverage in Anti-Money Laundering Legislation

STATE	Banks	Non-Bank Financial Institutions either generally or specified	Bureaux de Change	Investment Companies + Stockbrokers	Insurance	Comments	Casinos, Gambling Houses	Lawyers	Notaries	Accountants	Real Estate	Other natural or legal persons conducting financial transactions
ALBANIA	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
ANDORRA	✓	✓	✓	✓	✓		NA	✓	✓	✓	✓	✓
BULGARIA	✓	✓	✓	✓	✓	2003 legislation added lawyers & real estate	✓	–	✓	✓	–	✓
CROATIA	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
CYPRUS	✓	✓	✓	✓	✓		NA	✓	✓	✓	–	✓
CZECH REPUBLIC	✓	✓	✓	✓	✓		✓	–	–	–	✓	✓
ESTONIA	✓	✓	✓	✓	✓	2004 legislation added notaries and brought further clarification	✓	✓	–	✓	✓	✓
GEORGIA	[NO	RELEVANT OF	LEGISLATION ONSITE	AT VISIT]	TIME	Preventative legislation entered into force in 2004	[NO	RELEVANT	LEGISLATION ONSITE	AT VISIT]	TIME	OF
HUNGARY	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
LATVIA	✓	✓	✓	✓	✓	Further clarification provided in 2003 legislation	✓	✓	✓	✓	✓	✓
LIECHTENSTEIN	✓	✓	✓	✓	✓	Trustees and legal agents covered	–	✓	–	✓	–	✓
LITHUANIA	✓	✓	✓	✓	✓	Lawyers, Accountants, real estate and others added by legislation in 2003	✓	–	✓	–	–	–

ANNEX E

Range of Coverage in Anti-Money Laundering Legislation

STATE	Banks	Non-Bank Financial Institutions either generally or specified	Bureaux de Change	Investment Companies + Stockbrokers	Insurance	Comments	Casinos, Gambling Houses	Lawyers	Notaries	Accountants	Real Estate	Other natural or legal persons conducting financial transactions
MALTA	✓	✓	✓	✓	✓	Range of obligated entities extended eg to lawyers and accountants, in 2003	✓	–	–	–	–	✓
MOLDOVA	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
POLAND	✓	✓	✓	✓	✓		✓	–	✓	–	✓	✓
ROMANIA	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓	✓
RUSSIAN FEDERATION	✓	✓	✓	✓	✓	2004 legislation extended obligations to lawyers, notaries, accountants and real estate dealers	✓	–	–	–	–	✓
SAN MARINO	✓	✓	NA	NA	–	2004 legislation extended obligations to insurance, real estate, relevant professions and others	NA	–	–	–	–	–

ANNEX E

Range of Coverage in Anti-Money Laundering Legislation

STATE	Banks	Non-Bank Financial Institutions either generally or specified	Bureaux de Change	Investment Companies + Stockbrokers	Insurance	Comments	Casinos, Gambling Houses	Lawyers	Notaries	Accountants	Real Estate	Other natural or legal persons conducting financial transactions
SLOVAKIA	✓	✓	✓	✓	✓	2001 legislation extended obligation to lawyers and accountants	✓	–	–	–	✓	✓
SLOVENIA	✓	✓	✓	✓	✓	2002 legislation extended obligations to among others lawyers and accountants	✓	–	–	–	✓	✓
"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"	✓	✓	✓	✓	✓	2004 legislation brought further changes to the scope of AML coverage including real estate	✓	✓	✓	✓	–	–
UKRAINE	✓	✓	✓	✓	✓		✓	–	–	–	–	✓

– = NO MEASURES
NA = THERE ARE UNDERSTOOD TO BE NO SUCH INSTITUTIONS IN THE COUNTRY CONCERNED

ANNEX F

FIRST ROUND EVALUATION OF NEW MONEYVAL MEMBERS: A SUMMARY

Within the time-frame of the second round of MONEYVAL evaluations five new member states were subject to assessment for the first time. Furthermore, and as noted in the main text of this review, in December 2002 it was decided at the MONEYVAL plenary meeting to utilise the AML/CFT common methodology (which had been elaborated by the FATF and the International Monetary Fund and the World Bank) for all remaining first round evaluations.

It will be recalled that the version of the common methodology in question adopted an approach both to format and to international standards which differed significantly from that used previously by MONEYVAL. In its words: "It is based primarily on the FATF Forty Recommendations (the FATF 40) and the FATF Eight Special Recommendations on Terrorist Financing (the FATF 8), but also includes relevant elements from United Nations Security Council Resolutions and international conventions and from supervisory/regulatory standards for the banking, insurance and securities sectors." The scope of the exercise, though it did not as such invoke the NCCT criteria, was thus more extensive and exacting than that utilised by MONEYVAL throughout the second round.

