

Anti-money laundering and counter-terrorist financing measures

Republic of Moldova

Fifth Round Mutual Evaluation Report

July 2019



The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism -

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

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EXECUTIVE SUMMARY

1. This report provides a summary of the anti-money laundering (AML) and countering the financing of terrorism (CFT) measures in place in the Republic of Moldova as at the date of the on-site visit (1-12 October 2018). It analyses the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations and the level of effectiveness of Moldova's AML/CFT system, and provides recommendations on how the system could be strengthened.

Key Findings

a) The National Risk Assessment (NRA) was conducted in 2017 outlining comprehensively – albeit with moderate limitations - the threats, vulnerabilities and risks Moldova is exposed to. The Action Plan consequently adopted seeks to address the major risks identified, and has already positively resulted in mitigating measures taken by the authorities. Communication of the results of the NRA by non-financial supervisors to their reporting entities can be further enhanced. The scope of the NRA was not sufficiently broad in relation to financing of terrorism (FT) related risks. Nevertheless, the overall FT risk level appears to be justified.

b) The Service for Prevention and Fight of Money Laundering (SPCML) has a reasonably thorough analysis procedure to develop financial intelligence, which is used – to a certain extent - by law enforcement in criminal investigations related to money laundering (ML) and proceeds generating offences. The use of financial intelligence was tested in FT related investigations. The number of suspicious transactions reports (STRs) received is extremely high, and the SPCML was obliged to take methodological measures in relation to the internal analysis to address the situation. The information gathered through the threshold reports adds-up to the SPCML analytical products and therefore is useful for law enforcement agencies' (LEA) work. Cooperation between domestic authorities is generally satisfactory.

c) There are several avenues for starting a ML case including disseminations by the SPCML and LEA self-motion. The number of investigated ML cases fluctuated in the period under review due to the impact of the two high level cases identified by the Moldovan authorities (the “Global Laundromat” and the “Bank Fraud”), but there was an overall growing trend for convictions. A wide spectrum of ML investigations and prosecutions are conducted, including autonomous ML and foreign predicates cases, in which special investigative techniques are employed. Parallel financial investigations appeared to be carried out in proceeds generating cases. However, only a limited number of investigations lead to prosecutions. Sanctions for ML offence have been applied proportionately.

d) Several strategic documents have been adopted and implemented which demonstrates that depriving criminals of the proceeds of crime is a policy objective. Provisional measures are available and have been regularly applied. The authorities were able to validate various forms of confiscations including instrumentalities, foreign proceeds, equivalent value and proceeds located abroad. Nevertheless, the figures on the number and the value of confiscated assets remain low and do not appear to correspond to the scale of proceeds-generating crime in the country. The results are considerably weaker when taking into consideration the value of property that was effectively recovered. The situation improves when considering the amounts used to compensate victims. The asset management system has been recently reformed and now the responsibilities are divided between the State Tax Service (STS), the Criminal Assets Recovery Agency (CARA) and the court bailiffs.

e) The NRA recognises the FT threat as low and the assessment team (AT) did not find any evidence to suggest otherwise. There have been two FT investigations. As no FT aspect could be proven, no prosecution or conviction for FT was reached, which is consistent with the country's risk profile. The competent LEA authorities - the Security and Intelligence Service (SIS) and the Prosecutor's Office for Combating Organised Crime and Special Causes (PCCOCS) - demonstrated a correct understanding of FT risks and have broad powers to obtain financial intelligence and other information needed in FT cases. There have been two terrorism-related cases which led to convictions but no FT aspect has been identified during the parallel financial investigations. Foreign terrorist fighters (FTFs) trying to travel through the country were identified and risk mitigation measures were taken. Domestic co-operation between national authorities was established in the course of terrorism and FT investigations. Alternative measures have been applied to disrupt FT, such as non-admission on the territory and deportation.

f) Moldova implements targeted financial sanctions (TFS) pursuant to United Nations Security Council Resolutions (UNSCRs) through the AML/CFT Law and the Law no. 120/2016 *"on prevention and combating terrorism establishing mechanisms for implementation of the UNSCRs"*. The SIS may (although there is no explicit legal provision) designate persons and entities as a terrorist or terrorist organisation pursuant to UNSCR 1373. Moldova has not made any designation and has not requested other countries to give effect to the actions initiated under freezing mechanisms, as there were no cases which would meet the designation criteria. The banking institutions perform regular monitoring of their customers against UNSCR lists, but this is limited to the clients. Other reporting entities seemed to lack the full understanding of their obligations under the sanctions regime. No tailored guidance or trainings have been provided to improve awareness among non-banking financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs).

g) Moldova has not formally identified the types of non-profit organisations (NPOs) which are vulnerable to FT abuse.¹ However, the authorities have identified and monitor financial transactions of certain number of NPOs, which might be risky from a FT perspective. Some guidance to the NPO sector has been provided on potential FT abuse. There are no specific guidelines to reporting entities (REs) in relation to the monitoring process of the transactions involving NPOs posing a higher risk.

h) FIs participated in the NRA process which has improved their understanding of national ML threats and sectorial vulnerabilities. The internal risk assessments recently mandated by the National Bank of Moldova (NBM) have further increased the awareness of business-specific risks amongst banks. However, the evaluators found that the overall understanding of ML/FT risks across the financial sector is still not sufficiently comprehensive. ML typologies considered are primarily centred on the "Global Laundromat" schemes, while the analysis of FT risks is limited to examining United Nations (UN) sanctions lists. Nonetheless, banks are engaged in the provision of traditional banking services and products that reduce the risk exposure of the banking industry. Designated non-financial businesses and professions (DNFBPs), except for notaries, almost completely lack the appreciation of their exposure to ML/FT risks.

i) For many years, suspicious transaction reporting (STR) had been largely based on a set of specific risk criteria provided by the SPCML. This resulted in the development of a "tick-box"-reporting culture which negatively affected the overall quality of STRs. Nonetheless, STRs contributed to the discovery of the two biggest ML cases and led to multiple successful ML

¹ A study on the NPO was completed and approved in November 2018 (after the on-site visit).

investigations and prosecutions. The recent measures by the authorities to reform the STR system have yielded some results by reducing the total number of STRs and encouraging REs to support suspicions with analysis.

j) Moldova has a robust licencing framework to prevent criminals and their associates from holding, or being the beneficial owner (BO) of a significant or controlling interest or holding management function in financial institutions (FI). However, microfinance and foreign exchange offices (FEOs) (lower-risk sectors) have been only recently subject to authorisation requirements. The FIs' supervisors have an adequate level of understanding of ML risks for the majority of the sectors they supervise and carry out the AML/CFT monitoring and supervision on a risk-sensitive basis. While the range of sanctions available in the AML/CFT Law and sectorial laws seem to be dissuasive enough, there are some concerns in relation to their practical implementation, both in terms of numbers and amounts (in the case of fines) and others. The supervision of the DNFBPs is an area for improvement.

k) Moldova has implemented certain measures to prevent the misuse of legal entities in recent years. The STS introduced elaborate systems and processes to monitor dormant companies and uncover signs of value added tax (VAT) fraud. The SPCML has taken steps to encourage banks to identify and cancel the business relationships with shell companies. However, limited measures have been applied by the Public Services Agency (PSA), which lacks the capacity to track down fictitious legal entities and strike them off the register. The authorities rely primarily on banks to obtain the BO information. The bank account register managed by the STS will facilitate the rapid availability of the BO data to competent authorities, once a technical solution is created to allow the SPCML and LEAs to directly access the register. However, difficulties identified in relation to complex legal structures under IO.4 imply that accurate and current BO information may not always be available. The BO register created by the PSA so far contains data only regarding newly-registered legal entities, and the PSA lacks the sufficient resources, expertise and mechanisms to ensure that the BO data is verified for accuracy and duly updated.

l) Moldova has a comprehensive legal framework for requesting and providing international co-operation, including mutual legal assistance (MLA) and extradition, which is regularly used by LEAs, the Financial intelligence Unit (FIU), supervisory and other competent authorities. The AT positively assesses the manner through which Moldova provided and sought international assistance in relation to MLA and extradition for cases related to ML and predicate offences. Membership of various international organisations, such as Europol, Interpol and the Egmont Group, facilitated international co-operation, both for Moldova as a requesting party and as a requested party. Co-operation in relation to BOs is of limited effectiveness, due to the difficulties in the BOs framework.

Risks and General Situation

2. Moldova is not an important regional financial centre. Its financial sector consists mainly of the banking sector (which accounts for 70% of GDP), which implies a high risk, besides the remittances sector (15.4% of GDP) and the small securities and insurance sector. The country is poorly developed, and thus heavily-reliant on export and import.

3. The main risk of financial crime stems from predicate offences which generate illicit revenues, namely drug trafficking, corruption, human trafficking, tax evasion and smuggling. Vulnerabilities for ML are the high use of cash, the opaque ultimate BO structures and the use of shell companies for ML

schemes. Corruption is recognised in the NRA as one of the most stringent problems in Moldova and a common subject of public discussions, opinion polls, legislative regulations and political negotiations.

4. The FT risk, albeit considered by the authorities as 'low', is still present due to the potential transit nature of the country for FTFs, the risks arising in neighbouring areas, the evolution of FT risks globally, and the country's geographical location.

Overall Level of Effectiveness and Technical Compliance

5. Moldova has introduced a number of changes to the legal and organisational AML/CFT framework since the last evaluation. The new AML/CFT Law (2017) sets out the measures, competent authorities and procedures for detecting and preventing ML and FT, and governs the inspection of the implementation of its provisions. The new law reformed the standing of the FIU, established the principle of a risk-based approach in the application of preventive measures, and improved the customer due diligence (CDD) framework and implementation of TFS. Yet technical deficiencies remain with regard to politically exposed persons (PEPs), the application of enhanced due diligence (EDD) measures, preventive and other measures for DNFBPs, and BO information on legal persons and TFS, among other topics.

6. Moldova has demonstrated a substantial level of effectiveness in the assessment of ML/FT risks and domestic coordination, as well as in FT investigation and prosecution and engaging in international cooperation. It demonstrated a moderate level of effectiveness on supervision of the financial and DNFBP sector, preventive measures by FIs and DNFBPs, the prevention of misuse of legal persons and arrangements, the collection and use of financial intelligence, the confiscation of criminals' proceeds of crime or property of equivalent value, implementation of FT targeted financial sanctions, as well as on ML investigation and prosecution. Meanwhile, it could not demonstrate sufficient effectiveness on the application of proliferation financing (PF) related financial sanctions.

Assessment of Risks, coordination and policy setting (Chapter 2 - 10.1; R.1, R.2, R.33)

7. The understanding of ML/FT risks and vulnerabilities is based on the NRA, which was finalised in 2017. Relevant public authorities and the private sector contributed to the development of the NRA, which constitutes a global and solid base for understanding threats, vulnerabilities and risks in the country. While the NRA does not explore separately the risks associated with organised crime groups, NPOs and all the aspects of FT, it is still rather comprehensive and covers a wide range of subjects.

8. Following the adoption of the NRA, an Action Plan was adopted in 2017, aiming at addressing the main identified risks. The implementation of strategic plans could be further improved. Steps have been taken to address the identified shortcomings with regard to confiscation, which demonstrates that the outcomes of the NRA and the objectives of the action plan are given due consideration. The LEAs and the financial supervisors are generally aware of the risks emphasised in the NRA and of the AML/CFT requirements. Moldova is taking actions to inform reporting entities about the risk-based obligations deriving from the new law.

9. Adopted AML/CFT policies, as stipulated by the Action Plan 2017, are generally in line with the identified risks. The country could profit from further strengthening the domestic operational cooperation framework and further development of coordination of policies on combating PF. Despite this, cooperation between domestic authorities is reached to a satisfactory level.

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

10. The structure of the FIU (SPCML) changed to an autonomous public body with the adoption of the new AML/CFT Law. The SPCML has broad and unhindered access to information sources to develop financial intelligence. This intelligence was demonstrated to be used – to a certain extent – by prosecutors in ML and proceeds-generating cases. LEAs are able to conduct financial investigations during the criminal intelligence gathering stage, although the resources could be expanded.

11. The SPCML receives STRs, cash transaction reports (CTRs) and customs declarations. However, due to the previous rule-based mandatory reporting procedure, the SPCML received an unreasonably high number of STRs. This procedure has changed with the adoption of the new AML/CFT Law, but the number of received STRs remains high. Yet a number of ML criminal investigations were initiated as a result of the SPCML's analyses and disseminations.

12. The authorities demonstrated a proactive approach in pursuing investigations, and apply thereby a variety of investigative techniques. Parallel financial investigations are considered a priority for the prosecution services. However, the results of investigations and prosecutions into ML and major proceeds-generating offences are not entirely proportionate to the risks identified. The number of convictions also remains low when compared to the number of ML investigations, the number of convictions for the predicate offences, and the overall country risks. Indeed, only a small part of investigations led to prosecutions, despite the proactive approach of involved LEAs and the SPCML. LEAs and the SPCML would benefit from closer cooperation to increase the number of FIU cases investigation and prosecuted. ML acquittals are virtually non-existent.

13. Sanctions applied for the offence of ML are consistent with the sanctions applied for predicate offences. Custodial sentences are prevailing. The judiciary is considered able to apply proportionate sanctions. Fines applied to legal persons usually go hand in hand with the liquidation of the company.

14. A number of strategic documents have been adopted to develop the confiscation and sequestration regime. Moldova has developed an extensive legal system to recover assets, including provisional measures and the possibility of recourse to extended confiscation, but the proportion of the number and the value of seized/confiscated assets remains unbalanced. The system may profit from a unified and centralised database-keeping system for seized/confiscated assets to better understand the efficiency of measures undertaken.

15. The STS, bailiffs and the CARA manage the seized/confiscated assets, depending on the existence of a court order for capitalisation of assets before or after delivery of a decision. The effectiveness of the assets recovery system should be improved.

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

16. FT is criminalised largely according to the FATF standards. The terrorism financing threat in the country is perceived as low. The competent authorities demonstrated a correct understanding of FT risks, and they acquired broad powers to obtain (financial) information for identifying and investigating FT. There have been two terrorism-related cases which led to convictions, as well as few instances where FTFs tried to use Moldova as a transit country, but during parallel financial investigations no FT aspects were found. Two FT investigations took place: one related to a smuggling case, and another one was a

'false positive' match of a person with a UNSCR sanctions list. The investigations did not result in prosecutions or convictions, as ultimately no FT element could be established.

17. Domestic cooperation between authorities on FT takes place to a satisfactory extent in the course of criminal and financial investigations. The National Security Strategy includes combating FT as a priority.

18. Since no convictions have been achieved, no sanctions for FT have been applied. Nevertheless, alternative measures have been applied to disrupt FT, such as expulsion, non-admission and deportation.

19. The legal framework for the implementation of FT- and PF-related TFS is not fully in line with the FATF standards, especially in relation to designation procedures and safeguarding the rights of designated persons and entities. Among the FI and DNFBP sectors, mainly banks demonstrate awareness of UN and European Union (EU) designations, for which they generally have systems in place to monitor and compare clients and transactions to the designation lists. Insufficient awareness is noted across smaller banks, other FIs and the DNFBP sector. More training on the TFS-regimes is needed.

20. Moldova has not formally identified the types of NPOs which are vulnerable to FT abuse.² However, the authorities have identified and monitored financial transactions of a certain number of NPOs, which might be risky from the FT perspective. Some guidance to the NPO sector has been provided on this matter. There are no specific guidelines to REs in relation to the monitoring process of the transactions involving NPOs posing a higher risk of being misused for FT purposes.

21. The PF-related TFS legislation is established under the AML/CFT Law, but due to its recent implementation, a lack of comprehensive regulations and mechanisms on the subject is notable. Despite the occurrence of cases of smuggling with radioactive substances and prevention of the use of radioactive materials and dual-use goods on its territory, no case exists in Moldova on PF-TFS.

22. Cooperation is established among competent authorities on licencing of export and import of strategic goods. Priority could be given to identifying persons and entities involved in PF by accepting the SPCML as a permanent member to the group. Financial sector and related supervisory authorities demonstrated some awareness regarding PF-TFS, but no guidance and regular communication towards the reporting entities exist. As a result, DNFBPs only screen customers against the designations lists and do not take screening steps beyond that, while FIs encounter difficulties in establishing the BO, thus increasing the risk that the Moldovan financial system may be misused by designated individuals and entities for evading the sanctions regime.

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

23. The internal risk assessments recently mandated by the NBM have increased the awareness of business-specific risks amongst banks. ML typologies considered mainly focus on the schemes used in the "Global Laundromat", while FT risks are primarily analysed from the perspective of UN sanctions lists. DNFBPs, except for notaries, almost completely lack the understanding of ML/FT risks.

24. Risk mitigating measures taken by banks included active targeting of shell companies, but other measures are mostly limited to applying EDD. The risk-based approach (RBA) in the financial sector

² A study on the NPO was completed and approved in November 2018 (after the on-site visit).

is still a work in progress, while measures applied by DNFBPs are even less tailored to circumstances of customers. Banks and some non-bank FIs demonstrated an adequate application of basic CDD requirements, although establishing BOs of complex legal structures remains a challenge. The suspicious transaction reporting system was recently overhauled to improve the quality of STRs, although further progress requires more vigorous supervision over REs' internal systems and processes for identifying and reporting suspicious transactions. Banks started giving higher priority to AML/CFT issues due to supervisory pressure by putting in place AML/CFT compliance functions and training programs. Internal controls beyond banks are much less developed.

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

25. The NBM and the National Commission for Financial Markets (NCFM) have both undertaken measures to improve the transparency of shareholders' structures among most of their supervised entities, but deficiencies exist with regard to certain low-risk sectors such as microfinance. Background checks are conducted by both supervisors to identify the BO and shareholder structure of FIs. Both off- and on-site controls are performed by the NBM and NCFM, which also entail a review of the application and efficiency of certain obligations for FIs under the AML/CFT Law. However, supervision of FIs could be enhanced with a more risk-based approach, in line with the FATF standards. Licences have been withdrawn for FIs, although not for reasons of AML/CFT infringements.

26. The FIs' supervisors have an adequate level of understanding of ML risks for the majority of the sectors they supervise, which represent the most material areas in Moldova. Their understanding derives mainly from the NRA and from sectorial analysis. Supervisory actions have led to better governance by banking entities and some non-banking FIs, including in improving their internal risk assessments.

27. In relation to DNFBPs, notaries, lawyers, casinos and dealers in precious metals and stones (DPMSs) are subject to licensing/authorisation requirements. Regarding the supervisory framework certain gaps exist, as supervision of the degree of compliance of DNFBPs with the current AML/CFT obligations is only recently developed. The main measures adopted by supervisory authorities were related to awareness raising activities regarding the new requirements established by the AML/CFT legislation in force.

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

28. The NRA does not provide a comprehensive analysis of ML/FT risks related to legal entities (LEs), although the extent to which shell companies are misused is generally well-understood by the authorities. The country has taken some steps to prevent the misuse of LEs, particularly in the context of uncovering VAT fraud. However, limited measures were applied by the PSA to track down fictitious entities. The basic information on LEs is made available online. There are however some concerns regarding the ability of the PSA to keep this information accurate and up-to-date without having sanctioning power.

29. The authorities mostly rely on banks to access the BO information of LEs and the recently created bank account registry may improve further the availability of the data. The supervisory measures taken by the NBM have improved the quality of BO information obtained by banks, although challenges remain. There are also concerns that the PSA lacks the capacity to verify the accuracy of the data recorded in its BO registry. Trusts and similar legal arrangements, which are not recognised by the legal framework, have been observed as part of the ownership and control

structure of some customers of banks. There is an insufficient understanding among the authorities and banks regarding the nature of trusts and similar arrangements and the activity of the Trust and Company Service Providers (TCSPs).

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

30. The legal framework for providing international co-operation is well-developed and frequently used, and only moderate shortcomings are noted regarding MLA on freezing and confiscation. Bilateral and multilateral agreements have been concluded. The authorities actively seek international assistance (MLA and extradition) for ML and predicate offence cases. The quality and timeliness of responses of Moldova are generally satisfactory, although a few issues were raised by the international community.

31. Authorities are able to take urgent action to respond to requests, depending on the circumstance of the case. Statistics on the incoming/outgoing requests can be improved.

32. Moldova is a member of various international organisations, which enhances its capability of providing and seeking cooperation. The SPCML has demonstrated its ability to cooperate with counterparts upon their own initiative and upon requests. Only cooperation in relation to BO is of limited effectiveness, as the data provided to foreign counterparts may not be entirely comprehensive.

Priority Actions

a) Moldova should ensure that REs prioritise the assessment of their business-specific ML/FT threats and vulnerabilities, and apply CDD and other risk-mitigating measures that are appropriate in view of the risks identified.

b) Moldova should ensure that the new suspicion-based transaction reporting system is implemented as a matter of priority, and REs' internal processes aimed at identifying and reporting ML/FT suspicions are tested and supervised for effectiveness and quality of STRs produced.

c) Given the delays to requests for international legal assistance, Moldova should challenge the courts with more ML cases, relying on inferences that can properly be drawn from available evidence.

d) LEAs should be provided with sufficient resources and capacities to make more effective use of financial intelligence (financial experts, forensic accountants, information technology (IT) hardware and IT software).

e) Moldova should consistently employ the legislative framework to the fullest extent, to raise the effectiveness of confiscation of proceeds to higher degree, in particular regarding extended confiscation. More efforts should be placed in increasing the effectiveness of the asset recovery system.

f) Moldova should ensure that the NCFM and the DNFBPs' supervisors accelerate and finalise the development of their methodology for AML/CFT supervision on a risk-sensitive basis, and introduce a fully risk-based approach to the supervision of FIs under their remit and DNFBPs.

g) The AML/CFT thematic controls on REs should focus more on areas of high significance, such as the reformed STR reporting system and the application of a RBA. As a result, proportionate and dissuasive sanctions should be applied by all supervisors.

h) Moldova should thoroughly analyse the potential for misuse of all types of legal entities including NPOs, and ensure that the PSA has sufficient tools and resources in place to keep the basic information accurate and current, and is able to impose effective, proportionate and dissuasive sanctions for breaches of information requirements.

i) Moldova should clarify in its legislation mechanisms for domestic designation, de-listing and unfreezing procedures in accordance with UNSCR 1267 and UNSCR 1373 and their successor resolutions, and should conduct regularly awareness-raising trainings to REs in relation to implementation of TFS and PF.

j) Moldova should develop and adopt an up-dated AML/CFT Strategy.

k) With the next iteration of the NRA, Moldova should: i) further develop the analysis of the ML methods, trends and typologies, including if relevant related to OC; ii) develop the analysis of the risk posed by cash transactions; iii) give more attention to the misuse of legal persons and arrangements in ML schemes.

l) Continue enhancing knowledge of investigators and prosecutors - other than SIS - on the possible FT aspect that could be detected in relation to all range of offences.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings (High, Substantial, Moderate, Low)

IO.1 - Risk, policy and coordination	IO.2 - International cooperation	IO.3 - Supervision	IO.4 - Preventive measures	IO.5 - Legal persons and arrangements	IO.6 - Financial intelligence
SE	SE	ME	ME	ME	ME
IO.7 - ML investigation & prosecution	IO.8 - Confiscation	IO.9 - FT investigation & prosecution	IO.10 - FT preventive measures & financial sanctions	IO.11 - PF financial sanctions	
ME	ME	SE	ME	LE	

Technical Compliance Ratings

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	LC	LC	C	LC	PC
R.7- targeted financial sanctions - proliferation	R.8 -non-profit organisations	R.9 – financial institution secrecy laws	R.10 – Customer due diligence	R.11 – Record keeping	R.12 – Politically exposed persons
PC	PC	LC	PC	LC	PC
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
LC	C	LC	LC	LC	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
PC	C	C	PC	PC	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
PC	C	LC	LC	C	C
R.31 – Powers of law enforcement and investigative authorities	R.32 – Cash couriers	R.33 - Statistics	R.34 – Guidance and feedback	R.35 - Sanctions	R. 36 – International instruments
LC	LC	LC	C	C	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	PC	LC	LC		

MUTUAL EVALUATION REPORT

Preface

1. This report summarises the AML/CFT measures in place as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of 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. The evaluation was based on information provided by the country, and information obtained by the evaluation team during its on-site visit to the country from 1-12 October 2018.
3. The evaluation was conducted by an evaluation team consisting of:
 - Mr Azer Abbasov, Financial Monitoring Service, Azerbaijan (law enforcement expert)
 - Mr Diego Crijns, Fiscal Information and Investigation Service, Tax and Customs Administration, the Netherlands (legal expert)
 - Ms Tanja Frank-Eler, District State Prosecutor, Slovenia (legal expert)
 - Ms Adriana Ion, National Office for Prevention and Control of ML, Romania (law enforcement expert)
 - Mr Malkhaz Narindoshvili, Financial Monitoring Service, Georgia (financial expert)
 - Mr Gerard Prast, Financial Intelligence Unit UIFAND, Andorra (financial expert)
4. The team was supported by the MONEYVAL Secretariat, represented by Ms Irina Talianu, Ms Veronika Mets and Ms Claudia Elion.
5. The report was reviewed by the FATF Secretariat, Mr Igor Bereza (Ukraine) and Ms Jana Ružarovská (Czech Republic).
6. Moldova previously underwent a MONEYVAL Mutual Evaluation in 2012, conducted according to the 2004 FATF Methodology. The 2012 report has been published and is available at <https://www.coe.int/en/web/moneyval/jurisdictions/moldova>.
7. The 2012 Mutual Evaluation concluded that the country was compliant with four recommendations, largely compliant with 18 recommendations, partially compliant with 22 recommendations and non-compliant with four recommendations. One recommendation was considered not applicable. Moldova was rated largely compliant with six of the 16 Core and Key Recommendations and was placed under the regular follow-up procedure, being invited to report back to the MONEYVAL Plenary in December 2014, December 2015 and December 2016. In April and September 2016, the country submitted interim reports. In December 2016, in view of the 5th round on-site visit which was scheduled in the first half of 2018, Moldova was encouraged to continue submitting follow up reports, but was not further required to apply for removal in 2017 (Rule 13, Paragraph 8, MONEYVAL Rules of Procedure).

CHAPTER 1.

ML/FT RISKS AND CONTEXT

8. Moldova is a landlocked country located in Eastern Europe. It shares borders with Ukraine in the north, east and south, and with Romania in the west. The capital city is Chişinău. The population is of 3.549.750 inhabitants (World Bank estimate, 2017), with a GDP of USD 8.128 billion (World Bank estimate, 2017). Its official currency is the Moldovan Lei (MDL).

9. Moldova has gained independence from the former Soviet Union on 27 August 1991. The eastern strip of the Moldovan territory on the east bank of the Dniester river is a so-called post-Soviet “frozen conflict” zone, under the *de facto* control of the Transnistrian separatist regime since 1990. From an administrative viewpoint, the territory of Moldova is organised in territorial administrative units and comprises 32 districts, 5 municipalities and 2 special-status regions: the autonomous Unit of Gagauzia and the Transnistrian Region.

10. According to a population census from 2014³, Moldovans form the largest ethnic group (75.1%), followed by Romanians (7%), Ukrainians (6.6%), Gagauz (4.6%), Russians (4.1%), Bulgarians (1.9%) and others (0.8%). Romanian is the official language. Orthodox Christianity forms the largest religion (90.1%).

11. Moldova is a parliamentary republic, with elections for the parliament and president taking place every four years. The judicial system is based on civil law principles.

12. The largest share of the Moldovan economy is accounted for by the agricultural sector. Moldova imports energy resources, oil, natural gas and coal from the Russian Federation, and partly from Ukraine and Romania. In November 2013, Moldova signed an association treaty and a free trade treaty with the European Union, resulting in free access for Moldovan products to the European Economic Community, and, since 2014, visa-free access for Moldovan citizens to EU Member States.

13. Moldova is a member of international organisations such as the Council of Europe (CoE), the UN, the Organisation for Security and Cooperation in Europe (OSCE) and the World Trade Organisation (WTO), as well as regional organisations such as the Black Sea Economic Cooperation Initiative, the GUAM Organisation for Democracy and Economic Development and the Commonwealth of Independent States (CIS).

ML/FT Risks and Scoping of Higher-Risk Issues

Overview of ML/FT Risks

General criminal context of Moldova

14. In 2018, 32,000 crimes were recorded on the territory of the country, which is a decrease of 10% compared to 2017 and a decrease of 23,4% compared to 2014.⁴ Petty crimes (i.e. theft, robberies and burglaries) occur most often, while violent crimes (e.g. carjacking, home invasions and kidnappings) are extremely rare.⁵ These cases occur mainly in the border regions and likely relate to

³ <http://www.statistica.md/pageview.php?l=ro&idc=479&>

⁴ <http://www.statistica.md/newsview.php?l=en&idc=168&id=6268>

⁵ http://statistica.gov.md/public/files/ComPresa/Iustitie/2018/Anexe_infractiuni_2018.xls

smuggling.⁶ The occurrence of organised criminal activity in relation to smuggling of stolen and illegal goods has slightly increased due to conflicts in the region. Due to its geographical location, Moldova is misused for smuggling goods into and out of the EU and bordering countries, and human trafficking and drug smuggling activities.

15. There are no recent incidents of domestic terrorism. There were a number of arrests on charges of supporting and/or participating in conflicts abroad, but no violence within Moldova as a direct result was reported.

16. Several violent and non-violent anti-government protests (i.e. against the annulment of the 2018 mayoral election in Chisinau, or after the 2016 announcement of a new government) occurred in recent years, although the unrests in 2018 were generally non-violent.

ML/FT risk context

17. Moldova is not an important regional financial centre. Its financial market is under development and its integration into the global financial system is limited. The economy is mostly cash-based.

18. The banking sector, which accounts for 70% of the national GDP, is the most attractive sector and implies a high ML risk; the remittance sector, which accounts for 15.4% of GDP denotes a medium high ML risk level; the securities sector accounts for 1.64% of GDP and has a medium low risk level of ML; the insurance sector accounts for 0.8% of GDP and has a medium low risk level of ML; and the notary – real-estate sector, which is a small sector with insignificant share in GDP, has a medium risk of ML and FT.

19. Looking at the internal threat, the most relevant crimes generating illicit revenues are: drug trafficking, corruption, human trafficking, tax evasion and smuggling. Some of these activities are led by Organised Crime Groups (OCG), as highlighted by the NRA and different public sources.

20. The Moldovan banking system was used for a fraud and ML scheme involving several countries through which USD 1 billion was stolen between 2012 and 2014, which accounted roughly for 13% of the country's GDP (the so-called "theft of the century" or "Banking Fraud"). Moreover, between 2010 and 2014, at least USD 20 billion was moved from the Russian Federation through Moldova and Latvia into Europe (the so-called "Global Laundromat").

21. The risk of terrorism financing in Moldova is perceived as low due to the orthodox religion of the country and the global context within which Moldova is not perceived as a target of terrorism acts. There were no identified terrorist groups active in the country.

Country's risk assessment

22. The authorities conducted the NRA based on the World Bank methodology, which is consistent with the FATF Guidance. The SPCML has been assigned as coordinator of the NRA and the report was adopted in 2017. All the relevant public authorities⁷ and the private sector⁸ were

⁶ <https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=25687>

⁷ General Prosecutor's Office, the Security and Intelligence Service, the National Bank of Moldova, the National Commission of the Financial Markets, the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Finance, the Ministry of Economy, the Ministry of Information Technology and Telecommunications, the State Tax Inspectorate, the Customs Service, the Financial Inspectorate, the National Bureau of Statistics, and the National Anticorruption Center.

involved in the NRA process identifying the higher risk areas, institutional gaps and priorities for improving the national AML/CFT system.

23. The Methodology applied includes two core modules – the “*national threat*” and the “*national vulnerability*” - that comprise eight sub-modules and define a program of data collection and a program of data assessment. To identify the national threats, the seven set working groups (WGs) have accumulated a wide range of data on initiated cases of ML and FT and the results attained, the size of affected sectors, the regions indicating geographical threat, and the value of undetected criminal proceeds in correlation with the predicate crime that generated illicit profits.

24. The Threat Assessment Module determined the overall “*threat level*” and identified the main predicate offences, origins and flows of criminal proceeds, and laundering techniques and trends detected in the country. The module analysed data on detected ML cases, information on predicate offenses and their proceeds, information from MONEYVAL Mutual Evaluation Reports, estimates on undetected and unrecorded predicate offenses, and their proceeds etc. The breakdown of origin of funds facilitated the identification of patterns regarding the jurisdiction of origin of proceeds of crimes, which was particularly relevant in cases when the predicate offense to ML was committed in a foreign jurisdiction. The cross-border ML threats were taken into consideration.

25. The National Vulnerability Module is composed of two major parts: i) the overall sectorial vulnerability (determined by the outcomes of the assessments of the various sectors such as banking, insurance, securities, other financial institutions and DNFPBs), and ii) the national combating ability (which is a comprehensive assessment based on 22 input variables attempting to capture factors such as the quality of the judicial processes, the effectiveness of the law enforcement, domestic and international cooperation).

26. A large source of information was used to undertake the NRA exercise: statistical data gathered for a period of 3 to 5 years; national and international reports⁸; strategic financial analysis; typologies; and replies to questionnaires disseminated to the reporting entities.

27. The Terrorism Financing Risk Assessment Module largely followed the same approach as the ML Assessment Modules in terms of performing an intuitive and methodical analysis. First, the level of the terrorist threat for the country was assessed through the review of quantitative and qualitative information on terrorist acts in the jurisdiction, such as enforcement data, intelligence sources, and terrorism research. Second, the direction of movement of FT funds, as well as their sources and channels, were analysed.

28. The Moldovan NRA is an analysis of domestic and external ML/FT risks, including of what constitutes high, medium and low risk. The NRA identifies corruption as one of the most stringent problems in Moldova and a common subject of public discussions, opinion polls, legislative regulations and political negotiations. Corruption is analysed through a number of variables, such as frequency of the crime, bribe value estimates, territoriality, vulnerable fields of activity, categories of corruption crimes examined by the courts etc. In the “*Vulnerabilities*” module, the integrity and independence of criminal investigators, prosecutors and judges is critically assessed in the context of

⁸ Including professional associations such as: Association of Banks, “Union of Insurers”, Union of Notaries, representatives of the securities’ market, including the National Bureau of Motor Insurers.

⁹ E.g. UNODC Report on drug trafficking in South Eastern Europe (2014); US International Narcotics Control Strategy Report Moldova (2012); International Narcotics Control Strategy Report Moldova (2012); Report developed by NATO Parliamentary Assembly; data of the Institute for Economics and Peace (2014); Transparency International Reports, MONEYVAL Reports.

the state's capacity to resist corruption. On the external threat, the overall conclusion is that, given the fact that the domestic financial market is less developed and its integration into the global financial system is restricted, the domestic threat was considered three times higher than the external threat, the latter however, constantly increasing.

