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# Anti-money laundering and counter-terrorist financing measures Azerbaijan

## Fifth Round Mutual Evaluation Report December 2023



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

The fifth round mutual evaluation report on Azerbaijan was adopted by the MONEYVAL Committee at its 66<sup>th</sup> Plenary Session

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## EXECUTIVE SUMMARY

1. This report provides a summary of the anti-money laundering and combating financing of terrorism (AML/CFT) measures in place in the Republic of Azerbaijan as at the date of the onsite visit (1 – 15 March 2023). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Azerbaijan’s AML/CFT system and provides recommendations on how the system could be strengthened.

### Key Findings

- a) The authorities of Azerbaijan base their understanding of ML/TF risk on the findings of the National Risk Assessment (NRA) 2022, according to which domestic corruption, tax related crimes, smuggling and drugs trafficking are the main ML predicate offences. Azerbaijan would benefit from more comprehensive analysis into some ML and TF risks in order to substantiate the authorities’ understanding. At a policy level, domestic cooperation between the authorities appears to be adequate and has yielded positive results in terms of legislation changes and adoption of national action plans derived from the findings of the NRA. The effectiveness of these measures beyond legislation changes is less evidenced. Given that the authorities perceive immovable property to be the main ML scheme in corruption matters, there remains a lack of suitable measures to fully mitigate the risks.
- b) The investigative authorities have access to financial intelligence and other information which they use to a certain extent to establish evidence and trace the proceeds of crime linked to ML, TF and predicate offences. The financial intelligence is often gathered directly by the law enforcement agencies (LEA) from the private sector. It is evident that the conversion rate from intelligence obtained through suspicious transactions reports (STRs) and other reports into case investigations and ultimately prosecutions is insufficient. Most STRs are received from banks and the contribution from some of the higher risk sectors remains limited. Whilst the Financial Monitoring Service (FMS) maintain that the quality of STRs is improving, this remains insufficient, and this fact is reflected in the number of investigations being initiated from FMS disseminations. Further FMS work to improve their analytical capacity and capabilities as well as promote the use of financial intelligence in investigations is required. It is evident that the LEAs do not fully understand how the FMS can be a useful tool in their investigations. The duties of the FMS and LEAs would benefit from increased domestic cooperation at an operational level, including sufficient feedback mechanisms.
- c) Azerbaijan has dedicated LEAs competent to identify and investigate ML offence. The overall number of ML investigations increased in the last year, and deficiencies identified in relation to lack of parallel financial investigations, strict interpretation of ML offence and limited use of circumstantial evidence are being gradually addressed by the authorities. Some ML cases related to crimes posing high ML threat have been investigated and prosecuted, but the results are not fully consistent with the risk profile of the country. Most of the prosecutions and convictions achieved pertain to self-laundering and legal persons have not been investigated so far for ML.
- d) Confiscation is pursued as policy objective to some extent. Authorities confiscated some commendable amount of criminal proceeds. No parallel financial investigations have been conducted so far and authorities are focused on the establishment of the

damage caused by the offence, rather than tracing assets. There are some measures in place enabling management of seized and confiscated property, such as storing goods. Sanctions (fines) applied in case of false or undeclared cash do not seem to be entirely proportionate, dissuasive, and effective.

- e) Azerbaijan has secured seven TF convictions, which is in line with the risk profile of the country to some extent. The overall effectiveness is impacted by the deficiencies in the TF risk understanding. A variety of intelligence sources are used to trigger TF investigations. The systematic approach to investigate the financial aspects in terrorism cases was not fully documented and may constitute an area for improvement. There is no national counter-terrorism strategy. However, the authorities adopted some policy documents where TF investigations have been integrated.
- f) Azerbaijan has recently adopted a new legislation which ensures the implementation of UNSCRs 1267 and 1373 and its successor resolutions without delay. No individuals or entities that warrant designation to the UN sanctions under 1267/1989 or 1988 have been identified by the country. Azerbaijan has designated individuals pursuant to UNSCR 1373 and one foreign request for designation is under consideration. The country has applied freezing measures pursuant to 1373 and no instances were identified that would require freezing of assets pursuant to UNSCR 1267 or upon foreign request. The targeted financial sanctions (TFS) measures taken by the Azerbaijani authorities are partially consistent with the overall TF risk profile. The communication of designations by the authorities is quite limited and does not foresee a pro-active approach from the authorities in case of changes in the lists. Azerbaijan has conducted a risk assessment of the Non-Profit Organisations (NPO) sector to identify a subset of NPOs at risk of TF abuse shortly before the on-site visit. The authorities are still in process of considering the results of the NPO risk assessment in order to apply measures that are focused and in line with the risk-based approach to ensure that the legitimate NPO activities are not disrupted or discouraged.
- g) Proliferations financing (PF) -related UNSCRs are implemented by Azerbaijan through the recently adopted new law, which foresees the implementation of the UNSCRs without delay. The authorities have not yet tested the system in practice, therefore no assets related to PF were frozen. Before the adoption of the TFS Law the country relied on alternative measures oriented to monitor all transactions related to high-risk jurisdictions, including Iran and DPRK. The reporting entities' (REs) understanding of freezing obligations on PF, remains rather limited in all the sectors. Some outreach has been provided to REs by the authorities. Supervisory authorities have never considered PF issues as part of their supervision and only recently started considering the implementation of the measures for monitoring and ensuring compliance by RE with the PF related TFS.
- h) FIs reflected their risk understanding, informed by the Azerbaijan's NRA but not limited only to that, within their own internal risk management procedures and by allocating the necessary resources to mitigate risks. The designated non-financial business and professions (DNFBPs) are less focused on risk scenarios which is also reflected in the low level of reporting suspicious activities. The customer due diligence (CDD) measures performed are generally sound and risk based, with some exceptions (smaller non-banking financial institutions (FIs) such as life insurance companies, leasing companies, non-banking credit institutions (NBCI) and exchange offices) which

displayed lesser awareness. Banks perform a series of checks and gather information on shareholders and management of their clients and sometimes go further to identify the ultimate natural person who holds control. The effectiveness of managing domestic politically exposed persons (PEPs) is negatively impacted by deficient legislation.

- i) The Central Bank of Azerbaijan (CBA) applies basic *“fit and proper”* entry checks both for qualified owners, and persons who can significantly influence the decision-making process. Market entry checks do not always cover beneficial owners (BOs), while the identification of potential association with criminals is not checked. For the DNFBPs, limitations are noted on STS supervised entities. Effective *“fit and proper”* tests are applied to notaries, lawyers and auditors by their respective supervisors.
- j) The understanding of ML risks varies amongst supervisors. The CBA and the Bar Association demonstrated a better understanding of ML risks which is displayed to a lesser degree, by the State Tax Service (STS), and Chamber of Auditors. The risk based approach (RBA) in supervision did not prove its effectiveness. Notwithstanding the fact that the real estate sector is weighted as bearing higher ML risk, during the period under review there was no supervision for the sector. The overall sanctioning regime is an area for improvement.
- k) Detailed information on the ways of creating the various types of companies is publicly available in Azerbaijan. No legal arrangements are recognised. Authorities’ understanding of risk is mostly based on the NRA which includes a dedicated section on legal persons, with the limited liability companies (LLCs) being the most vulnerable. Azerbaijan implements certain measures to prevent the use of legal persons and arrangements for ML/TF purposes, such as the registration and authorisation system.
- l) Azerbaijan does not have a BO Register and there is no requirement for the legal entities themselves to gather and retain their BOs information. Authorities have easy access to basic information kept by the STS, which is generally accurate and updated. To obtain BO information the authorities mainly appeal to banks. The quality of BO information is impacted by deficiencies identified at the REs level. Although the sanctions are not fully proportionate and dissuasive, they appear to have a positive impact on the level of compliance with the registration requirements.
- m) Azerbaijan has a sound legal framework to provide international cooperation in relation to ML, associated predicate offences and TF. Mutual legal assistance is provided in a constructive and timely manner to a large extent despite the unavailability of a case management system and prioritisation mechanism applicable to all competent authorities. Authorities seek mutual legal assistance (MLA) to pursue ML and predicate offenses investigations. International cooperation on tracing, seizing, and confiscating assets moved abroad is very limited, but authorities are making efforts to overcome this deficiency. The General Prosecutor’s Office (GPO) demonstrated the effectiveness of informal cooperation, nevertheless it is hard to conclude the same for the other LEAs due to the limited information provided. The FMS does not entirely effectively seek assistance given risk and context of the country. No international cooperation has been performed by the supervisors in relation to AML/CFT matters. Azerbaijan provides basic and beneficial ownership information on legal persons and legal arrangements to foreign partners.

## Risks and General Situation

2. Azerbaijan is a transcontinental country located at the boundary of Eastern Europe and Western Asia. It is a part of the South Caucasus region, and is bounded by the Caspian Sea to the east, Russia to the north, Georgia to the northwest, Armenia and Türkiye to the west, and Iran to the south. The banking sector is the most significant across the financial industry, holding 95% of the total assets.

3. The geographical location of the country impacts the risks related to drugs smuggling and higher risk jurisdictions. Azerbaijan is internationally recognised as a transit country as part of the Transcaucasian drug transport route. The authorities have identified domestic corruption, tax related crimes and drugs smuggling as the highest ML risk areas. In addition, the TF risk level was assessed as medium-high in the NRA, mostly emanating from ethnic and religious threats.

4. The conclusions of the NRA appear reasonable and were known to the authorities. Some areas merit further analysis to substantiate ML related risk understanding at a national level, such as use of cash in the economy, misuse of real estate, legal persons and organised crime. A NPO TF risk assessment has been conducted by the authorities.

## Overall Level of Compliance and Effectiveness

5. The effectiveness of the Azerbaijani AML/CFT system is uneven. The NRA conclusions are reasonable, giving grounds for a satisfactory general understanding across most authorities of the main ML risks. The competent authorities were aware of the findings of the NRA, although when delving deeper, some conclusions appeared to be contradictory or insufficiently explored. The outcomes achieved in relation to ML and TF investigations and prosecutions, confiscation of proceeds of crime and targeted financial sanctions are moderate. More satisfactory outcomes have been achieved in the area of international cooperation. To achieve full effectiveness in the use of financial intelligence and other information, the transparency of legal persons, and the application of the preventive measures, major improvements are needed. The supervision over the FI and DNFBPs was achieved to a negligible extent.

6. In technical terms, Azerbaijan has achieved a commendable level of compliance for all FATF's six main Recommendations<sup>1</sup> and has a robust legal framework in relation to the preventive measures applied by FIs and DNFBPs. However, technical improvements are needed with regards to supervision, sanctions and transparency of legal persons.

### *Assessment of risk, coordination, and policy setting (Chapter 2; 10.1, R.1, 2, 33 & 34)*

7. Azerbaijan has undertaken a considerable amount of work to identify the ML/TF risks to which it is exposed and the authorities were able to articulate the NRA 2022 findings to a satisfactory level. In some aspects the understanding lacked depth and there is room for more comprehensive analysis to substantiate the understanding of ML risks (drugs smuggling, Hawala, use of cash, legal persons and virtual assets (Vas)). Similarly, in TF risk understanding, there is scope for formal analysis of links with organised crime, drug trafficking and the misuse of legal persons in the context of Azerbaijan. Real estate is considered to be a main method of ML, particularly in corruption matters, yet supervision measures for the real estate agents (such as outreach) are not sufficient. Some positive legislation changes have been recently made in relation to this, however, the effectiveness is yet to be evidenced. The ability for criminals to utilise undocumented immovable property in ML schemes remains a concern.

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<sup>1</sup> R.3, R.5, R.6, R.10, R.11, R.20



8. Azerbaijan's Coordination Council has a range of expertise which is beneficial for its responsibilities in conducting the AML/CFT/CPF national risk assessments, preparing action plans and drafting laws as well as the formation of domestic cooperation mechanisms amongst the competent authorities. At the policy level, there appears to be an adequate level of coordination, however at the operational level, the AML/CFT regime would benefit from greater cooperation. Azerbaijan has adopted three National Action Plans as a result of the NRAs, which demonstrates political commitment to address the ML/TF risks and vulnerabilities identified. On a technical level there have been positive results yielded, however, there is a lack of implementation of effective actions beyond legislative changes in some instances.

*Financial intelligence, ML investigations, prosecutions and confiscation (Chapter 3; IO.6, 7, 8; R.1, 3, 4, 29–32)*

#### *Use of Financial Intelligence*

9. The LEAs gather their own financial intelligence during independent investigations on predicate crimes. This intelligence is gathered directly from the private sector or by accessing various databases but mostly in investigations for the predicate offences and rarely in ML cases. LEAs' use of the FMS to obtain financial intelligence, support investigations and trace proceeds is limited. The main causes for this is: (i) the low quality STRs received from a small number of sectors; (ii) varying LEA appetite to investigate FMS derived analysis and provide feedback; (iii) the LEA's preference to obtain financial intelligence directly from the private sector, which hints that they do not consider FMS analysis as adding value to the raw financial intelligence already available; and (iv) the limited understanding amongst the LEAs of how the FMS functions can be useful to their investigations.

10. STRs from reporting entities has increased over recent years, particularly from banks which is partially in line with the Azerbaijan's risk and materiality profile. The contribution from some other higher risk sectors is still limited. The FMS reports that STR quality has improved, however, the data doesn't support this conclusion.

11. Strategic analysis has seen some improvements over recent years, and the dedicated division within the FMS is positive. Further work is necessary to provide strategic input to LEA, REs and the FMS itself to gear their actions into more effective repressive and preventive systems. Feedback is lacking in both operational and strategic analysis which is inhibiting the usefulness of the FMS products for the operational needs of the competent authorities.

#### *Investigation and prosecution of ML*

12. Azerbaijan has sound legal system and dedicated LEAs competent to identify and investigate ML offence. It was observed that various sources of information have been used to identify and investigate ML, but the FMS disseminations were mainly used for the investigation of predicate crimes. Authorities did not conduct parallel financial investigations, and it was observed that interpretation of ML offence was strict while objective factual circumstances were used only in a limited number of cases. There have been some ML cases related to the crimes posing high ML threat, but overall outcomes do not consistently align with the country's risk profile. The majority of ML prosecutions and convictions pertain to self-laundering with no legal persons facing charges. Nevertheless, authorities are making efforts to enhance effectiveness notably through the initiation of pre-investigations for stand-alone ML. All imprisonment sanctions in ML cases are proportionate, effective and dissuasive, yet fines are minimal and not proportionate to the nature and protected value of ML. Azerbaijan has some measures in place in instances when it is not possible to secure ML conviction, such as pursuing predicate offences.

#### *Confiscation*

13. There is no overarching policy document in Azerbaijan dealing with the confiscation of proceeds of crime, instrumentalities, and property of equivalent value. Nevertheless, the authorities have taken a number of progressive steps to develop its domestic legislative provisions, in order to make crime unprofitable. Azerbaijan prioritises the payment of victims, who have suffered damages as a result of criminality. Authorities confiscated some commendable amount of criminal proceeds nevertheless only in limited number of cases. Except for the SSS, there was no understanding by the LEAs of the need for parallel financial investigations. In addition, no guidance or methodology was provided or cited during the assessment in relation to parallel financial investigations, but some training has been delivered. The number of cases and the amount of recovered property is significant, and authorities explained that it is due to the application of principle of restitution of assets by offenders in order not to face criminal charges. The application of fines as opposed to amount of falsely or undeclared cash shows that the sanctioning system is not proportionate, dissuasive and effective.

*Terrorist and proliferation financing (Chapter 4; IO.9, 10, 11; R. 1, 4, 5–8, 30, 31 & 39.)*

14. Terrorism and TF risk in Azerbaijan is rated as medium-high. No terrorist organisations were identified to be operational or willing to act in Azerbaijan, but more than 1.500 Azerbaijani citizens joined illegal armed groups in the territory of Syria and Iraq. Authorities successfully secured a number of TF prosecutions and convictions which is to some extent in line with the risk profile of the country. Offenders were prosecuted and convicted for various types of TF activities including the provision, raising and transfer of funds aimed to support different terrorism related activities. The Security State Service (SSS) is the main LEA in charge of identification and investigation of TF offence. Effective cooperation was observed between the SSS and other authorities in TF cases. Azerbaijan adopted some policy documents dealing with preventive and disruptive measures against religious radicalism and terrorist activities and TF investigations are to some extent integrated into those documents.

15. Azerbaijan implements TF and PF TFS without delay based on a newly adopted TFS law. TF related freezing measures have been applied based on UNSCR 1373. The designation mechanism appears to be functional with 20 designations made by the SSS according to UNSCR 1373. One foreign request for designation was considered at the time of the on-site visit which demonstrates country's capacity to designate. Authorities approved the NPO risk assessment shortly before the on-site visit but still needs to establish the measures to be taken by the authorities to address the vulnerabilities. Only NPOs which were seeking to increase their level of understanding on risk of TF exposure reached out to the Guidance provided on the website of FMS, others were not aware of such publication.

16. Turning to PF, before the new TFS Law was adopted, Azerbaijan relied on an alternative mechanism, namely on the requirement that the reporting entities postpone the execution of transactions and submit reports to the FMS on all natural and legal persons from high-risk jurisdictions, including Iran and DPRK. The most material sectors were applying automatic screening using specialised software solutions which perform the checks of the lists of designated persons and entities, including PF TFS. The supervisory authorities did not have any experience in ensuring and monitoring compliance with the PF TFS, being at the initial stage of elaboration and adoption of supervision procedures.

*Preventive measures (Chapter 5; IO.4; R.9–23)*

17. FIs have a reasonable level of ML/TF risk understanding. At the time of the onsite visit, FIs were aware of the NRAs outcome, and they have implemented a series of measures in order to

manage ML/TF risk and to identify products which are most exposed of being used for ML/TF purposes.

18. The DNFBP sector in Azerbaijan has limited scope as the casinos are prohibited, the DPMS are not obliged entities, and the real estate agents were de facto excluded from the AML/CFT system (see Chapter 1). There were no virtual assets service providers (VASPs) registered at the time of the on-site visit. The ML/TF risk understanding varies with the legal professions and international accountancy firms having a stronger knowledge on the risks.

19. Mitigation measures and due diligence measures by FIs are generally sound for the entire customer base they manage, banks being the ones with a wide set of measures put in place when opening a business relationship. Difficulties have been noted in fully identifying and verifying the BO, conclusion that was also yielded in the course of the supervisor's controls. There are still some limitations with respect to PEPs as domestic PEPs have been introduced in the AML/CFT legislation shortly before the assessment.

20. STR reporting is concentrated mainly in the banking sector which is partially in line with the country risk and materiality. Other financial sectors account for a negligible number of STRs. The level of reporting from the DNFBP sector is low. Outside of the banking sector and MVTS operators, no specific focus is given to scenarios for detecting and reporting TF. The quality of the STRs is an area for improvement.

21. All FIs have an internal control framework based on programmes and systems to ensure compliance with AML/CFT due diligence obligations. For DNFBPs, the internal control function is generally less sophisticated.

*Supervision (Chapter 6; IO.3; R.14, R.26–28, 34, 35)*

22. The general process for licensing FIs requires the submission of relevant documentation from the applicant, including the completed "fit and proper" questionnaire. This documentation is reviewed by the CBA Licensing Division, with the final decision taken by the high-level board of directors. The information received during the application review process is verified by the CBA through public data and is not always subject of verification through other reliable and independent sources. In some cases, the CBA cooperated with foreign competent authorities and did perform verifications. In practice, market entry checks do not always cover BOs, while the identification of criminals' associates is not carried out.

23. While the LEA appeared to be aware of the AML/CFT risks related to the non-registered parallel FIs, the CBA does not consider it a preoccupation. There were no instances where a LEA informed the CBA about cases of identified un-licensed financial institutions.

24. The STS is responsible for registration of realtors, persons providing legal advice and persons providing accounting and tax advisory services, displaying a good system of gathering and verifying basic information but limited effectiveness when it comes to BO. The Chamber of Auditors, the Ministry of Justice and the Bar Association are responsible for the assessments of fitness and propriety of the rest of the DNFBPs which is generally sound.

25. The CBA has a good understanding of the sectors that it supervises and initiated sectorial risk assessments, along with the work on the NRA. Its understanding of risk may be limited by shortcomings identified under IO.1. The STS understanding of ML/TF risk in their sector is moderate while the Ministry of Justice (MoJ) and Chamber of Auditors consider the ML/TF risks connected with the sectors under their supervision as low. The Bar Association has a strong understanding of risks derived from the sector representatives (lawyers) and the services they provide.

26. In its supervisory activities, the CBA first assesses the risks connected to individual FIs, which leads to a risk level being attributed to each, followed by a supervision strategy which informs an inspection plan. The effectiveness of the risk-based supervision is impacted by the lack of human resources. The STS applied a form of a general risk-based supervision which includes some AML/CFT specific aspects. The rest of the DNFBPs supervision is not risk based.

27. The sanctioning regime in place cannot be considered as effective, proportionate and dissuasive partially due to technical shortcomings. Where shortcomings are identified during the on-site visits, the CBA often opts for action plans instead of sanctions.

*Transparency and beneficial ownership (Chapter 7; IO.5; R.24, 25)*

28. Information on the creation and types of legal person is publicly available, and the STS publishes on its website information regarding the documents which must be provided upon registration. Trusts cannot be established under the law of Azerbaijan. Whilst residents of Azerbaijan could be operating as trustees for foreign trusts, this scenario was never identified by the supervisors and the private sector. There are no trusts using services of FIs in Azerbaijan.

29. The authorities have a moderate understanding of ML risk based on the conclusions of the NRA which includes a section dedicated to the possible misuse of legal persons. The NRA assesses the ML vulnerability of the LLCs as the most prominent and presents some typologies but does not go beyond this by *ia* identifying the business sectors at greatest risk or analysing the vulnerabilities of other types of legal persons. Nevertheless, the STS' understanding of risk is enhanced by their own data.

30. The risk mitigation measures include registration and authorisation system run by the STS. The legal entities identified as high risk are registered in a risk module and subject to various types of tax control measures (onsite and extraordinary inspections, supervision, monitoring, etc.).

31. Direct ownership information (on the first level of legal owners of a legal person) is kept and can be obtained from the STS register with regard to: (i) partnerships; (ii) limited partnerships; (iii) LLCs; and (iv) original founders of NPOs. The Register contains information regarding: the name of the company, the type of company (LLC, LSC...), main type of activity, tax ID, date of issuing the tax ID, address, name and ID number of the manager, his/her address and date of birth, and information on company's bank accounts.

32. To obtain BO information the authorities have at their disposal three avenues: i) the REs, mainly the banks for any legal person holding an account, the ii) FMS for foreign legal persons, iii) to the company itself in case of JSCs. Although there is no separate register of bank accounts in Azerbaijan, this information is attached under the company's file kept by the STS. Therefore, in case of need, the LEA can obtain this information from the STS. Nevertheless, in practice, there is little evidence that the LEAs systematically make use of this option when searching for financial intelligence and BO information.

33. STS did impose fines for late submission of the required information. While this is a positive step in enhancing the quality, accuracy and actuality of basic information this remains limited to the taxpayers subject to inspections.

*International cooperation (Chapter 8; IO.2; R.36–40)*

34. Azerbaijan has two central authorities, the MoJ and the GPO, responsible for receiving and further disseminating incoming requests to LEAs for execution. MLA is provided in a constructive and timely manner to a large extent. Nevertheless, there is not a case management system and prioritisation mechanism applicable to all competent authorities. The primary basis for rejecting

MLA requests is the principle of dual criminality which hinders effective cooperation. Authorities seek MLA to pursue ML and predicate offenses investigations. There were no MLA requests sent in relation to TF offences, due to the difficulties relating to seeking information from conflict zones, and the sensitive nature of TF exchanges of information. International cooperation on tracing, seizing, and confiscating assets moved abroad is very limited, but authorities are making efforts to overcome this deficiency. Other forms of international cooperation are effectively used by the GPO, while the same cannot be concluded for LEAs and the FMS. Provision of basic and BO information is affected by the deficiencies identified under IO.5.

## Priority Actions

### **Azerbaijan should**

#### *Supervision and preventive measures*

- a) Strengthen supervision of FIs and DNFBPs by:
  - ✓ Enhancing the risk-based supervision in place for FI, including through improved and up-dated procedures and increased human and material resources dedicated for AML/CFT supervision;
  - ✓ Applying a risk-based approach for AML/CFT supervision for all DNFBPs (including real estate agents) and carry out risk-based off-site and on-site inspections;
  - ✓ Enhancing the efforts to identify and prevent unlicensed activity and be given appropriate powers to sanction those acting without a licence or authorisation;
- b) Strengthen enforcement and sanctioning powers for breaches of professional AML/CFT obligations by:
  - ✓ Addressing the technical deficiencies related to the sanctioning regime;
  - ✓ Ensuring that supervisory authorities have powers to impose and enforce pecuniary and other penalties for breaches of AML/CFT obligations;
- c) Implement mitigation measures relating to real estate. These measures should aim to:
  - ✓ Provide effective outreach and supervision to the relevant sectors (real estate agents, notaries and banks);
  - ✓ Conduct further analysis of real estate in ML schemes in Azerbaijan and evidence the effectiveness of the mitigation measures implemented;
  - ✓ Implement further measures to mitigate the ability to convert illicit funds into immovable property outside of official registration.
- d) Substantially improve transaction monitoring and STR reporting by REs providing thematic guides and outreach on sector specific risks indicators, typologies and red flags indicators which should include prominent offences in Azerbaijan.
- e) Take measures to enhance REs effectiveness in applying the necessary identification and verification measures in case of PEPs and BOs.

#### *Risk understanding*

- f) Take measures to ensure a better and more equal level of understanding of its identified ML and TF risks and vulnerabilities across all competent authorities. This should include conducting further analysis and assessment of the following areas relating to both ML and TF:

- ✓ Legal persons;
- ✓ Informal economy and financial services (Hawala);
- ✓ Organised crime;
- ✓ Virtual assets and VASPs providing services into Azerbaijan.

#### *Tackling ML and confiscation*

- g) Develop the culture of sharing information, intelligence, feedback and analysis in an appropriate manner and in appropriate cases between FMS and the LEAs and vice versa, to increase the FMS' capacity and capability to provide meaningful analysis to be converted into ML and TF cases by the LEAs.
- h) Ensure that the judiciary and LEAs interpretations and understanding of the ML offence are aligned with the international standards including by: (i) developing and disseminating formal guidelines drawing on international and domestic good practices; (ii) continue to promote evolving jurisprudence on ML cases in line with the current criminalisation of ML and international standards; and (iii) holding regular trainings.
- i) Ensure that parallel financial investigations are systematically conducted in all proceeds generating crimes, including TF. Guidance and supporting training programs for all competent authorities should be developed in that sense.
- j) Authorities should develop policy documents such as action plans and objectives set for LEAs to undertake measures to trace and seize proceeds when investigating proceeds generating crimes.

#### *International cooperation*

- k) LEAs and the GPO should establish as policy objective seeking MLAs proactively in ML, associated predicate and TF cases, with the focus on tracing, seizing, and confiscating assets moved abroad.
- l) Azerbaijan should not make dual criminality a condition when rendering MLA at least for requests which do not involve coercive measures, in accordance with the FATF Methodology

#### *TF, TFS and NPOs*

- m) Azerbaijan should adopt a general and unified counter terrorism financing strategy targeting specific risks and identifying and developing typologies observed.
- n) Without prejudice to the NPOs legitimate activities and careful to avoid unintended consequences of the application of the FATF standards and/or misapplication of R8, Azerbaijan should use the results of the NPO risk assessment to establish focused and proportionate supervisory measures to NPOs at risk of TF abuse in line with the risk-based approach.
- o) Further enhance its legal and institutional framework for the PF-TFS monitoring through i) the designation of a supervisory authority with full supervisory powers including on-site inspections and application of sanctions, and ii) providing the respective authority with necessary financial and human resources and proper training to perform its duties.

#### *Transparency of legal persons*

- p) Extend efforts to comprehensively identify, assess and understand the risks related with legal persons by enriching its analysis with information available at STS and LEA. The STS should enhance their knowledge on AML/CFT risks and take more proactive measures to

ensure the accuracy of the company register, including by:

- ✓ performing a vulnerability assessment on the population of registered commercial companies,
- ✓ random checks to identify shell companies, companies with nominee (straw men) shareholders and managers, and
- ✓ applying effective remedial measures.

## Effectiveness & Technical Compliance Ratings

### Effectiveness Ratings<sup>2</sup>

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

### Technical Compliance Ratings<sup>3</sup>

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

<sup>2</sup> Effectiveness ratings can be either a High - HE, Substantial - SE, Moderate - ME, or Low - LE, level of effectiveness.

<sup>3</sup> Technical compliance ratings can be either a C – compliant, LC – largely compliant, PC – partially compliant or NC – noncompliant.



## MUTUAL EVALUATION REPORT

### Preface

1. This report outlines the AML/CFT measures in place as at the date of the on-site visit. It analyses the level of compliance with the FAFT 40 Recommendations and the level of effectiveness of the AML/CFT system and recommends how the system could be strengthened.
2. This evaluation was based on the 2012 FATF Recommendations and was prepared using the 2013 Methodology. It was based on information provided by the authorities of the country and obtained by the evaluation team during its on-site visit to the country from 1 to 15 March 2023.
3. The evaluation was carried out by an assessment team consisting of:
  - Mr Borja AGUADO, Prosecutor, General Prosecutor's Office, Andorra (legal evaluator);
  - Mr Paul NAPPER, Principal Divisional Financial Investigator Serious Fraud Office, United Kingdom (legal evaluator);
  - Mr David BAKER, IT Lead & Data Protection Officer, Financial Intelligence Unit, Isle of Man (law enforcement evaluator);
  - Mr Andrian MUNTEANU, Deputy Director, Office for Prevention and Fight Against Money Laundering, Republic of Moldova (law enforcement/financial evaluator);
  - Ms Alina IONESCU, Legal Specialist, AML Unit Financial Supervision Authority, Romania (financial evaluator);
  - Ms Mariam BEZHUASHVILI, Head of Methodology, International Relations and Legal Department, Financial Monitoring Service, Georgia (financial evaluator);
  - with the support of the MONEYVAL Secretariat represented by Ms Irina TALIANU, Ms Jillian CHRISTIAN, Ms Ana BOSKOVIC and Mr Dmitry KOSTIN.
  - The report was reviewed by Ms Jana Eberle-Ruzarovska (Czechia), Mr Anton Eberle (Liechtenstein) and the FATF Secretariat.
4. Azerbaijan previously underwent a MONEYVAL mutual evaluation in 2014 which was conducted according to the 2004 Methodology. The 2014 evaluation report is available at <http://rm.coe.int/report-on-fourth-assessment-visit-anti-money-laundering-and-combating-/1680715b1d>.
5. This mutual evaluation concluded that the country was compliant with seven Recommendations, largely compliant with 22, partially compliant with 10 and not applicable with 1. Azerbaijan was compliant or largely compliant with 9 of the 16 Core or Key Recommendations.

## 1. ML/TF RISKS AND CONTEXT

6. Azerbaijan is a transcontinental country located at the boundary of Eastern Europe and Western Asia. It is a part of the South Caucasus region, and is bounded by the Caspian Sea to the east, Russia to the north, Georgia to the northwest, Armenia and Türkiye to the west, and Iran to the south. Baku is the capital and largest city. The currency is the Azerbaijani Manat and in 2021 the population was 10.1 million.

7. According to the Constitution adopted on 12th November 1995, Azerbaijan's Head of State and Government is the President, assisted by the Prime Minister. The state power in Azerbaijan is divided into legislative, executive, and judicial powers. The political parties are represented in the legislative and local self-governing bodies and self-governing municipalities also play an important role in the political system of Azerbaijan. The legislative power is held by the National Assembly, Milli Majlis, the executive power is carried out by the President, and the judicial power is held by the Courts of the Republic of Azerbaijan.

8. Azerbaijan's GDP totalled \$54.6 billion in 2021, an increase of 5.6% from 2020. During this period, the country's non-oil GDP increased by 7.2% and its oil GDP increased by 1.8%. In 2021, 37.8% of Azerbaijan's GDP came from the oil and gas sector, and 62.2% from the non-oil and gas sector. The sectoral production structure of GDP for goods is 54.3%, for services is 37.2% and for net taxes on products and import is 8.4%.

**Table** Error! No text of specified style in document..1: Azerbaijan's top 5 exports of products<sup>4</sup>

No.	Exports of products in 2021	Million (US dollar)
1	Mineral products	19,695
2	Vegetable products	658
3	Plastic and articles thereof; rubber and articles thereof	442
4	Base metals and articles of base metal	375
5	Textiles and textile articles	303

9. Top export destinations of commodities from Azerbaijan in 2021<sup>5</sup>:

- 1) Italy with a share of 41.6% (9.24 billion US\$)
- 2) Türkiye with a share of 12.7% (2.81 billion US\$)
- 3) Russia with a share of 4.15% (920 million US\$)
- 4) Israel with a share of 4.04% (898 million US\$)
- 5) Croatia with a share of 3.38% (751 million US\$)

**Table** Error! No text of specified style in document..2: Azerbaijan's top 5 imports of products

No.	Imports of products in 2021	Million (US dollar)
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<sup>4</sup> <https://www.stat.gov.az/source/trade/?lang=en>

<sup>5</sup> <https://trendeconomy.com/data/h2/Azerbaijan/TOTAL>

<b>1</b>	Machinery and mechanical appliances, electrical equipment, parts thereof	<b>2,749</b>
<b>2</b>	Chemical products	<b>1,310</b>
<b>3</b>	Vehicles, vessels, associated transport equipment	<b>1,292</b>
<b>4</b>	Base metals and articles thereof	<b>1,115</b>
<b>5</b>	Prepared foodstuffs; beverages, spirits and vinegar; tobacco	<b>890</b>

10. Top import destinations of Azerbaijan in 2021<sup>6</sup>:

- 1) Russia with a share of 17.7% (2.07 billion US\$)
- 2) Türkiye with a share of 15.8% (1.84 billion US\$)
- 3) China with a share of 14% (1.63 billion US\$)
- 4) Germany with a share of 5.4% (632 million US\$)
- 5) Ukraine with a share of 4% (468 million US\$)

## 1.1. ML/TF Risks and Scoping of Higher Risk Issues

### 1.1.1. Overview of ML/TF Risks

#### ML Risks

11. Azerbaijan's most recent NRA, completed in 2022, states that tax related crimes and corruption are the predicate offences that pose the highest levels of money laundering risk. In terms of corruption, Transparency International ranked Azerbaijan 157/180 with a score of 23/100 in the 2022 Corruption Perceptions Index<sup>7</sup>. The reasoning for the low score surrounds a weakened effective opposition to the Government and widespread corruption. The authorities refer to the 2021 Corruption Perceptions Index in their recent NRA and use the results of the 2016 Global Corruption Barometer<sup>8</sup> to indicate that the number of citizens of Azerbaijan that have paid bribes to the public services is decreasing. Whilst this may be occurring, the risks in Azerbaijan are geared towards larger scale corruption given the cases, reports from global organisations and investigative journalists as well as the cases presented to the AT during the on-site discussions. The NRA determines that officials of state authorities or institutions mainly committed the crimes of taking bribes, embezzling funds allocated to state purchases and corrupt practices surrounding entrepreneurs carrying out improvement works or social protection.

12. The authorities highlight that the real estate sector is the main means for conversion in money laundering schemes in Azerbaijan, particularly in relation to corruption, whereby funds obtained are converted into real estate and often bought on behalf of relatives of the criminals. The NRA offers typologies of money laundering schemes for the proceeds obtained from the embezzlement of state funds which indicate that most of the laundering is occurring domestically using legal persons and local banks with some use of foreign networks.

13. Tax related crimes also rated by the authorities as a higher ML domestic risk. The NRA states that illegal entrepreneurship (Article 192 of the Criminal Code) and evasion of paying taxes, unemployment insurance, compulsory health insurance or compulsory state social insurance

<sup>6</sup> <https://www.stat.gov.az/source/trade/?lang=en>

<sup>7</sup> <https://www.transparency.org/en/cpi/2022>

<sup>8</sup> <https://www.transparency.org/en/gcb>

(Article 213) were among the crimes under the investigative authority of the STS as those that pose a ML risk. The crimes under the latter outweigh the former in terms of number of suspicious subjects of criminal cases. The NRA states that the value determined in tax crimes investigated by the STS equates to the equivalent of €746.6 million<sup>9</sup> from 4180 criminal cases between 2015 and the first quarter of 2021.

14. Legal entities are deemed as being widely used in the tax crimes identified by the Azerbaijan authorities, whereby the inadequacy of transparent networks and beneficial ownership information is highlighted as well as the insufficiency of domestic preventive measures<sup>10</sup>. The NRA states that in complex tax evasion cases, the beneficial owner is often concealed leaving the nominees and coordinating persons to carry out the management of the corporate entities, sometimes without knowledge of who the beneficial owner is<sup>11</sup>. Analysis conducted by the authorities shows that the obtained illegal funds from tax crimes are ultimately cashed or are removed from the country through the importation of goods<sup>12</sup>.

15. In general terms, the NRA concludes that legal entities are widely used in the commission of crimes and pose a high ML threat. Nevertheless, the current NRA did not carry out a comprehensive risk assessment and relies on preliminary analysis<sup>13</sup> but does acknowledge the requirement to conduct more in-depth research. According to the current legislation, legal entities are not required to open a bank account, however, it is noted that most of the legal entities used in ML and other crimes had bank accounts and transactions were carried out through those accounts<sup>14</sup>.

16. The authorities consider that the trafficking of drugs originating from the Islamic Republic of Iran and their transit through the territory of Azerbaijan to be the highest external risk factor. The 2021 report of UNODC, indicates, as those for previous periods, that Azerbaijan is located on the Transcaucasian transport route which is the main part of the drug trade route. According to the research conducted by UNODC, it is noted that the first country from which drugs in circulation enter Azerbaijan as a transit point is Iran, and the main country of origin is Afghanistan. The location of the Republic of Azerbaijan on the East-West transport and trade corridor is a favourable geographical position, and, at the same time, the modern transport infrastructure built in the country increases the use of the country's territory as a transit point for drug trade. Some of the drugs transported through the territory of Azerbaijan are sold in Azerbaijan and the authorities state that this is how the most proceeds are generated then laundered domestically.

17. Between 2015-2021, 24,370 criminal cases were initiated in Azerbaijan for illegally preparing, manufacturing, acquiring, storing, transporting, sending, or selling narcotic drugs, psychotropic substances, or their precursors. According to the authorities, most of the crimes referred to were episodic in nature and were carried out in cash outside of the financial sector, the compensation for drugs being carried out through unlicensed parallel financial system (Hawala).

### TF Risks

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<sup>9</sup> Manat to Euro exchange rate as at 22/02/23.

<sup>10</sup> Azerbaijan NRA, page 23, paragraph 29.

<sup>11</sup> Azerbaijan NRA, page 19, paragraph 22.

<sup>12</sup> Azerbaijan NRA, page 23, paragraph 29.

<sup>13</sup> Azerbaijan NRA, page 56, paragraph 147.

<sup>14</sup> Azerbaijan NRA, page 57, paragraph 153.

18. The NRA considers the TF risk as medium high, mostly emanating from ethnic and religious threats. The authorities indicated that the travelling of natural persons to high-risk zones and the financing of those persons, as well as the return of natural persons from high-risk zones, represents the main risks.

19. The authorities report that analysis of the materials collected on criminal cases related to TF shows that funds and properties used for TF are usually formed at the expense of the personal funds of the members of the terrorist organization or their associates, relatives and other sources found by those persons. Funds used for TF are transferred through the bank to the persons who directly carry out the financing operation, as well as to the associates of those persons and those who are dependent on them, or funds are given in cash to the mentioned persons. Collected funds are rarely sent to members of a terrorist group through a bank, and in most cases, they are sent through illegal money transfer methods.

#### Vulnerabilities

20. The main factors that allow the materialisation of ML threats according to the NRA are considered to be the ineffective regulation of cash transactions; high level of shadow economy; lack of implementation of beneficial ownership transparency and preventive measures and the failure to investigate possible ML offences during the investigation of tax-related and corruption crimes as the investigation of related crimes is fragmented amongst different authorities.

21. Weaknesses and gaps observed in the absence of legislation and regulatory measures on virtual assets in Azerbaijan create threats for misusing this sector for ML/TF purposes, which are characterized as medium-high. Observations by the authorities show that virtual assets are widely used in various financial fraud schemes in Azerbaijan. The absence of a general regulatory framework for VASPs, and AML/CFT supervision mechanism, has a restrictive effect on the national combatting capacity against these threats<sup>15</sup>.

### ***1.1.2. Country's Risk Assessment & Scoping of Higher Risk Issues***

#### Country's Risk Assessment

22. Azerbaijan published its first NRA in 2015, followed by a second in 2022. Both assessments utilise the World Bank methodology and involved law enforcement, supervisory authorities, other competent authorities, and private sector representatives. The NRA analyses the ML/TF risk across sectors, legal entities, and beneficial ownership; a separate risk assessment has been carried out in relation to the TF risk in the NPO sector, the latter a couple of days before the beginning of the on-site visit. Vulnerabilities within the system have also been analysed and included in the NRA, of which a summary has been published publicly.

23. At national level the Coordination Council was established by the Cabinet of Ministers in 2020. The Coordination Council is composed of representatives of competent central executive, law enforcement and supervision authorities, courts, other state authorities and non-governmental bodies. It ensures the domestic coordination in the field of combating ML/TF/PF in Azerbaijan. The Coordination Council is responsible for conducting the NRA, preparing action plans, drafting legislation and enhancing the overall effectiveness of the AML/CFT/CPF regime and reports to the Anti-Corruption Commission in relation to these matters.

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<sup>15</sup> Azerbaijan NRA, page 234, section 4.6.

### Scoping of Higher Risk Issues

24. The AT identified the following areas which required an increased focus through the analysis of information provided by the Azerbaijan authorities (including the NRA) and by consulting various open sources:

25. **Suspicious transaction reporting:** Analysis by FMS shows that there are several issues related to the number and quality of STRs received. The main concerns regarding STRs are that the grounds for suspicion in these reports are not properly formulated, most STRs are not related to ML/TF and in general and the probable predicate crimes are not indicated in these reports. The scale of received STRs is inconsistent with the general scale of the banking sector and with the total assets and transaction turnover of individual banks.

26. **Understanding and management of risks by competent authorities and supervised entities:** Given the shortcomings identified with respect to STRs, the AT focused on reviewing and assessing the level of understanding and the effectiveness of risk management processes employed by the competent authorities and supervised entities alike. Mostly of the systemically important banking sector as well as the DNFBP sector in the periphery.

27. **Cash Transactions:** With an important shadow and a cash-oriented economy, focus was given to the treatment of cash transactions by the private sector and subsequently, by the authorities in the context of any STRs and further sources of intelligence. The potential use of cash in the highest-risk areas of identified criminality cannot be understated.

28. **Transparency of legal persons:** The NRA highlights that one of the main factors facilitating ML of criminal proceeds generated by corruption-related crimes, is the low level of transparency and corporate governance of legal persons, including their beneficial ownership. In tax related crimes, the beneficial owner is concealed. The AT analysed the understanding of the authorities' risk related to these issues, including the availability of, and access to, beneficial ownership information of the different types of legal persons allowed to be incorporated in the country, as well as the mitigation measures taken.

29. **Real estate market and notaries:** The real estate sector is one of the main means of conversion in ML schemes in Azerbaijan, particularly in corruption crimes. The existence of many real estate properties outside of official registration procedures in the country and the lack of effectiveness of accountability of the realtors that are obliged entities on the transactions of the purchase and sale of such property are identified as another important high-risk factor in terms of ML/TF. There is no supervision of the real estate sector in the country. The risk related to the activities of notaries is related to the conversion of criminally obtained funds into real estate, the most important tool in ML schemes in Azerbaijan. In corruption crimes, a very simple ML scheme is used as funds obtained as a result of corruption are converted into real estate buying on behalf of criminals.

30. **VASPs:** The VASP sector in Azerbaijan is neither regulated nor supervised. To date, the VASPs are not subject to the AML/CFT requirements. However, a risk assessment of this sector has been carried out within the NRA, showing that no VASPs and no specialized VASP platforms were identified in Azerbaijan. Transactions with virtual assets are realized mainly as an exchange between two individual parties, not through the participation of VASPs. Nevertheless, this sector remains attractive to criminals. As noted in the NRA, the Iran-based drug trafficking syndicates use new technologies and remote banking products.

31. **ML investigation, prosecution and conviction:** The number of criminal cases and convictions for ML raises concerns about the adequacy of seeing the country's risk profile. Institutional deficiencies in the approach related to proving the subjective elements of ML such as intent and knowledge appear to impact authorities' abilities to properly investigate and prosecute ML cases. The AT focused into the reasons behind this situation including the manner in which parallel financial investigations are conducted in all relevant situations.

32. **TF detection and investigation:** There here have been 9 criminal investigations, 5 prosecutions and 4 convictions achieved in Azerbaijan for TF offences. The AT therefore examined: (i) the extent to which potential TF risks are well understood and addressed by the competent authorities; (ii) the extent to which the competent authorities cooperate and collaborate effectively and whether the overall criminal enforcements measures have proven effective; (iii) if results are consistent with the jurisdiction's risk profile.

33. **Seizing, freezing and confiscation:** The issue identification, confiscation and recovery of criminal assets proved to be an issue horizontally throughout the country's previous MERs. The AT analysed the Azerbaijani authorities' ability to effectively seize and confiscate criminal proceeds.

34. **MLA and international cooperation:** The competent authorities consider cross-border drug trafficking and smuggling to represent an external threat to ML. The existence of robust MLA mechanisms and other forms of international cooperation is therefore essential in Azerbaijan. The AT focused on the extent to which Azerbaijan provides MLA and cooperates with foreign partners. Seeking international cooperation was also analysed as well as the level in which other forms of international cooperation are used.

35. **Targeted financial sanctions, including proliferation financing:** Azerbaijan's geographical location as well as the vulnerabilities identified in relation to the preventive measures might create concerns in the application of TFS. The AT considered the application of the mitigation measures taken in this area.

## 1.2. Materiality

36. Azerbaijan is a cash-oriented economy due to its highly unbanked population, low financial awareness, and inadequate payment infrastructure. Moreover, according to the official statistics the level of the shadow economy in Azerbaijan varied from 8.2-9% of the GDP during 2015-2019<sup>16</sup>. However, according to a number of reports, this indicator varies in higher ranges.

37. The financial sector in Azerbaijan is dominated by banks, which hold about 95% of the financial sector's total assets. Currently, there are 25<sup>17</sup> banks and 1 Post Office providing financial services in Azerbaijan out of which: 24 (7 banks have foreign ownership) are domestic banks and 2 foreign branches. 14 banks were closed in 2016 because of non-performing loans, poor asset quality, lack of liquidity, and the overall economic downturn. An additional four banks were closed in 2020 after the CBA took over financial market supervision from a formerly independent regulator. Azerbaijan's largest bank, the International Bank of Azerbaijan, which is majority-owned by the Azerbaijani government, underwent restructuring in 2018.

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<sup>16</sup> NRA Executive Summary, page 4

<sup>17</sup> MEQ on TC, page 22

38. There are some other financial institutions represented by lenders/leasing companies (36), securities firms (14), life insurance companies (5), and non-banking credit institutions (55). The insurance sector altogether represents only 4% of the financial assets in the country and the authorities consider the ML/FT risk be low. The State Post Office offers all banking services, including MVT services, except for giving loans. Companies complain that strict credit terms limit access to medium and long-term financing, constraining private businesses. Despite several government initiatives, the credit supply available to small and medium enterprises remains limited.

39. The DNFBP sector is represented by real estate agents, lawyers, notaries, other independent legal professions and accountants.

40. From the materiality standpoint, amongst DNFBPs the notaries are key actors in terms of transaction turnovers. The risk related to their activities is also higher, especially in relation to real estate transactions which are a significant component in ML schemes in Azerbaijan. Lawyers, auditors, and persons providing legal and accountancy services are considered by the authorities to be less prone to potential ML related schemes as they are mainly engaged in providing advice within their area of expertise and are less engaged in activities described under R22.1(d). This was confirmed during the on-site interviews.

41. There are no casinos as such activity is prohibited by a Presidential Decree. The Azerbaijani legislation does not foresee the creation of legal arrangements, but in theory foreign trusts can operate in Azerbaijan. Although no such have been identified in Azerbaijan in the course of the NRA analysis, the AML/CFT law sets forth CDD requirements on trusts.

### **1.3. Structural elements**

42. Azerbaijan has all the necessary structural elements required for an effective AML/CFT system including political and institutional stability, a high-level of commitment to address AML/CFT issues, stable institutions with accountability and transparency, the rule of law, and an independent judicial system.

### **1.4. Background and Other Contextual Factors**

43. It should be noted that the AML/CFT Law was adopted shortly prior to the beginning of the mutual evaluation and therefore, the effectiveness is considered mostly in the context of the previous AML/CFT Law.

44. Analysis of the prevention of corruption in respect of members of parliament, judges and prosecutors in the Addendum to the Second Compliance Report adopted by Groups of States Against Corruption (GRECO) in 2020<sup>18</sup> indicates that Azerbaijan has seven recommended actions out of twenty-one that have not yet been implemented to a satisfactory level. As per the report, the issues that have not been sufficiently addressed relate to the lack of transparency regarding members' of parliament, judges' and prosecutors' asset disclosure, the composition of the Judicial Legal Council and executive influence over the GPO.

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<sup>18</sup><https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a28742>



#### *1.4.1. AML/CFT strategy*

45. Following the first NRA, the competent authorities adopted the 2017 – 2019 National Action Plan (NAP) for AML/CFT in 2016. The main component of this NAP was to create a coordination mechanism for the purpose of formulating and implementing the state policy on AML/CFT and the legislation was amended to vest the Anti-Corruption Commission with this power as a result. Following from this, the Coordination Council was established in 2020 under the leadership of the Deputy Prime Minister. Among the main duties of the Coordination Council is the determination of the methodology of the NRA, creation of working groups that will implement the NRA, as well as coordination of activities between state institutions in this process, and implementation of other necessary measures.

46. The 2016 NAP consisted of 10 priority tasks (each involving several sub-tasks), including improving national legislation, bolstering the capacity of competent authorities, obliged persons and other persons involved in monitoring, increasing bilateral and multilateral cooperation, and improving analysis of suspicious transactions, crime statistics and ML/TF risks. Following the second NRA, the 2022 NAP includes measures and actions relating to supervisory bodies, FIU, LEAs, financial monitoring, criminal prosecution, TF and PF, and the improvement of AML/CFT legislation.

47. The NAP 2022 -2023 resulted from the second NRA and contains eleven measures across four main priorities: (1) increasing the level of systematic use of the results of financial intelligence in the preliminary investigation of predicate crimes by law enforcement agencies; (2) implementation of effective criminal prosecution of money laundering, and parallel financial investigation of predicative crimes; (3) improving the quality of financial monitoring in the field of AML/CFT; and (4) improving the mechanism of mutual legal assistance.

#### *1.4.2. Legal & institutional framework*

##### Legal Framework

48. The AML/CFT legal framework in Azerbaijan over the assessment period has been governed by the Law on the Prevention of the Legalization of Criminally Obtained Funds or Other Property and the Financing of Terrorism (2009), this was the law in force for a large proportion of the assessed period. The new AML/CFT Law was adopted in 2023 therefore analysed in the context of the TCA.

##### Institutional Framework

49. **FMS** – is the Azerbaijani FIU holding the classic FIU analytical responsibilities. The FMS is also one of the main institutions in formulating AML policies and strategies and ensuring control over them. This includes initiating the first NRA and participation in the development of the NAP on the AML/CFT.

50. **Central Bank of Azerbaijan (CBA)** – since the transmission of powers from the Financial Markets Supervision Authority to the CBA at the end of 2019, the Financial Monitoring Unit of the CBA became responsible for the AML/CFT supervision over all the FIs. The CBA developed and implemented its sectorial risk assessment methodology during 2019-2022.

51. **General Prosecutor's Office (GPO)** – directly investigates corruption-related ML cases (in particular, the Anti-Corruption Department of the GPO – ACGD) and other ML cases, being usually assisted by its own financial experts of the GPO's Division of Expert Analysis or other LEAs. The

Department for the Coordination of Special Confiscation Issues of the GPO also assists investigators in detecting and tracing criminal assets.

52. **Anti-Corruption General Directorate (ACGD)** – is a separate unit of the GPO, integrated by prosecutors and investigators, and acting as the Azerbaijani anti-corruption enforcement authority. The ACGD has powers to conduct operative-search measures in order to identify and trace assets, as well as initiating freezing and seizing of assets.

53. **Security State Service (SSS)** – is a competent LEA to investigate TF, smuggling, cybercrimes and corruption cases and any ML-related crime.

54. **Ministry of Internal Affairs (MIA)** – is the competent LEA to investigate a number of crimes. In the AML context, the MIA is mainly focused on drug trafficking-related ML crimes. In general terms, ML is jointly investigated with drug trafficking when financial elements are found by the MIA in the framework of its own drug-related investigation.

55. **State Tax Service (STS)** – the main purpose and activities in the field of ML/TF are the supervision over persons providing legal, accountancy and tax consultancy services, receipt of tax reports from NPOs. Moreover, the STS is a competent LEA to investigate tax-related ML crimes.

56. **State Customs Committee (SCC)** - acts as one of the main authorities implementing regulation to control the transfer of national and foreign currency across the customs border. Among other duties, the SCC takes measures to detect and investigate ML during the import and export of currency assets.

57. **State Committee on Religious Associations** –vested with powers to regulate the religious associations, which are registered in Azerbaijan.

#### **1.4.3. Financial sector, DNFBPs and VASPs**

58. An overview of the financial and non-financial sector is provided in Table 1.3.

**Table Error! No text of specified style in document..3:** Number of reporting entities in Azerbaijan

<b>Obligated entities</b>	<b>Number</b>	<b>Volume of assets (EUR)</b>	<b>Size of sector</b>
<b>Banks</b>	26	5,354,300,306	94.1%
<b>Post office (providing financial services)</b>	1	77,543,834	0.3%
<b>MFOs</b>	0	-	0.0%
<b>Payment service providers (PSPs)</b>	0	-	0.0%
<b>Brokerage firms (Investment companies)</b>	13	149,309,772	0.6%
<b>Non-Bank Credit Institutions (lending entities)</b>	55	277,885,475	1.0%
<b>Credit Unions</b>	56	6,898,791	0.0%
<b>Currency exchange offices</b>	5	948	0.0%
<b>Securities' registrars</b>	1	161,490	0.0%
<b>Life insurance companies</b>	5	385,830,350	1.4%
<b>Non-state pension scheme founders</b>	0	-	0.0%

<b>Insurance/reinsurance brokers</b>	85	17,208	0.0%
<b>Leasing companies</b>	134	641,436,830	2.4%
<b>Casinos</b>	0	-	0.0%
<b>Entities engaged in trade of precious metals and stones (DPMS)</b>	-	-	-
<b>Notaries</b>	295	-	0.0%
<b>Auditors (sole practitioner or partner/employee of audit firm)</b>	165	-	0.0%
<b>Audit firms (legal persons)</b>	118	418,390	0.0%
<b>Persons providing tax and accounting services</b>	1490	45,739,000	0.2%
<b>Barristers (attorneys)</b>	2237	-	0.0%
<b>Law firms</b>	2997	27,933	0.0%
	<b>7,562</b>	<b>26,939,570,329</b>	

59. Azerbaijan's financial sector is dominated by banks which hold approximately 95% of total financial sector total assets. There are 26 banks operating in Azerbaijan, of which 2 are state banks and 24 are private banks. The number of banks with foreign capital is 12, of which 2 are local branches of foreign banks. The customer base is predominantly domestic and there is an absence of complex products. By the end of 2020, the total volume of assets in the banking sector was 32 billion manats, which accounted for 44.3% of GDP for that year. By the end of the period, the volume of deposits in the banking sector (excluding financial institutions) was 20.7 billion manats, of which 8 billion were the deposits of individuals and 12.7 billion were the deposits of legal entities. Analysis of the cases presented indicates that domestic banking products are often utilised by criminals to launder the proceeds of crime.

60. The traditional non-bank financial institutions such as life insurance and investment companies, are undeveloped. The DNFBP market counts for a large number of legal professionals.

61. Although not yet operating in Azerbaijan and not subject to the AML/CFT requirements until recently (before the onsite visit), VASPs are covered in the NRA (2015 - 2021) with the ML/FT risk related as medium high. Since no VASPs were registered at the time on the on-site visit in Azerbaijan, this sector was not subject to AT's analysis under IO.4.

62. Casinos including internet and ship-based casinos are not covered by the AML/CFT obligations as this activity is prohibited in Azerbaijan. A peculiar situation is to be found in regard to the real estate intermediaries as defined by the FATF Standards and Guidance. While the real estate agents (realtors) are indeed included in the AML/CFT Law for some time, there was no outreach by the authorities or SRO to this industry which in practice remains completely outside the AML/CFT regime both in terms of compliance and supervision. For this reason, no reference will be made to this category throughout the analysis under IO.4 as the sector has no knowledge on their AML/CFT obligations.

63. Trust and company service providers, persons or businesses who provide services to third parties, are not obliged entities under the AML/CFT Law, which provides a definition for foreign legal arrangements for CDD purposes. Outside the AML/CFT legislation, trusts are not recognised

by the legislation and the AT has no indication that foreign trusts might act on the country's territory and/or act as clients of Azerbaijan FIs or DNFBPs<sup>19</sup>.

64. The dealers in precious metals and precious stones (DPMS) are not covered by the AML/CFT law due to the approach taken by the country not to allow cash payments above 8.000 USD, application of this ban is supervised by the STS. Therefore, it is assumed by the authorities that the category of DPMS, as described in the FATF Glossary, which involves reaching a threshold of USD/EURO 15.000, could not be legally present in Azerbaijan.

65. The assessors weighted the relative importance of the different types of FIs, DNFBPs and VASPs in Azerbaijan, taking into account the country's unique risks, materiality and context as follows:

66. **Most important** is the banking sector as it has the largest share of the financial sector's total assets (95%), customer base and it undertakes the vast majority of cross-border transactions.

67. **Highly important** sectors are real estate, currency exchanges including the post office (which offers currency exchange) and notaries. The notaries and real estate sectors are involved in the area which presents the most vulnerability to the country in ML cases – the conversion of criminally obtained funds into real estate. As a predominantly cash based society the use of currency exchange is important in the AML/CFT context, particularly whereby there are land borders with higher risk countries.

68. **Moderately important** sectors are accountants, lawyers and VASPs. The services provided by accountants is low risk in terms of ML/TF and the lawyers are rarely providing services defined by R.22 (1)d. The competent authorities state that there are no VASPs registered and are content that there are no VASPs operating outside of registration, nevertheless there is still a ML/TF risk of this occurring.

69. **Less important** sectors are casinos and gambling services which have been banned in Azerbaijan since 1998, although there is one lottery and one legal sports betting operator. The DPMS are outside the scope of the FATF as cash transactions over 15.000 manat (approximately 8.000 Euros) are prohibited for that category of traders (Art. 3.4.15 of the Law on cashless Settlements). The insurance industry is not material in Azerbaijan with a total market share of 4% of financial assets and the ML/TF risk is assessed as being low. TCSPs are also less important in the context of Azerbaijan as there is no concept of trusts in the country and the presence of the foreign trusts acting in the country was not demonstrated. Other company service providers do not appear to have a significant role in the Azerbaijani economy.

#### ***1.4.4. Preventive measures***

70. The AML/CFT Law and relative Technical Annex set out provisions on the prevention and combating of ML and TF. The AML/CFT requirements apply to all FIs and DNFBPs as defined by the FATF Methodology. Nevertheless, casinos are not subject to the AML/CFT Law as such activity is prohibited in Azerbaijan. Real estate agents are now supervised by the STS, however, this is a

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<sup>19</sup> This conclusion was drawn based on reliable public sources and interviews held on-site with all reporting entities.

recent change. The previous supervisors (FMS) were not imposing any supervisory measures on this sector.

71. The application of preventative measures extends to certain activities that are not covered by the FATF Methodology, i.e., auditors, tax advisors, pawnshops.

#### ***1.4.5. Legal persons and arrangements***

##### ***Legal Persons***

72. Commercial legal persons are registered with the state registration body of legal persons on the basis of the one-stop shop principle. State registration can be done by approaching the registration authority or electronically online. Registration takes 1-2 working days. An enhanced electronic signature is required for electronic registration. During 2015-2021, 50,495 legal entities were registered electronically. Of the 145,785 commercial legal entities registered by the end of 2021, 57,953 (39.7%) are suspended, and 87,832 (60.3%) are active legal entities. The authorities consider there to be a risk of abuse of legal persons, mostly indicated from the use of legal persons in the country's most serious ML cases.

**Table** Error! No text of specified style in document..4: Number of legal entities registered electronically.

<b>Year</b>	<b>Number of legal entities registered electronically</b>
2015	<b>2507</b>
2016	<b>4116</b>
2017	<b>7838</b>
2018	<b>8325</b>
2019	<b>11149</b>
2020	<b>6763</b>
2021	<b>9797</b>

**Table** Error! No text of specified style in document..5: Number of legal persons registered in Azerbaijan as of 1st January 2023

<b>Legal form</b>	<b>Number</b>
Limited liability company	88070
Subsidiary liability company	31
Open joint stock company	980
Closed joint stock company	566
General partnership	258
Cooperative	1072
Funds	85
Non-commercial legal person (NPOs)	1606
Religious organisation	622
Branch of a foreign entrepreneurial legal person	2217
Branch of a foreign non-profit person	18
<b>Total</b>	<b>95525</b>

##### ***Legal Arrangements***

73. Azerbaijan is not a signatory to the Hague Convention on Laws Applicable to Trusts and on their Recognition. There is neither a law governing trusts nor other types of legal arrangements. Trusts and similar legal arrangements set up under foreign laws may still carry out financial and other activities in Azerbaijan.

#### ***1.4.6. Supervisory arrangements***

##### ***Banking***

74. According to Article 3.1 of the Law on Banks, banks and non-bank credit organizations in Azerbaijan can execute banking activities based on a special agreement (license) issued by the financial market supervisory authority (now CBA). Pursuant to Article 14.1.4 of this Law, taking into account the need to ensure reliable and prudent management of banks and local branches of foreign banks, a banking license is provided when certain conditions of this Law are met, including when natural persons holding significant stakes and executive heads of legal entities have acceptable and necessary qualities (fit and proper test).

##### ***DNFBPs***

**Table** Error! No text of specified style in document..6: General overview of AML/CFT supervisory mechanism and monitoring regime for DNFBPs:

<b>Non-financial sector subjects</b>	<b>Transactions fallen under the AML/CFT supervision</b>	<b>Supervisory authority/Status of supervision</b>
<b>Persons engaged in the purchase and sale of precious stones, precious metals, and other items made from these stones and metals</b>	Cash transactions in the amount of 15,000 manat or more	The Ministry of Finance
<b>Persons providing intermediary services for the purchase and sale of real estate</b>	Real estate purchase and sale transactions	The FMS
<b>Lottery and sports betting game organizers</b>	Cash transactions in the amount of 15,000 manat or more	The CBA
<b>Lawyers</b>	Transactions related to the purchase and sale of real estate;	The Bar Association

	<p>Transactions related to the management of the client's funds, securities or other property;</p> <p>Transactions related to the management of the client's bank or securities accounts;</p> <p>Establishment of legal entities, provision and management of their activities, organization of fundraising for these purposes, as well as transactions related to the purchase and sale of legal entities.</p>	
<b>Notaries</b>	<p>Transactions related to the purchase and sale of real estate;</p> <p>Transactions related to the management of the client's funds, securities or other property;</p> <p>Transactions related to the management of the client's bank or securities accounts;</p> <p>Establishment of legal entities, provision and management of their activities, organization of fundraising for these purposes, as well as transactions related to the purchase and sale of legal entities.</p>	The Ministry of Justice
<b>Persons providing legal, accountancy and tax consultancy services</b>	<p>Transactions related to the purchase and sale of real estate;</p> <p>Transactions related to the management of the client's funds, securities or other property;</p> <p>Transactions related to the management of the client's bank or securities accounts;</p> <p>Establishment of legal entities, provision and management of their activities, organization of fundraising for these purposes, as well as transactions related to the purchase and sale of legal entities.</p>	STS

<b>Persons providing audit services</b>	<p>Transactions related to the purchase and sale of real estate;</p> <p>Transactions related to the management of the client's funds, securities or other property;</p> <p>Transactions related to the management of the client's bank or securities accounts;</p> <p>Establishment of legal entities, provision and management of their activities, organization of fundraising for these purposes, as well as transactions related to the purchase and sale of legal entities.</p>	<p>The Chamber of Auditors</p>
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#### ***1.4.7. International cooperation***

75. In general, Azerbaijan has a comprehensive legal framework to seek and provide international cooperation to its counterparts either through MLA and extradition requests or other forms of international cooperation. The MOJ and GPO are the competent authorities for receiving and sending MLA requests and most of the cooperation is done with Russia, Georgia and Türkiye.

76. Informally, the authorities utilise channels including the Egmont Group, UN, CARIN, Interpol, Europol as well as various state treaties. All of the competent authorities have an international cooperation department. Authorities exchange basic and BO information on legal persons, but lack of accuracy and adequacy of BO information may hinder effectiveness of such cooperation.



## 2. NATIONAL AML/CFT POLICIES AND COORDINATION

### 2.1. Key Findings and Recommended Actions

#### **Key Findings**

##### **Immediate Outcome 1**

- a) Azerbaijan has undertaken a considerable amount of work to identify the ML/TF risks to which it is exposed and the authorities were able to articulate the NRA findings to a satisfactory level. However, the understanding lacked depth in some aspects particularly around ML emanating from predicate offences such as drug smuggling. Full analysis of some important factors is lacking in the NRA, particularly surrounding legal entities and the use of cash in the economy.
- b) Real estate is considered to be a main method of ML, particularly in corruption matters, yet supervision measures for the real estate agents (such as outreach) are not sufficient. Some positive legislation changes have been recently made in relation to this, however, the effectiveness is yet to be evidenced. The ability for criminals to utilise undocumented immovable property in ML schemes remains a concern.
- c) The authorities were able to articulate the NRA findings in relation to TF, however, sometimes the focus was primarily on the predicate of terrorism as opposed to TF. There is scope for formal analysis of links with organised crime, drug trafficking and the misuse of legal persons to substantiate the conclusion that these are of low TF risk.
- d) Azerbaijan has adopted three National Action Plans as a result of the NRAs, which demonstrates political commitment to address the ML/TF risks and vulnerabilities identified. On a technical level there have been positive results yielded, however, there is a lack of implementation of effective actions beyond legislative changes in some instances.
- e) Simplified CDD regulations throughout the assessment period were adopted in 2015, therefore during this time the risk-based approach in this regard has been limited. Positively, the regulations were repealed in February 2023, following the recent NRA and the new regulations are in line with the risk and context of the country.
- f) The competent authorities have undertaken some objectives and activities that are consistent with the identified ML/TF risks which have generated some positive results. However, there is still room for improvement relating to strategic analysis, investigations and supervision.
- g) The Coordination Council has a range of expertise which is beneficial for its responsibilities in conducting the AML/CFT/CPF national risk assessments, preparing action plans and drafting laws as well as the formation of domestic cooperation mechanisms amongst the competent authorities. At the policy level, there appears to be an adequate level of coordination, however at the operational level, the AML/CFT regime would benefit from greater cooperation.
- h) Private sector representatives were involved in the second NRA process. An executive summary of the NRA has been published, and the full report is available to the

competent authorities and some of the private sector through supervisors and working groups. Outreach is reportedly conducted by the FMS and the CBA, but evidence of its effectiveness is limited as some sectors underestimate their ML/TF vulnerability.