Another difference worthy of note was the decision to build into the common methodology compliance ratings in respect of the satisfaction of the standards in question. These ranged from 'compliant' (where a requirement was fully observed) through to 'non-compliant' (where the jurisdiction had not addressed the issue or which had done so in a manner that could not reasonably lead to substantial observance).

This format was utilised in respect of the evaluations of four of the five new MONEYVAL members; namely, Armenia, Azerbaijan, Bosnia and Herzegovina, and Serbia and Montenegro (as it was then). For reasons of timing the first round report on Monaco followed the same broad methodology as that used in the second round more generally.

It is difficult to draw any meaningful comparisons or to define any general picture from an analysis of the five first round reports. This is due, in part, to the fact that they were all at somewhat different stages of addressing AML/CFT issues. Of the jurisdictions in question Monaco possessed the most mature and comprehensive AML system – best illustrated by the fact that it obtained the most positive classification ('not met') in respect of 24 of the 25 NCCT criteria (criterion 19 was 'partially met'). By way of contrast both Armenia and Azerbaijan were, at the time of their on-site visits, at a far more embryonic stage. Neither had in place at the time a general preventative law, a factor which had a substantial consequential impact on associated compliance ratings. Both Bosnia and Herzegovina, and Serbia and Montenegro can best be thought of as having achieved an intermediate position by the time of the formulation of their first round reports.

A further element of difficulty for analytical purposes is presented by the complex internal constitutional arrangements in Bosnia and Herzegovina, and Serbia and Montenegro. In the former context the report (para. 13) speaks of the country as having "the features of a very de-centralised federal system …" with a range of competent actors at differing levels in relation to AML matters. Following a decision of the December 2003 MONEVAL plenary the evaluation team utilised an "average rating" approach for the country as a whole (see, report paras. 26-27). A similar approach was adopted in relation to the constitutional complexities in Serbia and Montenegro (report, para. 10).

The view as to the slightly different stages of evolution suggested above is well illustrated by reference to the issue of the creation of modern FIU structures. In the case of Monaco a fully operational FIU was in existence which had obtained Egmont membership. By way of contrast (report para. 288): "Three FIUs (not within the Egmont Group definition) based on three different models and practices, operated within BiH at the time of the on-site visit." None of these was at state level. Serbia

had in place a FIU which attained Egmont membership in 2003 while there was no Financial Intelligence Unit in Montenegro at the time of the on-site visit (though this was accomplished prior to the adoption of the evaluation report by the MONEYVAL plenary). No FIU structures had been created in either Armenia or Azerbaijan by the time of the finalisation of their respective reports.

While the drawing of comparisons is difficult in this context it is not in all instances impossible. For example, and importantly, in all four of the jurisdictions subject to common methodology assessment concern was expressed over the adequacy of the confiscation and provisional measures regimes then in place. Indeed, in three of the four cases (BiH being the exception) the rating given in respect of FATF Recommendation 7 was 'materially non-compliant' indicating numerous or systematic shortcomings. Confiscation, it will be recalled, is an area which the horizontal review indicates is of general concern within the MONEYVAL membership.

Similarly, all but one of these reports (the exception being Serbia and Montenegro) indicate issues of concern in the area of customer due diligence in particular in the context of the identification of beneficial owners. Again this finds an echo in the outcome of the second round of MONEYVAL reports.

It should be noted that somewhat in contrast to the second round reports three of the four of those conducted on new members and utilising the common methodology failed, in the context of FATF Recommendation 10, to focus to any appreciable extent on the issue of bearer passbooks. This may be due in part to the wording of the common methodology and to the fact circumstances of the countries in questions. However, it is to be regretted – given the history of this important issue within MONEYVAL – that greater clarity was not brought to the position of the countries concerned.

Some though limited coverage was, however, provided in the BiH report. It notes (para. 413) that little information was available to the team on this issue. At a later stage (para. 439) it is stated that: "regarding bearer accounts, the authorities should collect reliable statistics and assess the AML/CFT risks these accounts present. The examiners consider that, depending on the risks, the accounts should either be abolished immediately or phased out within a reasonable period, which from the outset, should oblige banks to verify the identity of holders". It is to be hoped that further clarity will flow from the current round of evaluations.

Given what has been said above about the extent of the challenges still faced in completing the required features of a modern and comprehensive AML system it was to be anticipated that evidence of positive practical outcomes would be modest. Not surprisingly, given the time frames in question, in the area of countering the financing of terrorism much remained to be done in order to obtain formal compliance with international standards. In the four reports where this matter was addressed seven of the eight original Special Recommendations were afforded ratings. Of the 28 classifications to emerge from the process only three were 'compliant.'