29. In order to establish the external ML/FT threat the process made use of a range of data (quantitative indicators), such as the assessment of the financial inflow and outflows, incoming and outgoing MLA requests (per jurisdiction), ML convictions, prosecutions, investigations, freezing orders, seizing orders, confiscations, origin of countries of trust and company service providers (TCSPs), number of cases in which data are exchanged, total number of cash declarations, undeclared cash sized/confiscated, information obtained from dialogue with other countries etc.

Scoping of Higher Risk Issues

30. In deciding what issues to prioritise for increased focus, the assessors reviewed the Moldovan NRA, and information from third-party sources (e.g. reports of other international organisations). The assessors focused on the following priority issues:

a) **Corruption:** As acknowledged by the NRA¹⁰ and other international sources, corruption still remains widespread in Moldova, and the independence of the judiciary, law enforcement as well as national anti-corruption authorities needs substantial enhancement. Investigations (on-going) on the massive banking fraud unveiled in 2014 have touched only upon a limited number of individuals.

b) **Serious and organised crime:** The NRA and different public sources indicate that Organised Crime Groups (OCG) in Moldova are oriented mostly towards drugs and human trafficking¹¹, smuggling¹² and tax evasion¹³.

c) **Tax evasion¹⁴:** Tax evasion represents the fourth offense at national level generating illicit revenues. Despite the conducted investigations, only a low number of seizures, confiscations and convictions are being achieved.

d) **ML investigations and prosecutions:** A new law on prosecution service recently entered in to force (in August 2016) revising the existing legal framework to better align it with relevant European standards and best practices.

e) **Asset recovery:** A new Law on the Agency for the Recovery of Criminal Assets (CARA) came into force in May 2017, allowing CARA to get involved in a number of crime types, especially corruption, ML and organised crime, and to perform parallel financial investigations.

f) **Beneficial ownership:** The IMF has defined the opaque ultimate beneficial ownership of banks as one of the most important problems in the Moldovan banking sector.¹⁵ The risks coming forth from the lack of transparency were materialised in the ML scandal of 2014 in which three major Moldovan banks were involved.¹⁶ It is believed that the risks incurred with contamination of the

¹⁰ NRA, pages 16-21

¹¹ NRA, pages 10-15 and 22-24; <https://www.state.gov/j/inl/rls/nrcrpt/2012/vol1/184101.htm>; <http://antitrafic.gov.md/public/files/271339.pdf>, from page 283

¹² NRA, pages 29-41;

¹³ NRA, pages 26-28

¹⁴ NRA, pages 26-28

¹⁵ <https://www.imf.md/press/pressl/pressl-160516.html>

¹⁶ https://www.expert-grup.org/ro/biblioteca/item/download/1363_5d1f58bd9c3288e4cf9d717da5a15b3e

financial system are persisting, although notable steps have been taken (adoption of the Law on banking activity, adoption of various NBM regulations).¹⁷ The NRA has identified a lack of a clear mechanism for collecting and keeping the information about the beneficial owners by the registration authorities, and difficulties in identifying the beneficial owners in the case of non-resident companies.¹⁸

g) **Shell companies:** The use of shell companies in ML schemes continues, and it appears that neither current rules on company registration nor corporate criminal liability are sufficiently efficient to overcome this phenomenon, although steps have been taken to deal with shell companies that extensively feature in typologies of fictitious business arrangements in Moldova (i.e. creation of the electronic register of tax invoices and modernisation of the STS information systems).¹⁹

h) **Supervision of banks:** The NRA has identified risks in the area of supervision procedures and practices of financial institutions, and, in particular, lacking assessment of ML/FT risks, insufficient tools and mechanisms for on-site and off-site supervision and limited experience of personnel.²⁰ The NBM has tightened bank supervision and reporting standards, but a number of difficulties persist, e.g. a lack of periodical reassessment of shareholder structures of companies and some internal control procedures and audits which do not lead to follow-up measures.²¹

i) **Financial Intelligence Unit (FIU):** The adoption of the new Law 308/2017 (hereafter: AML/CFT Law) resulted in the FIU being relocated (from a Department of the Centre for Combating Economic Crimes and Corruption) to an independent public authority and central specialised body.

j) **The use of cash:** According to the NRA a high level of a cash-based economy is being maintained (through i.e. agricultural activities, procurement of real estate, motor vehicles, and insufficient information of population on the long-term negative effects of the cash-based activities).

k) **Terrorism financing:** The FT risk in Moldova is perceived as medium/low²². There is no recent history of terrorism in Moldova, nor is it a country of origin for FTFs. Still in early 2015, the specialised authorities investigated the activity of a group of people suspected of links with the terrorist group Islamic State (IS). The breakaway region Transnistria has been accused of being involved in trading with illegal weapons, as well as providing for ground for training groups of terror groups.²³

Materiality

31. Moldova has a small and open, cash-based economy and remains one of the poorest countries on the European continent. The economy relies heavily on remittances (which display a declining trend since 2017) due to insufficient domestic job creation, and is dependent on export of a

¹⁷<https://www.transparency.md/2016/12/20/radiography-of-a-bank-fraud-in-moldova-from-money-laundering-to-billion-fraud-and-state-debt/>

¹⁸ NRA Action Plan, page 7.

¹⁹ http://knowyourcountry.info/files/moldovaamlaug14_3.pdf, page 9

²⁰ NRA, page 76

²¹ <https://www.transparency.md/2017/10/30/new-report-talks-about-the-results-of-monitoring-the-financial-and-banking-sector-december-2016-october-2017/>

²² NRA, page 3 states the perception of TF is medium but NRA Action Plan describes it as low.

²³ <http://www.dw.com/en/transnistrias-explosive-inheritance-from-the-soviet-era/a-18886862>; <https://www.expert-grup.org/en/biblioteca/item/1423-proiectul-de-lege-cu-privire-la-prevenirea-si-combaterea-spararii-banilor-sursa-de-credibilitate-sau-instabilitate-economica>

few products.²⁴ However, the share of export to EU countries increased over the past years up to 70%. In 2016-first half of 2018, since the 2015 economic recession, the GDP increased with 4.5% annually.

32. In 2017 the volume of the long-term investments assets totalled 21 billion Moldovan Lei (MDL) and recorded a growth of 1.3% (in comparable prices) since 2016. Between January and September 2018, the long-term investments assets grew with 13.5%. This situation was caused mainly by the strong increase in public investment, due to the international financing resumption, as well as the improvement of the lending situation of the national economy and the upward trend of the investments of economic agents.

33. The financial market is less developed and its integration into the global financial system is limited. The banking sector accounts for 70% of national GDP, which implies a high risk. The remittances sector, accounting for 15.4% of GDP, denotes a medium-high risk level; the securities with 1.64% of GDP pose a medium-low risk level for ML. The insurance sector accounts for 0.8% of GDP and brings a medium-low risk level for ML and the notary/real-estate sector contains an insignificant share of GDP with a medium risk for ML/ FT.

Structural Elements

34. The key structural elements which are necessary for an effective AML/CFT regime are generally present in Moldova. It has democratic institutions in place, including rule of law and human rights guarantees. However, the level of democracy is rather low, scoring 4.93 out of 7 (with 1 being most democratic and 7 least democratic) in 2017.²⁵

Background and other Contextual Factors

35. Authorities largely recognize the risk of corruption in Moldova. The National Strategy for integrity and anticorruption (2017-2020) analyses in detail the corruption phenomena in Moldova, and builds up a set of actions structured on seven integrity pillars: the parliament; the government, the public sector and local public administration; the Central Election Commission and the political parties; the Court of Accounts; the Ombudsman; and the private sector. However, despite the efforts placed in the fight against corruption, the ranking of the Corruption Perception Index (CPI) did not improve in the recent years.

Table 1: Corruption Perception Index between 2014 and 2017

Year	CPI (0 = high, 100 = low corruption level)	Rank (out of 180)
2014	35	122
2015	33	123
2016	30	102
2017	31	103
2018	33	117

²⁴ <http://www.worldbank.org/en/country/moldova/publication/moldova-trade-study>

²⁵ <https://freedomhouse.org/report/nations-transit/2018/moldova>

36. There is a high-level commitment to address AML/CFT issues, which was boosted by the public opinion's reaction following the major banking fraud in 2014. After discovery of the fraud, the government decided to fill out the deficit from public money. This directly affected the national budget and implicitly all citizens of the country, enhancing awareness and pre-occupation for the ML threat at all levels.

37. In 2018, the government adopted a Voluntary Tax Compliance (VTC) programme, through which private persons can voluntarily declare their undeclared assets, with the aim of bringing money from the shadow economy to the real economy. Not all Moldovan citizens can benefit from the VTC programme (e.g. some public office positions and persons holding certain positions in a list of five banks are excluded), but those who can are required to show the source of the income and pay a 3%²⁶ tax of the value of the assets.

AML/CFT strategy

38. Moldova has developed an AML/CFT National Strategy for 2013-2017. The objectives of this Strategy were: the consolidation of prevention system, the optimization of fighting regime, the assurance of national and international cooperation, and assurance of transparency and feedback of the measures aimed at prevention and fight against ML and FT. The objective resided in the building of an efficient national system of prevention of and fight against money laundering and financing of terrorism in accordance with the applicable EU and international standards and as a consequence, the reduction of this vice in the economy of Moldova. With legislative, institutional (structural) and efficiency-raising measures to be taken, these components were sought to be covered.

39. The Strategy's execution tool is the Action Plan 2013-2017 that was to be implemented consequently by all stakeholders. The first Moldovan NRA and the adoption of the new AML/CFT Law were two of the measures taken in the implementation of the Strategy. Following the adoption of the NRA an up-dated (2017-2019) Action Plan was adopted.

40. The NRA identified six priorities for improving the national AML/CFT system and included a number of actions to be taken to improve national statistical data on ML and FT. The priorities are: i) technical endowment of the SPCML, LEA, prosecutors and judges in the field of financial investigations and recovery of illicit proceeds; ii) to improve the quality of the normative acts in force, policies and strategies in the field; iii) to enhance and streamline the measures to identify the beneficial owner; iv) to enhance inter-institutional cooperation by creating a practical and viable data and information exchange mechanism; v) to enhance international cooperation through qualitative execution of international technical assistance requests, active participation in international committees and forums; vi) to reduce cash transactions and develop national strategies for financial inclusion.

Legal framework

41. The AML/CFT legal and organisational framework is mainly governed by the 2017 AML/CFT Law. The Law sets out the measures, competent authorities and procedures for detecting and

²⁶ The tax percentage was raised to 6% by Law no. 243 of 08.11.2018 (after the on-site visit), amending Law no. 180 of 26.06.2018 on Voluntary Declaration and Tax Simulation.

preventing ML and FT, and governs the inspection of the implementation of its provisions. It is complemented by regulations, recommendations, government decisions and orders. Other relevant legislation includes the Criminal Code and Criminal Procedure Code, the Law no. 550/1995 on financial institutions, Law no. 202/2017 on the activity of banks, Law no. 1104/2002 on the National Anticorruption Center and Law no. 548/1995 on the National Bank of Moldova.

Institutional framework

42. **The Service for Prevention and Fight against Money Laundering (SPCML)** is an independent public authority, functioning as an autonomous and independent specialised authority within the Government, tasked with the classical Financial Intelligence Unit functions and with the execution of the Moldovan AML/CFT Strategy. The SPCML's activities are regulated in accordance with the AML/CFT Law laying down the operating principles, legal framework, objectives and functions operating controls, inter-institutional cooperation framework, rights and duties for employees, other responsibilities, funding and other issues.

43. **The Public Prosecution Service (PPS)** is a public institution within the judicial authority, contributing to the observance of the rule of law, act of justice, protection of rights and legitimate interests of individuals and society. It includes i) the General Prosecutor's Office, ii) specialised prosecutor's offices and iii) territorial prosecutor's offices. The **General Prosecutor's Office (GPO)**, upon the decision of the Prosecutor General, conducts (leads) and carries out (performs) the criminal investigation, and represents the accusation in courts, in cases of great importance. The territorial prosecutor's offices lead the criminal investigation in cases relating to offences where the criminal investigation is performed by the territorial criminal investigating bodies of the Ministry of Interior.

44. **The Prosecutor's Office for Combating Organised Crime and Special Causes (PCCOCS)** as a specialised prosecution office, i) performs the criminal investigation in cases relating to torture, terrorism offences and offences committed by a criminal organisation, as well as in other cases given in its competence by the law; ii) leads the criminal investigation in cases relating to offences where the criminal investigation is performed by the criminal investigating units of the central specialised bodies of the Ministry of Interior (MoI) and CS; iii) performs or leads the criminal investigation in cases submitted to it for further handling by the Prosecutor General; and iv) represents, in all above-mentioned cases, the accusation in the court of first instance, courts of appeal, courts of cassation.

45. **The Anticorruption Prosecutor's Office (APO)** is another specialised prosecution office, which i) performs the criminal investigation in cases given in its competence by the law; ii) leads the criminal investigation in cases where the criminal investigation is performed by the National Anti-corruption Centre; and iii) represents, in the above-named cases, the accusation in the courts of first instance, courts of appeal, and courts of cassation.

46. **The National Anticorruption Centre (NAC)** is the authority specialised in the prevention of and fight against corruption, corruption-related acts and corruptible deeds, including ML and FT. Within the NAC, the CARA is responsible for the recovery of assets obtained including through corruption and ML.

47. The criminal investigating bodies of the **Ministry of Interior (MoI)** conduct criminal investigations of offences that are not assigned by law to the area of jurisdiction of other investigating agencies.

48. The **Customs Service's (CS)** criminal investigating body conducts criminal investigations of offences related to smuggling and evasion of customs payments as defined in the Moldovan Criminal Code.

49. The **Anti-Terrorism Centre of the Intelligence and Security Service (SIS)** is the national agency directly responsible for the technical co-ordination of measures to prevent and combat terrorism, including FT, carried out by the competent public authorities. Its basic tasks are to evaluate terrorist threats, to gather and analyse information on the status and trends of the phenomenon, and to provide a relevant exchange of information at national and international level. The SIS oversees the implementation of UNSCRs at the national level, and may order the removal of restrictive measures in the light of TFS.

50. **The National Bank of Moldova (NBM)** is empowered to license, regulate and supervise financial institutions (commercial banks), non-bank payment service providers and foreign exchange entities.

51. **The National Commission for Financial Markets (NCFM)** is an autonomous public authority, which regulates and supervises the entities carrying out activities on the capital (securities), insurance and microfinance markets, such as investment firms, register societies, insurance companies, insurance intermediaries, savings and credit associations and microfinance organisations.

52. The **Ministry of Finance (MoF)** regulates accounting and audit in the corporate sector, as well as partly on organisers of gambling (including casinos). It performs on-site and off-site supervision and maintains and updates the 'State Register of auditors' and the 'State Registry of Auditors of Individual Entrepreneurial Auditors'.

53. **The Ministry of Justice (MoJ)** issue the licenses to notaries and lawyers and take part in international cooperation, including the extradition.

54. The **State Tax Service (STS)** is responsible for the tax administration process. It also creates, manages and updates the Register of payment and banking accounts of natural and legal persons within the AML/CFT framework.

55. The **Public Services Agency (PSA)** co-ordinates and organises the activities aimed at ensuring the implementation of public policies in the areas of, *inter alia*, real estate cadastre, regulation through licensing of entrepreneurial activity, and state registration of legal entities, their branches and representations and self-employed individuals. It also grants licenses to casinos (including internet casinos).

56. The **State Chamber for Marking Supervision (State Assay Chamber - SAC)** is responsible for licensing, registration and supervision of natural and legal persons practicing activities with precious metals and precious stones.

57. The **Notary Chamber** and the **Union of Lawyers** supervise notaries and lawyers respectively. They are self-regulatory bodies, promoting and protecting their benefits and guaranteeing independence and the quality of notary/lawyer assistance.

Financial sector and Designated Non-Financial Businesses and Professions (DNFBPs)

Financial institutions

58. The banking system dominates the country's financial sector. As of May 2018, 11 banks licensed by the National Bank of Moldova were operating, of which five subsidiaries of foreign banks and of financial groups. Besides, an international financial institution and a group of Western investment funds control the largest bank. Together, those account for over 3/4 of the banking sector. It should be noted that until December 2014, 14 banks were licensed, but three licenses were withdrawn as a consequence of failing compliance. In 2017, banking assets grew by 9.2% to a total value of assets of MDL 79.5 billion (around EUR 3,9 billion), which increased to MDL 81,0 billion (EUR 3.99 billion) during the first quarter of 2018. This latter amount accounts for 53.9% of GDP.²⁷ The value of liquid assets in March 2018 amounted to MDL 46.0 billion (EUR 2,27 billion) and the total value of deposits was MDL 60.6 billion (EUR 2.99 billion). This latter notion showcases an upward trend in the balance of deposits. Of the total deposits, deposits placed in the Moldovan currency accounted for 57.3%, whereas deposits placed in a foreign currency accounted for 42.7% of the total deposits.²⁸

Table 2: Banks in Moldova²⁹

31.05.2018	Market share (%)	Assets (mil. EUR)	Loans (mil. EUR)	Net income (mil. EUR)	ROA (%)
Moldova-Agroindbank	27.4	1,119.1	549.8	13.8	2.7
Moldindconbank	19.1	777.9	324.4	13.3	308
Victoriabank	18.9	772.9	188	5.2	1.6
Mobiasbancă	12.8	524.2	244.4	6.2	2.7
Eximbank	5.5	221.8	41.6	-5.7	-5.9
Procredit bank	4.1	167.5	108	1.4	1.8
Fincombank	3.7	151	71.1	0.9	1.3
Energbank	3.4	138.2	47.3	0.8	1.4
BCR Chişinău	2.3	93.8	34.3	0.6	1.8
Comerţbank	1.7	70.7	29.1	0.5	1.8
Eurocreditbank	1.1	45.8	21	0.2	1.2

59. The banking sector is characterised by a relative large number of customers (2.3 million on average). Beneficiaries of products and services offered by commercial banks include both resident and non-resident natural and legal persons. The risk profile of the customer is generally average, although this risk level may vary depending on aspects such as geographical location, type of customer or product used.

60. The capital or securities market is small in Moldova, and includes the Stock Exchange, the

²⁷ <http://www.bnm.md/en/content/financial-situation-banking-sector-first-semester-2018>

²⁸ <http://www.bnm.md/en/content/financial-situation-banking-sector-first-semester-2018>

²⁹ Source: National Bank of Moldova

National Depository of Securities, 11 registrar companies (providing services related to maintenance of shareholders' registries in the capital market), 18 investment firms (authorised to provide services in the capital market) and four qualified persons in the assessment of shares, registered in the register of authorised persons held by the NCFM.

Table 3: Dynamics of the main indicators of the capital market

Indicators	2012	2013	2014	2015	2016	2017	June 2018
Value of issues of securities, mil. euro	55.3	47.5	62.5	11.1	22.1	23.1	19.7
Value of transactions in securities, mil. euro	62.6	85.6	65.4	32.4	56.9	28.2	120.8
Value of transactions in securities in relation to GDP, %	1.42	1.70	1.17	0.53	0.85	0.38	2.95

61. The types of products and services available in the capital market are also limited. Shares are the only securities circulating in the market. In present, the portfolio of investment firms and registrar companies includes a single class of securities, namely shares. The registered capital market indicators have seen an upward trend since 2015, both on the primary and the secondary market.

62. As of 31.12.2017 licenses to carry out professional activity in the insurance market were held by 76 entities, including 16 insurance companies (out of which only one providing life insurance) and 60 insurance and/or reinsurance brokers.

Table 4: Dynamics of the main indicators of the insurance market

Indicators	2012	2013	2014	2015	2016	2017	June 2018
Value of subscribed premiums, mil. euro	54.5	59.9	60.2	61.4	69.0	72.1	35.3
Value of subscribed premiums in relation to GDP - %	1.24	1.20	1.08	1.01	1.03	0.96	0.86

63. At the end of 2017, there were 385 licensed foreign exchange offices and foreign exchange bureaus of hotels. According to the Law on foreign exchange regulation no. 62-XVI/2008, foreign exchange entities shall perform currency exchange operations in cash in national and foreign currency and traveller's cheques in foreign currency, with individuals. According to statistical data, the volume of purchase/sale transactions in foreign currency by the FEOs in 2012-2014 rose from EUR 495,528,500 to EUR 645,956,800 accounting to around 13% of GDP on an annual basis. This figure denotes a medium-low impact of this product in terms of ML/FT. The NRA dedicates a sub-chapter to the FEOs, where risks and vulnerabilities correctly identified and analysed. Further on, the NRA provides a description of the FEOs customer profile which is formed of resident individuals. The FEOs operate under a sound legal framework and some gaps identified are subject to mitigation measures following the adoption of the NRA.

64. The payment services in Moldova include the following activities: crediting and debiting a payment account with cash and all other operations required for the operation of a payment

account; carrying out payment operations, including money transfers; carrying out payment operations when the funds are covered by a credit line for a user of payment services; issuing and/or accepting payment cards and other payment instruments; money remittance; and payment operations when the payer's consent is expressed through any electronic, digital or information communication devices.

65. Payment service providers are: banks that operate under the Law on banking activity (Law no. 202, 06.10.2017, in force since 01.01.2018), financial institutions; payment institutions; electronic money institutions (EMIs); and postal operators. On 31 December 2018, there were 11 licensed banks and 6 non-banking payment service providers operating in Moldova, of which 1 is a payment institution, 1 is a postal operator and 4 are EMIs.

Table 5: Structure of the non-banking financial sector in Moldova

	2012	2013	2014	2015	2016	2017
Investment Firms						
Investments companies (firms)	22	22	23	19	18	16
Payment service providers						
Payment institutions						3
E-money service providers						4
Foreign Exchange Offices and Foreign Exchange Bureaus of the Hotel						
Under the form of a company	405	409	385	399	423	385
Established as individuals						
Collective Investment Bodies						
Collective Investment Bodies						
Life Insurance Companies						
From Moldova	2	2	2	2	2	1
From the EU						
Life insurance intermediaries	1	1	1	1	1	1
<i>Total</i>	3	3	3	3	3	2
Mortgage Companies						
Insurance companies	18	16	15	15	16	16
Insurance brokers	76	75	70	75	70	60
Insurance agents (legal persons)	113	155	167	185	208	222
Savings and Credit Associations (B license)	68	64	61	61	63	63
Microfinance organisations	70	85	101	119	132	156
Savings and credit associations with B-category license branches	x	5	9	16	18	28
Register societies	12	12	12	12	11	11
<i>Total</i>	357	412	435	483	518	556

DNFBPs

66. With the exception of TCSPs all the businesses and professions included in FATF's definition of DNFBPs do exist in Moldova. There are only two casino and a limited number of real estate agents registered which present a small threat to the sector, with mostly cash based transactions. All

contracts of selling or buying of real estate are subject to authentication by a notary but real estate sale may (and often does) occur without the intervention of a real estate agent.

67. The dealers in precious metals and stones must be licenced and have very low turnovers (see Table 6). There is a considerable number of agents operating as pawn shops.³⁰

68. Notaries and lawyers are also required to obtain a license, which is issued by the Ministry of Justice. Lawyers are subject to compliance with provisions on ethics and discipline which entails disciplinary sanctions for non-compliance. All licensed lawyers operate within regional bar associations. Lawyers are not authorised to conduct fiduciary activities. Auditors practice within audit companies, or as individual entrepreneur auditors. They are subject to a normative and regulatory framework adapted to the auditors' function.

Table 6: Number of DNFBPs in Moldova (April 2018):

Non-financial business or profession	Number	Estimated revenue/turnover
Casinos	2	N/A
Real estate agents (active)	11	N/A
Dealers in precious metals and stones	261	MDL 2.2 million (EUR 11.000) (2015)
Lawyers	1891	
Notaries	310	
Accountants & auditors	382	MDL 109 million (EUR 5.57 million) from sales by audit companies and individual entrepreneurs, including MDL 72.000 (EUR 3.680) from auditing (2015)
TCSPs	0	0

Materiality and level of ML/FT risks of the different FIs and DNFBPs

69. Banks dominate the financial sector and are by far the most important industry in the country. The non-bank financing (microfinance and leasing) has been increasing, but still accounts for a tiny share of the market compared to banks. The capital market is small and insignificant, while life insurance policies are provided by only one insurer. Despite the large amount of currency traded in cash (approx. 13% of GDP annually), most of the FEOs are run by banks. The non-bank PSPs (e-money providers) have relatively sophisticated products, but their overall turnover is rather low and thus, the weight given to the industry by the AT in determining the rating was limited. The DNFBP sector is much less material with only two casinos and a small number of real estate agents. The notaries are certifying real estate transactions and demonstrated better ML/FT risk awareness compared to other DNFBPs. In relation to FEOs that are not run by banks, the following mitigating elements apply: their services are limited to currency exchange in cash, but they do not transmit funds or deal with checks or other money-related instruments; their customers are predominantly resident and they are prohibited from dealing with legal persons.

Preventive measures

70. The primary piece of Moldovan legislation covering preventive measures in the AML/CFT framework (including customer due diligence, reporting, and record-keeping) is the AML/CFT Law. The preventive measures regime applies to both financial institutions and DNFBPs. In addition to the AML/CFT Law, the SPCML, supervisory authorities and other competent authorities have issued

³⁰ The NRA mentions "151 agents operating as pawn shops" (page 100).

sectorial regulatory acts. All categories of Financial Institutions (FIs) and DNFBPs required by the FATF Standards, except for TCSPs, are covered by the preventive measures.

71. Since the last evaluation, the AML/CFT system was extended to companies that use and issue electronic money, such as payment companies, electronic money issuing companies and postal offices.

Legal persons and arrangements

72. Various laws regulate the creation, types and basic features of legal entities in Moldova. The registration requirements and procedures are set out in the Law on State Registration of Legal Entities. The Public Services Agency (PSA) is the designated registration authority. The Moldovan legislation does not allow for the creation of trusts or similar legal arrangements. Trusts and similar legal arrangements formed under a foreign law are not prohibited from operating in the country and nothing precludes Moldovan residents to act as trustees for foreign trusts. However, neither the authorities, nor the assessment team found any evidence of foreign trusts regularly operating in Moldova.

73. Entrepreneurial activity can be performed under the following legal forms: individual entrepreneurs; limited partnerships; joint-stock companies; limited liability companies; co-operatives; state enterprises; and cooperatives.

Table 7: Legal persons in Moldova

Type of Legal Persons	No. Registered	Applicable Laws
Limited Liabilities Companies	98.510	Law no.135-XVI of 14.06.2007 on limited liabilities companies
Joint stock companies	4483	Law no.1134-XIII of 02.04.1997 on joint stock companies
Cooperatives (production cooperatives, consumer cooperatives and entrepreneurial cooperatives)	3766	- Civil Code of RM - Law no.1252-XIV of 28.09.2000 on consumer cooperatives - Law no.73-XV of 12.04.2001 on the entrepreneurial cooperatives - Law no.1007-XV of 25 April 2002 on production cooperatives
State-owned enterprises and municipal enterprises	1572	Law no. 246 of 23.11.2017 on state-owned and municipal enterprises
Non-commercial organisations, including foundations, associations and institutions (NPOs)	2035	- Civil Code of RM - Other
others (limited partnerships, collective companies, arena enterprises, inter-municipal enterprises, "colchos", farms and other enterprises, branches, representations)	3068	- Law no. 845 of 03.01.1992 on entrepreneurship and enterprises - Other
Individual entrepreneurs	55.690	- Civil Code of RM- Law no. 845 din 03.01.1992 on entrepreneurship and enterprises

74. About 11.000 non-profit organisations (NPOs) existed at the time of the on-site visit. Approximately 100 of them are considered of high risk, from varying points of view, and are monitored by the SIS. NPOs fall under the same fiscal regime as other registered companies.

Financial information is annually included in the database of the STS, which is accessible to the authorities. The PSA is designated to verify the founders, administrators and BOs of the NPO during the registration process.

Supervisory arrangements

75. The NBM is responsible for the authorisation, regulation and supervision of banks, non-bank payment services providers and foreign exchange entities.

76. The NBM as a supervisory authority performs the following main tasks: approves normative acts and recommendations for supervised institutions, performs on-site inspections and off-site analysis in order to oversee the compliance with the AML/CFT provisions, licenses and approves the management body of the supervised institutions, cooperates with relevant authorities in order to properly carry out its duties and functions, applies sanctions for non-compliance with AML/CFT requirements and performs additional tasks in order to oversee good functioning of the Moldovan banking sector, as well as other sectors that NBM is responsible for.

77. The NCFM regulates and supervises professional participants on the non-banking financial market, in particular the entities carrying out activities on the capital (securities) market (investment firms, register societies); insurance (insurance companies, insurance intermediaries); microfinance (savings and credit associations, microfinance organisations, credit history bureaus and non-state pension funds).

Table 8: The supervision regime in Moldova:

Type of business	Authority granting license / authorisation	Supervisor	No. of Registered Institutions (as of 01.10.2018)
<i>Financial institutions</i>			
Banks	NBM	NBM	11
Insurance companies	NCFM	NCFM	16
Insurance brokers	NCFM	NCFM	60
Payment institutions	NBM	NBM	3
E-money institutions	NBM	NBM	4
Securities companies – nonbanking investment firms	NCFM	NCFM	7
Foreign exchange offices	NBM	NBM	383
B – license savings and credit associations	NCFM	NCFM	63
Microfinance institutions	NCFM (since the 1st of October, 2018, previously unauthorised)	NCFM (since the 1 st of October, 2018, previously unregulated)	179
Leasing companies		SPCML / NCFM (since the 1 st of October, 2018)	15 (as of 1 October 2018)
Postal offices		ARNCETI	1
<i>DNFBPs</i>			
Casinos (which also includes internet casinos)	PSA	SPCML	2
Real estate agents		SPCML	27 (info as of 01.10.2018)
Dealers in precious	PSA	State Chamber for Marking	419

metals and precious stones (including pawnshops)		Supervision (State Assay Chamber)	
Lawyers, notaries, other independent legal professionals and accountants	Lawyers – Union of Lawyers / Ministry of Justice Notaries - Notary Chamber / Ministry of Justice Auditors – Supervisory Council to the Auditing Companies	Lawyers - Union of Lawyers Notaries - Notary Chamber Auditors - Supervisory Council to the Auditing Companies	Lawyers - 2101 Licensed Notaries – 313 (as of 01.10.2018) Auditors – 253 (as of 01.10.2018)
Traders in goods in the amount of at least 200.000 MDL or its equivalent		SPCML	n/a
TCSPs			

International Co-operation

78. Moldova is actively engaged in a variety of international initiatives in the area of AML/CFT. It participates in international meetings of the FATF, MONEYVAL, Eur-Asian Group (EAG), Egmont Group of Financial Intelligence Units, United Nations Office on Drugs and Crime (UNODC), OSCE, World Bank (WB) and other international organisations. Agreements are in place with Interpol, Europol, Eurojust and NATO. It also has close co-operation with countries in the region through the CIS.

79. Moldova is party to 19 multilateral treaties, one regional multilateral treaty and 11 bilateral treaties. When cooperation is requested by a country with which there is no treaty in place, in accordance with the Criminal Procedure Code, the competent authorities can apply the reciprocity principle.

80. Cooperation can be initiated and established by various authorities, including the SPCML, the NBM and the Ministry of Justice. Generally, the Moldovan system for international co-operation allows the authorities to request and exchange information, both upon request and spontaneously.

Terrorist Financing and Financing of Proliferation

81. The terrorism/FT threat is assessed by the authorities as low. There have been instances of attempted transit of FTFs, presence of persons linked to terrorist groups, and attempted smuggling of nuclear and radioactive materials. The NRA conclusions are based on hypothetical considerations and supervisory actions undertaken by the SIS, and take into account the risks arising in neighbouring areas, the evolution of FT risks globally, and Moldova's geographical location. The NRA used several indicators to measure the FT risks, such as bank transactions in relation to states with high FT risks, or transfers to companies registered in countries not having sufficient AML/CFT norms. While the NRA could benefit from more focus on other financial instruments that are risky from the FT point of view, and could regard the distribution of risks into categories (i.e. collection, movement, usage), the evaluation team did not come across information suggesting that Moldova faces an elevated risk of FT. The shortcomings identified in the application of preventive measures by certain REs constitute a vulnerability.³¹

82. According to information provided on-site, a limited number of NPOs is vulnerable to FT. There have been no real hits of designated persons and entities as customers against the UN lists on targeted financial sanctions.

³¹ See IO4 for a more detailed description.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key Findings

a) The NRA was developed using the World Bank methodology and with the participation of all relevant stakeholders (incl. Government authorities and the private sector) and using comprehensive data and information. The NRA constitutes a solid base for the domestic understanding of identified ML/FT threats, vulnerabilities and risks. There are a few shortcomings in the scope of the analysis. For instance, the organised crime threat was considered through the prism of particular offences such as drug and human trafficking, instead of being looked at as a stand-alone phenomenon. Limitations have been identified in the assessment of risks posed by the legal persons and arrangements.

b) The NRA separately identified that the overall rating for FT risks as low. However, the scope of the assessment is considered too narrow, as for instance, the NPO-related risks and the risks related to specific products and services were not considered.

c) Authorities targeted to address and mitigate the major identified risks through the adoption of the 2017-2019 NRA Action Plan. However, the National Strategy to prevent and combat money laundering and terrorism financing for 2013-2017 was not up-dated.

d) The AML/CFT Law establishes the general rules of application of EDD and SDD, in line with the FATF Methodology, as well as allowing REs to define their own high and low risk scenarios where EDD and SDD can be applied, on the basis of their own risk assessments, which shall include the findings of the NRA. Competent authorities, such as the SPCML, the NBM and the NCFM have issued further regulation introducing high and low risk products, services and scenarios, related to their respective sectors, where SDD and EDD shall be applied, pursuant to the adoption of the Action Plan of the NRA.

e) The NRA and the AML/CFT Action Plan together with the Organised Crime (OC) Combatting Action Plan and the Anti-corruption Strategy provide a strong basis for the objectives and activities of the authorities to be consistent with evolving national policies and take mitigating measures according to the identified risks (with some areas for improvement in case of STS, SIS and the CS). The priorities and activities of the law enforcement community, SPCML and financial supervisors are aligned with the national risk landscape.

f) The AML/CFT Law designated the SPCML as the leading and coordination body of the AML/CFT system in Moldova. From the experience of the authorities met on-site, a good level of cooperation between them and the SPCML was demonstrated, at an operational, strategic and supervisory level.

g) The participation and dissemination of the NRA report, including its Action Plan, has been satisfactory amongst the stakeholders involved. The supervisory authorities have ensured their availability through several means such as meetings, trainings, workshops and publications.

h) Major deficiencies were identified in the NRA with regard to seizure and confiscation of assets and the confiscation regime was assessed as inefficient. Moldova has taken steps to improve the legal framework and thus demonstrated that the importance of confiscation is understood as a central objective for the competent authorities.