### ***Recommended Actions***

#### ***Immediate Outcome 1***

- a) Azerbaijan should implement mitigation measures relating to real estate. These measures should aim to:
  - i. Provide effective outreach and supervision to the relevant sectors (real estate agents, notaries and banks);
  - ii. Conduct further analysis of real estate in ML schemes in Azerbaijan and evidence the effectiveness of the mitigation measures implemented;
  - iii. Implement further measures to mitigate the ability to convert illicit funds into immovable property outside of official registration.
- b) Azerbaijan should take measures to ensure a better and more equal level of understanding of its identified ML/TF risks and vulnerabilities across all competent authorities. This should include conducting further analysis and assessment of the following areas:
  - i. Legal persons;
  - ii. Informal economy and financial services (Hawala);
  - iii. Organised crime;
  - iv. Virtual assets, and VASPs providing services into the jurisdiction.
- c) All types of TF activities potentially present in Azerbaijan should be more comprehensively understood particularly in relation to (i) the link between OC, drug trafficking, terrorism and TF; and (ii) misuse of legal persons for TF purposes in order to enhance the authorities' capability to identify and investigate accordingly.
- d) Azerbaijan should ensure that all relevant authorities are held accountable to implement and enforce the measures set in the national strategic policies and the intended outcomes of the objectives are progressed, completed and evidenced.
- e) Azerbaijan should ensure the Coordination Council meets routinely and further strengthens the cooperation and coordination between competent authorities on ML and TF matters and evidence the outputs both at a strategic and operational level.
- f) Azerbaijan should ensure that financial institutions and DNFBPs have more awareness of the NRA, ML/TF risks and vulnerabilities relating to their sectors. This should be undertaken as outreach and guidance.

77. The relevant Immediate Outcome (IO) considered and assessed in this chapter is IO.1. The Recommendations relevant for the assessment of effectiveness under this section are R.1, 2, 33 and 34, and elements of R.15.

## **2.2. Immediate Outcome 1 (Risk, Policy and Coordination)**

### ***2.2.1. Country's understanding of its ML/TF risks***

*Methodology used for the NRA*

78. Azerbaijan published its first NRA in 2015 and completed the second in 2022 based on the World Bank's dedicated tool, providing a candid overview of the vulnerabilities within the AML/CFT system of the country. The second NRA is considered by the authorities to be more comprehensive than the first as the focus is more weighted towards the effectiveness of the system. Certain important risks, such as those emanating from tax related crimes and narcotics feature more heavily in the second NRA. A summary of the 2022 NRA has been published; the full document is available internally only to the competent authorities and to some of the private sector via the Supervisors and working groups.

79. Sectoral risk assessments have been completed during the process and conclusions are drawn within the NRA. Assessments have been completed in relation to the incoming and outgoing flows for high-risk jurisdictions of TF and a separate NPO TF risk assessment has also been conducted.

80. The 2022 NRA, conducted under the coordination and supervision of the Coordination Council, involved representation from various competent authorities and the private sector which shows commitment to understanding and assessing ML/TF risks on a national level.

#### *Understanding ML risk*

81. The authorities understand the main internal threats as corruption and tax related crimes as these constitute the main proceeds generating crimes posing the highest risk of ML seeing the amount of damage caused, and illegal income obtained. In the context of Azerbaijan, tax related crimes are broad and cover various relevant offences such as tax evasion, embezzlement and fraud (mostly VAT related).

82. For external threats, smuggling and drug trafficking were identified as the main concerns. A large part of the NRA was devoted to the transportation of drugs through Azerbaijan, and this was generally understood as a predicate offence. Whilst there is some information within the NRA in relation to the networks and organised crime that must be in place to support this smuggling, the analysis lacked depth to show how these networks impact the ML risk in the country and this was reflected during discussions.

83. The transportation of large volumes of cash across the borders to and from higher risk countries such as Iran and how this increases ML risk was acknowledged.

84. The AT consider the NRA conclusions as reasonable, giving grounds for a satisfactory general understanding across most authorities of the main ML risks that Azerbaijan faces. The competent authorities were aware of the findings of the NRA and were able to articulate these to the AT, although when delving deeper, some conclusions appeared to be contradictory or insufficiently explored, as explained below.

85. The NRA presents an overlap between the concepts of 'smuggling' and 'drug trafficking' and the on-site interviews showed that the main products being smuggled are the drugs coming from Afghanistan via Iran. In this context, the AT concluded that the phenomenon of drugs transited via Azerbaijan are considered as 'smuggling', whilst the drugs sold in the country are considered as 'drug trafficking'. Therefore, the AT has difficulty understanding how 'drug trafficking' can be considered an 'external threat' and therefore given the lack of clarity in the NRA and during the onsite, the AT questions the depth of the understanding of the authorities in relation to these 'higher risk' offences.

86. Payments derived from this criminal activity are often made using the Hawala network. The authorities lack a clear visibility over the facets of these phenomena, as for example the activities carried out by transnational OCGs dealing with the “drug smuggling” and subsequent money laundering in the logistics of transporting narcotics via Azerbaijan are insufficiently explored and understood. Therefore, whilst all authorities were aware of how their geographical position contributed to the risk of the predicate offence and the damage caused, some LEAs were unable to demonstrate a good level of understanding of the connection between ML and smuggling as a predicate offence.

87. Turning to vulnerabilities, the NRA identifies that the development of undocumented real estate outside of official property registration is the main method used by criminals to launder the proceeds of crime and is prevalent in grand corruption. The authorities and AT agree with this conclusion. To mitigate this risk, a Law prohibiting the payments of real estate property in cash was adopted in January 2023. On a less positive note, the real estate intermediaries are left out of the AML/CFT regime (see also IO.3 and IO.4) in practice, and the authorities consider them as low risk. Prior to the on-site, supervision of the real estate agents was not implemented. To address this, the responsibility of supervision was changed from the FMS to the STS. However, the effectiveness of this change cannot yet be measured. The authorities consider the notaries and banking sectors to be the responsible gatekeepers and have imposed measures such as prohibiting the sale and purchase of real estate in cash and enhancing the gatekeeping functions of notaries and banks in real estate transactions in the new AML/CFT law. Additional legislation has been introduced to tighten real estate agreements but it is too early to demonstrate its effectiveness.

88. Whilst these measures are commendable, they do not address the key issue of the presence of a large amount of immovable property which is outside of official registration procedures and that third parties can purchase property on behalf of others, which is also considered by the authorities as being a high risk for ML. Criminals are able to purchase and register land legitimately, then develop both personal and commercial property on that land unknowingly to the authorities, as a means to convert illicitly obtained funds into tangible assets. There is a lack of accountability from the authorities to address this vulnerability from an AML/CFT perspective.

89. The AT notes that Article 11.3 of the AML/CFT Law states that any transactions by a foreign PEP, or their close relatives and associates should be reported to the FMS, which is positive. However, in practice the highest risks are derived from domestic PEPs in mostly corruption cases, therefore the legislation is not aiding in mitigating the higher risks in this regard.

90. A relatively low focus was placed in the NRA on legal entities and related ML risks. The understanding of risks related to the use of straw men, shell companies and professional enablers, and their part in large scale, organised and sophisticated schemes involving legal persons, is largely deficient. There is some recognition of the gaps in the regulation of the legal sector, but there is scope for more understanding in this area.

91. Further analysis would be beneficial to fully understand the risk profile of Azerbaijan, particularly in the areas whereby full NRA analysis is somewhat lacking, such as the use of straw men in sophisticated ML schemes, enhanced analysis on legal entities as well as the use of cash in the economy and the role of the Hawala network in ML/TF.

92. The informal economy is important in the context of Azerbaijan. The NRA correlates the informal economy with tax evasion but lacks analysis of the extensive use of cash and subsequent ML/TF risks. Positively, legislation has been amended in order to mitigate some of the wider

issues of the informal economy which demonstrates an understanding of the risks presented. For example, the Law on Cashless Settlements<sup>20</sup> which has favourable results on the number of cashless transactions undertaken. The Hawala network presents a ML/TF risk and the authorities have criminalised such operations which is beneficial. While aware of the existence of illegal (unregistered) financial operators, the LEAs have not enforced the new legislation or detected this activity. The financial supervisor does not recognise the existence of unregistered parallel financial operators which should, in any case, be dealt with by LEAs. The lack of action and ownership of this issue amongst the authorities is causing these deficiencies.

93. The private sectors were categorised as banks, other financial institutions (investment companies, insurance companies, non-bank credit institutions, leasing companies, pawnshops and VASPs) and DNFBPs. The vulnerabilities across banks and other financial institutions are considered to be emanating from poor internal control and risk management systems.

94. The banking sector, due to its market share and volume of transactions, is identified by the competent authorities and in the NRA as the sector with the highest level of exposure to ML, in which the AT concurs. The NRA puts a good level of focus into this sector and outlines areas of vulnerability to identify where improvements can be made.

95. The insurance sector is considered to be of a lower risk to ML, mostly due to the market share and the type products offered, which appears to be a reasonable conclusion.

96. There was a moderate understanding demonstrated in relation to the risk posed by VAs and VASPs from the Azerbaijan perspective, and the AT appreciates that there has been some work conducted in this area to inform the NRA and that VASPs are now included in the AML/CFT Law. Whilst the NRA rates the risk from this sector as high, the understanding from the authorities indicated that this risk is reduced due to the new legislation and the principle that there are no such entities currently operating in Azerbaijan both legitimately and illegitimately. The cases and the use of VA by neighbouring countries outlined in the NRA indicates that there is, and has been for some time, a risk to ML/TF/PF in Azerbaijan relating to VA. The understanding lacked depth beyond the NRA which had limited context from an Azerbaijan perspective.

97. Overall, across the four supervisory authorities, the understanding of ML risks varies. The CBA and the Bar Association demonstrated a better understanding of ML risks which is displayed to a lesser degree, by the STS, and Chamber of Auditors. The Bar Association clearly articulated the highest risk is in terms of the buying and selling of immobile assets, which is in line with the findings of the NRA. The CBA understood the main vulnerabilities in the supervised sectors noting that these emanate from poor internal mechanisms to identify and report suspicious activity for both banking and non-banking institutions, conclusion found reasonable by the AT. The STS is now the supervisor for the real estate sector, which has not previously been subject to any supervision in practical terms. The authorities acknowledged that this sector is completely out of reach to supervision and is unaware of their reporting obligations and the wider ML/TF risks. There is a lack of connectivity between the risks and the responsibility of the authorities in mitigating the problems prevalent in the unregulated sectors and the parallel uncontrolled financial systems that are used for ML and TF purposes (see also IO.3).

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<sup>20</sup> Law on Cashless Settlements states that a number of transactions should be cashless such as car sales through specialised institutions, sales of goods over ~€2,230, health services over ~€280 and in real estate transactions.

### *Understanding TF risk*

98. According to the NRA completed in 2022, the main terrorist threats identified in Azerbaijan are categorised as radical-religious and ethnic.

99. Radical-religious – this threat relates to 2013-2021 when Azerbaijani citizens joined illegal armed groups in Syria and Iraq as foreign terrorist fighters (FTF). The NRA notes a reduction in the threat from this source since 2015 and that there were no domestic radical-religious groups operating in Azerbaijan or linked to foreign groups but there are instances whereby individuals have pledged their allegiance to ISIS and there have been convictions of radical-religious extremists and facilitating FTF. The general identified TF trend in Azerbaijan does not involve high amounts of money or especially complex structures and are often related to financing FTF.

100. The overall level of TF risk in 2015-2021 was considered to be variable in the NRA. It was observed that donations on radical-religious grounds are made through legal and illegal methods such as banks, electronic payment terminals and Hawala and are sent by relatives, friends, or other FTFs' close persons in order to support their activities (terrorist acts, transportation, allocation, etc.). There is no analysis conducted in relation to the TF threat from the FTFs.

101. Ethnic – The TF risk was marked as medium-high in the 2022 NRA, however, the competent authorities at the time of the on-site visit indicated the TF risk to have become medium. The ethnic terrorist threats are found to be financed through donations, fundraising (use of foreign NPOs located outside of Azerbaijan) and money transfers.

102. The AT concurs with the findings related to the identified threats noting the risks from Hawala, and unauthenticated electronic payments methods. Whilst the NRA has an extensive chapter dedicated to TF and highlights some of the financing methods used, more focus has been dedicated to the description of the predicate offence of terrorism. Furthermore, whilst the authorities maintain that the real estate sector, virtual assets and legal persons are of low risk to TF in Azerbaijan, there is a lack of analysis to substantiate this conclusion. The NRA and authorities have also not analysed the connection between drugs smuggling as a high-risk area for ML in Azerbaijan and the extent to which these criminal activities can pose a risk to TF.

103. The understanding of TF risks across the authorities varies, all were able to articulate the findings of the current NRA. As expected, the SSS has the widest understanding in line with the number of investigations they have undertaken, although their focus is often on the predicate terrorist offence, rather than a TF investigation. As in the case of the Hawala and real estate sector, an important emphasis is placed on the risks borne by the non-registered NPOs without any measures taken to address the issue. All agencies state NPOs pose little risk due to the high level of supervision of this sector.

104. There is an absence of supervision in relation to the Zakat funds or crowdfunding processes. Although the officers of NGOs and NPOs are considered to pose little risk due to the level of supervision, there is potential for charities and religious organisations to be abused by individuals that are not covered by the controls specified by the regulating bodies. The AT considers that the data collected and the analysis thereof were insufficient to support the conclusion on risk.

### ***2.2.2. National policies to address identified ML/TF risks***

105. Azerbaijan has demonstrated political commitment to fighting ML/TF in the period under review by developing three national strategic action plans for AML/CFT.

106. The NAP 2017-2019 resulted from the 2015 NRA and contained thirty-four measures across priorities relating to state policy, legislation, cooperation, capacity building of the authorities and reporting entities and improving statistics. This NAP intended to bring the TF offence into line with international standards. Whilst the NAP 2017 contained commendable initiatives, the practical results remain weak beyond legislation improvements: 1) a new AML/CFT Law was adopted; and 2) legislation improving the supervision framework, which is particularly important in the case of real estate agents who now fall under the supervision of STS.

107. From the planned actions in the NAP 2017-2019, the following concerns remain: the financial institutions and the DNFBPs still lack sufficient skills to provide high quality STRs (refer to IO.4); the supervisors are lacking resources and the risk-based supervision is in nascent form (refer to IO.3); the transparency of legal persons remains problematic (refer to IO.5), and the statistics are not always kept and rarely used to inform policy decisions. This indicates that the strategic policies are somewhat more declarative than practically effective in addressing the identified ML/TF risks in Azerbaijan. The AT notes that there was a delay of three years between the NAP of 2017-2019 and the NAP 2022-2023. The competent authorities indicated that this is due to the implementation of an action plan to promote an open government during this time, focusing primarily on corruption rather than ML.

108. The NAP 2022 -2023 resulted from the second NRA and contains eleven measures across four main priorities: (1) the activities of supervisory bodies – such as improving the frameworks, inspections, outreach, information exchange and BO mechanism; (2) the FMS, LEAs and prosecution of ML/TF – for example, increasing the level of systematic use of the results of financial intelligence in the preliminary investigation of predicate crimes by LEAs; (3) CTF and CPF; and (4) improvements of AML/CFT legislation. These four main priorities and the more granular measures contained within them are in line with the vulnerabilities identified in the NRA and during the ME process and the intended outcomes do mostly correspond with the AT's expectations. However, there are some actions that have been overlooked in this NAP including the improvement in financial intelligence received from REs, mitigating the risks in the conversion of the proceeds of crime into real estate, and analysis of some higher risk sectors and vulnerabilities within Azerbaijan (Hawala and OCGs for example).

109. The NAP 2022-2023 was a short timeframe and ambitious to complete during the year long period but there has been some implementation of the NAP 2022, notably the improvements in legislation (as in the NAP 2017) and efforts from FMS to increase the use of financial intelligence but there is still an evident reluctance from LEAs to incorporate the FMS into their investigations (refer to IO.6). Work is also required to implement the NAP actions in the area of parallel financial investigations of predicate crimes (refer to IO.7), and in supervision (refer to IO.3).

110. NAP 2023 – 2025 is a continuation from NAP 2022. Due to the recent adoption of this action plan (February 2023), the authorities are unable to demonstrate the effectiveness of the delivery of actions at this time.

111. The main concern within this Core Issue is that whilst Azerbaijan has adopted national policies which should address the ML/TF risks and vulnerabilities identified, there is a lack of implementation beyond legislative changes. For example, a positive step that has been adopted was making the use of the Hawala network illegal as it was identified that this was a ML/TF risk, however, there has not been any criminal investigations or supervisory actions to enforce this legislation although the existence of this activity is known to the authorities. A further example is the new provision in the Law on Cashless Settlements which stipulates that transactions

regarding the purchase and sale of real estate should be cashless. The new provision has yielded positive results in terms of reducing the (identified) number of transactions made in cash, however, its effectiveness is yet to be demonstrated in the long-term. These provisions do not go far enough in mitigating the risks posed by immovable property outside of official documentation or registration.

### ***2.2.3. Exemptions, enhanced and simplified measures***

112. In general, the application of enhanced measures for higher-risk scenarios and simplified measures for lower-risk scenarios is regulated by the AML/CFT Law. The FMS provides the information to the supervisors and obliged entities on the situations in which enhanced or simplified measures should be undertaken.

113. The simplified CDD Regulations in place for the assessment period (until February 2023) were adopted in 2015 and used with the following categories of customers: non-life insurance companies, notaries, and auditors; government enterprises; international organizations of which the Republic of Azerbaijan is a part; and joint-stock companies whose shares are listed on stock exchanges (except for credit institutions). Or for the following transactions types: loans given to individuals below the limit; domestic money transfer operations below the limit; transactions with government securities; and operations on the payment of wages, pensions, and social benefits.

114. Whilst some of those categories appear to be consistent with the conclusions of the NRA, others cannot be risk based justified. Since the simplified CDD regulations date from 2015, the more recent findings of risk analytical products conducted by the authorities cannot have been used and therefore it is concluded that an up-dated risk-based approach was not being undertaken during assessment period.

115. Positively, Azerbaijan has adopted the 'Rules of customer compliance and verification measures during the application of new technologies, identification of risk factors and attribution of customer profile risk groups' in February 2023. These rules aim to set out the requirements for customer compliance and are in line with the risk and context of the country. Due to the recent adoption of the rules, the effectiveness cannot be evidenced.

116. Casinos are prohibited and online casinos are blocked in the territory of the Republic of Azerbaijan on the basis of Presidential Decree since 1998. Nevertheless, this measure was not taken based on AML/CFT related rationale. Trusts cannot be formed under the Azerbaijani legislation. DPMS are not reporting entities due to the approach taken by the country not to allow cash payments above 8.000 USD, a ban whose' application is supervised by the STS.

### ***2.2.4. Objectives and activities of competent authorities***

117. Some of the measures and objectives of the competent authorities included in Azerbaijan's three action plans, demonstrate the authorities' will to meet the challenges identified in the NRAs. Positively, it is evident that the authorities have committed to improving technical compliance as shown in new and amended legislation implemented to mitigate the vulnerabilities identified in the AML/CFT framework during both NRA processes. However, further measures taken to improve the effectiveness of mitigating the ML/TF risks beyond legislative amendments are somewhat limited.



118. **FMS** - Alongside the usual core functions of an FIU, the FMS also plays a key role in the implementation of legislation and AML/CFT policy and is the link between the state authorities in this regard. Notably, in the NAP 2022, the FMS was responsible for minimal operational actions (outside of actions related to legislation and framework), with the only more practical action relating to providing training to reporting entities on the findings of the NRA, which would be useful but has not been evidenced to have taken place.

119. Operationally, in November 2021, the FMS started to utilise a feedback mechanism with the reporting entities in order to improve STRs which is a key area of concern in the use of financial intelligence identified. The FMS has also generated risk categorisation rules for STRs which gives a risk rating based on certain factors, including some elements from the NRA (refer to IO.6), the effectiveness of these actions is yet to be determined.

120. Preliminary analysis from the FMS was used to inform the NRA, specifically the “assessment of abuse risks for legal entities for ML purposes”, which was produced by the FMS in 2022. Nevertheless, the FMS (or any other authority) has not yet concluded further strategic action based on the findings of either NRA.

121. **Investigations, prosecutions and confiscations** - On the basis of the NRAs, the investigative authorities were granted the right to carry out investigative actions to obtain information on financial transactions, bank account status and tax payments during the initial investigation before the criminal case commenced. This amendment provided access to the LEAs to financial information during the investigation of the ML/TF cases without criminal proceedings.

122. The GPO was authorised to establish a centralised statistical database on ML/TF crimes in electronic form and to ensure the functioning of the information system for collecting, processing and transmitting statistical information on these offenses, however, the effectiveness of this is questionable. There are some investigations and prosecutions which are in line with the findings of the NRA to a reasonable extent, however, there appears to be some misalignment of priorities with investigations and prosecutions of offences that are not regarded as a high risk such as fraud (refer to IO.7). In terms of confiscations, the priorities are more consistent with the risks identified in the NRA (refer to IO.8).

123. **Supervision** - The authorities have taken some steps to improve supervision vulnerabilities in line the NRA, most notably moving the responsibility of supervising the real estate sector from the FMS to the STS, which is theoretically more appropriate due to a lack of resources in the FMS, although effectiveness is yet to occur. The CBA has developed a risk assessment and control methodology which outlines that the CBA conducts periodic risk assessments of the banks' AML/CFT activities.

### ***2.2.5. National coordination and cooperation***

#### *Policy level*

124. The Coordination Council is responsible for conducting AML/CFT/CPF national risk assessments, preparing action plans and drafting laws for the improvement of legislation as well as the formation of domestic cooperation mechanisms amongst the competent authorities.

125. The Coordination Council consists of representatives from twenty agencies and therefore has a sufficient range of expertise, this includes: Ministry of Economy; Ministry of Foreign Affairs,

Ministry of Justice, Ministry of Internal Affairs, Ministry of Finance; the State Security Service; Foreign Intelligence Service; and General Prosecutor's Office.

126. The adoption of new and amended legislation and Decrees is a positive output from the Coordination Council. There appears to have been an adequate level of coordination for the implementation of the NRA, with five working groups carrying out the following: threat analysis, national vulnerability assessment, banking sector's vulnerability assessment, other financial institutions' vulnerability assessment, and DNFBP's vulnerability assessment. Azerbaijan utilises a database for implementation of actions arising from the NAPs which is updated monthly by the responsible authorities for accountability.

#### *Operational level*

127. The competent authorities consider there to be a good level of cooperation between each other on an operational level, although the AT holds a differing view. Recently implemented multiagency meetings between the FMS and the wider LEAs are seen to reduce bureaucracy, however, a consequence of the informal nature of the meetings is that there is little data recorded relating to the frequency and output. The authorities indicated that there were three meetings held in 2022, which the AT considers to be low considering the risk and context of the country and the potential for investigations across multiple agencies. It is difficult to evidence the effectiveness of the levels of cooperation, merely having an MOU in place is not sufficient to demonstrate cooperation information sharing and the understanding of risk. The onsite visit indicated that there is room for improvement on coordination at an operational level (see IO.6).

128. It is evident that the competent authorities primarily keep investigations internal with coordination with other agencies on an operational level being minimum. This is supported by findings in the NRA which state that in instances where, in the course of tax crime investigations, the STS has identified corruption which was not further investigated, nor shared with any other LEAs<sup>21</sup>, demonstrating that domestic communication between the authorities is lacking.

129. There are no legal hindrances to the sharing of information amongst the competent authorities.

#### ***2.2.6. Private sector's awareness of risks***

130. The Coordination Council consists of the private sector bodies from the Bar, Chamber of Auditors and members from the banks, insurers and stock market participants' associations. Therefore, as the Coordination Council is responsible for NRA process, there was some involvement from representatives of the private sector. A number of questionnaires were formulated and distributed to state authorities and the private sector during this process but the response rate is unknown to the AT.

131. The NRA is circulated amongst the state authorities and an executive summary is available for the public. Outreach has reportedly been provided by the FMS and the CBA in relation to the findings of the NRA, the results of which were reflected during the onsite visit with the private sector whereby the AT concludes that whilst there was an understanding of ML/TF risks present at the country level, some sectors underestimate the risk factors to which they are vulnerable and how can they be used for ML/TF purposes (refer to IO.4). It is noted that a streaming video product has been made available to the private sector to provide information on some of the

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<sup>21</sup> Azerbaijan NRA, page 36, paragraph 64.

findings, however, the authorities have been unable to demonstrate evidence of the video's effectiveness<sup>22</sup>.

132. The authorities state that the full NRA is shared from the supervisory authorities to the corresponding sectors, however, evidence of this is limited and there are sector members that are completely out of the reach of the authorities (real estate agents), and will therefore be unaware of the country and sectoral ML/TF risks and vulnerabilities contained within the NRA.

### *Overall conclusions on IO.1*

133. Azerbaijan has produced two candid NRAs and three action plans stemming from those assessments. Generally, the competent authorities are able to articulate the findings of the NRA, however, the understanding lacked depth in some respects particularly around ML emanating from predicate offences such as drug smuggling. The NRA has partly assessed the ML threats concerning legal entities, however, the analysis is not comprehensive, as is the case for the use of cash in the economy. Further analysis into these offences and the misuse of legal entities in relation to TF would also be beneficial. The authorities were able to articulate the NRA findings in relation to TF, however, sometimes the focus was primarily on the predicate of terrorism as opposed to TF. Azerbaijan has evidenced that on a technical level, there have been positive changes to legislation as a result of the NRAs and in line with the risk and context of Azerbaijan, which is a commendable result. Nevertheless, the mitigation measures beyond legislation changes have been less evidenced resulting in the intended outcomes remaining incomplete, even from the NAP 2017-2019. A major concern for IO.1 is the non-existence of sufficient targeted mitigating measures beyond legislation for undocumented immovable property which is the most used method to convert the proceeds of crime (mainly corruption) into tangible assets. One of the recurrent problematic areas is the lack of ownership of the authorities in addressing the issues in related to un-regulated financial services (Hawala) and virtual assets. **Azerbaijan is rated as having a Moderate level of effectiveness for IO.1**

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<sup>22</sup> Such as viewer numbers, sectors, roles etc and usefulness of the content.

### 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

#### 3.1. Key Findings and Recommended Actions

##### **Key Findings**

##### **Immediate Outcome 6**

- a) The LEAs gather their own financial intelligence during independent investigations on predicate crimes. This intelligence is gathered directly from the private sector or by accessing various databases but mostly in investigations for the predicate offences and rarely in ML cases. LEAs' use of the FMS to obtain financial intelligence is limited.
- b) The FMS is the authority acting as the national centre for the receipt and analysis of STRs and CTRs. The number of STRs submitted has increased, particularly in 2022 and are mostly received from banks which is partially in line with Azerbaijan's risk and materiality profile. The number of STRs from the DNFBP sector is low.
- c) The FMS mostly disseminates ML analytical products related to corruption, tax evasion, drug trafficking and fraud. The FMS analytical products are based on the STRs received from the private sector enriched with a significant number of other data. The use of FMS analysis to support LEA investigations and proceeds tracing is limited.
- d) The main causes for the limited use of FMS disseminated intelligence is: (i) the low quality STRs received from a small number of sectors; (ii) varying LEA appetite to investigate FMS derived analysis and provide feedback; (iii) the LEA's preference to obtain financial intelligence directly from the private sector, which hints that they do not consider FMS analysis as adding value to the raw financial intelligence already available; and (iv) the limited understanding amongst the LEAs of how the FMS functions can be useful to their investigations.
- e) Strategic analysis has seen some improvements over recent years, and the dedicated division within the FMS is positive. Further work is necessary to provide strategic input to LEA, REs and the FMS itself to gear their actions into more effective repressive and preventive systems.
- f) Feedback is lacking in both operational and strategic analysis which is inhibiting the usefulness of the FMS products for the operational needs of the competent authorities.

##### **Immediate Outcome 7**

- g) Azerbaijan has sound legal system and dedicated LEAs competent to identify and investigate ML offence. While the number of investigations increased in the last year, the overall results are not fully satisfactory. Deficiencies identified in relation to lack of parallel financial investigations, strict interpretation of ML offence and limited use of circumstantial evidence are being gradually addressed by the authorities.
- h) Smuggling, drug trafficking, corruption and tax crime have been identified as the proceed-generating crimes posing a high ML threat. Some ML cases related to those

crimes have been investigated and prosecuted, but the results are not fully consistent with the risk profile of the country.

- i) While there are wide legal possibilities to pursue all types of ML, most of the prosecutions and convictions achieved pertain to self-laundering. Nevertheless, authorities are taking meaningful steps to increase effectiveness with some cases of pre-investigations of stand-alone ML initiated lately. Despite being abused for ML purposes, legal persons have not been investigated so far for ML. Azerbaijan has not demonstrated that it is pursuing cases pertaining to proceeds of foreign predicates.
- j) Criminal sanctions in ML cases are generally imposed jointly with sanctions for predicate offences and they are proportionate, effective and dissuasive. However, imposed fines are minimal and not proportionate to the nature and protected value of ML.
- k) Azerbaijan has some measures in place in instances when it is not possible to secure ML conviction, such as pursuing predicate offences.

#### ***Immediate Outcome 8***

- l) In Azerbaijan, confiscation is pursued as policy objective to some extent. While there is no overarching confiscation policy, a number of progressive steps have been taken to develop domestic framework. Some issues remain such as lack of policy and/or guidelines to conduct parallel financial investigations as well as implementation of effective seizure and confiscation measures across all LEAs.
- m) Authorities confiscated a commendable amount of criminal proceeds. This illustrates the efforts of the authorities to deprive assets from the criminals. Nevertheless, no parallel financial investigations have been conducted so far in case of proceeds generating crimes, and authorities are focused on the establishment of the damage caused by the offence, rather than tracing assets. Seizure and confiscation of instrumentalities, proceeds moved abroad as well as TF funds have not been ordered systematically.
- n) There are some measures in place enabling management of seized and confiscated property, such as storing goods. However, such mechanism does not extend beyond safekeeping measures. There is no central authority competent for the assets management neither there is procedure enabling management of complex, profit generating assets neither perishable goods.
- o) Azerbaijan applies written and prior electronic cash declarations system, which is administered by the SCC. Sanctions (fines) applied in case of false or undeclared cash do not seem to be entirely proportionate, dissuasive, and effective.
- p) The overall achieved results are to some extent consistent with the risk profile of the country.

#### ***Recommended Actions***

#### ***Immediate Outcome 6***

- q) The LEAs should be encouraged to systematically use financial intelligence in investigations of all proceeds generating crimes to trace criminal proceeds related to ML. This should include guidelines or methodological tools for LEAs facilitating the use of financial intelligence in investigations.
- r) The FMS should develop the culture of sharing information, intelligence, feedback and analysis in an appropriate manner and in appropriate cases with the LEAs and vice versa. This will increase the FMS' capacity and capability to provide meaningful analysis to be converted into ML and TF cases by the LEAs.
- s) The LEAs should work on enhancing operational coordination with the FMS and develop further understanding of how the functions of the FMS can better support their operational needs. This should include providing the FMS with frequent and constructive feedback in relation to its analysis products to further enhance the quality and added value of the FMS' disseminations, this should be requested and encouraged by the FMS, and focus on all types of relevant ML predicates, as well as ML and TF.
- t) The widest possible range of financial intelligence should be harvested to identify and investigate TF activities. The SSS should consider systematically sharing the result of their investigations with the FMS or other national authorities.
- u) The FMS should seek to enhance the diversity of STRs submissions, including from non-banks, higher/medium risk sectors, and entities in a position to identify unlicensed MVTs and/or Hawala activity. Quality training, outreach and feedback to REs across all sectors should be undertaken. The authorities should expand potential financial intelligence by recording the bank accounts of natural persons which are available to the STS similarly to legal person accounts.
- v) The FMS should continue to enhance the strategic analysis products it develops. The FMS should actively seek out the priorities of the competent authorities in order to align strategic analysis with those priorities.
- w) The FMS should be given appropriate human and financial resources in order to enhance its operational and strategic analysis capability and capacity. The FMS should also ensure that all relevant staff undergo and complete regular trainings linked to both strategic and operational priorities.

***Immediate Outcome 7***

- x) Authorities should adopt a new investigative strategy in order to prioritise and increase ML identification and investigations in line with the country risks. Authorities should harvest all sources of information available in order to identify and investigate ML (MLA request, open sources information, financial investigations etc.).
- y) Authorities are recommended to proactively engage prosecutors in the decision-making process when investigating ML and associated predicate offences.
- z) Azerbaijan should ensure that the judiciary and LEAs interpretations and understanding of the ML offence are aligned with the international standards including by: (i) developing and disseminating formal guidelines drawing on international and

domestic good practices; (ii) continue to promote evolving jurisprudence on ML cases in line with the current criminalisation of ML and international standards; and (iii) holding regular trainings.

- aa) Authorities should ensure that parallel financial investigations are systematically conducted in all proceeds generating crimes. Guidance and supporting training programs for all competent authorities should be developed.
- bb) LEAs should continue their efforts to investigate and prosecute different types of ML cases, including cases against legal persons, fully in line with the risk profile of the country. LEA should target more complex ML such as cases involving organised crime (drug trafficking) and corruption. When companies are used, the investigation should be extended to the legal persons and identification of the person(s) who ultimately controls and benefits from the proceeds of crime.
- cc) Azerbaijan should analyse ML sanctions to ensure that fines are sufficiently dissuasive in accordance with the gravity of the crime.

#### ***Immediate Outcome 8***

- dd) Azerbaijan should enhance, to a major extent, its strategic approach to the seizure, confiscation and recovery of the proceeds of ML, predicate offences and TF, as well as instrumentalities used and intended to be used for the commission of the offences. This can be achieved through policy documents such as action plans and objectives set for LEAs to undertake measures to trace and seize proceeds when investigating proceeds generating crimes.
- ee) The authorities should take steps to ensure that agreed guidelines are available and adhered to by all relevant agencies on the necessity and a methodology to trace, seize and confiscate the proceeds of crime and instrumentalities. A clear requirement to pursue parallel financial investigations needs to be issued. All LEAs shall be provided with regular training on detecting, tracing and confiscating the criminal proceeds, and instrumentalities, or property of equivalent value.
- ff) Azerbaijan should undertake proactive measures in order trace, seize and confiscate proceeds moved abroad.
- gg) Azerbaijan should seek to enhance its asset management mechanisms and procedures in relation to confiscated and seized property, beyond the mere safekeeping measures.

134. The relevant IOs considered and assessed in this chapter are IO.6-8. The Recommendations relevant for the assessment of effectiveness under this section are R.1, R. 3, R.4 and R.29-32 and elements of R.2, 8, 9, 15, 30, 31, 34, 37, 38, 39 and 40.

### **3.2. Immediate Outcome 6 (Financial Intelligence ML/TF)**

135. Azerbaijan has the potential characteristics of an effective system, namely a variety of financial and other information collected and used by competent authorities to investigate ML/TF and associated predicate offences. The authorities have access to numerous domestic databases. However, the contribution of FMS products to the LEA's investigations is limited and the use of financial intelligence by all competent authorities has room for improvement.

### ***3.2.1. Use of financial intelligence and other relevant information***

#### ***Access and use of financial intelligence and other relevant information***

136. The LEAs gather their own financial information, intelligence and evidence during independent financial investigations on predicate crimes. This information is gathered through direct powers and/or court orders for evidence gathering and is rarely shared between agencies as intelligence on a spontaneous basis. The LEAs do not have direct access into the FMS intelligence database.

137. All LEAs and the FMS have online direct access to twelve government databases<sup>23</sup> which feed into one unified platform integrating the replies received from each individual database. This gives the investigative bodies access to a range of information relating to the person of interest (including personal, migration, movable and immovable property, tax information, declarations across the customs border, the individual's border crossings etc.) in a usable and efficient format. Azerbaijan does not have a bank account database for nationals. The STS are able to identify legal persons' bank accounts as well non-citizens' that are registered with the tax authority. As there is no bank account information for the domestic natural persons, LEAs should submit requests to all banks in financial investigations.

138. The GPO has access to financial and other information in the course of its investigations. When starting an investigation, the GPO follows an internal Methodical Guidance document which identifies six categories of materials that are useful in for financial intelligence gathering:

- a) ***Criminal records and intelligence on individuals under investigation***: This includes information on previous arrests, prosecutions, convictions, and sanctions, and details of associations between individuals.
- b) ***Information disclosed by the FMS***: This includes STRs and other connected information (e.g., information on cash transactions, electronic money transfers, and declarations or disclosures of other transactions exceeding a certain monetary limit).
- c) ***Financial data/records***: This is information held by the REs: bank statements, bank account details, financial statements, other recorded data of financial transactions of individuals or businesses, other information collected during the audits performed as part of official duties, and 'know your client' protocols.
- d) ***Confidential information***: This category includes materials collected and stored by intelligence agencies for national security purposes. Access to this information is usually restricted.
- e) ***Material from open sources***: These include all information and details that can be obtained via open sources such as the Internet, social media, general media, as well as state (and in some cases private) archives and registers.

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<sup>23</sup> The Ministry of Internal Affairs; State Border Service; State Migration Service; Ministry of Justice; State Customs Committee; Ministry of Economy and its subordinate tax authorities; State Service for Property Issues and its local divisions; Ministry of Emergency Situations, Ministry of Culture; State Examination Centre; Ministry of Labor and Social Protection of the Population; Ministry of Digital Development and Transport.



- f) **Information from regulatory bodies:** This includes data from the central bank, tax authorities, as well as revenue collection and some other government agencies.

139. Criminal intelligence can be obtained through informants, surveillance, the use of covert tools, interviews, interrogations, and data analysis. The GPO may use international cooperation in the form of MLAs and informal assistance (mostly the CARIN network) (see IO.2) for the investigation of cases and tracing of assets. Nevertheless, there is little evidence of international cooperation being used to initiate or to substantiate financial intelligence analysis.

140. The SSS enjoys its own dedicated financial investigation department. Similarly to the GPO, intelligence is accessed in varying methods which also include criminal records and intelligence, information from the FMS, and material from open sources as well as government databases. The SSS' main source of intelligence in TF investigations is the information gathered from informants and persons under surveillance. The SSS also makes use of requesting information internationally but report that there are often no responses to MLA requests (see IO.2). Intelligence can be requested from members of the Egmont Group via the FMS.

141. The MIA holds the central criminal database and conducts ML investigations mainly in relation to the illegal circulation and smuggling of drugs and fraud. Intelligence gathering is undertaken in the course of the general duties required from the case, using specialist investigative techniques. When receiving a dissemination from the FMS, the MIA will generate its own evidence gathering once a court order from the GPO is obtained. In the course of investigations conducted by the MIA, the following categories of information are used in terms of financial intelligence:

- a) **Information obtained from banks on the basis of a court decision.**
- b) **Upon request;** information obtained from the STS, the Real Estate Cadastre and Address Registry Service under the State Committee on Property Issues, an independent audit, the forensic accounting expertise, INTERPOL and within the framework of international legal cooperation and the FMS. The MIA has made requests via the INTERPOL network previously but have not initiated cases through these means.
- c) **Materials obtained from open sources;** the internet and media, and information provided by the State Statistics Committee.

142. The STS has access to the tax returns submitted by taxpayers, all registration information, information on customs operations, bank accounts of the taxpayers and their operations. The FMS has direct access into the STS database. The STS can also utilise international sources for tax enquiries of which they can make requests to other jurisdictions. In instances whereby a jurisdiction does not respond, the STS will consider putting them on an internal higher risk list.

143. The FMS reported there were no legal barriers to obtaining information from the other competent authorities; the decision to grant access to the FMS to the databases is under the Council of Ministers and therefore MOUs are not required.

144. The FMS has the power to obtain further information from reporting entities, and there are applicable sanctions where necessary if they are refused. There are no limitations in requesting information from obliged entities in the absence of an initial STR, and, in the course of case analysis, the FMS routinely requests and receives information from obliged entities, mainly banks (98% of the time) and occasionally the post office. Information is reported to be provided in a timely manner – one day if urgent - and, overall, the FMS expressed satisfaction with its

collaboration with obliged entities and with the quality of provided information. The FMS has no recorded event where an obliged entity has refused an FMS request.

145. Whilst the LEAs' own use of financial information and evidence appears to be adequate to perform their duties, the effective use of financial intelligence in investigations at the pre-investigation stage to initiate investigations, develop evidence and trace criminal proceeds related to ML, associate predicate offences and TF is an area for improvement. The LEAs are comfortable in obtaining and using financial evidence in their investigations but obtaining, receiving and initiating investigations from information that is for intelligence purposes only is somewhat lacking. This is demonstrated in the low number of FMS initiated investigations and outcomes (see IO.7), the levels of domestic cooperation amongst the FMS and LEAs (indicated by the low number of requests for intelligence sent to the FMS from the LEAs – see Section 3.2.2. Reports received and requested by the competent authorities) and the perception from the LEAs during the onsite interviews that utilising their own financial investigators to obtain evidence is more effective.

### *3.2.2. Reports received and requested by the competent authorities*

146. The FMS is the authority acting as the national centre for the receipt and analysis of STRs and CTRs. The LEAs do not have direct access to these reports.

147. In recent years, the authorities have taken measures to enhance the STR reporting which resulted in a commendable increase in STRs submitted in 2022. Nevertheless, concerns remain both with regard to quantity and with the quality of reporting. Whilst the FMS attributes an increasing STR quality through the formal feedback mechanism implemented since November 2021, several indicators remain, suggesting there is room for improvement in this respect: (i) the percentage of STRs archived after initial FMS analysis without opening a case has increased from 21% in 2017 to 82% in 2022<sup>24</sup>; (ii) the ratio of STRs resulting in a dissemination has steadily reduced in 2021 and 2022; and (iii) the proportion of ML/TF investigations initiated from FMS disseminations remains low, although an increase in 2022 is to note. Therefore, the effectiveness of STRs in containing relevant and accurate information to assist the competent authorities in undertaking their duties remains moderate (see also IO.4).

148. An avenue for the FMS to support the LEAs needs is through responses to specific requests. When solicited, the FMS responds within 30 days, or if urgent, within 10 days. The LEAs consider responses to be timely. Requests are made to the FMS in instances where the LEA is seeking financial intelligence (only 184 requests during the assessed period) and BO information both domestically and internationally (56 requests). The information is obtained from domestic REs and international counterparts utilising the Egmont group. As the LEAs do not have direct access to the reports submitted to the FMS, the AT concludes that only 184 requests during the assessed period indicates that there is little interest in the information held by the FMS and that their intelligence is not considered useful.

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<sup>24</sup> STRs that had an absence of sufficient grounds for suspicion, unsatisfactory quality and are defensive in nature are closed after initial analysis.

**Table Error! No text of specified style in document..7:** Number of BO requests sent to the FIU by the LEAs

	2017	2018	2019	2020	2021	2022	Total
<b>No of BO requests</b>	2	1	0	17	11	25	<b>56</b>

STRs

**Table Error! No text of specified style in document..8:** Number of STRs submitted by reporting entities<sup>25</sup>

Sector	2017	2018	2019	2020	2021	2022	Total
<b>Banks</b>	240	245	294	240	449	1069	<b>2537</b>
<b>Securities firms</b>	-	-	-	-	-	1	<b>1</b>
<b>Life insurance companies</b>	-	-	-	-	-	1	<b>1</b>
<b>Post Office</b>	1	-	-	-	-	27	<b>28</b>
<b>DPMS</b>	1	-	-	-	-	-	<b>1</b>
<b>Lawyers</b>	-	1	-	-	-	-	<b>1</b>
<b>Notaries</b>	1	1	18	23	44	56	<b>143</b>
<b>Total</b>	<b>243</b>	<b>247</b>	<b>312</b>	<b>263</b>	<b>493</b>	<b>1154</b>	<b>2712</b>

149. It is encouraging that there has been an increase in the number of STRs submitted since 2021, which evidences the work undertaken by the FMS to improve reporting. The majority of the STRs are submitted by banks which is partially in line with Azerbaijan’s materiality and risk profile. Whilst the authorities maintain that the real estate agents are immaterial in relation to AML/CFT, the AT would expect to see more engagement with this sector as there is potential financial intelligence that can be obtained through real estate activity, particularly as real estate as a whole is higher risk in the country context. There have not been any STRs submitted from the two currency exchanges.

150. To address the shortcomings identified in the NRA in relation to the STR reporting system, the FMS has produced a Feedback Guidance document in November 2021 which uses 14 criteria to evaluate the quality of an STR, covering two core sections: (i) the content of the STR which relates to the nature of the suspicion, predicate offence, analysis conducted and accuracy of information; and (ii) drawing-up of the STR relating to the whether all relevant attachments, all transactions and visualisation aids were included and the text structure was suitable. Whilst the criteria are comprehensive and clear, its effectiveness in terms of the quality of the STRs remains to be demonstrated. Additionally, the FMS periodically provides feedback to reporting entities in the form of general outreach approximately every six months, with five reports sent to the supervising authorities in relation to sectoral STR feedback. The FMS have not conducted formal

<sup>25</sup> The REs which are not listed in the table have never submitted a STR.

analysis on the effectiveness of the Feedback Guidance document and how it has influenced an increase in STR quality.

151. Approximately 1% of STRs are rejected by the FMS on the basis of errors in their content. The authorities explained that the goAML software automatically assesses errors and allows the FMS to contact the RE to clarify before processing the STR. However, in some instances the STR is rejected without a follow-up procedure to ensure the intelligence is resubmitted to the FMS. This bears a small amount of risk that the intelligence will not eventually be received by the FMS.

152. The FMS has the legal power to postpone transactions, but this power is sporadically used: - once in 2020, and twice in 2021. None of these postponements resulted in further action. REs also have the legal power to postpone a transaction, and this would usually result in a report to the FMS, however this statistical data is not collected and it is unknown how often this is used or reported upon. The FMS considers this power to have limited use due to the short time frame that can be imposed (2 days for the RE then 3 days for the FMS).

#### CTRs

153. The FMS is the central repository for CTRs, which according to legislation should be submitted by REs in currency transactions over 20,000 Manats (10,000 EUR) or equivalent. Azerbaijan has recently included the requirement for wire transfers to be reported, although as this is newly implemented, the FMS were unable to demonstrate the effectiveness.

**Table Error! No text of specified style in document..9:** Number of CTRs submitted by REs<sup>26</sup>

<b>Sector</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>Total</b>
<b>Banks</b>	286,291	348,711	395,696	364,280	424,161	499,734	<b>2,318,873</b>
<b>Lenders / Leasing</b>	6	-	-	-	-	-	<b>6</b>
<b>MVTS</b>	40	2	138	162	147	144	<b>633</b>
<b>Other FIs</b>	432	695	627	899	557	469	<b>3679</b>
<b>Notaries</b>	2	-	3	-	3	-	<b>8</b>
<b>Total</b>	<b>286,771</b>	<b>349,408</b>	<b>396,464</b>	<b>365,341</b>	<b>424,868</b>	<b>500,347</b>	<b>2,323,199</b>

154. The AT noted the increase in CTRs and are satisfied with the explanation provided by the FMS that this increase is in line with the economy and changes in controls around cash transactions. The FMS indicated that there is an appetite to revise the threshold and define new measures due to new reporting entities; research is being conducted to this effect.

<sup>26</sup> The REs which are not listed in the table have never submitted a CTR.

155. Whilst the FMS uses CTRs as an additional source of information when examining a case, there is no targeted analysis thereof to identify ML/TF suspicions and complex, well masked ML/TF schemes.

156. The CTRs remain on the FMS' system and are reportedly used both operationally and strategically. The FMS perception is that information relating to CTRs is not considered to be high risk or suspicious as the cash is believed to be domestic funds. The AT would encourage the FMS to reconsider this perception based on more substantiated arguments such as a solid strategic analysis in this regard.

157. The FMS uses an automatic matching mechanism to identify individuals on international and domestic wanted and terrorist lists which is a positive initiative. A central database to also match whether an individual from an CTR is subject to a domestic confiscation order would also be beneficial.

Cross-border declarations

158. Cross-border declarations are submitted to the SCC and equate to 50,854 reports cumulatively since 2017 (refer to Table 3.4). This information is available when searched for by the FMS but is not automatically reported to them, or any STRs filed by the SCC where there is a suspicion of ML or TF (see IO.8). The use of cash declarations by the FMS to aid its functions and support the operational needs of the LEAs is somewhat lacking.

**Table Error! No text of specified style in document..10: Declarations on cash**

<b>Year</b>	<b>Incoming cross-border declarations</b>	<b>Outgoing cross-border declarations</b>	<b>Total</b>
<b>2018</b>	10224	4800	15024
<b>2019</b>	15414	10926	26340
<b>2020</b>	1286	1156	2442
<b>2021</b>	1028	814	1842
<b>2022</b>	2824	2382	5206
<b>Total</b>	<b>30776</b>	<b>20078</b>	<b>50854</b>

159. Border Currency Reports (BCRs) submitted to the FMS by the SCC include only the information about cash (in excess of US\$ 50,000) entering Azerbaijan through the customs border. During the assessed period, there were 219 BCRs totalling 63.5 million Manats, of which, 105 were submitted in 2022.

**3.2.3. Operational needs supported by FIU analysis and dissemination**

160. The FMS is a standalone department established, and if necessary dissolved, by Presidential Decree. The Board is appointed by the President of Azerbaijan, with the Head of the FMS sitting as Chairperson for this Board. The Head of the FMS sets the strategic and operational direction of the FMS and has a five-year term. The AT notes that the Chairperson (appointed by a politically exposed person) has access to FMS operational data as well as the ultimate decision for dissemination of intelligence. It is appreciated that safeguards are in place such as dismissal of

the Chairperson cannot be undertaken within the term and the FMS will not be affected in the event of a change in Government.

161. As of March 2023, the FMS is made up of 55 staff members, 33 of which are divided across the specific departments: Data Analysis, Security and IT, Legal, Cooperation and Supervision. The other 22 staff are in senior, secretarial or supporting roles. There are 5 Heads of Department, and 28 Heads of Division, Senior Specialists and Specialists. Amongst those, there are 15 who undertake the data processing, tactical and strategic analysis. This represents only 27% of the total FMS staff which does not appear to be commensurate with the importance of the core-functions of an FIU.

162. Staff undergo security clearance at the onboarding stage into the FMS. This is undertaken by the SSS as an independent third party. The FMS premises is secured with various methods in line with the Egmont 'Securing an FIU' standards (this involves guards, CCTV, PIN number and Biometric protection).

163. Some FMS staff have undergone various training courses and conferences linked to both the strategic and operational priorities of the FMS. This includes specific typology training such as ML and tax evasion schemes, CFT, concurrent financial investigations and NPOs. Tactical and operational analysis topics have included Open Source Intelligence Training and a number of Virtual Assets courses produced by international organisations. The number of FMS staff completing each training course is generally low.

164. The FMS controls its own financial budget, of which there were no concerns reported.

#### Operational analysis

165. The FMS has at its disposal a methodology for the prioritisation and analysing of STRs. The inbound process is:

- a) STRs are received through the software system. Compliance with the requirements of the "Rules for submitting information to the Financial Monitoring Service" is checked at this point and if there are errors, the RE is contacted or the STR is rejected. All information relating to STRs and linked cases are attached to the goAML system for secure storage and use.
- b) The Director of the Analytical Division reviews the STR before forwarding to the Head of the Tactical Analysis Division with the appropriate investigation workflow. They will then decide upon the executive analyst for the analysis and forwards the report to that employee.
- c) During this process, the reports are assessed for their priority as either high, medium or low. Cases that are related to TF, UN sanctions list or those that are under postponement are considered to be high risk.
- d) Upon receipt, all STRs are checked against the databases available to the FMS. Further on in the course of analysis open-source intelligence may be used. The AT notes that visual aids produced by the FMS are used in the analysis of complex cases.

166. Positively, the FMS has devised a set of rules for the classification and prioritisation of STRs that is implemented on the goAML system automatically when an STR is received. These rules take into consideration a number of risk criteria which are defined into the following categories:

(i) customer risk; (ii) geographic risk; (iii) operational and delivery risk<sup>27</sup>; and (iv) other risks<sup>28</sup>. The FMS maintains that these rules are the reason for the decline in the ratio of STRs resulting in a dissemination, however, this is not substantiated and the figures suggest that it is the quality that leads the STRs to being archived prior to initial investigation.

167. The FMS report that there are no specific time limits or targets for dissemination but noted that the quickest dissemination for an ML matter was 10 days, however in TF cases this has been immediately (contact via telephone).

**a) Case study 3.1: Criminal case where the FIU requested several foreign counterparts for information**

b) In 2020, the GPO requested information from the FMS in relation to a subject of interest and some associates. The subject was a PEP and under investigation for ML and fraud, embezzlement, abuse of authority, use of public funds for other purposes and forgery amounting to 9.76 million EUR. Some funds remained in Azerbaijan and the rest were transferred to the accounts of legal persons in three other countries.

c) The FMS sent requests to the three relevant foreign FIUs via the Egmont Group and the data received in response was analysed resulting in further requests for information being sent to six additional countries.

d) The information received included information on assets in family members' and associates' names, purchase agreements, accounts and transactions, new entities and beneficiaries.

e) The subject was found guilty at the Baku Court of Grave Crimes of the use of state funds, forgery, abuse of power causing grave consequences mis-entrepreneurship and sentenced to 10 years in prison and deprivation of the right to hold executive and financially responsible positions in state and local administrations for 3 years.

f) No ML charges were presented to the Court.

**Strategic analysis**

168. The FMS has a dedicated strategic analysis division with three members of staff. A number of products have been developed by this division<sup>29</sup>. The AT positively notes the FMS' clear increase in strategic analysis products in the recent two years, but further work is necessary to

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<sup>27</sup> Operational and delivery risk refers to the transaction amount, channels and execution status.

<sup>28</sup> Other risks refer to type of predicate offence, presence of signs of ML/TF and initial source of information.

<sup>29</sup> Typologies (11 since 2019); Red flag indicators (1 in 2019); Trends (14 since 2019); Methodological resources – (i)'Preparation of quality STRs by banks and submission to FMS' and (ii) 'Emerging ML/TF risks associated with VAs and VASPs' (both 2021); Strategic research – (i) risks for legal entities for ML purposes; (ii) high-risk areas (on ML and TF); (iii) Analysis of cash transactions of legal entities and individual entrepreneurs; and (iv) Assessment of risks caused by new technologies used in works transferred to LEA and detection of suspicious cases on this basis (all 2022); Instructions - high risk reports (1 in 2022); Risk categorisation of STRs (1 in 2022); Monitoring of persons and their operations related to the application of sanctions (4 in 2022), Supporting the NRA process (2022);The implementation of internal rules, registers, statistical databases and documentation.

provide strategic input to LEA, REs and the FMS itself to gear their actions into more effective repressive and preventive systems.

169. The FMS has conducted numerous presentations and training sessions in relation to strategic products which were shared publicly on the FMS website. With no feedback mechanism in place, the positive impact of such actions on the work of both REs and the competent authorities is difficult to assess. The AT notes that some important statistics are not kept (number of transactions suspended by the RE without reports being forwarded to the FMS and number of accounts closed by the REs due to absence of BO information) while others (cross-border cash declarations and CTRs) are not used to develop meaningful trends on which strategic conclusions could be drawn.

#### Dissemination

170. The FMS can disseminate to any party it chooses to and has secure methods in place to do so. There are no known legal impediments to the dissemination process. The AT notes that all decisions in relation to the dissemination of cases between the FMS and LEAs is undertaken by the Chairman of the Executive Board of FMS (the Director) after it has been reviewed by two Analysts. This process is reported to take approximately one day.

171. The FMS disseminations are mostly related to ML derived from corruption (64 cases since 2017). ML from drug trafficking has been the subject of 14 reports to the LEAs since 2017 and tax evasion in 11 cases of disseminated (predominately in 2017 and 2018). Although considered to be one of the highest risk areas in the NRA, smuggling has been the suspected ML predicate only once (in 2020). The AT notes that ML from fraud, cybercrime and organised illegal gambling also features in a number of disseminations to the LEAs (44, 6 and 7 reports respectively), which have not been a focal point in the NRA or as part of the ME process. These are areas in which may be overlooked in terms of emerging threats that have not yet been analysed by the authorities.

**Table Error! No text of specified style in document..11:** Number of cases disseminated to the LEAs

	<b>Cases disseminated to LEAs</b>	<b>Linked to predicate offences</b>	<b>Linked to ML</b>	<b>Linked to TF</b>
<b>2017</b>	48	5	26	17
<b>2018</b>	13	2	8	3
<b>2019</b>	30	13	9	8
<b>2020</b>	40	6	23	11
<b>2021</b>	37	3	30	4
<b>2022</b>	70	4	62	4
<b>Total</b>	<b>238</b>	<b>33</b>	<b>158</b>	<b>47</b>

172. Although the FMS perceive that the quality of STRs is increasing, the number of STRs which are archived without opening a case has steadily increased to 82% in 2022 from 74% in 2021, 70% in 2020 and 37% in 2019. Furthermore, there has been a downward trend in the proportion



of STRs that have triggered a dissemination to the LEAs since 2019, as outlined in Table 3.6. This indicates that whilst there may be a reduction in the amount of errors contained within the STRs, there is a lack in content that is convertible into usable and valuable intelligence. The conversion rate of STRs to intelligence that is used by the LEAs to initiate ML investigations is also a concern. During 2022, less than 1% of STRs resulted in an investigation by an LEA and this figure is lower for the years prior.

**Table Error! No text of specified style in document..12:** Number of STRs triggering cases sent to the LEAs

	2017	2018	2019	2020	2021	2022	Total
<b>Number of STRs received by the FIU</b>	243	247	312	263	493	1154	<b>2712</b>
<b>Number of cases sent to LEAs<sup>30</sup></b>	48	13	30	40	37	70	<b>238</b>
<b>Number of STRs disseminated on</b>	62	28	62	84	106	127	<b>469</b>
<b>Percentage of STRs disseminated on</b>	26%	11%	20%	32%	22%	11%	<b>17%</b>

173. Whilst over the assessed period there have been minimal cases of money laundering investigations initiated by the respective LEAs purely from FMS disseminations, the AT positively notes that there has been an improvement in 2022. Some are connected to existing cases, but feedback from the LEAs is limited and infrequent. During the onsite, the LEAs stated that the FMS intelligence is useful, but this is not fully supported by the data. It is clear that the FMS supports the operational needs of the competent authorities to some extent but is not an integral part of the investigation process and there is room for improvement in this respect.

174. The issues presented are: (i) the low quality STRs received from a small number of sectors; (ii) varying LEA appetite to investigate FMS derived analysis and provide feedback; (iii) the LEA's preference to obtain financial intelligence directly from the private sector, which hints that they do not consider FMS analysis as adding value to the raw financial intelligence already available; and (iv) the limited understanding amongst the LEAs of how the FMS functions can be useful to their investigations.

**Table Error! No text of specified style in document..13:** Number of cases disseminated to the LEAs

	2017	2018	2019	2020	2021	2022	Total
<b>GPO</b>	25	5	3	21	15	46	<b>115</b>
<b>State Tax Service (STS)</b>	0	0	1	0	0	5	<b>6</b>
<b>State Security Service (SSS)</b>	22	8	16	17	18	16	<b>97</b>
<b>Ministry of Internal Affairs (MIA)</b>	1	0	10	2	4	2	<b>19</b>

<sup>30</sup> This indicates the number of open cases, not STRs. One case could contain more than one STR.

<b>State Border Service (SBS)</b>	0	0	0	0	0	0	<b>0</b>
<b>Ministry of Emergency Situations (MES)</b>	0	0	0	0	0	0	<b>0</b>
<b>Ministry of Justice (MoJ)</b>	0	0	0	0	0	0	<b>0</b>
<b>State Custom Service (SCS)</b>	0	0	0	0	0	1	<b>1</b>
<b>Total</b>	<b>48</b>	<b>13</b>	<b>30</b>	<b>40</b>	<b>37</b>	<b>70</b>	<b>238</b>

175. In line with expectations, as the GPO is the main investigative and prosecution body in Azerbaijan, the FMS has sent the most reports to this authority (see Table 3.7). Of those disseminations, only 8 (7%) generated ML investigations. The GPO is considered to have an inconsistent approach towards the use of financial intelligence from the FMS, whereby the appetite and threshold to initiate investigations varies internally. Frequent feedback to the FMS from the GPO would be beneficial to enhance the conversion rate of FMS intelligence to GPO ML investigations as well as a consistent approach internally to the initiation of investigations.

<b>g) Case study 3.2: Standalone ML case opened on the basis FMS' dissemination</b>
h) In 2021, a STR was received from a commercial bank stating that the accounts belonging to 55 companies managed by persons "H" and "M" were used to cash funds in order to avoid legal requirements.
i) Based on the FMS analysis, it was identified that person "H" was controlling 54 company accounts, and person "M" was controlling 43 company accounts. The funds equalled a total of 5.3 million Manats (2.8 million EUR) of which 3.7 million Manats (1.9 million EUR) were cashed out and 1.7 million Manats (90,000 EUR) was transferred to other accounts of legal entities.
j) Analysis identified that the 5.3 million Manats that entered the accounts were state funds embezzled via three state entities. The case was disseminated to the Chief Anti-Corruption Department under the Prosecutor General for further investigation. The predicative crimes to ML were identified as tax evasion and embezzlement of state funds.

176. The SSS is the second FMS disseminations beneficiary and has zero investigations started on the basis of its products. It was explained to the AT that the SSS generates TF investigations based on alternative sources (informants/surveillance etc.), therefore, they do not initiate TF investigations based on the information received from the FMS. It was also explained that the FMS information is often already known and is analysed by the SSS internal financial investigation department. The SSS will engage the FMS in more complex cases occasionally, however, this does not appear to be routine practice. Therefore, in TF cases particularly, the extent to which FMS analysis and dissemination supports the operational needs of the SSS is limited.

177. The MIA is the third most reported to LEA from the FMS and two of those cases have resulted in ML investigations. The cases provided indicate that the MIA do utilise the intelligence gathering abilities of the FMS, mostly by requesting information from the relevant REs.

178. Financial intelligence shared from the FMS to the STS is minimal with one ML case underway (2022) initiated by the FMS. The NRA states that the FMS is 'used to a limited extent

within the investigational framework of investigative activities conducted by the STS<sup>31</sup> without further explanation. However, during the evaluation process, the STS indicated that information from STRs was not always useful in identifying the predicate offence and therefore a subsequent ML investigation is difficult. Similarly to the GPO, the STS are considered to have a varying appetite internally for initiating investigations derived from FMS analysis. The AT would expect the use of financial intelligence derived from the FMS to be important in the investigations of the ML related to the proceeds of the predicate offences conducted by the STS (tax related crimes, embezzlement, corruption etc.), particularly as these are regarded as the highest risk crimes.

179. The FMS has made some reports to the supervisory bodies in respect of criminal and regulatory concerns identified relating to obliged entities. The FMS conducted horizontal analysis in relation to obliged entities that did not report suspicious activity in a timely manner (3 such reports were communicated to the CBA in 2020). Three further reports were submitted to the Financial Markets Control Chamber and the CBA (1 in 2019, 1 in 2020, and 1 in 2021) regarding suspicious issues identified by FMS. The reports related to the use of card accounts for illegal purposes, business relations of obliged entities with suspicious foreign subjects, and cases of organising illegal investment activities.

180. The intelligence gathered by the FMS cannot be used as evidence, and as such, the relevant LEAs are required to apply for the relevant court orders to obtain the information on an evidential basis. The AT notes that neither the SSS, STS or Police have dedicated methodological or procedural tools to guide investigators in the use of financial intelligence to establish evidence or trace assets.

181. The AT concludes that the LEAs do not make extensive use of the intelligence generated by the FMS. The FMS needs to increase its standing in the overall intelligence picture by promoting its analytical products and, through systematic feedback and communication with the beneficiaries of those products. The design of their analysis should be directed for the benefit of the LEAs to then become a real support for the operational needs of the competent authorities. On the other hand, the AT notes a limited understanding by the LEAs of how to use FMS derived financial intelligence to develop evidence and trace criminal proceeds in ML, associated predicate offences and TF cases. Further cooperation and coordination work is needed on that front.

#### *3.2.4. Cooperation and exchange of information/financial intelligence*

182. The AT acknowledges that there have been improvements made to the formalisation of cooperation and the desire to enhance the exchange of information, particularly in 2022. Nevertheless, it is evident that this has not translated enough into effective investigations using financial intelligence. The culture of exchanging intelligence needs to be built upon in Azerbaijan to the level in which the FMS is the central function for financial intelligence and ML/TF. The AT would expect more coordination amongst the competent authorities so that the FMS can focus analysis into the subjects or offences in line with the LEA's operational matters of interest and priorities. This is a common finding across all LEAs.

183. The FMS utilise the goAML platform for sharing information with the LEAs agencies, and information can also be received from them through this same platform, if used. A joint LEA task force has been setup to discuss operational cases either through electronic means or in person,

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<sup>31</sup> Azerbaijan NRA, page 119, paragraph 357.

however, there is little in the way of records, statistics or outcomes for the activity of meetings to demonstrate the effectiveness. There were only three meetings held in 2022.

184. There is a lack of intelligence and feedback shared from the LEAs to the FMS. The FMS is often unaware of the LEA's potential interest in some subjects and may not prioritise specific disseminations. Effectively utilising the criminal record databases held by the MIA would ensure the FMS has access to more of the domestic intelligence picture and can alleviate potential gaps. The FMS could be used as a central financial intelligence function to connect different LEAs where the same subject or case may of interest, therefore subsequently enhancing domestic cooperation.

185. In international cooperation, there were 25 requests sent to foreign counterparts by the FMS in 2022 and 37 in 2021. The FMS indicated that some requests are made to foreign FIUs to obtain foreign beneficial ownership information when requested by LEA, but no evidence was provided on the number of instances when this happened in practice, nor on the results (BO information obtained using this avenue). It also remains unclear to the AT why the LEA would use the Egmont Group network via the FMS to obtain BO information that in some instances could have been received directly from the domestic private sector. Given the international nature of the risks associated with ML/TF and the cross border risks the NRA has identified, the AT expects there to be higher levels of international requests for information to foreign counterparts as well as spontaneous sharing of intelligence (see IO.2).

**Table Error! No text of specified style in document..14:** Number of requests sent to foreign counterparts by the FIU (in the course of operational analysis)

	2017	2018	2019	2020	2021	2022	Total
<b>No. of requests sent</b>	38	3	32	61	37	25	<b>196</b>

<b>k) Case study 3.3: Use of financial intelligence in a TF investigation</b>	
l)	In 2018, the FMS received a request from another FIU regarding the financing and supporting the ISIL activity by two Azerbaijani individuals ("XA" and "FM").
m)	The suspects supported the members of ISIL by providing finance and organizing their transit to Syria and Iraq across the requesting country.
n)	The requesting FIU required information from the Commercial Registrar, their immovable and movable properties, the beneficiaries of the transfers they made, suspicious financial transactions, criminal information, possible connections with terrorist organizations, crossing the state border, and information about the actual location.
o)	The FMS analysed the data obtained from the relevant sources, such as banks, post office, State Tax Service, Ministry of Internal Affairs, State Migration Service and Real Estate Registry.
p)	Based on the analysis, it was established that person "XA" received approximately 7.4 thousand USD and 429 thousand RUB (14 money transfers) via the "Western Union" money transmitter system. The received funds were cashed out by person "XA" in the branch of 4 reporting entities where he received the remittances. The investigation also revealed that in 2018 he was accused in the criminal case opened with Article 214-1 (TF) and he was subjected to a pre-trial detention.
q)	The FMS submitted the intelligence to the requesting FIU and to the SSS with the permission of the other country.

## *Overall conclusions on IO.6*

186. The investigative authorities have access to financial intelligence and other information which they use to a certain extent to establish evidence and trace the proceeds of crime linked to ML, TF and predicate offences. The financial intelligence is often gathered directly by the LEA from the private sector. It is evident that the conversion rate from intelligence obtained through STRs and other reports into case investigations and ultimately prosecutions is insufficient.

187. Most STRs are received from banks and the contribution from some of the higher risk sectors remains limited. Whilst the FMS maintain that the quality of STRs is improving, this remains insufficient, and this fact is reflected in the number of investigations being initiated from FMS disseminations. The FMS plays a key role in the AML/CFT system, and the AT commends the FMS on the work that has been undertaken recently to improve their analytical capacity and capabilities as well as promote the use of financial intelligence in investigations, however there is room for improvement. It is evident that the LEAs do not fully understand how the FMS can be a useful tool in their investigations. The duties of the FMS and LEAs would benefit from increased domestic cooperation at an operational level, including sufficient feedback mechanisms. **Azerbaijan is rated as having a Moderate level of effectiveness for IO.6.**

## **3.3. Immediate Outcome 7 (ML investigation and prosecution)**

### *3.3.1. ML identification and investigation*

188. Azerbaijan has a robust legal system and a number of LEAs with extensive powers to identify and investigate ML and associated predicate offences. The GPO has a central role in ML cases, either by supervising probes conducted by other LEAs (such as the MIA, SSS and STS) or by investigating it directly. In the first scenario, the authorities indicated that usually the GPO holds informal meetings with the LEAs in charge, the involvement of the GPO being confined to procedural matters, such as requesting court's orders to execute special investigative techniques. Once the investigation is finished, the competent LEA submits the indictment to the GPO, who must validate it, send it back for further investigation or amend the indictment.