Recommended Actions

a) When conducting the next iteration of the NRA, Moldova should:

- Further develop the analysis of the ML methods, trends and typologies including, if relevant related to OC;
- Deepen the FT risk assessment and widen the information sources (including the NPO sector potential for FT abuse);
- Conduct in depth analysis of the risk posed by cash transactions (e.g. include features of the smuggling phenomenon; elaborate on how cash movements are used for ML / FT purposes);
- Consider giving more attention to the misuse of legal persons and arrangements in ML schemes.

b) Develop and adopt an up-dated AML/CFT Strategy.

c) Take measures to enhance the mitigation measures implemented by the STS, SIS and the Customs Service.

d) Competent authorities should perform further outreach actions, such as trainings, meetings, workshops and publications, beyond the AML/CFT legislation, and provide more tailored training to each sectors' needs, vulnerabilities and ML/FT risks (including by sharing results from strategic analysis), as well as suggestions on subsequent mitigation measures.

83. The relevant Immediate Outcome considered and assessed in this chapter is IO1. The recommendations relevant for the assessment of effectiveness under this section are R1-2, 33 and 34.

Immediate Outcome 1 (Risk, Policy and Coordination)

Country's understanding of its ML/FT risks

84. The authorities' understanding of ML/FT risks derives from the NRA completed in 2017 (based on the WB methodology as main assessment tool), which saw the involvement of various competent authorities and a good number of private sector entities, including self-regulatory organisations (SROs) (for the detailed list of participants see Chapter I). In spite some data gathering difficulties, positive results have been achieved using alternative methods. The main sources of information to understand ML risk include numerous case studies, typologies sectorial and strategic financial analysis reports, information collected from surveys, information submitted by neighbouring countries and reports adopted by international organisations. The information and data used appears comprehensive. There is broad consensus among the authorities on the conclusions of the NRA and the rating assigned to the various threats and vulnerabilities.

85. The Moldovan Government designated the SPCML as the national coordinator for ML/FT risk assessment. A number of law enforcement, supervisory and other public authorities, and private sector were involved. This inclusive approach facilitated the analysis of the different categories of data and information provided by the authorities and associations. The NRA describes general ML/FT threats faced by the country, vulnerabilities related to the powers, resources and role of public authorities, as well as sectorial vulnerabilities. The authorities demonstrated a reasonably good understanding of ML risk and resulted from the work of seven WGs created for this purpose.

86. The NRA contains a separate chapter where the deficiencies and gaps faced in the risk assessment process are acknowledged and analysed. Most of the challenges pertain to coordination and collaboration (including easy access to data and communication); non-proportional allocation of resources at the stakeholders' level; and insufficient statistics available. In spite a number of steps taken by the authorities to mitigate the gaps identified during the NRA (such as reallocation of resources within the law enforcement authorities and supervisory institutions, unification of the format of statistic), staff turnover at executive level and the administrative reforms conducted during the assessment process have adversely affected the achievement of expected outcomes. To address the methodological and procedural difficulties encountered during the assessment process, the authorities included a distinct chapter on actions to improve the statistical data, and respective remedial measures have been included in the Action Plan.

87. In terms of the risk coming from major proceeds generating crimes, the NRA states that the drugs trafficking and human trafficking are the major ML threats coming from the crimes committed outside of country. Detailing the matter, the NRA indicates that Moldova is not a country of drug production, but serves as transit point towards Eastern Europe and to a lesser extent it is a country of destination. On the human trafficking, one of the features is the systematic presence of the OCG in the commission of the crime. An important number of OCGs were detected as being specialised in the area of illegal migration and to a lesser extent for labour and begging purposes. The range of predicate offences underlying the ML offence prosecuted in Moldova is roughly in line with the overall crime detected and thus in line with the country's risk profile.

88. In terms of proceeds generating crimes committed domestically, corruption, tax evasion and smuggling are the main ML threats with subjective and objective factors identified as enablers. The NRA gives a fair description of the characteristics of the corruption and tax evasion threat (value estimates, sectors exposed, cases brought to courts). Corruption is recognised not only as a major threat in terms of ML, but also a serious vulnerability which impedes effective ML investigations and prosecutions. The NRA analysis is somehow confusing in the case of the "*smuggling*" as what appears to be an analysis of the internal/external illegal money flows, and overall typologies is added at the end of the chapter (which is the last one), leaving it unclear if the last part of the analysis relates to "*smuggling*", or is the overall conclusion of the national threat chapter.

89. The Vulnerability Module is comprehensive and is based on 22 variables assessed by the dedicated WG, which capture the high-level factors which determine an effective AML/CFT regime: the quality of the policies and strategies to combat ML; effectiveness of the ML regulations; effectiveness of the asset recovery system; LEA resources; integrity and independence of criminal investigators, prosecutors and judges and the quality of the border controls. Amongst the main vulnerabilities identified the NRA lists: no risk based approach at the strategic level; insufficiently dissuasive penalties imposed by Courts in ML cases; ineffective confiscation regime; no real independence of the Prosecutor's Office against the political factor; lack of regulation on financial investigations and lack of support from financial experts in ML and other proceeds generated cases; and shortcomings in the communication between the SPCML and the CS.

90. The integrity of the LEA and judges amongst other public authorities remain a concern, even though the legal framework for asset declaration of public person is in place, and NRA gives concrete examples for the conviction of several judges and members of Parliament (107). The increased ML risks coming from public sector was confirmed by NAC which is accountable for testing integrity of all relevant public authorities with the National Integrity Authority.

91. The sectorial vulnerability was determined comprehensively sector by sector for all FIs and DNFBPs. With an underdeveloped non-banking financial system (especially in case of securities and life insurance) the most relevant vulnerabilities affect the banks where the lack of supervision in Transnistria, lack of transparency of shareholders in some banks, absence of a specific risk assessment for the sector and issues of integrity in relation to some FIs employees, are identified as major ML/FT vulnerabilities.

92. As explained above, the NRA provides a sound picture of the main ML threats and the features of the internal and external money flows which is consistent with the risks identified by other (credible) sources. The evaluators questioned whether the large amounts involved in the “Global Laundromat” Case would suggest that the external threat in the country surpasses the internal one. The authorities explained that having carefully looked into the matter, the conclusion based on facts and analysis was that, in terms of the overall risk, the “Global Laundromat” case must be measured as an exceptional event. Otherwise, if taken into account uncritically, without a suitable and up-dated consideration, the case might skew the real situation in the country.

93. The authorities are in a position to know which illicit activities are generating proceeds of crime, which areas within the country are vulnerable to abuse and those parts of the national AML/CFT system which are not functioning effectively. However, the NRA does not consider how the different vulnerabilities have been or may be potentially exploited by the threats in order to determine the manner in which ML/FT has materialised and which areas may be at an elevated risk. With the exception of the tax evasion ML schemes, the NRA lacks a description of the methods, trends and typologies used to launder proceeds of crime in Moldova. The last part of the analysis is not sufficiently structured and even if a number of relevant typologies are presented it is difficult for the reader to understand to which specific threat they correspond.

94. The OCG phenomenon is analysed through the prism of specific crimes, but information on the overall OC threat (e.g. various groups’ features, size, structure, whether they operate in or outside Moldova, their facilitators and the types of used ML techniques), is not covered in the NRA. As the NRA rightly describes, human trafficking, drug trafficking and smuggling are mainly committed in an organised manner and hence, the law enforcement authorities have to conduct comprehensive investigations (including financial investigations) to identify not only the perpetrator but also the organisers, facilitators and source of funds. For this reason, the assessment team considers that the NRA is of somewhat limited use to the authorities when implementing mitigating measures in relation to OC threat and to the private sector, which is required to take into consideration the results of the NRA in establishing internal policies.

95. The undeclared cross-border cash is looked at as a form of smuggling but does not include sufficient features of the phenomenon (financial flows to and from high risk countries, profile of cash mules, STRs and cash declarations, other forms of cash-based risks). Cash is also considered in the context of a series of cash-based economic activities (e.g. agriculture) - which fuel the “shadow economy” - and transactions in movable and immovable property between individuals. Additional referrals to the risks encompassed by the cash transactions are sporadically mentioned throughout the NRA in the context of the general typologies presented at the end of Chapter III (National ML Threat), and in relation to the territory of Transnistria. The analysis of the risk posed by the movement of cash lacks structure and the authorities’ understanding of the degree to which cash may be used for ML or FT purposes appears to be limited to tax evasion and ineffective measures at the border.

96. The NRA describes the “roles” of companies misused for fraudulent (mostly tax related) schemes and the subsequent ML as: the “missing trader” the “delinquent company” the “intermediary” the „cashing” and “beneficiary” companies, but does not provide a comprehensive analysis of ML/FT risks related to various types of domestic legal entities and foreign legal arrangements that might operate in the country. The NRA does provide typologies where companies are used to launder the proceeds but they are limited to tax crimes and to some extent to the typologies of international money flows. The NRA does recognize the difficulties experienced by the banking industry in determining BOs of complex legal structures as a risk, which was confirmed during the onsite interviews with banks (see IO.4).

97. The FT risks is analysed as separate item in the NRA and it is assessed as “low” due to the “transit” nature of the country and the global context within which Moldova is not a target of terrorism acts³². The assessors reckon that the referral to the “transit” nature of the country is somehow confusing. Following discussions with the authorities combined with the analysis of the text of the NRA, it resulted that the “transit” element is more of a hypothetical scenario³³, which needs to be more substantiated (as why the risk is not yet existing and what are the monitoring measures taken for the future) before inclusion as ground for the qualification of the FT actual risk.

98. The sources used for the FT risk assessment were rather limited as the SPCML has not been reported any suspicious transactions of terrorism financing. The NRA used several indicators to qualify the FT risk³⁴ but there is a limited focus on non-banking products and services that could be misused, and the analysis of risks into categories (collection, movement, usage) is absent. Nonetheless, the assessment team did not come across any information suggesting that Moldova faces an elevated risk of FT. Transactions were reported when partial hits with the UNSCR sanction lists were identified but the match was not confirmed. Enforcement data, and intelligence sources were also used but those were either related to potential terrorist acts, or (when speaking about FT) consisted in international researches. The NRA acknowledges that radicalization of separate individuals takes part mainly via social networks and has a sporadic character, having no connection with established communities.

99. The law enforcement community, displayed a sound knowledge of these risks (as indicated under IO 9), but the same does not apply to the private sector (for a deeper analysis see IO4).

National policies to address identified ML/FT risks

100. The NRA process was conducted on the basis of the National Strategy to prevent and combat money laundering and terrorism financing for 2013-2017. A new National AML/CFT Strategy was not adopted after 2017 and the authorities informed the evaluation team that the strategic documents issued after the adoption of the NRA were done in the application of the previous Strategy. The Moldovan authorities fully agree with the assessment team that the adoption of the

³² In the Global Terrorism Index 2018 (Institute for Economics and Peace) Moldova ranks 116 position of 138 countries with a score of 0,229 out of 10, where 10 represents highest risk of terrorism.

³³ The NRA states: “Given the currently existing trends and the status of Moldova as a transit country, a forecast could be made of an eventual increase in the inflow of immigrants and asylum seekers in Moldova, in the current year and the immediately following period”.

³⁴ Please see Chapter 1 of the MER.

New AML/CFT Strategy is imperative necessary for consolidation of the main components with the goal of enhancing the national AML/CFT regime³⁵ and already started the process of competing it.

101. Following the adoption of the NRA in 2017, the Government adopted the Action Plan (2017-2019) which is the main tool in mitigating the risks associated with the identified money laundering and terrorism financing (hereafter the Action Plan). In June 2018 the MoJ approved the Order nr. 462 regarding the creation of the inter-institutional WG for amending the legal and institutional framework regulating ML and FT, and due diligence measures. Several meetings of the WG already took place. The WG is composed by the representatives of the Supreme Court, MoJ, MoI, NAC, APO, CS, SPCML.

102. Although, as noted above, the assessment team considers that the NRA has not fully examined certain risks, under this core issue the focus is on, and gives credit for, the mitigating measures implemented in relation to threats and vulnerabilities that were actually identified.

103. The authorities concurred that the NRA aims both at an efficient redistribution of resources according to the capacity and level of identified risks, and the development of a national action plan for reducing the identified vulnerabilities. The implementation period is of 3 years, with partial coverage from the resources raised under technical assistance projects, and within the budgetary limits of the concerned institutions.

104. The Action Plan contains a number of monitoring indicators such as the number of regulatory documents adopted in the implementation of the relevant international recommendations and standards; number of identified ML and FT typologies; the number of bank accounts, and the amount of money frozen etc... The SPCML is the institution designated to gather the implementation reports from the other responsible authorities (clearly listed in the Action Plan), to analyse the status of their execution and to report yearly to the Government on the overall results.

105. The Action Plan follows the structure of the NRA and addresses the concerns there identified. However, apart from the set timelines (some actions start earlier than others) in the context of the available resources, there is no clear prioritisation of risk mitigation measures.

106. While the impact of the major fraud and ML schemes Moldova faced in the recent years was on the banks, and mitigation measures taken by the NBM, its impact was also felt and displayed in the attitude of the LEA and other stakeholders vis-à-vis ML investigations, prosecutions and convictions. This was demonstrated by the on-site discussions and the statistics and case examples provided by the authorities. Many of the steps taken were a consequence of those cases and the impact on the judicial system and on the civil society in general³⁶. This demonstrates that the competent authorities are able to respond to changing ML risks.

107. Capacity building for the SPCML, law enforcement agencies, prosecutors and judges in the field of financial investigations and enhancing the recovery of illicit proceeds system and mechanisms were the main priorities for authorities. To address these priorities, at the time of the on-site visit, a series of normative acts, guidelines and instructions were issued: Action Plan to

³⁵ On 12 September 2018 (right after the conclusion of the on-site visit) under the Government decision nr. 112, published on 14 September 2018 in the Official Gazette, a task force was established for the elaboration of the AML/CFT National Strategy for 2019-2023. It should be stated that in cooperation and assistance of the EU and CoE project CLEP, were received an expert view and a technical paper on the concept of a new AML/CFT National Strategy already presented to the authorities.

³⁶ Examples are: incorporation of the PCCOCS and measures taken by the NBM to increase the transparency of the banks' shareholders (see analysis under IO3 and IO7).

mitigate the ML/FT risks (GPO, 3 November 2017); General instructions on the application on freezing and confiscation of illegal goods (GPO, 28 September 2018); Guidelines on ML and FT investigations (GPO, 6 September 2018); Instructions on parallel financial investigations (GPO, 18 April 2017); Government Decision on approving the Regulation on Evaluation, Administration and Valorisation of (Sequestered) Criminal Assets (11 July 2018).

108. The adoption of the new AML/CFT Law institutional changes were made in relation to the Moldovan FIU which has changed its position within the national AML/CFT system, from a Department of the Centre for Combating Economic Crimes and Corruption to an independent public authority and central specialised body. The Director and deputy directors are appointed by the Government for a 5-year term. The technical and human resources of the SPCML have been increased although not all were in place at the time of the on-site visit (hardware still to be acquired and operational analysts to be hired).

109. In the same context of risk mitigation actions targeting capacity building for LEA, a new specialised Prosecutor's Office was created on the basis of Law 3/25 February 2016 on the PPS corroborated with the Law 159/7 July 2016 on specialised prosecutor's offices. By the Decision of the General Prosecutor, the human resources of PCCOCS were increased (12 July 2018).

110. To address the threats identified in the NRA, two Operational Plans were adopted: one in the application of the National Strategy to combat trafficking in human beings (GPO, 28 July 2018); and the second on the implementation of the National Strategy to combat organised crime (GPO, 23 August 2018).

111. Policy measures have been implemented to tackle corruption, one of the highest four ML threats. In 2017 the Parliament adopted the National Strategy for Integrity and Anticorruption, together with the Action Plan 2017-2020 and the Impact evaluation scale (2017-2020). The National Anticorruption and integrity Strategy for 2017-2019 includes a sectorial approach with 9 sectorial anticorruption action plans in the vulnerable sectors adopted³⁷. Furthermore, the GPO adopted its own Action Plan in the application of the National Strategy on anti-corruption and integrity (6 July 2018).

112. Providing training for public and private entities, allocation of resources, enhancement of supervision measures, strengthening national and international cooperation etc... are other measures provided for in the NRA Action Plan. The continuous training plan for prosecutors issued by the National Institute of Justice for 2018 includes ML and FT related sessions.

113. On the financial side, the SPCML and the NBM issued a series of Orders and Decisions in the application of the new AML/CFT Law.

114. Enhancing and streamlining the measures to identify the beneficial owner, enhancing inter-institutional cooperation by creating a practical and viable data and information exchange mechanism, enhancing international cooperation through qualitative execution of international technical assistance requests, active participation in international committees and forums, reducing cash transactions and developing national strategies for financial inclusion were the next priority

³⁷ Anticorruption AP 2018-2020: On tax matters (17 April 2018); In public administration and privatisation sector for (18 June 2018); In public procurement sectors (21 April 2018); In customs sectors (7 May 2018); Ensurance of public order (16 May 2018); In education sector (20 August 2018); In health and mandatory health insurance sector (12 September 2018); In protection of environment (5 December 2018); In agricultural and food sector.

actions for Moldova. Several measures were put in place to mitigate the risk of Transnistrian banks: all transactions with the region is concerned are analysed under the suspicion of ML/FT, no correspondent banking relations exist with the region, and the NBM warned partners from other countries about this issue.

115. In terms of addressing the FT risks, the NRA Action Plan includes several mitigation actions amongst which one is related to the identification of measures to periodically evaluate the NPO sector from the perspective of FT risks.

Exemptions, enhanced and simplified measures

116. The AML/CTF Law establishes the general rules of enhanced and simplified customer due diligence (CDD) for all reporting entities which are in line with the interpretative notes in the FATF methodology. REs are allowed to define their own high and low risk scenarios where EDD and SDD can be applied, and when determining the risk, the NRA must be taken into account.

117. The obliged entities perform EDD in relation to cross-border correspondent banking relationships, PEPs and in situations which, by their nature, may present higher risk. EDD are performed when, on the basis of their own assessment, the reporting entities establish factors generating higher risks. When performing their own risk assessment, the REs gather information from the NRA, as well as on criteria and factors established by the supervisory authority in relevant by-laws. The instances where enhanced measures are applied appear to be justified and in line with the country risk profile.

118. SDD is applied where lower risk of ML/FT is identified based on the risk assessment and management procedures established by the obliged entities. SDD can be applied, under limited conditions, to specific types of customers (entities of public administration, companies traded on a regulated market/multilateral trading system) or products (designated life insurance contracts). As in the case of the EDD, the entity collects sufficient information in order to establish whether the customer, transactions or business meet the conditions allowing the application of SDD, on the basis of the NRA and on the basis of criteria and factors established by the supervisors. The lower-risk scenarios appear to be in line with the country risk profile and the NRA.

119. The exemptions currently included in the AML/CFT Law are subject to relevant low risk conditions and quantitative thresholds, which is in line with the risk profile of the country (see Technical Compliance (TC) Annex, c. 1.6), although not specifically spelled out in the NRA.

120. As a result of the approval and publication of the Action Plan 2017-2019, the national competent authorities have updated their legal framework in order to clarify the practical implementation of the provisions related to application of EDD and align it with the findings of the NRA.

121. The NBM has amended the relevant by-laws for the banking, foreign exchange and PSPs sectors covering the situations of application of EDD and SDD. The NCFM has issued similar regulations for the sectors under their supervision. (e.g. the last updates in this regard were provided for non-banking financial market in relation to criteria for SDD and EDD which are consistent with the AML/CFT Law and with the NRA).

Objectives and activities of competent authorities

122. The NRA and the AML/CFT Action Plan together with the Combating OC Action Plan and the Anti-corruption Strategy provide a very strong basis for the objectives and activities of the authorities to be consistent with evolving national policies and take mitigating measures according to the identified risks. The priorities and activities of the law enforcement community, SPCML and financial supervisors are aligned with the national risk landscape.

123. One of the major legislative steps which prompted structural and methodological changes was the adoption of AML/CFT Law. Swiftly after, the Government issued the *“Methodology on the identification of suspicious activities and transactions of money laundering and terrorism financing”* which introduces the risk-based approach in the reporting regime.

124. The new AML/CFT Law reformed the standing of the SPCML, which became an independent and autonomous agency subordinated to the Government, with its own budget, and which was designated the leading and coordination body of the AML/CFT system in Moldova. The SPCML benefits from further safeguards on the immunity of the managers, and fit and proper requirements for employees. Additional human resource and IT solutions are envisaged to be delivered by the end of 2018.

125. In turn - in the application of the AML/CFT Law, and as a result of the NRA - the SPCML issued in 2018 several Guidelines and Procedures on: identification of ML and FT suspicious activities and transactions; identification of PEPs; submission of the special forms on STRs, suspicious activity reports (SARs), threshold and cash transactions. AML/CFT regulations on measures for prevention and combating ML and FT for leasing companies, real estate agents and persons selling goods above a threshold were also adopted, together with instructions on enforcing international restrictive measures. All these are examples of how SPCML quickly reacted to the new AML/CFT Law with the consideration of the NRA, and should be commended for this.

126. On the LEA side, based on the structural changes within the General Prosecutor’s Office, the separate department of Prosecution for Combating Organised Crimes in Special Cases was reinforced with additional human and financial resources. Similar structural changes occurred in the Ministry of Interior, where a separate structural unit with four specialised officers³⁸ – Prevention and Combating Money Laundering Section - was established in 2018 to carry out financial investigations in relation to ML and underlying predicate crimes, especially major proceeds generating crimes. Moreover, as a central body for investigating corruption and corruption-related offenses, the National Anticorruption Center authorised its investigative officers to fight against tax evasion, smuggling as associated predicate offences for ML³⁹. On the methodological side the General Prosecutor issued a series of Instructions and Guidelines as described under 1.2 above.

127. The Law on the Criminal Assets Recovery Agency entered into force in May 2017, following the adoption of AML/CFT Action Plan 2017-2019. This law was developed to address the vulnerabilities identified during risk assessment process (poor recovery of assets derived from the main identified threats). The CARA was created in 2017 as an autonomous subdivision subordinated to the NAC, responsible for the conduct of parallel financial investigations, the tracing and management of confiscated assets, and the repatriation of their value. CARA issues assets freezing

³⁸ Order nr. 100 from 22 March 2018 “on the amendment of the Order nr. 71 from 28 February 2013 on the organisation and functioning of the Ministry of Internal Affairs.

³⁹ Based on the Director order nr. 98 from 9 July 2018 the staff of the Division of criminal Investigation as well as the Division of Combating Corruption and associated crimes was increased.

and seizing orders. During the on-site visit, CARA could not fully demonstrate effective results (especially in terms of confiscations) due to the limited operational timeframe (see analysis on IO8).

128. To enhance supervision over the banking system, in 2015 the NBM started to collect aggregate data on balance of payments for Moldova with the view to prevent the banking system from potential threats and frauds. Moreover, a decision was made to prohibit any foreign placement above 25% of banking capital. During raider attacks (2014-2016), following the decision of Constitutional Court, the Parliament of Moldova amended the Law on National Bank to streamline its power to suspend transactions in relation to the transfer of property of shares of banks⁴⁰. To address the external risk exposure over the banking system, the NBM stated and later finalized the identification and verification of the beneficial owners of the banks operating in Moldova.

129. The AML/CFT Law enhanced the NCFM powers to collect beneficial ownership data on the investment firms' founders, beneficiaries, but also customers and their BOs. During the on-site interviews, the evaluation team was informed that the Commission is yet to start this process.

130. In order to mitigate misuse of companies as well as to decrease level of shadow economy, the STS implemented several positive measures: developed an electronic registry of companies and applied new software that can crosscheck the companies and their tax obligations. The State Tax Service implemented two levels of control over VAT return which can minimize tax dodges and fictitious transactions. The measures implemented by STS decreased the number of bogus companies, but overall these mitigation measures had negligible impact in terms of minimizing extent of shadow economy in Moldova. No information was provided to the evaluation team in relation to the measures taken by SIS in implementing risk mitigation measures consistent with the findings of the NRA. As for information provided by the Customs Service on the same issue, it was rather general and not sufficient for the purposes of findings evaluation.

National coordination and cooperation

131. Moldova implemented a national coordination mechanism through its legislation and this is supported by the actions taken by the relevant stakeholders. The AML/CFT Law designates the SPCML as the leading and coordination body of the AML/CFT system in Moldova. At the level of policies and programs, the cooperation is ensured by the SPCML, Government, Parliament, competent authorities, as well as specialised associations. At the operational level the cooperation should be carried out between SPCML, supervisory authorities, law enforcement, judicial and other competent authorities. The mechanism disposes of adequate resources.

132. In the implementation of the AML/CFT Action Plan, the Ministries, other central administrative authorities, public institutions and relevant associations shall take the necessary measures to fully implement the actions within the established deadlines and shall submit biannually to the SPCML informative notes on the status of implementation. Subsequently, the SPCML in its capacity of national coordinator must gather, analyse and report on the overall implementation of the Action Plan to the Government. Although some agencies (NAC, Prosecutor's Office) do not hierarchically report to the Government, the assessors were convinced that all do provide regular information. In the case of judicial authorities, some of the measures implemented, as informed by the authorities, include (i) in the case of the Supreme Court of Justice, the approval of

⁴⁰ Second Post-Program Monitoring Discussions—Staff Report, IMF Country Report No. 14/346, page 6., par.10.

the Report of the results of summary of the judicial ML criminal cases for 2017-2018 through Decision nr.18, pursuant to action nr. 19 of the Action Plan or (ii) in the case of the Criminal College of the Supreme Court of Justice, the adoption of an Explanatory Decision on the correct application of the legal provisions during the examination of ML causes by the Courts, as well as the inclusion in the Activity Plan for 2019 the issue of generalizing and analysing judicial practice in ML cases.

133. Pursuant to the approval, adoption and implementation of the NRA and its Action Plan, Government Disposition No.1-d of 10 January 2018 establishes, at the proposal of the SPCML, a WG for the preparation and presentation on national progress in the field of AML/CFT, to ensure the implementation of the Action Plan 2017-2019. The WG consists of representatives of the SPCML (which it is also the coordinator), the Ministry of Foreign Affairs, the MoI, the MoF, the MoJ, the Ministry of Economy and Infrastructure, CS, PSA, STS, National Bureau of Statistics, the Supervision of the Marking, the NAC, the GPO, the NBM, the NCFM, the SIS and representatives of reporting entities, experts and specialists in the field of AML/CTF, when deemed necessary. This WG will (i) meet periodically to coordinate the national progress report, (ii) collect the necessary statistical data, (iii) process, analyse and consolidate such data, (iv) issue binding and enforceable decisions for members of the WG.

134. Outside the Action Plan implementation, the evaluators are convinced that at the operational level, the cooperation between the SPCML and investigative authorities is carried out routinely, the good relations being partially explained by to the former statute of the FIU as part of the LEA. The SPCML has in place 22 MOUs concluded with different state agencies. After the reorganisation of the FIU, five MOUs were up-dated, while the others are still in force.

135. STS considers the SPCML as a reliable partner and provides domestic tax-related information when required. When needed for registration process of legal entities and conducting strategic analysis concerning legal entities, the STS sends request to SPCML to get wide range of information about their objects of interest (background information about the co-founder of companies or taxpayers).

136. At the strategic level, the NBM and the NCFM are informing, through a formal letter, the SPCML about the progress made in order to implement the actions of the Action Plan biannually. At the time of the on-site, both the NBM (through letter no. 28-01107/54/2826) and the NCFM last reported to the SPCML on July 2018, using an internally developed compliance template.

137. The SPCML has a supervisory role and has the duty to coordinate the activities of the institutions involved in the implementation of ML/FT prevention measures. Since 2005, the NBM and the NCFM have formal cooperation agreements with the SPCML. Cooperation between the SPCML and the supervisory authorities takes the form of intelligence exchanges (for instance, in the course of licensing of FIs for background checks), discussions on risks and STRs, training of REs and conducting joint on-site inspections. The financial supervisors notify the SPCML about any AML/CFT compliance infringement detected during their on-site or off-site supervisory actions. Overall the level of cooperation between the SPCML and the various supervisory authorities appears to be adequate.

138. The cooperation with the PSA, the authority responsible for companies registration is articulated, amongst others, through a set of instructions regarding the obtaining and registration of

data of ultimate beneficial owners (UBOs), which has been approved and the PSA in 2018⁴¹ and was already applied at the time of the on-site visit.

Private sector's awareness of risks

139. The SPCML, as a coordinator of the NRA, has sent the report to all supervisory authorities, officially requesting them to undertake certain measures regarding the entities under their supervision (equally FIs and DNFBPs), such as requiring the revision of their internal control procedures to be in line with the results of the NRA and the current AML/CFT legislative framework (particularly the AML/CFT Law).

140. To raise awareness of and present NRA report and the Action Plan, a public event was organised with the assistance of international organisations⁴² on 20 October 2017. More than 60 representatives of public authorities, private sector, international organisations and foreign FIUs attended. Both documents were disseminated to the participants, mainly to reporting entities. The NRA report and the risk mitigation Action Plan are also available on SPCML's website.

141. The obligation to apply a risk-based approach in AML/CFT preventive measures and the need to focus on mitigation actions was explained by SPCML and other supervisors on the occasions of trainings and WGs. In order to raise awareness on the NRA results, the SPCML in cooperation with NBM, NCFM, MF and the Notaries Chamber organised 8 workshops attended by 25 representatives of the Banking Association (banks); 62 representatives of the insurance, securities and microfinance sectors; 24 auditors; 18 dealers in precious metals and stones; and 29 notaries. In other three workshops the results of the NRA were presented together with training provided on the new reporting requirements.

142. Furthermore, guidelines and recommendations have been issued following the adoption of the NRA by several supervisory authorities, including:

- NCFM: (i) Rules on implementation of international restrictive measures on the non-banking financial markets⁴³ and (ii) Regulation on measures to prevent and combat money laundering and financing of terrorism on the non-banking financial market⁴⁴.

- NBM: (i) Regulation on requirements related to prevention and combating money laundering and terrorist financing in the activity of banks⁴⁵; (ii) Regulation on prevention and combating money laundering and terrorist financing in the activity of foreign exchange entities and hotels⁴⁶; (iii) Regulation on prevention and combating money laundering and terrorist financing in the activity of non-bank payment service providers⁴⁷; (iv) Recommendations on banks' risk-based approach (RBA) actions taking in relation to their customers in the context of prevention and combating money laundering and terrorist financing⁴⁸; (v) Recommendations on cross-border relationships in the

⁴¹ Order no.0501-281i from 9 August 2018, on the approval of the provisional instruction on collecting, checking and recording data on the actual beneficiaries in the State Register of Legal Persons and Individual Entrepreneurs.

⁴² OSCE and EU delegation in Moldova.

⁴³ Decision no.34.2 from 30 July 2018.

⁴⁴ Decision no.38.1 from 24 August 2018.

⁴⁵ Decision no.200 of 9 August 2018.

⁴⁶ Decision no.201 of 9 August 2018.

⁴⁷ Decision No.202 of 9 August 2018.

⁴⁸ Decision No.96 of 5 May 2011.

context of legislation on preventing and combating ML/FT⁴⁹; (vi) Recommendations on identification of beneficial ownership⁵⁰ and (vii) Recommendations on monitoring by banks of transactions and clients' activities to prevent and combat ML/FT⁵¹.

143. Reporting entities get also feedback from their supervisor through other means: (i) on-site controls (especially by the NBM and the NCFM) and the report/decision issued afterwards which contains the deficiencies and risks detected and recommended actions to address them, (ii) off-site reporting mechanisms, although in many occasions reporting entities do not receive feedback from the documents submitted, (iii) meetings and workshops organised by the supervisors or (iv) guidelines published by supervisory authorities, amongst others.

144. The participation and dissemination of the NRA report and its results has been satisfactory amongst the several stakeholders involved, as supervisory authorities have ensured its availability through several means explained above.

145. In general, financial institutions are better aware of their ML/FT risks, with a more developed understanding among larger financial institutions and those belonging to international groups, as they can benefit from their groups' experience and knowledge. As far as DNFBPs are concerned, there is a lesser level of risk understanding of particular risks they are facing (see IO 4).

Overall conclusion

146. **Moldova achieved a Substantial level of effectiveness for the Immediate Outcome 1**

⁴⁹ Decision no.42 of 27 February 2014.

⁵⁰ Decision no. 147 of 31 July 2014.

⁵¹ Decision no.256 of 19 December 2013.

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 6

a) The FIU (SPCML) changed its position from a specialised independent Division within the Centre for Combating Economic Crime and Corruption to an autonomous public body. The SPCML plays a central role in the AML/CFT system and has broad and unhindered access to information sources to develop financial intelligence which is used by LEA to collect evidence on ML and other crimes.

b) LEAs have a sound ability to conduct financial investigations at the criminal intelligence stage. In practice, the APO, the NAC and the PCCOCS make use – to a certain extent - of financial intelligence in ML and proceeds generated cases. The use of financial intelligence was tested in FT related investigations. Reports and analysis from SPCML are considered as intelligence and cannot be used as evidence in the course of a criminal procedure.

c) The SPCML receives STRs, CTRs, threshold reports and customs declarations. The previous rule-based regulation and guidance on mandatory suspicious transactions reporting resulted in an unreasonably high number of STR (of doubtful quality), which imposed an additional burden on the SPCML in identifying the relevant reports. The high number of STRs inevitably created considerable analytical work to identify the relevant suspicious transactions. At the STRs prioritisation stage, the FIU analysts have access to a limited number of databases. After the adoption of the new AML/CFT Law, and STRs Guidelines, the reporting system changed significantly but the overall number of STRs remains high.

d) The two high-level ML and fraud cases (the “Banking Fraud” and the “Global Laundromat”) were identified and disseminated to law enforcement authorities following SPCML work. Apart from that, a number of ML criminal investigations were initiated as the result of operational and strategic analyses executed by the FIU or independently by the LEA.

e) The SPCML appears to have a good cooperation with supervisory and law-enforcement authorities in terms of information and experience exchanges, and FIU disseminations progressively have become a main source of ML investigations.

f) The results of SPCML strategic analysis were successfully used by LEA, including by initiating investigations but less as a source of typologies.

Immediate Outcome 7

a) The significant and high-profile fraud and ML schemes Moldova faced in the recent years had an impact on the attitude of the LEA and other stakeholders vis-à-vis ML investigations, prosecutions and convictions. The authorities demonstrated a proactive approach in applying a variety of investigative techniques in ML cases, including multidisciplinary investigative teams, special investigative techniques and instruments of international legal cooperation.

b) Parallel financial investigations are carried out, and are considered a priority for the prosecution services, following the General Prosecutor’s instructions from April 2017. The criminal investigative officers in NAC are trained extensively on financial matters (part of training done

abroad) but there is a deficit of specialised trainings for other LEA. The cooperation between authorities was described as constant and effective by all the parties involved.

c) High-level corruption (including corruption of judicial authorities and politicians) is recognized as one of the major risks in Moldova, however, only modest results in prosecuting and convicting corruption-related ML cases have been achieved. The outcome of investigations and prosecutions of ML in other major proceeds-generating offences (particularly in human and drug trafficking, smuggling and fraud outside the competences of the PCCOCS), does not appear to reflect the country risks to the fullest extent. There also still appears to be potential for more ML cases from other proceeds-generating cases.

d) The number of ML convictions increased since 2011 and now includes autonomous and foreign predicates ML cases. ML cases can both start as a ML case and then extend into a predicate investigation/prosecution or vice versa. Sentences against legal persons have been noted. The judiciary accepts that no conviction for the predicate offence is necessary to achieve a ML condemnation.

e) Final ML acquittals are virtually non-existent. This confirms that ML cases are thoroughly prepared by prosecutors. Nonetheless, there are a number of important ML cases pending for some time due to lack of responses to MLA requests.

f) The sanctions applied for ML offences seem to be effective and consistent with those applied for related predicate offences, and the numbers show that custodial sentences are prevailing. Fines which were imposed to legal persons are often combined with the liquidation of the company.

Immediate Outcome 8

a) Several strategic documents have been adopted and implemented with an impact on the sequestration and confiscation regime. These demonstrate that confiscation of criminal proceeds is a policy objective.

b) Moldova has in place a two-tier confiscation system, which includes both special and newly introduced extended confiscation and which, applies to both natural and legal entities. Provisional measures are available. At the early stage of the process, significant amounts are sequestered by various LEA. The mechanism to apply extended confiscation was recently implemented and the prosecutors demonstrated sufficient awareness on its application, but at the time of the on-site visit, the results are not substantial. The authorities were able to demonstrate various forms of confiscations: from instrumentalities, foreign proceeds, equivalent value and proceeds located abroad.

c) The figures on the number and the value of confiscated assets remain low and do not appear to correspond to the scale of proceeds-generating crime in the country. The results are considerably weaker when taking into consideration the value of property that was effectively recovered. The situation improves when considering the amounts are sometimes used to compensate the victims for which separate statistics are kept by the authorities.

d) There are a negligible number of false declarations detected at the border and the total volume of restrained assets is very low, particularly if divided by the number of cases. Although the authorities demonstrated with examples that in some instances investigations have been carried out, the results do not match the risk profile of the country.

e) Prior to 2018, all sequestered and confiscated assets were managed by STS and court bailiffs. Since its initiation in January 2018 CARA became responsible for capitalization of assets before the decision on the confiscation of assets is final, while the asset management for confiscated goods remained in the hands of STS and bailiffs. Asset management responsibilities are therefore divided between three authorities. Although CARA showed some tangible results, the short period since its incorporation makes it difficult to fully assess effectiveness.

Recommended Actions

Immediate Outcome 6

a) Moldova should enhance its engagement with the private sector to further ensure a reasonable qualitative and quantitative level of STRs, (e.g. through training, feedback and awareness raising campaigns), and an effective transition to the new reporting system.

b) The SPCML should periodically up-date the internal analytical procedures SPCML in line with the evolving STR reporting environment.

c) LEAs should enhance their resources and capacities to conduct financial investigations and make more effective use of financial intelligence (financial experts, forensic accountants, IT hardware and IT software).

d) The SPCML should improve the analysis of cash declarations with the aim of developing ML/FT cases proportionate with the risk related to the cash transactions.

e) Moldova should continue to enhance the technical capacities (IT tools) of the analysis function of the SPCML and ensure that it is adequately resourced in terms of staff.

Immediate Outcome 7

a) The authorities should be more proactive in investigating and prosecuting ML related to serious crime, in line with Moldova's risk profile.

b) Given the delays to requests for international legal assistance, Moldova should consider challenging the Courts with more ML cases, relying on inferences that can properly be drawn from available evidence; LEA should be provided with the necessary resources to successfully investigate ML cases, including specific training and resources on economic crime and financial forensics.

c) On-going training should be provided to the prosecutors and judiciary on ML prosecutions and related evidential issues.

d) SPCML and LEA should continue working together to improve the number of FIU generated cases investigated and prosecuted;

Immediate Outcome 8

Moldova should:

a) Consistently employ its legislative framework to the fullest extent, to raise the effectiveness of seizing (sequestration) followed by confiscation of proceeds to higher degree, in particular regarding extended confiscation.

b) Take measures to enhance effectiveness the criminal asset recovery system. Adopt the National Strategy on criminal assets recovery.

c) Take further measures to ensure the availability of reliable and reconciled statistical data on sequestrated and confiscated assets for ML and proceeds generating offences to monitor the effectiveness of results with a view to increased effectiveness.

d) Strengthen the capacity of investigators (including CS), prosecutors and judiciary by providing continuous training in the field of asset sequestration, confiscation and management.

e) Continue to enhance CARA's asset management capacities.

147. The relevant Immediate Outcomes considered and assessed in this chapter are IO6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R4 & R29-32.

Immediate Outcome 6 (Financial intelligence ML/FT)

Use of financial intelligence and other information

148. The law enforcement agencies that make routinely use of the financial intelligence in ML and proceeds generated cases are the APO, the NAC and the PCCOCS. The legal framework for the gathering intelligence, is underpinned by the Moldovan Criminal Code (CC) and Criminal Procedure Code (CPC) (see R.30), and complemented by Guidelines and Instructions issued by the Prosecutor General (PG) as described below. Criminal intelligence investigations shall be initiated where information suggests that certain crimes have been committed. Criminal intelligence is gathered through the use of agents, interviews, inspections, controlled verification and delivery, surveillance, covert operations, etc. If in the course of an investigation, financial intelligence is needed to determine whether there are sufficient elements to launch a criminal case, this is usually obtained from the SPCML. It was confirmed on-site that in some cases, apart from request made to REs, exceptionally the SPCML made a request directly to legal entities and individuals in order to get additional information on the request of law enforcement agencies. Reports and analysis from SPCML are considered as intelligence and cannot be used as evidence in the course of a criminal procedure. Otherwise, in the course of a criminal case, a request to REs is made, except where the information is a state, trade or banking secret, in which case a court authorisation is needed. Administrative information, such as information from the company registry (on shareholders, directors, beneficial owners, etc.) and the land registry are used to develop a financial profile of the suspect and identify links with third parties.

149. The importance of financial investigations in the context of proceeds generating offences is highlighted in the PG's Instruction on Financial Investigations (instructions for LEA), which sets them as a priority in all criminal cases in order to identify and confiscate the illegally generated material gain. The assessment team was satisfied that, at least in high level cases, the APO, NAC and PCCOSC do take into account the Instruction in their current activities and do look at the financial aspect of the investigated crimes.

150. Just before the evaluation visit (on 6 September 2018), the PG issued Guideline for ML and FT criminal investigations which include: a compilation of relevant national and international laws and regulations; ML models and methods; typologies; methodological instructions on parallel financial investigations; and ML investigations techniques to be used (which include sources on intelligence and special investigation techniques). The Guideline in ML and FT criminal investigations foresees for the assignment of parallel financial investigations to the recently created CARA and formalises the need to use the SPCML generated intelligence in the ML investigations. The

Guideline is compulsory for all prosecutors and investigative officers, and shall be considered in the context of their appraisals. The prosecutors displayed sufficient knowledge of the content of the Guidelines although, due to their recent adoption (one month prior to the on-site visit), its application in practice had just started.

151. The LEA (especially APO, NAC and PCCOCS) have sufficient awareness of the importance of financial analysis in identifying, tracing and recovery of criminal assets and - to a certain extent - do make use of financial intelligence and other relevant information to identify investigative leads and develop evidence in support of investigations related to ML, FT and associated predicate offences. In the course of the financial investigations, APO verifies the volume of the legal revenues versus the expenditures, including properties and other assets that the persons under examination possess. The verification of property is done by checking databases and by using special investigative techniques, particularly when assets are used by third parties. In this case the Prosecution needs to demonstrate whether the legal owner would have the legal revenues allowing the acquisition of such property.

152. However, the results obtained so far - as displayed by the statistics - in terms ML cases brought to Courts (please see the analysis under IO7) are not outstanding. The evaluation team is of the opinion that the somehow narrow use of all financial intelligence gathering and analysis tools and procedures is impeded not by the lack of will or awareness at the prosecution and LEA level, but more by their limited resources and capacities (financial experts, forensic accountants, IT hardware, IT software).

Box 6.1: Financial investigation initiated by LEA in the course of an OCG case.

LEA initiated a criminal case against a criminal group which was involved in pimping activities in various places in Chisinau (hotels, saunas, apartments). When the criminal investigation for ML was initiated it was established that the perpetrators have converted, disguised, purchased and concealed several goods of illicit origin (apartments, land plots, cars, money), obtained from this criminal activity. A financial investigation was carried out by the criminal prosecution body. Two apartments in Chisinau and a luxury car (total value over EUR 70,000) were identified and sequestered. The case was sent to court with the following indictments: 5 individuals for of pimping, 1 individual for pimping and ML, 5 individuals and 1 legal person for ML.

153. Since the previous evaluation report, the SPCML changed its position from a specialised independent Division within the Centre for Combating Economic Crime and Corruption (National Anticorruption Centre at the time of the present round on-site visit) to an autonomous public body (administrative type of FIU). The SPCML continues to play a central role in the receipt, gathering, analysis and dissemination of financial intelligence and other relevant information to develop evidence and trace criminal proceeds related to ML, associated predicate offences and FT. The authorities maintained that the new AML/CFT Law reforms the mind-set of the SPCML and aims to increase its effectiveness by increasing the resources (financial, human and logistical), establishing new (risk based) analytical procedures and ensuring more flexibility and adaptability of the FIU to react to the ML/FT trends and typologies.

154. SPCML receives different type of financial information from REs and Custom Service. These include information on *i)* suspicious goods, activities or transactions suspicious related to ML, associated offences, and terrorism financing, *ii)* activities or transactions carried out in cash, through a single transaction with value of at least 200,000 MDL (approximately EUR 10,000) or through several cash transactions that seem to be connected, *iii)* customer's wire transactions performed through a single operation with the value of at least 500,000 MDL (approximately EUR 26,000).

Table 9: Data and information accessed by SPCML

No	Type of information accessed by SPCML	Responsible authority
1	Archive of Exchange Rates	National Bank of Moldova
2	Evidence of delinquent firms	State Tax Service
3	Evidence of tax invoices, balance sheets (interface adapted for FIU)	
4	Evidence of detected offenses	
5	Data on resident and non-resident economic agents registered in the country	
6	Data on economic and financial activity of legal entities	
7	Records and analysis of STRs, CTRs and threshold transactions	SPCML
8	Citizens' personal data on kinship relations	Public Services Agency
9	Data on identity documents	
10	Registered vehicles data	
11	Data on foreigners	
12	Data on resident and non-resident legal entities registered in the country	
13	Real estate data	Border Police
14	Cross-border data	
15	Evidence of contraventions and penalties	Ministry of Internal Affairs
16	Traffic accidents records	
17	Record of offenses and criminal cases	
18	Evidence of case history, criminal record	
19	SIA "Migration and Asylum"	
20	Registry of detained, arrested and convicted persons	Department of Penitentiary Institutions
21	List of importers and exporters of goods	Customs Service

Box 6.2: PEPs ML case conducted on the basis of financial intelligence information collected from different sources

Between 13 and 22 August 2014, SPCML received 5 STRs from a local bank, regarding transactions through which a Moldovan company received EUR 570,000 from a non-resident company registered in the UK with bank accounts in a Latvian bank. The purpose of the payment was *"lending"*. Following the initiation of investigations and an information request sent to Latvia, it was established that during the period of 2012-2014, the UK company transferred funds as a *"loan"* in the total amount of EUR 4,841,416 to the local firm.

Funds transferred by the UK company to the local firm came from bad loans from fraudulent companies. Additionally, the analysis of the profile of UK company provided reasonable suspicions that the beneficial owners of both companies are two high-level politicians. One of the accused received financial means, goods and services from fraudulent companies valued at over USD 60 million. In 2016 the SPCML disseminated the case to APO.

155. The list of bank accounts opened with Moldovan banks by legal persons and individual entrepreneurs is kept by the STS. Under AML/CFT Action Plan, this database has to be extended by the end of 2019 to include the list of bank accounts of individuals.

156. The SPCML can also request additional information (including documents or data covered by financial secrecy) from any public authority or RE, regardless of whether such entity had previously submitted or not an STR. Information requests are a daily occurrence and information is generally obtained in a timely manner. Statistics are maintained and no challenges were identified by the assessment team in this respect. In the course of its analysis, the SPCML accesses financial information (mainly in the form of bank statements) in order to analyse financial flows. Law enforcement information usually includes criminal records and facts about on-going investigations.

Table 10: SPCML requests for additional information from reporting entities and competent authorities, either on self-motion or after receiving an STR

Period	2013	2014	2015	2016	2017	10.2018
Requests	721	734	972	808	726	634
Answers	721	734	972	808	726	634
Refusals	0	0	0	0	0	0

157. Upon request or in the context of an STR, the SPCML receives beneficial owner information from REs as collected in the course of CDD process. When the information provided by FIs and DNFBPs (mostly in case of complex structure of foreign companies with foreign ownership) is insufficient to identify the BO, the SPCML frequently uses other investigative routes (*e.g.* IP addresses, Border Police information) and/or international cooperation channels to get the necessary information. These types of requests were characteristic to the investigations performed within the “Global Laundromat” and “Bank Fraud” cases. Otherwise, SPCML frequently used the international cooperation channels in order to obtain information regarding the beneficial owners of the partners (usually being registered and detaining bank accounts in foreign jurisdictions) that had business relations with the clients detaining accounts in Moldovan FIs. Similarly, the SPCML provides such type of information to foreign counter-parts if needed (see IO.2).

158. As a particularity of the Moldovan AML/CFT system, under Article 20 (c) of AML/CFT Law, the SPCML has the competence to exceptionally request information directly from legal entities and individuals that are not REs (which goes beyond FATF standards). The SPCML referred to this option mainly in the “Global Laundromat” case. From 2013 to 2017 (while SPCML was a law-enforcement type FIU), 45 such requests were sent to legal and natural persons. After the institutional changes occurred at the beginning of 2018 the legal right is maintained but there is no information on actual requests having been made by SPCML as administrative type FIU.

159. Information held abroad may be requested through the Egmont Group of FIUs, Europol, Interpol, the EU’s Camden Asset Recovery Inter-Agency Network (CARIN), and bilateral channels with international counterparts (see IO2).

STRs received and requested by competent authorities

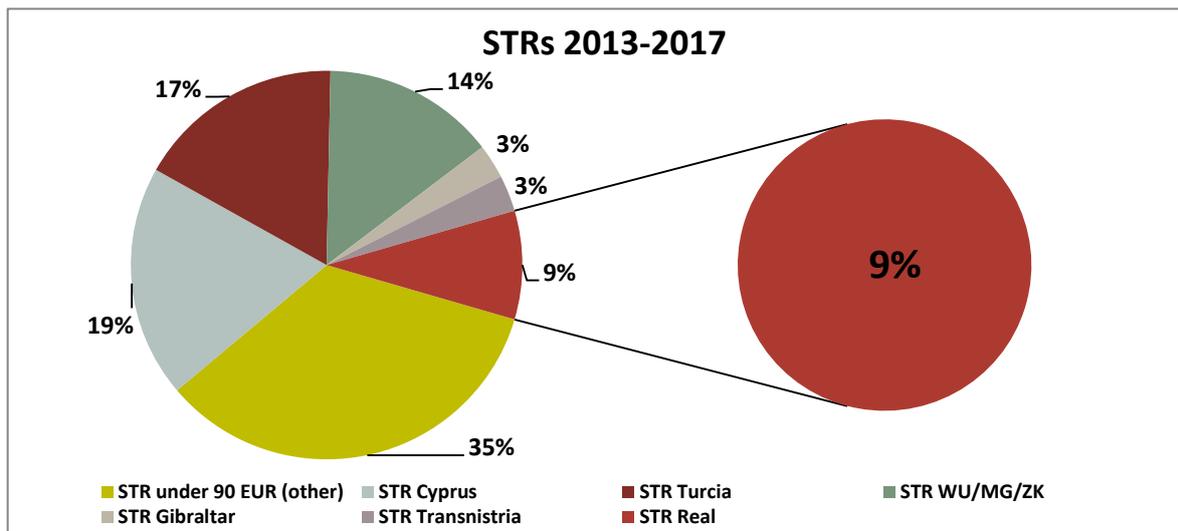
160. The SPCML is the central authority for the receipt of reports submitted by REs, which comprise both STRs and CTRs. The previous mandatory (indicators based) reporting by the REs resulted in an enormous amount of STRs. This was one of the main challenges in the Moldovan AML/CFT preventive system in the years under review. STRs must be sent to the SPCML no later than 24 hours after the identification of action or circumstances generating suspicions.

Table 11: Number of STRs received by SPCML from REs

STRs	2013	2014	2015	2016	2017	10.2018
Banks	851,699	622,995	662,818	603,565	709,454	714,742
Insurance sector	795	443	182	158	980	390
Securities sector	9	8	1	14	0	0
Currency exchange	1	2	0	0	0	0
Microfinance	9		0	0	0	2
Casinos	1	3	0	0	0	0
Lawyers	0	0	0	0	0	0
Notaries	2	4	0	39	0	213
Payment System Providers		34	131	19,362	629,159	78,659
Real estate agents	0	0	0	0	0	0
Total	852,516	623,489	663,132	623,138	1,339,593	794,006

161. The authorities are fully aware of the situation and have analysed the causes creating such major STRs inflow. They established that the former reporting regime provided a mandatory reporting, based on the criteria set out in the “*Guide on Identifying Suspicious Transactions*”, which determined the REs to file a big number of low quality STRs without a comprehensive assessment of the existence of valid suspicions (See Figure 1 below), and, as a result, only about 9% of the reports could be considered as relevant, suspicious-based STRs. For example, the REs were obliged to report STRs on any banking operation performed by the clients in relation to entities registered in the countries listed in the Annexes to the Guide. Since some of the respective jurisdictions were actually important trade partners for Moldova, this lead to an inflation of STRs connected to those jurisdictions. Moreover, as a result of strategic analysis conducted, SPCML sent a list of offshore companies that participated in the “Global Laundromat” case and demanded that any transaction related to these companies be reported to SPCML in 24 hours, which also contributed to the increased number of STRs.

Figure 1: STRs reported to SPCML



162. From the total number of around 700,000 STRs filed by the REs, 60,000 annually (5,000 monthly; 200 daily) have been subject to detailed analysis performed by 9 employees of the SPCML.

From the mentioned 200 transactions per day, around 20-25 “suspicious” transactions/activities were addressed to the management of the SPCML were proposed to be investigated.

163. This situation imposed an additional burden on the SPCML and determined the application of lengthy internal procedures to overcome the circumstances. In fact, in the first stage of the analysis, the SPCML employees act as “compliance officers” and select the relevant STRs from the huge number of reports received daily. Only after this procedure the actual financial analysis starts. While the evaluators consider that as one possible solution, questions remain as to why the issue was not addressed earlier, and more importantly, through meaningful regulatory measures.

164. All STRs were linked to ML, whilst no FT related STR was submitted by REs. Only few cases have been signalled as partially matching names from the list of persons, groups and entities involved in terrorist activities, without confirmation (false positives). In those cases both the SPCML and SIS were seized by the REs⁵².

165. After the adoption of the new AML/CFT Law, and of the Order “on the approval of the Guidelines for the identification and reporting of ML suspicious activities or transactions”, the reporting system changed significantly. According to the new procedures (in force and effect at the time of the on-site visit), reporting became a subjective decision of REs, which still have to notify the SPCML within 24 hours after the identification of the suspicious transaction. The authorities demonstrated with statistics (see Table 12 below) that these changes significantly decreased of number of STRs and that the number of STRs filed by banks in September 2018 decreased almost 5 times if compared to September 2017. The authorities must be commended for the efforts put into analysing the shift in the reporting behaviour by REs, which reveals that certain banks adjusted the number of STRs to a more realistic level (e.g. from 1,541 to 30 in a month), while others have a slower reaction (e.g. from 1,706 to 721). However, the evaluators note that the number of STRs remains high and the reason seems to be a gradual assimilation of the new reporting regime (finalizing the process of migration to new IT systems) combined with a residual mandatory reporting culture of some REs.

Table 12: Comparative statistics on STRs reported by banks

Bank		September 2017	September 2018
1	STR	2,773	1
	Cash	5,968	7,418
	Threshold	3,233	3,317
2	STR	25,832	4,171
	Cash	74,684	71,524
	Threshold	11,451	11,224
3	STR	1,541	30
	Cash	14,580	11,840
	Threshold	1,310	1,093
4	STR	586	20
	Cash	17,977	7,850
	Threshold	1,680	1,701
5	STR	2,534	260
	Cash	9,226	5,396
	Threshold	1,389	1,327

⁵² Please see IO9.

6	STR	1,706	721
	Cash	1,234	1,016
	Threshold	241	287
7	STR	17,697	4,153
	Cash	16,212	11,456
	Threshold	4,357	4,539
8	STR	17,697	4,153
	Cash	16,212	11,456
	Threshold	4,357	4,539
9	STR	389	2,083
	Cash	1,880	1,794
	Threshold	1,310	1,554
10	STR	885	113
	Cash	848	975
	Threshold	519	374
11	STR	3,193	4
	Cash	9,812	8,362
	Threshold	5,744	5,415

Table 13: Reports received from sources other than reporting entities

	2013	2014	2015	2016	2017	10.2018
State Tax Service	1	8	14	14	8	13
Customs Service	5	7	7	2	7	11

166. Apart from the REs, the SPCML received suspicious transactions reports from public authorities as displayed in the table above. The information received from public authorities can be used either to initiate a stand-alone case or is connected and complement an already started analysis. However, rarely the cross-border declarations have resulted in the initiation of an analysis.

Box 6.3: Financial analysis initiated on the basis of a STR received form Custom Service

In 2015, SPCML received a report from the CS on the suspected ML activity committed by a local pharmaceutical company. The report stated that this company avoided paying import duties by using artificial increase of the customs value of the goods. In addition, the CS found that, in the same time frame, another Moldovan company specialised in the production of medical drugs imported the same type of goods from the same company in China at a much lower price than the offers on the international market.

In fact, the local pharmaceutical company increased the price of the raw matters by using two offshore companies, in order to increase the expenses of the produced medicines, thereby exaggerating the expenses and avoiding payment of income tax.

A financial analysis was initiated by the SPCML and international cooperation channels were used. It was established that between February 2012 and December 2014, the non-resident company XYZ LIMITED through the accounts opened in the FOREIGN BANK 1 received funds in the total amount of about USD 4,894,062 from the Moldovan local company, as payment for raw materials (medicine pack).

At the same time, between 12 February – 26 March 2015, the Moldovan local company transferred a total of \$337,000 to fictitious WYC LTD registered in Belize with accounts opened at FOREIGN BANK 2, as payment for packaging of the raw material (glass bottles for pharmaceutical use).

Meanwhile, as imports of raw material were examined in detail, it was established that the goods were actually imported by Moldovan local company from two non-resident Chinese companies which had similar names to the fictitious companies.

From the information submitted by the foreign FIU on the account statements of real companies, it was established that about 60% of the funds received by these companies from Moldovan local company were subsequently transferred to the mentioned Chinese companies as a payment for packaging, and the rest of the money is transferred to other offshore companies.

As a result of the dissemination of information, in 2016 the APO initiated a criminal case for smuggling and ML offenses committed by the beneficiary owner of in conspiracy with other persons.

167. One of the measures to manage and mitigate the risk arising from the high circulation of cash in Moldova, and to align the legislation to the EU AML/CFT Directive(s), threshold transaction reporting requirement for cash amounting to or exceeding EUR 5,000 have been introduced. The implementation of the threshold reporting regime has been successful within the most relevant sectors, notably the banking, notarial and micro credit sectors. This has not been the case in the real estate sector, as it appears the in Moldova the agencies do not play a role in the payment of the real-estate transactions, hence, in case of cash payments the reporting is executed by the Notaries as displayed in the table below. The authorities have not identified many instances where this requirement has not been observed.

Table 14: Cash transactions reports by RE

	Reporting entity	FINANCIAL INSTITUTIONS							DNFBPs		
		Banks	Insurance sector	Securities sector	Saving and Credit Associations	Micro-finance	Currency exchange	Payment System Providers	Leasing	Casinos	Notaries
2013	TOTAL CTRs	974,300	24	29	287	324	31	n/a	n/a	7	189
	Domestic currency	688,577	24	-	287	324	31	n/a	n/a	7	110
	Foreign currency	285,723	0	-	0	0	0	n/a	n/a	0	79
2014	TOTAL CTRs	985,286	56	45	529	503	21	n/a	n/a	0	4,547
	Domestic currency	749,480	56	45	529	478	21	n/a	n/a	0	3,683
	Foreign currency	235,806	0	0	0	25	0	n/a	n/a	0	864
2015	TOTAL CTRs	1,177,967	37	14	383	431	145	n/a	n/a	0	5,300
	Domestic currency	981,097	37	14	383	409	145	n/a	n/a	0	4,293
	Foreign currency	196,870	0	0	0	22	0	n/a	n/a	0	1,007
2016	TOTAL CTRs	2,139,777	76	6	677	981		20,268	137		6,085
	Domestic currency	1,916,214	76	6	677	981			137		
	Foreign currency	223,563									
2022	TOTAL CTRs	2,012,189	410		1,581	1,816		31,597	363		7,578

0 1 7	Domestic currency	1,813,930	410		1,581	1,816			363		
	Foreign currency	198,259									
2 0 1 8	TOTAL CTRs	1,452,804	490	-	1035	576	328	1452	473	-	6,000
	Domestic currency	1,311,386	490	-	1035	576		1452	6	-	4,370
	Foreign currency	141,418	-	-	-				467	-	1,630

168. Apart from the cash transactions reported by the private sector, a significant number of Customs reports were received in the referred period (see Table 15 below). According to the Law on Foreign Exchange Regulation, corroborated with the AML/CFT Law (see R.32)), the CS must submit to the SPCML information on incoming and outgoing cross-border cash over EUR 10,000 on a monthly basis. However, in practice, based on an agreement between the CS and the SPCML, the cross-border cash declarations are uploaded in a database to which the SPCML has instant access electronically. The declaration form includes fields regarding the origin of the money and the purpose of bringing it to Moldova. The Customs database is updated instantly when new cash declarations are filed. This information is treated by the SPCML in the same manner as a CTR and is subject to the same procedure. While the cross-border cash declarations have been included in SPCML analysis, it was not confirmed that any of the declarations has ever resulted in the initiation of ML disseminations. The CS very rarely detects false or non-declarations and ML suspicions have been identified at the borders only in two cases. No reports concerning bearer negotiable instruments have been identified. It appears that the CS has limited resources, expertise and training to do so.

169. The authorities explained that the sudden decrease of the number of reports by approximately 35% in 2016 is due to a joint decision (SPCML and the CS) not to issue the cash declaration in case of the specialised duty-free stores operating in the transit area which artificially increased the statistics with about 1,500 reports annually⁵³. The decision demonstrates a pro-active attitude and a strategic approach by the authorities.

Table 15: Cross border transportation of currency and bearer negotiable instruments

Year	Number of declarations or disclosures		Suspicious cross-border incidents			Assets restrained (amount in EUR)
	Incoming	Outgoing	Suspicious ML	Suspicious FT	False declarations	
2015	8,114	89	0	0	3	230,000
2016	4,397	82	0	0	6	244,000
2017	2,044	90	0	0	9	208,000

⁵³ Following strategic analysis regarding the information on importing/exporting of the currency in/from Moldova, it was established that the Customs Service reports also the transactions resulting from the sale of goods by the duty-free stores. The shops would deposit their daily sales on bank accounts and due to the fact that the stores were located at the border crossing points, these transactions appeared as a requirement for reporting. On the basis of the above mentioned, jointly the Customs Service and the FIU agreed to not report the introduction of the money resulted from sales performed by duty free stores.

10.2018	1,687	59	2	0	5	150,000
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Table 16: Value of declarations or disclosures

Year	Incoming	Outgoing
	Currency	Currency
2013	EUR 24,799,585 USD 9,042,363 RUR 24,947,600	EUR 0
2014	EUR 31,305,084 USD 29,196,707 RUR 60,813,770	EUR 1,160,000
2015	EUR 49,639,925 USD 22,094,981 MDL 43,893,995	EUR 2,320,000
2016	EUR 29 188 686 USD 14 789 285 MLD 23,611,665	EUR 2,600,000
2017	EUR 29 839 421 USD 14 678 113 MDL 17,139,243	EUR 1,248,005 USD 1,510,710 MDL 3,586,038
10.2018	EUR 26 257 401 USD 9 223 587 MDL 700,281,884	EUR 883,485 USD 682,866 MDL 31,973,359

170. The information gathered through the threshold reports (all) has been useful to the SPCML analysis, and indirectly (through disseminations) and other authorities. The evaluators have been showed how the CTRs are easily accessible to the SPCML analysis through an automated process and can add value to the cases analysed based on the STRs. However, it is unclear to which extent CTRs have regularly trigger cases for the SPCML especially since at the time of the on-site visit an analytical tool (data mining) was still absent. Nevertheless, the authorities provided one example of case initiated on the basis of cash-related STR as emphasised in the Box 6.4.

Box 6.4. "Urgenta" case

In 2015 the SPCML unveiled a suspicious ML scheme involving citizens of Moldova, Romania and the UK. After receipt of suspicious cash transaction reports of REs, the SPCML established that between January and July 2015, a group of individuals had received funds at various Moldovan bank accounts, which had been sent from Romanian bank accounts. Financial analyses showed that the funds were dispersed and transferred in amounts up to EUR 15,000 to the bank accounts of seven Moldovan individuals, who subsequently withdrew the cash (in USD) through POS terminals at various bank branches in Chisinau.

The origin of the money and the number of the Romanian bank accounts (15 in total) were identified during financial investigations. The SPCML requested the Romanian FIU for additional information regarding the transfers made from these bank accounts. It resulted that the bank accounts had been credited from UK banks accounts, of which the holders were of Polish, Moldovan and Romanian nationality. The SPCML sent several Egmont requests to the UK FIU to identify the persons managing the scheme and its real beneficiaries. From their responses it could be deducted that UK bank

accounts had been opened with the use of false identities of intercepted persons. The UK FIU also reported that the origin of money was from cybercrime.

An international WG of investigative officers from Moldova, Romania and the UK established that financial means had been embezzled by Dridex and Dyrecare viruses (malicious software or malware), targeting users of online banking services and infecting their computers by sending infected e-mails. Hackers gained access to and managed the bank accounts of victims, thereby embezzling a total amount of GBP 16 million. Profits from these activities were disguised via multiple falsely opened bank accounts. The profits were subsequently divided in smaller amounts and directed to banks in the UK, Romania and Moldova.

In November 2016 in London, the criminal group was arrested. The international joint investigation team consisting of British, Romanian and Moldovan officers conducted 13 searches which resulted in 14 persons detained. Several electronic devices and false identity documents (over 70 passports) were seized. The Court of Old Bailey of the UK in November 2017 convicted five individuals to imprisonment (the term ranging between 3 years and five months and 10 years) for the offence of ML.

Operational needs supported by FIU analysis and dissemination

(a) Operational analysis

171. Following adoption of the new AML/CFT Law, the SPCML became an independent authority and its number of staff was increased from 16 to 30, amounting at the time of the on-site visit to 10 operational analysts. During onsite visit, the recruitment process has not yet been completed.

172. The SPCML conducts its operational activity under written procedures. As mentioned earlier, the operational analysis was adapted to handle the high number of STRs submitted by the REs. The STRs are received in electronic format via a secured data transmission network and is stored in the original form in an electronic archive on the central server of the SPCML. A copy of the received data is accessible to the analysis via a specialised interface named "SPCML – MS", which allows the manual filtering of STRs as well as any cash and wire transfer transactions held in the database, according to a variety of criteria. During onsite visit, the evaluation team visited the server room of SPCML which is located in the NAC building separately from other servers. The room was closed and sealed.

173. On the basis of the previous mandatory reporting regime, SPCML received approximately 3,000 – 6,000 reports, including 300 - 600 STRs per day. To identify and extract the relevant cases from the overall number of STRs, a "preliminary analysis"⁵⁴ is done by operational analysts, who are assigned specific REs (mostly banks). In this early analytical stage, in order to secure confidentiality and protection of information, the analysts' access to the SPCML database is restricted to the particular FIs that the analyst is responsible for. However, the analysts have access to all the other information sources such as the STS and the PSA.

174. The clearance process (aimed at prioritizing daily received STRs) is done manually by using simple filtration software. The amount of transaction, type of transaction, nature of suspicions, existence of high-risk jurisdiction, frequency of payment, background of client, etc. are the criteria for filtering the received STRs. The operational analysts have access only to the data for the last two years that are stored in the SPCML database, and only strategic analysts have unlimited access to the entire SPCML database. Given that it can take several years to develop a solid case and the scheme

⁵⁴ As stated above, this selective process appeared to the evaluators similar to the work of a compliance officer.

used by perpetrators could have gone on for more than a couple of years, the AT considers that the two years restriction applied by the SPCML case can hamper the completeness of the first stage of the operational analysis. To that, the authorities explained that the time restriction was introduced for two reasons: i) to shorten the time needed for the software to perform the search in the database with millions of records and, ii) to maintain the relevance of the search as data and information older than two years might be less useful for the analysis of present transactions.

175. Following the procedure described above, 20-30 STRs are included in an “*Analytical Note*”, which is submitted to the Head of SPCML for decision. The decision is taken always in consultation with the analyst responsible for the Note. The following measures are possible at this stage: applying monitoring measures over a specified period; initiating a financial investigation; transmission of the information for examination to another employee of the Office; immediate dissemination of the information from the Analytical Note to the competent authorities.

176. If the resolution to initiate the financial investigation is applied on the Analytical Note, in 24 hours the analyst shall prepare a “*Financial Investigation Report*” based on which a time for the preparation of the full financial investigation shall be set. The finalization term may be extended for just and reasonable causes.

177. The financial investigation process is a complex of measures deem to verify the suspicion indicators and the facts outlined in the “*Financial Investigation Report*” by collecting information, analysing and verifying financial, economic, and client relationships; establishing the source and tracing the assets used, as well as investigating the existence of links with the criminal networks and or other forms of criminality. In the process of examining the Financial Investigation Report, and completing the financial investigation the analysts responsible shall: i) access all the available electronic databases and other information resources; ii) collect information from external sources; iii) request information and documents from the reporting entities, the public administration authorities and subjects of analysis (natural or legal persons), within the limits provided by the AML/CFT Law; iv) request for international cooperation etc...

178. As demonstrated by the table below in corroboration with Table 19, the disseminations made by the SPCML include a high volume of STRs (with an average of 150 STRs per dissemination to LEA in 2017) which are related transactions and which are used by prosecution in the criminal investigation phase.