189. Coordination and cooperation between the authorities is constructive to some extent, but there is room for improvement. The authorities identified instances when the prosecutor was not informed about some indicators that might have led to ML investigations.<sup>32</sup>

190. In practice, the majority of ML investigations fall under scenarios in which they are conducted by the GPO itself. The GPO prioritises high-threat ML cases (based mainly on typologies) and cases causing a great harm to society or economy. While ML identification and investigations conducted by other LEAs are sparse, some case studies have been presented to the AT (see Case study 3.4) showing the authorities' capability to deal with ML in complex cases. The authorities have undertaken a series of training programs aimed at improving their skills and knowledge. These training initiatives reflect a commitment to enhancing the competence and capabilities of the LEAs.

191. The AT positively notes a significant increase in the number of ML investigations lately. ML cases are initiated using information from various sources, such as intelligence gathered by LEAs, use of special investigative techniques, (pre)investigation of predicate crimes and some FMS

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<sup>32</sup> NRA, pg. 22 para. 27 (h), (i)

disseminations (eleven cases during the period under assessment). During the course of ML investigations, LEAs and prosecutors can obtain financial information and the AT did not identify any delay or obstacle in this regard, even when the court order is required.

192. Looking at statistics on ML investigations, prosecutions and convictions, it becomes apparent that the FMS disseminations are mainly used for the investigation of predicate crimes. While, in 2022 it is noticeable that FMS analytical products were more used to initiate ML investigations, the number is still low.

193. In practice, financial investigations are conducted with the aim to trace proceeds of crime and developing of evidence. However, parallel financial investigations are not routinely conducted. For example, in corruption cases, only the bribe would be subject to financial investigation and analysis, but not the rest of the wealth of the suspected and other related persons.

**r) Case study 3.4: Scope of financial investigation related to corruption**

s) In 2019 the SSS, based on their own intelligence, launched a criminal investigation on corruption. During the investigation, it was established that a public officer was bribed in cash with 1 000 000 AZN (550 000 EUR). It was also known that the public officer was the owner of several pieces of real estate acquired in 2018. However, the scope of the financial investigation was restricted to tracing a specific amount of cash used as a bribe and excluded the examination of the origins of funds used for purchasing other assets such as real estate. Since the cash could not be traced and the real estate purchases were not within the investigation's scope, a ML case was never initiated.

194. While Azerbaijan faces a significant external ML threat, there was no investigations triggered by incoming MLA requests. Relevant open source information is rarely used to identify and investigate ML partly due to the fact that they are not fully accessible in the country<sup>33</sup>.

195. The GPO and LEAs recognised the use of circumstantial evidence in ML cases as useful tool when proving intent and knowledge of the perpetrator. Nevertheless, in practice utilisation of this tool (as explained in the NRA) has been limited due to the scepticism of judges, to prove charges based on the indirect evidence. While acknowledging this problem constitutes a positive step, it is not deemed fully adequate remedial measure to overcome this obstacle indicating the need for further measures to address this challenge effectively.

196. According to the case law, a prior or simultaneous conviction for the predicate crime is required to prove that property is the proceeds of crime. Additionally, only those who have committed the predicate crime were pursued for self-laundering<sup>34</sup>. A technical deficiency under R.3 hinders the initiation of ML investigations. Nevertheless, authorities advised that such practice has been under rectification since 2022 and the GPO initiated 11 stand-alone ML cases independently. Preliminary investigations in all criminal cases are currently ongoing.

197. The AT positively notes that in February 2023 the Supreme Court issued a ruling which established that a prior conviction for the predicate offence is not required and circumstantial evidence should be used when proving ML offence. This decision of the Supreme Court was issued

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<sup>33</sup> Some webpages with relevant information were not available in Azerbaijan, at least for the AT during the on-site visit (a VPN connection was needed for this purpose).

<sup>34</sup> NRA, para. 246

a month before the onsite visit and, therefore, its effectiveness and practical impact on cases could not be assessed.

198. In addition, the GPO (also in Feb. 2023) issued guidelines for LEAs on ML identification and investigation, which is positive way forward in achieving better results. Yet, the effectiveness of those actions remains to be demonstrated.

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

199. The ML investigations and prosecutions achieved in the assessment period are in line with the risk profile of the country to some extent. Some ML cases related to drug trafficking, corruption and tax crime (crimes posing the highest ML threat) have been investigated and prosecuted. In order to substantiate conclusions about the effectiveness of the system, the AT relied not only on the provided statistics but also on case examples illustrating the authorities' capabilities to investigate and prosecute ML.

**Table Error! No text of specified style in document..15:** Number of ML investigation (IN) and prosecutions (PR) per predicate offence (cases/persons)

Year	2017		2018		2019		2020		2021		2022	
Predicate offence	IN	PR	IN	PR	IN	PR	IN	PR	IN	PR	IN	PR
Tax evasion	1/1	1/1	1/1	1/1	2/2	2/2	2/2	2/2	-	-	-	-
Smuggling	-	-	-	-	-	-	-	-	-	-	-	-
Corruption	3/5	2/3	4/7	3/5	2/2	2/2	-	-	2/2	2/2	2/2	2/2
Drug trafficking	-	-	-	-	½	½	-	-	-	-	-	-
Embezzlement <sup>35</sup>	-	-	4/9	½	7/12	¾	9/14	4/4	4/8	2/5	1/1	1/1
Other	7/11	4/9	6/8	4/7	13/19	10/16	5/7	4/6	9/12	9/12	3/3	3/3

200. According to the statistics, 51% of the ML investigations and 46 % of the ML prosecutions are related to predicates posing high ML threats (i.e., corruption -including embezzlement of public officers-, smuggling, drug trafficking and tax evasion). While those figures, broadly speaking, represent reasonable results, concerns remain since around 50% of ML investigations and prosecutions are related to other predicate offences. Smuggling related ML has never been investigated or prosecuted despite posing a high ML threat. This raises concerns of the effectiveness of the system in addressing ML risks associated with smuggling.

<sup>35</sup> Committed by state officials (including legal persons owned by the state)

201. The authorities presented some case examples of ML investigation and prosecution related to predicate offences posing high threat such as corruption and tax evasion, demonstrating their efforts to align the enforcement measures to the country risk.

202. Nevertheless, difficulties remain noticeable despite their efforts to address predicates posing high threat. The authorities have the legal possibility to dismiss the case for tax offences regardless of the stage of the criminal investigation if the tax debts are paid (see IO.8). This practice explains why between 2017 and 2022 there were 2 160 tax crime investigations but only 404 convictions for this predicate offence and around 20% of tax related ML investigations.

203. Concerning corruption, there is similar legal possibility of dismissing the case when the perpetrator has voluntarily informed the relevant state body about the bribe (CC, Art. 312). The AT was informed that this would apply even when the information was given after the inception of the criminal proceeding. In practice this has been widely used, and while it can be beneficial in identifying corruption related offences, it poses doubts on the possibility to investigate and prosecute ML related to bribery. From a theoretical perspective, the individual paying the bribe could misuse the exception of their criminal liability based on the possibility to report the bribe they are paying as a mean of pressure to the public officer to maintain their criminal activity.

204. Although smuggling is one of the main ML threats in Azerbaijan, no smuggling-related ML investigations or prosecutions have been launched. Similarly, drug trafficking ML-related investigations and prosecutions are sparse. This might be explained by the differences of views among authorities concerning the level of ML threat posed by those two offences (see also IO.1) as well as the insufficient understanding of the ML crime when committed outside the financial system (cash, Hawala).

205. Turning to cash, despite significant amounts transported through the borders, a cash-related ML case has never been investigated. The authorities advised that this is caused by the lack of a clear link between the cash detected and any specific criminal offence committed prior to the transportation of cash. This supports the AT conclusion that there is limited financial investigations and use of objective factual circumstances to prove the intent and knowledge of the perpetrator.

206. Turning to convictions, it appears that most (68.5 %) are not related to predicate offences posing a high ML threat. No smuggling-related ML convictions have been achieved, and only 2% of the total ML convictions were related to drug trafficking. When it comes to tax related ML convictions, only five were handed down between 2017-2022 (9% of the total number of convictions) while corruption equates to 20% of the total number. The latter cannot be considered to be high-profile cases but rather, related to medium or low public officers.

207. No ML investigations and prosecutions have been achieved related to the proceeds of crimes committed abroad, despite the existence of relevant external ML threats, which is not fully in line with the risk profile of Azerbaijan.

208. Although the misuse of legal persons was identified as a ML risk factor, there are no investigations, prosecutions or convictions against legal persons. This lack of legal action is caused by the authorities' not prioritising the prosecution of legal persons.

### **3.3.3 Types of ML cases pursued**

209. There are legal possibilities to pursue all types of ML, except a specific form of self-laundering (see R.3). Nevertheless, during the assessment period, most of the prosecutions and



convictions achieved were related only to self-laundering due to the deficiencies identified under core issue 7.1 (high evidentiary threshold, failure to conduct parallel financial investigations, limited use of objective factual circumstances).

**Table Error! No text of specified style in document..16: Types of ML convictions per type of ML<sup>36</sup>**

	2017	2018	2019	2020	2021	2022	Total
<b>Self - Laundering</b>	2	4	8	9	6	6	<b>35</b>
<b>Third-party/stand-alone laundering</b>	1	-	-	-	-	-	<b>1</b>
<b>Foreign predicate offence laundering</b>	-	-	-	-	-	-	-

210. It is noticeable that despite all obstacles in proving ML offence, one stand-alone ML conviction was achieved in 2017. This demonstrates efforts of the authorities to pursue other types of ML.

<b>t) Case study 3.5: Stand-alone ML Case</b>
<p>u) In a complex money laundering scheme, a bank employee named Y officially held director positions in multiple legal entities. He used his connections to approach the head of a bank operating in Azerbaijan and informed him that two legal entities would be engaged in foreign economic trade activities and there would be several financial transactions. He asked for the allocation of a room in one of the bank's branches. Unofficially employed individuals with prior banking experience were placed in this room. Y and others then transferred significant sums of money into the accounts of two legal entities associated with this operation, with additional large deposits made in accounts at two other banks.</p> <p>v) At that time, to create a facade of legitimate business activity he issued fake purchase and sale agreements with foreign companies with which he had no business relationship. Allegedly, Y prepared fake Cargo Customs Declarations on the import of goods and forged the seal of the customs to prepare documents granting rights and exempting him from duties. Afterwards, the money was transferred to the accounts of more than 10 foreign legal entities in foreign banks through payment orders prepared by employees. Overall, Y and the accomplices laundered 4 707 639 251 manats (euros 2 615 162 815), 3 949 590 euros and 18 609 960 Russian rubbles. They were convicted for ML offence and sentenced to 15 and 11 years of imprisonment respectively.</p>

211. The GPO informed the AT that, following the new objectives set out as a result of the NRA, they initiated a number of stand-alone ML pre-investigations. While this is a positive step toward achieving effectiveness, some concerns remain. Namely, the authorities did not indicate a strategic approach to obtaining and using objective factual circumstances while proving the criminal origin of the assets in those ML cases. Therefore, the overall effectiveness in this respect is to be demonstrated.

<sup>36</sup> Data on ML prosecutions broken down by type of ML was not available.

### 3.3.4 Effectiveness, proportionality and dissuasiveness of sanctions

212. The range of available ML sanctions is wide, from very minor penalties to long imprisonment periods. Maximum penalties imposed in ML cases are from 10 to 16 years of imprisonment.

**Table Error! No text of specified style in document..17:** Total penalties imposed for ML (natural persons)

Types of imposed sanctions	2017	2018	2019	2020	2021	2022
Number of custodial sentences imposed	4	8	15	12	11	14
Average length of prison sentences imposed in months	126	102	106	120	108	96
Suspended sentences (average in months)	1 (90)	2 (81)	5 (38,4)	2 (63)	-	-
Number of fines imposed	-	1	2	1	-	-
Average level of fines imposed (in EUR)	-	3 829	1 470	2 054	-	-
Number of “deprivation of right” to hold office or carry out certain activities	3	8	13	12	4	1

213. Although ML penalties are generally imposed jointly with penalties for predicate offences, they seem to be proportionate, effective, and dissuasive. Nevertheless, when only fines are imposed, they are minor and not proportionate to the nature and protected value of ML and, not sufficiently dissuasive or effective.

### 3.3.5 Use of alternative measures

214. In Azerbaijan there are some alternative measures imposed when ML conviction is not possible to secure. Due to the high evidentiary threshold required for ML offence, the authorities are focused on the prosecution of the predicate offence. It is noted that the authorities are also exploring asset recovery mechanisms (see IO.8) but this measure cannot be taken as alternative to ML prosecution since in those cases ML aspects are not scrutinised at all.

### Overall conclusions on IO.7

215. Azerbaijan has several designated LEAs competent to identify and investigate ML offence. There is a number of investigations, prosecutions and convictions achieved for ML offence, and the results are consistent with the risk profile of the country to some extent. The majority of convictions are for self-laundering, and only one for standalone ML. The deficiencies identified in respect to the lack of parallel financial investigations, interpretation of ML offence and circumstantial evidence are being gradually addressed by the authorities. The imposed sanctions are effective and dissuasive, and some alternative measures are applied when it is not possible to secure ML conviction. **Azerbaijan is rated as having a Moderate level of effectiveness for IO.7.**

### 3.4. Immediate Outcome 8 (Confiscation)

216. Azerbaijan has a recovery regime that incorporates provisions for recovering the proceeds of crime by means of both confiscation and restitution. The dual nature of the system means that criminality such as theft and fraud, where victims are generally individuals, are not subject to confiscation but may be concluded through the restitution of damages.

#### *3.4.1. Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective*

217. There is no overarching policy document in Azerbaijan dealing with the confiscation of proceeds of crime, instrumentalities, and property of equivalent value. Nevertheless, the authorities have taken a number of progressive steps to develop its domestic legislative provisions, in order to make crime unprofitable. The amendments include extending the provisions to property held by third parties, the inclusion of income derived from criminal proceeds and the recovery of property of equivalent value. The authorities have also taken steps to enhance their capabilities, notably through the establishment of a specialist confiscation unit within the GPO to support and advise LEAs, and the provision of training to investigators and prosecutors. Additionally, the GPO issued a guidance manual “Methods for the preliminary investigation of crimes of money laundering and acquisition, ownership, use, and disposal of property knowingly obtained by crime” that generally describes the confiscation regime without providing specific guidelines on how to effectively make crime unprofitable. While welcoming such efforts, its effectiveness cannot be assessed since they were all produced prior to the onsite.

218. Despite the steps being taken, some issues remain. There is a lack of central oversight of seizure since it falls under the scope of a number of LEAs. In particular, there is an absence of a coherent national strategy or a policy for the implementation of effective seizure and confiscation measures across all LEAs. The absence of such is manifested in the lack of comprehensive guidance provided to the judiciary and LEAs, the absence of effective provisions for the collection and collation of statistics, as well as the retention of records relating to property seized or confiscated and a requirement for centralised reporting. The detrimental effect of these deficiencies is evident in the overall results of the LEAs.

219. The Authorities have not demonstrated that a clear policy relating to instrumentalities has been developed and adopted across LEAs. The absence of a policy is also reflected by the limited understanding of the concept of “instrumentalities” demonstrated by the individual agencies. However, some case examples of the seizure of vehicles used and currency intended for the furtherance of criminality were provided.

220. In addition, in the 2022 NRA a number of systemic issues have been identified that undermine the effectiveness of the provisions relating to confiscation. Specifically, failure to conduct parallel financial investigations, insufficient priority being given to the identification of property that has been aggravated by an absence of specialist knowledge, were acknowledged, which is a positive first step. Nevertheless, the actual measures taken or to be taken to address these issues have not been articulated to the AT, as such it is not clear if these issues have been mitigated or if there are improvements being developed to increase the effectiveness of the provisions. The NRA assessment does not make any reference to instrumentalities, nor does it refer to ML or TF in relation to breaches of the cross-border currency declarations.

221. Notwithstanding those deficiencies identified and lack of policy, during the assessment period authorities did seize and confiscate a commendable amount of proceeds of crime, and even a creditable value of assets recovered, as explained below.

### ***3.4.2 Confiscation of proceeds from foreign and domestic predicates, and proceeds located abroad***

222. Azerbaijan prioritises the payment of victims, who have suffered damages as a result of criminality from any property confiscated, with any remaining balances paid to the state. It should be noted that if damages exceed the amount identified for confiscation, compensation may be sought from the offenders' remaining assets.

223. One aspect of the system of restitution is the potential for offenders to agree to pay compensation during the preliminary investigation stage in order to avoid further investigation and potential prosecution. This option is only available on a first offence (the perpetrator has no prior criminal record) but is applicable to a wide range of criminality including tax, embezzlement, and corruption offences. The decision to offer this measure appears to lie with the investigating LEA in consultation with the GPO and it appears to be frequently used (see Table 3.12 'Property Recovered column').

224. Investigators are able to utilise general investigative powers to obtain relevant information including banking, tax, property and where available beneficial ownership information in an evidential format (see R. 31). In addition, financial enquiries can be undertaken during the pre-investigation stage, this enables more time for the investigators to establish the financial activity of individuals and the suspected criminality. Any investigative tools requiring applications to the court must be submitted and agreed with the Prosecutor assigned to the criminal case. Those techniques are used when tracing the proceeds of crime only, leaving out the identification, seizure and confiscation of instrumentalities.

225. Azerbaijan has a capability to fight cybercrime and have identified two case where the use of cryptocurrencies were a feature. Despite the existing legislation being believed to be applicable, it is yet to be tested. The authorities currently lack the resources and trained staff to facilitate the tracing, seizing or forfeiture of cryptocurrencies and digital assets.

226. As noted in the NRA, and with the exception of the SSS, there was no understanding by the LEAs of the need for parallel financial investigations. In addition, no guidance or methodology was provided or cited during the assessment in relation to parallel financial investigations, but some training has been delivered. In the majority of cases the investigator assigned to conduct the criminal investigation is also required to assess the damage to victims and identify available assets. The effectiveness of this approach is limited by a lack of specialist knowledge, and the conflicting pressures on the investigator, who, with limited time, is required to prioritise the criminal investigation. During the on-site it was evident that the identification of available assets and the extent to which individuals had benefited from their criminality were limited.

227. Despite deficiencies, the authorities were able to seize and confiscate the proceeds of ML and predicate crimes in some instances. There were some case examples, where commendable amount of proceeds of crime has been successfully confiscated (see case study 3.6).

<b>w) Case study 3.6: Case example of successful confiscation</b>
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x) Authorities launched investigation against F.R, as the founder and head of legal person “A.I” and chairman of the board of directors of legal person “A.K” for criminal offences of tax evasion, abuse of official power and official forgery. He committed criminal offences by leasing the office buildings, selling carpets, buying expensive cars, and fictitious selling of yarns. While conducting criminal investigation, authorities established that F.R caused damage in the amount of 22 314 515,40 manat (12 037 501,88 euros). F.R was convicted in 2022 and in order to compensate for the financial damage, property worth 30 587 044,10 manats belonging to F.R and his family members was confiscated. Shares in the value of 5,849,380 and assets one legal person were also confiscated.

228. While the statistics provided by the authorities in relation to the seizure and confiscation of assets (see Table 3.12) illustrate some creditable amounts, it is noticeable that confiscation was achieved in only 17 cases out of which 8 were derived from ML convictions, 10 from corruption and 1 from fraud<sup>37</sup>. The limited use of confiscation powers to recover property that represented either the increase in value of property obtained through criminality, or assets accrued directly from such property has been cited by the authorities (Case study 3.6). The frequency and extent of such action is however unclear. Nevertheless, the number of cases and the amount of recovered property is significant, and authorities explained that it is due to the application of principle of restitution of assets by offenders in order not to face criminal charges or to mitigate penalties. Authorities advised that this has been applied mostly in tax and corruption related cases.

229. The total amount of confiscated property actually recovered compared to the ordered amount is not known, as such the effectiveness of enforcement provisions has not been established.

**Table Error! No text of specified style in document..18:** Seizure and Confiscation of proceeds of crime from domestic predicates

	Seized property		Confiscated property		Property recovered <sup>38</sup>	
	No of cases	Value in EUR	No of cases	Value in EUR	No of cases	Value in EUR
<b>2017</b>	23	8 838 826	2	459 138	5 372	45 529 061
<b>2018</b>	28	20 315 311	0	0	5 214	66 868 371
<b>2019</b>	24	22 719 357	4	72 110 700	4 732	32 885 552
<b>2020</b>	17	11 137 337	6	3 039 000	4 577	61 592 735
<b>2021</b>	32	56 426 233	3	41 447 000	5 358	54 833 042
<b>2022</b>	25	2 661 076	2	7 497 000	6 237	64 387 592
<b>Total:</b>	147	122 098 143	17	67 656 838	31 490	326 096 356

<sup>37</sup> The clear inconsistencies in numbers produced have no impact on the AT’s analysis. These statistics were provided by the authorities.

<sup>38</sup> Figure reflects amounts paid to mitigate penalties, prior to prosecution and formal confiscation proceedings

230. Following the confiscation of property responsibility for realising the asset falls to the Court bailiffs, who are required to value and dispose of the property via special auctions organised by the Ministry of the Economy. Property can be listed for sale on a maximum of three occasions. On each instance the asking price is discounted by 10%, 25% and 50% respectively. If unsold, the property is accessed for either government use or for donation to disadvantaged members of society. Property that is deemed to have cultural significance may be transferred to the Ministry of Culture prior to auction.

231. There are currently no provisions to prevent the offender, their family, or associates from buying back property, as occurred in a 2021 case, whereby the brother of an offender was able to purchase back a garage and commercial vehicles via the auction. In cases where the realised amount is less than the assessed damages there are no provisions for revisiting or identifying further assets to meet the difference, however, in rare cases it may be possible for the Bailiffs to seek a revised order from the court. It was noted by the authorities during the on-site that the use of Bailiffs is a deficiency in the process, as they have limited authority and are unable to utilise investigative powers to trace assets.

232. In circumstances where a confiscation order is not paid there is no specific sanction to support enforcement of the order, however general legal provisions relating to issues of contempt of court can be used. The potential penalty being a custodial sentence of up to 3 years, or between 3 and 5 if the offender is deemed to be an official. No examples or data relating to the application of these sanctions has been provided.

233. Whilst the authorities achieved several TF convictions, no seizures or confiscation of funds have been achieved in this regard. It can be concluded that authorities do not apply those measures in TF cases.

#### *Tracing assets held abroad*

234. The case studies provided by the authorities demonstrate a number of cases where the proceeds of crime have been transferred and/or concealed via foreign corporate entities. These cases are particularly prevalent in regard to the two main domestic risks of corruption and tax offences. In one example, despite corrupt payments in excess of 2.8m AZN (1.5 m euros) which had been obtained by an individual were transferred between companies within Azerbaijan and other jurisdictions, no legal action has been undertaken in order to seize those funds moved abroad. Notwithstanding, the authorities have sought to develop their 'informal' processes for the identification of assets held in foreign jurisdictions, prior to a formal request, through participation in the Egmont system, CARIN and ARIN-WCA, managed by the FMS and GPO respectively. However, the figures provided relating to the use of Egmont are low, and no data has been provided in regard to the effective use of CARIN or ARIN-WCA (see IO.2). The authorities have cited one example where the CARIN system was successfully utilised to obtain information relating to property held overseas by an individual, who is subject to an ongoing investigation regarding bribery and corruption offences.

235. During the assessment period the authorities were unable to demonstrate instances where property had been recovered from other jurisdictions, despite seeking formal assistance on three occasions. Each of the requests were rejected by the recipient jurisdiction, although one has led to the alternative recovery action being taken by the recipient jurisdiction. A further request is being prepared for submission. The GPO have sought feedback from the recipient jurisdictions to improve future requests and identify potential issues.

236. There are no case examples of sharing of confiscated assets.

237. In Azerbaijan there are legal provisions enabling the management and the assignment of seized and confiscated assets to Government agencies. The secure retention, valuation and assessment of seized property is the responsibility of the investigating LEA, with the exception of a central deposit account maintained for the purposes of holding seized currency. Following the successful confiscation or forfeiture of property, responsibility passes to the court's Enforcement officer, who is responsible for realising and remitting the value to the Ministry of Finance. It was noted during the on-site that following the arrest of an individual they may be compelled to surrender movable property such as jewellery, gold, or currency within a specified period, for storage in a safety deposit box held by the LEA. However, when it comes to perishable goods, there is no provision enabling LEAs to avoid their dissipation.

238. There are no provisions for the management of corporate entities or complex assets, with only one instance cited where circumstances had necessitated the SSS to seek the appointment of an independent accountant to operate the company and maintain its value. This approach was recognised as an exception by both the SSS and the GPO. Overall, the focus is more on the storage of the assets, whereas there appears to be lack of comprehensive procedures for their management.

### ***3.4.3 Confiscation of falsely or undeclared cross-border transaction of currency/BNI***

239. Azerbaijan has land borders with Russia, Georgia, Türkiye, and Iran, which have all been closed to passenger traffic since March 2020 (triggered by COVID restrictions), while the closure of the border with Armenia significantly pre-dates those closures. Airport and maritime ports remain open. It is however unclear the extent to which the closures have inhibited the movement of freight and the conduct of cross border transactions seeing that exchanges/smuggling still exist.

240. Despite border closures for non-freight traffic, the cross-border transportation of currency and BNIs remains a significant issue. This is due to Azerbaijan's extensive land borders, its proximity to one high risk jurisdiction and its location on the transit route for illicit goods originating from Iran and Afghanistan. An estimated 75% of smuggling occurs across the Iranian border.

241. The risk of cross border currency movements is also affected by the range of the Azerbaijani diaspora that extends throughout the region with communities located near to the borders in northern Iran and the south of the Russian Republic of Dagestan. During the on-site it was stated that one of the primary sources of funds being sent to recipients in Azerbaijan is the community based in Russia.

242. The risk of the cross-border transfer of funds intended for the funding of terrorism is not considered to be significant by the Authorities, due to the small-scale movement of funds associated with families and friends funding individuals who have travelled to conflict zones for ideological reasons, although the AT is not fully convinced that this view is fully justified through a comprehensive analysis of data.

243. Azerbaijan has established a system of cross-border cash and BNI declarations. The system differentiates between resident and non-residents, including legal persons, and applies incremental thresholds which include and are in line with the 15 000 euros threshold provided

by the standards (see R.32). The cash declarations are not automatically reported to the FMS. The SCS are required to report only currency or BNI detections in excess of US\$ 50,000.

244. Officers acting at the border have powers to conduct inspections, examine goods, vehicles, and associated premises. The SCS have a specialised general investigative unit, who as part of their investigations seek to trace the derivation of funds and identify predicate offences, for which training is provided. This unit is responsible for receiving, analysing and storing the cash cross-border declarations (see Table 3.13). There is no specialist money laundering or terrorist financing capability and therefore there is no STR reported by the Customs in relation to potentially suspicious cross-border transportation of currency. Failure to consistently report suspicious activity, combined with the absence of comprehensive statistics and central oversight is a deficiency in the authorities' ability to develop intelligence, assess risk, quantify activity and undertake joint or targeted operations.

245. The SCS noted that the technical and physical capabilities available at the border have significantly improved in regard to the detection of illicit goods, including currency, through the introduction of X ray machines and sniffer dogs.

246. A framework of dissuasive administrative and criminal sanctions is available for undeclared and falsely declared cash based upon an incremental scale of penalties that include a fine calculated as a percentage of the sum up to 80% and imprisonment for between 3 and 5 years. Offences are prosecuted as stand-alone smuggling and are not considered in the context of ML or TF.

247. The administration and enforcement of the declaration provisions are the responsibility of the SCS, with prosecutions for smuggling undeclared cash above a certain threshold supported by the GPO. Offences that relate to the competencies of other agencies are referred to those LEAs for investigation and prosecution.

**Table Error! No text of specified style in document..19: Cross-border declaration (all)**

<b>Year</b>	<b>Incoming cash declarations</b>	<b>Volume in EUR</b>	<b>Outgoing cash declarations</b>	<b>Volume in EUR</b>	<b>False declarations</b>
<b>2022</b>	2,382	33,137,691	2,824	21,978,805	35
<b>2021</b>	814	19,713,414	1,028	7,612,152	11
<b>2020</b>	1,156	12,486,742	1,286	10,076,929	9
<b>2019</b>	10,926	82,064,285	15,414	76,592,964	24
<b>2018</b>	4,800	54,578,654	10,224	52,006,420	75
<b>2017</b>	2,338	45,533,993	6,371	22,684,328	92

248. The authorities reported no declarations of incoming or outgoing BNIs during the assessment period, as the SCS did not identify declared or non-declared BNIs.

249. The statistics provided by the authorities denote that when the traveller fails to declare, fines are applied, but the currency is not confiscated. The average fine varies between 4.000 and 15.000 euros depending on the year. The authorities do not differentiate between un-declared and falsely declared cash. The application of fines as opposed to seizure or confiscation of falsely or undeclared cash shows that the sanctioning system is not proportionate, dissuasive and effective.



**Table Error! No text of specified style in document..20: Statistics on cases of breach of declaration requirements<sup>39</sup>**

Year	2022	2021	2020	2019	2018	2017
<b>Number of case (individuals) where sanctions applied</b>	35	11	9	24	75	92
<b>Annual value of fines EURO</b>	227,929	44,716	137,194	165,878	788,377	798,516
<b>Number of cases where confiscation applied</b>	0	0	0	0	0	0
<b>Annual value of confiscation orders in EUR</b>	0	0	0	0	0	0
<b>Annual value of undeclared/falsely declared assets in EUR</b>	558,651	111,749	342,130	394,918	1,961,139	1,947,600

250. The Authorities provided one case example from 2021, involving the detection and seizure of currency along with illicit drugs in the possession of a Turkish national, who was intercepted at one of the jurisdiction’s airports. However, there is no information if the case was referred to LEAs for potential ML identification and investigation.

251. It is unclear if the true extent of the risk of cross-border transportation of cash and the potential link to ML and TF are sufficiently understood and prioritised by the SCS. In particular, the authorities provided either conflicting or limited responses regarding the suspicious currency and BNI smuggling across the wider land border, and the role of unregistered MVTS, such as Hawala, in such operations (see also analysis under IO.1).

252. The overall lack of data and case examples provided prevent the authorities from demonstrating the effectiveness of the cash/BNI sanctions provisions.

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

253. The 2022 NRA identified two principle domestic predicate offences, corruption and tax offences associated with ML risks. The seizure and confiscation results attained by the authorities during the assessment period, in particularly relating to cases where the predicate offences were corruption and bribery are consistent with the assessment. During the period the authorities reported a limited number of cases, with high value of seizures and confiscations relating to ML offences.

254. Turning to smuggling and drug trafficking, there is no evidence that the achieved results are consistent with the country’s risk profile since no seizure nor confiscation have been achieved so far.

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<sup>39</sup> It is not clear if breaches are for non-declared or falsely declared cash.

**Table Error! No text of specified style in document.21:** Seizure, confiscation and asset recovery for ML and predicate offences

Offence	Property seized		Property confiscated		Property effectively recovered <sup>40</sup>	
	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)
Money laundering	8	65,056,000	8	65,056,000	3	1,141,770
Participation in an organized criminal group and racketeering	1	4,085			137	893,063
Illicit trafficking in stolen and other goods					13	1 177 931
Corruption and bribery	132	110,273,000	10	67,560,595	110	135,781,000
Fraud	4	1,123,271	1	105	10,657	81,653,216
Counterfeiting currency					18	14,890
Counterfeiting and piracy of products					4	16,108
Environmental crime					549	959,868
Murder, grievous bodily injury					4	23,631
Kidnapping, illegal restraint and hostage-taking					2	3,036
Robbery or theft	2	152			17,552	21,601,682
Smuggling (including in relation to customs and excise duties and taxes)					15	981,601
Tax crimes (related to direct and indirect taxes)	6	2,326,876			300	60,841,634
Extortion	1	96,138	1	96,138	1,025	1,213,997
Forgery					15	105,836
	147	122,098,143	12	67,656,838	31,490	326,096,356

255. Terrorist financing is considered to be a medium-high risk and is posed by several radical and religious-based terrorist organizations operating abroad (see also IO.9). The funding of these individuals is generally low-level living expenses provided by family, friends and occasions faith

<sup>40</sup> Figures represent voluntary payments to mitigate penalties prior to prosecution and confiscation proceedings.

groups. Although TF convictions have been achieved, there are no confiscations in this regard, which is not consistent with the risk profile.

256. The authorities have identified a specific risk arising from the property market, in particular as a method of concealing the proceeds of domestic corruption & bribery. The risk is detailed in the NRA and is evident within the case summaries and the examples advanced during the on-site. Notably the NRA estimates that 52% of all confiscated property is real estate with a further 3% being land. It is believed that the use of unregistered property, often apartments in new developments is a particular issue enabling individuals to conceal the beneficial owner of properties. Domestic provision does limit the number of companies an individual can open, and there are no corporate formation service providers. Azerbaijan's legislation does provide provision for courts to apply special confiscation in relation to legal persons, however during the on-site there appeared to be little understanding of the risk related to legal persons and no examples or data were provided in relation to instances where these provisions had been successfully applied.

257. Corporate entities are a feature of both the case examples provided to the AT and are also briefly touched upon by the NRA. In particular a number of the cited cases include the use of foreign corporate entities as special purpose vehicle to hold assets or as conduits for the transfer and legitimisation of illicit funds. Domestic companies are noted as being very easy to incorporate, and instances of 3rd parties providing ownership details on behalf of others have been identified. However, there is little evidence that effective confiscation has been undertaken against corporate entities.

### *Overall conclusions on IO.8*

258. Azerbaijan has demonstrated a continuing desire to develop and enhance its domestic legislation and its capabilities in order to meet international standards for the confiscation of the proceeds of crime, property of equivalent value and instrumentalities. This has led to the authorities achieving some notable results, in particular with regard to confiscation of corruption proceeds and ML cases. However, the majority of cases where recovery is recorded are ones where voluntary restitution has been agreed. Cases of either false or failure to declare currency or BNIs are subject to both administrative and criminal sanctions, which are applied on a graduated basis. The system is however primarily a currency control mechanism. Particular areas of concern are the lack of reported activity in relation to instrumentalities, absence of parallel financial investigations, the effectiveness of international recovery provisions, the absence of an effective policy and in the lack of effective enforcement and asset management provisions. **Azerbaijan has achieved a Moderate level of effectiveness for Immediate Outcome 8.**

## 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### 4.1. Key Findings and Recommended Actions

#### ***Key Findings***

##### ***Immediate Outcome 9***

- a) Azerbaijan has secured seven TF convictions, demonstrating the authorities' ability to tackle different forms of TF activity, which is in line with the risk profile of the country to some extent. The overall effectiveness is impacted by the deficiencies in the TF risk understanding (see IO.1).
- b) The SSS is the main investigative body in charge of identification and investigation of TF offence. Cooperation between the SSS and the other authorities brings added value when investigating TF cases. The SSS feedback to the FMS on the outcome of the investigations is lacking. A variety of intelligence sources are used to trigger TF investigations. The systematic approach to investigate the financial aspects in terrorism cases was not fully demonstrated and may constitute an area for improvement.
- c) There is no national counter-terrorism strategy which was acknowledged in the 2022 Action Plan. However, the authorities adopted some policy documents where TF investigations have been integrated.
- d) When a TF conviction is achieved, imprisonment sentences imposed are effective, proportionate, and dissuasive.
- e) Azerbaijan undertakes several alternative measures to disrupt TF activities where a TF conviction cannot be secured such as deprivation of the citizenship and listing.

##### ***Immediate Outcome 10***

- a) Azerbaijan has the necessary legal and institutional framework to implement without delay UNSCRs 1267 and 1373 and their successors by using software integrations, which update information on the dedicated web portal for targeted financial sanctions;
- b) The MFA and the SSS have not yet identified or proposed any individuals or entities that warrant designation to the UN sanctions under 1267/1989 or 1988. The SSS has designated individuals pursuant to UNSCR 1373 and one foreign requested for designation is under consideration;
- c) The communication of designations by the authorities is limited and does not foresee a pro-active approach from the authorities in case of changes in the lists. Designations are published on the dedicated web portal for TFS, where the REs can check the lists themselves;
- d) Azerbaijan has conducted a risk assessment of the NPO sector to identify a subset of NPOs at risk of TF abuse shortly before the on-site visit. The main vulnerabilities are related to funding, operating in high-risk areas, extremist propaganda and unregulated NPOs. The authorities are still in process of considering the results of the NPO risk assessment in order to apply measures that are focused and in line with the risk-based

approach to ensure that the legitimate NPO activities are not disrupted or discouraged. However, during the assessed period, the country applied a one-size-fits-all approach to all NPOs;

- e) False-positive matches were encountered in 1 case with person designated under UNSCR 1267 and 1 case under UNSCR 1373, both cases being reported by the obliged entities to the FMS. After a detailed analysis it was confirmed as being inconsistent with the list of designations. No instances were identified that would require freezing of assets pursuant to UNSCR 1267 or upon foreign request, nor assets and instrumentalities seized/confiscated in the criminal cases. Pursuant to UNSCRs 1373, 2 pieces of land, 4 bank accounts with insignificant amount and 1 car have been identified and frozen.
- f) The TFS measures introduced by the Azerbaijani authorities are partially consistent with the overall TF risk profile as specific risks concerning its geographical position and other contextual factors are considered to some extent.

#### ***Immediate Outcome 11***

- a) Azerbaijan has only recently adopted the necessary legal framework on PF, which ensures the implementation of UNSCRs 1718 and 1737 and their successors without delay. Before the adoption of the TFS Law the country relied on alternative measures oriented to monitor all transactions related to high-risk jurisdictions, including Iran and DPRK. The authorities have not yet tested the system in practice, therefore no assets related to PF were frozen.
- b) Supervisory authorities have never considered PF issues as part of their supervision and only recently started considering the implementation of the measures for monitoring and ensuring compliance by RE with the PF related TFS.
- c) While there have been some guidance and awareness-raising actions provided to the REs, their understanding of freezing obligations on PF, remains rather limited in all the sectors. Instead, REs are paying special attention to relationships with customers from these countries due to inclusion of Iran and DPRK to the high-risk jurisdictions list.
- d) Following the adoption of the TFS Law, the supervisors were vested with powers to impose sanctions. Currently, no sanctions or penalties for PF issues have been imposed.

#### ***Recommended Actions***

##### ***Immediate Outcome 9***

- a) Azerbaijan should adopt a general and unified counter terrorism strategy targeting specific TF risks and identifying and developing typologies observed.
- b) The authorities should formalised the obligation to carry out parallel financial investigations alongside terrorism related cases with the aim to identify and investigate TF cases. Comprehensive guidance in this respect should be issued in order to streamline the work of the authorities.
- c) All possible sources of information (such as FMS disseminations and MLAs) should be harvested to the widest possible extent to identify and investigate TF activities. The SSS

should consider systematically sharing the result of their investigations with the FMS or other national authorities.

- d) Domestic cooperation between the SSS, prosecutors and the FMS should be strengthened when investigating and prosecuting TF, sharing their information more effectively and prosecutors assuming a more proactive role .

#### ***Immediate Outcome 10***

- a) Azerbaijan should enhance its communication mechanism of designations to the REs to make it more pro-active;
- b) Azerbaijan should further enhance the awareness of the NPO sector, including through outreach and/ or guidance to the NPOs and the donor community, with a focus on possible risks of being misused for TF purposes, as derived from the risk assessment, and their respective obligations in this regard;
- c) Without prejudice to the NPOs legitimate activities and careful to avoid unintended consequences of the application of the FATF standards and/or misapplication of R8, Azerbaijan should use the results of the NPO risk assessment to establish focused and proportionate supervisory measures to NPOs at risk of TF abuse in line with the risk-based approach.

#### ***Immediate Outcome 11***

- d) Azerbaijan should further enhance its legal and institutional framework for the PF-TFS monitoring through i) the designation of a supervisory authority with full supervisory powers including on-site inspections and application of sanctions, and ii) providing the respective authority with necessary financial and human resources and proper training to perform its duties.
- e) The authorities should perform trainings and awareness-raising activities in order to enhance the knowledge and understanding of the entities of the private sector (especially non-banking FIs and DNFBPs) on PF-related TFS obligations. This should include enhancing awareness on the provisions of the TFS Guidance.
- f) A domestic coordination mechanism on PF matters should be enhanced to develop and implement policies and activities to combat the financing of proliferation of WMD.

259. The relevant IOs considered and assessed in this chapter are IO.9-11. The Recommendations relevant for the assessment of effectiveness under this section are R. 1, 4, 5-8, 30, 31 and 39, and elements of R.2, 14, 15, 16, 32, 37, 38 and 40.

## **4.2. Immediate Outcome 9 (TF investigation and prosecution)**

260. Azerbaijan has a legal system in place enabling them to investigate, prosecute and convict TF activities. TF offence is broadly in line with the standards and the remaining technical deficiencies described under R.5 of the TC Annex do not seem to prevent the authorities from identifying and pursuing TF.

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

261. Terrorism and TF risk in Azerbaijan is rated as medium-high. The main TF risk is posed by several radical and religious-based terrorist organisations operating abroad, such as ISIL, PKK/YPG and Jabhat al-Nusra. Nevertheless, there are some deficiencies in relation to the understanding of TF risk (see IO.1). For example, while international organisations such as the UN<sup>41</sup> pointed out that drug trafficking and smuggling offences have links to TF, the authorities were aware to some extent of the TF risks posed by these activities. Nonetheless, a thorough and detailed explanation was not furnished neither the NRA articulated the extent to which these criminal activities pose TF risk.

262. In Azerbaijan, TF does not involve significant sums of money or complex schemes. Instead, it is often associated with financing of FTF. These funds typically come from legitimate sources and are usually sent by relatives, friends, or other FTFs' close persons in order to support their various activities (terrorist acts, transportation, allocation, etc.). The primary methods identified for TF, especially in connection to neighbouring countries where radical and religious-based foreign terrorist organisations (e.g., ISIS or al-Nusra) have stable structures and presence, include the use of cash and hawala. Additionally, misuse of the banking system and MVTs were also identified as financing tools for FTFs.

263. No terrorist organisations were identified to be operational or willing to act in Azerbaijan. Nevertheless, according to the 2022 NRA, it was found that between 2013-2018 more than 1.500 Azerbaijani citizens joined illegal armed groups in the territory of Syria and Iraq. The SSS showed a commendable awareness of the risk posed by FTF. However, they did not conduct the analyses to determine the extent to which the returnees might pose TF threat.

264. During the assessment period, the authorities successfully secured a number of TF prosecutions and convictions as outlined in Table 4.1. Offenders (all natural persons) were prosecuted and convicted for various types of TF activities including the provision, raising and transfer of funds aimed to support different terrorism related activities.

**Table** Error! No text of specified style in document..22: Total number of TF investigations, prosecutions, and convictions

	Investigations			Prosecutions			Convictions (first instance)			Convictions (final)		
	Cases		NP	Cases		NP	Cases		NP (LP)	Cases		NP (LP)
	FMS	Other sources		FMS	Other sources		FMS	Other sources		FMS	Other sources	
<b>2017</b>	0	0	0	1	0	0	0	0	0	1	0	3
<b>2018</b>	0	1	4	1	0	0	0	0	0	1	0	3
<b>2019</b>	0	2	4	1	1	3	0	1	3	1	1	14
<b>2020</b>	0	2	5	0	2	4	0	1	2	0	1	2
<b>2021</b>	0	3	3	0	2	2	0	2	2	0	2	2
<b>2022</b>	0	1	2	0	0	0	0	0	0	0	0	0

<sup>41</sup> <https://www.unodc.org/unodc/en/frontpage/drug-trafficking-and-the-financing-of-terrorism.html>

265. The AT has been presented with case examples in which authorities have willingness and capability to prosecute and secure convictions related to the provision of non-monetary funds. (see Case Study 4.1).

y)	Case study 4.1: Case example
z)	Azerbaijani resident (A) joined al-Nusra group based on the influence of their members. In order to provide funds to the group, he sold his vehicle for 11,000 USD. Money was used to buy ammunition as well as medical and military equipment necessary for this terrorist group. In addition, organisation was provided with the 10 000 USD sent to them by using hawala.
aa)	Subsequently, person A bought a one-way ticket to Syria (through Türkiye) on October 30th, 2018 but he was detained by the police in the context of a border control. Police conducted search of Person A and found 8.660 USD and 271,6 manats which was used as material evidence and finally confiscated by court order.
bb)	During the course of the investigation their close relatives were also interviewed, and Person A's mobile phone was subject to forensic analysis, proving that this was one of the means of contact with the terrorist group. As a result of criminal proceeding, Person A was convicted for TF offence and sentenced to 13 years and six months of imprisonment.

266. The results achieved so far are consistent to some extent with the TF risk profile of the country. However, some concerns remain since, according to the NRA, between 2015 and 2021 there were 171 criminal cases prosecuted and 463 individuals convicted for different terrorism related offences (the great majority of these cases are related to FTF linked to a terrorist act committed abroad). However, this number is not fully followed by a coherent number of TF prosecutions and convictions (see Table .1). The authorities advised that in all terrorism cases the financial aspects had been scrutinised, although this was not logged as a separate terrorist financing investigation. According to the authorities, this scrutiny did not reveal any terrorist financing activity and therefore did not result in TF prosecutions. Additionally, there are cases of funding some radical groups through various socio-cultural institutions located in Azerbaijan, but no prosecution or conviction against a legal person was achieved.

267. The geostrategic situation and position of Azerbaijan exposes the country to specific TF risks. In this context, the AT positively notes that despite the difficulties in seeking and providing international cooperation with Syria and Iran, some TF cases related with these jurisdictions have been detected by Azerbaijani authorities. Out of those cases, although cooperation was not established from the other jurisdictions, there was one conviction (Syria) and the other cases are pending further information from Iran.

#### ***4.2.2. TF identification and investigation***

268. A number of TF investigations have been initiated in Azerbaijan during the assessment period. The majority of investigations are launched independently from the proceedings related to terrorism offence, which demonstrates the authorities' capability to identify and investigate TF as a separate offence.

269. The SSS is the main LEA to combat TF with extensive legal powers as well as strong capabilities to identify and investigate this offence. A variety of intelligence sources (domestic and foreign) collected by the SSS is used in order to identify and investigate TF cases. The application of special investigative techniques, such as wiretapping, searches and others,



although mostly for the purpose of terrorism related investigations, has led to the identification of TF cases. Operational and search measures are regularly carried out to identify extremist-oriented individuals and groups who are trying to move through the territory of Azerbaijan in the direction of Syria and Iraq.

270. Authorities did not use MLA requests that have been received for domestic identification nor investigation in order to determine possible TF activity in the country.

271. The FMS disseminates TF cases to the SSS (40% of FMS overall disseminations are sent to the SSS), but these disseminations rarely trigger TF investigations. Despite the fact that the authorities provided statistics that some prosecuted cases as well as some final convictions originate from FMS disseminations (see Table 4.1), such statistics are not logical given that there have been no investigations triggered by FMS intelligence. Nevertheless, FMS disseminations are integrated in the information already held by the SSS (see IO.6) or used in already launched investigations.

**cc) Case study 4.2: Case example of national cooperation in TF cases**

dd) In 2018, the FMS received information from foreign counterparts that FTF (Person A), located in the territory of Syria received 7.400 USD and 429.000 RUB from 14 people through 4 Azerbaijani banks using quick transfer operations. The SSS carried out operational measures and investigation and as a result identified that Person A was supported by his close relative (B) living in Azerbaijan and his acquaintance (C). It was established that during 2017 Persons (B) and (C) regularly collected funds in order to meet the financial needs of "jihadists". Funds were sent to Person A via people belonging to the same group (ISIS) and living in the territory of the neighbouring state.

ee) As a result of criminal proceedings, the court found Persons B and C guilty. Both were convicted for criminal offence of TF and sentenced to 12 years of imprisonment each.

272. Although no domestic joint investigative teams were formally established in the framework of TF investigations, the authorities informed the AT that cooperation between competent authorities is common and regular practice in all TF cases. Authorities advised that the MoIA is also involved in TF investigations conducted by the SSS, mainly to build a profile of the investigated persons (e.g., criminal record) and collect other operational information. It is, however, noticeable that the SSS does not share the results of their investigations with the FMS or other national authorities on a regular basis.

273. Authorities conduct limited financial investigations alongside terrorism related cases which raises concerns given a number of such cases being initiated so far (see core issue 9.1). This inevitably affects effectiveness since TF may not always be properly considered in terrorism related cases.

**ff) Case study 4.3: SSS investigation with the supportive role of the FMS**

gg) In 2019, the SSS initiated an investigation against "HD" who organised different activities in Azerbaijan in order to support "ISIS" terrorist organisation. During the course of the investigation, the SSS sent a request to the FMS asking for additional information held by the national banks. Additional information was requested from the foreign FIUs. It was determined that "HD" was collecting funds in foreign countries from various natural persons, who used Western Union in those countries in order to make money transfers. Funds were

later transferred from foreign countries to the "ISIS" terrorist organization in Baku. The SSS established that 12 persons in total were involved in the criminal activity, out of which 11 were prosecuted and successfully convicted for TF offence. The authorities issued a warrant against one person and criminal charges against that person are still pending.

#### *4.2.3. TF investigation integrated with -and supportive of - national strategies*

274. Azerbaijan adopted some relevant policy documents such as the NRA, TF risk assessment of the NPO sector and its action plans as well as the Special action plan defining preventive and disruptive measures against religious radicalism and terrorist activities. TF specific actions were also promoted by Decree of Head of President's Office on Combating Religious Radicalism. The AT took note that TF investigations are to some extent integrated into those documents as explained below.

275. The 2022 NRA Action Plan provides some general measures related to fight against TF such as increasing the effectiveness of the fight against the financing of terrorism and the financing of the proliferation of weapons of mass destruction. These measures show that results of TF investigations conducted so far have been integrated at least in some of the actions, but it does not contain dedicated measures to identify or designate individual terrorists, terrorist organisations or associated support networks.

276. One of the actions of the 2022 Action plan is the development of CFT strategy, recognising its absence, but it has not been established yet. Some agencies, such as the SSS, have developed their own CFT strategy, which is focused on fighting terrorism (leaving aside TF). However, the authorities did not provide details of the document and it cannot be concluded to what extent TF investigations are integrated into it.

277. According to the information provided on-site, some authorities -mainly the SSS and, to some extent, the FIU, developed a good understanding of the methods and trends used to support terrorist groups or acts both domestically and abroad, using this knowledge to enrich their investigations. Regardless that the AT was informed that cases related to terrorism and FT were a priority, the strategy to assign a particular priority level to a case is not clear and homogeneous between all competent authorities.

278. Finally, the authorities indicated that the Decree of Head of President's Office on Combating Religious Radicalism of 2018 introduced general TF priorities for each competent authority and basic reporting mechanism. Nevertheless, there are concerns to what extent actual outcomes of TF investigations are integrated into those strategies.

#### *4.2.4. Effectiveness, proportionality and dissuasiveness of sanctions*

279. Sanctions applied to all natural persons sentenced for TF appear to be effective, proportional and dissuasive.

**Table** Error! No text of specified style in document..23: Imprisonment sanctions for TF

	<b>No. of natural persons convicted</b>	<b>Imprisonment sanctions applied</b>
<b>Case No.1</b>	3	12 years (each person)
<b>Case No.2</b>	11	2 years 6 months
<b>Case No. 3</b>	1	8 years

<b>Case No 4</b>	1	8 years
<b>Case No.5</b>	1	7 years
<b>Case No.6</b>	1	5 years
<b>Case No. 7</b>	1	13 years 6 month

280. It can be concluded that the average imprisonment sanction was: 11 years in 2021, 7,5 years in 2020 and 11,5 years in 2019.

281. No sanctions have been imposed to legal persons for TF and, therefore, its effectiveness, proportionality and dissuasiveness cannot be assessed.

#### *4.2.5. Alternative measures used where TF conviction is not possible (e.g. disruption)*

282. In Azerbaijan, there is a number of alternative measures applied when a conviction for TF (or terrorism) offence could not be secured. Those measures include deprivation of the Azerbaijani citizenship if the person is involved in an armed conflict abroad. Authorities advised that 536 persons have been deprived of their Azerbaijan citizenship during the assessment period, since these persons were abroad and securing a conviction *in absentia* was not legally possible. Also, the authorities designated approx. 11.000 in the domestic terrorism-related lists as a one of the alternative measures applied. Finally, in instances when the criminal proceeding cannot be continued due to the absence of the defender, an international warrant request is issued.

#### *Overall conclusions on IO.9*

283. Azerbaijan prosecutes and convicts different types of TF activity in accordance with the risk profile of the country to some extent. Nine TF investigations and seven TF convictions have been achieved in the assessed period, demonstrating authorities' ability to tackle this crime. Some deficiencies identified in TF risk understanding impacts the overall effectiveness. The SSS is the main investigative authority, and while using a variety of techniques when investigating TF activities, they advised that financial aspects in terrorism related cases have been scrutinised. There is no national counterterrorism strategy. The sanctions applied are proportionate, effective, and dissuasive. **Azerbaijan is rated as having a Substantial level of effectiveness for IO.9.**

### **4.3. Immediate Outcome 10 (TF preventive measures and financial sanctions)**

#### *4.3.1. Implementation of targeted financial sanctions for TF without delay*

284. Azerbaijan has now<sup>42</sup> the necessary legal and institutional framework to implement targeted financial sanctions (TFS) related to UNSCRs 1267 and 1373 and their successors without delay. The adoption of the new TFS Law, which entered into force as of 1<sup>st</sup> of February 2023 (one month prior to the on-site visit), enhanced and fostered the implementation of UNSCRs. The TFS Law describes the mechanism of UNSCRs implementation, determines the responsible authorities

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<sup>42</sup> Since the legal provisions related to the TF TFS changed in Azerbaijan in the last 10 years, the AT judged useful to briefly present their evolution in the introductory part of IO10.

and describes procedures to be followed by the obliged entities, along with all the natural and legal entities at national level.

285. Before the adoption of the TFS Law the TFS were applied based on the provisions of Ordinance No. 124 of the Cabinet of Ministers of the Republic of Azerbaijan adopted on 25<sup>th</sup> June 2010 (hereinafter Ordinance 124). In the previous 4<sup>th</sup> round MER of Azerbaijan, it was concluded that this Ordinance has outstanding loopholes and does not meet the TFS requirements. In April 2017 the Azerbaijani authorities amended Ordinance 124 in order to align it with international standards. In the exit follow-up report of Azerbaijan (<https://rm.coe.int/4th-round-mutual-evaluation-of-azerbaijan-follow-up-report-submitted-b/1680934a1a>) in December 2018, although it was a desk-based analysis, MONEYVAL concluded at that time that Azerbaijan’s TFS legal framework to a large extent is compliant with the TFS obligations.

286. The Ordinance 124 was broadly in line with R.6, however there were two outstanding issues that had been identified, i.e., the wording of item 13 of Ordinance 124 wasn’t precisely clear that the implementation of UNSCRs occurs without delay and the freezing obligation only covered REs. Therefore, the AT is not able to fully confirm whether in practice the previous amendments to the Sanctions List were implemented without delay before the adoption of the TFS Law. Nevertheless, the Azerbaijani authorities provided the AT with the table of implementation of UNSCRs, which demonstrates that the updates to the Sanctions List were implemented by the authorities without delay, in average within 24 hours.

**Table 4.3:** Implementation of UNSCRs (previous TFS system)

<b>UNSC Resolution</b>	<b>Date of making amendments to the UNSC list</b>	<b>UNSC Decision</b>	<b>Date of publication on the FMS website</b>	<b>Time for publication (hours or days)</b>
1267/2253	27.05.2022	6 designations were amended	28-05-2022	Less than 24 hours
1267/2253	01.04.2022	2 designations were amended	01-04-2022	Less than 24 hours
1267	07.03.2022	1 designation was added	07-03-2022	Less than 24 hours
1267/2253	03.03.2022	5 designations were removed	04-03-2022	Less than 24 hours
1267/2253	24.01.2022	1 designation was removed	25-01-2022	Less than 24 hours
1267/2253	17.01.2022	3 designations were removed	18-01-2022	Less than 24 hours
1267	03.01.2022	5 designations were removed	04-01-2022	Less than 24 hours
1267/2253	30.12.2021	2 designations were added	30-12-2021	Less than 24 hours
1267	29.12.2021	62 designations were amended	30-12-2021	Less than 24 hours
1267/2253	21.12.2021	1 designation was added	22-12-2021	Less than 24 hours
1267/2253	24.11.2021	1 designation was added	25-11-2021	Less than 24 hours

1267/2253	06.09.2021	1 designation was removed	07-09-2021	Less than 24 hours
1267/2253	17.06.2021	1 designation was added	18-06-2021	Less than 24 hours
1267/2253	06.04.2021	1 designation was amended	07-04-2021	Less than 24 hours
1267/2253	23.03.2021	8 designations were amended	24-03-2021	Less than 24 hours
1267/2253	23.02.2021	92 designations were amended	23-02-2021	Less than 24 hours
1267/2253	19.02.2021	2 designations were removed	19-02-2021	Less than 24 hours
1267/2253	08.10.2020	1 designation was added	08-04-2021	Less than 24 hours
1267/2253	10.09.2020	11 designations were amended	11-09-2020	Less than 24 hours
1267/2253	29.03.2019	6 designations were amended	30-03-2019	Less than 24 hours
1267/2253	22.03.2019	1 designation was added	22.03.2019	Less than 24 hours
1267/2253	13.03.2019	1 designation was amended	13.03.2019	Less than 24 hours
1267/2253	28.02.2019	1 designation was added	28.02.2019	Less than 24 hours
1267/2253	08.02.2019	4 designations were added	08.02.2019	Less than 24 hours
1988	30.01.2019	2 designations were amended	30.01.2019	Less than 24 hours
1988	10.04.2018	1 designation was amended	10.04.2018	Less than 24 hours
1988	16.02.2017	1 designation was removed	16.02.2017	Less than 24 hours

287. The steps taken by the Azerbaijani authorities to enhance its legal and institutional framework on TFS indicate that this issue became an area of greater interest which facilitated the adoption of the TFS Law, in order to ensure a focused approach on the TFS related issues and increase the understanding across the different sectors of obliged entities. It also confirms the existence of previous difficulties in applying fully effectively the UNSCRs Resolutions (when done in accordance with the Ordinance 124).

288. As described under R6, the current legislation presents only minor deficiencies which impact the practical implementation of UNSCRs to a minimal extent.

*Implementation of TFS 'without delay'*

1267

289. Azerbaijan implements UNSCR 1267/1989 and its successors without delay under the provisions of and the new TFS Law. It should be noted that as the last amendments introduced to the Sanctions Lists by the UN Security Council occurred in May 2022, there was no possibility for

the AT to test the new system. Nevertheless, the AT is of the view that the new approach adopted by Azerbaijan ensures implementation of UNSCRs without delay.

290. Turning to publication, the freezing measures are applied against the list published by the SSS on the dedicated website. Once the Security Council adopts the relevant UNSCRs, the UN Consolidated list of designated persons and entities is immediately integrated into the Azerbaijani TFS list through the use of a specific software. This software ensures that the list is updated without delay.

291. Following publication all assets of the designated persons and entities shall be frozen, without delay and without prior notice, by any person or state authority, obliged entities provided by the AML Law.

#### 1373

292. Domestic list of designated persons and entity is updated by the State Security Service without delay based on a Court order, by placing information of the designated persons and entities on the dedicated web portal on targeted financial sanctions. Once the person or entity is designated, all natural and legal persons are obliged to take freezing actions.

#### Designation

#### 1267

293. The Ministry of Foreign Affairs (MFA) is the competent authority for proposing designations to the international lists of the UN Security Council Sanctions Committees. The MFA follows the designation procedure established by the TFS Law which is based on the listing criteria set out in UNSCR 2368(2017). The actual identification of targets for designations is initiated by the State Security Service (SSS), which afterwards submits this information and documents to the MFA for further submission to the UN Security Council Sanctions Committees. In a nutshell, Azerbaijani TFS regime concerning UNSCR 1267/1989 follows the Guidelines of the Security Council Committee as of 5th of September 2018.

294. Designation requests to the international lists are submitted by the SSS to the MFA and supported by information and documents from different sources, such as: investigative, operational and search activity, mass media and evidence on reasonable grounds, to suspect or belief that the person(s) meets the designation criteria, detailed identification data, note on consent that designating state may be disclosed and data to be disclosed in the summary of the Sanctions Committees. Although the system of designation has never been tested, as no proposals were made, the AT saw the authorities aware and ready to take action if need be.

#### 1373

295. The SSS is the responsible authority for maintaining the national list of designated persons and entities. Based on the SSS submission the Court issues an order on the designation of persons and entities that meet the referral criteria. Targets for designations are identified by the SSS on its own motion or upon the proposal of the relevant competent authorities (the GPO, AML/CFT supervisory authorities, Ministry of Internal Affairs, MoJ, State Border Service, Foreign Intelligence Service, and the FMS), based on the designation criteria set out in the TFS Law. The SSS is also empowered to consider foreign requests for designations.

296. In case if the SSS established sufficient grounds for the designation request, it is submitted to the Court, to be examined within 48 hours to decide on the guarantee of refusal of the

submission. However, the evidentiary standard of proof of “reasonable grounds” is not being applied by the Court, being examined according to the provisions of the CPC.

297. Azerbaijan has listed 20 persons according to the procedure of designation as foreseen by Ordinance 124, which was in force before the on-site visit. The designations on the national list were based on the initiative of the SSS, as a result of cooperation among internal divisions of the authority, in consultations with the FMS. No criminal proceedings have been triggered against persons to designate them, i.e., designations were purely based on identification of sufficient grounds that the persons are linked to terrorism and terrorist financing. The updated list of designations was enforced by the FMS as the body responsible for publishing the list on its website.

298. At the time of the on-site visit, the Azerbaijani authorities have informed that they were considering a foreign request which was submitted according to Ordinance 124. Although this act has been revoked, its provisions concerning foreign requests were transposed to the TFS Law. The authorities could not say more about the request apart from that it has been submitted by a neighbouring country.

299. No other agency contributed to the designation process, although both the Ordinance and the TFS Law foresee such possibility.

#### Communication of designations

300. Upon the adoption of the TFS Law, all updates to the list either new designations or de-listing are communicated without delay to the obliged entities and general public through the dedicated web portal for TFS. In case of a match, the information should be provided to the FMS. However, apart from updating the web-portal, the communication of designations to obliged entities does not foresee any pro-active steps from the authorities to inform them on the changes to the lists. The REs must check the lists of designations available online.

301. The FMS has only recently published guidance on TFS on its website as required by the new TFS Law. Supervisory authorities and the FMS are in touch with the representatives of the obliged entities on the cases to be clarified in practice. However, the communication process is mostly oriented to provide access to resources without proactively notifying the private sector when changes in the lists occur.

302. The previous Ordinance foresaw more pro-activeness from the authorities in relation to communication, i.e., it had clear legal provisions that required to communicate updates to the supervisory authorities as well as to the REs directly or via supervisors.

303. Trainings are generally presenting the AML/CFT provisions, including sometimes TFS related issues. No specific TFS trainings were organised. Obligated entities are aware of their TFS obligations, including on assets freezing requirements for the designated entities (see also IO.4).

#### ***4.3.2. Targeted approach, outreach and oversight of at-risk non-profit organisations***

304. Azerbaijan has recently finalised its risk assessment of the NPO sector, which is a positive development. The results of the risk assessment will now be used to develop the risk-based supervision of the NPO sector to apply focused and proportionate measures. However, at the time of the on-site visit the country applied a one-size-fits-all approach to supervise all NPOs.

#### NPOs at risk

305. Azerbaijan identified several categories of organisations that fall under the FATF definition of NPOs, which are associations, foundation, foreign NPOs and religious associations. Overall, there are 3 680 NGOs (associations, foundation and foreign NPOs) and 993 religious associations, which fall under the FATF definition and subsequently under R.8.

306. NPOs in Azerbaijan largely rely on state support, but donated funds are accepted through bank transfers. Such NPOs whose core purpose is charity may accept donations of up to 200 manats (~EUR100) in cash. There are no such requirements for religious organizations/communities who can apply for and accept voluntary donations in cash, via bank transfers, cash sent by mail, plastic card, electronic payment systems or the Internet, without a value threshold. The unregistered religious associations pose the greatest risk, as they are not registered and cannot be counted, monitored and supervised.

307. The first assessment of the TF risk in the NPO sector was finalised by the Azerbaijani authorities just before the onsite visit, identifying the subsets of NPO that fall under the FATF definition, and establishing an overall low risk of TF abuse of NPOs. No individual NPO and no category of NPOs were identified at risk of being misused for TF purposes. However, Azerbaijan identified five potential inherent vulnerabilities for TF abuse: funding of NPOs from high-risk foreign sources; funding of NPOs through high-risk mechanisms; NPOs funding or operating in high-risk areas; dissemination of radical or extremist propaganda through NPOs; unregulated NPOs.

308. The NPO risk assessment uses quantitative and qualitative data, i.e., the results of the NRA, information from LEAs, financial reports submitted by NPOs to the Ministry of Finance, interviews with other competent authorities. The assessment was completed by the replies to a questionnaire provided by 390 NPOs out of 5 759. The survey considered several areas such as: activities, location, finances, types of funds and international dimensions. The NPO risk assessment also provides an analysis on the effectiveness of laws and regulations and other government measures. However, no measures were proposed for addressing the identified vulnerabilities (*i.e.*, the presence of non-registered NPOs).

309. The AML/CFT Law introduced new requirements for NPOs including the religious institutions. NPOs are obliged to have rules and procedures for minimising TF risks in relation to movement of funds, report suspicious transactions and must prepare a detailed financial report about their grants to be submitted to the supervisory body. Mentioned entities are obliged to undertake risk assessments and submit them to the authorities annually. The FMS has the capacity to verify the implementation of the provisions and non-compliance could be subject to pecuniary sanctions.

310. No convictions, prosecutions, regulatory interventions, investigations (on-going or closed), or MLAs relating to terrorist financing in the NPO Sector were reported by the authorities.

311. The FMS received 5 STRs on TF, involving NPOs during the period 2017-2021. Also, 1 spontaneous information was received from a foreign FIU, where the subjects of analysis were NPOs. The FMS analysed all received STRs concerning NPOs and the outcome of this analysis showed that the STRs were not related to TF.

312. Authorities stated that NPOs obtain funding either from an official source or a closely monitored source, thus the controls on funding for NPOs are strict with the implication of the MoJ, the MoF, the SSS and the FMS. The religious NPOs are receiving small amounts of cash donations collected in boxes, and the funds raised were recorded and reported to the SCRA. There some



concerns noted in the NPO risk assessment concerning funding through high-risk mechanisms, which are cash, fundraising, hawala, alternative remittance systems, crowd-funding, new technologies, crypto currency. The SSS came across of several TF cases when hawala was used for financing. NPOs have never been involved in those TF cases. However, there are no concrete measures and steps taken by Azerbaijan to mitigate or manage these vulnerabilities related to the funding mechanisms.

313. The SSS is responsible for conducting investigations of terrorism and TF offenses and has some successful cases (see IO.9), being enabled to get all relevant information (administrative, financial, and others) concerning terrorism, TF, and other related investigations (see R.31). Thus, the SSS has adequate investigative expertise and capability to examine NPOs suspected of being related to TF.

Supervision and/or monitoring

314. NPOs (associations, foundation and foreign NPOs) and religious organisations are regulated according to the Law on Non-Governmental Organizations and religious associations respectively. The law requires NPOs to register with the Ministry of Justice to become a legal entity and submit annual financial reports to the Ministry of Finance and tax reports to the Tax Service. Religious Associations are regulated by the State Committee on Religious Affairs. Table 4.3 provides an overview which authorities are empowered to supervise and register NPOs.