Table 17: Number of STRs archived, monitored, disseminated to LEAs, and used for investigation and prosecution

Period	2013	2014	2015	2016	2017	10.2018
Archived	6,518	6,347	12,274	8,382	9,590	8,124
Monitored	24,395	25,285	19,523	11,841	11,108	10,074
Disseminated	7,915	8,942	21,179	27,048	16,173	12,327
Used for prosecution	2,180	1,379	2,837	5,473	2,323	1,831

179. In spite of the difficulties generated by the time consuming “*clearance*” process, the analytical product delivered by the SPCML appears to be of a satisfactory quality and include complex and large graphically represented ML schemes accompanied by descriptive wording. This was confirmed

on-site by the representatives of various LEA agencies. On a less positive note, the evaluators have concerns regarding the timeliness of the analysis for the reasons presented above.

180. In addition to the regular dissemination process (described under the Core Issue below), the SPCML responds to the requests for information from law enforcement authorities if they are sufficiently substantiated by suspicions of ML, associated offences or FT. The responses include the information held by the SPCML including STRs, CTRs and other reports.

Table 18: Statistics on responses to the requests for information from law enforcement authorities

Institution	2013	2014	2015	2016	2017	10.2018
General Prosecutors Office	-	19	32	12	12	9
Anticorruption Prosecutors Office	7	18	22	41	69	24
Prosecutors Office for combating Organised Crime and Special Causes	-	-	-	5	6	31
National Anticorruption Center	15	44	54	38	61	17
Minister of Internal Affairs	10	15	53	52	81	70
Security and Intelligence Service	36	22	11	31	44	46
Custom Service	-	-	-	4	3	6
<i>Total</i>	<i>68</i>	<i>118</i>	<i>172</i>	<i>235</i>	<i>337</i>	<i>203</i>

(b) Strategic Analysis

181. Based on the new organisational structure of SPCML, the strategic analysis section was separated from the operational analysis section and the staff of strategic section was increased to five. The proposal to initiate a strategic analysis is formulated by the responsible inspector in a “Strategic Analysis Initiative Report” which is approved by the management. Even though before the establishment of the new FIU structure, the operational and strategic unit was the same, several preventive and informative strategic analyses were produced by SPCML, covering not only STRs, but also cash and wire transactions.

182. The target auditoria of such strategic analysis were: the SPCML (to gear the activity according to typologies, methods and trends identified), banks, CS, APO, GPO, PCCOCS, STS, MoI as well as foreign FIUs.

Table 19: Statistics on dissemination of the results of strategic analysis (2015-10.2018)

#	Targeted public and private agencies	Analysed subjects	Number of disseminations
1.	National Anticorruption Centre	7	2
2.	Anticorruption Prosecutor Office	25	1
3.	Prosecutor’s Office for Combating Organised Crime and Special Cases	89	3
4.	CCTP of Ministry of Interior	46	1
5.	Custom Service	69	4
6.	State Tax Service	88	5
7.	Foreign FIU	185	1
8.	Banks	273	3
9.	NBM	16	1

183. Strategic analysis conducted by SPCML was used for a variety of purposes. Some led to launch criminal cases. For example, the analysis of transaction by SPCML concerning domestic companies providing cargo services for the export of various goods to the territory of Turkey and

China allowed opening a smuggling criminal case by NAC⁵⁵. Strategic analysis on the transactions of residents by using money or value transfer services (MVTs) provided positive results which led to opening two ML criminal cases. Strategic information was provided to REs and supervisory authorities and used in NRA process.

184. The strategic analysis of SPCML not only led to investigation of ML crime, but also contributed to work of law enforcement authorities in terms of predicate crimes. Analysis of transactions by the companies that participated in public procurement for development sewage system in Moldova was disseminated to APO and three criminal cases were opened on embezzlement and active corruption. In 2017, strategic analysis on identifying suspects in human trafficking activities was disseminated to Ministry of Interior and in 2018, the results of analysis of the transactions of the companies specializing in the collection and export of fruits was also disseminated to PCCOCS.

Box 6.5: Strategic analysis by the SPCML used by NAC

A positive outcome to other LEA was the analysis on the transactions of the companies participating in public procurement of reconstruction and repairs of the aqueduct and sewerage systems in the rural areas of Moldova, co-financed by the State Ecological Fund. The results of the strategic analysis were disseminated to the NAC and 3 criminal cases were initiated on stealing of public funds and active corruption.

185. The strategic work of SPCML supported preventive approaches of a variety of agencies. The Custom Service was provided with three different groups of conclusions on scrutiny of transactions of the domestic companies and non-resident companies registered in offshore zones and involved in import and export of petroleum and agricultural products, pharmaceutical, phytosanitary and household appliances. The information reflected in this document proved to be valuable red flags for customs in terms of export and import operations.

186. The SPCML has drawn up the list of countries where banks with high risk of ML operate and the list of countries where legal persons with high risk of ML are registered and these lists were supported by the conclusion of the strategic analysis conducted by SPCML. The SPCML shared these lists to all REs.

187. Although the strategic analysis is a positive measure used especially by the LEA (which provided positive feedback) and SPCML itself, during interviews the banks were not equally satisfied by the SPCML's strategic products for the REs use, and stated that more efforts should be geared in that direction.

(c) Dissemination

188. From 2013 to 2017, 542 cases of ML and predicate crimes were disseminated by SPCML. Out of those 333 were disseminated to various law enforcement authorities (depending on their investigation powers) and 209 to other competent authorities. Until 2016 SPCML distributed its

⁵⁵ The case was started on the basis of the money laundering component and subsequently extended to smuggling. This is why, through the General Prosecutor's Decision, the competence to conduct the criminal prosecution was attributed to the National Anticorruption Centre (standard procedure when the criminal prosecution on a criminal case is made on the basis of several articles from Criminal Code within the competence of several law enforcement bodies).

analysis to APO. After 2016 organised crime related cases are disseminated directly to PCCOCS and only in few instances the disseminations are made to GPO (for distribution in territorial offices). Depending on the suspected predicate crime, SPCML also makes disseminations to the Ministry of Interior, NAC and/or the CS. In the referred period, 35-70% disseminations led to opening ML investigations (See Table 22). From 2013 to 2017, SPCML demonstrated approximately 50% growth trend in terms of disseminations. This positive trend is completed by the results of dissemination.

Table 20: SPCML disseminations

	Number of analysed cases ⁵⁶	Number of archived cases	Number of disseminated cases	Percentage analysed/disseminated
2013	221	93	53	24%
2014	230	90	60	26%
2015	236	175	141	79%
2016	149	119	180	120%
2017	183	137	108	59%
10.2018	232	50	82	35%
Total	1,251	664	624	50%

189. During the period under review, the SPCML disseminated around 50% of the analysed cases to domestic LEAs, with some spikes (in 2015 and 2016 due to several analysis related to the “Global Laundromat” and the “Bank Fraud”). As mentioned previously, the SPCML appears to be overburdened by the number of STRs and slightly ill-equipped in terms of staffing and analytical tools to cope with the reports submitted for analysis. As explained under Core Issue 6.2 the quality of STRs is questionable, but in turn this gives the SPCML and LEAs quick access to a high number of transactions. Looking at the figures further along the chain (see also the analysis under IO.7), it appears that a reasonable number of prosecutions are initiated based on SPCML disseminations. A number of convictions has also been achieved.

Table 21: Statistics on ML investigations, (SPCML disseminations vs. other sources)

	2013		2014		2015		2016		2017		10.2018	
	FIU	Other sources	FIU	Other sources								
Number of ML investigations	31	31	35	29	34	15	21	39	22	27	9	14
Total	62		64		49		60		49		23	

190. When a ML case has already been initiated before the disclosure from the SPCML the dissemination is connected to the existing case and the FIU input is considered as “supporting the ML investigation”. A significant number of such cases have been noted especially in relation to the NAC. This indicates that, to a large extent, the SPCML’s dissemination process has supported the operational needs of LEAs

Table 22: Statistics on SPCML support to LEA

	2013	2014	2015	2016	2017	10.2018
Number of ML investigations supported by SPCML	14	17	11	22	19	10
Number of predicate crime investigations supported by SPCML	10	25	61	77	106	35
Materials submitted to the LEA regarding legal entities with pseudo-activity criteria where tax inspections were carried	85	89	5	63	65	18

⁵⁶ A “case” includes several STRs.

Cooperation and exchange of information/financial intelligence

191. SPCML and competent authorities demonstrated good level of cooperation on ML/FT issues. There are no impediments, statutory or otherwise, which hinder the exchange of information, which is regulated by MOUs signed between SPCML and different competent authorities and by long-standing good practices. The assessment team was satisfied that all competent authorities are willing to share information with the FIU and do so when requested. Where information is needed formally (either from or by the FIU), a written request is submitted through the agreed channels. Restricted information is exchanged through confidential channels. The FIU has broad access to other government databases. Access is provided through secured channels. Due to close contacts that the FIU maintains with LEAs (until recently the SPCML was actually a division of a LEA), co-operation may also take place informally. This generally facilitates and expedites the process of information sharing. The FIU provides joint trainings and participates in joint investigation teams together with the LEA in ML cases.

Box 6.6: “Social Engineering” Case

In October 2015, Moldovan company “XXX” SRL received a number of transfers from different companies located in Lithuania, UK, Hungary and the Czech Republic. The payments were authorised by a telephone call of the person who claimed to be the representative of companies. Later, it was established that in fact the call was made by scammers. In all these transactions, “XXX” SRL company was the beneficiary and later, transferred the amount to different jurisdictions or made cash withdraws.

A STR was submitted by a commercial bank and SPCML issued a freezing decision. SPCML found out that criminal investigations were launched in a number of jurisdictions such as Lithuania, Hungary and the Czech Republic with regard to the respective fraudulent transactions.

On 27 October 2015 SPCML disseminated the information to the NAC, and a ML case was launched. Based on this criminal investigation, funds equal to EUR 1,300,000 were seized from the account of the company “XXX” SRL, citizens of foreign jurisdictions were declared “Wanted” through the Interpol database and one Moldovan citizen was arrested.

The investigations established that the criminal group attempted to embezzle a total of EUR 10 mln using the accounts of other 19 companies, residents of France, Italy, Belgium, Germany, Estonia, Spain and Switzerland.

Within financial investigation process, SPCML sent 16 international requests through Interpol. In August 2016, based on Court decision, the seized assets were returned to the victims.

192. The SPCML provides law enforcement authorities with financial information both spontaneously and upon request, and, when necessary, the law enforcement authorities seek additional information from SPCML about beneficial owner and source of funds which needs to be obtained from foreign counterpart.

193. In terms of dissemination of information, this power of SPCML is not limited to only law enforcement authorities. According to the statistics, SPCML disseminated the results of its operational and strategic analysis to STS, Custom Service, etc.

Table 23: Requests made by the FIU based on LEAs requests through Egmont Secure Web (of the Egmont Group)

Authorities	2015	2016	2017	10.2018
General Prosecutor's Office	-	-	-	-
Prosecutor's Office for Combating Organised Crimes and Special Cases	-	1	10	2
Anticorruption Prosecutor's Office	-	1	4	-
Ministry of Internal Affairs	-	-	-	2
National Anticorruption Centre	3	1		1
State Tax Service	2	-	-	-

194. As demonstrated by the table above, the SPCML uses its powers to request information from foreign counterparts not only for its own operational needs, but also regarding the information needed by other domestic authorities.

Overall conclusion

195. **Moldova achieved Moderate level of effectiveness for the Immediate Outcome 6**

Immediate Outcome 7 (ML investigation and prosecution)

196. Moldova has a comprehensive legal system and institutional framework to investigate and prosecute ML, as defined in Article 243 of the Criminal Code. Since the last round of evaluation, based on the MONEYVAL recommendations and the results of the NRA, Moldova sought to improve its legal and institutional structure to address the shortcomings and mitigate the threats. One of the most prominent measures was the establishment, in 2016 of the PCCOCS to deal with complex, cross-border OC cases, including ML. The general legal framework is complemented by guidelines and instructions (on e.g. performing financial investigations, applying seizure and confiscation), issued by the GPO (see analysis under IO1).

197. The competence to investigate and prosecute ML and associated predicate offences is divided between the National Anticorruption Centre (NAC), the APO, the PCCOCS, the criminal investigative bodies of Ministry of Internal Affairs according to legal competences provided by the art. 266-270² of the CPC or based on order issued by the GPO, in accordance with Article 271 par. 7 of the CPC. (see also Chapter 1 and R30)

198. In practice, the largest share of case files related to the investigation of ML offences is accounted for by criminal investigative body of NAC. The power of ML prosecution is principally assigned to APO as a specialised prosecutorial body within the PPS. PCCOCS is primarily in charge of ML cases related to drug trafficking, trafficking in human beings, smuggling and tax evasion where on the other hand APO deals with ML cases primarily related to corruption. ML cases where the category of the predicate offence has not been established can be investigated by both APO and PCCOCS. If a predicate offence or a certain individual is subject to a case examined by a specialised Prosecutor's Office, the (eventual) ML offence will be assigned to the same specialised Prosecutorial body, to ensure the continuity. Since there are only two specialised Prosecutorial bodies in Moldova, this provision ensures priority competences to APO and PCCOCS in case of any link to ML in the context of an already opened case. Any potential conflict of competence is solved by the General Prosecutor, although this case doesn't appear to frequently occur in practice.

199. The various law enforcement officers and prosecutors the AT met on-site possessed the required skills and knowledge to perform their functions adequately and appear to do so with integrity. To a large extent, there are no substantive or procedural aspects that hinder the investigation and prosecution of ML.

ML identification and investigation

200. The significant and high-profile fraud and ML schemes Moldova faced in the recent years had an impact on the attitude of the LEA and other stakeholders vis-à-vis ML investigations, prosecutions and convictions. After 2017, a series of Guidelines, Instructions and Action Plans have been developed by the General Prosecutor’s Office, bringing ML investigations more to the attention of prosecutors and law enforcement officers and rendering parallel financial investigations compulsory in all proceeds generated cases.

201. In practice, there are several avenues for starting a ML case: i) Self-notification of the criminal investigative body or prosecutor while investigating predicate offence (e.g. initiated on the basis of a complaint by a victim or informant or in any other manner foreseen by the CC and CPC), ii) following a dissemination by the SPCML, or iii) upon receipt of information from a foreign authority. From a review of cases which led to a ML conviction, the assessment team came to the conclusion that the majority of cases appear to be initiated by LEAs in the course of an investigation of a predicate offence or on the basis of SPCML dissemination. This was eventually confirmed also on the basis of various cases presented after the on-site visit. Until 2017, the ML cases identified on the basis of a referral from the SPCML were mostly taken forward by the NAC.

Table 24: Number of initiated ML investigations, with breakdown per LEA

Law enforcement agency	2013	2014	2015	2016	2017	10.2018
MoI	5	4	5	2	4	2
GPO/PCCOCS ⁵⁷	5	10	2	2	8	15
APO	30	29	8	30	15	9
NAC	19	19	34	23	22	2
Territorial POs	3	2	0	3	0	0
Total	62	64	49	60	49	28

Table 25: Statistics on number of SPCML disseminations distributed to prosecution offices.

Prosecutorial body	2013	2014	2015	2016	2017	10.2018
GPO	-	-	-	-	3	2
APO	10	12	35	56	10	34
PCCOCS	-	-	-	-	2	22

202. In cases where the ML investigation started from a SPCML dissemination, the FIU usually remains connected to the case and provides assistance in the criminal procedure by analysing the

⁵⁷ Before the incorporation of the PCCOCS IN 2016 a Division of the GPO was handling the ML cases which subsequently were “transferred” to PCCOCS.

financial flows or requesting information from abroad. From the examples provided by the Moldovan authorities it results that mixed teams are routinely used in the financial investigations, which - depending on the complexity of the case and on the predicate crime - may include representatives from different authorities (FIU, Tax authority, NBM, MoI). Seeking and providing assistance from/to foreign counterparts –by means of MLA and other forms of cooperation such as joint investigation teams and intelligence exchange - appears to be a common practice in ML cases.

Box 7.1: The “Global Laundromat” Case

The case was started by the SPCML, which identified a series of STRs having the same typology: high value payments made on the basis of Court decisions, following unpaid/overdue tripartite loan agreements signed between: a loaning company, a debtor (a Russian company) and a guarantor acting as an underwriter (sub-guarantor). The underwriters were Moldovan citizens which gave competences to Moldovan Courts to rule the settlements. The respective STRs were received from one particular bank.

From the SPCML analysis resulted that from October 2010 to May 2014 a series of multiple loan agreements were signed between offshore companies in amounts from USD 250,000 to USD 800,000. When the debtor did not settle its debts, the lending company submitted applications to the Moldovan courts asking for simplified procedure to oblige jointly repayment of the loan to the debtor, guarantor and underwriter and thus “certifying” the payment. Orders were sent to bailiffs who initiated the process of enforcement of judicial decision and sent enforcement rulings to the Moldovan banks which concealed the fact that debtors indicated in the Court order did not have accounts in Moldovan banks. Transactions were made through correspondent accounts with Russian banks. The funds collected by the bailiffs were then transferred to the benefit of lending companies to their bank accounts in Moldova and Latvia and then to bank accounts owned by different natural and legal persons further abroad.

On 14.02.2014, the APO, based on the SPFML dissemination, initiated a ML criminal case for laundering of more than EUR 22,000,000,000 dollars from Russia. SPCML Complex financial investigations were started in order to identify: the origin of the laundered money, the final beneficiaries of the transited financial means, the transit jurisdictions, natural and legal entities involved and the organisers of the ML scheme.

A joint (SPCML and NAC) investigative team was established under the APO coordination. A wide range of investigative measures were applied including visual tracking, wire-tapping, forensic computer analysis, hearing of witnesses, cross interviews and house searches. From March 2011 until November 2016, 72 requests to foreign FIUs (e.g. Russian Federation, UK, Latvia, Belize, USA, Switzerland, Liechtenstein, Estonia, Maldives, France, Germany, Seychelles, Poland, Italy, Israel, Greece, Monaco, Panama and Cyprus) were sent. During the period 2012 – 2017, as a result of the financial analysis of bank accounts detained in 78 banking institutions (from 61 states) by 1,267 non-resident legal entities (some registered in off-shore areas), the SPCML has disseminated to the criminal investigation body of NAC and APO 27 complex financial studies, which included the identity of the organisers of the ML scheme and final beneficiaries of the laundered financial means.

Since the foreign natural and legal persons were involved in the scheme, MLA procedures were initiated by APO with various countries.

At a later stage of the investigation the STS was involved and asked to provide information on declared income of the subjects. The results obtained from the STS were used to start other investigations outside of APO. In the “Global Laundromat”, there are 37 accused persons: 15 employees of the commercial bank involved in the transactions, 16 judges, 4 bailiffs and other 2 persons related to the banking sector. In the investigation process, 61 persons were questioned as witnesses, 11 rogatory requests were sent, 34 searches were carried

out, 27 sequestrations and 12 special investigation measures were authorised.

Judges: In 2016, 16 criminal cases were initiated against the judges for charges of issuing wilfully a decision contrary to the law, which were sent to the court in 2017. The criminal cases are under examination in first instance court. The delay in finalizing the trial examination and, respectively, in obtaining the convictions against them is due to the behaviour of the defence, which under any pretext, in order to delay the process, has brought different groundless requests, such as raising the exception of unconstitutionality of the art. 307 of the CC, conducting expertise abroad to determine whether LORO accounts have actually been transited, requesting to send rogatory letters to different states on performing certain actions that are not relevant to the case etc.... Subsequently, APO initiated 'ML in large scale' cases against all the 16 judges, which are at the criminal prosecution stage, pending responses to rogatory letters requests.

Bailiffs: 4 bailiffs are involved in the "Global Laundromat" case. The first case regarding a bailiff were started in 2015 with abuse of official position and money laundering charges and sent to the court in 2016. In 2017 the bailiff was convicted for ML to 5 years and 6 months imprisonment. In 2016, for other 3 bailiffs ML criminal cases were initiated and subsequently sent to Court in 2017. At the time of the on-site the criminal cases are under examination in first instance.

Bank administrators: In a total 15 persons, they ensured that the orders of the 16 judges and 4 bailiffs involved in the scheme were executed by the banking subdivisions, in particular by the subdivisions responsible for managing the corresponding accounts of foreign financial institutions. In addition, the employees of the concerned institution also played an important role in the collective signing of the contracts for the opening of the LORO correspondent accounts of the Russian banks in the Moldovan bank, being one of the pillars of the criminal mechanism.

Two persons have been indicted for organising the "Global Laundromat". Both have been announced in international search.

203. The other sources for starting ML investigations are the predicate crimes files which, in the course of the financial and other investigations, reveal a ML side. As described under IO1 and IO6 the parallel financial investigations are recommended through PG Instructions since April 2017 with the purpose to: i) identifying ML cases; ii) identify the criminal assets with a view to confiscation and iii) identify potential other crimes or persons involved (by following the money trail). The prosecutors met on-site confirmed that in case of proceeds generating crimes, the financial aspect is considered by – for example – measuring the legally declared income with the persons' assets and life style. As a matter for rule, if the predicate crime is in the competence of a certain specialised Prosecutorial body (APO or PCCOCS) the ML case will be kept within the same body.

204. For the APO almost half of ML investigations are generated by the FIU disseminations. This is explained by the exclusive ML competences APO had until 2016 (see analysis under IO6 (5) (c) and the privileged position the FIU (as an independent unit within the NAC) used to have vis-à-vis APO. The situation is slightly different for the PCCOCS, where out of 34 ML cases, 6 were triggered by SPCML, 11 through self-motion and 17 by the representatives of the criminal investigation bodies or another authorities (General Department for Criminal Investigation of the Ministry of Internal Affairs, Criminal Investigation Service of the CS, Center for Combating Trafficking in Human beings, STS). The AT was presented with examples of on-going ML investigations carried out jointly with the CS and MoI.

205. There is a significant change in trend in the period under review. On one hand there is a major drop in ML investigations in 2015 instigated either on FIU disseminations or generated other authorities. The decrease was explained as being a result of the measures which were adopted to tackle the deficiencies exposed by the high-profile cases. On the other hand, from 2016 there was a substantial increase in number of ML investigations resulting from other authorities, which was a result of the reformation of the APO and introduction of PCCOCS.

Table 26: Anticorruption Prosecutor’s Office – sources of ML investigations

	on FIU disseminations	on self-motion and on other sources
2013	14	16
2014	23	6
2015	6	2
2016	4	26
2017	5	10
10.2018	2	7
Total	54	67

206. During the period 2013 – 2017, total number of 162 ML investigations without prior STR was initiated. Apart from the decrease in 2015, the figures show rather stable trend. On the other hand, in merely 32 cases prosecutions were commenced in relation to ML investigations in the referred period. Altogether 27 cases ended with convictions and in 20 of cases the convictions were final. The rest of the cases (as of 31 December 2017) were pending before the Courts of Appeal (appeal procedure) or the Supreme Court of Justice (cassation procedure).

Table 27: Investigations, prosecutions and convictions (independently, without a prior input/STR from the FIU)

	ML/FT Investigations by law enforcement carried out independently without prior STR			Prosecutions commenced			Convictions (first instance)			Convictions (final)		
	Cases	Natural persons	Legal persons	Cases	Natural persons	Legal persons	Cases	Natural persons	Legal persons	Cases	Natural persons	Legal persons
2013	31	—	—	2	7	—	3	4	1	2	3	1
2014	29	—	—	5	6	1	1	0	1	1	0	1
2015	15	—	—	4	8	2	9	12	4	2	1	1
2016	39	—	—	5	16	9	5	7	1	6	10	2
2017	27	—	—	8	11	5	6	7	2	6	7	3
2018 ⁵⁸	21	-	-	8	19	0	3	3	0	3	2	1
Total	162	-	-	32	67	17	27	33	9	20	23	9

207. The ratio between the number of investigated and prosecuted cases is substantially lower when taking in consideration the number of reports filed by the SPCML of which only 16 cases for ML offence were prosecuted. Although the trend of FIU reports is in significant increase, the numbers also revealed that only a fraction of incoming cases is prepared for indictments to the criminal courts. In 9 criminal cases against 8 individuals and 4 legal persons the first instance conviction was achieved based on SPCML disseminations, from which 4 convictions against 3 individuals and 1 legal person based on the FIU disseminations are not final.

⁵⁸ Until October 2018

Table 28: Criminal cases initiated based on FIU disseminations (both ML and predicate offences)

		2013	2014	2015	2016	2017	10.2018		
FIU Cases in the reference year		Under analysis (end of the year)	221	230	178	107	100	232	
		Archived in reference year	93	90	175	119	137	50	
		Reports disseminated	53	60	141	180	108	82	
		overall number	49	55	93	101	35	28	
		to LEA for investigation							
Investigations initiated with a prior STR from the FIU		ML	31	35	34	21	22	7	
		Other criminal offences	11	9	22	23	21	8	
Related judicial proceedings in reference year – number of cases	Prosecution (based on FIU disseminated cases)	ML	3	1	4	4	4	0	
		Other criminal offences	1	2	4	4	10	6	
	Convictions	ML	0	1	3	1	2	2	
		Other criminal offences	0	2	2	3	4	3	
	Convictions (final)	ML	0	1	2	1	0	1	
		Other criminal offences	0	1	1	1	1	3	
Related judicial proceedings in reference year – number of persons	Prosecution (based on FIU disseminated cases)	ML	NP	3	0	3	4	4	0
			LP	1	1	1	2	1	0
		Other criminal offences	NP	1	1	3	3	10	6
			LP	0	1	1	2	2	1
	Convictions	ML	NP	0	0	2	1	3	2
			LP	0	1	2	0	0	1
		Other criminal offences	NP	0	3	3	3	4	3
			LP	0	0	0	1	1	0
	Convictions (final)	ML	NP	0	0	3	1	0	1
			LP	0	1	1	0	0	1
		Other criminal offences	NP	0	1	1	0	1	2
			LP	0	0	0	1	0	1

208. The authorities explained that the increase in the number of disseminations for LEA in 2014-2016 is due to the high number of cases related to the “Global Laundromat” and the “Banking Fraud” submitted for investigation by SPCML.

209. One reason behind the discrepancies between the number of disseminations and the number of prosecutions reflected by Table 28 above appears to consist in situations where the SPCML analysis are connected to already started investigations and hence, they are not counted as an FIU case but as a case which was “supported” by the FIU, as emphasised by the table below.

Table 29: Statistics on ML investigations supported by SPCML disseminations

Institution	2013	2014	2015	2016	2017	10.2018
General Prosecutor’s Office	-	-	1	-	1	10
Anticorruption Prosecutor’s Office	14	23	6	4	5	36
Prosecutor’s Office for Combating Organised Crimes and Special Cases	-	-	-	-	2	23
National Anticorruption Centre	10	18	46	34	25	53
Ministry of Internal Affairs	1	1	2	1	3	47

210. As shown by the statistics, ML prosecutions are almost identical with the number of convictions and final acquittals are virtually non-existent, as confirmed on-site by the judiciary. The eventual difference between the number of cases brought to Courts and the number of convictions is explained by the on-going trials. The biggest bottleneck in the ML criminal procedures appears to occur between the investigation and the prosecution phase. A reason is the dominance of cross-border ML cases where rogatory letters are pending. Another reason might be the unbalanced training provided to investigators vs. prosecutors and judges, as described below. The AT is of the opinion that a higher number of ML cases brought before Courts would sketch a clearer picture on the LEA's response to the country risks.

211. The good cooperation among LEAs and with other authorities at national level was demonstrated. In cases of proceeds generating criminal offences, the investigative body performs joint work with other state bodies, such as the FIU, the State Tax Service; the Customs Service; the Intelligence and Security Service; the Public Services Agency; the State Labour Inspectorate; and National Bank of Moldova. The CPC provides that the investigation in complicated or large-scale cases shall be conducted by a group of prosecutors and investigators with a prosecutor managing the group. This was confirmed as being the regular practice for NAC, APO and PCCOCS when investigating complex cases.

212. Investigative authorities are authorised to obtain all necessary information provided by both public authorities and private operators (companies, financial institutions and others). Investigators and prosecutors have access to data bases such as land registry office, tax authorities, customs authorities, border police (on natural/legal entities crossing borders), Ministry of Interior, registry of population, registry of legal entities and register of vehicles. If confidential information or documents from financial institutions is required, a judicial order is needed. The prosecutors maintained that no specific standard of proof has to be demonstrated to obtain the judicial order, only the justification that the information required is essential for the conclusion of the case. The motion is generally reviewed by the investigative judge on the same day (this was confirmed by the judiciary). The timeline for the documents required to be provided by the financial institutions depends on the complexity of the information and the number of documents requested.

213. From the legal point of view, the criminal investigators have various special investigative measures at their disposal. The authorities demonstrated a pro-active approach in taking the initiative to apply a variety of investigative techniques, including special investigative techniques in ML cases (monitoring or control of financial transactions and access to financial information; monitoring the connections of telegraph and electronic communications; collection of information from electronic communication service providers; wiretapping; controlled delivery; undercover investigation etc...). An example is provided in the description of the "Laundromat case" above. In practice, at least one special investigative measure is applied in virtually all ML cases.

214. Requests for international letters rogatory are issued to pursue different aspects of acquiring evidence. Requests for international legal assistance in criminal matters are sent through specialised department of General Prosecutor's Office. For intelligence purposes, information can also be obtained through Egmont Group Network, to which Moldovan FIU is part. To improve the efficiency of international cooperation CPC provides legal framework to set up a joint investigative team based on mutual agreement of at least two countries, which is a frequent practice. Although the authorities demonstrated that they are taking the initiative, they also expressed that not all jurisdictions display the same proactive approach when responding.

Table 30: Statistics on JITs

	2013	2014	2015	2016	2017	2018	Total
Corruption	x Romania	x Romania	x Romania				3
Cybercrime			x UK and Romania				1
Drug trafficking					x Czech Republic	3x Ukraine; Belgium; Germany	4
ML/Illegal production / introduction of cigarettes in EU countries			x Romania; Bulgaria, Lithuania, UK, Europol and OLAF				1
Organisation of illegal migration						x Romania	1
Putting in circulation counterfeit foreign currency			x Romania				1
Smuggling of cigarettes			x Romania				1
ML and Smuggling of cigarettes						x Romania	1
SMURD helicopter crash				x Romania			1
ML/Stolen goods in large scales						x France	1
Stolen luxury cars						x Romania	1
Total	1	1	5	1	1	7	16

215. The on-site interviews showed a significant discrepancy between practitioners in the level of training in the field of financial investigations, economic crime and ML. On one hand the FIU and the criminal investigative officers in NAC are trained extensively with an important part of their training done abroad but there is a serious deficit of specialised trainings on financial crime and financial forensics for other LEA. The judiciary is legally obliged to attend trainings in extent of 40 hours per year and joint trainings are organised by the National Institute of Justice (NIJ). The topics of trainings are special investigative measures, corruption and other proceeds generating crime but the economic crimes and the role of financial investigations is absent. ML trainings were organised sporadically before 2018: one on ML investigations in 2013 and one in 2014 were organised by National Institute of Justice. Both were joint trainings for judges, prosecutors and investigators. The situation improved only shortly before the on-site visit as in 2018 one training on ML investigation

for investigators and prosecutors was hosted by the General Inspectorate of Police. Other two were held in the context of an international technical assistance programme, where 20 prosecutors and 10 judges participated. As indicated in the NRA one of the reasons for insufficient training provided to LEA and judiciary is shortage of trainers.

216. Moldova does not have specialised judges dealing with complex and OC cases. There are 5 courts of first instance, where the average number of judges per court is very low (5 or less). The judiciary argued that the specialization could violate the principle of random distribution of cases established to implement the anti-corruption standards.

217. The ML cases are prioritized depending on the peculiarity of the case, the degree of social danger, the high-risks scenarios, special subjects, or imminent risk of losing assets. Another circumstance that mandates the case to be handled with priority is if the suspect is detained. Detention is limited to 12 months and must be extended every 30 days. This decision can be appealed and, according to the prosecutors and judges met on-site; often the defence excessively uses the legal remedy, which significantly overburdens the Courts. Consequently, this significantly contributes to the prolongation of the process.

218. Among aspects that hinder investigative, prosecutorial or judicial process, Moldovan authorities emphasised large volume of documents the investigators must examine and analyse. Although some beneficial outcomes were presented in relation to international legal cooperation, the results are not always satisfactory, as they depend on the responses received from the foreign jurisdictions – it takes a long period of time to receive the answer, there is no answer or there is “superficial” answer.

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

219. The NRA highlights drug trafficking, corruption, human trafficking, tax evasion and smuggling as the most relevant crimes generating illicit revenues. Corruption related crimes (in particular high-level corruption in private as well in public sector) remain among the top national threats, generating illicit proceeds. The numbers of reported criminal offences in the period 2013-2017 and the numbers of convictions for predicate offences show that the most significant proceeds generating crimes are robbery/theft, drug trafficking, corruption/bribery and human trafficking, respectively.

Box 7.2: “Flowers Case” (ML and Tax Evasion)

The OPCML received a series of STRs from a commercial bank with the following ML suspicions: the administrator and founder of the company BF SRL received payments for company’s goods and services, through the personal bank account held with a Romanian Bank (PayPal accounts) in amount of MDL 7,738,938 (~EUR 387,000) and through wire transfers in amount of MDL 1,153,347 (EUR 57,700). The money was received in the personal accounts in order to evade taxes and other duties. Subsequently, the funds were deposited to the account of the company BF SRL as a loan from its founder, which reduced the income excise and the VAT in amount of MDL 1,880,701 (EUR 94,000). In the investigation process, two information requests were made to commercial banks and three international requests were sent by the OPCML. The case was disseminated to NAC and a criminal case on ML in large amount was initiated, at a later stage, being complemented with an investigation and prosecution for tax evasion.

The individual was convicted for tax evasion to a fine of MDL 70,000 (EUR 3,500) with the deprivation of the right to hold managing positions for 4 years and for ML to imprisonment for 5 years, suspended for a 4-years term. The company BF SRL was convicted for ML to a fine of MDL 220,000 (EUR 11,000) and for tax evasion with the liquidation of the legal person.

The prejudice (the object of ML) in amount of MDL 1,880,701 (EUR 94,000) was voluntary paid to state budget before the sentence, therefore the confiscation was not applied.

220. The AT considers the above example as a commendable tax-related ML case which, on the other hand, illustrates limited dissuasiveness of pecuniary sanctions applied in ML cases. Apart from the jail sanction, the perpetrator was fined to EUR 3500 and the legal person involved had to pay EUR 11,000 fine. To this the Moldovan authorities explained that the level of fines is regulated through Law through the concept of “conventional units”. The thresholds of the “conventional units” are regularly up-dated by the legislator depending on several (economic but not only) criteria. The value of the “conventional unit” has been significantly increased recently but the fine applied has to be correlated with the value of the “conventional unit” at the time of the commission of the crime not at the time of the judgement. At the time of the sentence the “conventional unit” was already increased by 150%.

221. Since its foundation in 2016, PCCOCS sent to Courts 16 ML cases involving 52 individuals and 14 legal entities. Looking at the “profile” of the ML cases, the most prominent generating offences were: tax evasion, smuggling, creating or leading a criminal organisation, drug trafficking, trafficking in human beings/pimping, fraud, forgery, etc... Two cases were sent to Courts without a specific predicate. These to a certain extent mirror the national threats, especially in relation to tax crimes and smuggling.

Box 7.3: ML investigation related to human trafficking (initiated in 2015)

NBM received a request from a Romanian citizen R to approve the transport of USD 100,000 in cash from Moldova to Romania. The NBM considered the request suspicious and informed SPCML for further financial investigation which ended up as a dissemination to GPO.

The source of money was determined to be human trafficking activities: the victims were recruited in Moldova to practice video-chat prostitution in Romania. The video-chat was carried-out in locations situated in Romania but the payments were made by the customers to pimps' accounts (on-line payment platforms) in Moldova. In the course of the investigation it was established that over USD 1.3 million have been transferred in instalments back to Romania, using on-line payment platforms, in order to cover the expenses (rent for the video-chat locations, Internet fees, victims' logistical support...) to carry out the prostitution business. Once the SPCML seized the GPO (file taken over by PCCOCS in 2016) and a criminal case was initiated for ML and pimping, the entire sum found on R's bank account of (more than USD 400,000) was frozen and then sequestrated by the investigative judge on the prosecutor's request.

Investigative techniques used consisted in analysis of bank statements, wiretapping (phone conversations) and house searches. Rogatory letters request were sent to Romania and other jurisdictions. At the time of the on-site visit the case was still under investigation (pending the receipt of replies to rogatory letters).

222. Less consistency of ML investigations and prosecutions with the threat, risk profile and national policies was noted in relation to corruption and human and drug trafficking. High-level corruption (including corruption of judicial authorities and politicians) is recognized as one of the

major risks in Moldova, however, only modest results in prosecuting and convicting corruption-related ML cases have been achieved. The outcome of investigations and prosecutions of ML in other major proceeds-generating offences does not appear to reflect the country risks to the fullest extent. For instance, the number of convictions for ML related to human and drug trafficking and smuggling although existent, remain modest.

Box 7.4: ML corruption related case

In 2015 an investigation against the Moldovan ex-Prime-minister was initiated for trafficking in influence and passive corruption offences.

The ex-Prime-minister was charged with demanding and receiving bribes personally (luxury goods and services) and through intermediaries' companies). The total value of assets was evaluated to EUR 24.332.500 and consisted of financial means, services (air transport, hotel services) and luxury goods (cars, watches). The investigation revealed that indirectly the assets originated from funds defrauded from a Moldovan commercial bank "C" (the case is connected with the "Bank Fraud" case).

From the total amount of the illicit income related to corruption, EUR 2,700,000 were transferred through the non-resident offshore company E, to the resident companies A and B, managed by RI, affiliated to ex-Prime-minister. The A and B companies used the financial means to reimburse the loans from a resident commercial bank "C".

The resident companies and the natural person RI were investigated, prosecuted and convicted for ML (conversion and transfer of financial means known to constitute illicit income).

By the sentence of 06.11.2015, the court convicted RI for ML to imprisonment for 3 years 4 months. Each of the resident companies A and B were convicted for ML to a fine of EUR 8,000 and their liquidation.

The court ordered the reimbursement of the damage in the amount of EUR 2,700,000 to the resident commercial bank "C".

223. Moldova is not a financial centre, its financial market is less developed and integration in the global financial sector is limited. However, according to the NRA, the Moldovan banking sector is at high risk and its vulnerability was demonstrated since the last round of evaluation by at least two high profile international scandals, namely the "Laundromat Case" and the "Bank Fraud Case". In both cases banks were used by the perpetrators to implement the ML schemes with help from the inside. Banks' former employees are prosecuted in both cases and the matter was considered when legislative⁵⁹ and other measures were taken.

Box 7.5: Bank Fraud Case

On 26 November 2014, BC bank sent an STR whereby CD SRL registered in Moldova transferred to the non-resident company R LTD (registered in Hong Kong), with the "advance payment for construction supplies". In the course of the SPCML analysis was established that the company CD SRL never conducted import of goods. In the same time, the source of transferred money was a bank loan granted by BC bank. Additionally, using information from MNB it was determined that the loan granted by BC bank was pledged through fictitious guarantees for placements held by several foreign banks. Subsequently, in December 2014, based on the FIU

⁵⁹ As an example, the Law on Voluntary Disclosure and Fiscal Incentives (August 2018) excluded from the Program the persons convicted, suspected or accused of crimes related to the activity of the banks involved in the "Laundromat and "Banking fraud" scandals.

analysis of threshold transactions (automatic reporting) it was found that during 25.11.2014 - 26.11.2014 the BE bank granted loans in MDL, EUR and USD amounting to MDL 13.34 billion to 5 Moldovan companies. The sums were subsequently transferred to non-resident companies with accounts opened at AS BANK Latvia, with the justification of "paying for goods and equipment". It was established that the 5 companies did not record any imports.

In this context, on 03.12.2014, the SPCML disseminated the information to the APO and on 03.12.2014 the criminal case was initiated for abuse of power committed by several BC bank employees. Between December 2014 and December 2016, the SPCML carried out 36 disseminations to the APO who initiated criminal cases for abuse of power, fraud, bribery and money laundering.

To extract as much money as possible from the banks, a carousel borrowing scheme was applied so that the loans from one bank were paid with loans from another, in total three banks being involved. This scheme was facilitated by the shareholder of one of the banks. To conceal the facts, the funds were later moved from one bank account to another in a coordinated manner through a network of companies before being transferred to several bank accounts in different countries. Some of the money was channelled back to Moldovan banks as a repayment of loans simply to maintain the appearance and continuation of the scheme.

In total APO initiated 53 criminal cases against 191 legal entities and 36 individuals. The Banking Fraud case is on-going, hence, the individual cases are at different phases of the criminal procedure as depicted below (see Table 31).

The major beneficiaries of the bank fraud have been qualified in two groups: Group A (see below Table 32) who acted during 2007-2012 and Group B (see below Table 33) acting in 2013-2014.

In 5 cases the decision of the Court is final. Among the perpetrators one person was convicted to 18-years imprisonment for fraud, embezzlement and ML. The ML sentence was of 108 months (see Table 34). One person was convicted for autonomous ML to 3 years and 6 months imprisonment. Three other persons were convicted for ML, with the predicate in one case being the abuse of trust and in the other case arbitrariness; neither of these two cases is final. One person was convicted for passive corruption and influence peddling to 9 years imprisonment. Three persons were sentenced for obtaining credit by fraud (one to fine and two to 4 years imprisonment). Sequestrum was applied to assets of one of the bank managers to cover the damages caused.

Table 31: Separate criminal cases initiated in the context of the "Bank Fraud" Case

n/o	Category	Number of cases
1	Examined by the first instance	9
2	Under investigation by the first instance	3
3	Pending examination by the appeal court	3
3	Examined with definitive sentence	5
4	Under criminal investigation / prosecution	33

Table 32: Group A

Number of investigated persons	Offences	Proceeds
97-legal persons 15- individuals	Credit crimes (violating the crediting rules and fraudulent loans), ML (39 legal persons and five natural persons under investigation) and fraud	MDL 3,2 billion

Table 33: Group B

Number of investigated persons	Offences	Proceeds
12 legal persons 21 individuals	Fraud, abuse of trust, fraudulent loans, abuse of power and ML.	6,5 billion MDL

224. The investigations on the legal as well as the natural persons (members of the Board of Directors) in Group A on ML are on-going, as a response on rogatory letters is still awaited. Four individuals managing five legal persons have been charged with fraudulent loans. For Group B, charges have been brought, including for ML, and the cases are pending before court. The sentences achieved so far are described under Table 34 below.

Table 34: List of convictions achieved in the “Banking Fraud” case

Conviction for	Legal person/natural person	Sentence
Passive corruption & Influence peddling	Natural person 1 - former PM	9 years imprisonment and deprivation of right to hold public functions for 5 years
Fraud and Money laundering	Natural person 2 - former PEP	18 years imprisonment and deprivation of right to hold public functions for 5 years
Fraudulent crediting	Natural person 3	4 years imprisonment and civil action for 1.312.500 euro
Fraudulent crediting	Natural person 4	4 years imprisonment and civil action for 1.394.000 euro
Money laundering	Legal person 1/Natural person 5	Natural person -3 years and 6 months imprisonment Legal person: liquidation and civil action
Fraudulent crediting	Legal person 2/Natural person 6	Natural person - Fine Legal person: interdiction to perform pharmaceutical activity
Misuse of trust and Money laundering	Natural person 7	7 years and 6 months imprisonment and civil action for 135.500.000 euro
Money laundering and Deliberate insolvency	Natural person 8	5 years and 6 month imprisonment for ML and fine of 1.375 euro with the deprivation of the right to hold public functions for 4 years

225. As displayed in Tables 27 and 28, between 2013 and 2018, Moldova achieved ML final convictions in 25 cases (20 without FIU disseminations + 5 based on FIU disseminations), in respect of a total of 28 natural persons and 12 legal persons. The number of ML convictions seems to be modest, especially if compared to the overall number of convictions obtained for predicate offences. This is also acknowledged in the NRA.

226. In the same period (2013-2017) Moldovan courts achieved the following number of convictions for the offences which are most relevant for Moldova with regard to ML: drug trafficking (3,301 convictions), corruption (1,443 convictions), trafficking in human beings and migrant smuggling (174 convictions), robbery and theft (6,128 convictions). Some reasonable justifications for the much lower number of ML cases derived from those convictions do exist, they were duly considered by the assessment team when evaluating the overall situation in Moldova. It is acknowledged that in the majority of cases of convictions for theft, robbery or burglary, even fraud and petty corruption, the illicit assets are not further laundered or object of ML but instead used by the offenders to cover current personal needs. In other corruption cases a part of offenders were convicted without the bribe actually being paid. While not all proceeds-generating offences may necessarily have had a ML aspect, there still appears to be potential for more ML cases.

Types of ML cases pursued

227. The number of ML convictions increased since 2011 and now include stand-alone and foreign predicates ML cases. From the data provided by the Prosecution it results that ML cases can both: start as a ML case then extended into a predicate investigation/prosecution or vice versa.

228. Moldovan legislation does not require a person to be convicted of the predicate offence to prove ML, but merely that the property is the proceeds of crime. This was unanimously confirmed by the practitioners during the on-site interviews. When a reasonable suspicion of ML is established, LEAs are obliged to initiate a financial investigation and consider all circumstances, even if the elements of the predicate offence are not identified, or was ascertained that the predicate offence was committed abroad. This was supported by the cases that were presented to the evaluators. Nevertheless, given the discrepancies between the number of ML investigations and overall (low) number of ML cases brought to Courts, the evaluators are not convinced that this constitutes a systematic approach to prosecution and that the results of the early stages financial investigations are somehow overlooked or dismissed in more advanced stages of the criminal proceedings.

229. Since its incorporation in 2016 until October 2018, the PCCOCS had wide variety of ML types of cases pursued in the most serious crimes: from a total of 34 ML criminal investigations, in 22 cases, the prosecution was started in common with the predicate offense. In 10 cases, the criminal investigation was initiated directly for the ML offence and in 8 cases subsequently criminal charges were brought for the commission of the predicate offences. Two cases have been initiated as stand-alone ML and have been sent to Courts without an indication of a specific predicate. From the total number of criminal ML cases 47% (16 cases involving 52 individuals and 14 legal entities) ended with an indictment in Courts which in AT's view is a fair ratio, but this only apply to PCCOCS. In 3 criminal cases, the prosecution was suspended due to the flight of the accused persons. The prosecutors charged them in their absence, requesting arrest orders with their announcement in international search. Subsequently, after the PCCOCS prosecutors and officers carried out all the criminal investigation actions and the special investigative measures that were required, the prosecution was suspended until the location of the offenders (the accused persons) will be established. If they are found, the prosecution will be restarted. In 2 cases, the prosecution was closed for lack of prove of the elements of the offense.

Box 7.6: Autonomous ML case

The Criminal investigation was initiated by NAC under the supervision of APO in 7 March 2014 for active corruption on an especially large scale with regard to two natural persons, for promising, offering and giving to some Members of Parliament financial means amounting to USD 250,000 and EUR 500,000, to determine them to promote the interests of the group of persons they were representing.

By the decision of the Buiucani District Court, in July, 2016, the targeted persons were convicted for committing the offense of active corruption and USD 403,310, EUR 553,000 and RUB 48,900 (Russian ruble) were confiscated based on Article 106 (2)(a) from the Criminal Code with their passing to the state, as assets used (USD 250,000) and intended to be used (USD 253,000, EUR 553,000 and RUB 48,900) for committing the crime.

During the investigation of the corruption offence, it was established that the perpetrators, accused of active corruption, have not performed any legal activities justifying respective income (USD 250,000 and EUR 500,000), which led to the conclusion that the money represent illegal income.

Based on that fact, a criminal investigation was initiated according to Article 243 par. (3)(b) from the Criminal Code (money laundering on an especially large scale).

The ML part of the case is still under investigation, as the replies on MLA requests are still pending.

230. The figures of ML convictions have increased since the last round of evaluations with a wider variety of ML convictions achieved. Self-laundering continues to prevail (roughly 80% of the cases and persons), followed by third party laundering (20% of the cases and persons). ML cases involving foreign predicate offence account for 12% of the cases and 7% of the persons.

Table 35: Types of ML convictions achieved

Cases	(a) Total number of ML convictions	(b) Number of convictions for self-laundering	(c) Number of convictions for third party laundering	(d) Number of convictions for laundering proceeds of crime committed abroad
2013	2 cases/4 persons	2 cases / 4 persons	-	-
2014	2 cases / 2 persons	1 cases / 1 persons	1 cases / 1 persons	1 case / 1 persons
2015	9 cases / 16 persons	6 cases / 11 persons	3 cases / 5 persons	1 case / 1 persons
2016	5 cases / 8 persons	4 cases / 7 persons	1 case / 1 persons	1 case / 1 persons
2017	6 cases / 9 persons	6 cases / 9 persons	-	-
2018	3 cases/ 3 persons	1 case/ 1 person	2 cases/ 2 persons	2 cases/ 2 persons
Total	27 cases /42 persons	20 cases /33 persons	7 cases /9 persons	5 cases /5 persons

231. The figures indicate that in ML criminal cases ended with a final verdict, there have so far been no acquittals. The authorities confirmed that the five acquittals for ML pronounced in first instance Courts were contested by the prosecutors and the Appellate Court or the Supreme Court changed them to convictions. Although this ascertains that the cases are thoroughly prepared by the prosecution before the indictments are filed, it may also indicate an inclination to send to Courts only “guaranteed cases” without a pro-active and challenging prosecutorial attitude. Given the country risk profile (higher external risk) and the delays to requests for international legal assistance, the authorities should challenge the Courts with more ML cases, relying on inferences that can properly be drawn from available evidence

Effectiveness, proportionality and dissuasiveness of sanctions

232. The sanctions provided by the CC for the ML offence in case of individuals are largely proportionate and dissuasive (see also analysis under R.3). ML is categorized as a severe crime, punishable by up to 5 years imprisonment, with the possibility of increased sanctions for aggravated circumstances. The CC also provides supplementary sanctions: fine (for natural and legal persons), deprivation of rights to hold certain positions or to practice certain activities, and liquidation of the legal person.

233. The Supreme Court of Justice has developed a recommendation, instructing expressly on the individualisation of criminal sanctions. The Guideline specifies which circumstances and to what extent have to be taken in consideration to individualise the sanction, which includes legal entities.

In addition, judicial department of GPO issued Guidance on the sentence requested by the prosecutor should be.

Table 36: Sentences applied in ML cases:

Year	Non-custodial sentences (natural and legal persons)				Custodial sentences (persons)				
	Highest and lowest (fines in EUR)	Fines (average in EUR)	Other than fines	Total (cases)	Highest and lowest (sentence in months)	Imposed prison sentence (average in months)	Suspended prison sentence (average in months)	Other measures	Total (cases)
2013	7,000 —	1 (7,000)	1 (Strike out legal person)	1	48 m —	1 (48 m)	1 (36 m)		1
2014	6,600 —	1 (6,600)	1 (Strike out legal person)	1	60 m —	1 (60 m)	1 (24 m)		1
2015	7,500 7,000	3 (7,250)	3 (Strike out legal person)	3	72 m 28 m	7 (57 m)	2 (40 m)	3 (deprivation of rights – 36 m)	7
2016	7,000 —	1 (7,000)	1 (deprivation of rights)	1	96 m 60 m	4 (72 m)	2 (42 m)		4
2017	9,750 —	1 (9,750)		1	108 m 48 m	5 (72 m)	2 (21 m)		5
10.2018	11,000 1,500	2 (6,250)	-	2	72 m 60 m	2 (66 m)	1 (60 m)		3
Total	-	-	6	9	-	20	9		21

234. With an average prison sentence of 4-6 years, the sanctions applied for ML offence appear to be effective and dissuasive. As substantiated by the judiciary during the onsite and confirmed by the cases provided by the authorities, sanctions applied in ML cases correspond to the sanctions applied for similar offences.

235. The numbers also demonstrate that the custodial sentences are prevailing. This shift coincided with a positive development in relation to the cases put before the courts by the prosecution, which increased in number in the last years and involved more significant amounts of laundered funds deriving from more serious underlying predicate offences. In less than 50% of the cases, the sentence is suspended.

236. In case of fines applied the average is more than EUR 7,000, which for a country like Moldova (where the average salary is of EUR 325) appears moderately dissuasive.

237. Analysing the scale of custodial sentences, the amplitude varies between 2,3 years to 9 years of imprisonment which demonstrate the judiciary's ability to apply proportionate sanctions.

Alternative measures

238. Where an ML investigation has been pursued but where it is not possible, for justifiable reason, to secure a conviction, Moldova applies a sequestration/confiscation of goods. There have been cases where, following an investigation into ML or predicates (several smuggling and ML cases have been presented to the AT), the Prosecution was not able to institute criminal proceedings for justifiable reasons (the conviction was moved from criminal penalties to contravention). In case where the criminal procedure was terminated because of the expiration of the limitation period or the perpetrator's death, special confiscation is applied. In addition, as alternative measure, criminal prosecution is initiated for other criminal offences, such as tax evasion, false declaration or illegal enrichment. Considering all the alternative measures applied the system appears to be sufficiently effective.

Overall Conclusion

239. Overall, Moldova has achieved a Moderate level of effectiveness for Immediate Outcome 7.

Immediate Outcome 8 (Confiscation)

240. Overall, Moldova has a comprehensive and sound legal system for the application of provisional measures and confiscation of proceeds of crime, which is a result of significant legislative measures the country has adopted since the last evaluation. The most important changes are: i) the introduction of extended confiscation (entry into force February 2014), ii) the establishment of the CARA in 2017 and iii) amendments of the provisions of the CC to address the deficiencies and inconsistencies of the criminal legislation, and to introduce the definition of parallel financial investigations. This demonstrates that the confiscation and the provisional measures were high on the authorities' agenda in the recent years. The provisional measures and confiscation regime are pursued as policy objective in various policy documents as emphasised under the Core Issue 1 below.

241. The general provisions of provisional measures are to be found in the CPC and those on confiscation mainly appear in the CC (see analysis under R4). The relevant regulation on asset management is set up in Government Decision No. 972 of 2001 and Government Decision 684 of 11 July 2018⁶⁰ which regulate the procedure on the disposal of confiscated assets. Additionally, there are specific guidelines and instructions on how to implement respective laws with regard to confiscation, issued by the General Prosecutor's Office, which shall be used by the criminal investigative bodies of all competent authorities, as detailed under Core Issue 1 and 2 below.

242. As analysed under R.4, the English versions of the Moldovan CC and CPC use the term "seizure" for a coercive measure used exclusively in the course of evidence gathering process (hence it is referred to as "seizure as evidence" in R4). The term corresponding to the provisional measure "seizure" - as defined by the FATF Glossary - is "sequestration" in the Moldovan legislation and hence, for the purposes of IO.8 this word shall be used. Nevertheless, in some instances, the Moldovan authorities translated the "sequestration" in Romanian original as "seizure"⁶¹. In those cases the AT inserted a footnote to signal the inconsistency in translation.

⁶⁰ This Decision has no impact on the effectiveness as it entered into force on the 12 October 2018 that is the last day of the on-site visit.

⁶¹ For a thorough explanation of the terms please see the *Note under R4 in the Technical Compliance Annex.

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

243. At the national level, several actions have been taken by the authorities to co-ordinate and develop the provisional measures and the confiscation regime in a coherent manner and render confiscation of proceeds, instrumentalities and other assets a policy objective. NRA Action Plan sets priority measures to improve the provisional measures and the confiscation regime. The 2017-2019 “PG Action Plan on the implementation of the Action Plan on reducing ML/FT risks” envisages several measures to be taken to enhance the authorities’ capacity to trace, seize and confiscate illegally gained assets such as: enhancing the existent regulatory regime on assets management, enhancing the institutional framework on provisional measures and confiscation regime, and analysing the judicial practice on sequestrations related to special confiscations.

244. The “PG Operational Action Plan 2018-2019 in the implementation of the National Strategy on combating OC (2011-2019)” provides for actions to enhance: the analytical capacities, the financial investigations and the criminal pursuits in the ML/FT area. The progress achieved in the application of this action shall be measured through indicators such as the evolution of the total value of identified, sequestered and confiscated goods in the reference period.

245. The 2017-2020 National Integrity and Anti-Corruption Strategy foresees that recovery of illegal proceeds and victims’ compensation are priority actions under the Pillar III «*Justice and anticorruption authorities*». The “*Action Plan in the application of the National Integrity and Anti-Corruption Strategy*” provides for the implementation of key policy actions related to criminal assets *i.a.*: the adoption of a National Strategy on criminal assets recovery; the creation of a database for criminal assets frozen, sequestered and confiscated; as well as trainings for LEA officers, prosecutors and judges on procedural aspects of criminal assets recovery (including extended confiscation). At the time of the on-site visit, the National Strategy on criminal assets recovery was not yet adopted.

246. Other strategic documents have indirect impact on the sequestration and confiscation system such as the “*Action Plan on the implementation of the 2011-2016 Justice Sector Reform Strategy*” (which provides for improved technical capacities and data storage – including for assets management).

247. At the time of the on-site visit the document was planned as the “*National Strategy on criminal assets recovery*”, under the “*National Integrity and Anti-Corruption Action Plan*”, and the Moldovan authorities explained that the document was not adopted due to the extension of the CARA responsibilities beyond the corruption matters. Such a document would be expected to integrate the various sectorial actions and strategic plans addressing the sequestration and confiscation regime, and should gear the activity of all prosecutorial and law enforcement structures towards a more substantial assets-oriented culture, accentuating the merits of financial investigations with better results in confiscations.

248. A policy measure related to enhancing the illegal assets recovery regime was the introduction in 2017 of the Assets Recovery Office. The CARA unit is an autonomous specialised subdivision within the NAC, acting with an independent budget. The Law on CARA (No. 48/ 2017) provides a catalogue of 54 proceeds-generating crimes - including the most significant proceeds-generating crimes, recognised in the NRA (smuggling, cybercrime, THB, ML, drug trafficking, corruption) - for which parallel investigation can be conducted (by CARA). CARA has competences in

criminal assets management and disposal. When performing financial investigations, the CARA is empowered by the criminal investigative body to trace criminal assets, gather evidences on them and preserved them, but that does not prohibit the investigative body to carry out its own investigations (including financial or special investigative measures). As described under IO.7, financial investigations are carried out both by the criminal investigative body and, when it is the case, by the CARA.

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

249. Moldova has in place a two-tier confiscation system, which includes both special and newly introduced extended confiscation and which, in principle, applies to both natural and legal entities. To unify the practice and to formalise certain aspects of the provisional measures and confiscation regime, “General guidelines on the application of the legal provisions with regard to seizure⁶² and confiscation of illicit goods” were issued by the PG on 29 September 2018 (hereafter “PG Guidelines on confiscation”). The assets recovery mechanism in Moldova includes the sums used as restitutions to victims of crimes, which are not included in the data under confiscated property as the authorities do not keep aggregated statistics on those values. Nevertheless, the value of assets sequestered or recovered for restitution to victims (be it individuals, legal persons or the State) are presented in various parts of this analysis.

Special confiscation

250. The special confiscation is defined as a security measure aimed at removing the dangers resulting from the commission of criminal acts, as well as preventing the commission of future criminal offences. According to the prosecutors, the special confiscation is usually ordered by the Court in case of a conviction. However, the measure may also be applied if the Court decides the cessation of the trial on motivated grounds (i.a. in case of amnesty or death of the offender) or in cases where the criminal liability has been replaced with a civil liability and respective sanction. The confiscation is considered to be an “in rem” measure, hence not being subject to the statute of limitations as illustrated by the Box 8.1 below.

Box 8.1: Confiscation of assets in case the criminal liability has been replaced with a civil liability

a) In a 2011 case, the prosecution was terminated because the presumed criminal act (smuggling) was re-qualified as a contravention. In 2017 the GPO issued an Ordinance of confiscation of luxury goods resulted from the respective activities and the proceeds were recovered to the State budget.

b) On 30.01.2017, the PCCOCS sent to the court a criminal case against to a natural person for attempt to commit smuggling of goods in the amount of EUR 30,000. On 01.10.2018 the Chisinău District Court issued a sentence of termination of the criminal proceeding without criminal conviction due to the decriminalisation of the criminal acts by the law (According to the new law, the acts were re-qualified as a contravention). By the same sentence the confiscation of the goods in the amount of EUR 30,000 EUR was ordered.

251. In addition, subject to special confiscation are goods held against the legal provisions (*weapons, drugs, radioactive substances, toxic substances, explosives, etc.*), regardless of the fact if the court has pronounced the condemning sentence or acquittal, or of the cessation of the criminal

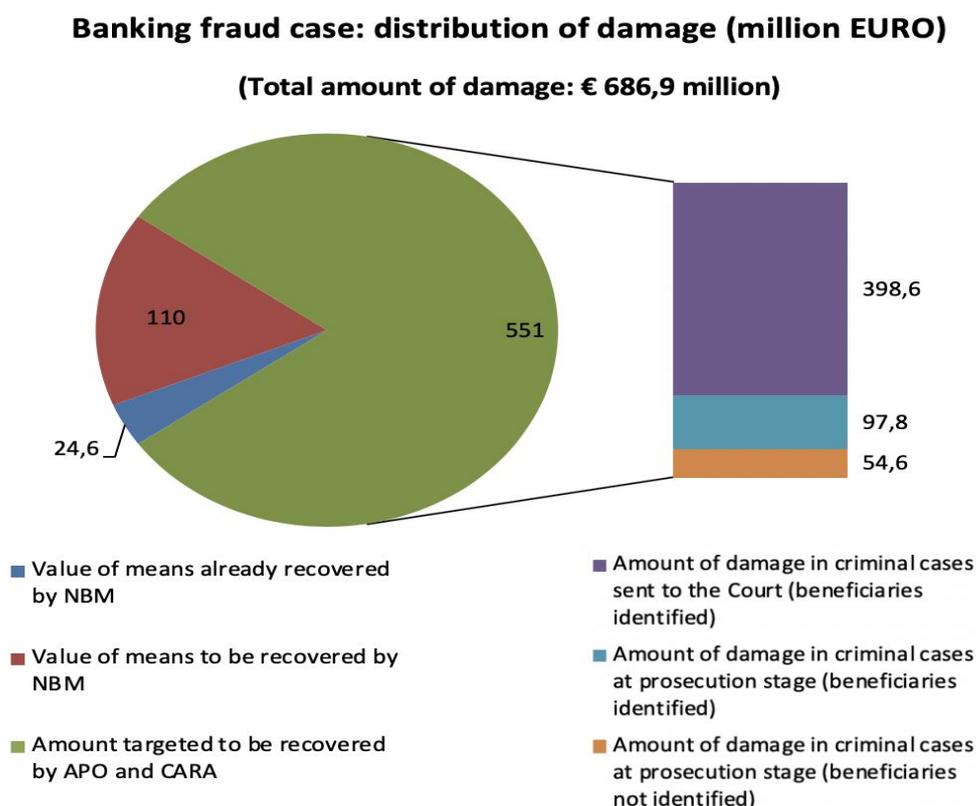
⁶² “Sechestrarea” = “Sequestration” in Romanian original.

proceedings. In this case, the special confiscation can be avoided only by proving that holder had a legal authorisation to possess these goods.

Table 37: Special confiscation for all offences

Year	Property sequestrated to guarantee the confiscation		Property confiscated		Property effectively recovered	
	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)
2013	3	32,500	21	131,931	128	93,966
2014	21	639,604	52	315,012	164	101,000
2015	17	10,635,270	53	391,541	163	264,508
2016	19	1,372,392	43	24,457,635	144	140,525
2017	77	10,737,580	140	853,875	82	1,002,583
10.2018	86	9,548,001	191	2,461,554	N/A	N/A
Total	223	32,965,347	500	28,611,548	681	1,508,709

Figure 2 The damage caused in the “Banking Fraud” case



252. The APO presented the figures related to the status of asset recovery process in the “Banking Fraud” case. The only amounts that have been actually recovered are the banks’ assets which the NBM liquidated to cover the loss, as an administrative act. About 58% of the total damage (EUR 398,6 million) are assets subject to Court procedure (on-going trial). Sequesters were applied on assets in amount of over EUR 77,765,711. This amount is not included in Table 37 above as it serves as restitution to victims. Approximately 8% of the total damage is subject to prosecution without the perpetrator being identified which demonstrates the ability of the authorities to apply special confiscation in the absence of a conviction (in rem). However, turning to assets actually recovered the results remain modest.

Provisional measures

253. Provisional measures may be ordered by the investigative judge. In case of sequestration, the investigators issue a sequestration ordinance to the prosecutor who subsequently submits the application for the authorisation to the investigative judge. The professionals met on-site maintained that in practice there are no difficulties in terms of obtaining swift sequestration approvals. There are no time limits set for provisional measures the limits are set in the context of the case by the Prosecution or Courts.

Box 8.2: Case of sequestration and confiscation of instrumentalities

In 2017 in a case prosecuted by PCCOSC the first instance court convicted a foreign citizen for committing a pimping offence to 4,5 years imprisonment and applied the special confiscation of some electronic devices (1 smartphone, 1 camera, 2 laptops, 1 hard disc) as instrumentalities of the crime and also the extended confiscation of goods (2 apartments, a plot of land, 2 cars) in the equivalent value of MDL 4,000,000 (EUR 200,000).

254. The Moldovan authorities do not keep statistics broken down on types of confiscations (laundered property, proceeds, instrumentalities...) achieved, but the on-site interviews confirmed that both proceeds of crime and instrumentalities are sequestered and confiscated in practice (see Box 8.2). Case examples show that property from foreign proceeds has been confiscated (see for instance Box 8.3).

Box 8.3: Confiscation in a ML case with foreign predicate (NAC)

The case against the natural person Mr SR was referred to court on 24.01.2018 for ML charges. S.R. was accused of ML in collusion with other person, who had known that obtained criminal financial means are from criminal activities. According to their agreement, in the period January – February 2009, aiming to disguise the nature and origin of the criminal money, SR received through a payment system from a foreign jurisdiction, on the name of vulnerable persons the total amount of USD 2,710 and EUR 2,699. Subsequently, SR transferred the money to another person. SR pleaded guilty and requested a simplified procedure before the court. By the sentence of the Chisinau District Court of 14.02.2018, SR was convicted of the ML offense and fined with EUR 1,500 and confiscation of the equivalent in MDL of the laundered proceeds.

255. According to the practitioners, confiscation of equivalent value is used, with the example in Box 8.4 provided. As an example the authorities presented one case of confiscation from a *mala fide* third party, as well as one case of confiscation of instrumentalities intended for use (see Box 7.4). There is no experience in the confiscation of co-mingled property. However, the practitioners were quick to point out that there is no impediment in doing so if the situation requires.

Box 8.4: Case of confiscation of equivalent value (APO)

The case is part of the “Banking Fraud” scheme. During 2012-2014, the non-resident company I.P.A, received USD 440,100 in its bank accounts opened in the country of residence, as a result of 14 transfers from the companies A, B and C. The BO and the manager of the non-resident company I.P.A. was the citizen of Moldova, ex-member of the Parliament. The transfers have been made on the basis of fictitious consulting services. Other similar operations have been done in a following a similar “modus operandi”. The source of money was loans obtained from loans guaranteed by one of the Moldovan commercial banks involved in the “Banking Fraud” scheme.

By decision of the Chisinau District Court of 04.04.2018, the defendant L.C. was found guilty of committing two ML offenses and convicted for 5 years 6 months of imprisonment, with the deprivation of the right to hold public positions for 4 years. The counter-values of USD 440,100 and EUR 278,242 were confiscated.

256. The Table 37 above as well as data related to restitution to victims measures (which are not included in the Table 37) provides a clear indication that the implementation of provisional measures and confiscation regime has improved considerably in Moldova, especially when compared to the situation at the time of the 4th Round MER in 2012. Looking at the whole amount of property sequestered and confiscated the figures indicate a rising trend, both in the number of cases as well as in the value of property confiscated. However, the overall results represent a mere fraction of the extent of proceeds-generating crime as resulting from the numbers of reported criminal offences and the number of convictions in the period under assessment for most significant proceeds generating crimes (robbery/theft, corruption/bribery and trafficking in human beings). Moreover, the results are substantially weaker when taking into account the numbers on property effectively recovered in the period under assessment. These outcomes therefore raise concerns over the consistency of the confiscation chain starting with provisional measures and ending with the final execution of a confiscation decision.

257. To that, the authorities argued that a significant part of the crime proceeds (especially in case of crimes as robbery and theft) is used to compensate the victims. In corruption cases a part of offenders are convicted only for pretending or for accepting bribes when the latter were not received, and in cases of illegal trafficking in narcotics, the most of the proceeds are destroyed. While partly accepting all these arguments, the AT is of the opinion that still an important part of the crime proceeds resulted from the most serious proceeds-generating offences is not entirely pursued. The authorities’ efforts should intensify in this regard, a more systematic approach to seizure and confiscation should be adopted and additional technical and human resources should be allocated to the area of financial investigations.

258. Proceeds located abroad can be sequestered and confiscated through international cooperation requests. The authorities provided two such examples both related to corruption cases. In the first case the goods (real estate) belonging to a high-level state official were sequestered abroad and a confiscation request was sent to the respective country once the Moldovan Court issued a conviction decision. In the second instance, bank accounts were sequestered abroad, the case being still in Court. Although the examples demonstrate that the legal system does not present any impediments to sequester and confiscate proceeds located abroad, and the authorities took some measures in this regard, the repatriation mechanisms have to be further developed, especially when considering the country risk and context, in which a vast majority of proceeds is kept/invested abroad.