**Table Error! No text of specified style in document..24: Supervisors of NPOs**

Type of NPO	Registration/supervision
Associations	Ministry of Justice
Foundations	Ministry of Justice
Foreign NGOs	Ministry of Justice
Religious organisations	State Committee on Religious Associations

315. Two state authorities are responsible for supervision of NPOs. The Ministry of Justice is the supervisory authority for NPOs, branches, or representative offices of foreign NPOs, whose activities consist of receiving, collecting, delivering, or transferring the funds. The SCRA is the supervisory authority for religious organisations, that are limited only to the obligation to provide an annual report on the use of funds, obtained inclusively from the State.

316. Supervisory activities of the Ministry of Justice are performed according to the plan or spontaneously. In December of each year, a list of monitoring entities to be supervised for the next year is prepared and approved by the head of the supervisory authority, one of the factors being considered is the financial turnover of the organisation. Additionally, the Ministry of Finance presents a list of reports prepared by NPOs to be compared with the information in the grants, service contracts, and donation registry.

317. Azerbaijan applies a one-size-fits-all approach to supervise the NPO sector and no risk-based measures applied to NPOs at risk of terrorist financing abuse is in place. Limited guidance was provided to NPOs on potential misuse for TF purposes, strictly linked to materials available on the FMS. None of the outreach measures are risk-based or targeted. The MoJ stated that 56 inspections for AML/CFT supervision of NPOs were performed and 6 protocols after the NPOs inspections under their supervision were sent to Court with sanctions in amount 14,100 manat

(~EUR 7,000). The identified breaches were related to failure to provide information to the registry of legal persons and failure to maintain internal registry. No breaches were CFT related.

#### Outreach and training activities

318. According to the NPO risk assessment the MoJ provided guidance to NPOs on issues related to terrorism, currently the focus is being placed on providing guidance to newly established NPOs. Trainings have been also provided by international organisations. The MoJ stated that 19 trainings were organised for the NPOs, but no details were provided on the presented topics, target audience and number of participants.

319. The NPO sector is aware of potential TF risks to a limited extent. The NPOs consider themselves safe from being misused for TF purposes based on the fact that most of the funds they use are obtained from the state, and due to very strict rules applied to the sector. Authorities stated that FMS website provides clear guidance on the risk indicators and the steps to be taken by the NPOs. Nevertheless, awareness on CFT provisions and NPO misuse for TF purpose are an area of improvement.

320. Currently the authorities mostly rely on the capacities of the SSS to investigate and gather information in order to prevent and combat TF abuse of NPOs, rather than on sustained outreach, which assists in raising awareness of NPOs on TF issues, and targeted risk-based supervision to identify the misuse of NPOs.

321. The authorities are still in process of considering the results of the NPO risk assessment in order to apply measures that are focused and in line with the risk-based approach to ensure that the legitimate NPO activities are not disrupted or discouraged.

#### ***4.3.3. Deprivation of TF assets and instrumentalities***

322. The SSS has the responsibility to perform operative and criminal investigation on the cases of terrorism and terrorism financing, thus during the period 2015-2021, 171 criminal cases were investigated on terrorism with 463 indicted individuals. Authorities stated that within the SSS a special unit is responsible for gathering information, inclusively being responsible for conducting financial investigations. However, during the same period 9 individuals were prosecuted in 8 cases of terrorism financing, representing only 4% of the overall number of prosecuted cases on terrorism, being applied provisional measures on 2 units of real estate and bank accounts with insignificant amounts of funds.

323. Though TF cases were presented within the NRA, as successful prosecutions of individuals, who collected funds for terrorists, with imprisonments for 12 years, no assets nor instrumentalities seized/confiscated in those cases (See IO.8).

324. The FMS submitted 78 reports of suspicions on TF cases to the SSS, but no criminal case was opened by the SSS based on the mentioned reports, instead a person wanted for terrorism was arrested in the country in 2017. Authorities stated that within investigated cases was established the use of hawala and new technologies for the movement of funds, which created difficulties in tracing and deprivation of funds.

325. False-positive matches were encountered in 1 case with a person designated under UNSCR 1267 and 1 case under UNSCR 1373. Both cases were identified in 2019 by banks and reported to the FMS. Regarding the designated person under 1267, the Azerbaijani authorities informed the AT that some additional steps had been taken to confirm that the person is not designated. In

particular, a confirmation request was sent to a country, citizen of which this person was. After detailed analysis, it was confirmed that the person is not designated under UNSCR 1267.

326. In case of assets frozen by mistake, inclusively on false positive matches the subject of designation can apply via a dedicated web-portal on TFS with the request to unfreeze and after confirmation by the SSS, assets will be unfrozen without delay. In case of the decisions of the Court on the delisting of the persons and entities from the national list and decisions of the Sanctions Committees on delisting the person or entity from the international list the SSS will update this information on web-portal on TFS.

327. No assets were frozen pursuant UNSCRs 1267 and upon foreign request. Authorities met onsite declared that the only assets seized pursuant to UNSCRs 1373 are 2 units of land, 4 bank accounts with insignificant amount and one car. As was previously noted, Azerbaijan has designated 20 persons. Freezing measures were applied against 5 persons. Concerning 15 other designations the SSS stated that no property belonging to these persons have been identified as there is no property owned by them.

328. The SSS is the competent authority providing access to frozen assets or other assets established to be necessary for basic expenses of the designated persons and entities, only after the risk of using the financing of terrorism was completely excluded.

329. All obliged entities subject to the AML/CFT Law, as well as persons providing auditor services, any person or state authority, organisations, branches or representative offices of foreign non-governmental organisations and religious institutions in case of identification of designations shall freeze, without delay and without prior notice all assets of such persons and entities, with the notification of the FMS via web portal on targeted financial sanctions.

#### ***4.3.4. Consistency of measures with overall TF risk profile***

330. The measures introduced by the Azerbaijani authorities are partially consistent with the overall TF risk profile. The assessment team believes that Azerbaijan could improve its analysis of specific risks relevant to its geographical position and other contextual factors.

331. The TF risk was first assessed in NRA 2 as *“medium-high”*. This assessment, however, remains incomplete (see Chapter 1 and IO.1), making it difficult to form a comprehensive understanding of TF risk. In spite of the existence of TF convictions (see also IO.9) no confiscation for TF have been achieved, hence the measures to deprive terrorists of assets and instrumentalities cannot be considered as fully consistent with the overall TF risk profile. Understanding of TF risks by the investigative authorities is not supported by sufficient awareness on the financial activities that could be used by the perpetrators. The AT considered also the absence of capabilities of the authorities for deprivation of TF assets in case of using new technologies and informal transfers services.

332. Deficiencies identified in the overall framework of the confiscation regime impact the capacities of the authorities to apply effective measures of seizure and confiscation in TF cases as in other type of offences.

#### ***Overall conclusions on IO.10***

333. Azerbaijan implements UNSCRs 1267 and 1373 and their successors without delay based on a newly adopted TFS law. Freezing measures have been applied based on UNSCR 1373. The

designation mechanism appears to be functional with 20 designations made by the SSS according to UNSCR 1373. One foreign request for designation was considered at the time of the on-site visit which demonstrates country's capacity to designate. Authorities approved the NPO risk assessment shortly before the on-site visit but still needs to establish the measures to be taken by the authorities to address the vulnerabilities. Only NPOs which were seeking to increase their level of understanding on risk of TF exposure reached out to the Guidance provided on the website of FMS, others were not aware of such publication. Overall, considering the country risk profile and context the AT is of the view that deficiencies regarding the communication of designations; accuracy of the NPO risk assessment and targeted supervision of NPOs, including provided outreach; limited deprivation of TF assets and instrumentalities are of an important nature and require major improvements. **Azerbaijan is rated as having a Moderate level of effectiveness for IO.10.**

#### **4.4. Immediate Outcome 11 (PF financial sanctions)**

334. The legal framework on PF TFS has only been recently adopted, which came into force as of 1<sup>st</sup> of February 2023. Previously, there were no requirement for freezing assets which are related to PF and the country had only relied on alternative mechanisms which required REs to submit reports on all transactions concerning natural and legal persons from high-risk jurisdictions.

##### ***4.4.1. Implementation of targeted financial sanctions related to proliferation financing without delay***

335. Mechanism for the implementation of PF-related TFS without delay is ensured by the provisions of the new TFS Law and the automatic publication on the dedicated website. Before the adoption of this Law there was neither legal nor institutional framework on PF issues in Azerbaijan, nevertheless the country relied on alternative measures oriented to monitor all transactions related to high-risk jurisdictions, including Iran and DPRK.

##### ***Implementation of TFS on PF***

336. Lists of designated persons and entities under UNSCR 1737 (Iran) and UNSCR 1718 (North Korea) are automatically placed and updated in the dedicated web portal (managed by the SSS) on targeted financial sanctions through software integrations immediately after its publication in electronic form by the United Nations. Similar to TFS requirements, Article 5.1 of the TFS Law imposes an obligation to freeze all assets of the designated persons and entities, without delay and without prior notice, by any person or state authority, obliged entities. Through this mechanism, the PF TFS are implemented without delay within a matter of hours.

337. The authorities responsible for the implementation of the TFS for PF are provided by the TFS Law, as described under IO.10 regarding UNSCR 1267. Information on transactions and attempts to carry out transactions involving assets of the designated persons, as well as legal persons under their control or subordination, as well as natural and legal persons acting on behalf of those persons or as per their instructions, and the transactions with those assets shall be submitted to the FMS, regardless of their amount.

338. The new TFS Law establishes the procedures of designation, listing, freezing/unfreezing, de-listing,. Due to very recent adoption of the relevant legislation, the authorities were not in a position to test the system in practice, therefore no assets related to PF were frozen.

339. According to the NRA the PF-related vulnerabilities are referring to the lack of formal institutional and coordination mechanisms for the implementation of relevant UNSCRs. Following the adoption of the NRA Azerbaijan the Coordination Council was also entrusted with new functions related to PF (the first meeting on PF was conducted by the Council on 17 February 2023, where the authorities discussed the new PF changes and the possibility of aligning the dual-use goods control with PF). The AT expresses the same concerns on effective implementation of TFS requirements by obliged entities (see also IO.4), correlated with the deficiencies in the identification of the BO as described under IO.5.

340. Azerbaijan does not maintain economic relations with North Korea, while with Iran, as a neighbouring country, shares the longest border line and carries out trading relationship. Table 4.4 displays the commercial turnover between Azerbaijan and Iran. As explained by the Azerbaijani authorities, trading with Iran is not that significant in the scale of the general turnover of goods. E.g., the share of Iran in the general turnover of import is only 3.5% and export is 0.5%. According to the statistical data Azerbaijan mostly exports to Iran the following goods: cotton, electricity, perfume plants, petrol and vegetable residues. Azerbaijan imports from Iran ethylene polymers, potatoes, unglazed ceramics, motor vehicles, including parts and accessories. It's worth noting that the figures for the import turnover are much higher due to transit trade and swap transactions, i.e., Azerbaijan imports gas from Turkmenistan for Nakhchivan via Iran and these figures are included in the trade balance.

**Table Error! No text of specified style in document..25:** Trade turnover between Azerbaijan and Iran

<b>Year</b>	<b>Export / Import (in USD)</b>
<b>2017</b>	16 794 000 / 240 273 000
<b>2018</b>	31 231 000 / 414 801 000
<b>2019</b>	41 130 000 / 452 701 000
<b>2020</b>	38 485 710 / 300 615 390
<b>2021</b>	43 278 150 / 397 523 540
<b>2022</b>	29 831 100 / 476 438 400

341. According to the NRA, transactions potentially linked to Iran could be carried out by concealing the true purpose and destination of the transactions (fictitious import/export operations) in the complex ownership structure and complex transaction schemes of the beneficial owners. Gaps in customer profile development, continuous monitoring of operations, as well as the wide spread of fictitious import/export transactions in Azerbaijan for transferring money abroad are another factor that increases operational risks.

342. According to the authorities, Azerbaijan does not have any correspondent banking relations with Iranian financial institutions. Commercial payments for trading are carried out via the branch of an Iranian Bank, which has an insignificant market share. Baku branch of Bank Melli Iran performs bank transfers to and from Iran using internal messaging system as opposite to the SWIFT in their settlements. Other banks refuse to provide any financial services relating to Iran. Therefore, bank transactions are so insignificant in general trade financing with Iran.

343. The statistics provided by the CBA, the turnover of transactions performed by natural persons with Iran in 2022 amounts to 196 incoming payments totalling 199 700 USD and 100 outgoing transactions totalling 122 500 USD. During the period of 2015-2020, according to the NRA, 240 real estate transactions were conducted by residents from Iran, a sector where the lack

of control mechanisms for customer and transaction risks along with a high volume of cash transactions suggests a highly vulnerable sector. Nevertheless, some mitigating measures have been established by the authorities as Iran is considered to be a high-risk jurisdiction and therefore every real estate transaction is reported by notaries (see table 4.5) to the FMS, which afterwards analysed against PF TFS.

344. The trade in special commodities and technologies, such as dual-use goods are subject to control by the state. Depending on the type of goods a relevant special permission is required for export clearance. Approximately 15 governmental entities are involved in this verification process. However, this process does not consider PF issues, indicating that the financing of proliferation is insufficiently prioritised at the national level.

345. Considering the very recent adoption of the TFS Law, obliged entities acknowledged the availability of online guidance on TFS on the FMS website. Apart from guidance, the CBA jointly with the FMS organised an awareness-raising workshop for FIs (banks, insurance companies, investment companies, central depository and postal office) (<https://www.cbar.az/press-release-4105/central-bank-and-financial-monitoring-service-held-event-for-financial-institutions>).

#### ***4.4.2. Identification of assets and funds held by designated persons/entities and prohibitions***

346. Prior to the adoption of the TFS Law, the obliged entities had no specific PF related obligations and Azerbaijan relied on some alternative mechanisms.

347. Iran and DPRK are listed in Azerbaijan as high-risk jurisdictions and according to the AML/CFT Law REs are required to report any transaction related to these high-risk jurisdictions to the FMS (see table 4.5). If a RE identifies a transaction which is linked to Iran or DPRK or any other country included into the list of high-risk jurisdictions, is obliged to postpone a transaction for two days. Within those two days the FMS carries out its analysis and decides whether to prolong the postponement up to 72 hours and afterwards, if need be, submits a report to the SSS, which has the power to freeze transactions in accordance with the Criminal Procedural Code.

348. Another alternative mechanism used by REs was screening their clients against PF to the extent to which their screening systems happened to have included the listed entities. The Azerbaijani authorities demonstrated a case example<sup>43</sup> where a bank in 2012 froze the assets of a person who was an Iranian designated person under the OFAC Sanction list. The amount is still frozen.

349. Identification of assets and funds held by designated persons/entities under current TFS legal provisions was in progress at the time of the on-site visit.

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<sup>43</sup> At the face-to-face meeting, the Azerbaijani authorities provided the AT with a Baku Administrative Court decision No 2-3(103)-30/2023 as of 23.05.2023 on freezing actions undertaken by a bank. This court order provides detailed information on the bank, the frozen amount, reasons for freezing the funds, and the actions taken by a designated person to appeal the bank's freezing actions. The court concluded that application of the freezing actions taken by the bank based on the OFAC lists are lawful. Up to date the funds are still frozen

350. Under the new TFS Law, all obliged entities subject to the AML/CFT Law, as well as persons providing audit services, any person or state authority, organisations, branches or representative offices of foreign non-governmental organisations and religious institutions have the obligation to freeze without delay and without prior notice all assets of designated persons and entities, with the notification of the FMS via a dedicated web portal (<http://hms.gov.az/>). The authorities informed the AT that in case of application of freezing measures the REs are also obliged to inform the FMS via the web-portal. The web portal was created as a single platform for the reporting entities in order to obtain all necessary data on targeted financial sanctions. The web portal is managed by the Government and is intended to facilitate access to the relevant TFS data.

351. No instances were identified by the country that would require freezing of assets as foreseen by the UNSCRs. No hits or false positives were reported to the FMS.

352. The SSS is the competent authority providing access to frozen assets or other assets established to be necessary for basic expenses of the designated persons and entities, only after the PF risk was completely excluded.

#### *4.4.3. FIs, DNFBPs and VASPs' understanding of and compliance with obligations*

353. In the absence of legal provisions on PF related TFS, obliged entities applied some indirect mitigating measures provided by the AML/CFT legal framework, in order to reduce potential risk of implication in PF activities. As noted previously, the REs are obliged to inform the FMS on all transactions with Iran and DPRK as high-risk jurisdictions. Following receipt of such reports, the FMS checked these persons (natural / legal) against the list. No cases of hits or false positives have been identified.

#### *Understanding and compliance with obligations*

354. The obliged entities demonstrated knowledge of the new legal provisions related to PF TFS and the necessary steps to apply respective mechanisms. Some banks, investment companies, credit institutions, tax advisers stated that even in the absence of the legal framework on PF TFS they used commercial databases (which included the designated persons) for screening clients at all stages of their relationship and transactions, including regular checks of the customer database against the designation lists under all relevant UNSCRs.

355. Other obliged entities stated that the FMS included Iran and DPRK on the high-risk jurisdiction list, thus special attention was paid to operations and business relationships with citizens, individuals with place of registration, residence and main activity situated in the respective jurisdictions, as well as wire transfers to high-risk jurisdictions.

356. Entities are obliged to clarify the purpose and intended nature of such transactions, and in case of unclear economic and legal purpose, a written analytical report describing the relevant aspects should be prepared. Information on any transaction with funds or any other property in relation to such persons must be submitted to the FMS. According to the FMS, a significant number of transactions associated with the high-risk jurisdictions was submitted by REs (See Table 4.5), being used in the STR analyses as part of the FMS database, as well for strategic analysis activities.

**Table Error! No text of specified style in document..26:** Transactions associated with Iran submitted to the FMS<sup>44</sup>

Year	Number of transactions (one report can involve multiple transactions)
2017	25 851
2018	30 082
2019	37 192
2020	32 998
2021	60 274
2022	147 952

357. According to the explanations provided by the Azerbaijani authorities more than 99% of these transactions were submitted by banks and the remaining part of transactions were submitted by notaries.

*Outreach*

358. The dedicated website on TFS, including PF, represents the main source of information to increase the awareness of general public and reporting entities. It provides the lists of designated persons and entities, online training and the possibility to notify FMS on the freezing measures applied on the assets of designated individuals.

359. Just before the onsite visit, the FMS developed Guidelines on the Implementation of TFS to describe the obligations and measures to be taken by financial and non-financial institutions, audit service providers, supervisory bodies, other government authorities, as well as certain categories of commercial and non-commercial legal entities to fulfil their obligations before, during and after the establishment of relations with listed individuals and entities. However, due to the recent adoption of the Guidelines, the obliged entities met onsite were not aware about the respective provisions.

**4.4.4. Competent authorities ensuring and monitoring compliance**

360. Legal responsibilities in ensuring and monitoring compliance of the obliged entities with the PF TFS is a new area of activity for the FMS, Ministry of Justice and the State Committee of Religious Organisations, due to very recent adoption of the legal provisions.

361. The supervisory authorities met onsite stated that during the supervisory activities they would consider measures taken by the obliged entities in relation to the clients, partners, BOs from Iran and DPRK, as high-risk jurisdictions. Nevertheless, effective supervisory actions have not been undertaken (see also IO.3).

362. No specialised training on PF was provided to the staff of supervisory authorities and no sanctions or penalties have been imposed.

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<sup>44</sup> The Azerbaijani authorities informed the AT that Azerbaijan does not carry out any business relationship with DPRK. REs have not identified any transactions that were related to DPRK.



363. The supervisory authorities met onsite stated that they are in the process of adjusting their internal procedures according to the legal provisions of TFS Law and will prepare the necessary guidance for the obliged entities.

*Overall conclusions on IO.11*

364. PF-related UNSCRs are applied in Azerbaijan after the adoption of the TFS Law and no delays in implementation are encountered. Before the new TFS Law was adopted, Azerbaijan relied on other alternative mechanisms, e.g., reporting entities are required to postpone execution and submit reports to the FMS on all transactions concerning natural and legal persons from high-risk jurisdictions, including Iran and DPRK. As was determined during the on-site visit, most material sectors of the obliged entities were applying automatic screening using specialised software solutions which perform the checks of the lists of designated persons and entities, including PF TFS. The supervisory authorities did not have any experience in ensuring and monitoring compliance with the PF TFS, being at the initial stage of elaboration and adoption of the procedures of supervision. **Azerbaijan is rated as having a Moderate level of effectiveness for IO. 11.**

## 5. PREVENTIVE MEASURES

### 5.1. Key Findings and Recommended Actions

#### **Key Findings**

##### **Immediate Outcome 4**

- a) Overall, banks and investment companies demonstrated a reasonable understanding of ML risks to which they are exposed. Most are able to identify products and services that are more vulnerable to both ML and TF risks. They are aware of the NRA outcomes which also informed their own risk assessment. However, understanding the specific inherent risks presented by persons who could ultimately control legal entities was less developed. Understanding ML/TF risks by other non-bank FIs is moderate.
- b) The DNFBP sector in Azerbaijan has limited scope as the casinos are prohibited, the DPMS are not obliged entities, trusts cannot be created under the local law, and the real estate agents were de facto excluded from the AML/CFT system (see Chapter 1). There were no VASPs registered at the time of the on-site visit. The ML/TF risk understanding varies with the legal professions and international accountancy firms having a stronger knowledge on the risks.
- c) Risk mitigation measures consist mainly in client categorisation and application of enhanced measures in higher risk scenarios. Some non-bank FI such as investment companies and life insurance firms place too much reliance on the use of bank accounts for the products they provide, as a risk mitigation tool.
- d) CDD measures performed by reporting entities are generally sound and risk based, with some exceptions (smaller non-banking FIs such as life insurance companies, leasing companies, NBCI and exchange offices) which displayed lesser awareness. Most FIs use automated risk scoring systems.
- e) To identify the BO, most FIs apply regulatory thresholds of capital or voting rights. Banks begin the identification of the BO based on the customer's declaration followed by internet searches. Verifications from reliable independent sources are rarely performed. Some banks did, however, confirm that they went further in their efforts to identify natural person who may be considered as the BO. If the BO is not properly identified, the business relationship is declined or interrupted.
- f) The application of EDD measures is generally satisfactory with the exception of PEPs, due to legal shortcomings which have been resolved in the legislation just ahead of the on-site visit. The DNFBPs give less focus to higher risk scenarios.
- g) STR reporting is concentrated mainly in the banking sector which is partially in line with the country risk and materiality. Other sectors account for a negligible number of STRs. The level of reporting from the DNFBP sector is low. Outside of the banking sector and MVTs operators, no specific focus is given to scenarios for detecting and reporting TF.
- h) Banks have adequate resources to implement AML/CFT policies and controls relative to their size, complexity, business activity and risk profile. Other FIs need to develop stronger lines of defence.

#### **Recommended Actions**

#### **Immediate Outcome 4**

The authorities should:

- a) Continue to ensure that all RE (especially smaller FIs and DNFBPs) assess the ML/TF risks to which they are exposed as a result of the nature and complexity of their business (BRA) and the ML/TF risks to which they are exposed as a result of entering into a business relationship or carrying out an occasional transaction (IRA). These assessments should be appropriate to the nature, size and characteristics of their business and analyse the ML and TF threats and vulnerabilities specific to Azerbaijan in depth.
- b) Ensure the effective identification and management of PEPs and BOs through better communication between the FMS and the CBA and the private sector and through the provision of sectoral guides, alerts and best practices.
- c) Substantially improve the STR reporting by providing thematic guides and outreach on how to identify suspicious or unusual transactions. Typologies and red flags indicators should be provided to all RE.
- d) Ensure that the internal AML/CFT procedures of RE are regularly updated at appropriate intervals and take into account the risks posed by products/services and ensure that these procedures/internal mechanisms are periodically audited to check their effectiveness in practice.
- e) Ensure that the real estate agents become active obligated entities, *understand their ML/TF risks and implement effective AML/CTF obligations and risk mitigating measures in line with the FATF Standards*

365. The relevant IO considered and assessed in this chapter is IO.4. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23, and elements of R.1, 6, 15 and 29.

#### **5.2. Immediate Outcome 4 (Preventive Measures)**

366. The AT weighted the sectors based on their risk and materiality as described under Chapter 1.4.3:

- **Most important** is the banking sector as it has the largest share of the financial sector's total assets (95%), customer base and it undertakes the vast majority of cross-border transactions.
- **Highly important** sectors are real estate, currency exchanges including the post office (which offers currency exchange) and notaries.
- **Moderately important** sectors are accountants, lawyers and VASPs.
- **Less important** sectors are casinos and gambling services, the DPMS, the insurance industry and the Trusts.

367. The AT's findings on IO.4 are based on interviews with representatives of all categories of REs according to the AML/CFT Law with the exception of real estate agents (who have no knowledge on the AML/CFT requirements) and VASPs which were not yet registered in Azerbaijan. Where available, supervisory data and other information from Azerbaijan authorities was used (including the NRA & MEQ).

### ***5.2.1. Understanding of ML/TF risks and AML/CFT obligations***

368. Understanding of ML/TF risks and AML/CFT obligations varies across sectors depending on the size of the entity, the products and services they provide, the customer base and their geographical footprint. The NRA findings on risks have been shared with the private sector. The banks have been involved in the NRA by providing information through questionnaires.

#### ***(i) Banks***

369. Overall, banks demonstrated a reasonable understanding of ML risks to which they are exposed (e.g., use of cash including desk transactions/withdrawals, transactions connected to the real estate industry, realtors, geographic risk, PEPs and NGOs). Notwithstanding the fact that trusts are not registered in Azerbaijan and there is no proof of such activity, banks seem to be aware of the ML/TF risks and stated that they would rather refuse such a relationship rather than manage the risk.

370. With respect to the risks around legal persons and legal arrangements, the understanding is fragile and confirms the shortcomings identified in the NRA (see also IO.1). The risks posed by the use of strawmen, use of shell companies, multi-layers companies used to obscure the BO, are understood to a certain extent. There are instances where there is little distinction between legal ownership (founders) and beneficial ownership through controls/other means beyond a threshold (see also IO.5).

371. The majority of banks are able to identify the products and services most vulnerable to TF such as money transfers, cash transactions and online products. Nevertheless, there were a number of banks for which the awareness of TF risk was limited to the use of screening of lists and higher-risk jurisdictions.

372. Banks develop business risk assessments (BRAs) for assessing the overall level of residual ML/TF risk associated with their business and with the individual business relationships or occasional transactions. The BRA are updated regularly (in most cases annually). Higher risk customers include PEPs (in some cases both domestic and foreign), TCSPs, VASPs and customers linked to higher-risk jurisdictions. Business relationships and transactions with customers from the real estate industry are also rated as presenting higher risk which is in line with the country risk profile. Other examples provided as high-risk factors included foreign legal entities and non-resident natural persons and professionals establishing and using newly incorporated vehicles for tax avoidance purposes and non-face to face business relationships. Few banks consider complex legal structures, which might obscure the identification of the BO, as an aggravating risk factor of concern.

373. The BRA outcomes are not subject to a specific information/notification to the CBA but such analysis can be presented whenever there is a request from the financial supervisor.

374. Banks identified cash transactions and money transfer as an increased risk factor when establishing the risk profile of a business relationship (individual risk assessment - IRA).

375. The risk model used by banks, in general, enables them to know how, and to what extent, they are vulnerable to being used for ML/TF purposes. Some banks use more sophisticated methodologies while others simpler ones, both options commensurate with the profile of their customers and range of products and services provided. Most banks mentioned also setting limits in their risk appetite by identifying factors which would make a customer not accepted under any circumstances, e.g. trusts, VASPs and legal entities for which the BO (natural person) cannot be identified, demonstrating a prudent approach.

376. Nevertheless, the AT must point out that the later de-risking line has little value in practice, as for example domestic trusts cannot be formed under the legislation and there is no indication that foreign trusts are operating in the country (hence they are de-risking something that does not exist). Similarly, while theoretically the absence of identification of BO would lead to a refusal to enter in a business relationship with the customer or would lead to the termination of a business relationship with the customer, in practice gaps in the set of measures for the identification and verification of BOs have been noted. This raises concerns to the effectiveness of this measure. Although the authorities were able – at AT’s request - to produce statistics on the number of cases when a business relationship was refused or interrupted for failure to identify the BO, there is no strategic view formed on the phenomenon.

377. In the process of IRAs, the customer risk classification is mostly automated and uses a set of risk factors such as characteristics of products and services, type of customers, number of transactions and their frequency, higher risk jurisdictions. The result is the clients/business relationship risk profile (risk scoring). Using such a wide list of risk factors allows banks to profile their clients into three categories: high risk, medium risk (the majority) and low risk (e.g. students, senior citizens, remuneration cards). Banks have set a date for each calendar year on which the next BRA/IRA update will take place, such an approach being limited and not ensuring the assessment of new or emerging risks.

378. Notwithstanding some efforts made by some banks, some difficulties were identified in the effectiveness of the BRA/IRA concerning the identification of customers which are PEPs, both domestic and foreign (see the specific sub-chapter below), mostly due to the fact that identifying domestic PEPs was not an obligation until recently.

379. The understanding of AML/CFT requirements is generally sound and well reflected in the banks’ internal programmes and procedures. Some deficiencies have been noted in relation to the concept of UBO and PEPs and in the application of TFS obligations.

(ii) *Non-bank FIs*

380. The understanding of ML risks in non-bank FIs (life insurance, investment, MVTS & postal money orders), leasing companies, exchange offices, pawnshops, non-credit FIs – agricultural loans) varies among different entities. Most non-bank FIs have conducted BRAs and so were well placed to understand risks. Like banks, the risk assessment is periodically (mostly annually) updated.

381. Investment companies have a reasonable understanding of their AML/CFT requirements and to a certain extent of the ML/TF risks to which they are exposed, being able to recognize the risks posed by some customers such as investors from high-risk jurisdictions or legal persons with temporary residency. Similar concerns regarding the concept of the UBO qualifications of PEPs as high-risk customers are noted.

382. Life insurance companies are not heavily weighted in terms of materiality. There are only five life insurance companies and they do not provide unit link products as there is no appetite for this type of product. They mostly offer products (life policies) which provide a lump sum in the event of biometrical risks (death in specific period). All premiums and the lump sums are transferred through banks. This is seen by the insurers as a risk mitigation measure, which is not in line with the FATF principles of effectiveness.

383. MVTS operators are only banks with a specific authorisation and Azerpost (the national post office). These operators were able to confidently articulate business specific risks for both

ML and TF. MVTS operators use a BRA which is documented, updated and communicated to relevant personnel within the group (post offices).

384. The understanding of AML/CFT obligations by currency exchange offices is very limited, and they have not implemented a BRA. As a de facto rule, standard CDD measures are applied only when there are exchanged funds for more than 850 Manats (500 \$). Customers who exchange funds for less than 850 Manats are not identified and there is little understanding of the risk of smurfing, therefore it is possible that linked transactions go unnoticed.

385. Most of the non-banking FIs considered the risk in their internal AML/CFT policies and procedures which are periodically reviewed. Nevertheless, this is not reflected in their capacity to file STRs and the sector demonstrated difficulties in understanding fully certain risks such as those related to complex structures that might obscure the identity of the BOs. The risk related to corruption and laundering the proceeds of corruption is an area for improvement throughout the non-banking financial sector.

386. The understanding of TF-related obligations in non-bank FIs was less reliable than in the banking sector and varied by institutions, usually being merged with TF TFS.

*(iii) DNFBPs*

387. DNFBPs in general demonstrated a proper understanding of ML/TF risks present at the country level although some underestimate the sector-specific risk factors to which they are vulnerable. The understanding of risks is stronger with the consultancy firms, which are part of international consortiums providing accounting and legal advice and the notaries and lawyers which are members of the Bar Association.

388. Notaries perform legalisation of ownership transfer of a property (purchase and sale agreement) only if the asset is registered in such a way that the ownership can be identified. Notaries have a general good understanding of ML risks and were able to provide examples of higher risk scenarios also taking the country's risk assessments outcomes into consideration. Notaries plan yearly risk assessments. On a less positive note, this theoretically good understanding of risk is not mirrored by submission of STRs to the FMS which raises effectiveness concerns.

389. Lawyers and international audit and consulting professionals prepare risk assessments which are periodically updated (mostly on a yearly basis) taking regulatory changes and new and emerging risks, if there are any, into consideration. Lawyers also classify the customers taking ML/TF risk factors but also other myriad factors such as tax evasion, corruption, etc. into account.

390. Independent auditors (member of the Chamber of auditors) consider the risks of being used for ML/TF almost impossible mainly based on their professional experience and their risk acceptance policy (refusal of entering in business relationship with domestic PEPs, when this type of customer is publicly known).

391. Notwithstanding the fact that VASPs do not yet operate in Azerbaijan, the DNFBPs awareness regarding this type of customers is very elevated.

***5.2.2. Application of risk mitigating measures***

392. FIs and DNFBPs have implemented AML/CFT preventive measures to mitigate their ML/TF risks. The magnitude to which these preventive measures are applied differs between the type of obliged entities. Mitigating measures applied by banks to manage risks posed by legal persons are not considered proportionate with their ML/TF risks.

*(i) Banks & investment companies*

393. Banks and investment companies have developed sophisticated AML/CFT internal systems and controls, including monitoring tools proportionate to the residual risk identified during their BRA. Following their risk assessments, and having taken into account both inherent risks and residual business and business relationships risks, they predictably apply preventive measures commensurate to risk based on a risk scoring. For the allocation of different scores, banks weight ML/TF factors and make informed judgements about the relevance of different factors in the context of each of their business relationships or an occasional transaction and their line of products and services provided. They build up risk profiles for their customers which are regularly reviewed, depending on the risk score assigned. The score assigned categorises each business relationship risk as high, medium or low. This helps banks to have a clear image on where it should focus its ML/TF management efforts.

394. Some of the banks prepare an “action plan” for managing residual risks. Thus, for increased and high-risk customers (based on the outcomes of the risk calculator) more scrutiny is applied such as: (i) obtaining management approval; (ii) requesting more information and documentation from the customer such as source of wealth when there is a PEP involved; (iii) obtaining written declaration regarding the natural person who ultimately owns control of the legal entity and (iv) more assessments of customer information.

395. While there are appropriate mitigating measures applied as mentioned above, there are shortcomings observed. For example, identifying and understanding the risks posed by PEPs (domestic PEPs until recently were not covered by the Law), and the insufficient implementation of due diligence in relation to who ultimately owns the control of a customer – legal entity.

*(ii) Other financial institutions*

396. Insurance firms do not sell complex products and present a low ML/TF risk (there is no demand for investment link insurance products from the 5 insurance companies operating). They are less preoccupied of the risk factors to which their business is exposed and apply preventive measures to some extent (collecting customer information via insurance policies only).

397. MVTs (authorised banks and Azerpost) apply similar preventive measure commensurate to risks, risk profiling customers and applying increased measures such as requiring management approval, source of funds and reporting business relationships with customers from higher-risk jurisdictions.

398. Non-bank credit institutions and leasing companies implement preventive measures proportionate to the risks posed by their products and services. Measures such as screening of the customers are implemented (use of automated tools such as Lexis Nexis), and risk factors are weighted depending on their relative importance to the specific characteristics of their products and services provided. This often results in non-bank credit institutions weighting risks influenced by just one factor (agricultural loans 40% supported by the Ministry of Agriculture) which often leads to categorising customers mainly as low risk.

*(iii) DNFBPs*

399. All DNFBPs had formal procedures in place and risk methodologies developed for risk profiling their customers according to different levels of risk (high, medium, low). This is particularly true for lawyers and independent professionals part of international networks, who have structured risk management systems and controls (including use of screening commercial tools but also individual checks).

400. In the case of lawyers, independent professionals who are part of international networks and notaries, customers are often domestic companies and resident natural persons. In case of legal companies, they have in place a set of measures (one example is e-notary used by notaries) dedicated to obtain satisfactory information which often led to refusals of acceptance for business relationships with risky customers.

### ***5.2.3. Application of CDD and record-keeping requirements***

401. Almost all FIs and DNFBPs apply identification and verification measures when entering into a business relationship, conduct CDD measures and apply record keeping procedures. The exception being the real estate agents as described at the beginning of the IO. Not all CDD measures are risk based.

#### *FIs - CDD measures*

402. All FIs perform CDD measures, with banks having the most comprehensive set of actions applied when they identify and verify the customers and open a business relationship. Independent exchange offices apply CDD measures only when the threshold of exchanged funds is over 850 manats (500 \$).

403. Prior to account opening, the banks use a KYC questionnaire which covers: (a) for natural customers: ID cards, place and address of employment and the purpose and intended nature of business relationship, while (b) for legal persons: inter alia, address of the main and subsidiary activities, identification number, declarations on BO information (individuals who exercise control), purpose of the business relationship, authorised capital (manats) and the purpose of intended transactions using the bank account. When an account is opened by a person purporting in the name of the customer, banks check the power of attorney provided for such a person and also look for the purpose of the intended business relationship.

404. A considerable majority of the customer base in Azerbaijan is formed of residents and the CDD measures are generally applied on a face-to-face basis. All interviewed banks stated that they rarely establish or have remotely onboarded customers, although the CBA have provided regulations in that sense. Banks confirmed that they do not open business relationships (open accounts or execute transactions) if the identification of a client is not complete. The interviewed banks stated that there are no anonymous or fictitious named accounts, confirming that they do not open business relationships (open accounts or execute transactions) if the identification of a client is not complete.

405. Domestic banks, those part of a larger group and subsidiaries demonstrated good knowledge of the record keeping obligations and undertake more comprehensive CDD measures when establishing business relations or carrying out occasional transactions. Additional checks are made when there are doubts about the veracity or adequacy of previously obtained customer identification data. Banks conduct ongoing due diligence according to the monitoring mechanism implemented.

406. When the customer is a legal person, banks begin the identification of the BO based on customer's declaration followed by internet searches. In cases where the customers have complex structures and/or ownership abroad, the banks would satisfy themselves with copies of the incorporation documents and managers and owners ID, sometimes crosschecked with the originals issued by the foreign jurisdictions. To identify the BO, the banks request the client declaration accompanied by written probatory documents. Verifications from reliable



independent sources are rarely performed. If the UBO is not properly identified the business relationship is declined.

407. Investment companies and life insurance companies have the possibility to use banks to market their products and services but there is no practice for reliance on CDD completed by third parties. These categories of entities perform a reasonably wide-range of measures, including a periodic review of the existing relationships and the adequacy of data obtained.

408. While performing CDD measures, investment companies collect information based on a precise set of questions (survey/questionnaire) requesting ID information, residency information and self-declaration of the BO and PEP status. When the customer is a foreign PEP, additional information about the source of funds and wealth are also requested and information about the total amount of assets intended to be invested is inquired, but very little verification is performed.

409. Life insurance companies obtain the required CDD measures via the policies. Thus, the identity (name and residency, employer) of both the customer and the beneficiary of the policy is determined when opening a business relationship with no additional information being verified throughout the entire business relationship (payment of life insurance premiums by employers) or at the time of pay out.

410. Smaller FIs such as non-bank credit institutions and leasing companies perform standard CDD measures such as requesting ID cards and tax codes. Leasing companies mainly provide products and services to entrepreneurs (both legal and natural) for which they request ID cards and bank account information. Nevertheless, no information on the BO is requested.

411. FIs are aware that they should refuse establishing a business relationship or terminate it, if CDD measures cannot be performed in a complete and satisfactory manner. While the refused business relationships are said to be informally notified to FMS, the statistics are not used by the authorities to make judgements/conclusions on the amplitude of the phenomenon. There are FIs with no instances of refused/terminated business relationships for failure to comply with the AML/CFT preventive measures.

#### *Record keeping requirements*

412. All FIs have a good knowledge and understanding of record keeping requirements, especially in relation to keeping the records of transactions and business correspondence. All records are kept for at least 5 years and are being made available when requested by competent authorities. Information obtained through CDD measures as well as transaction records are maintained in a manner which would allow reconstruction of transactions at the request of competent authorities. There are FIs that independently of the legal requirements, prolong the record keeping of information for more than 5 years. Information regarding transactions not shared at the level of the group.

413. Effective record keeping of domestic PEP information and its availability is negatively impacted by the lack of legal provisions throughout most of the assessed period. Some banks maintained that they would keep such records on the basis of group policies.

#### *DNFBPs*

414. Notaries perform a complex set of CDD actions for both natural and legal customers, recently reinforced by a new tool developed at national level (e-notary) which helps in performing satisfactory CDD measures (including confirmation of the identity of a person in the

photo). While undertaking CDD measures, notaries request identification documents of the customers such as ID, residency, citizenship and source of funds. The notaries specified one case in which two founders of a legal entity sold their shares to another legal entity which was a real estate developer, operation for which the notary requested the ownership titles of the shares.

415. Similarly, lawyers have a good knowledge of the CDD measures and obligations of ongoing monitoring, proportionate to the services they provide for domestic customers. Lawyers identify customers by requesting their ID cards, passports and information regarding their citizenship.

416. Independent accountants and auditors perform a more in-depth verification of their clients through all the corporate information made available for a statutory audit including source of funds of the customers and executed transactions.

417. Notaries, lawyers and accountants/auditors do not establish business relationships without identifying the customers, based both on professional regulations and the AML/CFT Law.

418. In terms of verifications, all DNFBPs deplored the lack of verification tools and the lack of guidance on BO identification from the supervisors. This is not surprising seeing that the STS itself struggles with the concept.

419. The DNFBPs met were attentive of the record keeping requirements and maintain all necessary information for even more than 5 years. In this regard notaries indicated that they keep documents and information for 10 years and auditors indicated a 7-year record keeping period.

#### ***5.2.4. Application of EDD measures***

420. Generally, EDD for higher risk areas covered by core issue 4.4 are being applied depending on the sector and on the topic, with application soundest by banks and non-bank FIs, although shortcomings are noted either due to legislative gaps (PEPs) or insufficient attention paid to certain FATF requirements (jurisdictions under increased monitoring).

#### ***Politically exposed persons***

421. With regard to PEPs, the application of CDD measures has been obstructed by legislative shortcomings related to the definition of PEP which did not include domestic PEPs. This is a severe technical deficiency reflected in the effective application of the standards especially seeing the country context and corruption related risks (see also IO.1). The issue was addressed in legislation just ahead of the on-site visit.

422. Application of the PEP requirements varies depending on the size and geographical footprint of FIs. All FIs met on-site confirmed that there was no obligation to perform EDD to domestic PEPs until recently and most classified only foreign PEPs as high-risk customers. A future change in the internal rules is envisaged by FIs to align with new AML/CFT requirements.

423. Obtaining self-declaration from the customer as to whether they are considered as a PEP is common practice amongst FIs (as part of “know your customer” questionnaires). In the course of the regular up-dates, cases where existing customers become PEPs after a business relationship are identified.

424. Banks apply additional measures for foreign PEPs such as enhanced monitoring and management approval, but the verification of the source of wealth is mostly reliant on publicly available sources. There are three manners of verification: open sources (Internet), commercial databases (World check/Refinitiv, Dow Jones, Lexis Nexis) and self-constructed lists. In some instances, banks acknowledge that relying only on open sources could pose a risk of non-

identification of potential PEPs. Turning to the internal lists, they are exclusively built based on Internet sources. It is difficult to envisage how such a process could be carried out in practice, let alone its effectiveness.

425. Some banks maintained that they perform EDD to both domestic and foreign PEPs based on their group policy which increases the effectiveness of the sector. Nevertheless, overall, the identification of domestic PEPs is in a nascent form.

426. Many representatives of non-bank FIs (PSP, investment companies) demonstrated sufficient knowledge on PEP-related requirements. PEP customers are profiled as high risk for which they request management approval in all cases and demand information and documents regarding the source of funds and origin of wealth (questionnaire based). There is a common approach not to open or maintain a business relationship if the PEP customer does not provide the requested information or additional clarification.

427. Most of the DNFBPs met on-site have a good understanding of PEP-related requirements as provided by the AML/CFT Law in force for the overwhelming part of the assessed period (which excluded domestic PEPs). Some DNFBPs verify if a customer is a PEP and apply EDD or even have a rule of not accepting domestic PEPs as customers.

#### *Correspondent relationships*

428. Few of the Azerbaijan banks keep Loro & Nostro/Vostro bank accounts (correspondent bank accounts). They demonstrated a good understanding of the enhanced AML/CFT requirements and of the risks involved. They collect sufficient information about respondent institutions to fully understand the nature of their business activities and to be able to assess reputation and the quality of the supervision. Management approval is always required to start such correspondent relationships and the responsibilities for each FIs is being documented.

429. Banks have internal procedures regarding the rules for opening business relationships with correspondent foreign banks pursuant to which any correspondent account/business relationship is being periodically updated (at least annually).

430. All credit institutions registered in Azerbaijan and branches of foreign credit institutions, offer corresponding services. None of the banks offer “payable through account” services and there are no established “nested account” relationships.

431. The CBA has provided information supporting a high level of adequacy identified in relation to corresponding banking services. No deficiencies were identified by CBA during their supervision actions on that matter.

432. Except the post office, there does not appear to be similar correspondent-type relationships outside of banks.

#### *New products*

433. Banks conduct risk assessments before using new and developing technologies and prior to the launch, new business/product would involve the AML/CFT compliance department alongside others. The introduction of products such as mobile-banking and video identification have been risk assessed but in practice are not of wide use. Online onboarding is rare (almost all face to face onboarding) and when it is, some banks rely on electronic signatures (e-sign). The submitted data and information in case of online onboarding are, inter alia, ID cards, signed declaration in relation to the purpose and intended nature of the business relationship, a

certificate duplicate issued by a tax authority, a power of attorney for those purporting to act on behalf of a customer.

434. FIs do not sell or buy crypto-assets, and do not currently offer crypto-asset-denominated investment products or crypto-asset custody services to their customers. The institutions interviewed were aware of the risks associated with these new technologies and stated that they would refuse to work with certain platforms.

435. Non-bank FIs are aware of the legal requirements to assess risk and conduct appropriate CDD but, in practice there is a low appetite for online on boarding services or for the provision of sophisticated high-tech products.

436. The use of new technology is not widespread in the DNFPB sector, apart from notaries (e-notary). The product base is also rather static with very little need to perform such risk assessments.

#### *Wire transfers*

437. Banks have a generally good understanding of the requirements imposed under R.16. They advised that all wire transfer information (incoming and outgoing) is automatically screened by the swift system to ensure that wire transfers (incoming and outgoing) contain all required data. Post-transfer checks are also carried out periodically. In cases of missing information on incoming transfers, FIs contact the originator's institution and request additional information, before proceeding with the transfer.

438. Azerpost Office also provides international (post office - to - post office) money remittance services and wire transfers (bank transfers). As a sine qua non rule (customer acceptance policy), Azerpost requests from its customers for ID cards or passport information and bank account details.

#### *Targeted financial sanctions relating to TF*

439. Banks have a good understanding of their requirements in relation to TFS relating to TF and have measures in place to screen the clients before the establishment of a business relationship and during that relationship (transaction based) for potential hits. Those institutions that have access to commercial databases from third-party retailers use those to screen: (i) their customers and BO (to the extent they are identified); and (ii) transactions, against the lists of persons and entities designated under UNSCR lists, as well as designations of other countries and jurisdictions, e.g. OFAC and the EU. Many banks confirmed that they have periodic processes for the entire customer base re-screening and that there are even terminated business relationships followed by STRs filed to FMS.

440. Non-banking FIs and DNFBPs tend to apply manual searches on the domestic list published on the SSS (previously FMS) dedicated website. Auditors and tax advisors received the list of sanctioned entities from their supervisor, the STS, but the concept of TF TFS is sometimes mixed with the FATF high risk jurisdictions. Notaries stated that the checks are performed by the "e-notary" system, without the implication of the notaries, who are notified that the transaction cannot be registered in the system in case of matching. Reporting entities generally expressed the readiness to contact the supervisors of FMS, in case of doubt, but most of the sectors expressed the clear intention to refuse entering in a business relation with the customer in case of any uncertainty related to TFS.

441. Supervisors stated that aspects related to TFS are part of their interest during the inspections. However, the AT was not provided with any data on the deficiencies identified and sanctions applied to the obliged entities for breach of TF TFS-related provisions. In the context of the deficiencies identified under IO.5, the AT consider that complex structures could represent a challenge for the obliged entities to effectively implement TFS requirements when it comes to BOs.

#### *Higher-risk countries*

442. The awareness on the higher risk and high-risk jurisdictions varies amongst FIs and DNFBPs, therefore, the application of EDD measures depends on the sector of obliged entities. Often these obligations are linked to countries listed by EC, and so there is greater familiarity with EU lists than countries subject to FATF “call for action” (“blacklist”) or jurisdictions on increased monitoring (“grey list”). When identifying customers connected to higher risk countries, reporting entities look at the nationality and residence.

443. Banks were aware of the high-risk jurisdictions and most apply ECDD to customers coming from higher risk countries or to other FIs with which they have correspondent business relationships. Nearly all interviewed banks specified that they have an internal list of higher risk jurisdictions which also constitutes a risk factor when elaborating the BRA and IRA. When establishing a business relationship with a higher risk jurisdiction, scrutiny of the executed transactions is performed. Some banks use automated screening programmes for detecting such transactions, block them and request additional information from the customer in case of doubt. Nevertheless, there were instances where countries under increased monitoring by the FATF were considered as low risk without sufficient substantiation for such decisions.

444. While the post office has a good understanding of the required EDD measures for customers from higher risk jurisdictions (with one case communicated to the FMS), the exchange offices could not articulate what additional measures would apply in case of customers related to high-risk countries.

445. The application of EDD measures performed by the DNFBPs is limited as many do not provide services for non-resident customers (financial auditors) or do not have customers connected to higher risk jurisdictions. Nevertheless, the AT has difficulties to fully confirm this statement given the country’s geographical risk.

#### ***5.2.5. Reporting obligations and tipping off***

446. Azerbaijan reporting requirements are divided in cash transaction reports (CTRs), wire transfers with funds equal or above the threshold specified by the AML/CFT Law, and suspicious transaction reports (STRs). RE are required to file an STR in specific circumstances such as: (i) transactions carried by a foreign PEP or his family and close associates; (ii) transactions with assets subject to TFS; (iii) transactions carried by religious organisations, NGOs as well as branches of NGOs and (iv) transactions carried above any threshold set by FMS.

447. All obliged entities are aware of the circumstances in which there is a requirement to submit an STR to FMS and the requirements not to tip off a customer where such report is made. In spite of the awareness, the overall effectiveness of the reporting system is insufficient (see the analysis below in conjunction with IO.6).

448. Banks generate the highest number of STRs which reflects the sector’s materiality. Notwithstanding the higher number of STRs filed to FMS, most of the reports are not based on

specific suspicious rationale, resulting from a meaningful analysis by a compliance professional, but rather following the rules set by the AML/CFT Law. This is ultimately translated into a poor quality, defensive reporting situation.

449. The number of STRs filed by the non-banking FIs and DNFBPs (with the exception of the notaries) is very low or inexistant (see Table 3.1 under IO.6).

450. Non-bank FIs seem to have a moderate understanding of the reporting requirements. There are remarkable differences in the number of STRs submitted by the banks and other FIs, with no reports from the leasing companies and exchange offices. Azerpost submitted 27 STRs in 2022 (See Table 3.1 under IO.6).

451. Notaries use an independent system of reporting customers from high-risk jurisdictions subject to a call for action or jurisdictions under increase monitoring, directly to Ministry of Justice. The reports hint that such customers have been serviced by notaries in Azerbaijan, which is a logical conclusion given the geographical position and the important cultural ties with Iran.

452. The ability of lawyers to submit STRs is very limited due to the type of services provided namely the legal representation in courts. Lawyers stated that they don't have a gateway for making STRs due to the impossibility of disclosing information obtained during the course of carrying out professional activities without the consent of their customers which would in fact constitute tipping off. While the consent can be asked for in advance, this was not done systematically.

453. There was no confirmed case of tipping off in Azerbaijan.

454. The private sector indicated that apart from the STRs there are informal reports, namely oral communication between the private sector and the FMS regarding specific cases identified as being unusual. This information was not confirmed by the FMS.

455. Some banks have indicated that there were cases of suspended transactions which presented suspicious elements or abrupt change of conduct by the customer, which were duly reported to the FMS. In such cases, the banks can perform the transactions only after FMS assessment and clearance. Similar, any attempt of carrying a transaction with funds known as being proceeds of crimes are reported to FMS. Nevertheless, no statistics on STRs pertaining to attempted transactions were available.

456. Not all banks consider that filling an STR in relation to a customer should be reflected as a risk element in the future profiling the customer which raises concerns. On the face of it, this attitude might display a lack of trust in the STR reporting indicators, considering them as irrelevant, which might hint that the private sector doesn't take the entire STR reporting system seriously, especially through the prism of the pre-set criteria for reporting which provides a tick-box exercise instead a sound and well-grounded rationale and red flags indicators.

457. The feedback is provided by the FMS only when the quality of the information provided inside the STR is weak (so called "negative feedback"). In practice during the reviewed period, FMS did not provide systematic feedback for the STRs submitted.

#### ***5.2.6. Internal controls and legal/regulatory requirements impending implementation***

458. In the course of the interviews, banks appeared to have a good understanding of the AML/CFT internal controls and procedures. Overall, there are no legal or regulatory provisions impeding internal control audits implementation.

459. Banks have established AML/CFT compliance functions (AMLO) which in some cases are closely working with the risk management function. The interviewed banks have screening programmes for their staff at the stage of recruitment as well as AML/CFT training programmes. Internal AML/CFT audits are performed by all FIs.

460. The non-bank FIs have less sophisticated AML/CFT internal procedures or, in case of leasing companies and exchange offices, no procedures at all. In some cases, the CBA during on-site inspections has identified deficiencies related to lack of inclusion of certain AML/CFT matters (transaction reporting procedure).

461. DBFBPs have developed good internal policies and procedures that are periodically reviewed (in most cases yearly).

462. FIs and DNFBPs have adequate resources to implement policies and internal controls relative to their size and complexity. The effectiveness is confirmed by the limited number of breaches (only two in 2022) identified by the supervisor in the bank's risk management and AML/CFT audit.

#### *Overall conclusions on IO.4*

463. Understanding of risks and the AML/CFT obligations are rather good in the banking sector which is by far the most material sector in Azerbaijan. Risks are insufficiently assessed and understood in the non-banking financial institutions (including currency exchanges and the post offices) and some DNFBPs. The effectiveness of the BO identification is moderate, with only some banks having sound procedures to identify the natural person who ultimately owns or controls the client, while others still struggle with the concept especially regarding verifications. The application of EDD is satisfactory with the exception of PEPs due to deficiencies in the AML/CFT Law until recently. The level of suspicious activity reporting is an area for improvement in all sectors either from a qualitative (banks) or a quantitative perspective (the rest of the reporting entities). There are no instances of tipping off. The rating is impacted by the fact that the real estate agents do not apply AML/CFT preventive measures. **Azerbaijan is rated as having a Moderate level of effectiveness for IO.4.**

## 6. SUPERVISION

### 6.1. Key Findings and Recommended Actions

#### **Key Findings**

##### **Immediate Outcome 3**

- a) The Central Bank of Azerbaijan (CBA) applies basic “fit and proper” entry checks both for qualified owners (set at 10% or more of share capital or shares with voting rights), and persons who can significantly influence decision making process. The information received is verified through public sources. Market entry checks do not always cover BOs, while the identification of potential association with criminals is not checked. For non-bank FIs, changes in owners or controllers or their “fit and proper” status are not subject to prior approval. For the newly regulated non-banking FIs, licensing and registration procedures do not apply. The VASPs fall under the CBAs supervision but no such entities are registered to date.
- b) With regard to DNFBPs the “fit and proper” checks are carried out by the STS, the Bar Association and the Chamber of Auditors. Limitations are noted on STS supervised entities as they do not cover information on criminal background of real estate agents, persons providing legal advice services, persons providing accounting and tax advisory services. Effective “fit and proper” tests are applied to notaries and on lawyers and auditors by their respective supervisors.
- c) Overall, across all four supervisory authorities, the understanding of ML risks varies. The CBA and the Bar Association demonstrated a better understanding of ML risks which is displayed to a lesser degree by the STS, and Chamber of Auditors. The overall understanding of TF risk did not prove to be sufficient across all supervisory authorities.
- d) Notwithstanding the fact that the real estate sector is weighted as bearing higher ML risk, during the period under review there was no supervision for the sector.
- e) The effectiveness of the regime was impacted by repeated changes in supervisory arrangements in Azerbaijan whereby responsibilities were transferred repeatedly between the Financial Markets Supervision Authority (FMSA), the CBA and the FMS. Therefore, even though at the time of on-site visit CBA’s approach was informed by a form of RBA mechanisms, this conclusion cannot be extended to the entire period under review. The CBA’s human resources is an area for improvement.
- f) The sanctioning regime in place cannot be considered as effective, proportionate and dissuasive. It is evident that the CBA acts as an awareness raising entity rather than an authoritative supervisor. Where shortcomings are identified during the on-site visits, the CBA often opts for actions plans instead of sanctions. The CBA applied monetary fines only to natural persons (MLROs and managers of the FIs), never to FIs as a corporate entity, even in cases of recurrent or systematic breaches.



- g) Turning to the DNFBPs, with the notable exception of tax advisors and accountants, the level of financial sanctions applied is very low. Other types of sanctions are rarely or never used.
- h) The outreach of AML/CFT obligations for the FIs, conducted by the CBA needs further improvement. Whilst the banking sector representatives are provided with sector-specific guidance notes, similar approach is not in place with regards to non-banking FIs. Guidance and trainings provided by the DNFBPs' supervisors is insufficient.

***Recommended Actions***

***Immediate Outcome 3***

- a) Competent authorities should ensure that all FI's, DNFBP's and VASPs are subject to an appropriate and robust licencing or registration process, including by carrying out the periodic sectoral risk reassessments;
- b) The CBA's AML/CFT capabilities should be strengthened to ensure that their licencing system covers the BOs and the associates in all cases, including by implementing a system for liaising with foreign authorities to ascertain whether they have relevant information to assess the fit and properness of applicants or key function holders in FIs under their supervision;
- c) The CBA should revise and up-date their working procedures to:
  - respond to the new organisational structure within the CBA;
  - cover all FIs;
  - Ensure a consistent risk based approach by detailing all the elements of the on-site process;
- d) The authorities should enhance their efforts to identify and prevent unlicensed activity and be given appropriate powers to sanction those acting without a licence or authorisation;
- e) In the circumstances required by the FATF Recommendations, TCSPs should be subject to supervision for compliance with AML/CFT requirements. Effective supervisory framework should be put in place for the real estate agents;
- f) The CBA should ensure establishment of licencing and risk based supervision for VASPs if such entities will be identified;
- g) The overall supervisory activity by the CBA should be reinforced and use should be made of the full range of available sanctions, including pecuniary sanctions, withdrawal of authorisation and publication of the sanctions.
- h) The STS should implement a targeted risk based supervision on the DNFBPs under their monitoring;
- i) The supervisors should be given appropriate human and financial resources, together with efficient sanctioning powers to impose financial penalties shortly after

identification of the breaches Respective supervisors should continue to provide training to FIs and put in place systematic and comprehensive training for DNFBPs. Their overall outreach with regard to higher risk bearing sectors should be enhanced.

464. The relevant IO considered and assessed in this chapter is IO.3. The Recommendations relevant for the assessment of effectiveness under this section are R.14, 15, 26-28, 34, 35 and elements of R.1 and 40.

## **6.2. Immediate Outcome 3 (Supervision)**

465. The provision of financial services in Azerbaijan is subject to a licensing and registration requirement, with the CBA being the competent authority for granting, amending and withdrawing licenses and revoking registration. The CBA's licensing responsibilities extend to VASPs, even though at the time of on-site visit licensing regime for VASPs were not in place, as no such entities filed registration requests. TCSPs are not designated as obliged entities, and trusts are not recognised by the law of Azerbaijan. The AT could not identify any indication of the existence of foreign trusts operating in the country.

466. STS registration is required for persons providing legal advice services, persons providing accounting and tax advisory services and realtors. Notaries are registered by the Ministry of Justice. In terms of AML/CFT supervision for lawyers (members of the Bar Association) and auditors, the Azerbaijani Bar Association and Chamber of Auditors are in charge, respectively. Number of FIs and DNFBPs licensed or registered for the period under the review are set out in table 1.1 in Chapter 1.

467. Although included in the AML/CFT Law and in the NRA, at the time of the on-site visit the authorities did register any entity that would fall in the FATF definition of VASPs. The supervision of VASPs was entrusted to the CBA but since no entities were identified, no supervisory action has taken place. Therefore, the AT will not make reference to the VASPs in the analysis below.

468. The weighting given to REs regarding supervision, based on the relative importance of each sector, is the same as detailed under Chapter 1 (see subchapter 1.4.3), and applied equally for the preventive measures (IO.4).

### ***6.2.1. Licensing, registration and controls preventing criminals and associates from entering the market***

#### *Financial institutions*

469. In 2016, the supervisory functions over financial institutions were attributed to the Financial Markets Supervision Authority (FMSA). In November 2019 the FMSA was liquidated and its functions were returned to the CBA. The AT has no information confirming that these changes were done in accordance with the evolving national AML/CFT policies and with the ML/TF risks identified as requested by IO.1.4. Such shift during the small period of time impacted the effectiveness of the overall supervisory process.

470. Although at the time of the on-site visit the responsibility for licensing and registration of FIs lied within the CBA, the procedures in key directions of supervision and licensing were written and utilized in practice based on the old supervisor's structure and resources and were not updated to the CBA's characteristics. CBA's internal procedure for licensing/registration were not

properly formalized which the view of the AT, causes the risks of inconsistencies in practice. Nevertheless, the individual job description of the CBA employees in charge with the AML/CFT supervision were updated in 2021.

471. The general process for licensing of new FIs requires the submission of relevant documentation from the applicant, including the completed fit and proper questionnaire. This documentation is reviewed by the Licensing Division, and, depending on the type of FI, reviewed by Credit Institutions Supervision Department, Capital Market Policy and Supervision Department, and Insurance Activity Policy and Supervision Department. The Process is subsequently supplemented by the analysis and approval from the AML Department with the final decision taken by the high level board of directors of the CBA.

472. The CBA conducts fit and proper checks on owners and controllers of FIs: (i) persons in the ownership structure, including BO; and (ii) directors and senior management, in the ownership structure. As part of these checks, the CBA requires proof of the absence of a relevant criminal record (certificate) for owners and controllers.

473. The information received during the application review process is verified by the CBA through public sources and is not always subject of verification through other reliable and independent sources such as information requests from jurisdictions connected to the person under the review (nationality, previous employment, etc.). In a number of cases, (on an ad-hoc basis) the CBA cooperated with foreign competent authorities and did perform verifications. In practice, market entry checks do not always cover BOs, and with that, the identification of criminals' associates is not carried out in practice.

474. Time limits set for a decision to be taken on a license/registration vary in practice, being between one and six months from receipt of all information necessary to support license/registration application. According to the authorities, the refusals were related to AML/CFT specific issues.

**Table Error! No text of specified style in document..27: CBA license/registration applications by type of applicant (2017 to 2021)**

<b>FI Sectors</b>	<b>Number of applications received</b>	<b>Number of licenses/registrations approved</b>	<b>Number of licenses/registrations refused</b>	<b>Number of licensed/registered institutions</b>
<b>Banks</b>	-	-	-	26
<b>Non-bank Credit Institutions</b>	18	15	3	56
<b>Currency exchange offices</b>	2	2	-	2
<b>Investment firms</b>	11	7	4	12
<b>Registrar and depository</b>	-	-	-	1
<b>Investment funds and</b>	-	-	-	1

<b>managers of these funds</b>				
<b>Postal operators</b>	-	-	-	1
<b>Insurance companies or intermediaries</b>	259	239	20	777

475. During the period under review, CBA has not identified any breach regarding the licensing and registration and therefore no further measures have been enacted in this regard. The CBA does not routinely search media and other public advertisements for identifying businesses which operate in the regulated sector and are not appropriately licensed. CBA does not see its responsibility in monitoring unlicensed financial institutions, as to their view, it shall be done by LEA.

476. However, even though their approach in this regard is not proactive, in case of customer's complaint, or getting a call for action from licensed institutions being underprivileged by unfair competition from such participants in the market, the CBA reacted and informed LEA. In the period of 2019-2021, there were 7 notifications of "Ponzi" schemes organised by legal persons all reported to the law enforcement authorities.

**i) Case study 4.1: Case example on identification of Ponzi Schemes**

j) In one case of suspected Ponzi scheme following a complaint, the CBA started an investigation using the Mystery Shopper technique: CBA's employees pose as investors or regular customers and interact with the employees and services of the scheme in question to gather information and evidence that can be used in the investigation. CBA employees pose as potential customers and: (a) conducts phone conversations with the employees of the scheme, who carry out promotion on the internet resources of the scheme; (b) hold meetings in the office of the scheme and obtain detailed information about the scope of the scheme's activities; and (c) "secretly" invest in the scheme as a customer to collect more information and documents, including contracts and etc. If the investigation yields evidence of criminal activity, MIA arrests the individuals responsible for the scheme and charge them with various crimes, such as fraud and embezzlement.

477. According to the LEAs, the non-registered parallel FIs is one of the main AML/CFT vulnerabilities in the country with Hawala-type of services being used to transfer/laundry proceeds, especially those issued from drug trafficking and various forms of smuggling (see also IO.1). The LEAs would be responsible for the identification of such cases and application of the sanctions in this regard. While the LEAs appeared to be aware of these risks, the CBA does not consider the un-registered FIs as a preoccupation, beyond the complaints described above.

478. There were no instances where LEAs informed the CBA about cases of identified un-licensed financial institutions. The lack of awareness on the risk and absence of a pro-active approach by the CBA, coupled with the lack of coordination between the LEAs and the financial supervisor in this respect is an area for concern.

479. The CBA monitors changes in the ownership and management structure of FIs on an on-going basis. During the period under the review in 3 cases the CBA refused a change in

management structure. No information has been provided regarding the inspections conducted on this specific matter, or any non-declared change identified by the CBA.

#### *DNFBPs*

480. The STS is responsible for registration of realtors, persons providing legal advice and persons providing accounting and tax advisory services. Registration can be done via submitting paper-based or online application, through which the STS obtains and verifies only basic identification data. To start activities in these sectors within the framework of simplified procedures, it is enough to register as a business entity in the STS and get the taxpayer identification number under the corresponding activity code.

481. The STS does not ensure that criminals and their associates are not professionally accredited, as it is not required to check and periodically review criminality background of applicants. The STS does not identify and verify BO based on reliable and independent sources and does not proactively monitor changes in the ownership and management structure of REs on an on-going basis.

482. The Chamber of Auditors is responsible for registration of auditors in Azerbaijan. Assessments of fitness and propriety of auditors are focussed primarily on good reputation, conduct, solvency and competence matters. Applicant's criminal records are not checked and are not independently verified. On a positive note, a person who was deprived of rights to hold certain positions or to engage in certain activities in the field of financial and economic relations by a legally binding judgment of the court is not allowed to conduct auditing services. The measures do not extend to criminals' associates. In case of audit companies, information regarding their BO is not subject of identification and verification from the Chamber of Audit.

483. The Licensing of Notaries is generally sound and undertaken by the Ministry of Justice of Azerbaijan. Most assessment criteria are based on the applicant's experience and qualifications to act as a notary, bankruptcy and whether a person has been removed from public office on disciplinary grounds. The integrity assessments are limited to criminal records checks on the individual, but do not extend to associates.

484. The lawyers who are registered in Azerbaijani Bar association have the right to represent their clients in Courts, which is their main activity. The accredited lawyers must be Azerbaijani nationals and are subject to a thorough scrutiny by the Bar. This scrutiny includes criminal record clearance, professional and good reputation records. The measures do not extend to criminals' associates. The lawyers outside the Bar are not subject to licencing/registration.

#### ***6.2.2. Supervisors' understanding and identification of ML/TF risks***

485. Overall, supervisors' identification and understanding of ML/TF varies, with a better understanding of the ML risks for banking sector supervised by the CBA and a still evolving understanding regarding other higher risk sectors licensed and supervised by the CBA, such as newly regulated non-banking sector representatives (e-money institutions, payment service agents, payment institutions, collective investments and VASPs). The risk understanding of the DNFBP supervisors derives mainly from newly adopted NRA, rather than ongoing sectorial risk assessment. In all cases, TF risk understanding appears to be less developed across all sectors.

#### *Financial institutions*

486. The CBA has a good understanding of the sectors that it supervises, and basic understanding of ML/TF risks connected with them. The CBA had initiated sectorial risk assessments, along with the work on the NRA, the outcomes of which represent one of the sources for the NRA itself. However, its understanding of risk may be limited by shortcomings identified under IO.1.

487. With the aim of understanding sectorial risks and as part of its supervisory planning, since 2021 the CBA has developed an off-site AML/CFT questionnaire of approximately 400 questions, which is used to obtain information on the activities of the FIs, design the risk matrix for the sectors and inform the on-site inspections. FIs submit extensive off-site questionnaires once a year, which enables the CBA to understand the type of business, clientele, etc. of the individual institutions. The off-site questionnaires are sector specific and consist of several categories of data – some quantitative and some qualitative.

488. Through these questionnaires, the CBA collects significant information which is a positive development in the design and application of a RBA in supervision. The quantitative data relate to the key groups of information (such as types of customers, operations, products/services, geographical area of conducted transactions), which is then automatically analysed and extracted into charts and graphs. Using this data, the residual risk level is evaluated based on the combination of the adequacy of AML/CFT internal control (based on a questionnaire) and inherent risk level (based on the statistical data of conducted transactions).

489. During risk assessment, CBA does not rely only on the FIs' responses but checks the adequacy and comparability of the provided responses with the profile and contextual factors and in case of mismatch require clarifications from the REs and modifies the data accordingly. The CBA's assessment is completed with information from other sources, like audit reports, onsite visit reports, prudential reports, media news, information from other state authorities, whistle-blowers etc.

490. Table 6.2 presents the risk assessment of the CBA for organizational risk assessment on a sub-sector level. More information on the use of the off-site assessments for the purposes of supervision planning is provided under section 3.2.3 below. The assessment methodology of organizational risks is based on certain high-level principles as well, pursuant to which based on the risk comparison table, FIs are classified by risk groups: (1) FIs classified as high-risk (less than 10%); (2) FIs classified as a medium risk (less than 30%); (3) FIs, classified as low-risk (more than 60%). The AT was advised that the percentages above are pre-set and cannot be changed in case more than 10% of the FIs in a certain sector would need to be rated a high risk due to resources limitations.

491. While the assessors understand this as a form of RBA which might bring some positive results in terms of gearing the resources towards to riskier entities, the pre-set percentages may lead to an artificial modification of risk levels to fall in the ranges. Another shortcoming of the approach is that it does not allow a proper quantification of the CBA's needs in terms of resources, by satisfying themselves with the existent ones rather than assessing organizational risks based on factual data. Results of such approach is visible in the chart below, as during the 2019-2022, in average, approximately 80% of banks are prescribed to be low risk.

**Table Error! No text of specified style in document..28:** Organisational Risk Assessment on a sub-sector level

Year	Risk level	Banks (and postal operator)	Insurance companies	Life insurance companies	Investment companies
2019	<b>Total</b>	<b>30</b>	<b>18</b>	-	<b>8</b>
	High	3	2	-	1
	Moderate	6	4	-	2
	Low	21	12	-	5
2020	<b>Total</b>	<b>26</b>	<b>19</b>	-	<b>10</b>
	High	3	2	-	1
	Moderate	5	4	-	2
	Low	18	13	-	7
2021	<b>Total</b>	<b>26</b>	<b>20</b>	-	<b>12</b>
	High	3	2	-	1
	Moderate	5	4	-	2
	Low	18	14	-	9
2022	<b>Total</b>	<b>25</b>	-	<b>5</b>	<b>13</b>
	High	3	-	1	1
	Moderate	5	-	1	3
	Low	17	-	3	9

492. From 2020 CBA started conducting sectorial risk assessments on methodologies inspired from international standards and samples of best practices. Risks are assessed in two main directions – threat and vulnerability, both of which are based on a specific methodology. The results of the assessments of each FI are compiled in a single risk assessment report and concentrates on sectorial risk identification.

493. Table 6.3 presents the risk assessment of the CBA for individual sectors. More information on the use of the off-site assessments for the purposes of supervision planning is provided under Section 3.2.3 below.

**Table Error! No text of specified style in document..29:** Risk rating of financial sub-sectors under the CBA supervision

FI Sectors	2019	2020	2021	2022
<b>Banking sector</b>	High	Medium	Medium	Medium

<b>Currency exchange offices</b>	N/A <sup>45</sup>	Low	Low	Low
<b>Investment firms</b>	Low	Low	Low	Low
<b>Persons providing financial lease services</b>	Low	Low	Low	Low
<b>Registrar and depository</b>	Low	Low	Low	Low
<b>Investment funds and managers of these funds</b>	Low	Low	Low	Low
<b>Insurance companies or intermediaries</b>	Low	Low	Low	Low
<b>Credit Unions</b>	Low	Low	Low	Low

#### *DNFBPs*

494. The STS informs its risk understanding of REs under its supervision by sending out AML/CFT specific self-assessment questionnaire annually. The questionnaire is sector specific for persons providing legal advice services, persons providing accounting and tax advisory services. The STS understanding of ML/TF risk in their sector is moderate.

495. The MoJ and Chamber of Auditors consider the ML/TF risks connected with the sectors under their supervision as low, mainly based on the assumption that, if sufficient mitigating measures are put in place by the FI, this fully remedies possible risks. Their assessment of risk also considers elements other than ML/TF, *e.g.* the Chamber of Auditors is focussed on the quality of audit opinions. This approach to understanding risks is insufficient as no consideration is given to possible differences in ML/TF risks between the individual institutions. On a positive note, the deficiencies identified in relation to the ML/TF risk understanding are attenuated by the fact that the two supervisors know very well the industry and its players and would be able to react in certain cases where the risks would be aggravated.

496. Bar Association has good understanding of risks derived from the sector representatives (lawyers) and the services they provide. They are able to articulate the activities that would fall under the FATF preventive measures and those who would not. They also differentiate degrees of vulnerabilities between Bar lawyers and non-Bar lawyers and are able to identify the participation in the company formation and real estate related activities as the riskiest ones.

### ***6.2.3. Risk-based supervision of compliance with AML/CFT requirements***

#### *Financial institutions*

##### *CBAs supervisory planning*

497. The CBA has a dedicated AML/CFT Supervision Department (Financial Monitoring Department), which, at the time of the on-site visit, consisted of 14 staff. It is further divided into three divisions: Analysis, methodology and off-site; On-site of banks and Post offices; and On-site of non-bank financial institutions. The Methodology and off-site division has 3 employees and undertakes individual and thematic analysis of available information. It is also in charge of

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<sup>45</sup> Currency exchange offices were not operating in 2019.



communication with supervised sectors and awareness raising and training activities. Its staff members participate on an ad-hoc basis in on-site inspections.

498. The duties and responsibilities of the Analysis, Methodology and off-site division are disproportionate to the resources it has, especially given the number of financial institutions subject to CBAs regulation. Considering the volume of risk assessment questionnaires (approximate 400 questions) and the fact that the analysis of the replies is done manually, questions are raised regarding the capacity of the CBAs off-site division to perform its functions in an efficient and timely manner.

499. In the on-site supervision divisions, inspectors are assigned to specific inspections based on the Annual Supervision Plan.

500. To guide the inspection process, the CBA uses the regulations adopted by the previous supervisor (FSMA) for banking and securities sector. The CBA has no inspection procedure for other non-banking financial institutions which makes the process subjective and inconsistent. High-level principles for the planning and undertaking of onsite inspection (for further information, please refer to the analysis under R. 26) are not formalized.

501. To plan its supervisory activities, the CBA first assesses the risks connected to individual Fis, as described above in section 6.2.2. This leads to a risk level being attributed to each FI followed by a supervision strategy. The supervision strategy sets specific objectives that are planned to achieve the following year. Based on the supervision strategy an inspection plan is drawn up, considering the following periodicity of inspections – (1) for high-risk Fis – not more than once a year; (2) for medium-risk FIs – not more than once in two years; (3) for low-risk group Fis – not more than once in three years.

502. The assessors are of the opinion that this system results from a lack of resources and hinders the use of a fully risk-based approach, as it excludes for example inspections organised when specific events might take place in the course of a year, with impact on the risk level of Fis. No information has been provided to the AT on a number of cases where the CBA initiated ad hoc inspections (e.g. based on information received from third parties or other units of the CBA or following a notification from the FIU).

#### *CBAs on-site inspections*

503. The CBAs onsite inspection division for banking and post office and division for non-banking financial institutions consists of 6 and 5 persons respectively. Given the context and risks of financial institutions in Azerbaijan, on-site supervisory resources seems to be inadequate, as complex on-site inspections of important financial institutions are conducted by 2-3 assessors for approximately 2-3 weeks, which in AT's opinion limits the supervisors' ability to study all the essential areas in depth. Deficiencies have been identified in several directions, mostly with regards to assessing compliance in the area of BO identification and verification (especially of legal persons with complex structures), PEPs identification<sup>46</sup>, and suspicious transaction monitoring. Inconsistencies were identified with regards to the enforcement of onsite action plan

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<sup>46</sup> Excerpt from an on-site supervision report: "A number of cases in the field of the legalization of funds or assets obtained through criminal means and the financing of terrorism (AML/CFT) some requirements were violated such as failure to identify beneficial owners, failure to determine whether they belong to a foreign political figure (PEP), failure to terminate business relations with clients whose beneficial owners have not been identified, enhanced due diligence measures related to high-risk clients a, such as failure to conduct, failure to update identification information, etc."

in practice. The assessors note that the actual number of on-site inspections does not correspond to the targets set by the CBA (see Table 6.4).

504. During 2017-2020, on-site inspections of Fis were mostly carried out on an ad hoc basis and targeted mostly to the banking sector. This situation changed since 2021 when a risk matrix has been created for informing the CBA supervision, and now constitutes the basis of the programme of on-site inspections. Since 2021, the onsite inspections are planned on a yearly basis considering the outcomes of an off-site questionnaires (submitted by the REs twice a year as explained above). When deciding on the supervisory measures and intensity of onsite inspection for the REs within the sector, the CBA takes into consideration the ML/TF risk scoring of an individual entity. This allows for resources to focus on the higher risk bearing REs.

505. Pursuant to the on-site inspection manual for banking and securities sector, there are two types of inspection – (1) comprehensive (complex) inspection – covering all areas of institution’s activities to assess the general condition, including the components of capital, assets, management, income, liquidity and risk sensitivity, as well as to determine the compliance of its activities with banking legislation; and (2) Targeted (thematic) inspection – an examination of specific segments or types of the institution’s activity. AML/CFT specific aspects that are needed to be generally covered through these types of on-site inspections are not formalized for all categories of REs.

506. On-site supervision manuals of the CBA are not sector-specific and specify main data categories (types of transactions, internal control documents, data on reporting to the FIU and etc.) that are required to be collected from the REs during the on-site visit. Complex inspections in banks and post offices would generally cover at least the following aspects: (a) practical implementation of obligations (cash operations and wire transfers, suspicious transactions, BO identification process, measures related to PEPs, etc.); (b) policies and procedures (CDD, transaction monitoring, correspondent relationships, identification of suspicious transactions, internal organisation, etc.); (c) IT systems; (d) training; © AML/CFT compliance unit (resources, position of the MLRO, their awareness level and independence, etc.).

507. Before an on-site inspection the FIU provides the CBA with feedback (in particular with regard to compliance with reporting obligations). Within the inspection, internal policies and rules are reviewed and a sample of files selected and checked. The sample is chosen based on analysis of off-site reporting and focusses on possible areas of higher risk.

**Table Error! No text of specified style in document..30: Number of on-site inspections carried out by the CBA**

<b>FINANCIAL SECTOR</b>	<b>Types of information</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
<b>Banks</b>	Number of entities	30	30	30	26	26	25
	On-site visits conducted	3	30	-	-	8	6
	AML/CFT specific ad hoc on-site	-	24	-	-	-	1

	AML/CFT combined with general supervision on-site visit	3	6	-	-	8	5
<b>Securities firms</b>	Number of entities	6	7	8	10	12	13
	On-site visits conducted	-	-	1	-	8	6
	AML/CFT specific ad hoc on-site	-	-	-	-	-	-
	AML/CFT combined with general supervision on-site visit	-	-	1	-	8	6
<b>Collective investment schemes</b>	Number of entities	2	2	2	2	2	2
	On-site visits conducted	-	-	-	-	-	-
	AML/CFT specific ad hoc on-site	-	-	-	-	-	-
	AML/CFT combined with general supervision on-site visit	-	-	-	-	-	-
<b>Life insurance companies</b>	Number of entities	3	3	4	4	5	5
	On-site visits conducted	-	1	-	-	-	1
	AML/CFT specific ad hoc on-site	-	-	-	-	-	-
	AML/CFT combined with general supervision on-site visit	-	-	-	-	-	1
<b>Life insurance intermediaries</b>	Number of entities	68	71	79	80	85	87
	On-site visits conducted	-	7	1	-	1	2
	AML/CFT specific ad hoc on-site	-	-	1	-	-	-
	AML/CFT combined with general supervision on-site visit	-	-	-	-	1	2
<b>Exchange offices</b>	Number of entities	-	-	-	1	2	5
	On-site visits conducted	-	-	-	-	-	-
	AML/CFT specific ad hoc on-site	-	-	-	-	-	-

	AML/CFT combined with general supervision on-site visit	-	-	-	-	-	-
<b>Non-bank credit institutions</b>	Number of entities	45	46	48	49	56	55
	On-site visits conducted	17	13	-	-	1	4
	AML/CFT specific ad hoc on-site	-	-	-	-	-	-
	AML/CFT combined with general supervision on-site visit	17	13	-	-	1	4
<b>Post Office</b>	Number of entities	1	1	1	1	1	1
	On-site visits conducted	-	1	-	-	-	1
	AML/CFT specific ad hoc on-site	-	1	-	-	-	-
	AML/CFT combined with general supervision on-site visit	-	-	-	-	-	1
<b>Non-life Insurance</b>	Number of entities	14	14	14	15	15	-
	On-site visits conducted	-	9	-	-	3	-
	AML/CFT specific ad hoc on-site	-	-	-	-	-	-
	AML/CFT combined with general supervision on-site visit	-	9	-	-	3	-
<b>Re-insurance companies</b>	Number of entities	1	1	1	-	1	1
	On-site visits conducted	-	-	-	-	1	-
	AML/CFT specific ad hoc on-site	-	-	-	-	-	-
	AML/CFT combined with general supervision on-site visit	-	-	-	-	1	-

508. The figures in Table 6.4 shows that during 2017 to 2018 the CBAs' inspection plan for banking sector concentrated more on covering larger number (despite the limited resources available) of entities (in 2018 24 banks out of 30), rather than informing its supervisory actions with the risk-based approach. From 2019 to 2020 the onsite inspections were non-existent due to the effect of transitory period of supervisory rearrangement. Only in period of 2021-2022 it can be considered that the CBA comparatively informed its supervisory plan with risk-based

approach, although it is also visible that the supervisory actions need further improvement in order to fully meet the supervisory action plan in practice.

509. According to the outcomes of the on-site inspections in the banking sector, a number of deficiencies were identified, more systemic in nature being: (a) verification of customers' beneficial owners'; (b) a lack of internal procedures and breaches of AML/CFT training obligations, (c) lack of AML/CFT specific awareness among MLROs; and etc.

#### *DNFBPs*

510. Chamber of Auditors does not apply AML/CFT specific risk-based approach to audit companies and auditors under its supervision, but concentrates on supervising general activity. Same form of risk-based approach is utilized by the Bar association for lawyers and Ministry of Justice for notaries.

511. As for the persons under the STS supervision, annually, based on the information obtained from online questionnaires and outcomes processed, it is decided which organization is put under high-risk category and therefore assigned to an on-site inspection. AML/CFT specific aspects are covered by a complex type of inspection. During the on-site inspections, STS mostly concentrates on assessment of internal policies and rarely covers subjects like preventive measures undertaken or reporting obligations. Even though in general the STS is well resourced, employees who have a good understanding of the AML/CFT matters are few.

**Table Error! No text of specified style in document..31:** Number of on-site inspections carried out in DNFBP sector

<b>DNFBPs</b>	<b>Type of information</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
<b>Notaries</b>	Number of entities	153	159	156	158	166	157
	On-site visits conducted	38	44	42	5	15	46
	AML/CFT specific on-site	-	-	-	-	-	-
	AML/CFT combined with general supervision on-site visit	38	44	42	5	15	46
<b>Accounting and tax consultancy</b>	Number of entities	1,250	1,463	1,706	1,900	2,242	2,613
	On-site visits conducted	-	-	28	4	14	8
	AML/CFT specific on-site	-	-	14	2	7	4
	AML/CFT combined with general supervision on-site visit	-	-	14	2	7	4
<b>Legal services</b>	Number of entities	1,565	1,677	1,794	1,901	2,156	2,385
	On-site visits conducted	8	2	40	-	2	-
	AML/CFT specific on-site	4	1	20	-	1	-

	AML/CFT combined with general supervision on-site visit	4	1	20	-	1	-
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#### 6.2.4. Remedial actions and effective, proportionate, and dissuasive sanctions

##### Financial institutions

512. Deficiencies identified in technical part (Recommendation 35) significantly impacts the effectiveness of the sanctioning regime, as multi-pronged range of sanctions with respect to the severity of the violations are not available. As stated in the TC annex, the CBA can apply monetary fines only in specific circumstances which significantly impact effectiveness. The system of fining for individual breaches appears to put more burden on the CBA, which has to count individual breaches even in the case of a systematic problem in the institution. With that, even the restricted monetary sanctioning framework is not used adequately and effectively by the CBA, as in practice it applied monetary fines only to natural persons (MLROs and managers of the FIs) and never imposed corporate sanctions to the FIs even in cases of recurrent or systematic breaches. Such a sanctioning regime cannot be considered as effective, proportionate and dissuasive, although the CBA does not believe that the sanctioning system presents difficulties.

513. When identifies breaches, the CBA utilizes only a small scope of remedial measures, which are not proportionate and dissuasive in nature. Principally, the CBA tries to enhance compliance and understanding of supervised FIs with their AML/CFT obligations only by prescribing them recommended actions. In practically all of the cases inspections would be followed by a designated action plan containing issues which have to be remedied, together with a timeline (this action plan is proposed by the institution and approved by the CBA). Some of the action plans included the notification that in case the deficiencies will not be remedied in time, sanctions will be imposed. It has not been demonstrated from the CBA that it duly follows up on compliance with the agreed action plans.

514. From the types of breaches identified in the sector during the 2018-2022 (see Table 6.6), it is evident that these breaches are systemic in nature and relates with violation of important requirements.

**Table Error! No text of specified style in document..32:** Financial sanctions applied for breaches identified in case of banks

Year	Number of sanctions	Types of Breaches	Type of Sanction	Total amount
2018	30	1. Violation of CDD requirements (including BO identification) 2. Violation of reporting and suspending suspicious transactions requirement	Finning employees: - 15 Heads of Compliance/Risk departments/divisions; - 8 AML/CFT specialists; - 7 were Board members (CEO, CRO, etc.)	45`000 AZN/~ USD 26.500

2019	5	Failure to implement directives/decisions of the CBA	Fining of employees: -1 was Head of the IT department -1 was Head of Compliance - 2 were CEOs -1 was Deputy CEO	5`000 AZN/~USD 3000
2020	0	-	-	-
2021	1	Violation of reporting and suspending suspicious transactions requirement	Fining the AML/CFT compliance officer (Deputy of CEO) of 1 bank	10`000 AZN/~USD 5,800
2022	2	Failure to establish an effective AML/CFT program	Fining of AML/CFT compliance officers of 2 banks	3`000 AZN (1764.7USD)

515. The discretion of the CBA to choose how many files it will take into consideration in an on-site examination causes additional questions. The CBA did not provide rationale behind sampling the data for examination and consistency with regards to materiality of the assessed RE.

516. As for non-banking financial institutions, there are number of sub-sectors REs which have never been inspected, such as exchange offices, leasing companies, MVTs, REs issuing or managing means of payment, REs engaged in collective investment schemes, although pursuant to the results of NRA, a number of risks are identified in the products and services these institutions provide.

#### *DNFBPs*

517. In the DNFBPs sector only STS had applied financial sanctions as a result of on-site inspection with amounts significantly higher than those applied in the banking sector. Nevertheless, since the realtors were “de facto” outside of the supervisory regime, the sanctions cannot be considered as commensurate with the country risk. The dissuasiveness of the supervisory measures used with regards to the persons providing legal advice and tax and accounting services has not been fully demonstrated, with 8 legal services and 5 accounting and tax consultancy firms fined in 2019 (see Table 6.7 below). In addition, since the statistical data provided does not differentiate the percentage (or the number) of the sanctions applied for the AML/CFT specific breaches, it is difficult to assess effectiveness, dissuasiveness and proportionality even when sanctions have been applied.

**Table Error! No text of specified style in document..33: Supervision DNFBPs**

DNFBPs	Types of information	2017	2018	2019	2020	2021	2022
Notaries	Number of entities	153	159	156	158	166	157
	On-site visits conducted	38	44	42	5	15	46
	AML/CFT specific on-site	-	-	-	-	-	-

	AML/CFT combined with general supervision on-site visit	38	44	42	5	15	46
	Sanctions applied (EURO)						58 705
<b>Accounting and tax consultancy</b>	Number of entities	1,250	1,463	1,706	1,900	2,242	2,613
	On-site visits conducted	-	-	28	4	14	8
	AML/CFT specific on-site	-	-	14	2	7	4
	AML/CFT combined with general supervision on-site visit	-	-	14	2	7	4
	Sanctions applied (EURO)			2 642			
<b>Legal services</b>	Number of entities	1,565	1,677	1,794	1,901	2,156	2,385
	On-site visits conducted	8	2	40	-	2	-
	AML/CFT specific on-site	4	1	20	-	1	-
	AML/CFT combined with general supervision on-site visit	4	1	20	-	1	-
	Sanctions applied (EURO)			2 862			

518. No other supervisors have applied sanctions for breaches of AML/CFT obligations which is mainly due to the lack of effective supervision and technical impediments to their sanctioning powers (as described in R.28 and R.35).

#### *6.2.5. Impact of supervisory actions on compliance*

519. The level of understanding of risks and level of compliance with AML/CFT obligations of obliged entities is linked to the level of supervision applied by the respective supervisor, with the banking sector being by far the most advanced in the area (see also IO.4).

##### *Financial institutions*

520. The CBA has basic communication with its supervised population and promotes understanding of AML/CFT risks and obligations, but in the absence of sanctions, the FIs implement the AML/CFT obligations more based on group requirements or voluntary compliance rather than pressure from the supervisor. Although the remedial measures and follow-up actions sometimes result in an increased compliance, overall, the inspections continue to identify the same types of breaches. An increased understanding of risks following supervision can mainly be observed in banking sector and in case of lawyers.

521. The FMS reported an increase in the quality of the STR in the recent years, although their use for the LEA's work remains an area for concern (see IO.6). The FIs made positive comments to the assessment team about the CBA's approach to supervision which has improved significantly in recent years.

522. Still, CBA did not confirm that it has seen a significant improvement in FIs compliance in the period under review as a result of its efforts which materialised mostly in the form of action plans, remedial measures, guidance, interpretative materials and significant awareness raising efforts. The main type of breaches identified in the course of the on-site visits remain static in the last 5-6 years with basic deficiencies such as inappropriate internal rules remaining an area for



concern. CBA failed to use significant information from the supervised entities such as instances where the business relationship was refused or terminated for BO identification reasons (see IO.5).

523. The table below presents statistics on the number of customers with whom business relationships were terminated or suspended for various reasons, including the incomplete or un-updated CDD measures and not being able to identify BO during 2017-2021, by banks. The statistics below were not used by the CBA for strategic purposes.

**Table Error! No text of specified style in document..34:** Number of customers whom business relationship was terminated

2017	2018	2019	2020	2021
37 539	28 624	69 204	37 463	54 956

*DNFBPs*

524. The STS, Bar association, MOJ and Chamber of Auditors actively communicates with its supervised population and promotes understanding of profession-specific issues, rather than concentrating on AML/CFT risks and obligations. Supervisors have not confirmed that their remedial measures and follow-up actions always result in an increased compliance of the supervised entity, though inspections continue to identify some breaches.

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

525. Overall, there is a basic level of cooperation between supervisors and the FIU, as well as between REs and their respective supervisors and the FIU.

*Financial institutions*

526. The CBA is involved in a number of outreach initiatives, some of which it undertakes jointly with the FIU. It has published a number of guidance documents, distributes official documents (e.g. legislation, NRA, sanctions lists) and provides general recommendations or warnings, such as with regard to the risks connected to high risk bearing activities, products and services etc.

527. The CBA also periodically arranges discussions of AML/CFT issues at the Azerbaijan Banks Association, initiates the adoption of Recommendations by that Association and conducts trainings for all the FIs.

528. FIs met were moderately aware of the outreach activities undertaken by the CBA. Given the challenges of the CBA’s activities in promoting a high level of understanding of risks and obligations and the apparent maturity of the majority of its supervised population, it will be beneficial in the up-coming stage for the CBA to refocus on enhancing the general understanding of risks and give “ownership” and relevant knowledge to REs of their own assessment of risks going beyond the CBA guidance.

*DNFBPs*

529. The STS conducts continuous training for employees to implement AML/CFT supervision. STS has a separate structural unit responsible for training staff - the Training Centre. Staff are regularly trained on topics related to the fight against corruption, and as part of cooperation with international and regional organizations in the field of anti-corruption, participated in several

international programs, seminars and exercises in the framework of interaction with international and regional organizations in the field of combating corruption.

530. The STS concentrates more on training employees, rather than REs (no information has been provided regarding the number, subject of trainings and REs covered). The STS prepared a training program for the personnel involved in inspections in the area of AML/CFT, a training strategy for REs in the area of AML/CFT, and an action plan for the implementation of the strategy. Within the framework of this program and strategy, the STS organized the following trainings on AML/CFT: (1) Online training on “Conducting on-site tax inspections in the area of combating the laundering of money or other property obtained criminally and the financing of terrorism” in 2016 (77 employees were involved); (2) Training on “Combating the laundering of money or other property obtained criminally and the financing of terrorism - AML/CFT” in 2016 (81 employees were involved); (3) Training on “Forms of supervision by tax authorities on the application of the law on the fight against the laundering of money or other property obtained criminally and the financing of terrorism”, in 2017 (21 employees were involved); (4) Training for trainers on “Fighting against the laundering of money or other property obtained criminally and the financing of terrorism” in 2019 for employees of tax authorities working in the area of a tax audit (31 employees were involved); Training on “Fighting against the laundering of money or other property obtained criminally and the financing of terrorism” on in 2019 for employees operating in the relevant area and related structures and participating in the risk assessment process.

531. The Chamber of Auditors conducts basic training to ensure the level of awareness of AML risks of its employees. Auditors and employees working in the Chamber of Auditors are involved in training every year. The Chamber of Auditors has an AML/CFT training strategy and curriculum.

532. Bar association and MoJ has not provided statistical data regarding the trainings conducted, persons trained and impact caused as a result.

### ***Overall conclusions on IO.3***

533. The CBA applies basic “*fit and proper*” entry checks for financial institutions. The overall effectiveness of its supervisory regime is impacted by limited resources and repeated changes in supervisory arrangements. The CBA could not demonstrate full effectiveness of its supervisory actions for the entire period under review. The RBA in supervision in a nascent form with more positive results noted in case of banks. Limitations are noted on the STS supervised DNFBPs as they do not cover information on criminal background of real estate agents, persons providing legal advice services, persons providing accounting and tax advisory services. Limited sanctions have been imposed on FIs and DNFBPs in recent years, which is largely due to technical shortcomings. Pecuniary sanctions applied are not consistent with the severity of the breaches and the associated risks. The CBA demonstrated a certain level of outreach of AML/CFT obligations for the FIs, while the DNFBPs supervisors provide more limited guidance and trainings to the REs. **Azerbaijan is rated as having a Low level of effectiveness for IO.3.**

## 7. LEGAL PERSONS AND ARRANGEMENTS

### 7.1. Key Findings and Recommended Actions

#### **Key Findings**

##### **Immediate Outcome 5**

- a) Detailed information on the ways of creating the various types of companies is publicly available in Azerbaijan. Due to the ease of founding a legal person, most register directly with the registrar of companies, without using specialised services. The overwhelming majority of the legal persons are registered as limited liability companies (LLCs). No legal arrangements are recognised.
- b) The authorities' understanding of risk is mostly based on the NRA which includes a dedicated section on legal persons. The LLCs are the most vulnerable type of legal persons as frequently present in some ML typologies. The assessment does not go beyond this by *ia* identifying the business sectors at greatest risk or analyzing the vulnerabilities of other types of legal persons.
- c) Beyond the NRA, the STS' understanding of risk is enhanced by their own data, which gives them visibility on a series of relevant information such as the number of companies with foreign ownership, companies owned by natural persons, dormant companies, suspended companies, and companies without bank accounts. This data was not used and analysed in an integrated manner to generate a more comprehensive understanding of ML/TF risk related to legal persons at the national level.
- d) Azerbaijan implements certain measures to prevent the use of legal persons and arrangements for ML/TF purposes, such as the registration and authorisation system. If changes occur during the lifetime of a company, a new application must be submitted, but there is no obligation for the company to regularly up-date their data in the registry. Although the STS risk management system is more targeted towards the risk of tax evasion, certain elements are relevant for AML/CFT purposes.
- e) Azerbaijan does not have a BO Register and there is no requirement for the legal entities themselves to gather and retain their BOs information. According to the statistics in practice, most of the legal owners and managers (shareholders/managers) are individuals.
- f) The authorities have easy access to basic information kept by the STS, which is generally accurate and up-dated. To obtain BO information the authorities have three avenues at their disposal: i) the REs, mainly the banks for all legal persons; ii) the FMS for foreign legal persons; iii) to the company itself in case of JSCs. The quality of BO information is impacted by deficiencies identified at the REs level.
- g) The STS did impose fines for late submission of the required information. While this is a positive step in enhancing the quality, accuracy and actuality of basic information, this remains limited to the taxpayers subject to inspections. The sanctions are not fully proportionate and dissuasive, but appear to have a positive impact on the level of compliance with the registration requirements. No other initiatives were reported such as random verifications or periodic monitoring of the registered companies.

## ***Recommended Actions***

### ***Immediate Outcome 5***

- a) The authorities should extend efforts to comprehensively identify, assess and understand the risks related with legal persons by enriching its analysis with information available at STS and LEA and include risk factors associated with legal persons, such as: (i) use of fictitious ownership, (ii) geographical risks (origin of members/shareholders and BO), and (iii) field of activity.
- b) The STS should enhance their knowledge on AML/CFT risks and take more proactive measures to ensure the accuracy of the company register, including by: i) performing a vulnerability assessment on the population of registered commercial companies, ii) random checks to identify shell companies, companies with nominee (straw men) shareholders and managers, and iii) applying effective remedial measures.
- c) The STS should perform verifications on the accuracy of the basic data provided on the companies and their shareholders to ensure they are current and reliable.
- d) The authorities should strengthen the measures that mitigate the ML/TF risks associated with legal persons by obliging them to use the services of an FI, or a DNFBP.
- e) The authorities should review the system and implement measures to ensure that adequate, accurate and current BO information will always be available to the competent authorities on a timely basis, including on companies that do not bank in Azerbaijan.
- f) The authorities should apply effective, dissuasive and proportionate sanctions against persons who do not comply with the information requirements.

534. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The Recommendations relevant for the assessment of effectiveness under this section are R R.24-25, and elements of R.1, 10, 37 and 40.<sup>47</sup>

## **7.2. Immediate Outcome 5 (Legal Persons and arrangements)**

535. Pursuant to the World Bank study<sup>48</sup> Azerbaijan ranks 9<sup>th</sup> in the world in the “Ease of doing business”. Setting up a legal entity in Azerbaijan is straightforward. All legal entities should be registered in the company registry maintained by the STS. The registration of a legal entity is undertaken within 1-2 business days and can be done through online or desk-based means. The registration fee for a LLC is only 15 AZN (8 EUR), as for representative offices and branches of foreign legal entities, it is 300 AZN (165 EUR). Azerbaijan is not a company formation centre.

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<sup>47</sup> The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum’s respective methodologies, objectives and scope of the standards.

<sup>48</sup> <https://subnational.doingbusiness.org/content/dam/doingBusiness/country/a/azerbaijan/AZE.pdf>

536. The registration application does not have to be notarised and professionals such as lawyers, accountants and other CSPs do not have to take part in the process of establishment and registration of a legal entity, which is fairly easy. Most legal persons are registered as LLCs, which at the beginning of 2023 accounted for 95,3% of total number of commercial legal entities and 84% of the overall turnover as declared to the STS. According to the authorities, bearer shares have never been issued in Azerbaijan.

537. Whilst the analysis below assesses the transparency of all types of legal person available in Azerbaijan, its main focus is on LLCs, as this type of legal person is most prevalent in terms of numbers registered and used in the ML cases within the country.

**Table Error! No text of specified style in document..35: Number of legal persons\* in Azerbaijan**

<b>Types of legal persons</b>	<b>Number</b>
<b>Commercial legal persons:</b>	<b>161 115</b>
• <b>Limited liability company</b>	153 601
• <b>Subsidiary liability company</b>	48
• <b>Open joint stock company</b>	1 493
• <b>Closed joint stock company</b>	693
• <b>Partnership (general and limited partnership)</b>	467
• <b>Cooperatives</b>	1 832
• <b>Branches and representatives of foreign commercial legal persons</b>	2 981
<b>Non-commercial legal persons:</b>	<b>4420</b>
• <b>Non-governmental organizations (NGOs)</b>	3680
– <b>Public unions</b>	3467
– <b>Foundations</b>	213
• <b>Religious organizations</b>	622
• <b>Branches and representatives of foreign NGOs</b>	118
<b>Public legal persons</b>	<b>386</b>

\* Despite that state and local governmental authorities (municipalities) are not considered legal entities, according to Articles 43.3 and 43.4 of the Civil Code of the Republic of Azerbaijan they act in civil relations (matters) as legal entities. The number of registered entities which act as legal and not covered by Table 7.1 is of 7 426.

### ***7.2.1. Public availability of information on the creation and types of legal persons and arrangements***

538. The types of legal persons which may be established in Azerbaijan are set out in the Civil Code, which contains the full procedures for the establishment of such legal persons, with more

detailed information being set out in the Law on the State Registration and State Registry of Legal Persons and on the STS website. On its website, the STS publishes a summary of functions of the different types of legal persons, as well as basic information regarding the documents which must be provided upon registration. The STS also has on its website a section for frequently asked questions, which tackles some basic areas. All the necessary information for the establishment of a legal person in Azerbaijan is publicly available including guidance when it comes to on-line registration. The STS website contains information on the steps to be taken before starting a business, such as choosing the area of activity based on the classification of economic activities, considering whether it is an area of activity subject to special requirements (e.g. activity licence or submission of a notice to competent authorities).

539. Applications for the registration of legal entities is submitted to relevant authorities: Ministry of Justice in relation to non-commercial institutions and the STS in relation to commercial institutions and public legal entities. Information on whether a legal person has or has not received state registration is available upon request. Access to the certain basic information regarding a legal entity is publicly available without any fee.

540. Trusts cannot be established under the law of Azerbaijan. Whilst residents of Azerbaijan could be operating as trustees for foreign trusts, based on the knowledge of the authorities and private sector, there are no trusts using services of FIs in Azerbaijan. The AT could not find any element challenging this conclusion.

### ***7.2.2. Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities***

541. The authorities have a moderate understanding of ML risk based on the conclusions of the NRA which includes a section dedicated to the possible misuse of legal persons. The analysis contains an overview of relevant legislation, types of legal persons that can be incorporated in Azerbaijan, and numbers of legal persons established. The NRA outlines that in most of the investigated and prosecuted ML cases, legal persons were misused in the laundering schemes (in particular LLCs) and the main typologies are as follows: (a) in the name of same persons different legal entities are established, which participate in complex schemes of transactions; (b) legal entities are established in the name of different persons at the same or similar address and these legal entities are used for the same purpose; (c) turnovers of legal entities fluctuates sharply during a short period of time; (d) a company is established in a person's name without his full knowledge, transactions are conducted through that company and the company incurs a long-term tax debt. This information has not led to any further conclusions about vulnerabilities in the system.

542. The analysis conducted by the authorities in the NRA has enabled them to identify and assess the ML vulnerability of the LLCs as the most prominent and present some typologies but does not go beyond this by *i.a* identifying the business sectors at greatest risk or analysing the vulnerabilities of other types of legal persons.

543. The NRA does not systemically consider the extent to which some of the features of the Azerbaijan system, e.g. use of service points, on-line registration, existence of tax-exempt companies (special trade companies, international trading companies and free zone companies), availability of corporate directors, use of shell companies, use of “front persons” or “straw men” and absence of a requirement for minimum share capital, may create vulnerabilities. Whilst the

NRA report does mention some of these features, it merely describes them without analysing their impact and consequences.

**Table Error! No text of specified style in document.36:** Dormant/inactive companies in the total population of commercial entities

<b>Legal entities</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
<b>Commercial legal entities</b>	83 363	109 893	125 407	134 368	145 785	161 115
<b>Dormant legal entities (without any activity declared)</b>	3 834	4 212	6 198	7 152	6 169	6 326
<b>% of dormant companies</b>	4,6%	3,8%	4,9%	5,3%	4,2%	3,9%
<b>Suspended legal entities</b>	34 989	39 747	45 305	51 393	54 580	68 450

544. Beyond the NRA, the STS' understanding of risk is enhanced by their own data, which gives them visibility on a series of relevant information such as the number of companies with foreign ownership, companies owned by natural persons, dormant companies, suspended companies, and companies without bank accounts (see Tables 7.2 and 7.5). The results of the tax inspections carried out by the enforcement arm of the STS are also feeding into the overall understanding of risk. Nevertheless, the above data are not used and analysed in an integrated manner to generate a more comprehensive understanding of risk at the national level.

545. Foreign ownership is marginal in limited and general partnerships and mostly represented by natural persons. As of the end of 2020, 14,923 (11%) legal entities have a non-resident person as a direct founder. Of these, 10,683 are non-resident individuals and 4,228 are non-resident legal entities. 133 founders of legal entities (founded by non-residents) are based in offshore zones where tax benefits are available.

546. Between the different types of legal persons, only LLCs are considered by the authorities as presenting a higher risk, whilst other types of legal persons are considered to present a low risk (based on a comparison with LLCs, which feature more frequently in STRs and ML cases, and their materiality). Whilst this appears justified, a further analysis of the other types of legal persons could be beneficial, based on their economic indicators and on the risks, seeing that in practice there has been a case where a JSC was involved in a ML scheme.

547. Although of less importance due to the country profile, sufficient consideration has not been given to the minimal use that is made of gatekeepers for establishment of legal persons and whether vulnerabilities may arise therein. Also, the NRA report does not consider the extent to which professionals acting as company service providers administer legal persons and, possibly, foreign trusts in Azerbaijan. While Azerbaijan is not a company formation jurisdiction and the above conclusion seems reasonable, there is very little objective and verifiable data gathered to support it.

### 7.2.3. Mitigating measures to prevent the misuse of legal persons and arrangements

548. Azerbaijan implements certain measures to prevent the use of legal persons and arrangements for ML/TF purposes. One of the key measures is the company registration in STS and authorisation system, i.e. the obligation to have the authorisation to carry on a business in the form of a company and the requirement to update the company information regularly. This system ensures that there is basic control of market entry for most commercial companies and their directors, members and managers which in practice is translated in the verification of the veracity of the ID documents of shareholders and managers. No other verifications are made on the occasion of registration. If changes occur during the lifetime of companies (registered office, managers, members, etc.), a new application for authorisation must be submitted to the STS, which commences a new process. There is no obligation for the companies to regularly up-date their data in the registry (e.g. once every a number of years).

549. Commercial legal entities are registered with the state registration body of legal persons on the basis of the one-shop principle. State registration can be done by approaching the registration authority or online. The registration takes 1-2 working days. An enhanced electronic signature is required for electronic registration. In the period 2017-2022, 55 370 LLCs were registered electronically.

550. The authorities advised that applications for authorisation/registration are refused if there is a lack of economic purpose or incomplete application, with an average 24% of the requests being refused. The usual reasons for refusal are related to incorrect or incomplete information provided by persons who do not have experience with the incorporation procedures. There is no information on the existence of refusals for lack of fitness and propriety.

**Table Error! No text of specified style in document..37: Number of incorporations and refusals**

	2017	2018	2019	2020	2021	2022
<b>Incorporation process</b>						
<b>Number of incorporation requests</b>	13 357	14 965	19 779	13 685	16 687	22 049
<b>Total number of refusals at incorporation:</b>	2 068	3 038	3 891	4 455	5 021	6 254
<b>for incomplete application / uniqueness of name</b>	2 065	3 038	3 676	3 944	4 852	6 175
<b>for risk indicators</b>	3	0	215	511	169	79
<b>% of refusals at incorporation</b>	15,5%	20,3%	19,7%	32,6%	30,1%	28,4%
<b>Up-dates (Change) of information</b>						
<b>Number of up-dates (changes) requests</b>	14 792	15 208	22 917	34 716	26 236	24 616
<b>Number of refusals:</b>	251	269	446	1 444	896	595
<b>% of refusals</b>	1,7%	1,7%	1,9%	4,1%	3,4%	2,4%



551. As described above, the STS has a certain visibility over the legal entities registered, their level of risk and their features. With the aim of managing risk and addressing outlined typologies the STS identified "Criteria for risky taxpayers, including risky operations" which are used since 2020.

552. The risk criteria fed into a risk management system, which is more targeted towards the risk of tax evasion and include items such: over invoicing, false invoices, discrepancies in business indicators etc. One criterion particularly relevant for ML preventive measures is the fact that an individual owns/manages more than 5 commercial companies. Risky taxpayers are the subject of tax controls and they are not allowed to participate in state procurements. In practice, one single criterion is sufficient to consider the company as high risk.

553. The legal entities identified as high risk are registered in the risk module of AVIS (Automated Tax Information System) and covered by various types of tax control measures (onsite and extraordinary inspections, supervision, monitoring, etc.). If, as a result of the inspections, it is proven that the persons are risky, this information is reflected in a database. The authorities advised that in January 2023, around 5-6% of the total population of registered companies were categorized as high risk. Out of that population, all entities have been inspected and all of them do have bank accounts.

554. Following inspections, the STS identified instances where the company data including the identity of managers/shareholders was not dully up-dated. As a result, the companies were notified and urged to file updates to the Registrar. Fines were imposed in case of late submissions (see Table 7.7 below).

555. The risk mitigation measures described above, especially when it comes to tax inspections, are largely based on law enforcement type of action. The authorities made little use the results of the risk assessment tool and the subsequent inspections to draw strategic/policy conclusions to better understand the vulnerabilities and take mitigating measures to enhance transparency, such as measuring the presence of shell companies or companies with "straw men" acting as managers/shareholders.

556. While the STS considers the technical and structural accuracy of basic shareholder information filed by companies, it does not take any pro-active preventive measures to ensure maintaining such information updated such as random checks.

**Table Error! No text of specified style in document..38:** Information about commercial entities owned by natural persons and multi-layer entities

Total number of commercial entities	including					
	with participation of local legal entity	% in total registration	with participation of foreign legal entity	% in total registration (%)	Owned by natural persons	Specific weight in total registration (%)
161,115	5,937	3.7	4,752	2.9	150,423	93.4

557. Azerbaijan does not have a BO Register and there is no requirement for the legal entities themselves to gather and retain their BO's information. Therefore, this information is not available neither at the company level nor at the STS. The authorities argue that given the profile

of the country, in practice most of the legal owners and managers (shareholders/managers) are in fact the BOs (see Table 7.4 above).

558. The REs are required to obtain and maintain BO information on legal entities in the course of CDD measures undertaken, but little mitigation measures taken by the authorities have been reported on that front. Supervisory authorities, which are tasked to check compliance of REs with basic and BO requirements, call for the remediation of shortcomings but rarely impose effective sanctions for non-compliance. No guidance on the identification of BO have been issued and very little training was provided to the private sector (See also IO.3).

**Table 7.5** – Customers who’s bank accounts were closed or opening refused due to absence of BO information

Year	Number of customers
2017	184
2018	165
2019	611
2020	452
2021	321

559. The AT positively notes that the CBA has undertaken certain activities aimed at understanding the size and significance of the cluster of FIs’ customers, with regard to whom identification of beneficial ownership is more challenging. The CBA advises that inspections have systematically identified breaches of the BO-related obligations which have either ended with a written warning or a precept. The CBA was able to produce (at the AT’s request) the statistics provided in Table 7.5. above, but is not in the possession of any strategic analysis in that regard. The non-banking FIs and the DNFBPs are rarely used as a source of BO information as it is difficult to determine if a company is the client/customer of a specific entity.

560. As concerns the involvement of “gate-keepers”, due to ease of founding a legal person, most register directly with the STS and notaries, lawyers and accountants are rarely involved.

#### ***7.2.4. Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons***

561. With the aim of obtaining information on basic and beneficial ownership of legal persons competent authorities can access data (i) through a public registrar (including the Securities Registrar) for basic information only; (ii) through REs (banks mostly) for BO information. The legal persons are not required to hold information concerning their BO which impacts their ability to understand the concept and the need for such, as well as their level of preoccupation in collecting and keeping this type of information.

#### ***Basic information***

562. As has been stated above, all legal persons established in Azerbaijan and branches of foreign legal persons operating in country have to be registered with the STS. It is set out, by legislation, which information is to be included in the STS register. In summary, direct ownership information (on the first level of legal owners of a legal person) is kept and can be obtained from the STS register with regard to: (i) partnerships; (ii) limited partnerships; (iii) LLCs; and (iv) original founders of NPOs.

563. The Register contains information regarding: the name of the company, the type of company (LLC, LSC...), main type of activity, tax ID, date of issuing the tax ID, address, name and ID number of the manager, his/her address and date of birth, and information on company's bank accounts. The opening of bank accounts by legal entities is conditioned by STS input to the banks, following declaration by the company, therefore the information regarding the bank accounts held by the commercial companies seems to be accurate. All the information from the STS register is publicly available (including online), hence all concerned authorities have direct access to it.

564. The STS has access to the Ministry of Interior database and is, therefore, able to verify the accuracy of information provided to it, in the sense that the ID documents are real and valid. In average 24% of applications to register a legal person were rejected with a much smaller percentage in case of the up-date requests (see Table 7.3).

565. Changes to basic information take effect only after their registration in the STS register (for instance, an agreement to change ownership of a share in a LLC is not official until it is registered in the STS register).

566. The Securities Registrar acts as registrar to JSCs. As obliged entities, Securities registrars have to fulfil CDD requirements to their full extent in respect of customers (which are considered to be all direct shareholders). They also have a general power to access ultimate beneficial ownership data with regard to shares held in nominee accounts (the nominees would be only banks or brokerage companies supervised by the CBA). Securities registrars are supervised by the CBA.

567. Whilst beneficial owners are not registered in the STS register, the authorities argue that often the BO information coincides with the basic information as 93,4% of LLCs are owned by natural persons. Nevertheless, seeing the lack of visibility of the authorities on the accuracy of the Commercial Register in terms of existence of "shell companies" and use of "straw men", this argument does not cover all possible cases.

### ***The BO information***

568. To obtain BO information the authorities have at their disposal three avenues: i) the REs, mainly the banks for any legal person holding an account, ii) the FMS for foreign legal persons, and iii) to the company itself in case of JSCs. Although there is no separate register of bank accounts in Azerbaijan, information on bank accounts opened by legal persons is attached under the company's file kept by the STS. Therefore, in case of need, the LEA can obtain this information from the STS. Nevertheless, in practice, there is little evidence that the LEAs systematically make use of this option when searching for financial intelligence and BO information. This is also due to deficiencies identified under IO.6 and 7.

**Table Error! No text of specified style in document..6:** Number of bank accounts opened by legal persons (January 2023)

<b>Total</b>	<b>Suspended companies</b>	<b>Active with bank accounts</b>	<b>Active without bank accounts</b>	<b>% of active without bank accounts</b>
<b>182.356</b>	71.509	101.912	8.935	4,9%

569. All REs are required to perform BO identification and verification. Nevertheless, there is no obligation for the legal persons to hold a bank account which negatively impacts the access to BO

information for those companies that might perform transactions using foreign financial institutions or VASPs, or participating in trade base ML.

570. In practice, the BO information holders are the banks which overall have a rather light approach in identifying and especially verifying the BO information from independent and reliable sources (see also IO.4). The financial supervisors identified deficiencies on that front with no severe sanctions applied to enhance effectiveness (see also IO.3). Overall, it is difficult to conclude that the BO information kept by the REs is fully accurate and current.

571. The LEA reported that they use the FMS to obtain BO information in certain cases of foreign legal persons. At the LEA request the FMS will in turn address the jurisdiction of registration (of legal person) via the EGMONT Group secure website. The AT was not provided with statistics of how often this actually had happened in practice, with what results and in what delays.

#### ***Access by competent authorities***

572. In practice, in order to obtain information regarding legal persons, competent authorities would access on-line the STS registry. The access is instantaneous and effective with the reservations on the availability of reliable and current information therein.

573. In case of need for BO information, the authorities would request this from FIs, mostly from banks, where the legal person may be a customer. The possibility to obtain information directly from a legal person (in case of JSCs holding their own registers) does not appear to be used much in practice but remains a possible additional source.

574. As stated above, no information on the quality and timeliness of the FMS answers to the LEA requests was provided.

575. The accuracy of the BO information is affected by the fact that the FIs had deficiencies with regards to identification BOs of the customers and their on-going monitoring. With that, FMS confirmed that there were a very limited number of cases, when information provided from the REs are not accurate and, in such cases, they try to identify the BO on their own using different sources.

576. Information has not been provided on the number of requests made by LEAs to obliged persons and legal persons for BO information but the private sector confirmed that in case such requests are received, the reply is sent within a week, or within the deadlines specified by the requesting LEA.

577. The GPO and STS confirmed that amongst others, (witnesses, FMS) an important source of BO information are the banks. The responses from banks come in maximum 20-25 days and the quality of the data was qualified as “satisfactory” although instances when the identity of the BO was not fully documented by the RE or the information was not fully accurate were identified by the CBA inspections. Little, if any, feedback is given to the private sector or the supervisor in those instances. AT was not provided with any information on the MoIA experience on that front.

#### ***7.2.5. Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements***

578. No legal arrangements are recognised under the legislation of Azerbaijan and the occurrence of trusts as customers of FIs in the country was not proven. It also appears that no lawyers, notaries or accountants offer trust services or act as trustees for trusts established under

foreign law. The authorities are not aware of any other legal arrangements performing activity in Azerbaijan.

579. Banks had only basic understanding of the concept of trusts and the obligations with regard to identifying the appropriate persons as BOs, e.g. settlor and beneficiaries. While acknowledging that at the time of the on-site there were no indications of professionals or individuals acting on behalf of foreign trusts, the AT considers that the Azerbaijan has not undertaken sufficient measures –in the form of specific guidance, training and other targeted awareness raising activities for the REs potentially exposed to relationships with trusts and other professionals acting as trustees. The mechanisms used to identify the presence of trusts in the country should be enhanced.

#### *7.2.6. Effectiveness, proportionality and dissuasiveness of sanctions*

580. The STS may impose a fine for failure to submit information provided by law or submits incorrect information to the registrar. Commercial legal entities, branches and representative offices of foreign commercial legal entities are required to inform the STS no later than 40 days after the change.

581. STS did impose fines for late submission of the required information (Table 7.7 below) and the authorities maintained that those submissions were triggered by inspections to higher risk taxpayers as they incentivised the companies to seek compliance (see IO.5.2). While this is a positive step in enhancing the quality, accuracy and actuality of basic information, this remains limited to the taxpayers subject to inspections. The classification of a tax-payer as high risk is one of the outcomes of the inspections. The sanctions are not fully proportionate, and dissuasive (see also R24) for AML/CFT purposes but appear to have positive impact on the level of compliance with the registration requirements.

582. No other initiatives were reported such as random verifications or periodic monitoring of the registered companies. The AT was not informed about instances when the general controls undertaken by the STS to high-risk companies led to sanctions due to deficiencies related to transparency obligations (complete, reliable and updated information on shareholders and managers).

**Table Error! No text of specified style in document..7:** Number and amounts of fines imposed on companies for failure to up-date registry information

<b>Year</b>	<b>Number of entity subjected to fines</b>	<b>Total of entities inspected</b>	<b>Amount of fines</b>
<b>2017</b>	4	6791	2 500 AZN (1 323 EUR)
<b>2018</b>	6	4 144	10 000 AZN (5 293 EUR)
<b>2019</b>	5	3172	12 500 AZN (6 616 EUR)
<b>2020</b>	7	2 638	12 500 AZN (6 616 EUR)
<b>2021</b>	2	3 723	5 000 AZN (2 646 EUR)
<b>2022</b>	2	3 888	3500 AZN (1 852EUR)

583. Sanctions are foreseen for obliged entities for non-compliance with their CDD obligations. According to the information provided by the CBA, breaches related to the identification of BO have been systematically identified in the FI sector without further details on the actual issues (the FIs did not identify BO at all, the identification didn't go up to the UBO, whether the verifications were missing, whether the data was not updated). The sanctions imposed by the CBA could not be considered effective, proportionate and dissuasive (see IO.3).

584. Legal persons are not required to hold information concerning their BO and, as such, there are also no sanctions foreseen in this regard.

#### *Overall conclusions on IO.5*

585. Information on the creation and type of legal persons is publicly available. Legal arrangements cannot be formed in Azerbaijan and there is no indication of foreign ones acting as clients of reporting entities domestically. The authorities have a moderate understanding of the vulnerabilities related to the legal persons mainly through a number of typologies identified in the NRA. The STS has at its disposal a series of data assisting them to have a more elevated understanding of risk, but this data is not fully used in an integrated manner at the national level. Basic information on legal persons is kept by the STS and it is easily accessible on-line. Measures have been put in place to ensure its accuracy and actuality. BO information is available mostly through the private sector which displays some challenges in keeping it accurate, current and adequate. When solicited by the authorities the BO information is delivered promptly. The applied sanctions are moderately effective, proportionate and dissuasive. **Azerbaijan is rated as having a Moderate level of effectiveness for IO.5.**

## 8. INTERNATIONAL COOPERATION

### 8.1. Key Findings and Recommended Actions

#### ***Key Findings***

##### ***Immediate Outcome 2***

- a) Azerbaijan has a sound legal framework to provide international cooperation in relation to ML, associated predicate offences and TF. There are two central authorities, the MoJ and the GPO, responsible for receiving and further disseminating incoming requests to LEAs for the execution.
- b) Mutual legal assistance is provided in a constructive and timely manner to a large extent despite the unavailability of a case management system and prioritisation mechanism applicable to all competent authorities. A basis for rejecting MLA requests is the principle of dual criminality which hinders effective cooperation. A high number of incoming extradition requests are refused, due to the dual criminality principle and prohibition of extraditing citizens.
- c) Authorities seek MLA to pursue ML and predicate offenses investigations. There were no MLA requests sent in relation to TF offences, due to the difficulties relating to seeking information from conflict zones, and the sensitive nature of TF exchanges of information. International cooperation on tracing, seizing, and confiscating assets moved abroad is very limited, but authorities are making efforts to overcome this deficiency.
- d) LEAs, the GPO, and the FMS appear to use other forms of cooperation through systems such as Egmont, CARIN and the ARIN-WCA. These avenues are sometimes utilised to seek assistance prior to making a formal MLA request. While the GPO demonstrated an example of the effectiveness of such cooperation, it is hard to conclude the same for the other LEAs due to the limited information provided. The FMS does not entirely effectively seek assistance or proactively disclose intelligence given the risk and context of the country. No international cooperation has been performed by the supervisors in relation to AML/CFT matters.
- e) Azerbaijan provides basic and beneficial ownership information on legal persons and legal arrangements to foreign partners. However, this is not done effectively as limitations identified in IO.5 impact on competent authorities' ability to provide and respond to foreign requests.

#### ***Recommended Actions***

##### ***Immediate Outcome 2***

- a) Azerbaijan should establish a consolidated case management system available to all competent authorities. Given Azerbaijan's context, such a system will enable effective tracking and prioritising of MLA and extradition requests, and it will allow collection of comprehensive national statistics.

- b) LEAs and the GPO should establish as policy objective seeking MLAs proactively in ML, associated predicate and TF cases, with the focus on tracing, seizing, and confiscating assets moved abroad.
- c) Azerbaijan should not make dual criminality a condition when rendering MLA at least for requests which do not involve coercive measures, in accordance with the FATF Methodology.
- d) Azerbaijan should analyse instances where incoming extradition requests have either been rejected or remain pending, in order to identify and eliminate deficiencies that prevent constructive extradition process.
- e) The FMS should ensure that financial intelligence is requested proactively and disclosed spontaneously to its foreign counterparts.
- f) Supervisors should establish mechanisms for international cooperation and proactively seek assistance from foreign counterparts in relation to AML/CFT matters

586. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are R.36-40 and elements of R.9, 15, 24, 25 and 32.

## **8.2. Immediate Outcome 2 (International Cooperation)**

587. Azerbaijan is a signatory to all relevant treaties and conventions, the provisions of which, with some exceptions due to compatibility with domestic legislation, have been integrated into law. In circumstances where formal agreements or treaties are not applicable, the authorities are able to seek assistance on the basis of reciprocity.

588. The authorities have taken meaningful steps to develop their domestic capabilities in relation to international co-operation, including the restructuring of the FIU and the creation in 2020 of the department for international legal co-operation within the GPO.

589. The feedback received from countries in the Global AML/CFT network on their experience with Azerbaijan in relation to formal and other forms of cooperation was generally positive. The majority of countries noted that their experience when cooperating with Azerbaijan was satisfactory in terms of timeliness and quality of the information provided. Nevertheless, some countries indicated delays in receiving a response to a request, while one country particularly emphasised that no adequate responses were provided on the number of MLA requests.

590. Azerbaijan's capacity to build local networks and to engage with regional partners is impacted by regional tensions. Notably, despite the agreement of an MOU between the parties in 2016, there is a lack of co-operation between Azerbaijan and its neighbour the Islamic Republic of Iran. This constitutes a significant challenge for Azerbaijani LEA, given the authorities estimation that 75% of smuggling offences occur across the southern land border with the Islamic Republic of Iran, and the status of Azerbaijan as a transit route for illicit narcotics originating from the Islamic Republic of Iran and Afghanistan.

### ***8.2.1. Providing constructive and timely MLA and extradition***

591. Azerbaijan can provide constructive and timely MLA and extradition in relation to ML, associated predicate offence and TF to a large extent. With no single central authority responsible



for receiving and issuing MLA requests, the competency is primarily delegated to the MoJ and GPO, by virtue of the terms of the relevant treaty, agreement, or convention. In circumstances where a request is not subject to the provisions of existing convention or treaty the MoJ is determined to be the competent authority. Requests received by the MoJ are, once adopted, referred to the GPO for administration and, once delegated to the competent LEA, oversight. Some case management system is available, but it is not used by all competent authorities in order to ensure assessment and prioritisation of MLA requests.

592. The GPO retain a record of all MLA requests received to facilitate the management and ensure timely execution of requests once delegated to the competent LEA. The system however lacks the capability to prioritise requests. Each of the recipient authorities have dedicated resources to execute requests, with an expectation that they will respond to a request within 30 days and maintain their own management records.

593. The powers and investigative techniques available to the competent authorities on receipt of an MLA are the same as those available for the purposes of investigating domestic offences. Those powers are not restricted by the nature of the criminality and are applicable to requests relating to all offences.

594. The volume of incoming requests is low, with predicate offences identified by the NRA as key risks accounting for 13.2% of the requests received during the assessment period. During the same period there were no requests relating to TF and only 15 relating to ML (1.56% of requests), all of which, barring one case that is pending, have been executed by the authorities. However, reliability of such statistics is questionable since responses from the global network indicate that at least two MLA request was sent in relation to TF offence.

595. The nature, source and volume of Azerbaijan's incoming requests is largely determined by regional factors including assessed risks. Notably, the data demonstrates that the majority of incoming requests originated from regional partners, such as Türkiye, and the Russian Federation, which alone is estimated to account for 50% of all incoming requests.

596. The statistics provided are limited and discrepancies in numbers are observed. There is insufficient data to ascertain how the volume of requests derived from the key predicate offences compare to other specific criminality. However out of the key predicates, the instances of bribery and corruption and illicit trafficking in narcotic drugs account for the majority of requests. Despite the absence of detailed statistics, according to the available data and case examples, it can be concluded that authorities can provide timely assistance.

**Table Error! No text of specified style in document..39: Incoming MLA requests**

	2022	2021	2020	2019	2018	2017	Total
<b>Incoming MLA requests</b>	163	240	125*	152	159	122	961
<b>-ML-related</b>	5	2	3	2	1	2	15
<b>-Corruption</b>	14	13	4	4	5	4	44
<b>-Tax crimes</b>	7	0	0	6	4	2	19
<b>-Smuggling</b>	8	0	2	7	4	4	25
<b>-Illicit trafficking in narcotic drugs</b>	13	2	4	11	2	7	39
<b>-Terrorism</b>	2	3	2	6	7	6	26
<b>-TF</b>	0	0	0	0	0	0	0
<b>-Others</b>	114	220	115	116	136	97	798

<b>Pending</b>	37	61	0	0	0	0	98
<b>Refused</b>	9	15	4	4	5	2	39
<b>Executed</b>	117	164	85	148	154	120	788
<b>Average execution time (days)</b>	30	30	n/a	30	30	30	n/a

597. A breakdown of the statistics provided for 2021 details the originating jurisdictions, which clearly reflects the regional nature of Azerbaijan's current international co-operation. The breakdown is not available for all of the assessment years. In 2021, of the 240 reported requests, 150 were submitted by the Russian Federation, 42 from Belarus, with further request being received from Türkiye, Ukraine and Georgia. A similar pattern exists for the 2020 statistics, with the majority of requests originating from the Russian Federation, Belarus, Türkiye, Georgia and Republic of Moldova.

598. As with other jurisdictions there are statutory (codified) grounds for the authorities to refuse requests, principally on the grounds of national security, protected data, such as race, religion or sex, for political crimes or those derived from military service, or where existing domestic proceedings have been initiated. In such circumstances the authorities are required to provide feedback to the originating jurisdiction. In addition, dual criminality is sufficient grounds for refusal even for non-coercive measures which goes beyond standards. It should be noted that the principle of dual criminality is not affected by differences in the terminology (the name of the crime), as it is based upon the conduct giving rise to the alleged offence. During the assessment period 39 requests equating to 4% of the incoming request were rejected, mainly due to the absence of the subject from the jurisdiction. In instances when requests were incomplete, authorities reached out foreign counterparts to ask for the additional information and documents. Also, model MLA request has been published in order to facilitate process of submitting complete MLA request.

#### *Extradition*

599. Azerbaijan's domestic legislation does not permit the extradition of its citizens to other jurisdictions and requires dual criminality. However, where a request is rejected, the authorities are able to initiate a domestic investigation into the alleged offences and seek to prosecute the matter. In every extradition the authorities seek a copy of the criminal case from the requesting authority, to enable potential domestic action and to ensure offences are consistent with domestic legislation. Unfortunately, no data or examples have been provided to demonstrate the extent to which this alternative approach was effectively used.

600. Extradition is permissible in relation to foreigners and persons without citizenship. Of the 287 requests received during the assessment period, 98 were executed, while 67 requests are pending. On average, where requests have been actioned, the authorities have done so within 100 days, although it should be noted that response times have consistently improved and are currently concluded on average within 90 days. On the other side, authorities provided some general reasons, such as delays in providing additional documents and appealing procedure for the comparatively high number of still pending cases.

601. A significant proportion of requests are however refused. During the assessment period 125 requests are recorded as being rejected compared to the 98 that were executed, which equates to percentile ratio of 53.19 % to 41.70 %. The authorities advised that the primary

reasons for rejecting requests is the possession of national citizenship<sup>49</sup> while request have also been refused due to dual criminality.

602. In the absence of further detail, it is not possible to assess the impact of particular domestic provisions on the number of extraditions, however a general conclusion can be reached that the instances of request for extradition being rejected is high and is likely to be having an impact on the wider effectiveness of Azerbaijan’s international co-operation provisions.

603. A further consideration arising from the data provided is the number of extraditions for the illicit trafficking in narcotic drugs. In 2022, 14 extradition requests were received in relation to this offence of which 8 were rejected and 6 are pending. In 2019, 5 requests were received with 3 rejected and only 1 executed.

**Table Error! No text of specified style in document..40: Incoming extradition requests<sup>50</sup>**

	2022	2021	2020	2019	2018	2017	Total
<b>Incoming extradition requests</b>	93*	53*	30*	43	45	23	287
<b>-ML-related</b>	0	0	0	0	0	0	0
<b>-Bribery &amp; corruption</b>	4	0	0	0	0	0	4
<b>-Tax crimes</b>	2	0	0	1	3	2	8
<b>-Smuggling</b>	4	0	0	3	2	2	11
<b>-Illicit trafficking in narcotic drugs</b>	14	0	0	5	3	2	28
<b>-Terrorism</b>	0	0	0	0	0	0	0
<b>-TF</b>	0	0	0	0	0	0	0
<b>-Others</b>	69	0	0	34	37	17	157
<b>Pending</b>	52	15	0	0	0	0	67
<b>Refused</b>	45	30	12	16	12	10	125
<b>Executed</b>	6	8	11	27	33	13	98
<b>Average execution time (days)</b>	90	90	n/a	120	120	180	-

#### *Seizures and confiscations*

604. Azerbaijan’s domestic legislation enables competent authorities to expeditiously execute requests for assistance in relation to the seizure and confiscate of property, on behalf of another jurisdiction, in circumstances where a conviction has been obtained. The requirement for conviction precludes pre-emptive action to seize property, and all forms of non-conviction-based seizure, forfeiture or confiscation.

605. Data provided by the authorities in relation to incoming MLA requests seeking assistance in relation to the seizure or confiscation of assets indicate that a total of 80 requests were received during the assessment period. Of which, 79 related to predicate offending and one to stand-alone ML. The authorities executed 79 of the requests with one deferred to the following year, although this case is not accounted for in subsequent years. The data provided lacks detail, context and fails to articulate any outcomes, as such it is not clear if the requests sought assistance to trace assets or resulted in recovery action. In addition, the authorities have not provided any case

<sup>49</sup> Between 2017 and 2022, 108 requests were rejected on the bases of nationality.

<sup>50</sup> The discrepancy between figures derives from the statistics provided by the authorities to the AT and do not influence the overall conclusions on effectiveness

examples of the effective seizure or confiscation of property or of instrumentalities undertaken on behalf of another jurisdiction during the assessment period.

606. Further to the data supplied, the GPO referred to 8 international requests received in 2021 for asset identification and tracing, one was executed on behalf of the Romanian authorities and resulted in the identification of assets, six resulted in no assets being identified and one was rejected. These examples demonstrate that the authorities have received and executed requests, however it is unclear whether these specific instances are reflected in the statistics discussed above or if they are in addition to them.

### ***8.2.2. Seeking timely legal assistance to pursue domestic ML, associated predicates and TF cases with transnational elements***

607. Authorities do seek legal assistance to pursue ML and associated predicates in constructive and timely manner to a large extent. Total number of requests sent to foreign counterparts is not insignificant, but some issues remain given risk and context of the country particularly transnational character of some of ML threats.