Box 8.5: Proceeds located abroad

By the sentence of the Chisinau Court of Appeal from 2016, a high-level official was found guilty of committing passive corruption (the value of the illicit remuneration MDL 1.285.976 = EUR 65,770) and traffic of influence (the value of the illicit remuneration MDL 475.775.788 = EUR 24,332,500). The court convicted him for a final punishment of 9 years of imprisonment and a fine of 3.000 conventional units (the equivalent of MDL 60.000 = EUR 3,070) with depriving the right to occupy public positions for 5 years. By the first instance sentence and the decision of the Court of Appeal the confiscation of the equivalent of the illicit remunerations was disposed, including by capitalization of the sequestered goods within pre-trial criminal investigation: real estates, 4 vehicles (out of which one luxury car held by a third party, plots of land, parts of capitals and shares in resident and non-resident companies.

During the criminal investigation, the share of 95.37% of the joint stock company "KIC" SA, registered in Romania, was sequestered with the value of the equivalent of EUR 58,627, held directly by the convicted person. On the basis of a MLA request of 30.10.2015, the Romanian authorities applied the sequestration on the property mentioned above. The confiscation of the equivalent of proceeds of crime (including the shares and the cars) is in process of the execution.

Extended confiscation

259. For the application of extended confiscation, a conviction is required for a list of criminal offences, among which are ML, establishing or leading a criminal organisation, and corruption-related offences. The AT was informed that in cases where a significant discrepancy is noted – by way of a financial investigation - between the declared (legitimate) income and the persons' assets and life-style, the unjustified wealth can be subject to extended confiscation. In this case, the CC additionally requires that - for five years prior and after the commission of the offence - the value of the respective assets to substantially exceed the income legally obtained. The court must also apply the extended confiscation to the assets transferred to third parties who knew or should have known about the illegal acquisition of the assets and to corresponding value as described under R4 in the TCA.

Box 8.6: Case of extended confiscation APO

In a case of passive corruption committed by a secretary of the municipal council, the defendant was sentenced to 2 years 2 months of imprisonment, suspended conditionally for 1 year of probationary period, with a fine in the amount of EUR 8,000, and the deprivation of the right to hold public functions and public-dignity functions for a period of 5 years and 1 month. The Court also ordered the special confiscation of USD 2,000 and EUR 1,750 as property resulting from the offense for which the perpetrator was convicted and the extended confiscation of USD 2,300 and EUR 7,640 was applied. The sentence was not appealed and the confiscation of the entire sum was executed.

260. In practice and in line with the instructions provided to the prosecutors by the "PG Guidelines on confiscation", specific financial investigations should be carried out to administer evidence and complement the other probationary elements. Such financial investigations have a large area of coverage and are based on two complementary actions: establishing the "flow" (tracing the proceeds of crime), and the "inventory" (identification of any goods owned by the suspected persons).

261. The "PG Guidelines on confiscation" introduces the concept of "financial profile" of the suspect with a view to determine the possible discrepancies between legal income and unjustified wealth which might be subject to extended confiscation. In the course of the financial investigations,

the prosecution must *i.a.* verify the revenue obtained by the prosecuted person, including family members, establish the money flow in their banking accounts, verify the declaration of assets in case of civil servants etc.... During the interviews the prosecutors (APO and PCCOCS) maintained that they do verify the legal revenues versus the properties and other assets hold by the suspects by checking databases and by using special investigative techniques. The AT was provided with an example of a case where a suspect (a judge) lived in a luxury house (he was the beneficial owner) registered on someone else name and the prosecution demonstrated that that person did not have the legal resources to justify the acquisition of such a property. The authorities confirmed that the case is under trial with illegal enrichment and corruption charges and EUR 12,500 and a luxury car of about EUR 23.000 were sequestered.

262. Although the mechanisms to apply extended confiscation do exist and the prosecutors meet on-site demonstrated sufficient awareness on its application, the results are not substantial. There were no assets forfeited based on the extended confiscation regime before 2017. The authorities explained that this was due to the Constitutional Court Decision 6/16 April 2017, stating that the extended confiscation shall be applied together with convictions for offences committed and to assets acquired after 25 February 2014, when the provision came into force. Convictions for offences committed in 2015-2016 started to be issued in 2017 and applied only to assets acquired after 25 February 2014.

263. In 2017, there were six cases altogether where extended confiscation was applied (see Table 38 below), amounting to EUR 72,515. There were no statistics on the amount of the property that was effectively recovered by the time of the on-site visit but the authorities maintained that in the case of extended confiscation presented in the box above, the entire sum was actually recovered. These rather modest figures indicate the issues with implementing the extended confiscation regime.

Table 38: Extended confiscation in 2017 (no extended confiscation case in 2018)

Criminal offence	Value (EURO)	Number of cases
Corruption	9,825	2
Sexual exploitation	57,110	1
Illicit drug trafficking	5,580	3

Blocking funds

264. The FIU has the power to block funds for five days. This power has been practically applied between 2013 and 2017, as visualised in the table below but the results in term of confiscated value are very limited.

Table 39: Postponement to confiscation

Year	Number of postponement orders issued by FIU to suspend transactions/block account	Number of cases where a prosecution /indictment was initiated	Convictions and confiscation	
			Cases	Amount (in EUR)
2013	154	1	N/A	N/A
2014	241	12	1	97.933
2015	84	7	2	N/A
2016	144	N/A	N/A	N/A
2017	34	N/A	N/A	N/A
10.2018	8	N/A	N/A	N/A

Voluntary payments to the state budget

265. The voluntary payments are part of the simplified procedures which for the offender entail admitting the guilt and restitution of damage. Through this system the accused has the minimum and maximum penalties reduced. Since 1 August 2016 until 1 October 2018, the newly created PCCOCS reported to have successfully retrieved to the state budget the total amount of 285,882,496 MDL (over EUR 14,000,000). These recovered financial means are due to voluntary payments to the state budget by the perpetrators for recovering the damage caused by ML and predicate offenses, as well as the collection of damages through court decisions. Out of this amount, in 2017 and 2018 (until October 1) a total of 99,242,236 MDL (EUR 4,962,100) was reimbursed in the interest of the State based on Court decision for tax evasion, smuggling and ML.

266. After the on-site visit, the AT was provided with a different set of data (see Table 40 below) which includes data on sequestrations for restitution to victims.

Table 40: Value of sequestrated good vs. damage caused by crimes⁶³⁶⁴

Damage caused by crime (total)		
2016	EUR 1,610,531,670	EUR 501,593,882
2017	EUR 2,196,381,385	EUR 768,595,303
Value of sequestrated goods (total)	Criminal Investigation Body	Prosecution
2016	EUR 140,788,524	EUR 6,400,699
2017	EUR 17,368,192	EUR 40,511,356

CARA

267. In the course of parallel financial investigations, the Police gather evidence on the proceeds of the crime and other assets subject to confiscation. In certain cases (as described in the introductory part of the analysis under IO.8) the criminal investigative body can delegate the CARA to conduction parallel financial investigations to identify and trace criminal assets, and to accumulate evidence about the assets and their availability. Instructions on performing parallel financial investigations were issued by the GPO and are compulsory to all prosecution offices (see analysis under IO.7).

268. Although the CARA became operational only in January 2018, some visible results were presented to the evaluation team. From January to September 2018, a variety of assets with a total value of 111,383,744 MDL (EUR 5,711,271) was sequestrated. To perform their duties, CARA has access to all relevant data bases.

Table 41: Amounts sequestrated by CARA January -September 2018

Amounts (MLD)	Amounts (EURO)	Offence
241,883	12,453	ML
3,031,462	156,082	Smuggling
1,410,755	72,636	Passive corruption
970,258	49,956	Abuse of power or excess of official authority
6,386,106	328,804	Abuse of official positions
742,907	38,250	Fraud

⁶³ GPO Reports 2016, 2017

⁶⁴ The estimations are made annually, hence no numbers were available for 2018

893,455	46,001	Fraud, Appropriation of another person's property, Abuse of official authority
1,147,525	59,083	Illegal circulation of narcotic for the purpose of alienation
8,006,277	412,222	Illegal circulation of narcotic for the purpose of alienation, ML, Smuggling, Creating or leading a criminal organisation
29,868,658	1,537,861	Violation of crediting rules, Fraud
760,076	39,134	ML
4,593,878	236,527	Smuggling, Active corruption, Excess of power or excess of official authority
5,285,510	272,137	Passive corruption
608,919	31,351	Passive corruption, Active corruption, Influence Peddling
4,536,633	233,579	Passive corruption, Active corruption, Abuse of power or excess of official authority
1,823,477	93,886	Passive corruption, Influence Peddling
8,845,444	455,429	Passive corruption, Abuse of power or excess of official authority
10,527,956	542,057	Passive corruption, False accounting documents, Fraud
3,703,760	190,697	Influence Peddling
96,558	4,971	Abuse of power or excess of official authority
17,902,239	921,741	Excess of power or excess of official authority
Total: 111,383,744	Total: 5,734,867	

Table 42: Number of seized goods by CARA January -September 2018

Types of goods	Number
Stock packages (103 422 shares)	6
Social capital	7
Agro-industrial construction	8
Residential building	55
Non-residential building	29
Bank account	33
Private use real estate (apartments)	48
Commercial use real estate	4
Cash	28
Crypto currency generation system	320
Agricultural land	564
Land for construction	50
Agricultural machinery	2
Means of transport	75
Total	1,229

Provisional measures and confiscation in case of foreign predicates

269. The same procedure applies in case of proceeds from crimes committed abroad. Several such examples were presented to the AT during the on-site interviews. Provisional measures can and are instituted in the context of rogatory letters received from external partners (see also analysis under IO.2) and in case of joint investigations (see also IO.7). When requiring assistance from abroad some difficulties have been encountered such as absence of responses or delayed responses to requests submitted to foreign jurisdictions (the “Global Laundromat” was such an example).

270. The Moldovan authorities indicated that they have had no experience of enforcing a Moldovan confiscation order abroad. On assets sharing with foreign authorities and returning assets found in Moldova, the authorities presented the AT with a case from 2013 where APO, seized in a ML case 47 computers which were returned to USA which requested them for compensating the victims of a cyber-fraud offence. However, in the absence of more examples it seems that the authorities do not routinely use all the available legal instruments to recover the proceeds of crimes located abroad. In case of THB the prosecution claimed that since the illegal income is obtained outside the country (from the exploitation of the victim), the money obtained never reach the territory of Moldova and hence it cannot be recovered.

Box 8.7: Seizure and confiscation of corruption proceeds, including assets located abroad.

In 2015 a criminal case was initiated against an ex PM on trafficking in influence and passive corruption charges.

a) Trafficking in influence: during his mandate (2013-2014) claiming to have influence on public officials within the Government of Moldova and other public institutions, the PM demanded and received, personally and through intermediaries, money, services (air transport, hotel services) and other luxury goods. The money was transferred to bank accounts of non-resident companies whose beneficiary he was. The luxury goods consisted in cars and expensive watches. The total value of assets identified as proceeds from trafficking in influence was of MDL 475,775,788 = EUR 24,332,500.

b) Passive corruption: in the same period, the PM demanded, extorted and received a luxury car in the value of MDL 1.285.976 = EUR 65,770 for using his power and influence in the management of a Moldovan commercial bank (BEM), where the state held at that time 56.13% of shares. The management decisions were made in favour of one company (owned and controlled by the briber) who unjustly benefitted from BEM funds.

During the criminal investigation, provisional measures were applied on different types of assets held by the offender and third parties in Moldova and abroad. A total of 95.37% of the shares of the joint stock company "KIC" SA (with a value of EUR 58,627), held by the offender and registered in Romania, was sequestered. On the basis of a MLA request of 30.10.2015, the Romanian authorities enforced the sequestration of the property.

By the sentence of the Chisinau District Court of 27.06.2016, and the subsequent decision of the Chisinau Court of Appeal of 11.11.2016, ex-PM was found guilty of both offences.

The court convicted him to 9 years of imprisonment and a fine of approximately EUR 3,070 with deprivation of the right to hold public positions for 5 years and withdrawal of the state honour "The Order of the Republic".

The confiscation of the equivalent value of EUR 24,400,000 was ordered by the court, This amount included the sequestered goods within the pre-trial criminal investigation: i) real estates, ii) 4 cars held by third parties, iii) plots of land, iv) parts of statutory social capitals and shares in resident and non-resident (joint stock company "KIC" SA, registered in Romania) companies.

The recovery of the equivalent value of proceeds (including the shares and the cars) is in process of the execution.

At the time of on-site visit there was an on-going ML investigation regarding some of the assets originated from the offences above.

271. There is a universal understanding that property as defined in the CC covers all types of property listed in the FATF Methodology, including virtual currencies, which are considered to carry economic value rather than simply constituting electronic data.

272. The confiscated assets remain under the responsibility of the Court. In the absence of a specialised and centralised asset management system, both the STS and the bailiffs have acquired competences with the confiscated assets. In addition, during the sequestration procedure, the immediate disposal of assets can be ordered even before the decision on the confiscation of assets is final. This is to preserve the value of the seized assets. In exceptional cases, this may be applied even without the owner's consent. The valuation, management and capitalisation of criminal assets is ensured by the CARA under the requirements of the CPC and Government Decision 684/2018 (which entered into force in the last day of the on-site visit).

273. The role of the bailiffs in the confiscation process is to take over the confiscated goods or financial assets. They draft the protocol for transmittance of the assets to the STS and report to the court that the case was finalised. The procedure is set out by Governmental Decision 972/2001, as well as in the procedures for taking over assets for their transmittance towards the STS.

274. The STS manages assets for which a judgement is final. The system of asset management is based on Government Decision 972/2001, which contains detailed rules on the disposal of assets. Certain assets, once confiscated, go to the state reserves (e.g. petrol, gas, timber, real estate, etc.), others are disposed of (e.g. tobacco) and some assets are transferred for free to the local authorities where the asset is located (e.g. land, real estate). Other goods are sent to the national museums (assets with historical or scientific value). The rest of the assets is sold on the domestic market: i) through a sales contract concluded directly with the buyer, who submitted his offer; ii) through a commission contract, by which the STS contacts a company that is selling similar assets and once sold the money is transferred into the state budget; or iii) through a tender if they have two or more potential buyers. The gains from sold assets are placed into a general treasury account of the state. It is up to the STS to also value the confiscated assets. When they register these confiscated assets, they are taken over from the criminal proceeding body or from the court.

275. Newly created CARA is assigned with competence in the evaluation, administration and disposal of the criminal assets sequestered and due to the setting of this agency with a law enforcement body, it can be concluded that the legal and institutional framework potentially provides the necessary tools for the efficient administration and disposal of seized assets. Nevertheless, in practice some challenges have been faced by the current asset management system especially in relation to new types of proceeds like virtual currencies⁶⁵. In one case CARA had to manage 320 systems generating virtual currencies (Bitcoin miners). For the disposal of these systems conformity and safety certificates had to be acquired. In addition, there were issues with establishing the value of the assets that was decreasing. Another potential topic raised was the disposal of crypto-currencies which is not stipulated in the law⁶⁶. Further significant issue the authorities are faced with was related to establishing the value of real estate property since available cadastral information is out-dated (latest assessment dates of 2004).

276. The CARA has the possibility to outsource specialised persons or companies to ensure the most effective performance of the duties of valuation and management of seized criminal assets.

⁶⁵ In order to overcome the deficiencies in assessing the assets needed to be disposed, in July and September 2018 CARA hired two specialists in goods assessment.

⁶⁶ The Government Decision no. 684 of 11 July 2018, entered into force after the on-site visit, stipulates that the seized electronic currency held in the country and abroad shall be converted into national currency or in convertible foreign currency, as the case may be, through authorised national and / or international legal entities, being subsequently transferred to treasury accounts managed by the CARA. The Government Decision entered into force on 12 October 2018.

Services of these experts are ensured from the budget of the NAC. Other authorities (MoF and STS), which are involved in the process of asset management, do not apply this possibility. The current system does not appear to be value-based and as a consequence does not appear to be the most cost-effective. After all it is the efficiency of the asset-depriving system that encourages investigators to pursue complex property. This could be resolved through the effective application of the asset management powers acquired by CARA through the GD 684/2018 which entered into force during the on-site (and hence the AT couldn't evaluate to any extent its application in practice).

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

277. For the transportation of cash and bearer negotiable instruments (BNIs), Moldova has introduced a declaration system for sums exceeding EUR 10,000. The import and the export of cash (in national or foreign currency), as well as traveller's checks by way of parcels is not allowed. Transporting cash in foreign and national currency into or out Moldova via international postal services is allowed only for numismatic purposes and under certain limitations. Customs has the right to obtain from the traveller additional information about the origin of the cross-border transported goods, their destination, and the identity and address of their owner when the goods do not belong to the traveller. Since September 2018 the Customs has the additional right to request the information on the origin of money and the purpose of bringing money to and exiting from Moldova. This information is automatically received by the SPCML in electronic form (See also IO.6). Controls are in place at the airport and border-crossings, which are executed by the customs units⁶⁷. These units have the power to search the persons and the vehicles and then report to the police any suspicion with regard to cash or BNI transportation. Customs officers have the power to restrain the currency (in case of sums subject to declaration, the entire amount shall be sequestered, not only the part exceeding the threshold), including the vehicle with which the items were transported.

278. Based on an inter-institutional agreement between the CS and the FIU, the FIU has 24/7 access to the customs declaration. The CS is obliged to inform the FIU through official letters, once per month, about the currency entering/exiting the country.

279. Customs officers have the competence under the Customs Code to restrain the money which has not been declared. In case of false declaration about amount of currency, persons are subject of criminal sanctions (if the amount is greater than MDL 615,000 – EUR 30,750) or contraventions for lesser amounts. The Customs Fraud Investigations Department (CFID) is charged with the restraining (seizure) measures before the penal case is started. The activity of the CFID is regulated by the Regulation on the organisation and functioning of the Customs Fraud Investigation Division from 2016 which contains specific provisions interpreting the general provisions from the Customs Code, and empowers the customs inspector to restrain the goods or the currency.

Box 8.8: Typology of un-declared cash at the border identified through international co-operation

In December 2017-January 2018 there was a joint operation organised with the Russian Customs Authority. Through international cooperation were some un-declared cash at the border was identified. The lack of declaration was caused generally by the fact that the person was unaware of

⁶⁷ Between the Transnistrian region and effectively controlled territory of the RM, Customs Service established crossing points in order to ensure customs controls of the natural and legal persons and of the goods into or from the territory of the RM.

the declaration obligations or because they trying to avoid the taxations. The persons had been working abroad and brought the money into the country for their personal needs. Through international cooperation, the Moldovan authorities already knew that the respective individuals were carrying cash at the border.

280. In certain cases of non-declared cash, the Customs inspectors may restrain other objects than the actual money (such as vehicles) when there are clear indications that the object was used purposively to hide/disguise the respective currency. A case example of a restrained vehicle in 2016 was provided during the on-site interviews.

Box 8.9: Typologies of un-declared cash at the border

In general, the cases of non-declared cash pertain to the incoming/outgoing of amounts of about EUR 20,000-30,000. Following investigations performed by the Customs Authority it resulted that the money was introduced in Moldova to pay for the tuition fees of a university of medicine. The person had a legal activity in Israel and their children were studying in Moldova. In another case the person was leaving Moldova carrying EUR 60,000 in cash for the purpose of buying an apartment in Romania. The family had legal activity in Moldova therefore the sum was justified. According to the authorities in 90% of the cases, people either unaware or not understand the declaration obligations properly.

281. In case there are indications that the cash smuggling involves sums amounting to MDL 2,500,000 (approx. EUR 125,000) or more, the criminal investigation is carried out by the specialised prosecution service only (PCCOCS). The authorities informed the AT on-site that on average, 7 criminal cases were initiated each year on smuggling in currency, but the amounts are not significant.

282. Statistics on assets restrained due to unlawful cross-border transportation of cash are illustrated in the table below. However, very few of the cases have led to ML/FT investigation. Some sentences have been achieved and the respective amounts confiscated. Given that smuggling is identified as one of the major ML risks in Moldova, the limited results achieved on cash smuggling cases raises concerns.

Box 8.10: on-going ML investigation on cash smuggling

During the on-site visit PCCOCS mentioned an on-going ML investigation linked to cigarettes smuggling that have occurred in Romania and Bulgaria. The proceeds of crimes (about EUR 410,000) committed abroad were introduced in Moldova through smuggling and used for acquiring of assets. The investigation started for ML offence and later also for smuggling with cash. A tripartite JIT has been constituted in 2018 and the criminal scheme is under on-going investigation in all three states. No results in terms of convictions or confiscations in this case have yet been achieved.

283. The authorities explained that the customs frauds related to undeclared currency were identified based on tactical risk analysis which included information obtained from neighbouring states (especially Ukraine and Romania). According to the Custom’s data, in the period 2015-2018 the most cases of non-declaration were found in the airport as demonstrated by Table 43 below.

Table 43: Customs frauds related to undeclared currency

Year	Terrestrial border	Airport	Luggage	Specially arranged place
2015	2	1	1	2

2016	2	4	5	1
2017	5	4	9	0
10.2018	2	4	5	1

284. As a rule, the undeclared currency was identified both in specially arranged places and in the luggage of the citizens, or in specially arranged places. The largest amount seized in these cases amounted to USD 185,000 in 2015 at a terrestrial customs post, the currency being found in several plastic bags hidden in the car.

Table 44: Cross border transportation of currency and bearer negotiable instruments

Year	Number of declarations or disclosures				Suspicious cross border incidents			Assets restrained (EUR)	Assets confiscated (EUR)
	Incoming		Outgoing		ML Suspicions	FT Suspicions	False declarations		
	Currency	BNI	Currency	BNI					
2013	7,470	0	0	0	0	0	3 (1-incoming 2-outgoing)	105,000	13,000 (one sentence)
2014	7,799	0	43	0	0	0	1 (incoming)	117,600	21,000 (one sentence)
2015	8,114	0	89	0	0	0	3 (2- incoming 1-outgoing)	230,000	45,000 (two sentences)
2016	4,397	0	82	0	0	0	6 (2- incoming 4-outgoing)	244,000	11,750 (one sentence)
2017	2,044	0	90	0	0	0	9 (6- incoming 3-outgoing)	208,000	46,350 four sentences)
10.2018	1,687	0	59	0	2	0	6	255,000	56,000 (one sentence)

285. The cases and sums restrained at the border include both false declarations and non-declarations as the Moldovan authorities do not keep separated statistics. No information on confiscations in this regard has been provided to the AT. The constant drop in the number of cross-border declarations is explained under IO.6.

286. These figures show a low number of Customs actions in cross-border cash control. There is a negligible number of false declarations detected and the total volume of restrained assets is also very low, particularly if divided by the number of cases. Although the authorities demonstrated with examples that in some instances investigations have been carried out, the results do not match the risk profile of the country. The number of false declarations increases by 33% every year but the figures are still low which demonstrate a moderate effectiveness by the Customs in this field.

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

287. Data provided by the authorities concerning confiscated proceeds are generally consistent with the identified risks and envisaged policies and priorities. Statistics indicate that from January to October 2018 a variety of assets with a total value of MDL 106,382,720 (EUR 5,449,455) have been sequestrated largely in relation to the violation of crediting rules and fraud, excess of official

authority, passive corruption and smuggling. Yet, the amount of assets confiscated in relation to ML, smuggling and THB remains rather low. The quality of implementation of confiscation mechanisms over the last five years shows an overall positive trend. Both the number of cases as well as the value of property confiscated has improved considerably. Nonetheless, the overall absolute numbers are low in comparison to the actual extent of proceeds-generating crime in Moldova. Significant lacunae exist with regard to the application of extended confiscations, the enforcement of confiscation orders abroad and in relation to cross-border transactions of currency.

288. Information provided by the authorities suggests that generally proceeds are sequestered in line with the predicate crimes identified as higher risk, and in line with the country's NRA, policies and priorities. Policy measures aimed at enhancing the illegal assets recovery regime originating from the afore-mentioned crimes have been established by the authorities as described under Core Issue 8.1. For instance, a significant volume of assets has been sequestered over a five-year period (over EUR 20 million) in relation to ML, corruption and tax offences, which constitute the highest threats in the country. There has not been progress in relation to corruption offences, in terms confiscation. It is also very positive that Moldova makes efforts to keep up with developing technologies, such as virtual currencies, which constitutes an emerging risk. However, the results in relation to actual confiscation are still rather modest and further efforts are needed in relation to ML and all proceeds-generating crimes and confiscation of cash at the borders.

Table 45: Value of sequestered and confiscated property disaggregated by criminal offences

2013-2017 ⁶⁸						
Offence	Property sequestered		Property confiscated		Property effectively recovered	
	Cases	Amount (EUR)	Cases	Amount (EUR)	Cases	Amount (EUR)
Money laundering	12	10,287,064				
Terrorism, including FT	1	4,000				
Participation in an organised criminal group and racketeering	1	375,000			1	2,910
Trafficking in human beings and migrant smuggling	17	382,145	2	15,145		
Sexual exploitation, including of children	10	658,630	20	188,624		
Illicit trafficking in narcotic drugs and psychotropic substances	9	91,630	32	44,773	42	4,013
Illicit arms trafficking			4	655		
Illicit trafficking in stolen and other goods			1	440		
Corruption and bribery	32	7,198,613	110	24,342,652	274	1,102,645
Fraud	2	77,750	1	2,033	4	2,370
Counterfeiting currency			1	2,758		
Environmental crime	2	5,200	2	550	1	2,740
Murder, grievous bodily injury	2	16,500	1	1,500		
Kidnapping, illegal restraint and hostage-taking	1	1,575	1	1,575		

⁶⁸ The statistics are kept yearly, hence no numbers were available for 2018

Robbery or theft	10	45,570	14	12,475	5	976
Smuggling (including in relation to customs and excise duties and taxes)	17	637,414	101	1,787,404	27	48,328
Tax crimes (related to direct and indirect taxes)	13	2,954,065	12	160,297		
Extortion			5	4,722	2	410
Forgery	7	56,725	2	8,540	2	125
Other: Please Specify					296	438,065

289. As it results from the table above, apart from the voluntary payments to the state budget in ML cases (as described under CI 8.2), the authorities did not report any ML confiscations, which is an area for concern. Nevertheless, after the on-site visit, one of the specialised prosecution offices (PCCOCS) provided statistics on the ML cases and related offenses sent to the court, with a total value of the financial means object of laundering (damage) amounting to MDL 159,521,982 (approx. EUR 8,000,000). Within the criminal prosecution cars, real estate, land, material goods, bank accounts, financial means in the total amount of MDL 86,007,107 (EUR 4,300,000) were sequestered and MDL 53,992,698 (EUR 2,700,000) were recovered to the state budget through voluntary payments by the perpetrators for the recovery of the damage caused by ML and predicate offenses. The discrepancies between various statistics kept by the Moldovan authorities make it difficult for the AT to accurately assess effectiveness.

Overall Conclusion

290. **Overall Moldova achieved Moderate level of effectiveness for Immediate Outcome 8.**

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key findings

Immediate Outcome 9

a) The NRA recognises the FT threat as low and perceives its territory not as a target area for terrorist attacks. No STRs relating to FT have been filed by REs and no foreign MLA requests relating to FT were received. The competent authorities (SIS and PCCOCS) demonstrated a correct understanding of FT risks and have broad powers to obtain financial intelligence and other information required for FT.

b) There have been two terrorism-related cases which led to convictions, as well as FTFs trying to travel through the country but no FT aspect has been identified during the parallel financial investigations. In response to the inherent FTFs threat, Moldovan authorities have set up a specialised enforcement unit which led to the identification of FTFs trying to transit through the country; as a result, the majority of these travellers were not allowed entry into Moldova.

c) The main authority in identifying FT is the SIS, which co-ordinates the information exchange with foreign partners. Since 2016 the PCCOCS is the prosecutorial body in charge for FT. Two FT investigations were conducted (under prosecutor's supervision) but since no FT element was found, no prosecution was initiated and no sanctions have been applied for the FT offence. This is consistent with the country's risk profile. One of these investigations demonstrates the authorities' capacity to detect potential FT in cases which are not related to terrorism or FT from the very beginning.

d) Domestic and international co-operation between relevant authorities (i.e. SIS, CS, PCCOCS) was established in the course of terrorism and FT investigations. The authorities did not encounter any hinder to retrieve and analyse (financial) information in the course of FT-related investigations. They sought to identify the role and sources of money of the potential terrorist financier.

e) The National Action Plan for 2017-2019 outlines actions for combating FT, and sets the FT risk mitigation measures. The National Security Strategy includes combating FT as one of three counter-terrorism priorities.

f) Alternative measures have been applied to disrupt FT, such as expulsion, non-admission and deportation.

Immediate Outcome 10

a) Moldova implements TFS pursuant to UNSCR 1267 and its successor resolutions without delay through the AML/CFT Law and Law no. 120 "on prevention and combating terrorism establishing mechanisms for implementation of the UNSCRs" (hereafter Law no. 120). No assets have been frozen pursuant to UNSCRs.

b) The SIS may (although there is no explicit legal provision) designate persons and entities as a terrorist or terrorist organisation pursuant to UNSCR 1373. By the time of the on-site visit, Moldova had not made any designation and had not requested other countries to give effect to the actions initiated under freezing mechanisms as there were no cases which would meet the designation criteria.

c) Moldovan authorities made important changes to the legal framework governing TFS, however technical deficiencies remain (see R.6), which hamper effectiveness of Moldova's compliance with TFS.

d) The mechanism in place ensure that any changes in the UN sanctions lists are automatically in effect and assets owned or controlled by the designated persons and entities are to be frozen immediately. Information on UNSC lists, including updates, are communicated to the REs without delay by publication of the relevant information on the SIS and the SPCML websites. The FIs supervisory authorities communicate the updates directly to the entities under their remit.

e) The FIs and DNFBPs interviewed on-site were generally aware of the UNSC sanctions regimes. FIs demonstrated a moderately effective application of their obligations regarding implementation of FT TFS, while some of the DNFBPs claimed that only foreign names considered as suspicious would be examined and the UNSC up-dates are checked occasionally through the SIS website.

f) The majority of banks interviewed have FT-related UN sanctions lists integrated in their software systems and screen automatically all new customers and parties in transactions. Other FIs and DNFBPs rely mostly on the information published on the SIS and SPCML websites. However, there are some concerns in the implementation of TFS: timeframes for applying checks on existing customers range from one week to one year; insufficient efforts are made to identify funds indirectly controlled by UN designated persons or to uncover other forms of TFS evasion through transactional analysis; some smaller banks and non-bank FIs do not apply TFS screening to BOs or counterparties in transactions (see IO.4).

g) In case of a match with one person or entity on the sanctions list, REs are obliged to apply immediately restrictive measures, and to refrain from performing any transaction in the favour or benefit, directly and indirectly, of the listed persons or for the benefit of LEs owned or controlled, directly and indirectly by listed individuals. The freezing measure is maintained for an undetermined period and the relevant decisions are communicated within 24 hours to the SPCML, which would communicate it within 24 hours to the SIS. These powers have never been exercised in practice as there were no relevant cases.

h) Some guidance has been issued by supervisory authorities on FT TFS. Trainings are mostly offered to the banking sector and seem not to be sufficiently covering the TFS issues.

i) There are no publicly known procedures in place for considering de-listing of the entities and/or persons that no longer meet the criteria for designation.

j) Compliance with FT TFS is checked by NBM as part of the regular monitoring process of the banks. Other sectors have not been supervised in relation to FT TFS.

k) Moldova has not formally identified the types of NPOs which are vulnerable to FT abuse.⁶⁹ However, the authorities have identified a certain number of NPOs which might be risky from the FT perspective which are under the SIS radar. Some guidance to NPO sector has been provided on the FT risk of abuse. There are no specific guidelines to REs in relation to the monitoring process of the transactions involving NPOs posing a higher risk of being misused for FT purposes.

Immediate Outcome 11

⁶⁹ A study on the NPO was completed and approved in November 2018 (after the on-site visit).

a) The concept of prevention and combating proliferation of weapons of mass destruction (WMD) is only regulated by the AML/CFT Law, and is therefore recent. The procedures for the implementation of TFS related to proliferation financing (PF) are similar to TFS for FT, as described under IO10. However, in the legislation the references to PF are not sufficiently clear, which may impede the enforceability and application of the legal provisions in practice. There is still a lack of comprehensive regulations and mechanisms on PF-TFS. The existing mechanisms in place for PF-TFS are not sufficiently effective to prevent the designated individuals and entities from raising, moving and using funds or other assets for PF.

b) Up to date, no case has been registered related to the PF UNSCRs. Authorities investigated several cases of smuggling with radioactive substances, dismantled criminal organisations involved in PF activities and prevented the usage of radioactive materials and dual-use goods on its territory, but no PF aspect was identified in these cases.

c) Authorities with competences in the export and import of strategic goods are co-operating to prevent the entrance, transit or exiting of such in or from the territory of Moldova. The SPCML is not involved in this process and thus the evaluation team is of the opinion that the financing of proliferation may not be sufficiently effective when it comes to financial information exchange to identify persons and entities involved in proliferation of WMD.

d) Overall, there is little awareness on the differences between FT and PF-sanctions lists among the REs and their supervisory authorities. The financial sector and related supervisory authorities demonstrated some understanding in relation to their obligations under the UNSCRs, as well as the necessary steps to be taken to apply the relevant mechanisms. However, a lack of guidance suggests that PF is not considered a serious concern among FIs.

e) DNFBPs demonstrated basic understanding of the UNSCRs as well as their obligations resulting from the implementation thereof at the domestic level. Actions taken by the DNFBPs related only to a general screening of customers against the lists of designated individuals and entities which did not extend to identifying difficult company structures. They did not receive specific guidance or trainings on PF.

f) Compliance with TFS relating to PF is part of the regular monitoring process of FIs and DNFBPs. No specific procedures exist for supervisory actions on PF-compliance and no thematic inspections have taken place. So far, no cases of breaches of compliance with the obligations by REs were identified.

Recommended actions

Immediate Outcome 9

Moldova should:

a) Continue to conduct parallel financial investigations during criminal investigations into terrorism and FT, during which the authorities should seek not only to uncover the role of the potential terrorist financier, but also to identify the assets and the sources of money and non-monetary FT aspects.

b) Remedy the minor technical deficiencies identified under Recommendation 5.

c) Continue enhancing knowledge of investigators and prosecutors - other than SIS - on the possible FT aspect that could be detected in relation to all range of offences.

d) Continually re-evaluate the risk level for FT activities (particularly in the context of Moldova being a transit country for FTFs) and inform competent authorities and reporting entities accordingly.