**Table Error! No text of specified style in document.41: Outgoing MLA requests**

	<b>2022</b>	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>	<b>2017</b>	<b>Total</b>
<b>Outgoing MLA requests</b>	241	164	86	171	149	143	<b>954</b>
<b>-ML-related</b>	4	38	1	5	4	4	<b>56</b>
<b>-Bribery &amp; corruption</b>	23	17	3	13	17	14	<b>87</b>
<b>-Tax crimes</b>	14	25	15	21	13	12	<b>100</b>
<b>-Smuggling</b>	29	-	-	16	9	-	<b>54</b>
<b>-Illicit trafficking in narcotic drugs</b>	-	22	18	21	13	6	<b>80</b>
<b>-Terrorism</b>	2	1	-	-	-	-	<b>3</b>
<b>-TF</b>	-	-	-	-	-	-	<b>-</b>
<b>-Others<sup>51</sup></b>	169	61	49	95	93	107	<b>574</b>
<b>Pending</b>	141	89	47	0	0	0	<b>277</b>
<b>Refused</b>	7	9	6	38	35	18	<b>113</b>
<b>Executed</b>	93	66	33	133	114	125	<b>564</b>
<b>Average execution time (days)</b>	120	120	120	210	180	150	<b>-</b>

608. The MoJ in order to increase effectiveness of cooperation is able to facilitate requests through its engagement at ministerial and diplomatic levels. In urgent matters the MoJ will directly contact counterparts or utilise Interpol to ensure the timely exchanges of information.

609. The number of outgoing MLA requests specifically seeking assistance in ML cases, is consistent with the results achieved in terms of ML prosecutions and convictions. 5.87 % of MLA requests are related to ML cases, which is consistent with the findings of IO.7 regarding the insufficiency of cases overall. It is, however, less consistent with the external risks identified in the NRA. That said, during the assessment period 56 requests specifically relating to ML were submitted, of which 33 have been executed, 5 have been refused and 28 are described as pending. The figures for ML requests are distorted by figures for 2021 when a total of 38 requests were

<sup>51</sup> Other offences constitute those against the person such as violence or sexual offences.

sent, as compared to the previous and subsequent years during which requests did not exceed 5 per year. This short-term increase reflects activity related to two specific cases being investigated by the authorities during the period and does demonstrate that MLA requests are being utilised in instances where a ML case is being progressed.

610. No outgoing requests pertaining to TF have been recorded by the authorities. However, there are a number of potential reasons for the absence of recorded instances, including the difficulty relating to seeking information from conflict zones, and the sensitive nature of TF exchanges of information. These issues may also be pertinent to the wider deficiencies in data provided by the authorities relating to TF.

611. Of the recorded outgoing MLA requests related to predicate offences, a significant proportion (42%) relate to those offences identified in the NRA as key ML risks. Separate data provided by the authorities does demonstrate the stated policy of advancing international co-operation in relation to bribery and corruption cases citing one case that resulted in requests for legal assistance being sent to 17 jurisdictions.

<b>k) Case study 8.1: Outgoing MLAs</b>
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<p>l) Authorities initiated complex ML case against number of defendants for concealing proceeds of crime through numerous bank accounts in several jurisdictions. In order to obtain evidence, requests for mutual legal assistance were sent to 17 jurisdictions across the Europe, Asia and America. Prior to sending requests to certain jurisdictions, authorities initiated bilateral meetings to discuss and ensure they that adequate and well substantiated requests were sent. Based on the evidences provided by the foreign counterparts, Baku Serious Crime Court ordered confiscation of more than 100 million manats from the accused persons and ensured repatriation of the victims of predicate crimes.</p>
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612. In the context of investigations of predicate offences authorities sought assistance in tax, corruption and drug trafficking cases. More than half of the requests were related to other offences some of which might be ML predicates but the authorities were not able to advise to what particular offences they are related. Therefore, it can be concluded that seeking assistance is largely in accordance with the risk profile of the country. Most of the requests were addressed to Russian Federation, Türkiye, Georgia, Germany, France, UK, Iran, UAE.

613. The authorities have yet to request or have a request for the establishment of joint investigation teams, although they do not consider there to be any domestic legislative prohibitions on doing so.

614. The authorities have issued model MLA requests and guidelines in order to streamline the process, which is a commendable initiative. The number of refused requests is per se not significant 11.84%, but the authorities were not able to advise on the reasons for refusals.

#### *Extradition*

615. Requests for extradition are undertaken depending on the relevant competency by either the GPO or the MoJ, who submit and progress request on behalf of LEAs, with the exchange of relevant information being conducted via Interpol. Requests are managed with follow up letters and additional information provided when necessary.

616. During the assessment period 484 requests were issued, of which 187 were refused and 86 are pending. Where requests are rejected, feedback is sought from the respondent jurisdiction.

The detailed reasons for rejections have not been provided, as such it is not possible to identify common issues that may be affecting requests. Although the authorities have not been able to demonstrate effective extradition in relation to ML and TF specifically, the execution of extradition requests in 211 instances of predicate or other criminality does demonstrate effectiveness to a large extent.

617. During the assessment period only 3 extradition requests relating to ML were submitted and are pending, the low number of requests, as noted previously, reflects the level of domestic ML investigations, and the absence of ML investigations that identified multi-jurisdiction activity. No extradition requests were submitted in relation to terrorism or TF. The key predicate offences represent 32% of the requests which is consistent with the primacy of those matters within the NRA.

**Table Error! No text of specified style in document.42: Outgoing extradition requests**

	2022	2021	2020	2019	2018	2017	Total
<b>Outgoing extradition requests</b>	90	24	32	101	151	86	<b>484</b>
<i>-ML-related</i>	0	1	2	0	0	0	3
<i>-Bribery &amp; corruption (predicate)</i>	9	0	5	5	7	0	26
<i>-Tax crimes (predicate)</i>	13	2	1	15	19	17	67
<i>-Smuggling(predicate)</i>	16	0	1	11	12	1	41
<i>-Illicit trafficking in narcotic drugs (predicate)</i>	0	2	1	8	9	3	23
<i>-Terrorism</i>	0	0	0	0	0	0	0
<i>-TF</i>	0	0	0	0	0	0	0
<i>-Others</i>	52	19	22	62	104	65	324
<b>Pending</b>	61	15	10	0	0	0	<b>86</b>
<b>Refused</b>	8	6	9	36	94	34	<b>187</b>
<b>Executed</b>	21	3	13	65	57	52	<b>211</b>
<b>Av. execution time (days)</b>	300	364	364	330	300	330	-

#### *Seizures and confiscations*

618. Azerbaijan has not yet demonstrated the effective seizure or confiscation of property held overseas, although steps are being taken by the authorities to develop measures and to improve outcomes.

619. As noted previously, the data supplied by the authorities in relation to seizing and confiscation is limited. The information provided in regard to outgoing requests is similarly sparse, with a total of 14 requests being reported for the assessment period 2017 to 2021. All of the requests are recorded as relating to ML cases; however, no context or detail has been provided in regard to these requests, thereby limiting the scope of any analysis of the data.

620. During the assessment period the authorities submitted four MLA requests seeking assistance in the recovery of assets held in other jurisdictions, out of which three have been refused by the recipient jurisdiction.

621. Feedback received in relation to one of the requests highlighted potential concerns arising from aspects of Azerbaijan's domestic legal proceedings and co-ordination. The GPO have undertaken steps to review the feedback to inform and improve future requests. A fourth MLA request relating to the proceeds of corruption is currently being prepared for submission.

622. In circumstances where assets are recovered by another jurisdiction on behalf of Azerbaijan, the authorities expressed a willingness to reach an asset sharing agreement and noted that there are no domestic prohibitions on doing so.

### *8.2.3. Seeking other forms of international cooperation for AML/CFT purposes*

623. Azerbaijan makes efforts to establish and use other forms of international cooperation. This focus is reflected in the jurisdictions that are party to MOUs<sup>52</sup> with Azerbaijan, and its membership of the Commonwealth of Independent States (“CIS”), and the Organization for Democracy and Economic Development (“GUAM”)<sup>53</sup>, which seek to enhance opportunities for the informal exchange of information between competent agencies. The effectiveness of these measures is yet to be demonstrated due to the low volume of requests and absence of measurable outcomes.

#### *FIU*

624. The FMS seeks cooperation from foreign counterparts through the exchange of information conducted via Egmont secure platform, or if alternative MOUs exist through designated secure channels. Requests are managed via goAML analytical software and internal systems. The FMS is the competent authority for the administration and management of the Egmont system and retains a dedicated resource and the designated points of contact.

625. Since 2012 Azerbaijan has agreed MOUs for the purpose of exchanging financial intelligence between FIUs with seven jurisdictions in relation to ML and TF, whilst also conducting discussions with a further six<sup>54</sup>. Authorities provided statistics on the number of the requests sent to the other FIUs. Overall, it can be concluded that the number is relatively sparse considering risk and context of the country, and volume of the FMS analysis (see also IO.6). The comparatively low volume of requests is also reflected in the statistics relating to the use of the Egmont network by LEAs. The authorities attribute the cause of the low volume of requests to organisational change between 2016 and 2017, and a period of suspension from the network which ended in September 2018.

**Table Error! No text of specified style in document.43: Outgoing requests and spontaneous disseminations sent by the FIU**

	2022	2021	2020	2019	2018	2017	Total
<b>Outgoing requests</b>	25	37	61	32	3	38	<b>196</b>
<b>Spontaneous disseminations</b>	19	2	16	0	0	2	<b>39</b>

626. The authorities record that during the period 2017 to 2021, 171 requests were sent via the Egmont secure web, of which 137 related to ML, 17 to TF and 17 were defined as other. During the same period, 20 Spontaneous disseminations were issued consisting of 5 ML, 14 TF and 1

<sup>52</sup> MOUs: Republic of Moldova (2012), Belarus (2013), Türkiye (2015), Macedonia (2015), Russia (2015), Iran (2016), Israel (2021)

<sup>53</sup> Republic of Azerbaijan, Georgia, Republic of Moldova & Ukraine

<sup>54</sup> Bangladesh, Japan, Kazakhstan, Palestine, Turkmenistan, and Ukraine.

other. Information was disseminated to 60 countries. Given the external risks identified and the national context the number of spontaneous disseminations appears to be low.

627. Further to the data referenced above, information<sup>55</sup> supplied by the authorities also notes that between 2017 and 2021 the FMS submitted a total of 110 requests on behalf of other LEAs to FIUs in 38 jurisdictions. Of these requests 57 related to bribery and corruption offences, 22 to cybercrime, 17 to ML, 4 to TF, 4 to fraud, 1 to tax evasion and 5 to other predicate offences. The two sets of data do not appear to be consistent, and it is unclear if the stats provided include these examples.

628. The FMS have provided several examples where the FIU has successfully been able to develop financial intelligence received from both domestic sources and other FIUs in order to support and inform domestic criminal investigations, predominantly by the SSS in relation to a TF case, as well as cybercrime and corruption cases. Whilst the examples provided indicate that informal cooperation has been useful, the AT is of the view that further efforts would be beneficial given the risk profile of the country.

**m) Case study 8.2: Case example of FIU cooperation**

n) In 2022, the FMS, based on the request from the GPO has sent requests to four foreign countries asking for financial intelligence in relation to PEP who had bank accounts in different countries. According to the results of the financial analysis carried out by the FMS, investigation has been launched for the criminal offence of embezzlement of state funds in the amount of 18.3 million AZN and as well as for ML offence since he used fake contracts, bank statements, companies, as well as companies and nominal persons established in the names of PEP's relatives and friends in order to conceal origin of the proceeds of crime.

*LEAs*

629. In order to support domestic investigations MoIA exchanges information with other foreign counterparts usually using INTERPOL channels. Also, information is sought through the use of the FMS channels for international cooperation. No further details have been provided and therefore the effectiveness of such cooperation cannot be assessed.

630. The STS and SSS are also able to send and receive requests in relation to matters for which they are competent. During the assessment period the STS sent 54 requests to counterparts in relation to potential ML, of which 1 was sent on behalf of another LEA, 38 were executed and 15 refused.

631. Azerbaijan's domestic legislation also allows LEAs to co-operate with their counterparts for specific purposes, for example the sharing of information between Customs authorities in relation to cross border activity. The extent to which these arrangements are utilised has not been quantified and specific examples have not been provided.

*GPO*

632. The GPO hold responsibility for the administration of incoming and outgoing request via CARIN and ARIN-WCA networks, although there has been limited use of these systems to date with only one recent example provided. In this case a request was submitted Montenegro in

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<sup>55</sup> MEQ Effectiveness document



regard to a corruption prosecution. The request was sent as a pre-cursor to seek formal mutual legal assistance, as such it is unclear to what extent it sought information regarding assets as opposed to seeking to engage with the authorities to facilitate the subsequent formal request.

#### *Supervisors*

633. Six authorities had supervisory duties during the assessment period: the Financial Markets Supervision Authority (FMSA), the CBA, the FMS, the STS, the Bar Association and Chamber of Auditors. All public authorities have powers to exchange information with foreign counterparts in the exercise of their competences which include or included in the past ML/TF issues. According to the authorities, CBA received and responded to 12 international requests regarding fit and proper matters (3 - Moldova, 2 - Croatia, Kyrgyzstan, Romania, 1 - Kazakhstan, Lithuania, Tajikistan). The AT was not provided with further information related to exchanges on ML/FT matters.

634. The Bar Association participated in the Platform for Exchange, Cooperation and Outreach) of the Council of Bars and Law Societies of Europe) on AML issues related to lawyers. Exchanges on proceedings took place later on.

635. The Chamber of Auditors has not received any requests from its foreign counterparts, neither there was any case which required requesting information from abroad. But they actively seek cooperation, attend and organize international conferences and meetings, including on AML/CFT matters. The Bar Association and Chamber of Auditors cooperation with foreign counterparts is limited to training/experience exchange. No practice to exchange information/data on particular cases was reported to the AT.

#### ***8.2.4. Providing other forms international cooperation for AML/CFT purposes***

#### *FIU*

636. During the assessment period the FIU received 385 requests and spontaneous disseminations. Only on five occasions were requests rejected, in each instance due to no connection to Azerbaijan being identified, and therefore it can be concluded that the FMS provides cooperation to foreign counterparts in an effective and timely manner. In cases where a request is rejected the FIU have provided timely feedback to the originating jurisdiction.

**Table Error! No text of specified style in document..44:** Incoming requests and spontaneous disseminations received by the FIU

	2022	2021	2020	2019	2018	2017
<b>Incoming requests</b>	37	49	32	51	15	29
<b>Executed requests</b>	32	40	34	53	5	23
<b>Spontaneous dissemination</b>	21	35	34	42	9	31
<b>Average number of days to respond to requests</b>	34	41	25	100	89	30
<b>Foreign requests refused by the FIU</b>	1	3	0	1	0	0

*GPO*

637. The GPO have received two requests for assistance via the CARIN Network. The requests originated from the Republic of Slovenia and from Romania, in relation to ML and corruption offences. In one instance the subjects of the enquiry included a corporate entity incorporated in Azerbaijan for which BO information was required, unfortunately it is unclear what material was ultimately disseminated as it is merely described as 'possible' information.

#### *LEAs*

638. In addition to the informal measures available via the FMS and GPO, there are provisions for the exchange of information between competent authorities and their counterparts as noted above, with the exception of the STS, which received 20 requests all of which were executed, there is no quantitative data in relations to the extent and effectiveness of these alternative processes.

639. The data provided is once again demonstrative of a relatively low volume of incoming requests, which is consistent with the general levels of activity in relation to international co-operation.

#### *Supervisors*

640. As explained under core issue 2.3 there are six authorities with supervisory power. The limited information exchanges on operational matters explained above is mirroring the low results achieved terms of AML/CFT supervision in general (see IO.3).

### ***8.2.5. International exchange of basic and beneficial ownership information of legal persons and arrangements***

641. Exchange of BO and basic information is performed by LEAs and the FMS. Authorities use the FMS and public registers to obtain and provide that information. It has to be said that the registers contain only basic information on legal persons. In general, it was said that the BO information is sought in all international requests relating to corruption and other predicate offences. Nevertheless, statistics provided indicate that during the assessment period BO information has been requested only in 56 instances.

642. Deficiencies have been identified by the AT in relation to the availability of beneficial ownership information in Azerbaijan (IO.5), which is available to a certain extent through requests made to the private sector (see also IO.4). This limits the ability of the authorities in providing such information to their foreign counterparts. No statistics or case studies have been provided in this regard, which prevents the AT from further assessing the level of effectiveness.

#### ***Overall conclusions on IO.2***

643. Azerbaijan has a sound legal framework to seek and provide formal and informal international cooperation. Cooperation can be provided in a constructive and timely manner. Authorities seek international cooperation to a large extent and the nature of the co-operation is predominantly regional, which is in line with the country risk. The effectiveness Azerbaijan's MLA and extradition provisions are constrained by the prohibition on the extradition of citizen and dual criminality. Authorities have a limited proactivity when seeking assistance in relation to seizure and the confiscation of assets held abroad. Basic and BO information is exchanged but limitations under IO.5 hinders full effectiveness in case of incoming requests. **Azerbaijan is rated as having a Substantial level of effectiveness for IO.2**

## TECHNICAL COMPLIANCE ANNEX

This annex provides detailed analysis of the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations in numerical order. It does not include descriptive text on the country situation or risks and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in [date]. This report is available from [link].

### *Recommendation 1 – Assessing risks and applying a risk-based approach*

#### **Criterion 1.1 (Met)**

Article 21.2 of the AML/CFT Law states that the NRA will be conducted. Two such reports have been produced by Azerbaijan covering the time periods 2010 – 2014 and 2015 – 2021.

#### **Criterion 1.2 (Met)**

Article 21.2 of the AML/CFT Law stipulates that the NRA will be updated by the Coordination Council. This body consists of competent authorities, including law enforcement, supervisory, courts and non-governmental representatives. The Coordination Council is established by the competent executive authority (Cabinet of Ministers). The measures undertaken are (i) arranging the NRA; (ii) determining targets and plans for the management of the risks identified; (iii) supervising the achievement of the set targets to report to the Anti-Corruption Commission of the Republic of Azerbaijan.

#### **Criterion 1.3 (Met)**

Article 21.2 of the AML/CFT Law states that the NRA will be updated at least once in every three years by the Coordination Council. The 2022 NRA is considered to be up to date at the time of the evaluation, however, it is noted that the previous NRA was undertaken 7 years prior and the period between the NRAs has not fulfilled the ‘up-to-date’ aspect of this criterion. This is mitigated as the 2022 NRA is an assessment of 2015-2021.

Furthermore, the supervision authorities are required to assess the sectoral risks in relation to criminally obtained property, financing of terrorism and proliferation of weapons of mass destruction on an annual basis by considering relevant risk factors, the results of the NRA and institutional risk assessments provided by obliged entities, and entities as outlined in Article 12.

#### **Criterion 1.4 (Met)**

According to Article 21.3 of the AML/CFT Law, the report on the results of the NRA should be published on the official website of the Financial Monitoring Organ and should be provided to all participants, as well as obliged persons (Article 12) via the supervision authorities. The executive summary of the NRA was published on the FMS official website, which is the main mechanism used to disseminate the results publicly.

#### **Criterion 1.5 (Met)**

The 2023-2025 National Action Plan was adopted with the Presidential decree on 28 Feb 2023. The new action plan includes eight parts including global trends, analysis of the current situation, target indicators, purposes, priority directions, financing mechanisms, events regarding the

implementation of the National Action Plan. This National Action Plan and those that preceded it have been as a result of the findings of the NRA and therefore a risk-based approach is demonstrated.

**Criterion 1.6 (N/A)**

The AML/CFT Law does not provide the non-application of any FATF Recommendations requiring FIs or DNFBPs to take certain actions.

**Criterion 1.7 (Met)**

According to Articles 4.11-4.13 of the AML/CFT Law obliged persons shall be required to conduct enhanced CDD measures when the high risk is identified regarding complex, unusually large transactions and all unusual patterns of transactions, which have no apparent economic or lawful purpose, as well as based on the assessment of the measures regarding characteristics of clients, products, transactions, delivery channels and geographical emplacement, when there is a high risk.

**Criterion 1.8 (Met)**

According to the AML/CFT Law (Article 4.18), simplified CDD measures may be applied, in accordance with the procedures determined by financial monitoring organ, on the basis of the assessment of the measures (factors) regarding characteristics of clients, products, transactions, delivery channels and geographical emplacement; in cases where risks are low based on the results of the risk assessment. Simplified CDD measures are determined by the financial monitoring organ on the basis of the risk assessments conducted.

**Criterion 1.9 (Met)**

According to Article 21.7 of the AML/CFT Law, obliged persons shall be required to identify, assess institutional risks on the ML/TF/PF annually; to document the results of the institutional risk assessment and provide it for supervision authorities; to take measures in order to manage, eliminate or mitigate those risks in accordance with internal rules and procedures determined by the management.

Article 16.3 of the AML/CFT Law states that if supervision authorities detect incompliance with the requirements of this Law by the obliged persons, supervision authorities shall implement administrative or other measures as provided by the legislation in respect to these persons, and inform the FMS in this regard. Violation of the requirements of this Law shall cause suspension or revocation of a permit (license, certificate, membership) issued for that sector in accordance with the legislation of the Republic of Azerbaijan.

**Criterion 1.10 (Met)**

(A) As stated in Criterion 1.9, the legislation (Article 21.7 of the AML/CFT Law) requires obliged persons to document and provide the institutional risk assessment to the supervision authorities on an annual basis.

(B) The “Rules for the Implementation of Customer Compliance and Verification Measures When Introducing New Technologies, the Identification of Risk Factors, and Attribution of Customer Profiles to Risk Groups” meets this criterion. These rules outline the procedure for identifying relevant risk factors depending on the customer, product, services, transactions, delivery channels and geographical location. The OEs are required to consider the country, sectoral and

institutional risk assessments when attributing customer profiles to the high, medium or low risk groups.

(C) Article 4.5 of the AML/CFT Law states that OEs should conduct CDD business relationships on an ongoing basis which is outlined in Article 8 of the CDD Rules introduced in criterion 1.10(B). According to these rules, OEs should conduct CDD at least once a year for high-risk customers, once every two years for medium risk customers and once every three years for low risk customers or continuously for political figures. These intervals can be increased or decreased depending on the country, sectoral and institutional risk assessment results.

(D) Article 21.7 of AML/CFT Law sets out the requirement for obliged persons to provide the results of the institutional risk assessment to the supervision authorities.

#### ***Criterion 1.11 (Mostly Met)***

(A) As per Article 10 of the AML/CFT Law, obliged entities (which includes FIs and DNFBPs) are required to confirm and implement internal policies, procedures, control mechanisms and their development. This article also includes stipulating that an independent and effective compliance system should be established at the management level, ongoing employee training and an independent audit mechanism.

(B) Article 10.4 states that the financial monitoring organ shall determine the minimum requirements that the internal control program must meet and there can be additional requirements determined by the Supervisor. The legislation does not explicitly state that the implementation of these controls will be monitored.

(C) This criterion is met as per Requirements on the Establishment of Internal Control Systems (Article 9.13).

#### ***Criterion 1.12 (Met)***

Article 4 of the CDD Rules outlines the simplified measures in accordance with Article 4.18 of the AML/CFT Law. Criteria 1.9 to 1.11 are mostly met and the simplified measures can only be implemented for low risk levels only. Customers who have conducted suspicious transaction(s) should be attributed to the high-risk category according to Article 3.9.4 of the CDD Rules and therefore simplified measures are not permitted.

#### ***Weighting and Conclusion***

The only minor deficiency identified as part of this recommendation relates to the lack of provisions for the monitoring of internal control procedures. **R.1 is rated Largely Compliant.**

### ***Recommendation 2 - National Cooperation and Coordination***

In its last MER, Azerbaijan was rated largely compliant with former R.31. The deficiencies included no real mechanism in place for AML/CFT policy coordination of all the AML/CFT stakeholder and a lack of cooperation between the GPO and Police on financial intelligence.

#### ***Criterion 2.1 (Met)***

Following the results of the first NRA conducted in 2014-2015, Azerbaijan adopted its first 2017-2019 National AML/CFT Action Plan in 2016. The 2017-2019 National Action Plan aimed to mitigate the risks identified in the NRA and implement other measures necessary for improving the efficiency of the national AML/CFT system. The National Action Plan consisted of 10 priority

tasks (each involving several sub-tasks), including improving national legislation, bolstering the capacity of competent authorities, obliged persons and other persons involved in monitoring, increasing bilateral and multilateral cooperation, and improving analysis of suspicious transactions, crime statistics and ML/TF risks.

Following the second NRA conducted with the scope of 2015-2021, the 2023 - 2025 National Action Plan has been recently adopted by the Coordination Council. The plan includes measures and actions relating to supervisory bodies and the private sector, FIU, tax, LEAs, criminal prosecution, TF and PF, and the improvement of domestic and international cooperation and AML/CFT legislation.

### ***Criterion 2.2 (Met)***

Article 21.2 of the AML/CFT Law designates the Coordination Council to have the responsibility of determining targets for the management of the risks identified as a result of the NRA and preparing drafts of relevant plans and providing them to competent state authorities. The Coordination Council is also required to supervise the achievement of the set targets and inform the Anti-Corruption Commission of the Republic of Azerbaijan in this regard.

### ***Criterion 2.3 (Met)***

At the policy level, Article 20 of the AML/CFT Law states that the Anti-Corruption Commission of the Republic of Azerbaijan participates in formation of the state policy in the field of combating the legalization of criminally obtained property and the financing of terrorism, studies and briefs state of implementation of legislation in this field, conducts supervision on the execution of state programs.

From an operational perspective, the competent authorities have established multiagency taskforces and the FMS Charter states that the FIU will disseminate the Prosecution authorities in cases of ML or the State Security Services in relation to the financing of terrorism.

### ***Criterion 2.4 (Met)***

Legislation Export Control document, Item 3, specifically 3.1.2 and 3.1.3 provide the necessary legislation for this recommendation.

### ***Criterion 2.5 (Met)***

Article 10 of the Law on Personal Data provides a suitable gateway for the exchange of information. It also permits (in Article 13) Government bodies to fulfil their obligations, both to each other and internationally.

There are no hinderances within the data protection legislation for formal or informal cooperation between the relevant authorities.

### ***Weighting and Conclusion***

Azerbaijan meets all requirements for this Recommendation. **R.2 is rated C.**

### ***Recommendation 3 - Money laundering offence***

In the 4th round MER of 2014, Azerbaijan was rated LC on former R.1 and PC on former R.2. There were deficiencies in the criminalisation of ML since acquisition, possession or use of property was criminalised only with respect to “significant amounts” and liability of legal person for ML offence was not in force.

**Criterion 3.1 (Mostly met)** - Criminalisation of ML is provided under Art. 193-1 and 194 of the CC. The ML actions of “conversion”, “transfer”, “concealment” and “disguise” are described in Art. 193-1 of the CC, and broadly incorporate the elements established under Art. 6(1)(a) of the Palermo Convention and Art. 3(1)(b) of the Vienna Convention. However, criminalisation of the acquisition, possession and use of proceeds of crime is limited only to “not promised in advance purchase” which is only one of the multiple manners to acquire property (CC, Art. 194).

**Criterion 3.2 (Mostly met)** – Criminalisation of ML follows “all-crimes approach”. Nevertheless, some deficiencies in criminalisation of TF, impact the range of offences that should be covered.

**Criterion 3.3 (Not Applicable)** – This criterion is not applicable because Azerbaijan applies an all-crimes approach, in the terms referred under c.3.2.

**Criterion 3.4 (Met)** – The ML offence extends funds or property “obtained by criminal way”. The AML/CFT Act defines “criminally obtained property” as “funds of every kind, property, whether movable or immovable, tangible or intangible (intangible property assets) and legal documents or instruments evidencing the title to, or interest in property, as well as virtual assets, obtained directly or indirectly through the commission of a crime envisaged in the Criminal Code of the Republic of Azerbaijan (hereinafter referred as “the Criminal Code” (Art. 1.1.1). This definition is broadly in line with the standards.

**Criterion 3.5 (Met)** – Incriminations of the ML offence do not require conviction for predicate offence to prove that property is the proceeds of crime.

**Criterion 3.6 (Met)** – Although CC does not explicitly extend the scope of the ML offence to proceeds from predicate offences committed abroad, it does not require that the predicate offence is committed domestically. In addition, the general rules concerning the territorial application of the CC implies that predicate offences for ML extends to extraterritorial conducts.

**Criterion 3.7 (Met)** – The ML offences do not differentiate between laundering the proceeds of a person’s own offence or the offence committed by third party, and hence, it does not preclude self-laundering as an offence (CC, Art. 193-1 and 194).

**Criterion 3.8 (Met)** – Azerbaijani authorities indicated that criminal legislation requires considering objective factual circumstances when assessing the mental elements of all crimes, according to the principle of free evaluation of the evidence provided under Article 145 of the CPC.

**Criterion 3.9 (Mostly met)** – Imprisonment sanctions for ML offence can be applied alternatively with fines and range from two up to five years with deprivation of the right to hold the certain post or to engage in certain activity for the term up to three years or without it (CC, Art. 193-1). In instances where ML is committed (i) by group of persons in a preliminary conspiracy, repeatedly or by a person using his/her official position, or (ii) by organized group or criminal community, or in large amount (over 45 000 manats (euro 25 000)), the applicable sanction of imprisonment ranges from five to eight years and from seven to 12 years, respectively. Imprisonment sanctions are proportionate and dissuasive.

Nevertheless, fines range from 4 000 up to 8 000 manats (euro 2 300 to 4 600), which are not proportionate nor dissuasive.

**Criterion 3.10 (Met)** – CC establishes “criminal law measures” applicable to legal entities where a ML crime is committed in favour of the legal person or to protect its own interest by a natural person (i) authorised to represent the legal person, (ii) has the power to take decisions on behalf

of the legal person or (iii) has the power to control the activities of the legal person (CC, Art. 99-4). Sanctions applicable to legal persons are liquidation of the legal entity, a fine, a special confiscation and the deprivation of conducting certain activities and therefore are proportionate and dissuasive (CC, Art.99-5). Proceeding against legal person are without prejudice to the criminal liability of natural person (CC, Art. 99-4.2)

**Criterion 3.11 (Met)** – Under different concepts (i.e., participation and attempt to a crime and the figure of accomplice) the ancillary offences to ML include participation in, association with, or conspiracy to commit, attempt, aiding and abetting, facilitating, and counselling the commission of an act of ML (CC, Art. 27 to 34).

#### *Weighting and Conclusion*

ML offence is criminalised mostly in accordance with the requirement. Nevertheless, there are some deficiencies such as limited scope of “*acquisition*” “*possession*” and “*use*” of proceeds of crime and sanctions being not dissuasive and proportionate. **R.3 is rated LC**

#### **Recommendation 4 - Confiscation and provisional measures**

In the 4<sup>th</sup> MER of 2014, Azerbaijan was rated PC on the confiscation and provisional measures as PC. A number of recommendations were made by the assessors, which have subsequently, in part or fully, been implemented leading to an enhanced rating of LC being granted following the exit FUR (2018).

#### **Criterion 4.1 (Mostly Met)**

**(a) property laundered** - There are general measures in place for the confiscation of instrumentalities used for the commission of the criminal offence as well as property derived from a person’s criminality (CC Art. 99-1), which includes confiscation of laundered property.

**(b) proceeds of or instrumentalities used or intended for use in, ML or predicate offences** - In Azerbaijan, proceeds of crime shall be confiscated from the convicted person (CC, Art. 99-1). The measures provided are applicable to general criminality, thereby providing for the seizure and confiscation in cases of both ML and any predicate offences. Incomes and other benefits derived from such proceeds shall also be confiscated, except when property subject to confiscation shall be returned to the legitimate owner (CC, Art. 99-1.1.2). Instrumentalities used for the commission of any criminal offence shall also be confiscated (CC, Art. 99-1.1.1). Nevertheless, there is no legal provision enabling confiscation of the instrumentalities intended for use in ML or predicate offences.

Instrumentalities and proceeds of crime shall also be confiscated from the persons to whom the property was transferred in any manner, where the recipient knew or should have known about the illegal means by which the property was obtained and accepted it, while respecting bona fide 3<sup>rd</sup> party (CC, Art. 99-1.3).

**(c) property that is the proceeds of, or used in, or intended for use in the financing of terrorism, terrorist acts or terrorist organisations.** Criminal Code (Art. 99-1.1.4) stipulates that instrumentalities used or intended to be used for the commission of financing of terrorism, armed formations or groups not stipulated by the legislation, organised groups or criminal communities (criminal organizations) shall be confiscated. In relation to proceeds of or used in the commission of terrorism offences should also be confiscated according to the general rule for



confiscation (see c.4b). However, there is legal impediment to confiscate property intended to be used in the commission of terrorism offence.

**d) property of corresponding value.** In case the instrumentalities and property subject to confiscation cannot be confiscated, court shall order confiscation of corresponding value (CC, Art 99-2). Nevertheless, deficiencies related to confiscation of instrumentalities intended to be used for the commission of ML and predicates offences impacts the ability to order confiscation of corresponding value in such cases.

**Criterion 4.2 (Mostly met)** – The CPC of Azerbaijan has been cited as the primary legislative mean enabling competent authorities to identify, trace and evaluate property subject to confiscation, carry out freezing or seizing of property, and take any appropriate investigative measures (CPC, Art. 85 and 86, Art. 132, Art. 134 and Art. 248).

**(a) identify, trace, and evaluate property that is subject to confiscation** – All LEAs (investigators and preliminary investigators) and prosecutors have power to identify, and trace property that is subject to confiscation. Investigators and the preliminary investigators can take steps to ensure payment of compensation for material damage caused by the offence and arrange seizure of property as appropriate (CPC, Art. 85 and 86). To identify and trace proceeds of crime, prosecutors can, upon court approval, undertake actions such as examination and search of premises and collecting information about financial transactions, bank accounts or tax payments as well as information representing family, state, commercial or professional secrets. There is no provision stipulating the process for the evaluation of property subject to confiscation.

**(b) carry out provisional measures, such as freezing or seizing, to prevent any dealing, transfer or disposal of property subject to confiscation** - In Azerbaijan, provisional measure of seizure may be ordered with respect to the property of the accused and property of other persons who may be held liable, irrespective of what it is or in whose possession it is (CPC, Art. 248.2). These provisions provide sufficient measure for the seizing of property subject to confiscation in order to prevent dissipation, but it is not clear if this can be made *ex-parte*.

**(c) take steps that will prevent or void actions that prejudice the country's ability to freeze or seize or recover property that is subject to confiscation** - Steps to prevent or void actions that prejudice the country's ability to seize or recover property that is subject to confiscation might be taken based on the Art. 303 of CC. Fines should be imposed in case of hiding or misappropriating property subject to confiscation as well as evading the execution of the confiscation order.

**(d) take any appropriate investigative measures-** Authorities can take investigative measures as set out in R.31.

**Criterion 4.3 (Met)** –The legislation provides for third parties to apply to the prosecutor to release property that has been unlawfully attached or attached in error. If the property is not released, then third parties may apply to the court and the decision of the court will be binding on all parties (CPC, Art. 254).

**Criterion 4.4 (Partly Met)** –CPC details some procedure for the management of the seized instrumentalities, proceeds and property of corresponding value (Art. 251). According to the legislation, seized immovable property shall be sealed and given to its owner or holder, or adult members of the family, for safe keeping, in exchange for a commitment not to misappropriate, damage or destroy it. Movable property, once seized, is deposited with the relevant institution. Precious metals and stones, pearls, money in local and foreign currency, securities (shares, bonds,

cheques, treasury notes, loan certificates, lottery tickets etc.) are deposited in the State Bank. Other assets are sealed and kept within investigating authority or court and can be handed over to other state authority which is better suited for their management. Nevertheless, those provisions are mostly related to storage, rather than management of seized property.

#### *Weighting and Conclusion*

Azerbaijan meets most of criteria under R.4. Deficiencies identified are lack of measures related to confiscation of instrumentalities intended to be used for the commission of ML and predicates offence, no provision enabling evaluation of property subject to confiscation, nor ex prate seizure of property and no proper asset management legal framework. **R.4 is rated LC.**

#### *Recommendation 5 - Terrorist financing offence*

In the 4th round MER of 2014, Azerbaijan was rated LC on former SR II. The FT offence did not cover all terrorist offences listed in the Annex of the FT Convention and criminal liability of legal persons had not come into force.

**Criterion 5.1 (Mostly met)** – Azerbaijan criminalises TF offence (CC, Art. 214-1) as “*deliberate collection or provision directly and indirectly all or part of the funds or other property, regardless of the source of its receipt, knowing that they will be used to finance, preparation, organization, or committing acts by a person or group (gang, organization) stipulated for by the Articles 102(Attack on persons or establishments, which use international protection), 214 (terrorism), 214-2 (Public appeals to terrorism), 214-3 (Conducting trainings with a terrorism purpose), 215 (Capture of the hostage), 219 (Stealing of airship, ship or railway train), 219-1(Sea robbery), 219-2 (Acts constituting a treat to the safety of fixed offshore platforms), 226 (Illegal handling with radioactive materials), 227 (Plunder or extortion of radioactive materials), 227-1 (The threat of theft of radioactive materials), 270-1 (Acts constituting a treat to aviation security), 277 (Attempt on life of the state or public authority), 278 (Violent seizure of power or violent deduction of power, violent change of the constitutional system of the state), 279 (Creation of an armed formations or groups, which are not provided by the legislation), 280 (Armed rebellion), 282 (Diversion) and 283-1 (Creation of stable group to participate in the armed conflicts outside the Republic of Azerbaijan), or for the financing of a terrorist or terrorist group (gang, organization)*”. These listed offences implement majority of the convention offences required by the TF Convention. Nevertheless, offence of kidnapping of internationally protected person under the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, as well as offences of violence against a person at the airport serving international civil aviation and a person on board of fixed platform under Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, (1988) and Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988) are not criminalised and therefore financing of such activities do not present TF offence.

**Criterion 5.2 (Met)** - According to the Azerbaijan CC (Art. 214-1), financing of terrorism refers to providing or collecting funds or other property, directly or indirectly, knowing that they will be used, in full or in part, to commit the criminal acts defined under some Arts. of the CC (see criterion 5.1) or for the financing of a terrorist or a terrorist group. A link to a specific terrorist act or acts is not required by the CC..

**Criterion 5.2bis (Partly met)** –TF offence includes financing of organisation, preparation, and conduction of trainings with a terrorist purpose (CC, Art. 214-1 and 214-3). However, financing of activities such as travelling to a State other than the State of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or for the purpose of the providing or receiving terrorist training is not criminalised.

**Criterion 5.3 (Met)** – TF offence extends to funds “*regardless of the source of its receipt*” which, according to the Azerbaijani authorities implies that TF offences extend to any funds whether from a legitimate or illegitimate source. The term “*funds or other property*” is defined under the Law on Combating Terrorism as “*regardless of the method of acquisition, tangible and intangible assets of any kind, movable or immovable property, as well as money of any kind, bank loans, traveller’s checks, bank checks, postal orders, letters of credit, as well as shares, bonds, legal documents or deeds in electronic or any other form that confirm rights to such assets, including promissory notes and other securities*”.

**Criterion 5.4 (Met)**– TF offence does not require actual use of funds or other property in the commission or attempted commission of terrorist acts. In addition, connection to a specific terrorist act does not preclude criminal responsibility for TF offence. (CC, Art. 214.1 and explanatory note)

**Criterion 5.5 (Met)**– Azerbaijani authorities indicated that criminal legislation requires considering objective factual circumstances when assessing the mental elements of all crimes, according to the principle of free evaluation of the evidence provided under Article 145 of the CPC.

**Criterion 5.6 (Met)** –Criminal sanctions applicable to natural persons for TF (CC, Art. 214-1) is imprisonment from 10 to 14 years, which is proportionate and dissuasive enough.

**Criterion 5.7 (Mostly met)** – CC establishes “*criminal law measures*” applicable to legal entities where a TF crime is committed by some related individuals in favour of the legal person or in order to protect its interest. In the context of TF crimes, the financing activity is not usually committed in favour of the legal person itself or its interest, but in favour of a third entity, person or group of persons and, thus, this purposive element of the offence required for legal persons is not fully in line with the standards. Available sanctions are liquidation of the legal entity, fine, special confiscation and the deprivation of conducting certain activities and they seem to be proportionate and dissuasive.

**Criterion 5.8 (Met)** –TF offence extends to participation in, association with, or conspiracy to commit, attempt, aiding and abetting, facilitating, and counselling the commission of an act of TF (CC, Art. 27 to 34).

**Criterion 5.9 (Met)** – Due to all-crimes approach applied in Azerbaijan the TF offence is a predicate offence for ML.

**Criterion 5.10 (Met)** – CC does not make any distinction regarding the place where the terrorist(s)/terrorist group(s) is located, or the terrorist act(s) occurred/will occur. If the terrorist(s)/terrorist group(s) is located in another country or the terrorist act(s) occurred/will occur in another country and the person alleged to have committed the financing of these persons or these acts is in Azerbaijan the TF offence appears to be applicable. Furthermore, CC (Art.12) establishes that anyone who commits a crime of terrorism or TF “*shall be instituted to criminal*

*liability and punishment” according to Azerbaijani criminal legislation, “irrespective of a place of committing a crime”.*

#### *Weighting and Conclusion*

In Azerbaijan, definition of TF offence does not meet all criteria required under R.5. Financing some of the offences listed in the Annex of TF Convention as well as traveling of the individuals for terrorism purposes are not criminalised. There are certain limitations regarding liability of legal persons. **R.5 is rated LC.**

#### ***Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing***

According to the Azerbaijani MER of 2014, non-compliant rating was provided for the former SR.III, according to the following deficiencies: no dedicated CFT structure for the conversion of designations into Azerbaijan Law under UNSCR 1267 and 1373, including consideration of designations by third countries, no designating authority for UNSCR 1373, no clear requirements on the financial sector as to their duties on notification of designations, no publicly known procedures for considering de-listing, unfreezing and for persons inadvertently affected, no guidance on the scope of “funds or other assets” to the financial sector.

Since then, Azerbaijan revised its legal framework on TFS and adopted Ordinance No. 124 of the Cabinet of Ministers of the Republic of Azerbaijan as of June 25, 2010 on the adoption of the Regulation on approval of the General List of natural or legal persons designated within the frame of countering the financing of terrorism. On February 1, 2023 the new Law on targeted financial sanctions entered into force.

#### ***Criterion 6.1 (Met) –***

- a) The MFA is the competent coordinating executive authority of Azerbaijan for proposing persons or entities for designation to the relevant Sanctions Committees (Article 11.2 of the TFS Law).
- b) The TFS Law provides the mechanism for identifying targets for designation based on the designation criteria set out in the UNSCRs. The proposal of individuals to the international lists is initiated by the State Security Service, being responsible for identification of the target for designations and submission of the information and documents to the Ministry of Foreign Affairs to be submitted to the UN Security Council Sanctions Committees (Article 11.1 of the TFS Law).
- c) The authorities shall apply an evidentiary standard of proof of “reasonable grounds” when deciding whether or not to make a proposal for designation. According to Article 11.1.2 of the TFS Law, requests for inclusion of a person or entity in the international lists is supported by information from different sources, such as: investigative, operational and search activity, mass media and evidence on reasonable grounds, to suspect or believe that the person(s) meets the designation criteria. The initiation of criminal proceedings against a person or entity shall not be a prerequisite for designation.
- d) The MFA follows the procedure for submission of the request of designation of a person or entity in the international lists of the Sanctions Committees and use the standards form for listing (Article 11.2 of the TFS Law).

- e) The proposals for designations provide all relevant information as possible on the proposed name (Articles 11.1.5.1-11.1.5.3 of the TFS Law) and on the basis for the listing (Articles 11.1.1-11.1.3 of the TFS Law). The status as a designated state may be made known (Article 11.1.4 of the TFS Law).

**Criterion 6.2 (Mostly met) –**

a) Based on the State Security Service submission a Court order should be issued on the designation of persons or entities that meet the specific criteria for designation, as set forth in UNSCR 1373. The State Security Service makes the submission of persons and individuals for designation to the domestic list based on the requests of the Prosecutor General's Office, supervisory authorities stipulated by the AML Law, bodies (Ministry of Internal Affairs, Ministry of Justice, State Border Service, Foreign Intelligence Service) and the Financial Monitoring Service, as well as based on the request made by the competent authorities of foreign countries (territories) or on its own initiative (Articles 7.1 and 7.2 of the TFS Law).

b) (*Met*) Targets for designation are identified by the State Security Service, on its own motion or upon the proposal of relevant national authorities, based on the designation criteria set out in UNSCR 1373 (Articles 7.1.1-7.1.3 of the TFS Law).

c) The State Security Service is a competent authority for receiving foreign requests for designations (Article 8.1 of the TFS Law). Upon request, the SSS reviews whether it is supported by reasonable grounds to meet the criteria for designation (Articles 8.2 and 8.3 of the TFS Law). The SSS is required to review a foreign request within 15 days (Article 8.4 of the TFS Law). Once the SSS ensures that the request meets the requirements, it submits the request to the Court, which has 48 hours to make a decision on the guarantee or refusal of the submission. The Court's decision comes into force immediately (Criminal Procedure Code, Article 528).

d) The State Security Service is a competent authority for receiving foreign requests for designations (Article 8.1 of the TFS Law). Upon request, the SSS reviews whether it is supported by reasonable grounds to meet the criteria for designation (Articles 8.2 and 8.3 of the TFS Law). The SSS is required to review a foreign request within 15 days (Article 8.4 of the TFS Law). Once the SSS ensures that the request meets the requirements, it submits the request to the Court, which has 48 hours to make a decision on the guarantee or refusal of the submission. The Court's decision comes into force immediately (Criminal Procedure Code, Article 528).

The evidentiary standard of proof of “reasonable grounds” is applied by the Court. The examination of the State Security Service submission for deciding to make a designation to the domestic list should be carried out according to the CPC. The submission for designation is not conditional upon the existence of a criminal proceeding (Criminal Procedure Code, Article 528.2).

- e) There are no provisions which need to be followed under this sub-criterion.

**Criterion 6.3 (Not met) –**

- a) No legal provisions are foreseen that empower the State Security Service to collect and solicit information to identify persons or entities with respect to whom there are grounded suspicions to meet the criteria of designation.
- b) No procedures are in place to operate *ex parte* against a person or entity who has been identified and whose (proposal for) designation is being considered.

**Criterion 6.4 (Met) –**

1267: Azerbaijan implements the Consolidated list without delay through software integrations immediately after its publication in electronic form by the United Nations (Article 5.2 of the TFS Law).

1373: Designation of a person or an entity in the domestic list is made without delay on the basis of a Court order upon the SSS submission of information and documents, by placing information of the designated persons and entities on the web portal on targeted financial sanctions (Article 7.1 of the TFS Law). The Court has to examine the submission of designation in the domestic list within 48 hours (Articles 528.1 and 528.2 of the CPC). The Court's decision comes into force immediately (Criminal Procedure Code, Article 528).

**Criterion 6.5 (Mostly met)** – In Azerbaijan, the MFA is the coordinating body for implementation of TFS (Article 11.1 of the TFS Law). The SSS is a designated authority responsible for implementation and enforcement of the TFS requirements (Article 1.1.9 of the TFS Law).

- a) All assets of the designated persons and entities shall be frozen, without delay and without prior notice, by any person (natural or legal person) or state authority, obliged entities provided by the AML Law, as well as persons providing auditor services, non-governmental organizations, branches or representative offices of foreign non-governmental organizations in the Republic of Azerbaijan and religious institutions (Art. 5.1 of the TFS Law).
- b) The definition of “assets” provided by Article 1.1.5 of the TFS Law is in line with the FATF Glossary. The freezing measures, regardless of whether they are directly related to terrorism, terrorist financing, shall be applied to the assets of designated persons and entities, owned or controlled directly or indirectly, wholly or jointly with others, as well as the funds or other assets derived or generated from such assets, as well as assets of individuals and entities acting on behalf of or at the direction of designated persons and entities (Article 4 of the TFS Law).
- c) Any person or entity in the territory of the Republic of Azerbaijan is prohibited from making any funds or other assets, economic resources, or financial or other related services, available directly or indirectly, wholly or jointly, for the benefit of designated persons and entities; entities owned or controlled, directly or indirectly, by designated persons or entities; and persons and entities acting on behalf of, or at the direction of, designated persons or entities (Article 5.5 of the TFS Law).
- d) Domestic and international lists are elaborated and published as described under c.6.4. International lists of designated persons and entities are automatically placed and updated on the web portal on targeted financial sanctions using software integrations immediately after its publication in electronic form by the United Nations (Article 5.2, of the TFS Law). Moreover, the FIU has issued a guidance for FIs and DNFBPs (<https://fiu.az/en/instructions>). However, this communication lacks proactive notification of FIs and DNFBPs.
- e) Entities mentioned under c. 6.5(a), should take prompt actions to freeze the assets of designations referred to in c.6.5(b), as well as notify the FMS via web portal on targeted financial sanctions (Article 5.1 of the TFS Law). Information on transactions and attempts to carry out transactions involving assets of designations, as well as legal persons under their control or subordination as well as natural and legal persons acting on behalf of those persons or as per their instructions, and the transactions with those assets shall be submitted to the financial monitoring service, regardless of their amount (Articles 11.3 and 11.3.2 of the AML/CFT Law).
- f) The rights of bona fide third parties acting in good faith when implementing the obligations are protected (Article 5.7 of the TFS Law)

**Criterion 6.6 (Mostly met)** –

- a) De-listing requests of the designated entities may be submitted to the Sanctions Committees either directly or through the Ministry of Foreign Affairs, in accordance with procedures adopted by the *1267/1989 Committee* or the *1988 Committee*. Relevant information on the de-listing procedure can be found at the Sanctions Committees websites and shall also be posted on the web portal on targeted financial sanctions, thus ensuring that the procedure can be publicly known (Article 12 of the TFS Law).
- b) The decision to designation pursuant to UNSCR 1373 may be appealed against at the court as prescribed by the Article 529 of the Criminal Procedure Code, establishing the procedure of de-listing of person or entity from the domestic list. The assets shall be kept frozen while the person is in the list of the designated persons and be promptly released following delisting of the person. Also, upon the elimination of grounds for freezing the assets of natural or legal persons, at request of the person whose assets have been frozen or the relevant executive authority, State Security Service should publish relevant information on the web portal on targeted financial sanctions (Article 10 of the TFS Law).
- c) Please see c.6.6(b).
- d) Information on the terms of delisting for designated persons is displayed on the Financial monitoring service website (<http://www.fiu.az/en/sanctions/terms-delisting>). Persons and entities included in international lists may submit a petition for their de-listing from the international lists directly or through their legal representatives to the Ombudsperson or the Coordinator appointed by the Sanctions Committees, either directly or through the Ministry of Foreign Affairs (Article 12.3 of the TFS Law).
- e) Please see c.6.6(d).
- f) Procedure of unfreezing the assets, inclusively on cases of false positive, provides that the assets should be unfrozen without delay after verification of non-conformity of the identity by the body determined by the relevant executive authority upon the person's application through the web portal on targeted financial sanctions (Article 5.6 of the TFS Law).
- g) The decisions of the Court on the delisting of the persons and entities from the national list and decisions of the Sanctions Committees on delisting the person or entity from the international list shall be updated by the State Security Service on web portal on targeted financial sanctions (Articles 10.6, 12.11 of the TFS Law). Moreover, the FIU has published a guidance for the FIs and DNFBPs as foreseen by Article 13.4 of the TFS Law. However, this guidance does not address an obligation to respect unfreezing actions. In addition, this communication does not foresee proactive notification of FIs and DNFBPs.

***Criterion 6.7 (Met) –***

Based on the permission of the State Security Service shall be provided access to frozen assets or other assets which have been determined to be necessary for basic expenses of the natural or legal persons. Permission to access frozen assets is granted after completely excluding the risk of directing the assets to be provided access to for the financing of terrorism and the decision on the use of frozen assets of the persons designated in the International List is made, with the opinion of the relevant Committee being taken into account (Ordinance No. 310 “On providing access to frozen assets for the payment of necessary and unexpected expenses of the natural or legal persons whose assets were frozen”).

*Weighting and Conclusion*

Azerbaijan meets most of the requirements of R.6 and only minor deficiencies remain. In particular, lack of provisions which need to be followed under c.6.2(e). Neither powers nor procedures are foreseen under 6.3. Azerbaijan has established mechanisms for communicating

designations to FIs and DNFBPs, however this approach lacks proactiveness (c.6.5(d) and c.6.6(g)). Azerbaijan implements UNSCRs 1267 and 1373 and their successors without delay. **R.6 is rated LC.**

### ***Recommendation 7 – Targeted financial sanctions related to proliferation***

TFS related to PF requirements were not previously assessed during the previous round of evaluation, as being recently added to the FATF Recommendations. Azerbaijan adopted Law on targeted financial sanctions entered into force starting from February 01, 2023.

#### ***Criterion 7.1 (Met)***

TFS related to PF and the obligations stemming from UNSCR 1718 (concerning the DPRK) and UNSCR 1737 (concerning the Islamic Republic of Iran) are regulated by the provisions of the TFS Law, being applicable as described under c.6.4 (Article 5.2 of the TFS Law).

#### ***Criterion 7.2 (Mostly met)***

- (a) All the assets of the designated entities shall be frozen, without delay and without prior notice, by any person or state authority, upon publication of the list of designated persons on the on the web portal on targeted financial sanctions as described under c.6.5(a).
- (b) The freezing obligations extend to all types of funds as described under c.6.5(b).
- (c) Please see c.6.5(c).
- (d) Mechanism for communicating designations is described under c.6.5(d) considering that same deficiencies are also applicable.
- (e) Financial institutions and DNFBPs are required to report any assets frozen, including attempted transactions. Please see c.6.5(e).
- (f) The rights of bona fide third parties acting in good faith when implementing the obligations are protected according to Article 5.7 of the TFS Law.

***Criterion 7.3 (Met)*** – Supervision authorities shall monitor compliance with the TFS Law by the obliged entities under their supervision, persons providing auditor services, religious institutions, non-governmental organizations, as well as branches or representative offices of foreign non-governmental organizations. Failure to comply with the requirements of the TFS Law shall generate liability in the cases and in the manner established by law and may result in suspension or revocation of the license, registration, certification or membership (Articles 13.1-13.3 of the TFS Law).

#### ***Criterion 7.4 (Mostly met) –***

- (a) Persons and entities listed in international lists may submit a petition for their de-listing from the international lists directly or through their legal representatives to the Ombudsperson or the Coordinator appointed by the Sanctions Committees, either directly or through Ministry of Foreign Affairs, according to Article 12.3 of the TFS Law.
- (b) Procedure of unfreezing the assets, inclusively on cases of false positive is provided under c.6.6(f).
- (c) The procedure for ensuring access to frozen assets for the payment of necessary and unexpected expenses of the persons and entities is described under c.6.7.
- (d) In c.6.6(g) it is described the mechanism for communicating de-listings along with the guidance for the financial sector and DNFBPs. Mentioned deficiencies also apply to this sub-criterion.



**Criterion 7.5 (Met) –**

- (a) It is not prohibited the addition to the accounts frozen of interests or other earnings due on those accounts or payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions to the frozen accounts of individuals and entities listed in international lists by the sanctions committees established by the United Nations Security Council for the purpose of preventing the proliferation of weapons of mass destruction and its financing, as well as payments incurred from the contracts, deals, and obligations that arose prior to prior to the date on which those accounts became subject to the provisions provided for in the resolutions of the United Nations Security Council. These interests, other earnings and payments are also subject to the freezing measures and the provisions of these resolutions are also applicable for them (Article 6.1 of the TFS Law).
- (b) In case of the liabilities in respect of frozen assets should be fulfilled within the framework of the contracts entered into by the designated persons and entities prior to their listing, the designated persons and entities hold the rights to fulfil those liabilities being subject to exceptions established by relevant resolutions of the United Nations Security Council sanctions committees established to prevent the proliferation of weapons of mass destruction and its financing (Article 6.2 of the TFS Law).

*Weighting and Conclusion*

Azerbaijan has met almost all requirements of R.7. Some minor deficiencies exist. Therefore, **R.7 is rated LC.**

**Recommendation 8 – Non-profit organisations**

Azerbaijan was rated C in the previous evaluation round on SR VIII.

**Criterion 8.1 (Mostly met)**

- a) Azerbaijani authorities have conducted a sectoral risk assessment of the NPO sector to identify a subset of NPOs that fall within the FATF definition and are at risk of TF abuse. However, no individual NPO nor category of NPOs were identified at risk of being potentially misused for TF purposes.
- b) The NPO risk assessment identifies the nature of TF threats to NPOs. The report has a dedicated chapter on TF threat to NPOs, which considers different sources of information, i.e., quantitative and qualitative data. Moreover, the risk assessment also analyses how terrorist actors abuse NPOs.
- c) The NPO risk assessment evaluates the adequacy of laws and regulations, including governmental measures regarding all NPOs. No measures have been proposed for addressing the identified vulnerabilities.
- d) Pursuant to item 10 of the Ordinance No.404 establishes a requirement for supervisors, i.e., the Ministry of Justice, to carry out the sectoral risk assessment on an annual basis.

**Criterion 8.2 (Partly met) –** Azerbaijani legislation differentiates two categories of NPOs: non-governmental organisations (NGOs) and religious organisations. According to Article 1 of the Law on NGOs, NGOs include public unions and foundations.

- a) Azerbaijani legislation promotes accountability of NPOs through several measures. According to Article 1 of the Law “On Grant” religious organisations and NGOs, branches,

and representative offices of foreign NGOs cannot receive assistance in the form of financial resources and (or) in any other material without a grant agreement (decision), except for the support provided by public authorities and donations specified in the Law “On Freedom of Religious Faith” and “On NGOs”. Pursuant to Article 4 of the Law “On Grant”, grant agreements (decisions) shall be introduced to the central executive authority (Ministry of Justice) for registration and approval of the rules on registering grant agreements. It is prohibited to conduct bank and any other transactions on grants that are not registered. Other than these measures, there are no policies to promote and public confidence in the administration and management of NPOs.

- b) The NPO risk assessment acknowledges that “some” outreach on TF has been provided by the Ministry of Justice, by its Academy of Justice, and by the SCRA. No other specific data was provided on outreach and educational programmes to raise and deepen awareness among NPOs and the donor community about the potential vulnerabilities of NPOs to terrorist financing abuse and terrorist financing risks, and the measures that NPOs can take to protect themselves against such abuse.
- c) Azerbaijani authorities do not work with NPOs to develop and refine best practices to address terrorist financing risk and vulnerabilities and thus protect them from terrorist financing abuse.
- d) There is no direct obligation for the NPOs to open a bank account. Nevertheless, according to Article 24.1-4 of the Law “On NGOs”, donated funds are accepted by transfer to the bank accounts of NGOs and branches or representative offices of foreign NGOs. Such NPOs whose core purpose is charity may accept donations of up to 200 manats (~USD117) in cash. There are no such requirements for religious organizations/communities. However, according to the Law “on Freedom of Religious Faith” religious organisations can apply for and accept voluntary donations, which are provided in cash, via bank, mail, plastic card, electronic payment systems or the Internet.

**Criterion 8.3 (Partly met) –**

Azerbaijan applies a one-size-fits-all approach to supervise the NPO sector. There are two state authorities responsible for supervision of NPOs. The Ministry of Justice is the supervisory authority for NGOs, branches, or representative offices of foreign NGOs, whose activities consist of receiving, collecting, delivering, or transferring the funds, as well as for the religious organisations (items 16.1.3 and 16.1.4 of Article 16 of the AML/CFT Law). For religious organisations the supervisory authority is the SCRA. According to “The Rules for the implementation of supervision over the compliance to the requirements of the AML/CFT Law by the NGOs, branches or representative offices of NGOs of foreign countries in the Republic of Azerbaijan” approved by the Ministry of Justice, supervision is carried out according to the plan or spontaneously. In December of each year, a list of monitoring entities to be supervised for the following year is prepared and approved by the head of the supervisory authority, one of the factors being considered is the financial turnover of the organisation. Additionally, the Ministry of Finance presents a list of reports prepared by NGOs to be compared with the information in the grant, service contracts, and donation registry. In case of suspicions, supervision measures are taken at the relevant monitoring entity. Although, Azerbaijan promotes supervision of NPOs, i.e., it only requires them to submit an annual financial report (item 12.3 of Article 12 of the AML/CFT Law). Other risk-based measures foreseen under sub-paragraph 6(b) of INR.8 to NPOs at risk of TF abuse are not applied.

**Criterion 8.4 (Not met) –**

- a) The Ministry of Justice exercises monitoring of compliance of NPOs with the AML/CFT requirements (items 16.1.3 and 16.1.4 of Article 16 of the AML/CFT Law). However, there is no monitoring of risk-based measures applied to NPOs at risk of terrorist financing abuse.
- b) Supervisory authorities are empowered to impose administrative or other sanctions as provided by the Code of Administrative Offences. In case of violation of receiving grants (Article 432) the administrative fines are applied depending on the gravity of violation between 1000 and 5000 manats (app. 550-2800 Euros) for officials and between 5000 and 15000 manats (app. 2800-8300 Euros) for legal persons. For failure to include information on donations in the financial reports (Article 465) the administrative fines are applied between 1500 and 3000 manats (app. 830-1700 Euros) for officials and between 5000 and 8000 manats (app. 2800-4450 Euros) for legal persons. For violation of legislation on NPOs regarding carrying out unregistered activities the administrative fines are applied between 1000 and 2000 manats (app. 550-1100 Euros) for officials and between 2500 and 3000 (app. 1400-1700 Euros) for legal persons. Nevertheless, these sanctions cannot be considered effective, proportionate and dissuasive. Moreover, no other sanctions are available regarding the risk-based measures foreseen under subparagraph 6(b) of INR.8.

**Criterion 8.5 (Mostly met) –**

- a) Regular cooperation is encountered regarding the activities of NGOs and religious organisations among the FMS, the Ministry of Justice, the SCRA, and the SSS. The FMS regularly shares the information submitted by obliged entities, inclusively containing bank account transactions and flow of funds to these organisations provided by foreign sources (Regulation on Submitting Information to the FMS). However, no information has been provided whether apart from the FMS other competent authorities that possess data concerning NPOs can also share this information.
- b) The SSS is responsible for conducting investigations of terrorism and TF offences, being enabled to get all relevant information (administrative, financial, and others) concerning terrorism, TF, and other related investigations. Thus, the SSS has adequate investigative expertise and capability to examine NPOs suspected of being related to TF.
- c) According to Article 8.2 of the Law on state registration, the Ministry of Justice is the central register for NGOs. Thus, the authorities have full access to the administration and financial information of NGOs. According to Article 12 of the Law on Freedom of Religious Faith, all religious organisations are registered with the SCRA and included into the state register of religious organisations. Moreover, LEAs can obtain financial information concerning NGOs directly from obliged entities during the course of an investigation.
- d) There are multiple approaches in place in Azerbaijan that ensure prompt notification of relevant authorities when there is a suspicion that the NPO is abused for TF or involved in a way as foreseen by criterion. The FMS receives from obliged entities (e.g., from NPOs themselves) information concerning the situations that cause suspicions or reasonable grounds for suspicions that funds or other property are related to TF (Article 7.2.1 of the AML/CFT Law). Information resulted from processing suspicious transactions is shared

continuously with the SSS, as law enforcement authority responsible for investigations of terrorism and TF offences (Article 14.10 of the AML/CFT Law).

### **Criterion 8.6 (Mostly met) -**

Azerbaijan relies on existing legal framework on international co-operation and information exchange. According to Article 22 of the AML/CFT Law competent authorities should cooperate and exchange information with their foreign counterparts for the purpose of monitoring, supervision, analysis, inquire and investigation of ML/TF or predicate offences. Azerbaijan has not established any procedure to respond to international requests regarding NPOs.

#### *Weighting and Conclusion*

Azerbaijan has taken some steps to meet the requirements of R.8, but moderate shortcomings remain. The country carried out the NPO risk assessment and established a requirement to carry out this assessment on an annual basis, including measures to promote accountability of NPOs. However, within the risk assessment no individual NPO nor category of NPOs were identified at risk of being potentially misused for TF purposes. Moreover, no measures have been proposed for addressing the identified vulnerabilities. Azerbaijan encourages NPOs to conduct transactions via regulated financial channels. Nevertheless, there are outstanding deficiencies that exist in Azerbaijan, i.e., no risk-based supervision, no policies to promote and public confidence in the administration and management of NPOs, limited outreach and educational programmes to raise and deepen awareness among NPOs as well as the donor community on TF issues. **R.8 is rated PC.**

### **Recommendation 9 – Financial institution secrecy laws**

In the 4<sup>th</sup> round MER of 2014, Azerbaijan was rated LC on former Recommendation 4. The authorities were recommended to adopt clear provisions to clearly state that capital market secrecy does not apply in situations specified by the AML/CFT Law or when the information is to be used for AML/CFT purposes and where a correspondent relationship involves the maintenance of “payable through accounts” local banks should be allowed to share information about their customers CDD to correspondent banks.

### **Criterion 9.1 (Mostly met)**

*Access to information by competent authorities* – Art. 16 (1) of the AML/CFT Law expressly allows FIs to provide information to FIU/FMS and other AML/CFT competent supervisors, without breaching the duty of confidentiality, to support their supervisory activities. Designated FIs are required, upon request to provide information to the FIU/FMS (AML/CFT Law, Art. 17(3)).

*Banking, securities & insurance sectors secrecy.* The sectorial legislation also enables the competent authorities to access the confidential data and information held by most of the FIs (Law on banks, Art. 41 (1), (2) & (4), Insurance Law. Art. 6, Law on securities market, Art. 28 (2) & (3)).

The CPC establishes law enforcement powers during a criminal investigation for compelling the production of information about financial transactions, bank accounts or tax payments, including where covered by confidentiality provisions. (Art. 177, CPC).

*Sharing of information between competent authorities* –

Art. 13, Art. 17 (5) and (6) & Art. 21 (1) of the AML/CFT Law enable FMS to share information with domestic competent authorities and foreign FIUs.

The FMS may, to the extent necessary for the performance of its tasks, cooperate and exchange confidential information with the relevant competent authorities both domestically and internationally by virtue of Art. 5 (3) of the Law on Banks.

*Sharing of information between FIs when required by R13, 16 & 17 –*

Pursuant to Art. 8 (4) & (5) of the *Regulation on opening, maintaining and closing of bank accounts*, banks are required to be satisfied with information in order to assess the risk of the respondent bank that opens a correspondent account and with respect to “payable-through accounts” the correspondent bank should identify and verify these persons, as well as make sure that the respondent bank has taken such measures and that the relevant information will be provided to it at the request of the correspondent bank. It is not clear if banks are required to satisfy themselves that the respondent bank has performed CDD obligations on its customers or is able to provide relevant CDD information upon request to the correspondent bank.

*Weighting and Conclusion*

Azerbaijan meets most of the criteria under this Recommendation. Minor deficiencies remain in relation to information sharing between FIs. **R.9 is rated LC.**

### ***Recommendation 10 – Customer due diligence***

In the 4th round MER of 2014, Azerbaijan was rated PC on R.5. The authorities were recommended to issue: guidance or regulation on simplified CDD; requirements to identify and verify the BO under life insurance policies; guidance on the identification of BO in case of foreign legal persons. The authorities were invited to consider requiring that the companies’ registrar contains BO information.

#### ***Criterion 10.1 (Met)***

Covered FIs are prohibited from keeping anonymous accounts or accounts in fictitious names, anonymous deposit accounts or to issue anonymous deposit certificates (Art. 4 (1) of the AML/CFT Law). Banks are prohibited to open anonymous accounts and anonymous deposit accounts and issue deposit certificates (Law on banks, Art. 41 (1) third thesis).

*When CDD is Required*

#### ***Criterion 10.2 (Met)***

Art. 4(2) of the AML/CFT Law requires to undertake CDD measures before: (a) establishing a business relationship, (b) carrying out an occasional transaction above 15,000 AZN/20.000 AZN (approximately 8.829 EUR/10.782 EUR) or in case of a transaction, carried out in a single operation or in several operations that appear linked, (c) before carrying out occasional transaction that are wire transfers, (d) when there is a suspicion of ML/FT regardless any exemptions or threshold, or e) the FI has doubts about the veracity or adequacy of previously obtained CDD data.

*Required CDD measures for all customers*

#### ***Criterion 10.3 (Met)***

The requirement to identify the customer and verify its identity is set out for legal and natural persons in Art. 4(4.1) of the AML/CFT Law. The identity of natural persons is verified on the basis of identity documents and the identification of a legal person is verified on the basis of a notarized copy of their statute and state registration certificate. The requirement to verify the customer's identity using reliable, independent source documents, data or information is set out at Art. 4(4.2).

***Criterion 10.4 (Met)***

Art. 4 (4.2) of the AML/CFT Law stipulate that FIs are required, when identifying and verifying a customer, to also identify and verify the identity of any person purporting to act on behalf of a customer.

***Criterion 10.5 (Met)***

Art. 4(4.3) of the AML/CFT Law requires FIs to identify the BO and take reasonable measures to verify its identity using information and documents from reliable and independent sources so that the FI are satisfied that they know who the BO is.

***Criterion 10.6 (Mostly met)***

Art. 4 (4.4) of the AML/CFT Law requires FIs to obtain information on the purpose and intended nature of a business relationship. However, there is no requirement regarding the understanding of the purpose and intended nature of the business relationship.

***Criterion 10.7 (Met)*** - According to Art. 4 (5) of the AML/CFT Law, FIs should conduct ongoing due diligence on the business relationship, including (a) the scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the FIs knowledge of the customer, their business and risk profile, and the source of funds; and (b) ensuring that documents, data or information collected under the CDD process is kept up-to-date and relevant, by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships.

*Specific CDD measures required for legal persons and legal arrangements*

***Criterion 10.8 (Met)***

Art. 4 (6.1 & 6.2) of the AML/CFT Law requires FIs to take reasonable measures to understand the ownership and control structure of clients (legal entities) in the process of establishing BOs.

***Criterion 10.9 (Mostly met)***

The information required to identify legal persons or a foreign legal arrangements and the sources of verification therein are set out in Art. 4 (6.1 & 6.2) of the AML/CFT Law. Thus, FIs are required to identify the customers and verify their identity on the basis of information and documents on its incorporation, name, organisational-legal form, proof of existence and the names of the persons having a senior management position, legal address and/or address of principal place of business. These data must be verified based on the information or documents obtained from the reliable, independent sources and database (Art. 4 (6.3) of the AML/CFT Law). FIs are not required to obtain and distinguish between the address of the registered office if different a principal place of business.

***Criterion 10.10 (Met)***

Art. 1 (1.19) of the AML/CFT Law defines the BO as the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf transaction is being conducted and/or a contract is being used. It also includes the natural persons(s) who exercise ultimate effective control over a legal person or a foreign legal arrangement (domestic legal arrangements not included).

The provisions of the AML/CFT Law requires obliged entities (a) to identify the BO of legal entities, excepting legal persons controlled/owned by the Azerbaijan State and identify the natural person who ultimately has a controlling ownership interest in a legal person; (b) to what extent, when there is doubt with respect to the natural person under (a) as to whether the person(s) with the controlling ownership interest is the BO or where no natural person exerts control through ownership interests, the identity of the natural person(s) (if any) exercising control of the legal person or arrangement through other means or (c) where no natural person is identified under (a) or (b) above, the identity of the relevant natural person who holds the position of senior managing official (Art. 4 (6.3) & 4(7)). Additional regulations are provided in some sectoral laws.

Pursuant to the provisions of the AML/CFT Law Art. 4 (16), the CDD measures (performed for both clients & their BOs) will be applied to all existing customers.

#### ***Criterion 10.11 (Met)***

FIs are required to identify and take reasonable measures to verify the identity of BO through information such as: (a) for trusts, the settlor, the trustee, the protector (if any) the beneficiaries or class of beneficiaries , and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership); (b) for other types of foreign legal arrangements, the identity of persons in equivalent or similar positions. (AML/CFT Law Art. 4(7) & 4(8).

#### *CDD for Beneficiaries of Life Insurance Policies*

#### ***Criterion 10.12 (Mostly met) –***

In addition to the CDD measures required for the customer and the beneficial owner, FIs are required to conduct the following CDD measures on the beneficiary of life insurance policies, as soon as the beneficiary is identified or designated: (a) for a beneficiary that is identified as specifically named natural or legal persons or a foreign legal arrangements – taking information and documents of identification; for a beneficiary that is designated by characteristics or by class or by other means – obtaining sufficient information concerning the beneficiary to satisfy the financial institution that it will be able to establish the identity of the beneficiary at the time of the pay-out; (c) for both the above cases – the verification of the identity of the beneficiary is required to occur at the time of the pay-out. It is not clear if other investment related insurance policies are covered by the AML Law.

#### ***Criterion 10.13 (Met) –***

FIs are required to include the beneficiary of a life insurance policy in their risk assessment, respectively when determining whether EDD are applicable. If the FI determines that a beneficiary who is a legal person or a foreign legal arrangement presents a higher risk, it is required to take EDD measures which should include reasonable measures to identify and verify the identity of the BO of the beneficiary of the policy, at the time of pay out (Art. 4.13 of the AML/CFT Law).

#### *Timing of Verification*

**Criterion 10.14 (Met) –**

Art. 4(2) of the AML/CFT Law, FIs are required to verify the identity of the customer and BO before establishing a business relationship or carrying out a transaction & occasional wire transfer.

**Criterion 10.15 (Met) –**

It is not permitted for a customer to utilise the business relationship prior to verification. FIs are required to perform CDD before opening any business relationship/ carrying any transaction (Art. 4(2) of the new AML/CFT Law).

*Existing customers*

**Criterion 10.16 (Met) –**

Pursuant to Art. 4 (16) of the AML/CFT Law FIs are required to apply CDD requirements to existing customers on the basis of materiality and risk, and to conduct due diligence on such existing relationships at appropriate times.

*Risk-Based Approach*

**Criterion 10.17 (Met) –**

Art. 4 (12 & 13) in conjunction with Art. 9) of the AML/CFT Law requires FIs to apply enhanced CDD to higher risk customers, business relationships or transactions. It further stipulates some higher ML/TF circumstance where the enhanced CDD is mandatory, such as, (i) non-resident customers; (ii) legal persons or arrangements such as trusts that are personal assets holding vehicles (iii) companies that have nominee shareholders or shares in bearer form; (iv) establishing of correspondent banking relationships or any other transactions with correspondent accounts of foreign banks; (vi) transactions with funds or other properties referred to at art. 11 of the AML/CFT Law (reporting obligations).

**Criterion 10.18 (Met) –**

Art. 4 (18) of the AML/CFT Law provides for the possibility of applying simplified CDD measures that must be determined on a risk basis. Also, pursuant to Art. 4 (5) of the Simplified Customer Due Diligence Regulation (2015), simplified measures are prohibited in cases of AML/CFT high risks.

*Failure to satisfactorily complete CDD*

**Criterion 10.19 (Met) –**

Art. 4(14) of the AML/CFT Law stipulates that FIs are required to (a) refuse establishing a business relationship or performing a transaction, not to open an account and to terminate a business relationship if they are unable to identify and verify customers or BOs, and (b) to submit an STR to the FIU.

*CDD and Tipping-off*

**Criterion 10.20 (Met) –**

In the case where FIs consider/have reasonable grounds to think that by continuing performing CDD measures will tip off the customer, the FIs are permitted not to pursue the CDD process, and instead file an STR (Art. 4 (15) of the AML/CFT Law).

*Weighting and Conclusion*



Azerbaijan has the necessary CDD requirements in place. Minor concerns regarding the lack of requirements to understand the purpose and intended nature of a business relationship remain. It is not clear if other investment related insurance policies are covered by the AML Law. **R.10 is rated LC.**

### ***Recommendation 11 – Record-keeping***

In the 4<sup>th</sup> round MER of 2014, Azerbaijan was rated LC on former Recommendation 10. The authorities were recommended that the requirement to maintain records of account files and business correspondence for at least 5 years following the termination of an account or business relationship should apply to those entities which have the yearly turnover less than AZN 50,000 per quarter. The designated entities should be required to ensure that all customer and transactions records are available on a timely basis to LEA. The requirement to retain business correspondence and other relevant documents should be extended to at least 5 years following the termination of an account or business relationship.

**Criterion 11.1 (Met)** – Art. 6 of the AML/CFT Law requires FIs to maintain all the data and written documents concerning CDD and transactions for 5 years after its completion. The period of 5 years can be extended by a decision of the competent supervisor.

**Criterion 11.2 (Met)** – FIs are required to keep all the data and written documents obtained through CDD measures, as well as the results of analyses undertaken for 5 years after the termination of the business relationship or date of the occasional transaction, according to Art. 6(2) of the AML/CFT Law. The record-keeping requirements also cover the business correspondence and account files (Art. 6(2) of the AML/CFT Law).

**Criterion 11.3 (Met)** – Art. 6 (4) of the AML/CFT Law provides a range of information that the FIs should submit to the FIU in relation to transactions, including information that permits reconstruction of individual transaction so as to provide evidence for criminal proceedings.

**Criterion 11.4 (Met)** – Art. 6(5) AML/CFT Law requires the FIs to ensure that CDD information and transaction records are made available upon competent authority requests and within the specified delays.

### ***Weighting and Conclusion***

**R.11 is rated C.**

### ***Recommendation 12 – Politically exposed persons***

In the 4<sup>th</sup> round MER of 2014, Azerbaijan was rated LC on former Recommendation 6. Deficiencies were related to the effective implementation. The authorities were invited to consider amending the requirements on establishment of the internal control system so that foreign customers and BO who are foreign citizens are required to fill in the questionnaire for PEPs of a foreign state.

**Criterion 12.1 (Met)** – The definition set out in the AML/CFT Law covers the politically exposed persons, close relatives of PEPs and close associates of PEPs.

- a) Art. 7 (1) & (1.1) require FI, to implement risk-management systems that allow to determine whether the customer or the BO is a PEP, their close relative or close associate.
- b) Business relationships with a foreign PEP can only be established or continued based on senior management approval pursuant to Art. 9 (1.2) of the AML/CFT Law.

- c) Art. 7 (1.3) & (1.4) of the new AML/CFT Law require FIs to take reasonable measures to establish the source of wealth and the source of funds of customers and BOs identified as PEPs and conduct enhanced ongoing monitoring on that relationship. Moreover, one other additional measure is requested for life insurers, respectively to determine whether the beneficiaries of a policy and the BO are PEPs (Art. 7 (2)).

**Criterion 12.2 (Met) –**

The AML/CFT Law does not distinguish between foreign and domestic PEPs, all the measures described under 12.1 apply to domestic PEPs and to those who have been entrusted with a prominent public function by an international organisation.

**Criterion 12.3 (Met) –** The AML/CFT Law requires FIs to apply additional measures when performing CDD to family members or close associate of all types of PEP (Art. 7(1)).

**Criterion 12.4 (Met) –** The new AML/CFT Law requires life insurers/FIs to perform additional measures, respectively to determine whether the beneficiaries of a life insurance policy and the BO are PEPs (Art. 7 (2) of the new AML/CFT Law).

*Weighting and Conclusion*

**R.12 is rated C**

**Recommendation 13 – Correspondent banking**

In the 4<sup>th</sup> round MER of 2014, Azerbaijan was rated LC on former Recommendation 7. The authorities were recommended to introduce requirements for the regulated entities to document the AML/CFT responsibilities of each correspondent institution.

**Criterion 13.1 (Met) –** The correspondent banking relationship is defined by the Art. 2 (9) of the Central Bank Regulation (hereafter CBR) on opening, maintaining, and closing bank accounts. Prior to establishing a cross-border correspondent relationship, FIs are required to:

(a) Gather information about the respondent institution to fully understand the nature of its business and determine from publicly available sources its reputation and the quality of supervision applied therein (Art. 9 (13) of the AML/CFT Law, Art. 8 (2), Annex 4, Art. 8 (3), the CBR) including the assessment of risks for entering in a correspondent relationship and the existence of ML/FT investigation or regulatory actions.

(b) Request information of the respondent institution's AML/CFT controls (Annex 4 (5) CBR).

(c) Obtain the senior management (competent management body) approval for establishing a new correspondent relationship (Art. 8 (6) CBR); and

(d) documenting the responsibilities of each institution (Art. 9 (13) of the AML/CFT Law, Art. 8 (2), Annex 4, Art. 8 (3), the CBR). The documentation shall be based on precise information/documents that allow an understanding of the AML/CFT responsibilities of each institution.

**Criterion 13.2 (Met) –** With regard to “payable -through accounts”, FIs are required to satisfy themselves that (a) the respondent bank has identified and verified its customers and (b) is able to provide relevant CDD information upon request to the correspondent bank (Art. 8 (5) of the CBR). The latter is assured also by legal provisions set down in an agreement between the correspondent and the respondent bank.

**Criterion 13.3 (Met)** – Art. 2 (1.5) of the FMS Regulation on requirements of the compliance programs of the obliged persons<sup>56</sup> provides the definition of shell banks. Art. 7 (13) of the same act prohibits FIs from entering into, or continuing, correspondent banking relationships with shell banks and are required to satisfy themselves that respondent financial institutions do not permit their accounts to be used by shell banks. Furthermore, art. 8 (7) & 8 (7.4) of the Rules of opening, maintaining and closing bank accounts require FIs to refuse entering into correspondent banking relationship with shell banks (banks with no physical presence).

#### *Weighting and Conclusion*

**R.13 is rated C**

#### **Recommendation 14 – Money or value transfer services**

In the 4<sup>th</sup> round MER of 2014, Azerbaijan was rated PC on former Special Recommendation VI. The deficiencies were cascading from other Recommendations pertaining to FI and the Post as well as effectiveness issues.

**Criterion 14.1 (Met)** – The Law on banks (Art. 1(0.8), Art. 38) & the Law on postal services (Art. 12 (2.1) require all money or value transfers providers, which can only be legal persons, to be licensed before providing any MVT services. All banks in Azerbaijan are licenced for MVT services. The MVTS providers are supervised by the CBA.

**Criterion 14.2 (Mostly met)** – Pursuant to Art. 398 of the Code of Administrative Infringements and Art. 192 of the Criminal Code, financial activities carried out without a licence are sanctioned. The CBA can revoke a licence if unauthorised activities are identified (Art. 16 (1.10) of the Law on Banks).

There is no information on actions taken by the Azerbaijani authorities to identify un-authorized MVT activities.

**Criterion 14.3 (Met)** - MVTS providers are obliged entities (banks and the national postal operator) under the AML/CFT Law (Art. 4) and are therefore subject to monitoring for AML/CFT compliance.

**Criterion 14.4 & 14.5 (Not met)** – The use of agents is not provided nor prohibited under the Law on banks and the Law on Postal services. Therefore, there are no provisions on the inclusion in the AML/CFT programmes or requiring the construction of a list/register of agents. In the absence of an express/specific prohibition, the AT is not convinced that agents cannot function in Azerbaijan.

#### *Weighting and Conclusion*

There is no information on action taken to identify potential un-licensed MVTS and the provisions prohibiting the existence of agents was not provided. **R.14 is rated PC**

#### **Recommendation 15 – New technologies**

In the 4<sup>th</sup> round MER of 2014, Azerbaijan was rated C on former Recommendation 8. Since then,

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<sup>56</sup> Full title: Requirements on establishment of the internal control system by monitoring entities and other persons involved in monitoring which are legal persons for preventing the legalization of criminally obtained funds or other property and the financing of terrorism (2010)

this Recommendation has been amended, including by adding measures in relation to virtual asset service providers (VASPs).

**Criterion 15.1 (Met)** – The provisions of the AML/CFT Law require Supervisory authorities and FIs to identify and assess the ML/TF risks that may arise in relation to the development of new products, and new business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products. (Art. 8 (3) & (4)).

**Criterion 15.2 – (Met)**

The AML/CFT provisions require FIs to assess relevant risks prior to the launch or use of new products, business practices and to take preventive measures to manage and mitigate ML/FT risks (Art. 8 (3) &(4)).

**Criterion 15.3 (Partly Met)** – Identifying risks at a national level, including ML/TF (a) emerging risks such as those posed by virtual assets activities and the activities or operations of VASPs is requested at Art. 21 (1), (2) & 21 (5).

(a) The Azerbaijan’s NRA covers VASPs and risks of virtual assets at chapter 4.6 although at the time of the NRA, VASPs did not operate in Azerbaijan. The NRA (2015 – 2021) assessed the risks with regard to virtual assets as being medium high although it is observed that the main vulnerabilities are due to the lack of regulatory framework and supervisory mechanisms and also that virtual assets are widely used in various financial fraud schemes in Azerbaijan.

(b) Art. 21 (5), (6) & (7) of the AML/CFT Law requires to assess and mitigate risks identified when conducting an NRA. Supervisory authorities are requested to conduct sectorial ML/TF risk assessments driven by the NRA outcomes, to document the sectorial risk assessment outcomes and to apply mitigation measures. It is not clear if the country is required to apply a risk-based approach to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified.

(c) Pursuant to Art. 21 (7) of the AML/CFT Law, obliged persons, including VASPs are required to take measures to identify, assess, manage and mitigate their ML/TF risks annually, to document it and take into account the NRAs outcomes.

**Criterion 15.4 (Not met)**

No information was provided on licencing and registration arrangements for VASPs.

**Criterion 15.5 (Not met)**

No information was provided on the measures put in place to identify any activity performed without a licence.

**Criterion 15.6 (Met)–**

VASPs are subject to AML/CFT measures in Azerbaijan since 1<sup>st</sup> of February 2023. (a) The CBA has powers to supervise VASPs and to ensure their compliance with AML/CFT requirements (Art. 16 (16.1.1)). (b) CBA have powers to supervise and conduct inspections for ensuring VASPs compliance with national AML/CFT requirements. Also, the supervisor has powers to suspend or revoke a licence when breaches of the legal provisions are detected (Art. 16 (3) & (4)).

**Criterion 15.7 – (Met)**

Art. 14 (11) of the AML/CFT Law covers the obligation for supervisors to establish guidelines and feedback which will assist RE, including VASPs in applying AML/CFT measures in the course of remote transactions carried out through new or developing technologies. In support of this, VASPs benefit of Regulation on transactions with virtual assets in the Republic of Azerbaijan issued shortly before the onsite (24 February 2023).

**Criterion 15.8 – (Partly met)**

According to Art. 24 of the AML/CFT Law failing to comply with the legal provisions may entail VASPs liability. It is not clear if there are any sanctions for VASPs directors and senior management. Shortcomings identified under R35 apply.

**Criterion 15.9 – (Mostly met)**

(a) R.10 - Although VASPs are required to comply with the requirements set down in the AML/CFT Law regarding CDD (Art. 4), these measures are not triggered when the occasional transactions conducted by the VASPs equals or exceeds 1.000 euro. Pursuant to Art. 4 (2) of the AML/CFT Law, RE shall perform CDD (i) when establishing business relationships; (ii) when carrying out an occasional transaction amounting to or exceeding 15.000 euro (20.000 AZN); (iii) before an occasional transaction with virtual assets; (iv) in all cases when there are suspicions. Moreover, the CBA VASPs rules (art. 3, art. 4 & art. 5) requires VASPs to perform CDD measures prior to transactions with VAs regardless of a threshold imposed.

(b) R.16 – VAs transfers

- (i) The originating VASPs are required to apply CDD measures prior to transactions with VAs (art. 4 of the AML/CFT Law & art. 3 of the CBA VASPs rules) and send the information to the beneficiary VASP (art. 3.4 of the CBA VASP Rules). There are no specific provisions requiring making the information available immediately and securely to appropriate authorities.
- (ii) Beneficiary VASPs are required to apply CDD measures prior to operations with VAs (art. 4 of the AML/CFT Law & 4.1 of the CBA VASPs Rules). It is not clear if the beneficiary information on VAs transfers is made available on request to appropriate authorities.
- (iii) VASPs are required to take measures set at R. 16.18 (art. 1.1, 1.4 & 7 of the CBA VASPs Rules).
- (iv) It is not clear if same requirements are set for FIs when sending or receiving VAs transfers on behalf of a customer.

**Criterion 15.10 – (Mostly Met)**

With respect to TFS, the communication mechanisms described under R6 & R7 apply.

**Criterion 15.11 – (Mostly met)** – The provisions of Art. 22.3 AML/CFT Law requires supervisors to provide information within the international cooperation mechanism in relation to ML and TF relating to virtual assets. The analysis under R. 37 – R. 40 is also relevant.

*Weighting and Conclusion*

No information was provided on licencing and registration arrangements for VASPs and on the measures put in place to identify any activity performed without a licence. Furthermore, there are no sanctions stipulated for VASPs directors and senior management. It is not clear if

requirements from R16 are set for FIs when sending or receiving VAs transfers on behalf of a customer. **R.15 is rated PC**

### ***Recommendation 16 – Wire transfers***

In the 4<sup>th</sup> round MER of 2014, Azerbaijan was rated PC on former Special Recommendation VII. The authorities were recommended to: issue requirements for each intermediary FI to ensure that all originator information is transmitted; issue guidelines for risk-based procedures; and take measures to make the sanctioning regime more effective.

#### *Ordering financial institutions*

##### ***Criterion 16.1 (Met) –***

Cross border wire transfer services can only be provided by banks, local branches of foreign banks and the national postal operator and pursuant to the AML/CFT Law defines a wire transfer at Art. 1 (1.23) FIs are required to identify the customer and the beneficial owner before carrying out occasional transactions that are wire transfers regardless of the amount, using reliable and independent sources. Cross border wire transfers must always be accompanied by accurate information regarding both (a) the originator and (b) the beneficiary such as: (i) name; (ii) type and serial number of an identification document and a money remittance code provided by the system which permits the traceability of transactions (iii) the originators address pursuant to Art. 9 (4.1) from Guidelines on Cashless Settlements and Money Remittances in the Republic of Azerbaijan. The CBA issued right before the onsite the Regulation on CDD performed when FIs perform wire transfers which also requires specific information from the originator and the beneficiary of the transfers.

##### ***Criterion 16.2 (Partly met) –***

Pursuant to Art. 4 (2.1), (2.3), (2.4), (2.5), art. 4 (3) & art. 4 (4.1) of the AML/CFT Law before a business relationships/wire transfers are carried FIs are required to identify the customer and the beneficial owner and conduct all other CDD measures. Although the CBA Wire transfers regulation provides a definition for batch payments (art. 2.1.8), there are no other specific provisions covering several individual cross border wire transfers from a single originator bundled in a batch file for transmission to beneficiaries, and that the batch file should contain required and accurate originator information, and full beneficiary information, that is fully traceable within the beneficiary country.

##### ***Criterion 16.3 (Met) –***

Although there are no de minimis threshold requirements for cross border wire transfers, when the FIs cannot perform CDD measures for the parties of the transactions or has doubts about the veracity of the information provided the business relationship will not be established or continued and the transaction will not be carried out Art. 4 (2.4). (13), (14) & (17) of the AML/CFT Law). The provisions of the AML/CFT Law covers also situations when there are ML/TF suspicions (art. 4 (2.4).

##### ***Criterion 16.4 (Partly met) –***

Although there are no de minimis threshold requirements for cross border wire transfers, when the FIs cannot perform CDD measures for the parties of the transactions or has doubts about the veracity of the information provided, the business relationship will not be established or continued and the transaction will not be carried out (Art. 4 (14) of the AML/CFT Law). It is not

clear if FIs are required to verify the information pertaining to its customer where there is a suspicion of ML/TF.

**Criterion 16.5 & 16.6 (Met) –**

The AML/CFT Law has no express provisions covering exclusively domestic wire transfers. Information accompanying domestic wire transfers are the same as for cross border wire transfers (Art. 4 (2.3) of the AML/CFT Law). However, the CBA wire transfers regulation (art. 2 (1.4) & (1.5) provides definitions for cross border and domestic transfers and requires obtaining information of the originator and beneficiary as well as requirements for the ordering FI to make available additional information within three business days of receiving the request either from the beneficiary FI or from appropriate competent authorities. There are provisions covering the right of law enforcement authorities to compel immediate production of such information (art. 3 of the CBA wire transfer regulation).

**Criterion 16.7 (Met) –** All the required information for the originator and beneficiary are collected and kept for at least 5 years (Art. 6 of the new AML/CFT Law).

**Criterion 16.8 (Met) –** According to provisions of Art 4 (13.3) & (14) of the AML/CFT Law if a FI is not able to identify and verify the information of the customers and beneficial owner cannot establish a business relationship/execute a wire transfer.

*Intermediary financial institutions*

**Criterion 16.9 – (Mostly met) –** The intermediary FI is required to obtain all originator and beneficiary information that accompanies a wire transfer (art. 4.1 Wire transfers CBA Regulation). It is not clear if the intermediary also retains the obtained information with the transfer (information received on the payer and the payee that accompanies a transfer of funds) and if the obtained information is for cross border wire transfers or for domestic wire transfers.

**Criterion 16.10 – (Met) –** Intermediary FIs are required to keep records for 5 years (art. 4.2 Wire transfers CBA Regulation and art. 6 of the AML/CFT Law) where technical limitations prevent the required originator or beneficiary information accompanying a cross border wire transfer from remaining with a related domestic wire transfer.

**Criterion 16.11 – (Partly met) –** Intermediary FIs are required to apply a risk-based approach when they identify a wire transfer that lack required originator information. There are no similar provisions covering the lack of required beneficiary information (art. 4.3 Wire transfers CBA Regulation).

**Criterion 16.12 – (Partly met) –** Intermediary FIs are required to apply a risk-based approach for determining (a) when to execute, reject, or suspend a transfer lacking originator or beneficiary information and (b) revise all business relationships. It is not clear if these risk based factors are set in policies and procedures (art. 4.3 -4.4 Wire transfers CBA Regulation).

*Beneficiary financial institutions*

**Criterion 16.13 – (Partly met) –** Beneficiary FIs are required to verify the information accompanying the transfer from the originator (art. 5.1 CBA wire transfers Regulation). It is not clear if the verification includes taking reasonable measures, which may include ex post monitoring or real-time monitoring where feasible, to identify cross-border wire transfers that lack required originator information or required beneficiary information.

**Criterion 16.14 - (Met)** – Regardless any threshold, the beneficiary FI of the payer should verify the accuracy of the information on the payee on the basis of documents, data or information obtained from a reliable and independent source before carrying any fund transfer. The verified information must be kept for at least 5 years (Art. 6 of the AML/CFT Law).

**Criterion 16.15 - (Partly met)** – Beneficiary FIs are required to have a risk-based approach if they identify incomplete information (art. 5.3 -5.4 of the CBA wire transfers regulation) but is not clear if there are required policies or procedures for determining (a) when to execute, reject, or suspend a transfer lacking originator or beneficiary information and (b) revise all business relationships.

#### *Money or value transfer service operators*

**Criterion 16.16 - (Not met)** – There are no provisions binding MVTS to comply with the relevant requirements of Recommendation 16.

**Criterion 16.17 - (Not met)** – There are no specific provisions covering a MVTS provider controlling both the ordering and the beneficiary side to take account of all the information from both sides to determine whether an STR has to be filed or to file an STR in any country affected by the suspicious wire transfer, making the relevant transaction information available to the FIU.

#### *Implementation of Targeted Financial Sanctions Criterion*

**Criterion 16.18 - (Met)** – FIs conducting wire transfers are subject to obligations set down by Law on Targeted Financial Sanctions/TFS, Art. 5 (1). Thus, FIs take freezing actions and comply with prohibitions from conducting transactions with designated persons and entities.

#### *Weighting and Conclusion*

Azerbaijan complies with some of the requirements under R.16. Moderate deficiencies remain: There are no provisions binding MVTS to comply with the relevant requirements of Recommendation 16; There are no specific provisions covering a MVTS provider controlling both the ordering and the beneficiary side to take account of all the information from both sides to determine whether an STR has to be filed or to file an STR in any country affected by the suspicious wire transfer, making the relevant transaction information available to the FIU; it is not clear if the intermediary retains the obtained information with the transfer (information received on the payer and the payee that accompanies a transfer of funds) and if the obtained information is for cross border wire transfers or for domestic wire transfers. There are no provisions covering the lack of required beneficiary information. It is not clear if risk-based factors are set in policies and procedures. Beneficiary FIs are required to verify the information accompanying the transfer from the originator but is not clear if the verification includes taking reasonable measures, which may include ex post monitoring or real-time monitoring where feasible, to identify cross-border wire transfers that lack required originator information or required beneficiary information. **R.16 is rated PC.**

#### *Recommendation 17 – Reliance on third parties*

In the 4<sup>th</sup> round MER of 2014, Azerbaijan was rated N/A on former Recommendation 9.

**Criterion 17.1 (Met)** –



FIs are permitted to rely on third parties FIs to perform CDD measures set down at Art. 4 of the AML/CFT Law. In cases where FIs rely on third parties, the ultimate responsibility for CDD measures remains with the FI relying on the third party (Art. 5 (1) of the AML/CFT Law.

The FI relying on the third party to perform CDD measures is required to (a) immediately obtain information concerning CDD measures (Art. 5 (1.1); (b) take steps to satisfy itself that copies of identification data and other relevant documentation relating CDD requirements will be made available from the third party upon request without delay (Art. 5 (1.2); (c) satisfy itself that the third party is compliant with the obligations set in the AML/CFT Law, is supervised and monitored and has measures in place in accordance with the requirements from R.10 & R. 11. (Art. 5 (1.4)).

***Criterion 17.2 – (Met)***

Art. 5 (2) of the AML/CFT Law requires FI relying on third parties based in other countries/jurisdictions to have regard of the level of ML/TF risk of that country.

***Criterion 17.3 – (Met)***

Art. 5 (3) of the AML/CFT Law permits FI to rely on another entity within the same group regarding identification and verification of the customer and beneficial owner, provided that the below conditions are met.

(a) the financial group applies CDD, record keeping and programme against ML/TF in accordance with AML/CFT Law;

(b) the effective implementation of CDD and record keeping requirements and AML/CFT programmes is supervised at a group level by a competent authority;

(c) OEs that are part of the same financial group are required to implement mitigation measures in relation to high-risk countries, respectively to implement group wide ML/TF risk management procedures.

*Weighting and Conclusion*

**R.17 is rated C.**

***Recommendation 18 – Internal controls and foreign branches and subsidiaries***

In the 4<sup>th</sup> round MER of 2014, Azerbaijan was rated LC on both former Recommendation 15 and 22. The authorities were recommended to: require obliged entities with a quarterly turnover less than 50,000 AZN to establish internal controls, procedures and policies; introduce requirements for FIs to maintain an adequately resourced independent audit function; and to introduce a requirement for the non-banking FIs to ensure that their foreign branches and subsidiaries observe the AML/CFT measures consistent with the FATF Recommendations.

***Criterion 18.1 (Met) –***

FIs are required to put in place AML/CFT programmes, in order to manage ML/TF risks and which include the following internal policies, procedures and controls: (a) compliance management arrangements, including appointing an AMLO at a management level, responsible with the coordination of the AML/CFT internal procedures and who has direct access to all AML/CFT information (Art. 10 (1) of the AML/CFT Law ); (b) screening procedures ensuring high standards when hiring employees (Law/Art. 10 (1.3) of the AML/CFT Law); (c) informing the employees

regarding new developments, techniques and practices in legalising illicit funds. It is not clear if this information is an ongoing employee training program/an ongoing employee training programme (Art. 10 (1.4) of the AML/CFT Law); and (d) establishing an independent audit mechanism to test the efficiency of the implemented AML/CFT system (Art. 10 (1.5) of the AML/CFT Law).

***Criterion 18.2 (Partly Met) –***

Financial groups are required to implement wide group programmes against ML/TF, applicable to all branches and majority owned subsidiaries of the financial group (Art. 10 (2) of the AML/CFT Law).

*(a) Information sharing.*

The wide group programmes include, in addition to the measures analysed at Cr. 18.1, policies and procedures for sharing information required for the purposes of CDD and ML/TF risk management (Art. 10 (2.1) of the AML/CFT Law);

*(b) Provisions of AML/CFT information by group level functions.*

Art. 10 (2.2) of the AML/CFT Law permits sharing information at a group level, including information regarding the customer account and transaction information. It is not clear if the provisions supporting the information exchange within the group includes also analysis of transactions or activities which appear unusual (Art. 10 (2.2) of the AML/CFT Law).

*(c) Safeguards.*

Art. 10 (2.3) of the AML/CFT Law requires financial groups to include in the AML/CFT programmes adequate safeguards on the confidentiality and use of information exchanged. It is not clear if this includes also measures to prevent tipping off the customer or overall dissemination.

***Criterion 18.3 (Met) –***

Art. 10 (3), (4) & (5) require FI to ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with the home country requirements, where the minimum AML/CFT requirements of the host country are less strict than those of the home country, to the extent that host country laws and regulations permit.

If the host country does not permit the proper implementation of AML/CFT measures consistent with the home country requirements, financial groups are required to apply additional measures to manage the ML/TF risks, and inform their home supervisors.

*Weighting and Conclusion*

There are minor shortcomings: the provisions supporting the exchange information within the group does not include the analysis of transactions or activities which appear unusual; and the requirement for the financial groups to include in the AML/CFT programmes safeguards on the confidentiality and use of information exchanged do not cover measures to prevent tipping off the customer. **R.18 is rated LC.**

### ***Recommendation 19 – Higher-risk countries***

In the 4<sup>th</sup> round MER of 2014, Azerbaijan was rated LC on former Recommendation 21. The assessors concluded that it should be a requirement that the written findings should be available to auditors and that the authorities should issue a list of countermeasures to be applied to countries which do not or insufficiently apply the FATF Recommendations.

#### ***Criterion 19.1 (Mostly met) –***

FIs are required to apply EDD for high-risk customers, business relationships and transactions involving non-resident customers (Art. 9 (1) of the AML/CFT Law). The due diligence measures are not requested to be proportionate to the risks of the business relationships and transactions with customers (natural and legal persons) from countries for which this is called for by the FATF and not requested all non-resident customers (even from jurisdictions that are compliant with FATFs requirements).

#### ***Criterion 19.2 (Mostly met) –***

Art. 9 (1&2) of the AML/CFT Law covers requirements for applying enhanced due diligence to business relationships and transactions with natural and legal persons from countries high risk countries. Restrictions are required to be in place for customers from countries this is called for by the FATF. It is not clear if the measures applied are proportionate to the risk and if there are also measures independent of any call from FATF to do so.

#### ***Criterion 19.3 (Mostly met) –***

Pursuant to Art. 9 (3) of the AML/CFT Law obliged entities are informed with respect to the list of non-compliant jurisdictions. It is not clear which are the measures put in place to ensure that FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries.

#### ***Weighting and Conclusion***

The requirements for R.19 are mostly covered. There are minor deficiencies such as due diligence measures are not requested to be proportionate to the risks of the business relationships and transactions with customers (natural and legal persons) from countries for which this is called for by the FATF and not requested all non-resident customers; it is not clear if there are any countermeasures that can be applied independently and if the countermeasures are proportionate to ML/TF risks and where not identified the measures put in place to ensure that FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries. **R.19 is rated LC.**

### ***Recommendation 20 – Reporting of suspicious transactions***

In its last MER, Azerbaijan was rated largely compliant with former R.13. The deficiencies included limited training and lack of typologies leading to a low level of suspicious transactions reports from the banking sector and a lack of awareness which led to a very low level of reporting from financial institutions other than banks.

#### ***Criterion 20.1 (Met)***

Article 11 of the AML/CFT Law requires an obligated person to report to the FIU in relation to situations that cause suspicion or reasonable grounds for suspicion that are the proceeds of criminal activity or related to TF immediately and in some cases, without conducting the

transaction. The following situations should be suspended within two working days when there are grounds for ML/TF suspicions: (1) transactions conducted with clients with a high-risk profile; (2) transactions equal to or above the designated threshold; and (3) transactions resulting in the withdrawal of funds from the account.

In cases of transactions with the assets of persons subject to targeted financial sanctions in accordance with the Law of the Republic of Azerbaijan on Targeted Financial Sanctions, the AML/CFT Law stipulates a report should be made *immediately after the grounds for submission of the information and documents are identified, but no later than the end of that business day.*

Article 11.3 of the AML/CFT Law also states that obligated persons are required to submit information and documents to the FIU, regardless of the amount or whether there are grounds for suspicion within three working days after the following transactions are carried out: (1) any by a PEP of foreign countries, their close relatives or associates; (2) transactions with the assets of persons subject to targeted financial sanctions; (3) bank accounts of religious organisations or non-governmental organisations operating in the territory of the Republic of Azerbaijan, as well as branches and representative office of foreign non-governmental organisations.

#### **Criterion 20.2 (Met)**

Article 11.2 of the AML/CFT Law requires an obligated person to report in situations that cause suspicions or reasonable grounds for suspicion that the property is the proceeds of a criminal activity or related to TF, regardless of the amount of the transaction. The AT considers the use of the word 'situation' to cover attempted transactions.

#### *Weighting and Conclusion*

**R.20 is rated C.**

#### **Recommendation 21 – Tipping-off and confidentiality**

In the 4<sup>th</sup> round MER of 2014, Azerbaijan was rated LC on former Recommendation 14. The report notes that provisions should be introduced extending the protection on reporting in good faith to directors and officers which are not employees of the reporting entity.

#### **Criterion 21.1 (Met) –**

Pursuant to Art. 23 (1) of the AML/CFT Law, neither FIs, nor their employees can be held liable for damages incurred by reporting suspicions in good faith to the FIU and they shall be presumed to have acted in good faith unless proved otherwise. It is not clear if the protection is available even if they did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.

#### **Criterion 21.2 (Mostly met) –**

FIs are required to keep confidential that an STR or additional information was submitted to the FIU (Art. 11(8) & 15 (4) of the AML/CFT Law). Information regarding STRs can only be disclosed based on a court decision issued during criminal investigations or criminal proceedings. The mentioned provisions of the AML/CFT Law do not specify that confidentiality of STR information do not apply to information sharing between FIs (Please also see R18 analysis).

#### *Weighting and Conclusion*

The AML/CFT Law do not specify that confidentiality of STR information do not apply to information sharing between FIs. **R.21 is rated LC**

### ***Recommendation 22 – DNFBPs: Customer due diligence***

In the 4<sup>th</sup> round MER of 2014, Azerbaijan was rated PC on former Recommendation 12. The authorities were recommended to: eliminate the exemptions based on quarterly turnover; place the accountants under the AML/CFT requirements; and intensify the awareness raising actions on the importance of BO identification.

#### ***Criterion 22.1 (Mostly met) –***

- (a) There are no casinos operating in Azerbaijan (Presidential Decree No. 730/27.01.1998 prohibiting the establishments of casinos in Azerbaijan);
- (b) Real estate agents are required to apply CDD measures before entering in a business relationship and before carrying a transaction (Art. 4 (2.1) & (2.2));
- (c) Dealers in precious metals and stones are not covered by the AML/CFT Law. However, this shortcoming is mitigated by the existing prohibition on the cash transactions over EURO 8.000 or more the AZM;
- (d) Lawyers, notaries, accountants and tax advisors (Art. 3 of the AML/CFT Law) are required to apply CDD measures according to Art. 4 of the AML/CFT Law;
- (e) TCSPs are not covered by the AML/CFT Law;

Requirements and shortcomings described in the AML/CFT Law for covered FIs under R.10 are equally applicable to covered DNFBPs.

#### ***Criterion 22.2 (Met) –***

The covered DNFBPs are subject to the same record-keeping requirements as FIs (please see R.11). Pursuant to Art. 6 of the AML/CFT Law all obliged entities are obliged to keep obtained data (CDD, transaction reporting). Competent authorities have access to such data and information.

#### ***Criterion 22.3 (Met) –***

The covered DNFBPs are subject to the same requirements regarding PEPs as FIs, please also see analysis for R.12).

#### ***Criterion 22.4 (Mostly met) –***

DNFBPs are subject to the same requirements regarding new technologies (Art. 8 of the AML/CFT Law) as FIs (please also see analysis for R.15).

#### ***Criterion 22.5 (Met) –***

DNFBPs are subject to requirements regarding the reliance on third parties (Art. 5 in conjunction with Art. 4 & 3 (1) of the AML/CFT Law as FIs (please also see the analysis for R.17).

### ***Weighting and Conclusion***

Dealers in precious metals and stones and TCSPs are not covered by the AML/CFT Law which constitutes a minor shortcoming seeing their risk and materiality in Azerbaijan. **R.22 is rated LC**

### ***Recommendation 23 – DNFBPs: Other measures***

In the 4<sup>th</sup> round MER of 2014, Azerbaijan was rated PC on former Recommendation 16. The authorities were recommended to enhance the training and awareness raising efforts on DNFBPs reporting requirements.

#### ***Criterion 23.1 (Mostly met) –***

All covered DNFBPs (please also see analysis for R22) are required to report unusual transactions based on Art. 11 (2), 11 (2.1) & 11 (2.2) of the AML/CFT Law.

- (a) Casinos are prohibited;
- (b) Lawyers and notaries are considered obliged entities as analysed in c.22.1(d) and thus, are also required to report unusual transactions pursuant to Art. 11 of the AML/CFT Law.
- (c) Dealers in precious metals and stones are not expressly covered by the AML/CFT Law; but the transactions foreseen by this criteria are prohibited
- (d) Trusts cannot be formed under the Azerbaijan legislation and other CSP are not covered by the AML/CFT regime.

#### ***Criterion 23.2 (Met) –***

Pursuant to Art. 10 (1) of the AML/CFT Law (also see the analysis for R18), obliged entities, including DNFBPs should implement AML/CFT programmes which have regard to the ML/TF risks and the size of the business.

#### ***Criterion 23.3 (Met) –***

DNFBPs are subject to the same requirements regarding higher risk countries as FIs (also see R.19). TCSPs are seen as high-risk customers for which EDD are requested.

#### ***Criterion 23.4 (Met) –***

DNFBPs are required to comply with the tipping off and confidentiality requirements set out in the AML/CFT Law (please also see analysis for R.21).

#### ***Weighting and Conclusion***

The criteria are affected by the fact that dealers in precious metals and stones and TCSPs are not expressly covered by the AML/CFT Law. **R.23 is rated LC.**

### ***Recommendation 24 – Transparency and beneficial ownership of legal persons***

In the 4<sup>th</sup> MER of 2014, Azerbaijan was rated PC on former R.33. The deficiencies identified were restrictions on access to ownership and shareholder information as well as commercial, corporate and other laws did not require adequate transparency concerning the beneficial ownership and control of legal persons.

#### ***Criterion 24.1 (Met)***

- (a) *Types, forms and basic features of legal persons* – The Civil Codes details different types, forms and features of the legal persons, commercial and non-commercial, that can be established in the country. Types of commercial legal persons that can be created are business partnership and societies (Civil Code, Art. 64-68), general partnership (Civil

Code, Art. 69-81), limited partnership (Civil Code, Art. 82-86), limited liability company (Civil Code, Art. 87-96), subsidiary liability company (Civil Code, Art.97), open or closed joint stock company (Civil Code, Art. 98-108) and cooperatives (Civil Code, Art. 109-113). Non-commercial legal entities that can be established in Azerbaijan are public unions (Civil Code, Art. 114), foundations (Civil Code, Art. 115-116) and unions of legal entities (Civil Code, Art. 117-119). Information on the types, forms, and basic features of legal persons and the manner of their creation are publicly available.

**(b) Processes for creation of legal persons and obtaining information** – All legal persons must be registered into the State Registry (Civil Code, Art 48.1) including representative offices and branches of foreign legal entities (Law on the State Registration and State Registry of Legal Persons -LSRSRLP, Art. 4.1). Provisions of the Civil Code include the process for the creating of all legal entities. Applications for the registration of legal entities should be submitted to the relevant authorities: Ministry of Justice in relation to non-commercial institutions and the STS in relation to commercial institutions and public legal entities. Information on whether a legal person has or has not received state registration shall be available upon request. The STS is the competent authority to maintain the register of legal persons both commercial and non-commercial. A company acquires legal personality on the date of entry in the registry. Information on the process of creation of different legal entities is publicly available at [www.taxses.gov.az](http://www.taxses.gov.az). The obtaining and recording of beneficial ownership is discussed under c.24.6.

**Criterion 24.2 (Partly met)** – Azerbaijan conducted general analysis of ML risks associated with legal persons in the NRA, however, the analysis is accepted in the NRA as not being comprehensive. Overall conclusions reported by the authorities are not supported by formal analysis. Comprehensive analysis into the risks posed by the misuse of legal persons in relation to TF, organised crime and drugs smuggling is lacking in order to substantiate understanding in higher risk areas (see IO.1). Threats and vulnerabilities of LLC have been identified, however there is no analysis of the exposure of other types of legal persons or has the country identified the business sectors at greatest risk (see IO.5).

**Criterion 24.3 (Mostly met)** – All legal entities should be registered in the company registry maintained by the STS (Presidential Decree on Implementing LSRSRLP, Art. 2.4.2.). The Registry incorporates data on company name, legal form and status, address of the company, record proof of incorporation as well as list of directors (LSRSRLP, Art. 13.1, 13.3-1, 14.1 and 14.2). However, there is no legal requirement to record basic regulating powers. Information from the STS register is publicly available (including online) but, ownership and information on founders (participants) of commercial legal persons and their shares in the authorised capital is classified as a commercial secret and can therefore only be accessed upon request by courts and investigative bodies, enforcement authorities, the FMS, supervisory bodies and lawyers and notaries (LSRSRLP, Art. 15.9). A separate e-portal is functional under the STS and FMS authority for monitoring participants and other persons participating in monitoring to have access to the information regarding shares of the authorised capital and owners of securities (Regulations on providing information about the founders (participants) of commercial legal entities to monitoring participants adopted by the decision of Cabinet of Ministers dated October 10, 2018).

**Criterion 24.4 (Not met)**– The legal person must register information mentioned in 24.3 and keep it up to date. However, they are not required to maintain the information set out in c.24.3 neither to maintain a register of the shareholders and the number of shares held by each shareholder as well as category of shares. The register of shareholders of the joint-stock company

shall be maintained by the central depository - National Depository Centre (Civil Code, Art. 106-2.1).

**Criterion 24.5 (Partly met)** – Companies are obliged to register changes related to ‘the constituent documents’ of legal entities, representations and branches of foreign legal entity no later than 40 days from the day of change (LSRSRLP, Art. 9.1 and 9.2). Constituent document is considered to be the charter of the legal entity containing the legal persons’ name, location, the procedure for managing its activity, as well as the procedure for its cancellation (Civil Code Art. 47.1) The charter of a non-commercial legal entity defines the scope and goals of its activity. Therefore, it cannot be concluded that all elements from c.24.3 and 24.4 are subject to regular update. In addition, there are no mechanisms, such as verification tools for detecting discrepancies to ensure that the information referred to in criteria 24.3 and 24.4 is accurate and updated on a timely basis.

**Criterion 24.6 (Mostly met)** – There is no BO registry in Azerbaijan and legal entities are not explicitly required to hold or take reasonable measures to obtain up-to date information on their beneficial owners.

The authorities can determine BO using information collected by monitoring entities. Legal persons are not required to open a bank account, but when they do, they are subject to CDD measures undertaken by the banks (see R.10) but there is no legal requirement for legal persons to have an on-going customer relationship with monitoring entities. Information collected by monitoring entities who are obliged to verify the identification data of their customers and beneficial owners using reliable, independent sources are used in order to determine BO (AML/CFT Law, Art. 9.2).

**Criterion 24.7 (Mostly met)**– The analysis of R10.7 and 10.10 and R22 apply. The deficiencies under R. 24.6 impact the overall micro-rating.

**Criterion 24.8 (Not met)** –There is no information on the cooperation between companies and competent authorities to determine BO.

**Criterion 24.9 (Met)**- While there is no requirement for legal persons themselves, administrators or liquidators to retain the relevant information, there are other measures in place with regard to record-keeping.

The records of the state registry are maintained for 75 years after a legal person ceases to exist according to the Art. 8 of the "Rules for maintaining, using and protecting the state registry of legal persons" 13 April 2005 Ordinance No. 70 of the Cabinet of Ministers of the Republic of Azerbaijan. Furthermore, obliged persons shall maintain, for at least five (5) years, all information and documents on transactions, both domestic and cross-border from the date of completion of the transaction (AML\CFT Law, Art. 6.1). This includes account files and business correspondence and documents obtained through CDD measures including the results of any analysis undertaken (AML/CFT Law, Art. 6.2). The period provided may be extended by a decision of the FMS or supervisory.

**Criterion 24.10 –(Met)** The FIU can obtain BO information from the obliged entities in a timely manner (AML/CFT Law, Art.14.2) Supervisory authorities are empowered to have access to such information (AML/CFT Law Art.6.5). LEA may request and collect BO data from any company during the course of the investigation (see. R.31). In case BO data are not submitted voluntarily, court order may be requested.



**Criterion 24.11 (Mostly met)** – Authorities advised that it is not possible to effectively issue bearer shares because all shareholders of companies need to be included in the registration application that it is required for the incorporation of companies (Civil Code, Art.997-2). Moreover, any changes in shareholding following incorporation are to be registered with the Registry (LSRSRLP, Art. 5 and 9). Nevertheless, before 15 July 2015 bearer form of investment security could have been issued by JSC and there is no requirement to convert or immobilise them except in cases where bearer share holder transfers his share through the stock exchange or market intermediaries. Despite the fact that before 2015 bearer shares could exist, authorities believe that no bearer shares exist in Azerbaijan.

**Criterion 24.12 (Partly met)** –No information was provided to the AT on licensing requirements for nominee shareholders and directors as well as on the obligation of legal persons to maintain information on nominee. Only nominal holders of securities as defined under foreign depository or foreign investment company that exercises rights confirmed by securities based on an agreement or power of attorney and instructions and for the benefit of an investor (Law on Security Market, Art. 27) are required to register within the NCD and must disclose the name of the beneficiary to the NCD or the supervisory authorities.

**Criterion 24.13 (Mostly met)**– Submitting false basic information during the registration of legal entities, representative office, or branch of a foreign legal entity or during subsequent changes to such information is subject to fines 700 manats (euro 390) for natural person and 7 000 manats (euro 3 900) for legal person (Code of Administrative Offences, Art. 403). In case when information on the changes in registration data of legal person is not provided, fines can be imposed to natural person from 1 000 to 2 000 manats (euro 560 to 1 100), and to legal entities from 2 500 to 3 000 manats (euro 1 400 to 1 700) (Code of Administrative Offences, Art. 405). Sanctions available for a breach of the duty to identify and verify the identity of customers and BOs, by an obliged entity, its management board member or an employee are fines from 2 000 to 4 000 manats (euro 1 100 to 2 200) for a natural person and from 20 000 to 30 000 manats (euro 11 100 to 16 700) for a legal person for each customer and each transaction (Code of Administrative Offences, Art. 598.1.1). The available fines do not appear to be fully proportionate nor dissuasive.

**Criterion 24.14 (Met)**– State authorities are empowered to cooperate in order to exchange basic and BO information. The FMS, supervisory authorities can conduct exchange of basic and BO information with foreign competent authorities (AML/CFT Law, Art. 22). This article covers all types of information and documents of which the AT considers the exchanging of information of shareholders to be included. LEAs can obtain BO information under their investigative powers (see R.31.1) which can be exchanged with foreign counterparts.

**Criterion 24.15 (Not met)** –

The country has not provided any evidence on how they monitor the quality of assistance they receive from other countries in response to requests for basic and BO information or the country's requests to locate beneficial owners of legal persons who may be located outside the country.

#### *Weighting and Conclusion*

There are some measures in place preventing misuse of the legal persons for ML and TF purposes. While risk assessment on the legal persons has been conducted, analysis does not appear to be comprehensive. In addition there are a number of deficiencies identified which impact the rating such as: (i) legal persons are not required to maintain information or register of shareholders;

(ii) BO information cannot be obtained in all instances; (iii) cooperation between companies and competent authorities when determining BO is not clear; (iv) no requirement on licensing for nominee shareholders and directors as well as on the obligation of legal persons to maintain information on nominees; (v) sanctions are not fully proportionate and dissuasive and (vi) there is no mechanism to monitor the quality of assistance received from foreign counterparts. **R.24 is rated PC.**

### ***Recommendation 25 – Transparency and beneficial ownership of legal arrangements***

In the 4<sup>th</sup> MER of 2014, former R.34 was not considered applicable in Azerbaijan.

#### ***Criterion 25.1 (Mostly Met)-***

(a) and (b) (N/A) Azerbaijan is not a signatory to the Hague Convention on Laws Applicable to Trusts and on their Recognition. There is neither a law governing trusts nor other types of legal arrangements, and thus these sub-criteria are not applicable. Regarding sub-criteria.

(c) Trusts and similar legal arrangements set up under foreign laws may still carry out financial and other activities in Azerbaijan. Foreign professional trustees are not recognised as reporting entities. However, if lawyers, notaries, persons providing legal, accountancy and tax consultancy services within the scope of being REs (Article 3.1.2 of the AML/CFT Law) provide trustee services then the record-keeping requirements as foreseen under Article 6 of the AML/CFT Law apply to them.

***Criterion 25.2 (Mostly met)*** Lawyers, notaries, persons providing legal, accountancy and tax consultancy services within the scope of being REs (Article 3.1.2 of the AML/CFT Law) which provide trustee services are required to keep information required by this Recommendation accurate and up to date as well as to update it on a timely basis (Article 4.5 of the AML/CFT Law). Similar legal provision applies to FIs and other DNFBPs which established business relationship with legal arrangement. Nevertheless, foreign trustees are not recognised as reporting entities and therefore are not covered by this requirement.

***Criterion 25.3 (Mostly Met)-*** When forming business relationship with the obliged entities, persons acting as external managers of a foreign legal arrangement are required to declare that they act in this capacity (the AML/CFT Law, Art 4.20). However, there is no requirement that would cover occasional transactions above the threshold.

***Criterion 25.4 (Met)-*** There are no legal provisions that would prevent the trustees from disclosing any information relating to the trust.

***Criterion 25.5 (Mostly Met)-*** The FMS has the right to obtain information and documents from the obliged entities on transactions subject to monitoring and have the right to require additional necessary information and documents related to its competences (the AML/CFT Law, Art. 14). Nevertheless, as noted under 25.3 there is no requirement to disclose status to obliged entities when carrying out occasional transactions, i.e., in such situations this information is not accessible.

***Criterion 25.6 (Mostly Met)*** - Deficiencies identified under R. 37–40 are applicable to the exchange of information on foreign trusts/legal arrangements that may be obtained through obliged entities.

(a) Legal arrangements cannot be established in Azerbaijan and therefore, there is no registry for legal arrangements. The FMS (see c.29.3), supervisors (see c.27.3) and law enforcement

agencies (see c.31.1) can access basic information on trusts held by obliged entities if a trustee established business relationship with such reporting entities. Information can also be obtained from lawyers, notaries, persons providing legal, accountancy and tax consultancy services within the scope of being REs (Article 3.1.2 of the AML/CFT Law) which provide trustee services.

(b) The FMS, supervisory authorities and criminal investigative authorities are entitled to exchange all types of information and documents. Nevertheless, trusts are not recognised as reporting entities under the AML CFT Law. Additionally, the use of this information for other purposes is possible only with the written consent of the party providing the information and documents (The AML/CFT Law. Art. 22).

(c) Authorities can use investigative powers in order to obtain BO information on behalf of foreign counterpart (the AML/CFT Law, Art. 22.1).

**Criterion 25.7 (Partly Met)** - lawyers, notaries, persons providing legal, accountancy and tax consultancy services within the scope of being REs (Article 3.1.2 of the AML/CFT Law) which provide trustee services can be held liable for breaching the AML/CFT requirements (Article 24 of the AML/CFT Law). However, these sanctions cannot be considered proportionate or dissuasive (See R.35). Moreover, foreign trustees established on the basis of foreign law are neither held liable for any failure to perform their duties nor there are proportionate and dissuasive sanctions available.

**Criterion 25.8 (Not Met)** - lawyers, notaries, persons providing legal, accountancy and tax consultancy services within the scope of being REs (Article 3.1.2 of the AML/CFT Law) which provide trustee services can be held liable for not providing information to competent authorities (Article 24 of the AML/CFT Law). However, these sanctions cannot be considered proportionate or dissuasive (See R.35). Moreover, foreign trustees established on the basis of foreign law are neither held liable for any failure to perform their duties nor there are proportionate and dissuasive sanctions available.

#### *Weighting and Conclusion*

Trusts under domestic legislation is not permitted. However, this does not prevent such legal arrangements to carry out financial transaction. In this respect, authorities implemented a number of measures to prevent misuse of trusts and other legal arrangements for ML and TF purposes. When lawyers, notaries, persons providing legal, accountancy and tax consultancy services act as trustees, they are covered by the AML/CFT Law and are obliged to fulfil the requirements. At the same time, foreign professional trustees are not recognised as reporting entities and therefore are not covered. However, trusts are not considered to be a common corporate vehicle used in Azerbaijan and this sector is not material. **R.25 is rated LC.**

#### ***Recommendation 26 – Regulation and supervision of financial institutions***

Azerbaijan in the 4<sup>th</sup> round MER was rated PC with former R.23 based on the following deficiencies: there is no requirement to prevent persons who are associated with criminals from holding or being the beneficial owner of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils in financial institutions; the postal office was not subject to on-site supervision; lack of effectiveness of the risk-based supervision due to the recently adopted procedures.

**Criterion 26.1 (Met)** - The AML/CFT law designates the competent authorities for financial institutions' AML/CFT supervision. Bank and non-bank credit institutions, leasing companies,

insurers (including re-insurers and non-life insurers) and insurance intermediaries, securities firms and collective investment schemes, exchange offices and the postal service in its money transfer capacity are under the supervision of the Central Bank of Azerbaijan (Article 16.1.1 of the AML/CFT Law)

**Criterion 26.2 (Met)** – Article 3.1 of the Law on Banks states that ‘banks and non-bank credit institutions may exercise banking activities in the territory of the Republic of Azerbaijan on the basis of a special permit (license), issued by the financial markets supervisory authority.’ Credit unions must also be licensed as prescribed by ‘Regulations on issue of a banking license to credit unions’ issued by the then Financial Markets Supervisory Authority of the Republic of Azerbaijan, Resolution № 15, 7 July 2017. Licensing requirement is equally imposed by the Laws on Securities Market (Article 30) and Insurance Activity (Article 7). The Law on Currency Regulation imposes a licensing requirement on exchange offices in its Article 13.1.1. The licencing regime includes documents certifying the physical presence of the financial institutions. Turning to shell banks, Azerbaijan was rated “Compliant” with the previous Recommendation 18, the assessors noting that “*even though there is no direct prohibition not to establish shell banks, it can clearly be seen that the comprehensive process established by the Azerbaijani authorities prevent the creation of shell banks on the territory of Azerbaijan*”. The current AT agrees with this statement.

**Criterion 26.3 (Mostly met)** – The AML/CFT Law establishes a general requirement for all supervisors to prevent criminals and their associates from the market entry. Pursuant to Article 17.2 of the AML/CFT Law criminals shall not hold a controlling ownership interest, be a beneficial owner, or hold a management function in the FIs. Article 17.3 of the AML/CFT Law establishes a similar requirement in relation to associates, however this obligation has a limitation, i.e., it refers to a criminal conspiracy. Supervisors are required on on-going basis monitor changes in the ownership and management structure. Some additional measures to prevent criminal and their associates from entering the market can be seen in sectoral legislation.

*Banks* - Law on Banks contains relevant provisions in Article 1.019 both for qualified holding owners, set at 10 or more percent of share capital or shares with voting rights, or entitling to influence significantly decision making of the legal entity. The statement in the sectoral law about the influence on decision making is alluding to controlling interest. To this effect, the CBA is entitled to seek information from financial, tax and law enforcement bodies. The concept of fit and properness is referred to in the Law on Banks, Article 10.1. Fitness and properness are defined in Article 1.0.18 of the Law on Banks as encompassing the notion of ‘civil impeccability’ which is further defined in Article 1.019 as exhibiting, *inter-alia*, absence of criminal conviction. Financial, tax and law enforcement bodies are obliged as per Article 72 to submit required information on financial status and professional activities of owners of qualifying holdings or whether they had criminal convictions in the past. Fitness and properness is also applicable in the case of officers of banks, which include members of the Supervisory and Management Boards, as per Article 10.1 of the Law on Banks.

*Non-bank credit institutions* – Article 8.3 of the Law on the non-bank credit institutions prohibits those persons convicted of ‘intentional crimes’ from assuming the position of an administrator. There is no legal reference regarding prohibitions on criminals from owning a qualified holding or the control aspect in the ownership of NBCIs or to national convictions

*Insurance Activities*- the relevant law of 25 December 2007 No. 519-IIIQ as subsequently amended provides in Article 19.1.2 that natural persons as the founders or shareholders of insurance entities must have ‘civil perfection, in case of the desire to acquire prevailing share interest or majority control’ whilst in Article 19.2.2 it is provided that legal entities as founders or shareholders must have ‘civil perfection of top officials of the executive authority of local legal entities’.

*Securities* –the relevant law provides, as quoted, in Article 1.0.026 that those holding 10% or more of the share capital or being able to influence decisions taken by a legal person, the head of the corporate activity (no indication as to the precise definition is provided) of the obliged entity and members of the supervisory council or management body of an investment company, stock exchange, clearing house and central depository, must be free from criminal liability, conviction and past criminal conviction.

*Exchange bureaux* – the extract from the Currency Regulation Law quoted requires in Article 13.1.2.7 a reference from the relevant executive authority on the absence of economic crime convictions by the applicant for a licence to be included in the documents submitted in support of the application.

#### **Criterion 26.4 – (Partly met)**

(a) *for core principles institutions*: Compliance with Core Principles 1, 2, 3, 4, 5, 9, 11, 13, 25, 26 and 29 of the Basel Committee on Banking Supervision was evaluated as part of the NRA exercise. The conclusion drawn in the NRA is that the country's AML/CFT legislation largely complies with requirements of the Basic Principles of the Basel Committee, but some shortcomings were found concerning Basel Committee Principles 5, 11, and 26. Articles 45 and 46 of the Law on Banks relate to CP27 and CP10 respectively whilst Article 13 and Article 14.1.11 of the Law on Banks appear to address the requirements of CP3 and CP12 respectively. Article 14.1.11 of the Law on Banks addresses consolidated supervision insofar as foreign banks' subsidiaries or foreign holding company.

For insurance companies, there is no information on how consolidated supervision for AML/CFT purposes is legally provided, except for the preparation of consolidated annual financial statements. For investment companies, Article 31.11 of the sectoral law explicitly states that the prudential requirements are applied on a consolidated basis.

(b) *for all other financial institutions*: non-bank credit institutions are governed by the Law on non-bank credit institutions № 933-IIIQ. NBCI are licensed and their operations are governed by a number of provisions included in the said law. Credit unions are also licensed as per Law № 876-IQ which includes various supervisory provisions. Leasing companies activities mentioned in the Civil Code and as per the country are regulated by the CBA, however there is no further information on the mode of supervision of such entities.

Exchange offices' activities are regulated by the Law on Currency Regulation which provides for supervision of the exchange offices with the law. The activity of the Post Office is regulated by the Law on Postal Service which lists the permissible financial services that the PO may carry out and the licensing and regulation of these services. Additionally, Regulations on issue of a license to the national operator of postal communication and permits to its branches and post offices for supply of financial services and on prudential regulation of its operations.

The AML/CFT Law assigns the supervision of the above activities to the CBA. Article 6.6 provides for annual evaluation of ML/TF risks as well as supervisory inspections on financial institutions under the CBA's supervision.

**Criterion 26.5 – (Partly met)** The AML/CFT Law (Article 16.4) imposes an obligation on supervisors to conduct inspections commensurate with the risks identified as well as at a national and a sectoral level. The frequency and intensity of inspections with respect to financial groups take into account their specific characteristics, although it is not clarified which characteristics.

(a) There is no explicit reference or mechanism of assessment of ML/TF risks by supervisors on the basis of policies, procedures, internal controls of supervised entities.

(b) The AML/CFT law mentions in Article 16.4 that supervision authorities shall be required to conduct supervision inspections commensurate with the risks identified, as well as to risks at a

national and sectoral level in accordance with the established supervision rules. This requirement only applies to financial groups.

(c) The Azerbaijani legislation does not require to consider the characteristics of financial institutions and any discretion allowed by the Azerbaijani framework to the use of risk-based approach by financial institutions.

**Criterion 26.6 – (Not met)** No requirement for supervisors to review the assessment of the ML/TF risk profile of FIs when there are major events or developments in the management and operations of the financial institution or group.

#### *Weighting and Conclusion*

Azerbaijan only partly meets the requirements under R.26. There are moderate deficiencies which impact the ratings, in particular, market entry requirements do not fully cover criminals' associates, and gaps in the risk-based supervision. **R.26 is rated PC.**

#### *Recommendation 27 – Powers of supervisors*

Azerbaijan in its 4<sup>th</sup> round MER was largely compliant with former R.29. The only deficiency that was identified by the AT, was related to inappropriate division of the supervisory powers of the CBA and the MCIT, which undermined the overall supervision.

**Criterion 27.1 – (Met)** Financial institutions are supervised by the CBA. The AML/CFT Law makes detailed reference to the powers of supervisors under Articles 1.1.15, 1.1.16 and 16.

**Criterion 27.2 – (Met)** Article 1.1.16 of the AML/CFT law provides supervisors with powers to conduct all types of inspections.

**Criterion 27.3 – (Partly met)** The general ability to conduct uninhibited inspections is provided in the sectoral laws: for banks (Articles 5 and 6 of the Regulation on Inspections of bank activities), securities market operators (Articles 5 and 6 of the Regulation on Inspections of licensed activity in the securities market) and insurance market professionals (Articles 5 and 6 of the Regulation on Inspections of professional activity in the insurance market). This includes compelling the production of records, documents, or information relevant to their monitoring the compliance. No information on the rest of the FIs was provided.

**Criterion 27.4 – (Partly met)** The AML/CFT Law provides in Article 16.3 that if supervision authorities detect incompliance with the requirements of the AML/CFT Law shall implement administrative or other measures as provided by the legislation, and inform the FMS. Violation of the requirements of the Law shall cause suspension or revocation of a permit (license, certificate, membership) issued for that sector in accordance with the legislation. Other types of sanctions are left with the provision of the sectoral Laws, the Code of Administrative Offences and Criminal Code.

Referring to sectoral laws, the Law on Banks is eloquent on enforcement measures, corrective actions, sanctions and how to impose these sanctions (Article 47) but no direct referral is made to the AML/CFT Law. The Law on Insurance Activity's Article 106.1.7 provides that violations of the provisions of the AML/CFT Law may result in suspension of the licence for up to 6 months. Article 123(2) provides that insurers, reinsurers and insurance intermediaries shall bear liability for the failure to comply with the requirements of the AML/CFT Law in cases referred to in the Code of Administrative Offences and Criminal Code of the Republic of Azerbaijan. It therefore appears that the measures available for supervisors are inferred by the Administrative Offences Code although it is not clear how supervisors may proceed to impose these measures on the supervised entities. Regarding the securities markets operators, art. 86 of the Law on Securities Markets allows authorities, in case there is a violation on any of the said Law's or any other law

or regulation relating to the securities market, to issue a written order to the person committing the violation dictating specific measures. Article 598 of the Code of Administrative Offences envisages pecuniary fines for officials of the legal persons and legal entities themselves for violations of specified provisions of the AML/CFT Law. It is clear that the supervisors have no power to impose financial corporate sanctions to insurers and securities market operators. For NBCIs, Credit Unions, Leasing companies, the Post Office and the exchange offices there is no quotation of the applicable provisions.

#### *Weighting and Conclusion*

Moderate shortcomings remain. Supervisors of financial institutions have the necessary powers to supervise financial institutions and conduct inspections. However, the power to compel relevant information is missing for smaller FIs (NBCIs, Credit Unions, Leasing companies, the Post Office and the exchange offices). The powers to sanction are limited: the AML/CFT Law refers to other legal provisions which are deficient when it comes to AML/CFT compliance: the Law on Banks does not make reference to the AML/CFT issues, the Administrative Code does not foresee insufficient corporate pecuniary sanctions. **R.27 is rated PC.**

#### ***Recommendation 28 – Regulation and supervision of DNFBPs***

In its 4<sup>th</sup> round MER, Azerbaijan was rated PC with former R.24 based on the following deficiencies: undue procedural hurdles for all supervisory authorities of the DNFBPs to initiate procedures for violation of the AML/CFT Law provisions; Minimal active supervision undertaken for AML/CFT purposes; several supervisory authorities are not fully aware of their supervisory function.

**Criterion 28.1 – (N/A)** Casino operations are not allowed in the country.

#### ***Criterion 28.2 – 28.3 (Met)***

Article 16 of AML/CFT Law establishes supervisors for relevant DNFBPs: for attorneys – Azerbaijani Bar Association (Article 16.1.5) and for persons providing auditor services – Chamber of Auditors (Article 16.1.6). The AML/CFT Law refers to other acts concerning the supervisors for notaries, real estate agents and persons providing legal, accounting and tax services.

The Presidential Decree 2007 of 31.01.2023 on application of the AML/CFT Law further clarifies who are the respective supervisory bodies as follows: the STS for real estate agents and persons providing legal, accounting and tax services and the Ministry of Justice for notaries.

#### ***Criterion 28.4 - (Partly met)***

- (a) Articles 1.1.15 and 1.1.16 of the AML/CFT law provide supervisors with powers to perform their functions, including powers to monitor compliance.
- (b) **(Partly met)** The AML/CFT Law establishes a general requirement for all supervisors to prevent criminals and their associates from the market entry. Pursuant to Article 17.2 of the AML/CFT Law criminals shall not hold a controlling ownership interest, be a beneficial owner, or hold a management function in the DNFBPs. Nevertheless, this requirement does not prohibit criminals and their associates being professionally accredited. Article 17.3 of the AML/CFT Law establishes a similar requirement in relation to associates, however this obligation has a limitation, i.e., it refers to a criminal conspiracy. Supervisors are required on on-going basis monitor changes in the ownership and management structure.

(c) **(Not met)** The Code on Administrative Infringements prescribes administrative pecuniary measures in a specific set of circumstances relating to AML/CFT compliance, applicable to monitoring entities, in its Article 598. Deficiencies under R.35 are applicable.

**Criterion 28.5 - (Partly met)** Art. 16.4 of the AML/CFT Law provides that supervision authorities shall conduct inspections commensurate with the risks identified, as well as to risks at a national and sectoral level in accordance with the established supervision rules. There is no requirement for risk based off-site supervision.

#### *Weighting and Conclusion*

Azerbaijan has only taken some steps to comply with this recommendation. There are significant shortcomings regarding the market entry, and the risk-based supervision. **Therefore, R.28 is rated PC.**

#### **Recommendation 29 - Financial intelligence units**

In its last MER, Azerbaijan was rated largely compliant with the former R.26. The only deficiency was in relation to the effectiveness of the low number of cases initiated based on FIU dissemination.

#### **Criterion 29.1 (Met)**

The FMS is the FIU for Azerbaijan - FMS was re-established in 2018 as a public legal entity funded from state budget with the Decree of the President of the Republic of Azerbaijan on the establishment of the Republic of Azerbaijan (no.95; May 25, 2018).

#### **Criterion 29.2 (Met)**

As outlined in Article 14.1 of the AML/CFT Law, the FIU is the central agency for the receipt of STRs from obliged persons and other information including cash transactions with funds or other property equal to or above the designated threshold as well as wire transfers equal to or above the designated threshold (Article 11.1).

Article 11.3 outlines that other information and documents are required to be reported on relating to the following transactions: (1) any by a PEP of foreign countries, their close relatives or associates; (2) transactions with the assets of persons subject to targeted financial sanctions; (3) bank accounts of religious organisations or non-governmental organisations operating in the territory of the Republic of Azerbaijan, as well as branches and representative office of foreign non-governmental organisations (Article 11.3).

Moreover, the form and manner of disclosures such as the fields required to be completed and the information to be provided is contained within the FMS Feedback procedures.

#### **Criterion 29.3 (Met)**

a) Article 14 of the AML/CFT Law states that the FIU has the right to obtain information and documents from the obliged persons, supervision authorities and state organs by making a request in relation to its operational and strategic analysis or at the request of a third country. The FIU also has the right to request that *obliged entities provide information and documents on the transactions carried out, based on specific criteria (type, characteristics of the transaction, persons, territories, products, delivery channels etc.) up to 6 months after the date of sending this request. This period can be renewed up to six months.* Article 14.5 outlines that these requests can be sent electronically and in practice, they are sent via goAML to the relevant bodies. Item 3.2.4.



from the Charter of the FMS also outlines that in order to perform its functions, that online access to databases of supervisory and other state authorities is necessary.

Article 6.5 of the AML/CFT Law requires obliged entities that receive a request from the FMS to respond within the timeframe specified.

b) A list of databases and other sources have been provided that the FMS can access, these are wide ranging and include direct access into the Automated Tax Information System and the State Registry of Real Estate. Public databases that are used by the FMS are designated persons list, registry of public procurement, Supreme Court, Ministry of Justice, various databases for identification information of subjects and commercial open source tools.

#### **Criterion 29.4 (Met)**

a) The Charter for the FMS provides the means for operational analysis, and how this is undertaken is documented in the 'Domestic procedural rules for the implementation of the activity of the Data Analysis Department of the Financial Monitoring Service of the Republic of Azerbaijan on collection, processing, analysis, and transmission of data' dated 2021.

b) The FMS does have a strategic analysis division that uses available and obtainable information to identify ML/TF related trends and patterns. The FMS internal procedural rules also stipulate how strategic analysis should be conducted.

#### **Criterion 29.5 (Met)**

Article 3.1.14 of the FMS Charter states that based on its analysis, that transactions related to ML will be submitted by the FMS to the GPO and to the SSS in relation to the financing of terrorism.

According to Article 3.1.24 of the FMS Charter, a function of the FMS is to provide AML/CFT information upon request by the state bodies and institutions in the manner and timeframe defined by the legislation.

Article 3.2.4 of the FMS Charter gives the right for the FMS to require OEs to provide information on behalf of the competent authorities.

The FMS utilise goAML to conduct disseminations of information to the LEAs. The goAML system is also used as the online reporting tool from the OEs into the FMS. The system is considered to be dedicated, secured and protected. Feedback from the LEAs is provided back to the FMS via goAML. This falls under the function defined under the FMS Charter of 3.1.14.

In sensitive and rare requests, the authorities can utilise a specialised communication service named Feldyeger. The duty of Feldyeger communication is the delivery of particularly important and confidential correspondence (in paper form) of legislative, executive and judicial authorities of Azerbaijan and outside of its borders. The activity of the Feldyeger communication is regulated by the Law on Feldyeger Communication and conducted by the Special State Security Service.

#### **Criterion 29.6 (Met)**

a) Confidentiality is covered by Articles 11.8 and 14.6 of the AML/CFT Law. These Articles stipulate that regardless of the source, the information and documents *submitted to the financial monitoring organ shall be kept confidential, used solely for the purposes provided*. In terms of integrity and availability, the goAML system is ensured by recovery systems and its accessibility is determined by white IP address listing and is allowed only from certain static public IP addresses. Internally, the system has audit and logging tools where each user action is recorded,

and each user has access only to the data belonging to themselves. Law enforcement always have access, but it is limited to the users' granted permissions.

Item 3.1.23 of the Charter of the FMS states that a function is to provide *an appropriate regime for the storage and protection of information that constitutes the state and commercial secrets or other secrets protected by law, as well as other official and/or confidential information obtained in the course of its activities.*

b) Item 4.10 in the Charter for the FMS puts some mechanisms and controls in around the staff of the FMS, but it relies on security contracts and 'fit and proper' standards. Security contracts and "fit and proper" checks do not offer the same level of scrutiny as security clearance. The authorities have indicated that there is a vetting process before onboarding new staff to the FMS, which includes background checks which are were undertaken both by FMS's internal security unit and by the third party (SSS) upon request.

c) The FMS premises and facilities are secure with limited access and the 'FMS IT Security Rules' clearly outline IT security.

#### **Criterion 29.7 (Met)**

a) Article 1.2 of the FMS Charter states that the FMS is operationally independent.

The FMS is managed by the Executive Board (Article 4 FMS Charter), which is appointed by the President of the Republic of Azerbaijan. The Executive Board consists of 3 members: the Chairman and 2 Deputy Chairman and the term of office is 5 years. Article 4.7 of the Charter of the FMS states that the chair of the Executive Board "*organizes and oversees the activity of the Service as well as manages its current operations*" as well as "*takes necessary measures to protect state secrets and confidentiality regime on operational areas of the Service*".

According to Article 7 of the Decree of President №215 (18<sup>th</sup> July 2018) it is determined that the Executive Board member can be dismissed prior to the expiration of their term on the basis of: "*(1) under the personal application of the Executive Board's member; (2) under the liquidation and reorganization of the Service; (3) election to the legislative or local self-governing bodies, other state bodies, public law entities and enterprises in which the control package of shares is owned by the State, as well as appointment as a judge, if they do not give up those duties; (4) inability to fulfil his/her duties due to illness for six consecutive months, if a longer term is not determined by the legislation; (5) conviction of a criminal offense or upon being declared legally incapable or having limited legal capacity by the court; (6) termination of the citizenship of the Republic of Azerbaijan; (7) death of the Executive Board's member, as well as if the court considers him/her as missing or declares as deceased; (8) does not fulfil his / her duties or duties, or grossly violates his or her duties in the cases referred to in Article 72 of the Labor Code of the Republic of Azerbaijan*".

The liquidation and reorganisation of the FMS can be carried out by the President of the Republic of Azerbaijan under the general provision as a public entity.

The process for starting, continuing and ultimately disseminating analysis by the FMS is reviewed and authorised by the Chairman of the Executive Board (the Head of the FMS) after it has been reviewed by two analysts under the "Domestic procedural rules for the implementation of the activity of the Data Analysis Department of the Financial Monitoring Service of the Republic of Azerbaijan on collection, processing, analysis, and transmission of data".

b) Under 3.2.7 to 3.2.12 of the FMS Charter the FMS has a clear remit to engage internationally and share information as required. According to the AML / CFT Law the FMS has the capability to disseminate to domestic authorities.

c) The FMS is not located within the existing structure of another authority.

d) According to the FMS Charter, the FMS is funded from the state budget, it carries out its own accounting and HR functions independently together with the other functions. Additionally, the FMS manages the procurement itself.

**Criterion 29.8 (Met)**

This criterion is met - The Republic of Azerbaijan is an Egmont Group member state since 2011.

*Weighting and Conclusion*

Azerbaijan meets all requirements for this Recommendation. **R.29 is rated Compliant.**

**Recommendation 30 – Responsibilities of law enforcement and investigative authorities**

In the 4th round MER of 2014, Azerbaijan was rated PC on former R.27. The main deficiencies identified were limited access of LEAs to financial information, legal limitations on the use of special investigative techniques in ML cases, and limited number and low level of investigations, prosecutions and convictions on money laundering and terrorist financing as opposed to the general volume of proceeds-generating crimes.

**Criterion 30.1 (Met)**- Azerbaijan has a number of competent authorities to combat ML, associated predicate offences and TF. Broadly speaking, the GPO is in charge of ML investigations (CPC, Art.215.3.1), but it remains under the competence of the Ministry of Internal Affairs, State Custom Service or State Tax Service if signs of ML are detected during their own investigations related to the predicate offence (Decree No.387 of the President of the Republic of Azerbaijan “On application Criminal Procedure Code of the Republic of Azerbaijan”). When ML is investigated by LEAs, the GPO has supervisory role. TF investigations are under the competences of the SSS.

**Criterion 30.2 (Mostly met)** – According to the information provided, financial investigation is performed during the standard investigation of proceed generated crimes, but there is no requirement to conduct financial investigation parallelly to the primary one. Therefore, the cases and circumstances where parallel financial investigations are launched, the competent authorities are not clearly defined in the Law.

Nevertheless, in case LEA is not empowered to investigate ML, the investigation should be submitted to the GPO, who can create an investigative team involving different LEAs in complex cases. In addition, the AT was informed that ML investigations remains under the competence of the MoIA or STS if signs of ML are detected by them during their own investigations related to the predicate offence.

The State Customs Service is referring cases to the GPO where traces of ML are detected (AML/CFT Act, Art. 18).

**Criterion 30.3 (Met)** – All LEAs and prosecutors are designated to identify, trace and initiate seizure of property subject to confiscation (CPC, Art. 84-86 and 177). In any case, a court order is required to obtain information about financial transactions, bank accounts or tax payments.

Nevertheless, noting in the legislation prevents the authorities to undertake those actions expeditiously.

**Criterion 30.4 (N/A) –**

Since there are no other competent authorities which are not LEAs, but which have responsibility for conducting financial investigations into predicate offences, this criterion is not applicable.

**Criterion 30.5 (Met)** – The Anti-Corruption General Directorate (ACGD) is a separate unit of the GPO, integrated by prosecutors and investigators, and acting as the Azerbaijani anti-corruption enforcement authority. According to the provided information, the ACGD has powers to conduct operative-search measures in order to identify and trace assets, as well as initiating seizing of assets.

*Weighting and Conclusion*

Responsibilities of LEAs are mostly in line with the requirements of the Recommendation. However, deficiencies remain with regard to the lack of possibility to launch parallel financial investigations. **R.30 is rated LC.**

**Recommendation 31 - Powers of law enforcement and investigative authorities**

In the 4th round MER of 2015, Azerbaijan was rated LC on former R.28. Effectiveness of available powers had not been tested in money laundering or combating the financing of terrorism investigations and prosecutions.

**Criterion 31.1 (Met)**

a) *Concerning the production of records held by financial institutions, DNFBPs and other natural or legal persons:* GPO and the investigators shall, amongst others, obtain documents and other material on criminal acts and the persons connected to them (CPC, Art. 84 to 86). Upon request of prosecutor, court decision is required to obtain information about financial transactions, bank accounts or tax payments and private life or family, state, commercial or professional secrets (CPC, Art 177.3.6). Records obtained through the court order are shared with LEAs when they are conducting investigations.

b) *The search of persons and premises:* search of premises requires a judicial authorisation issued by a court following a reasoned request from the investigator (CPC, Art. 242 - 245). Body searches are usually conducted following a court decision, except in those cases where the person is detained, arrested or if there are sufficient grounds to suspect that a person in a building where a search or seizure is being conducted is in possession of objects or documents of potential significance.

c) *Taking witness statements:* the investigator can take witness statements (CPC, Art. 85 and 227).

d) *Seizing and obtaining evidence:* the investigator has the powers to seize and obtain evidence (CPC, Art. 85).

**Criterion 31.2 (Met)** - Special investigative techniques available to the authorities are undercover operations, intercepting communications, accessing computer systems and controlled delivery, amongst others (Law on operative-search measures, Art. 10). Those measures can be ordered in relation to any criminal offence (i) to detect and disclose crime for

which there are information that have been committed; (II) within the framework of an already initiated criminal case. (iii) to prevent an event representing a threat to national security, or (iv) if the person is hiding from the authorities. In general terms, a judicial decision is required to apply these techniques, but certain activity can be conducted without such decision in order to prevent serious crimes against a person or especially dangerous crimes against the state (e.g., intervention of communications).

**Criterion 31.3 (Mostly Met)**- Investigators, based on the court order, are empowered to obtain information about financial transactions, bank accounts or tax payments and private life or family, state, commercial or professional secrets (CPC, Art. 177.3.6). Nothing in the legislations prevents authorities to undertake those actions timely. Azerbaijani authorities indicated that a centralised information system of the tax authority is the tool used by investigators to determine if someone has a bank account, but it remains unknown to the AT the information contained in this register and how its accuracy and comprehensiveness is ensured. Identification of assets by competent authority is not ensured to be conducted without prior notification of the owner.

**Criterion 31.4 (Met)**- The FMS provides information on legalisation of the criminally obtained property, crimes committed to obtain such funds or other property or the financing of terrorism upon requests by the state bodies and institutions in the manner and time frame defined by the legislation (Presidential Decree on ensuring activity of the FMS, Art. 3.1.24).

#### *Weighting and Conclusion*

In Azerbaijan the competent investigative authorities have power to access and obtain information applying various compulsory measures, technics and mechanisms. Some deficiencies, however, are identified in relation to lack of possibility to identify assets without prior notification of the owner. **R.31 is rated LC.**

#### **Recommendation 32 – Cash Couriers**

In the 4<sup>th</sup> MER of 2014 Azerbaijan 2014 was rated PC on the former SR IX. It was noted that Declaration did not cover physical transportation in currency AZN, no clear legislative provision requiring customs authority to stop or restrain currency valuables when indications of ML/TF were present, no requirement of the Custom Service to report suspicious transactions and no programme on training and enforcement.

**Criterion 32.1 (Met)** – Any person (resident, non-resident including legal persons) who enters or leaves Azerbaijan is required to declare cash and BNI exceeding certain threshold. Provisions are applicable to the transfer of the cash through postal services and cargo, while such transportation of BNIs is not allowed. Transportation of foreign currencies exceeding US\$ 50,000 must be conducted via an authorised bank (Regulations on bringing foreign currency into and taking out of the Republic of Azerbaijan by residents and non-residents Art. 2.2-2.3 (further Currency Regulation).

**Criterion 32.2 (Met)** – Transportation of cash in domestic currency and BNIs up to 20,000 manats should be declared verbally, while written declaration is required for transportation of more than 20,000 manats or BNI. (Rules on declaration of national currency by residents and non-residents in cash and securities denominated in national currency when taking them out of the Republic of Azerbaijan and bringing them to the Republic of Azerbaijan, Ar. 2.2). The

transportation of foreign currencies in cash and BNI between US\$ 10,000 and US\$ 50,000 or equivalent in foreign currencies that have been previously imported shall be declared in writing to the customs authorities (Currency Regulation, Art. 2.2-2.3).

**Criterion 32.3 (N/A)** – Not applicable since Azerbaijan operates a declaration system.

**Criterion 32.4 (Met)** – Upon discovery of a false declaration of currency or BNIs, or a failure to declare them, the Customs Authority has the right to request additional information on their source and intended use (Custom Code, Article 92).

**Criterion 32.5 (Met)** – The sanctions applied for falsely declared cash and BNI depends on the nature of the violation. In case of the failure to declare cash below 50,000 manat, fines will be imposed ranging between 40% and 60% of the value of cash as well as confiscation measures.

If the value of non-declared cash is between 50,000 and 200,000 manats fine between 40% to 60% of the value of cash or up to 3 years imprisonment will be imposed. If non-declared amount of cash is between 200,000 to 500,000 manats, fine up to 50% to 70% of the value of conveyed cash or two and four years of imprisonment will be imposed and for falsely declaration of over 500,000, fine up to 60% to 80% of the money value or imprisonment between three and five years will be imposed.

**Criterion 32.6 (Met)** – Monthly reports pertaining to currency and BNI transported over the customs border submitted by the State Customs Committee to the Financial Monitoring Service, in electronic format via the secure goAML system (AML/CFT Law, Art. 8.2).

**Criterion 32.7 (Mostly met)** – General provisions are in place for the Customs authorities to cooperate with other government bodies in order to fulfil their duties (Custom Code, Art.12). However, the provisions do not provide specific measures in relation to co-ordination between agencies or government bodies.

**Criterion 32.8 (Met)** –

*(a) where there are suspicions of T/F or M/L or predicate offences* - In circumstances where there are suspicions that ML/TF offences may have been committed, there are measures for the preservation and seizure of evidence (traces) and for the matter to be referred to the competent authority for investigation (CPC, Art. 249).

*(b) where there is a false deceleration* - Custom authorities are entitled to seize goods (including currencies) in administrative procedure when there is a suspicion of violation of the custom regulations (Custom Code, Art. 76.1).

**Criterion 32.9 (Met)** – The customs authority, whether acting on its own initiative or upon request, is able to co-operate and exchange information with foreign counterparts or conduct inquiries on their behalf in relation to ML or predicate offences as well as with respect to declared, intentionally falsely declared or undeclared currency (AML/CFT Law, Art. 22.5). All related documentation is stored for 75 years.

**Criterion 32.10 (Met)**- There are strict measures in place to safeguard information derived from the deceleration process and ensuring its correct usage (Custom Code, Art. 41). Protection of the systems are carried out by the Special State Protection Service of the Republic of Azerbaijan.

**Criterion 32.11 (Partly Met)** – Persons transporting cash related to ML/TF or predicate offences are subject to criminal sanctions. Criminal sanctions for ML offences are not proportionate and dissuasive. Criminal sanctions for TF are proportionate and dissuasive. Confiscation mechanisms

are regulated under the CC and CPC. Strengths and vulnerabilities of the system, as described under R.4, would equally apply here.

#### *Weighting and Conclusion*

Azerbaijan achieves compliance with the majority of criteria of this Recommendation with minor deficiencies identified related to the measures enabling co-ordination between competent authorities. In addition, deficiencies under R.4 have cascading effect. **R.32 is rated LC.**

#### **Recommendation 33 – Statistics**

In the 2014 MER Azerbaijan was rated non-compliant with the former R. 32. The main deficiencies were related to the absence of an authority responsible for keeping statistics on ML/TF, lack of statistics on the STRs disseminations, AML/CFT investigations, provisional measures, confiscation, MLA and supervisory cooperation.

##### **Criterion 33.1 (Partly met) –**

- a) STRs, received and disseminated: Although, there is no direct requirement/obligation to maintain statistics in a comprehensive manner, based on the information provided by Azerbaijan it can be concluded that comprehensive statistical data is maintained;
- b) ML/TF investigations, prosecutions and convictions: pursuant to item 21.8 of Article 21 of the AML/CFT Law for that purpose of conducting a NRA, the GPO collects and maintains statistical information from courts and criminal investigative bodies. However, statistical data on ML/TF is not maintained in a comprehensive manner;
- c) Property frozen; seized and confiscated: Azerbaijan collects and maintains general figures on property frozen/seized and confiscated. However, this is statistical data is not maintained in a comprehensive manner;
- d) Statistical data on MLAs and on other forms of international cooperation contains information on the type of predicate offences, on requests for assistance received and made, on the requesting and requested countries and the status of the request. This information is not maintained in a comprehensive manner.

#### *Weighting and Conclusion*

In general, Azerbaijan collects and maintains statistics on STRs received and disseminated; on ML/TF investigations, prosecutions and convictions and on MLAs and other forms of international cooperation. However, apart from STRs statistical data is not maintained in a comprehensive manner. **R.33 is rated PC.**

#### **Recommendation 34 – Guidance and feedback**

Azerbaijan was previously rated largely compliant in its last MER for former R.25. The deficiencies were a lack of guidance on identification of beneficial owners, enhanced and simplified due diligence and complex and unusual transactions. The questionable effectiveness of typologies and trends issued by the FMS and the lack of sector specific guidelines in relation to AML/CFT was also highlighted.

##### **Criterion 34.1 (Partly Met)**

#### *Guidelines*

Azerbaijan has approved 'Rules on the implementation of customer Due Diligence and Verification Measures when Introducing New Technologies, the Identification of Risk Factors and Attribution of Customer Profiles to Risk' (February 2023). These rules set out the requirements for customer compliance measures at different levels, including simplified and enhanced customer compliance measures, therefore mitigating the deficiency identified in the previous MER.

The FMS has published a methodology of BO identification which also mitigates the deficiency identified in the previous MER. The methodology defines and provides examples of three levels of BO identification: (1) individuals who own the legal entity; (2) natural persons exercising control over a legal entity in another form; and (3) natural persons exercising management of the legal entity. It also includes the procedure for determining the BO of a legal entity registered abroad and of non-commercial legal entities. In a separate document, guidance has also been published on the identification of shell companies which is a positive.

There has been some guidance provided by the CBA to the FIs, however, in relation to DNFBPs the guidance and outreach is limited (see IO.3). Given that notaries and banks are considered to be the gatekeepers to the higher risk real estate sector, there are no specific guidelines for the implementation of the measures relating to this activity in these sectors. In general, the regime would benefit from more sector specific guidelines across all aspects of higher risk areas identified in the NRA (corruption, tax related crimes, drug smuggling, real estate activity, organised crime, use of cash etc). Positively, there are typologies available in relation to some higher risk aspects on the FMS website, such as embezzlement, drugs trafficking and organised crime, however, these are not guidance. There is also very basic guidance for the real estate brokers, which whilst encouraging that there is some available, enhancement of these guidelines would be beneficial to enable the sector to have the tools to be actively included in the AML/CTF system.

The authorities have developed a document which is available via the FMS website regarding VAs and VASPs. The document provides an in-depth description of the concept and how they are related to the FATF standards. However, the document lacks both country and relevant sector specific context. The methodological guidance produced by the FMS on ML vulnerabilities of free trade zones offers more country context and relevant indicators relating to financial institutions, unusual business activity, trade-based ML and shell companies, however, there are none regarding TF. Guidance on the application of targeted financial sanctions have also been published on the FMS website.

In relation to guidance in assisting financial institutions and DNFBPs in detecting and reporting STRs, the competent authorities have produced a methodological tool for reporting suspicious transactions by banks and a separate one for credit institutions. The bank document covers all expected elements including the process of monitoring, detection and reporting of suspicious transactions as well as preparing the STR and common weaknesses identified in bank STRs. There is not a similar document available for the DNFBPs and other FIs, which would be beneficial for the deficiencies related to STRs identified in IO.6.

The competent authorities have not produced comprehensive guidelines relating to the identification and reporting of TF in the context of Azerbaijan.

#### *Feedback*



To improve disclosing institutions ability to detect and report suspicious transactions, Azerbaijan has introduced Article 19 of the AML/CFT Law which states that feedback in relation to: (1) the acknowledgement and receipt of the information and documents; (2) a summary of further steps taken as a result of the analysis; and (3) the quality and usefulness of the information and documents submitted, is provided to the obliged persons on transactions that are to be monitored by the financial monitoring organ. The FMS 'Rules for Feedback' stipulates the frequency and method in which the feedback should be provided. In practice during the reviewed period, the FMS did not provide systematic feedback for the STRs submitted although in some instances feedback has been provided whereby the submission was weaker (see IO.4).

#### *Weighting and Conclusion*

Azerbaijan has mitigated the deficiencies in the previous MER relating to the lack of guidelines in the identification of BOs and CDD. However, moderate deficiencies are present due to the lack of: (i) sector specific guidelines for DNFBPs and FIs; (ii) guidelines in relation to identifying and reporting higher ML risks; (iii) contextual VA and VASP guidelines; (iv) STR submissions from DNFBPs and other FIs except from banks; and (v) any comprehensive TF guidelines.

Azerbaijan has legal basis for providing feedback in relation to the submission of STRs and there is evidence of it being provided to REs, however, in practice the feedback mechanism would benefit from being more systematic. **R.34 is rated PC.**

#### *Recommendation 35 – Sanctions*

Azerbaijan was rated PC with former R.17 in the 4<sup>th</sup> round MER based on the following deficiencies: sanctions are not effective, proportionate and dissuasive; no sanctions have been applied to financial institutions' senior management; no sanctions apart from writing warnings have been imposed; no sanctions have been applied by the MCIT; low number of sanctions applied by the CBA, SCS and MFA raises concerns about the effectiveness of the AML/TF sanctions regime.

##### ***Criterion 35.1 - (Not met)***

Article 16.3 of the AML/CFT Law states that if supervision authorities detect deficiencies in the application of the Law they shall implement administrative or other measures as provided by the legislation, and inform the FMS. The AML/CFT Law provides only for suspension or revocation of licenses, certificates or memberships of supervised persons which does not allow for a variety of sanctions depending on the severity of the violations and/or their frequency for those sectors which are not covered by sectorial laws.

The Law on Banks provides in Article 16.1.9 that the revocation of licence may occur if the bank or the local branch of the foreign bank violates the requirements of the Law on Banks or the AML/CFT Law more than twice, without any reference to the degree of severity of the violations. Also, in Article 16.2.7 it is provided that if the bank, branch or representative office violates the requirements of the AML/CFT law or CBA regulations more than twice, the financial markets supervisory authority shall consider revocation of the permit.

Additionally, Article 47.1 of the Law on Banks provides that, if the financial markets supervisory authority identifies that the bank violates the AML/CFT Law, it shall be entitled to take measures such as to request a commitment letter from the bank on elimination of violations, to enter into an agreement with the bank and issue an order to the bank. A range of sanctions are listed in Art. 48 of the Law on Banks, mostly pertaining to limitations on the banks' activities, such as limitations of deposits, or removal of officers. No pecuniary sanctions are mentioned under this Article.

Both Art. 16 and 47 are problematic in that: i) they still make reference to the financial markets supervisory authority while at the time of the on-site visit the AML/CFT supervision of banks was entrusted to the CBA; and ii) these measures cannot be taken for one off breach regardless of its severity.

Article 598 of the Code of Administrative Infringements provides pecuniary fines to officials and legal entities for violations of the AML/CFT Law. Administrative fines between 2,000 and 6,000 manats (436 – 3,246 euro) for officials and between 20,000 manats and 50,000 manats (10,820 – 27,000 euro) for legal entities shall be applied. The pecuniary sanctions are not proportionate and dissuasive<sup>57</sup>. It remains unclear which legal provision will prevail in case of banks and other financial institutions.

Another difficulty is that Article 18 of the Code on Administrative Infringements which defines the concept of “administrative liability of legal persons”, provides the administrative liability for the administrative offenses made for the “benefit of this legal entity or the protection of its interests” by: i) the person with powers to represent the legal entity, ii) the person having powers to make decisions iii) the person who controls its activities, and iv) the employee of the legal entity as a result of the absence of control by the officials of the entity. The condition introduced in the liability of the legal person that the offenses be “made for the benefit of this legal entity or the protection of its interests” is not in line with the FATF standards and significantly reduces the scope of application of the sanctions (excluding for example breaches caused by absence of corporate compliance culture or negligence, without any “benefit”).

According to Article 18.5 of the Code of Administrative Offences, administrative punishment liability is applied to the legal entity only by the court judge. Hence, it is unclear how independently a supervisory authority may act in imposing measures against failure by supervised entities to meet their AML/CFT obligations.

### **Criterion 35.2 – (Met)**

Article 598 of the Code of Administrative Infringements provides for pecuniary fines for “officials” of the legal entities. This includes directors and senior managers.

#### *Weighting and Conclusion*

The sanctioning regime is governed by a series of legal acts: AML/CFT Law, the Law on Banks, and the Code on Administrative Infringements. There are significant issues with the sanctioning regime as: the AML/CFT Law does not allow for a multi-pronged range of sanctions depending on the severity of the violations and/or their frequency; the Law on Banks still make reference to the financial markets supervisory authority; the sanctions cannot be taken for one off breaches regardless of the severity of the breach; the condition “benefit” introduced by the Code of Administrative Infringements is not in line with the FATF standards; the pecuniary sanctions are not proportionate and dissuasive; the administrative punishment liability is applied to the legal entity only by the court judge impeding supervisor’s independence. Sanctions can be applied to directors and senior management. **R.35 is rated NC.**

### **Recommendation 36 – International instruments**

In the 4<sup>th</sup> round MER from 2014, Azerbaijan was rated PC on former R.35. The authorities were recommended to make legal amendments in order to introduce all elements of ML offence as required by the conventions as well as liability of legal persons for ML offence, incorporate

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<sup>57</sup> until 1 February 2023 (one month before the on-site visit) they were even lower in the legislation, so the above figures had no impact on effectiveness

offences in the annex of the TF Convention into domestic legislation, and tackle property held by 3<sup>rd</sup> parties as a gift or for under value.

**Criterion 36.1 (Met)** - Azerbaijan signed and ratified all four convention. The United Nations Convention against Illicit Traffic in Narcotic and Psychotropic Substances, 1998 (Vienna Convention) was signed in 1992 and ratified by Law №356 of 28 October 1992 and Law №549-IQ of 1 December 1998. The United Nations Convention against Transnational Organised Crime, 2000 (Palermo Convention and its two protocols) was signed in 2003 and ratified by Law №435-IIQ of 13 May 2003. The United Nations Convention for the Suppression of the Financing of Terrorism, 1999 (the Terrorist Financing Convention) was signed in 2001 and ratified by Law №174-IIQ of 1 October 2001.

#### **Criterion 36.2 (Mostly Met)**

Azerbaijan has broadly implemented provisions of the Conventions. However, there are certain deficiencies identified in R. 3, 4 and 5 which lead to the conclusion that minor deficiencies with regard to the implementation remain.

#### *Weighting and Conclusion*

While Azerbaijan is a party to the relevant conventions, certain deficiencies have been identified in their implementation into domestic legislation. **R.36 is rated LC.**

#### **Recommendation 37 - Mutual legal assistance**

In the 4<sup>th</sup> MER of 2014, Azerbaijan was rated LC on both former R. 36 and SR V. It was noted that the shortcomings of the ML and the TF offences as well as difficulties in respect of the confiscation of indirect proceeds and third-party assets.

**Criterion 37.1 (Met)** - In Azerbaijan MLA is provided based on the Law on Legal Assistance in Criminal Matters (LLACM) requiring reciprocity, and both multilateral and bilateral treaties, to which it is a party. There is nothing in the legislation that will impede provision of the MLA rapidly.

**Criterion 37.2 (Partially met)** -Responsibility to act as the Central Authority is designated depending on the terms of the different treaties to the Ministry of Justice and the Prosecutor General's Office. In circumstances where a treaty or convention is not relevant to a request, the Ministry of Justice is the designated authority and acts pursuant to the Law on Legal Assistance in Criminal Matters.

Authorities receiving requests have individual internal processes and recording keeping provisions. Nevertheless, there is no clear process for the timely prioritisation and execution of MLA requests.

**Criterion 37.3 (Met)** - The grounds for refusals of a request for legal assistance do not pose unreasonable or unduly restrictive conditions (Law on Legal Assistance in Criminal Matters, Art. 3).

#### **Criterion 37.4 (Met) -**

**(a)** There are no specific provisions identifying fiscal matters as grounds for refusing an MLA request.

**(b)** Secrecy or confidentiality are not envisaged as grounds for refusing a request.

**Criterion 37.5 (Met)** – In matters not derived from international treaties, measures to ensure the confidentiality of MLA requests are stipulated in Art.6 of the Law on Legal Assistance. The provisions require the Ministry of Justice to revert to the requesting authority in circumstances where confidentiality may be an issue to seek agreement to proceed.

Additional provisions as to the general management of confidential material and the confidentiality regime are detailed in Ch.49 of the Rules of Organization of Work of the General Prosecutor's Office of the Republic of Azerbaijan.

**Criterion 37.6 (Not met)** –Dual criminality is a one of the grounds for refusing MLA request even when assistance do not involve coercive measures (LLACM, Art. 3.1.4).

**Criterion 37.7 (Met)** –Authorities advised that if the offence by factual circumstances constitutes a criminal offence under the legislation of Azerbaijan, MLA shall be granted regardless of the denomination of the offence in the requesting country. There is nothing in the legislation requiring that the offence described in a foreign country use the same terminology or fall within the same category of offence.

**Criterion 37.8 (Met)** –

*(a) all of the specific powers required under Recommendation 31*

Powers and investigative techniques available to competent authorities for the purposes of investigating ML, predicate offences and TF as detailed in R.31, are available for the purposes of MLA (LLACM Art. 2.3).

*(b) a broad range of other powers and investigative techniques*

A range of other investigative techniques available to LEAs when investigating ML, predicate offences and TF can be ordered based on the MLA requests (LLACM, Art.2.3.11 and CPC, Art.134).

*Weighting and Conclusion*

Azerbaijan has legislative measures in place enabling provision of MLA. Nevertheless, there is no clear process for prioritisation and execution of MLA requests, and dual criminality still presents the ground for refusal of assistance in non-coercive actions. **R.37 is rated LC.**

**Recommendation 38 – Mutual legal assistance: freezing and confiscation**

In the 4<sup>th</sup> MER of 2014 Azerbaijan was rated LC on the former R.38. The evaluation identified deficiencies in respect to indirect proceeds and 3<sup>rd</sup> parties that may affect the ability to assist, and an absence of formal arrangements for co-ordinating seizure and confiscation proceedings.

**Criterion 38.1 (Mostly met)** - In Azerbaijan, authorities can take actions in response to the request for identification, seizing and confiscation of laundered property, proceeds of crime, instruments used in the commission of criminal offence as well as property of corresponding value (LLACM, Art. 2.2.2). There is nothing in the legislation which would prevent them to take actions expeditiously. Nevertheless, deficiencies identified under R.4 in relation to instrumentalities intended to be used for the commission of ML and predicate offences have an impact on this criterion.

**Criterion 38.2 (Mostly met)** –Authorities advised that co-operation with other jurisdictions in relation to non-conviction-based confiscation proceedings is envisaged by the CPC (Art. 525.5). Nevertheless, there are no such legal basis for related provisional measures.

### **Criterion 38.3 (Mostly Met) –**

(a) *arrangements for co-ordinating seizure and confiscation actions with other countries* - Authorities advised that coordination of seizure and confiscation of assets can be done through the Department for Coordination of Special Confiscation issues established within the GPO as well as through the CARIN Network.

(b) *mechanisms for managing, and when necessary, disposing of, property frozen, seized or confiscated* - Azerbaijan has domestic mechanism for management of seized and confiscated property which is applicable when assets are seized or confiscated based on the foreign request. Deficiencies identified under R.4 will also apply.

**Criterion 38.4 (Met)**- In Azerbaijan, there is legal basis enabling sharing of confiscated assets with foreign country (CPC, Art 525.4).

### *Weighting and Conclusion*

In Azerbaijan, there are measures in place enabling provision of the assistance with regard to identification, seizure and confiscation of assets. Nevertheless, deficiencies identified under R.4 in relation to instrumentalities intended to be used for the commission of criminal offence as well as management of seized and confiscated property may hinder provision of assistance. In addition, assistance cannot be provided when provisional measures are requested in relation to non-conviction-based confiscation. **R.38 is rated LC.**

### **Recommendation 39 – Extradition**

In the 4<sup>th</sup> round MER of 2014 Azerbaijan was rated LC on former R.39. The main deficiencies were reserve on effectiveness and criminalisation of ML offence impeded extradition possibilities.

**Criterion 39.1 (Mostly met)** - In Azerbaijan there are legal basis for the extradition of foreigners and persons without citizenship, who have committed offences outside of the jurisdiction and are living on the territory of Azerbaijan (CC, Art. 12.3 and 13). The measure does not include limitations in regard to the type or nature of the criminality.

(a) *ensure ML and TF are extraditable offences* - The provisions of Art.13 of the CC do not restrict the scope of extradition to specific types of criminality, as such both TF and ML are extraditable offences. Extradition request can be executed without undue delay.

(b) *ensure they have a case management system, and clear processes for the timely execution of extradition requests including prioritisation where appropriate* -Individual authorities responsible for receiving and executing requests have their own internal record keeping procedures and processing. Nevertheless, due to the limited information provided it is not possible to conclude whether timely execution and prioritisation is enabled.

(c) *not place unreasonable or unduly restrictive conditions on the execution of requests* - The specified grounds for refusing a request for extradition are defined in Art.3 of the CC and limitations on the prosecution of extradited individuals is addressed by Art.4 of the CC. These provisions provide protections for the rights of individuals and seek to ensure that individuals are not subject to prosecution for offences for which they were not extradited.

### **Criterion 39.2 (Met) –**

**a) extradite their own nationals** - The extradition of Azerbaijan citizens to a foreign state, for offences committed in those states, is prohibited under the provisions of Art. 53 of the Constitution of the Republic of Azerbaijan and Art.13.1 of the Criminal Code.

**b) submit the case without undue delay to its competent authorities for the purpose of prosecution of the offences set forth in the request** -In instances where an individual cannot be extradited on the grounds of their nationality, a domestic prosecution, if dual criminality exists, can be undertaken without undue delay (CC Art. 12 and Art.13.1).

**Criterion 39.3 (Met)** - The legislation of Azerbaijan requires dual criminality in order for an individual to be extradited. The cited legislation does not require the offences being prosecuted to be categorised equally or for both states to define the offence in the same terms. Restrictions are proscribed based upon the length of potential incarceration.

**Criterion 39.4 (Met)** -Azerbaijan is a party to the Third Additional Protocol to the European Convention on Extradition, Art.1 of which requires parties to undertake extradition pursuant to the simplified procedures detailed in the Protocol. Nevertheless, there is no national legal provision enabling simplified extradition mechanism.

#### *Weighting and Conclusion*

Azerbaijan is party to the relevant international conventions regarding extradition. The domestic legislation facilitates extradition in relation to ML and TF offences in relation to non-Azerbaijan citizens. However, it is not possible to conclude whether timely execution and prioritisation is enabled. The exclusion of Azerbaijan citizens from the provisions may be mitigated by the domestic measures for the prosecution of individuals on the request of a foreign jurisdiction. **R.39 is rated LC.**

#### **Recommendation 40 – Other forms of international cooperation**

In the 4<sup>th</sup> round MER of 2014 Azerbaijan was rated LC on R.40. The main deficiencies were reserved on effectiveness and lack of obligation for supervisory authorities to provide exchange of information in a rapid and constructive way.

**Criterion 40.1 - (Met)** The AML/CFT Law in its art. 22.1 empowers supervisors, LEAs and the FIU to rapidly provide the widest range of international cooperation upon request or spontaneously.

LEAs are also able to provide a wide range of cooperation in relation to ML, TF and associated predicate offences (Law on Prosecutor's Office, Art. 6, Law on Intelligence and Counterintelligence Art. 7, Statute of the Ministry of Internal Affairs, Item 4.1, Statute of the State Custom Committee, Item 4, Statue of the State Border Service Item 9).

In addition, the CBA is empowered by its statute (art. 51 and 52) to engage in international cooperation and exchange information with counterparts provided that confidentiality is preserved and information is used exclusively for supervisory purposes.

#### **Criterion 40.2 – (Mostly met)**

(a) See Criterion 40.1

(b) There are no legal limitations that would prevent the FMS, LEAs and the CBA from using the most efficient means to co-operate with their foreign counterparts.

(c) In Azerbaijan a number of different systems operates to receive and disseminate information, with foreign jurisdictions; these include the Egmont, CARIN and Interpol secure networks as well as bilaterally agreed secure systems

(d) The FMS has measures in place to prioritise and execute requests from foreign authorities relating to ML, predicate offences and TF in a timely manner (Internal procedural rules for the implementation of the activity of the Data Analysis Department of the Financial Monitoring Service of the Republic of Azerbaijan on data collection, processing, analysis, and transmission Item 7). Article 22.10 of the AML/CFT Law establishes an obligation to exchange information in a manner of prioritisation and to execute requests in a fashion manner. However, apart from this obligation there is no specific process/procedure on prioritisation and execution of foreign requests.

(e) Article 22.10 of the AML/CFT Law establishes a requirement to exchange information through a secure channel. The information and documents obtained from foreign counterparts in the course of information exchange shall be kept confidential and considered equal to the secrets protected by legislation. The FMS has internal measures in relation to the safeguarding of data and information it receives. Ch.49 of the Rules of Organisation of Work of the General Prosecutor's Office of the Republic of Azerbaijan provides general provisions for authorities concerning the safeguarding of confidential material.

**Criterion 40.3 – (Met)** According to Article 22 of the AML/CFT Law competent authorities (supervisors, LEAs and the FIU) are empowered to exchange information with their counterparts without a need to conclude MoUs.

**Criterion 40.4 – (Mostly met)** The CBA has not given any indication about provision of feedback to requesting authorities on the usefulness and use of the information they have provided to the CBA. According to Article 19.2 of the AML/CFT Law the FMS and LEAs are required to provide feedback relating to the exchange of information, which encapsulate issues such as usefulness, and outcomes.

**Criterion 40.5 – (Met)**

(a) Competent authorities should not refuse a request for assistance if it involves fiscal matters (Article 22.11.1 of the AML/CFT Law).

(b) Competent authorities should not refuse a request for assistance on the grounds that legislation requires the obliged entities to maintain secrecy regime (Article 22.11.2 of the AML/CFT Law).

(c) The request for assistance will not be refused on the ground of ongoing investigation unless it would impede that inquiry, investigation or proceedings (Article 22.11.3 of the AML/CFT Law).

(d) No restrictions regarding the status or nature of the counterparts.

**Criterion 40.6 – (Met)** The AML/CFT Law indicates in art. 22.7 that information submitted shall only be used for the purpose requested or provided.

**Criterion 40.7 (Met)** Article 22.10 of the AML/CFT Law obliges competent authorities that the information and documents obtained from foreign counterparts shall be kept confidential and considered equal to the secrets protected by national legislation. Grounds for breach of confidentiality shall cause the refusal to execute the request.

Moreover, the FMS also applies both the Egmont Group Principles for Information Exchange, which require Information received, processed, held or disseminated by requesting FIUs must be securely protected, exchanged and used only in accordance with agreed procedures, policies and applicable laws and regulations.

In dealing with non-Egmont group authorities the FMS' internal procedural rules require communications to be conducted via an agreed secure channel.

The Law on Personal Data provides further provisions regarding the management and storage of data that are applicable to all competent authorities when exchanging information domestically or with third countries.

**Criterion 40.8 (Met)** – The FMS has the power to request information from monitoring entities, other persons involved in monitoring, supervisory and other state authorities in relation to ML and TF, including on behalf of foreign competent authorities (Article 14.3 of the AML/CFT Law). This information can be shared with a foreign counterpart pursuant to Article 22.1 of the AML/CFT Law)

LEAs are able to conduct inquiries on behalf of foreign counterparts and shared information with a foreign counterpart (Article 2 of the Law on Legal aid in criminal matters, Article 489.4 of the Criminal Code, Article 22.6 of the AML/CFT Law).

Supervisors are able to conduct inquiries on behalf of foreign counterparts and shared information with a foreign counterpart (Articles 22.1 and 22.6 of the AML/CFT Law).

#### FIU

**Criterion 40.9 (Met)** – the FMS is empowered to provide co-operation by Article 22 of the AML/CFT Law.

**Criterion 40.10 (Met)** – See criterion 40.4.

**Criterion 40.11 (Met)** –

(a)-(b) (met) the FMS can exchange information obtainable under R.29 and other information obtained at the domestic level (Article 22 of the AML/CFT Law).

#### Supervisors

**Criterion 40.12 – (Met)** The CBA in its capacity as prudential and AML/CFT supervisor is empowered by virtue of art. 22.1 of the AML/CFT Law and art. 51 and 52 of its statute to provide co-operation with competent authorities of foreign countries and exchange information.

**Criterion 40.13 - (Met)** See criterion 40.12.

**Criterion 40.14 – (Met)** The CBA is able by virtue of art. 5.3 of the CBA Law to exchange information, in the context of its supervisory functions, with foreign counterparts. There appears to be no restriction on the type of information that may be exchanged, whether for prudential supervision or for AML/CFT supervision.

**Criterion 40.15 – (Mostly met)** Refer to Criterion 40.8. Moreover, no information has been provided whether the CBA can facilitate the ability of foreign counterparts to conduct inquiries themselves in the country in order to facilitate effective group supervision.



**Criterion 40.16 - (Not met)** There is no requirement for supervisors to obtain prior authorisation for any dissemination of information exchanged or use of that information for supervisory and non-supervisory purposes.

#### LEAs

**Criterion 40.17 (Met)** – LEAs have the power to exchange domestically available information with foreign counterparts for investigative and intelligence purposes relating to ML, associated predicate offence and TF, including the identification and tracing of the proceeds and instrumentalities of crime (Law on Prosecutor’s Office, Art. 6, Law on Intelligence and Counterintelligence Art. 7, Statute of the Ministry of Internal Affairs, Item 4.1, Statute of the State Custom Committee, Item 4, Statue of the State Border Service Item 9 and AML/CFT Law, Art. 22.4, Article 2.3.10 of the Law on legal aid on criminal matters).

**Criterion 40.18 (Met)** – All powers available in a domestic case may be used to conduct inquiries and obtain information on behalf of a foreign counterpart (Article 22.6 of the AML/CFT Law). Also see criterion 40.8.

**Criterion 40.19 (Not met)** –It is unclear if the scope of the measures that facilitate co-operation with domestic and foreign authorities extends to an ability to participate in joint investigative teams and create bilateral or multilateral arrangements to enable such activity.

**Criterion 40.20 (Mostly met)** – Article 22.9 of the AML/CFT Law allows competent authorities to exchange information with indirect counterparts. However, there is no requirement to ensure that the purpose and source of the request is recorded.

#### *Weighting and Conclusion*

Azerbaijan has implemented most of the requirements concerning international cooperation and is largely in line with R.40. Nevertheless, several minor deficiencies still remain: no specific process/procedure on prioritisation and execution of foreign requests; lack of possibility to facilitate the ability of foreign counterparts to conduct inquiries themselves in the country in order to facilitate effective group supervision; no requirement for supervisors to obtain prior authorisation for any dissemination of information exchanged or use of that information for supervisory and non-supervisory purposes; unclear if the scope of the measures that facilitate co-operation with domestic and foreign authorities extends to an ability to participate in joint investigative teams and create bilateral or multilateral arrangements to enable such activity and no requirement for competent authorities to ensure that the purpose and source of the request is recorded. **R.40 is rated LC.**

## Summary of Technical Compliance – Deficiencies

### ANNEX TABLE 1. COMPLIANCE WITH FATF RECOMMENDATIONS

Recommendations	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	<b>LC</b>	<ul style="list-style-type: none"> <li>• There are no provisions for the monitoring of internal control procedures (c.1.11(b))</li> </ul>
2. National cooperation and coordination	<b>C</b>	<ul style="list-style-type: none"> <li>•</li> </ul>
3. Money laundering offences	<b>LC</b>	<ul style="list-style-type: none"> <li>• Criminalisation of the acquisition, possession and use of proceeds of crime is not in line with the standards (c.3.1)</li> <li>• There is a minor gap in the range of predicate offences related to TF (c.3.2)</li> <li>• Fines applicable for ML offence are not proportionate and dissuasive</li> </ul>
4. Confiscation and provisional measures	<b>LC</b>	<ul style="list-style-type: none"> <li>• Instrumentalities intended to be used for the commission of the offence cannot be confiscated. (c. 4.1 (b))</li> <li>• There is no legal basis for confiscation of property intended to be used in the commission of terrorism offence (c.4.1 (c))</li> <li>• Confiscation of corresponding value for instrumentalities intended to be used in the commission of the offence is not provided (c. 4.1 (d))</li> <li>• There is no provision stipulating the process for the evaluation of property subject to confiscation (c. 4.2 (a))</li> <li>• Provisional measures cannot be ordered <i>ex parte</i> (c. 4.2 (b))</li> <li>• There is no mechanism available for the active management of seized and confiscated assets beyond safekeeping measures (c.4.4)</li> </ul>
5. Terrorist financing offence	<b>LC</b>	<ul style="list-style-type: none"> <li>• TF offence does not include all of the elements of the offences in the treaties listed in the Annex to the TF Convention (c.5.1)</li> <li>• Financing of travel for the perpetration, planning, or preparation of, or participation in, terrorist acts, or for the purpose of the providing or receiving terrorist training is not criminalised (c.5.2bis)</li> </ul> <p>Liability of legal persons is limited to the instances when offence is committed in favour of the legal person itself or its interest (c.5.7)</p>
6. Targeted financial sanctions related to terrorism & TF	<b>LC</b>	<ul style="list-style-type: none"> <li>• There are no provisions which need to be followed under c.6.2(e)</li> <li>• No legal provision are foreseen that empower the State Security Service to collect and solicit information to identify persons or entities with respect to whom there are grounded suspicions to meet the criteria of designation (c.6.3(a))</li> <li>• No procedures are in place to operate <i>ex parte</i> against a person or entity who has been identified and whose (proposal for) designation is being considered (c.6.3(b))</li> <li>• The communication of designations lacks proactive notification of FIs and DNFBPs (c.6.5(d))</li> <li>• Available guidance does not address an obligation to respect unfreezing actions (c.6.6(g))</li> </ul>
7. Targeted financial sanctions related to proliferation	<b>LC</b>	<ul style="list-style-type: none"> <li>• The communication of designations lacks proactive notification of FIs and DNFBPs (c.7.2(d))</li> <li>• Available guidance does not address an obligation to respect unfreezing actions (c.7.4(d))</li> </ul>
8. Non-profit organisations	<b>PC</b>	<ul style="list-style-type: none"> <li>• No individual NPO nor category of NPOs were identified at risk of being potentially misused for TF purposes (c.8.1(a))</li> </ul>

Recommendations	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> <li>No measures have been proposed for addressing the identified vulnerabilities (c.8.1(c))</li> <li>There are no policies to promote and public confidence in the administration and management of NPOs (c.8.2(a))</li> <li>No other specific data was provided on outreach and educational programmes to raise and deepen awareness among NPOs and the donor community about the potential vulnerabilities of NPOs to terrorist financing abuse and terrorist financing risks, and the measures that NPOs can take to protect themselves against such abuse (c.8.2(b))</li> <li>Azerbaijani authorities do not work with NPOs to develop and refine best practices to address terrorist financing risk and vulnerabilities and thus protect them from terrorist financing abuse (c.8.2(c))</li> <li>Azerbaijan applies a one-size-fits-all approach to supervise the NPO sector (c.8.3)</li> <li>No monitoring of risk-based measures applied to NPOs at risk of terrorist financing abuse (c.8.4(a))</li> <li>Available sanctions cannot be considered effective, proportionate and dissuasive. No other sanctions are available regarding the risk-based measures foreseen under subparagraph 6(b) of INR.8 (c.8.4(b))</li> <li>No information has been provided whether apart from the FMS other competent authorities that possess data concerning NPOs can also share this information (c.8.5(a))</li> </ul>
9. Financial institution secrecy laws	LC	<ul style="list-style-type: none"> <li>Not specific requirement for the banks to satisfy themselves that the respondent bank has performed CDD obligations on its customers or is able to provide relevant CDD information upon request to the correspondent bank</li> </ul>
10. Customer due diligence	LC	<ul style="list-style-type: none"> <li>no requirement regarding the understanding of the purpose and intended nature of the business relationship</li> <li>FIs are not required to obtain and distinguish between the address of the registered office if different a principal place of business</li> <li>It is not clear if other investment related insurance policies are covered by the AML Law</li> </ul>
11. Record keeping	C	<ul style="list-style-type: none"> <li></li> </ul>
12. Politically exposed persons	C	<ul style="list-style-type: none"> <li></li> </ul>
13. Correspondent banking	C	
14. Money or value transfer services	PC	<ul style="list-style-type: none"> <li>no information on action taken to identify potential un-licensed MVTs</li> <li>agents are not regulated</li> </ul>
15. New technologies	PC	<ul style="list-style-type: none"> <li>No requirement to apply a risk-based approach to ensure that measures to prevent or mitigate ML and TF are commensurate with the risks identified</li> <li>licencing and registration arrangements for VASPs</li> <li>measures put in place to identify any activity performed without a licence</li> <li>not clear if there are any sanctions for VASPs directors and senior management</li> <li>no specific provisions requiring making the information available immediately and securely to appropriate authorities (15.9(b)1)</li> <li>not clear requirements for FIs when sending or receiving VAs transfers on behalf of a customer (15.9(b)iv)</li> </ul>
16. Wire transfers	PC	<ul style="list-style-type: none"> <li>no specific provisions covering several individual cross border wire transfers from a single originator bundled in a batch file for</li> </ul>

Recommendations	Rating	Factor(s) underlying the rating
		<p>transmission to beneficiaries, and that the batch file should contain required and accurate originator information, and full beneficiary information, that is fully traceable within the beneficiary country</p> <ul style="list-style-type: none"> <li>• not clear if FIs are required to verify the information pertaining to its customer where there is a suspicion of ML/TF</li> <li>• not clear if the intermediary also retains the obtained information with the transfer (information received on the payer and the payee that accompanies a transfer of funds) and if the obtained information is for cross border wire transfers or for domestic wire transfers</li> <li>• no provisions covering the lack of required beneficiary information (16.12)</li> <li>• not clear if the verification includes taking reasonable measures, which may include ex post monitoring or real-time monitoring where feasible, to identify cross-border wire transfers that lack required originator information or required beneficiary information (16.13)</li> <li>• no requirement to have policies or procedures for determining (a) when to execute, reject, or suspend a transfer lacking originator or beneficiary information and (b) revise all business relationships (16.15)</li> <li>• There are no provisions binding MVTs to comply with the relevant requirements of Recommendation 16</li> <li>• There are no specific provisions covering a MVTs provider controlling both the ordering and the beneficiary side to take account of all the information from both sides to determine whether an STR has to be filed or to file an STR in any country affected by the suspicious wire transfer, making the relevant transaction information available to the FIU</li> </ul>
17. Reliance on third parties	<b>C</b>	•
18. Internal controls and foreign branches and subsidiaries	<b>LC</b>	<ul style="list-style-type: none"> <li>• The provisions supporting the exchange information within the group does not include the analysis of transactions or activities which appear unusual</li> <li>• the requirement for the financial groups to include in the AML/CFT programmes safeguards on the confidentiality and use of information exchanged do not cover measures to prevent tipping off the customer</li> </ul>
19. Higher-risk countries	<b>LC</b>	<ul style="list-style-type: none"> <li>• The due diligence measures are not requested to be proportionate to the risks of the business relationships and transactions with customers (natural and legal persons) from countries for which this is called for by the FATF and not requested all non-resident customers (even from jurisdictions that are compliant with FATFs requirements)</li> <li>• not clear if the measures applied are proportionate to the risk and if there are also measures independent of any call from FATF to do so</li> <li>• not clear which are the measures put in place to ensure that FIs are advised of concerns about weaknesses in the AML/CFT systems of other countries</li> </ul>
20. Reporting of suspicious transaction	<b>C</b>	•
21. Tipping-off and confidentiality	<b>LC</b>	• No specific requirement that confidentiality of STR information do not apply to information sharing between FIs
22. DNFBS: Customer due diligence	<b>LC</b>	• Dealers in precious metals and stones and TCSPs are not covered by the AML/CFT Law

Recommendations	Rating	Factor(s) underlying the rating
23. DNFBPs: Other measures	<b>LC</b>	<ul style="list-style-type: none"> <li>Dealers in precious metals and stones and TCSPs are not covered by the AML/CFT Law</li> </ul>
24. Transparency and beneficial ownership of legal persons	<b>PC</b>	<ul style="list-style-type: none"> <li>No comprehensive risk assessment (c.24.2)</li> <li>No legal requirement to record basic regulating powers (c.24.3)</li> <li>No requirement to maintain information set out in 24.3 neither to maintain a register of shareholders (c.24.4)</li> <li>Not all elements are subject to regular update and there are no mechanism for detecting discrepancies (c. 24.5)</li> <li>BO information cannot be determined in all instances (c.24.6)</li> <li>BO information is not updated in all instances (c.24.7)</li> <li>No cooperation between companies and competent authorities to determine BO (c.24.8)</li> <li>No requirement to convert or immobilise bearer shares issued prior to 2015 (c.24.11)</li> <li>No requirement for licencing of nominee shareholders and directors or the obligation to maintain information on nominees (c.24.12)</li> <li>Available sanctions are not fully proportionate or dissuasive (c. 24.13)</li> <li>No mechanism to monitor the quality of assistance received from foreign counterparts (c. 24.15)</li> </ul>
25. Transparency and beneficial ownership of legal arrangements	<b>LC</b>	<ul style="list-style-type: none"> <li>Foreign professional trustees are not recognised as reporting entities</li> <li>No requirement that would cover occasional transactions above the threshold (c.25.3)</li> <li>No requirement to disclose status to obliged entities when carrying out occasional transactions, i.e., in such situations this information is not accessible (c.25.5)</li> <li>Deficiencies identified under R. 37–40 are applicable to the exchange of information on foreign trusts/legal arrangements that may be obtained through obliged entities (c.25.6)</li> <li>Sanctions cannot be considered proportionate or dissuasive. Moreover, foreign trustees established on the basis of foreign law are neither held liable for any failure to perform their duties nor there are proportionate and dissuasive sanctions available (c.25.7 and c.25.8)</li> </ul>
26. Regulation and supervision of financial institutions	<b>PC</b>	<ul style="list-style-type: none"> <li>Limitations in the it and proper requirements as it refers to a criminal conspiracy rather than to “associates”</li> <li>shortcomings were found concerning Basel Committee Principles 5, 11, and 26 (c25.4(a))</li> <li>no further information on the mode of supervision of leasing companies</li> <li>There is no explicit reference to an assessment of ML/TF risks by supervisors on the basis of policies, procedures, internal controls of supervised entities</li> <li>The legislation does not address the need to consider the characteristics of financial institutions and any discretion allowed by the Azerbaijani framework to the use of risk-based approach by financial institutions</li> <li>No requirement for supervisors to review the assessment of the ML/TF risk profile of FIs when there are major events or developments in the management and operations of the financial institution or group</li> </ul>
27. Powers of supervisors	<b>PC</b>	<ul style="list-style-type: none"> <li>No provision allowing uninhibited inspections for FIs other than banks, securities operators and insurance professionals</li> <li>no power to impose financial corporate sanctions to insurers and securities market operators. For NBCIs, Credit Unions, Leasing companies, the Post Office and the exchange offices there is no quotation of the applicable provisions</li> <li>The powers to apply pecuniary sanctions are insufficient</li> </ul>

Recommendations	Rating	Factor(s) underlying the rating
28. Regulation and supervision of DNFBBs	<b>PC</b>	<ul style="list-style-type: none"> <li>No requirement to prohibit criminals and their associates being professionally accredited (28.4(b))</li> <li>For associates, the obligation refers only to criminal conspiracy (28.4(b))</li> <li>Deficiencies identified under R35 apply (28.4(c))</li> <li>no requirement for risk based off-site supervision (28.5)</li> </ul>
29. Financial intelligence units	<b>C</b>	<ul style="list-style-type: none"> <li></li> </ul>
30. Responsibilities of law enforcement and investigative authorities	<b>LC</b>	<ul style="list-style-type: none"> <li>No requirement to conduct parallel financial investigations (c.30.2)</li> </ul>
31. Powers of law enforcement and investigative authorities	<b>LC</b>	<ul style="list-style-type: none"> <li>Identification of assets is not ensured to be conducted without prior notification of the owner</li> </ul>
32. Cash couriers	<b>LC</b>	<ul style="list-style-type: none"> <li>No measures in place enabling co-ordination between agencies or government bodies (c.32.7)</li> </ul>
33. Statistics	<b>PC</b>	<ul style="list-style-type: none"> <li>Statistical data on ML/TF investigations, prosecutions and convictions is not maintained in a comprehensive manner (c.33.1(b))</li> <li>Statistical data on property frozen; seized and confiscated is not maintained in a comprehensive manner (c.33.1(c))</li> <li>Statistical data on MLAs and on other forms of international cooperation is not maintained in a comprehensive manner (c.33.1(d))</li> </ul>
34. Guidance and feedback	<b>PC</b>	<ul style="list-style-type: none"> <li>Guidance and outreach to DNFBBs is limited</li> <li>No guidance for banks and notaries as gatekeepers of real estate sector</li> <li>No sector specific guidelines in relation to the higher risk areas (corruption, tax related crimes, drug smuggling, real estate activity, organised crime, use of cash etc)</li> <li>Guidelines for the real estate agents are not comprehensive</li> <li>VA and VASP guidelines are not in the country and sector context</li> <li>Guidance relating to free trade zones does not include TF</li> <li>No sector specific guidance for reporting suspicious transactions for other FIs (except banks) and DNFBBs</li> <li>No comprehensive guidelines relating to the identification and reporting of TF</li> <li>Giving feedback on STRs has not been systematic throughout the assessment period</li> </ul>
35. Sanctions	<b>NC</b>	<ul style="list-style-type: none"> <li>The AML/CFT Law does not allow for a multi-pronged range of sanctions depending on the severity of the violations and/or their frequency</li> <li>The Law on Banks still make reference to the financial markets supervisory authority</li> <li>The sanctions cannot be taken for one off breach regardless of the severity of the breach</li> <li>The condition "benefit" introduced by the Code of Administrative Infringements is not in line with the FATF standards</li> <li>The pecuniary sanctions are not proportionate and dissuasive</li> <li>The administrative punishment liability is applied to the legal entity only by the court judge impeding supervisor's independence</li> </ul>
36. International instruments	<b>LC</b>	<ul style="list-style-type: none"> <li>No full implementation of the relevant Conventions due to the deficiencies under R. 3, 4 and 5 (art. 6 and 10 of the Palermo</li> </ul>

Recommendations	Rating	Factor(s) underlying the rating
37. Mutual legal assistance	LC	<p>Convention, art. 3 of the Vienna Convention and art. 26 of the Merida Convention)</p> <ul style="list-style-type: none"> <li>• There is no clear process for the timely prioritisation and execution of MLA requests (c.37.2)</li> <li>• Dual criminality is applicable when even when MLA requests do not involve coercive measures (c. 37.6)</li> </ul>
38. Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> <li>• Deficiencies identified under R.4 in relation to instrumentalities intended to be used for the commission of ML and predicate offences have an impact on c. 38.1</li> <li>• Provisional measures cannot be ordered when assistance is requested in relation to non-conviction-based confiscation (c.38.2)</li> <li>• Deficiencies identified under R.4 in relation to management of seized and confiscated property apply in c. 38.3 (b)</li> </ul>
39. Extradition	LC	<ul style="list-style-type: none"> <li>• Due to the limited information provided it is not possible to conclude whether timely execution and prioritisation is enabled (c.39.1(b))</li> </ul>
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> <li>• No specific process/procedure on prioritisation and execution of foreign requests (c.40.2(d))</li> <li>• No requirement for the CBA to provide feedback to requesting authorities on the usefulness and use of the information (c.40.4)</li> <li>• No information has been provided whether the CBA can facilitate the ability of foreign counterparts to conduct inquiries themselves in the country in order to facilitate effective group supervision (c.40.15)</li> <li>• There is no requirement for supervisors to obtain prior authorisation for any dissemination of information exchanged or use of that information for supervisory and non-supervisory purposes (c.40.16)</li> <li>• It is unclear if the scope of the measures that facilitate co-operation with domestic and foreign authorities extends to an ability to participate in joint investigative teams and create bilateral or multilateral arrangements to enable such activity (c.40.19)</li> <li>• There is no requirement to ensure that the purpose and source of the request is recorded(c.40.20)</li> </ul>

## GLOSSARY OF ACRONYMS<sup>58</sup>

	DEFINITION
ACGD	Anti-corruption General Directorate
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
AT	Assessment Team
BO	Beneficial owner/Beneficial Ownership
CBA	Central bank of Azerbaijan
CC	Criminal Code
CC	Coordination Committee
CDD	Customer Due Diligence
CPC	Criminal Procedure Code
CTR	Cash Transaction Report
DNFBP	Designated non-financial businesses and professions
DPKR	Democratic People's Republic of Korea
DPMS	Dealers in Precious Metals and Stones
EDD	Enhanced Due Diligence
Europol	European Police Office
FATF	Financial Action Task Force
FI	Financial Institution
FMS	Financial Monitoring Service
FTF	Foreign Terrorist Fighters
GDP	Gross Domestic Product
GRECO	Group of States against Corruption
IAIS	International Association of Insurance Supervisors
ICP	International Core Principles
IMF	International Monetary Fund
IOSCO	International Organization of Securities Commissions
ISIL/ISIS	Islamic State of Iraq and the Levant
JIT	Joint Investigative Team
JSC	Joint Stock Company
LEAs	Law Enforcement Authorities
LLC	Limited Liability Company
MER	Mutual Evaluation Report
MFA	Ministry of Foreign Affairs
ML	Money Laundering
MIA	Ministry of Internal Affairs
MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
MoJ	Ministry of Justice
NAP	National Action Plan
NCD	National Central Depository
NPO	Non-profit organisation
NRA	National Risk Assessment
OEs	Obligated Entities
OSCE	Organisation for Security and Co-operation in Europe
PF	Proliferation Financing
GPO	General Prosecutor's Office
SCC	State Customs Committee

<sup>58</sup> Acronyms already defined in the FATF 40 Recommendations are not included into this Glossary.



SCRA	State Committee on Religious Associations
SSS	Security State Service
STR	Suspicious transaction report
STS	State Tax Service
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TCA	Technical Compliance Annex
TCSP	Trust and Company Service Provider
TF	Terrorist Financing
TFS	Targeted Financial Sanctions
UNODC	United Nations Office on Drugs and Crime
VA	Virtual Assets
VASP	Virtual Assets Service Provider
WMD	Weapons of Mass Destruction

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December 2023

Anti-money laundering and counter-terrorism financing measures

**Azerbaijan**

*Fifth Round Mutual Evaluation Report*

This report provides a summary of AML/CFT measures in place in Azerbaijan as at the date of the on-site visit (1 to 15 March 2023). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Azerbaijan AML/CFT system and provides recommendations on how the system could be strengthened.