Immediate Outcome 10

Moldova should:

a) Address the technical deficiencies in the legislation including by harmonising the provisions of the Law 25/2016 with the AML/CFT Law on the timeliness of the application of the restrictive measures. (see Technical Compliance Annex on R.6 and R8);

b) Provide adequate training on implementation of FT TFS for the supervisory authorities and REs, with special focus on DNFPB sector;

c) Enhance supervision and monitoring of REs in relation to their compliance with FT TFS regime and collect statistics on relevant supervisory actions and measures imposed;

d) Enhance coordination between competent authorities (the SIS, SPCML and MFAIE) and supervisory authorities with the aim to enhance the capacity of identifying potential individual and entities that meet the criteria for listing under UNSCR regime (e.g. the authorities may consider creating relevant permanent coordinating body comprising the relevant authorities);

e) To conduct a thorough assessment to identify the types of NPOs which are vulnerable to FT abuse, and to continuously monitor the NPO sector;

f) Provide specific guidelines to REs in relation to the monitoring process of the transactions involving NPOs posing a higher risk of being misused for FT purposes.

Immediate Outcome 11

a) The authorities should streamline the AML/CFT Law and Law no. 25/2016 on the application of restrictive measures so as to provide for a more clear legal basis for preventing PF, and they should address the identified technical deficiencies in the legislation.

b) Supervisory authorities should allocate adequate resources and give priority to PF-related TFS compliance supervision, and introduce thematic monitoring on the topic of PF.

c) The SIS and SPCML should make clear reference on their websites to the relevant PF-UNSCRs, including the latest amendments. They may consider providing an explanation of the changes each time an amendment is published.

d) Authorities should increase outreach to and provide training for supervisory authorities and reporting entities, in particular the DNFBP sector, on the implementation of the PF-TFS regime and the obligations related hereto.

e) Supervisory authorities should enhance monitoring of reporting entities in relation to their compliance to the PF-TFS regime, and should consider maintaining relevant statistics on supervision actions and measures imposed.

f) The authorities should evaluate the possibility to include the SPCML as a member of the Interdepartmental Committee for Control of Exports, Re-export, Import and Transit of Strategic Goods, in order to more effectively prevent and combat PF of WMD.

291. The relevant Immediate Outcomes considered and assessed in this chapter are IO9-11. The recommendations relevant for the assessment of effectiveness under this section are R.5-8.

Immediate Outcome 9 (FT investigations and prosecutions)

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

292. The NRA recognises the FT threat as low and perceives the Moldovan territory not as a target area for terrorist attacks. In particular, no activities of radical Islamist terrorist organisations have been detected. The NRA signals a potential risk by way of country's transit geographical position, for FTFs passing through Moldova and the flow of foreign citizens from high-risk zones. The authorities indicate as a potential risk that profits of proceeds-generating crimes committed in or related to Moldova may have links to conflict areas in the region or people with links to terrorist organisations. The level of FT risk in Moldova is confirmed by the total absence of incoming FT related MLA requests.

293. The authorities defined the following conditions for the resurgence of risks and threats related to terrorist activity: geopolitical situation (transit zone); FTF phenomenon and the flow of foreign citizens from risk zones (asylum seekers and terrorism in general).

294. The National Security Strategy adopted by Law Nr. 153/2011 states that the activity of the competent public authorities is to focus on three basic segments: prevention and non-admission of terrorist manifestations; combating terrorist financing; and combating terrorism through cooperation with the competent institutions. The FT risk mitigation measures as described in the ML/FT Action Plan 2017-2019 include: periodically evaluate the non-profit sector for FT risks; establish FT cooperation mechanisms at national level; organise training activities; adjust the regulatory framework (guidelines) for STR reporting; continue capacity building of bodies responsible for identifying and investigating terrorism.

295. The NRA concludes that the existing legal framework, consisting of the AML/CFT Law and CPC, is sufficiently strong to tackle FT, which in the AT's opinion is a justified conclusion (see TC Annex). It also finds that LEAs have acquired the necessary resources to combat FT. The intelligence authority empowered in the FT area is the Security and Intelligence Service (SIS) and, at Prosecutorial level, PCCOCS (General Prosecutor Office – Criminal Investigations Directorate before 2016). The establishment of the PCCOCS in 2016 and the attribution of competences related to crimes of terrorist nature is a proof that the Parliament gives the due consideration to FT threat. Both agencies demonstrated a correct understanding of FT risks and have broad powers to obtain financial intelligence and other information required for FT investigations, the latter being confirmed by the judiciary. Since 2013, the MoI has a dedicated unit (within the Special Operation Division) authorised to carry out investigations related to terrorist and extremist acts, which materialises mostly in joint investigations with SIS if needed.

296. The authorities were aware of the fact that *hawala* system can be used for transferring the money to finance the terrorism and related challenges. However, the authorities indicated there is no evidence that *hawala-like* systems are used in Moldova.

297. In the assessed period, 2 investigations have been initiated for FT suspicions. The AT met the prosecutors that actually handled the cases, who were convinced they had left no stone unturned and were positive that no FT suspicion could have been corroborated. One of the cases concerned cigarette smuggling through the Transnistrian region and related tax evasion, human trafficking and

illegal migration through Moldova (See Box 9.2). The other concerned a false match with a UNSCR Sanctions list (See Box 9.1 below).

298. There were no cases sent to courts with terrorism charges (Art 278 CC) and hence no terrorism convictions achieved. Two sentences have been pronounced by the Moldovan Courts in 2015 and 2016 for terrorism-related cases: one for “*recruiting, instruction or according of another support in terrorist purpose*” (Article 279¹ Criminal code) and one for “*instigation in terrorist purpose or public justification of the terrorism*” (Article 279² Criminal code) (see sub-chapter below for description). Special investigative measures (*i.a.* visual tracking and interception of telephone conversations) have been applied in those cases. In the course of the special investigations carried out, other possible FT aspects are considered (such as non-monetary support to terrorists or terrorist organisations).

299. The Guide on the methodology of criminal prosecution of ML and FT crimes (No. 41/26 of 6 September 2018) establishes that parallel, proactive financial investigations are conducted in all cases of proceeds-generating offences, including FT. The financial investigations also extend to cases where the predicate offence was committed outside Moldova.

300. Since 2013, the authorities have identified travellers passing through Moldova to Turkey, to join the terrorist fight in Syria (the authorities estimated this number at 10-20 persons per year). The travellers were coming mostly from former Soviet countries. In response, the SIS installed a specialised enforcement cell at the only airport, where the SIS, Police and CS operate to identify potential FTFs.⁷⁰ There were 22 cases of FTFs trying to transit through Moldova in 2016, and 7 more in 2017. The majority of these travellers were not allowed entry into Moldova. The trend has now become that FTFs are returning from conflict zones through Turkey and Moldova, to their countries of origin. Authorities estimate that six to seven persons per year are returning through the Moldovan airport, of which three to four may have been involved in terrorism. These six to seven persons were recognised by the specialised cell at the airport and underwent specific procedures when trying to enter the country but due to suspicions, they were not allowed in Moldova. Instead, their data has been shared with relevant foreign counterparts. The authorities consider the risk posed by (returning) FTFs as decreasing.

301. The authorities indicated that FT is among the priorities and the resources allocated to FT are at the moment sufficient. Mercenaries (Moldovan citizens) have been identified by SIS, and PCCOCS started investigations on such cases. PCCOCS confirmed that in the mercenary cases, the financial aspect is duly considered. Examples of financial analyses have been provided (the prosecutors analysed the sources of money used for travelling for example). No FT aspect has been identified. The SIS ensured that the matter is continuously on its radar, and as soon as there are financial links to terrorist organisations the matter will be higher prioritised.

302. In light of the fact that no information suggests that Moldova faces an elevated FT risk, including the absence of incoming FT related MLA requests; and that the authorities investigated two FT cases, the assessment team has reasons to conclude that the mechanism in place to prosecute and convict persons for FT would work effectively and according to the country risk profile, should the need arise. However, based on the on-site interviews, the assessment team got the view that

⁷⁰ The officers of the General Inspectorate of Border Police (GIBP) of the Ministry of Interior have received training provided by the Antiterrorist Center of SIS, which focused on recognising FTFs among passengers at the airport and all national border crossing points.

prosecutors would benefit from more practical training, such as mock investigations and prosecutions, to be held jointly with the SIS, in order to be better equipped to routinely and fully capture the financing element in all terrorism-related cases, including radicalisation (religious extremism).

FT identification and investigation

303. The main authority in identifying FT is the SIS, with the Anti-Terrorist Center as its operative unit. SIS co-operates with the SPCML when verifying information on suspicious activities. The SIS also co-ordinates exchange of information with foreign partners when it comes to verifying and/or informing partners on eventual links or suspicious financial activities in the light of FT in the context of their cases. Since 2016, the PCCOCS is in charge for FT investigations. PCCOCS has FT specialised (trained) prosecutors which have been assigned to the two FT investigations conducted so far.

304. The SIS is responsible for collecting, analysing and disseminating terrorist-related intelligence. For all reported terrorism-related cases, surveillance is instituted and any financial lead is followed into a potential FT investigation. SIS becomes therefore involved in any potential terrorism/FT-case from the earliest moment possible. In cases related to terrorism where small, cash-based transactions have been made, no actual FT-circumstances were found and thus the cases were not brought to court on suspicion of FT, upon the decision of the investigative prosecutor.

305. In terms of FT, SIS receives information from the SPCML (results of STRs analysis), tax authorities and foreign counterparts. Other sources triggering a FT investigation are criminal investigations for other crimes (including terrorism related). Cases or indicators of FT or any FT-relevant data are automatically sent to the PCCOCS.

306. The SPCML shall notify the SIS on transactions and activities suspected of financing of terrorism. In practice, in the period 2013-2018, no STRs related to FT had been submitted by reporting entities, hence, no notifications have been sent⁷¹.

307. Since 2013 the Moldovan authorities conducted two FT investigations: one proved to be a “false positive” match with a person listed by a third party country as being involved in terrorist activities (see Case box 9.1), and the second was a complex cigarette smuggling case in relation to Transnistria (see Case box 9.2).

Box 9.1: The “false positive”

In March 2016, PCCOCS initiated a FT case on the basis of the dissemination sent by the SIS (who was notified simultaneously by a commercial bank and SPCML). In fact, during the CDD procedures carried out by the bank, the person who intended to transfer money through a money remitter was identified as potentially listed. The bank informed the SPCML and the transfer was not performed. Within the criminal prosecution, special investigative measures have been carried out in order to prove the persons’ identity and the context/facts. It was established that the beneficiary of the transfer is a Moldovan resident studying in Chisinau, holding an Israeli passport. During the criminal prosecution, bank account statements were examined, leading to the conclusion that the suspicious transaction was the only one of this kind performed. In order to investigate all the circumstances of the case, a search was made at the domicile of the beneficiary of the suspicious transaction and related persons were identified. Requests to foreign partners were sent (Russian Federation and Israel). Based on all the information acquired, it was established that the person in question had the same

⁷¹ A “false positive” case has been submitted to the SIS but this was not considered as FT related STRs.

name and surname as a person on the list of terrorist suspects. The investigation took 30 days and was finalized with the dismissal of the case.

308. From the above case the AT concludes that indeed the Moldovan authorities do have the necessary powers to conduct proper financial investigations and use special investigations techniques in FT cases, but the “false positive” does not fully show the capacity to detect potential FT since it was generated already as a FT case. On the other hand, the cigarette smuggling investigation (Case 9.2 below) demonstrates the authorities’ capacity to detect potential FT in cases which are not related to terrorism or FT from the very beginning.

Case 9.2: The cigarette smuggling case

On 14 December 2012, the SIS and GPO jointly carried out investigations into a batch of smuggled cigarettes which had been captured at the border crossing point between Moldova and Romania. During the investigation, FT suspicion arose.

During the verification measures, it was revealed that some of the suspects might also be involved in other offences, such as illegal migration, human trafficking, tax evasion and money laundering. The involvement of one of the suspects in an extremist-terrorist organisation was also detected and analysed. Intelligence from foreign counterparts indicated a possible connection of one of the suspects with a fundamentalist-Islamic group from Lebanon.

The SIS and the GPO verified the hypothesis that FT could have occurred by using the financial means resulting from cigarette smuggling for FT purposes. Financial investigations were initiated, with the support of national authorities and foreign EU-partners.

Meanwhile, one of the suspects was arrested by foreign (EU country) authorities. Evidence indicated that this person was an intermediary of cigarette transactions, and that he had established contacts between supplying factories from the Middle East and the cigarettes black market in the EU. During the special and financial investigations (i.e. analysis of bank account statements surveillance, wiretapping, call history, GPS tracking etc.) his connections to individuals originating from high risk areas were identified.

According to the results of the financial investigation, the analysis of financial information, the documents seized during the searches and the exchange of information with national and foreign partners, it was established that payments had been made using the banks from different countries, but no evidence was found sustaining the initial hypothesis of possible links to FT activities of the suspect. The investigations ended up with 4 criminal cases, several arrests, seizure of criminal assets and convictions of the group leaders and main participants.

Terrorist acts and terrorism-related cases

309. There were no cases sent to courts with charges of terrorism (Art 278 CC) and only few terrorism or terrorism related cases have been reported to the competent authorities⁷² (see Table 46 below). Two sentences have been pronounced by the Moldovan Courts in 2015 and 2016 for terrorism-related cases. The first was associated with moving the frontiers of the autonomous Unit of Gagauzia. The second case was related to instigation at terrorism through social media. In the first case, two individuals have been sentenced (final) to 10 years and respectively 11 years and 6 months in prison (for breaching Art. 279¹ of the CC), which evaluators consider as a deterrent penalty. In the

⁷² The authorities maintain that the row “False deliberate communication about terrorism act” refer to anonymous telephone calls about fake threats.

second case one individual was sentenced to a fine of MDL 3,000 (~EUR 150) (for breaching Art. 279² of the CC) which is far from being dissuasive. The Prosecutor's Office appealed the decision. The authorities maintained that financial investigations were carried out in both cases, and it was determined that no financial component was present which seems reasonable seeing the profile of the cases.

Table 46: Investigated cases related to terrorism (SIS and MoI)

	2013	2014	2015	2016	2017	10.2018
Terrorist act (Article 278 Criminal code)	0	0	0	0	0	0
Terrorist financing (Article 279 Criminal Code)	0	0	1	1	0	0
Recruiting, instruction or according of another support in terrorist purpose (Article 279 ¹ Criminal code)	0	1	1	0	1	0
Instigation in terrorist purpose or public justification of the terrorism (Article 279 ² Criminal code)	0	0	4	5	2	0
Travelling abroad in terrorist purposes (Article 279 ³ Criminal code)	0	0	0	0	0	0
False deliberate communication about terrorism act (Article 281 Criminal code)	11	6	25	23	9	14

Foreign Terrorist Fighters (FTF)

310. The authorities claim that Moldova is not a state exporting FTFs, although sporadic cases where Moldovan citizens have been radicalised abroad and involved in actions of an international terrorist organisation (Da'esh) were detected. In 2016, the Antiterrorist Center of SIS in cooperation with Prosecutorial bodies documented 22 FTFs, and 7 in 2017. They were all foreigners and as an alternative measure, most were refused entry into Moldova. Two cases of Moldovan citizens travelling to Syria from abroad to fight for the terrorist organisation Da'esh were identified and investigated (See Box 9.3).

Box 9.3: involvement of Moldovan citizens in Da'esh

In January 2015, the specialised Directorate of the GPO (the file was taken over by PCCOCS in 2016), initiated a prosecution under Art. 279¹(3)CC (recruiting, training or any other assistance for purposes of terrorism) and Art. 279²(3)CC (instigation for purposes of terrorism or public justification of terrorism) based on information received from SIS.

Complex special investigation measures were carried out by the SIS, including information received from external partners (foreign special services), responses to rogatory letters sent by PCCOCS, as well as the analyses of information from open sources.

According to the documents of the case, two individuals (A and B) were identified as suspected of having participated in the military conflict in Syria on the part of the terrorist organisation Da'esh.

On 12.08.2015, A was accused for committing the offenses provided by art. 279¹(3)CC and art. 279²(3)CC. An arrest warrant was issued, and he has been announced as internationally wanted by Interpol. SIS is still undertaking a set of special investigative measures, including with foreign partners, to identify the person and his contacts in Moldova.

A and B have been separately recruited through different channels. They were not necessarily related to each other. Both A and B were announced as dead in Syria. However, this is not supported by evidence.

311. Several case examples have been provided to the AT from where it could be concluded that financial investigations (systematically including international cooperation) or FT investigations were conducted to, among others, identify distinct offences, the role of foreign or domestic terrorists and their sources of money, or the financing of the travel of FTFs. The SIS assured the evaluation team that it is continuously striving to improve its knowledge about modus operandi of FT.

Box 9.4: Financial investigations into alleged FTFs

One case in 2015 concerned a cell of eight foreign individuals (eventually deported from Moldova) with terrorist elements, who intended to travel to Syria in order to join Da'esh.

SIS examined a FT case following suspicions concerning logistical assistance given by one member of the cell who was responsible for the collection of financial means, food and phone cards. Domestic financial checks and investigations, corroborated with results of information exchange with foreign counter-parts did not result in elements of FT in Moldova. Instead, it was found that the person was already serving a sentence in France, having been convicted for terrorist activities.

Another case concerns a foreign citizen, who was detained at Chisinau Airport and interrogated by the Anti-terrorism Centre officers. It was established that the person was a FTF, without a specific aim of coming to Moldova. During the interrogation process neither bank accounts nor any other proof of sending or receiving amounts of money were found. The person was not admitted to Moldova and returned to the country of origin. Later, the SIS received confirmation from his country's authorities that the individual is a terrorist and had been fighting in Syria with a terrorist organisation.

312. Authorities indicated that the financial aspect is considered during investigations into cases with possible links to FT (see case boxes) as a financial investigation is obligatory (by GPO Guidelines) in case of proceeds-generating crimes and FT. The authorities did not encounter any problems to obtain or access relevant (national) information in FT-related investigations, or other problems that hindered a swift investigation or prosecution. None of the provided cases gave the impression that there had been any obstacles related to retrieving/analysing financial information.

313. The authorities have also been active in seeking international co-operation for terrorism and potential FT-cases. Particularly in the course of investigations into the three persons suspected of ties with terrorist organisations, the authorities sent rogatory letters and requests for exchange of information and intelligence.

314. The authorities further improved their knowledge and awareness on FT risks, by liaising with foreign authorities and organisations (e.g. participating in roundtables at Europol and Interpol). It is positively noted that SIS officers (and some Police officers) have participated in 41 international trainings, conferences and other activities, on topics such as FT, terrorism, identification of financing sources for FT activities, returning FTFs, money transfer methods to terrorist organisations, preventing and countering violent extremism etc⁷³. These activities took

⁷³ Titles of the activities were, e.g.: "Training on financial intelligence"; "The Reverse of Foreign Terrorist Fighters: challenges for the OSCE Area and Beyond" (conference); "The role of women in combating terrorism, violent extremism and TF, sharing the expertise and best practices at global level" (workshop).

place, *i.a.*, in France, Germany, Austria, Slovenia and the US as well as many countries in the region, and were initiated by the (host) country or by international organisations such as the OSCE or NATO.

FT investigation integrated with -and supportive of- national strategies

315. The National Strategy of Fighting Against Money Laundering and Financing of Terrorism 2013-2017 did not contain a strategy focused specifically on terrorism or FT. The National Action Plan for 2017-2019 outlines actions for combating terrorism financing, in particular for identified vulnerabilities (*i.e.* lack of co-operation mechanisms at national level, shortage of training on detecting and investigating FT cases). The Action Plan sets the following FT risk mitigation measures: (1) identifying measures to periodically evaluate the non-profit sector from the perspective of FT risks; (2) establishment of co-operation mechanisms at national level; (3) organisation of professional training activities; (4) adjusting the regulatory framework for reporting of activities and transactions suspected of FT in conformity with the standards of the FATF; (5) technical endowment and capacity building of bodies responsible for identifying and investigating FT. A number of institutions were designated as main or co-implementers, such as the SIS, MoJ, SPCML and MoI.

316. FT is one of three counter-terrorism priorities for competent public authorities, according to the National Strategy of Security. The other two priorities in this regard are the prevention and non-admission of terrorist manifestations and combating terrorism through cooperation with the competent institutions. Effectiveness, proportionality and dissuasiveness of sanctions

317. Since there have been no FT convictions in the period under evaluation, the evaluation team was unable to assess whether sanctions applied would be effective, proportionate and dissuasive. The legal framework is discussed under Recommendation 5.

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

318. Moldova has applied alternative measures to disrupt FT such as expulsion (based on Court decision), deportation (based on the decision of Bureau of Migration and Asylum MoI), non-admission on the territory (based on the decision of the Border Police). 60-70% of the alternative measures consist of deportation and non-admission on the territory. The counter-parts have been informed in case of foreign citizens.

319. As previously discussed, there have been a number of FTFs identified as attempting to transit through Moldova. To disrupt the travel or prevent the FTFs from returning to their country of origin through Moldova, the SIS co-operates with the CS and Police at the airport. Refusal of entry was performed in the majority of cases. The SIS informed its foreign counterpart(s) after having investigated the cases (see case boxes).

320. The authorities are able to apply other measures to mitigate FT risks, such as asset freezing, designation or imposing a fine, but none of such have been imposed for terrorism, FT or related activity as no funds have been identified.

Overall Conclusion

321. Moldova has achieved a Substantial level of effectiveness for IO.9.

Immediate Outcome 10 (FT preventive measures and financial sanctions)

Implementation of targeted financial sanctions for FT without delay

322. Moldova implements TFS pursuant to UNSCR 1267 and its successor resolutions without delay through AML/CFT Law and Law no. 120. No assets have been frozen pursuant to UNSCRs. The SIS may (although there is no explicit provision) designate persons and entities as a terrorist or terrorist organisation pursuant to UNSCR 1373. By the time of the on-site visit Moldova had not made any designation and had not requested other countries to give effect to the actions initiated under freezing mechanisms as there were no cases which would meet the designation criteria.

323. The mechanism in place ensures that any changes in the UN sanction lists are automatically effective in Moldova, thus assets owned or controlled by the designated persons and entities are to be frozen immediately. MFAEI notifies the SIS and SPCML about the relevant updates, which are then immediately (within one business day) published on the SIS and SPCML websites before they are translated to the Romanian and Russian language and published in the Official Gazette. The lists published on the SIS and SPCML websites are consolidated and include links to the UN website.⁷⁴ The publication in the Official Gazette occurs within 10 days from the date of the adoption of the Resolutions. The SIS and SPCML follow also the updates through the UN website.

324. The authorities take various measures to communicate the amendments in the UN lists to the REs, either through their websites (SIS, SPCML and MFAEI) or in some cases via direct communication (NBM). This mechanism ensures timely access of the REs to consolidated UNSCRs lists.

325. FIs and DNFBPs interviewed on-site were generally aware of the UNSC sanctions regimes. However, understanding of their obligations regarding implementation of FT TFS varied. Although no real-life examples could be provided, FIs claimed that they would refuse any business relations with persons on the UN sanctions lists and suspend their existing accounts. In such cases FIs would also file an STR to the SPCML. On the other hand, some of the DNFBPs will only consider foreign names considered as suspicious would be screened against the sanctions lists, while any updates to those lists are checked occasionally through the SIS website (see IO.4).

326. REs confirmed that in practice, the UN sanctions lists and changes are published on the SIS and SPCML websites immediately. However, it appears that, despite of direct publication, some REs believe that UNSCRs become legally binding within 10 days from their adoption (with the publication in the Official Gazette). Therefore, it can be inferred that in practice TFS might not always be implemented without delay.

327. Implementation of TFS varies across the financial sector. Major banks screen all new customers and parties in transactions against FT-related UN sanctions lists. However, the timeframes for applying checks on existing customers range from one week to one year. Insufficient efforts are made to identify funds indirectly controlled by UN designated persons or to uncover other forms of TFS evasion through transactional analysis. Some smaller banks and non-bank FIs do not apply TFS screening to BOs or counterparties in transactions (see IO.4).

328. DNFBPs rely on the publicly available information from the SPCML and SIS websites. Some DNFBPs, such as notaries, lawyers and dealers in precious metals or precious stones seem to lack

⁷⁴ <http://SPCML.md/sanctions>; <https://antiteror.sis.md/advanced-page-type/listele-teroriste>

awareness regarding their obligation on the application of international restrictive measures. They referred during the interviews to screening against the lists with designated individuals and entities without specific references to UN sanctions lists. Given the lack of awareness, these categories of reporting entities are vulnerable to misuse.

329. According to the legislation, REs shall immediately apply restrictive measures and shall refrain from performing any transaction or making any assets, directly or indirectly, wholly or jointly, available for the benefit of designated persons and entities and for the benefit of entities owned or controlled, directly or indirectly, of designated persons or entities. The freezing measure is maintained for an undetermined period and the relevant decisions are communicated within 24 hours to the SPCML, which would communicate it within 24 hours to the SIS. These powers have been tested in practice only once when a “false positive” match occurred, pursuant to a third country designation, whereby an RE (a bank) refrained from performing the transaction. In that case, the bank informed SIS about the suspicions it had and after additional verification, the SIS conducted a FT investigation and eventually informed the bank about the result: the client was not the designated person (see IO.9, Case Box 9.1).

330. The SPCML has issued guidelines on implementation of TFS by the REs under its supervisory remit (real estate agents, lessors, other natural and legal persons who sell goods in the amount of at least MLD 200.000 or its equivalent) and has organised training seminars on specific topics. The guidelines clarify: the mechanism for application of TFS; sources of verification regarding the amendments to UNSCRs; clarifications on identification of suspicious activities in relation to FT.

331. The NBM organised training seminars for banks on different topics, aimed at increasing the awareness level of REs on FT and TFS (during 2013 – 2018, 13 relevant training seminars were conducted for banks). SPCML and other supervisory authorities organised various training seminars for all sectors, but TFS as a topic was included only starting from 2018.

332. The AML/CFT Law provides the possibility to request the removal of the restrictive measures in case of changes in SIS’ or relevant UN sanctions lists. However, relevant requirements do not ensure an effective mechanism for de-listing regarding UNSCR lists and only certain criteria are established for de-listing in case of the national lists elaborated by the SIS. There are no publicly known procedures in place for considering de-listing of the entities and/or persons that no longer meet the criteria for designation.

333. The NBM is checking the level of implementation of procedures on TFS. In 2014, the NBM applied sanctions in two cases for violation of requirements related to TFS (to banking institutions). At the time of the on-site visit, a significant part of the banking sector was under enhanced supervision of NBM, therefore the assessment team is convinced that this sector complies with the legal provisions on restrictive measures. Other sectors have not been supervised on the implementation of FT TFS.

Targeted approach, outreach and oversight of at-risk non-profit organisations

334. Moldova has not formally identified the specific types of NPOs which are vulnerable to FT abuse.⁷⁵ However, the discussion in the working group for the preparation of the NRA considered the necessity to identify the vulnerable types of NPOs, and as a result, a remedial action was included

⁷⁵ A study on the NPOs was completed and approved in November 2018

into the NRA Action Plan.⁷⁶ In the authority's opinion, NPOs in Moldova are of low risk from a FT point of view. This view is based on the FT risk profile of Moldova, the nature of NPO activities and the absence of cases where the NPOs in Moldova would have links to FT.

335. The SIS cooperates with relevant domestic (the SPCML, Ministry of Justice (as supervision authority) and PSA) and international competent authorities to collect information in relation to a potential connection with FT and radicalization of NPOs in Moldova. The various case examples provided by the Moldovan authorities demonstrated that the SIS, SPCML and law enforcement authorities are sufficiently vigilant to the FT risks related to NPOs and they are taking coordinated mitigating actions.

336. Through the work of the two SIS departments specialised in NPOs, it was established that among the 11.000 existing NPOs, around 100 are potentially vulnerable to different types of abuse, including FT. These NPOs are part of an enhanced monitoring process by the SIS which, in cooperation with the SPCML, MoJ and PSA, has analysed suspicious transactions and activities (see Box 10.1). There have been relevant dialogues between the authorities and the representatives of the sector in relation to understanding the vulnerabilities to FT abuse of the NPO sector, but there are no indications that this communication takes place on a regular basis.

337. When establishing the level of terrorism risk for the NPOs, SIS is taking into consideration three sources of information: operational information, financial information and certain databases they have access to. The SPCML is involved in this risk evaluation process and provides to the SIS financial information for relevant NPOs. The PSA's main obligation is to check the founders, administrators and beneficial owners of the NPO during their registration process, and to inform SIS in case of amendments of statutory documents of the NPOs in case of introduction of non-resident entities or persons.⁷⁷

338. In recent years the SPCML has received reports on NPOs suspected of being involved in illicit activities related to FT. However, the analysis of the suspected NPOs' financial transactions and of the parties involved did not lead to the conclusion that they were involved with FT.

Box 10.1: Operational investigation by SIS on a NPO activity

Based on cooperation with intelligence services from other countries, the SIS was notified about suspicions that a Moldovan NGO might finance/transfer/aid a paramilitary activity in the region. The case analysis included the NGO's activity, its management, the financial flows (i.e. SWIFT transfers), the donations and the programmes implemented. The conclusion was that neither the donor nor the NGO itself were involved in supporting terrorist activity, and they were not part of a FT funding scheme. The NGO activity was limited to protecting the rights of a national minority in Moldova.

339. The SIS has undertaken various measures to prevent development of the risks to national security, in accordance with the provisions of the National Strategy on Security. This includes issuing public guidance (e.g. flyers) and direct communications with certain categories about the risks related to terrorism and FT. Authorities stated that REs do not have special CDD measures in relation to NPOs in their internal rules since the general risk of abuse of NPOs for FT purposes is low.

⁷⁶ Action nr. 2.1 "Identifying measures to periodically evaluate the non-profit sector from the perspective of terrorism financing risks".

⁷⁷ The PSA acquired this competence in September 2018 from the Ministry of Justice.

340. Regarding the transparency of the NPOs, the NPOs are under the same fiscal regime as any other companies registered in Moldova. All the financial information reported on annual basis by NPOs is included in the database of the State Tax Service (STS), which is accessible to authorities. This level of access to the fiscal information of NPOs allows for the detection of fraud in relation to funds of the organisations. The same fiscal authority is the one in charge with scheduling the control actions in relation to NPOs, but these actions are limited only to fiscal duties and financial indicators of the NPOs' activities.

341. The SIS has undertaken outreach and educational programs to raise and deepen awareness among NPOs about the potential vulnerabilities of NPOs to FT abuse and FT risks, and the measures that NPOs can take to protect themselves against such abuse. Between 2015 and 2017, over 800 persons benefited from organised programs of which the main subject was the risk of abuse of NPOs by terrorist entities, as well as related topics. The authorities informed the AT that best practices to address the FT risk and vulnerabilities to protect NPOs from FT abuse have been developed together with a consortium of private institutions and independent experts.

Deprivation of FT assets and instrumentalities

342. Moldova has not identified financial or other activities of designated persons and entities and no assets have been frozen under UNSCR 1267 and UNSCR 1373 as there were no such cases. The REs and competent authorities have at their disposal legal mechanisms and instruments for applying freezing measures.

343. The authorities informed the AT that there was a case of a potential UNSCR match, which subsequently resulted in a FT investigation. This proved to be a "false positive" (See Box 9.1). This case example proves that FIs and competent authorities have, in practice, mechanisms for detection and identification of the sanctioned persons and entities and give attention to possible actions that may be undertaken to solve the cases. This demonstrates a certain level of effectiveness of the regime regarding the detection of funds possibly related to a listed person(s).

Consistency of measures with overall FT risk profile

344. The overall FT risk in Moldova is low and, as discussed under IO9, the AT could not find any indication that the actual situation might be different. From this perspective, the absence of designations and of restrictive measures taken in relation to UNSCRs is consistent with the country's profile. Nevertheless, potential threats remain present, *inter alia* in the form of FTFs and returning fighters trying to transit through Moldova. Current developments in the world and the region (i.e. Moldova's geopolitical situation, flow of foreign citizens from risk zones) may lead to an increase of the FT risks the country is exposed to. To address those potential risks the authorities should make it a priority to address the technical shortcomings identified in relation to R6 and R8 and to continue to improve its TFS regime.

345. As mentioned earlier, authorities have not undertaken an in-depth assessment of the NPOs sector and, as a consequence, the risk of abuse of NPOs for FT purposes has not been fully addressed. Although there are some measures in place for the periodical monitoring of the financial transactions of a certain number of NPOs, the sector is not subject to targeted and proportionate monitoring activity, in line with the risk-based approach. On a positive note, the NRA Action Plan sets a number of priority actions in order to mitigate FT risks and improve the effectiveness of the system. In particular, with regard to NPOs, the NRA Action Plan provides for periodical evaluation of

the non-profit sector from the perspective of FT risks as well as setting up working groups and organising awareness-raising seminars.

Overall Conclusion

346. **Moldova achieved a Moderate level of effectiveness for Immediate Outcome 10.**

Immediate Outcome 11 (PF financial sanctions)

Implementation of targeted financial sanctions related to proliferation financing without delay

347. Moldova is neither a major weapons manufacturing country nor an international trade centre or a large market for proliferation goods. Import and export statistics demonstrated that only non-sanctioned goods were traded with Iran and that no trade had taken place with the Democratic People's Republic of Korea (DPRK).

348. The legal basis for the application of TFS under UNSCRs 1718 and 1737 and their successor resolutions is embedded in Law no. 25/2016 (04.03.2016) on international restrictive measures and the AML/CFT Law (see IO.10 and Recommendations 6 and 7). The powers of competent authorities are embedded in legislation in the same way as for FT-related TFS⁷⁸, but the concept of (combating) PF and the financial component thereof are mentioned only in the AML/CFT Law. This is complemented with some secondary legislation, such as regulations of the SPCML, NBM and NCFM.⁷⁹ The TC Annex notes some deficiencies in the legal framework, especially in relation to a de-listing mechanism and a lack of procedures applicable for the proper implementation of Recommendation 7.5 (on contracts, agreements or obligations that arose prior to the date on which accounts became subject to TFS), in particular the lack of an explicit provision requiring all natural and legal persons to freeze funds or assets of designated persons and entities, and the absence of a provision prohibiting to make available any assets or funds to designated persons or entities.

349. The mechanism for implementation of sanctions related to PF is similar as for FT. PF-TFS are directly applicable in Moldova. However, there are concerns related to the communication thereof. Although the SIS and SPCML publish information on their websites regarding the lists of designated persons and entities related to PF, this information is incomplete. The websites of SIS and SPCML do not refer to UNSCR 1718 (2006) or any other DPRK resolution, nor to UNSCR 2231 (2015) or to the latest amendments to UNSCRs on (de-)listing and (relief of) restrictive measures related to DPRK and Iran. The information is immediately published on the websites of the SIS and SPCML. The translations in Romanian and Russian are published in the Official Gazette of Moldova within ten days after their adoption. As described under IO.10, this two-folded mechanism does not necessarily

⁷⁸ The SIS, via the Ministry of Foreign Affairs and European Integration, is the competent authority for the implementation of TFS related to proliferation (Art. 34 AML/CFT Law). It informs the government and competent public authorities and institutions about the adoption, modification, extension, suspension or wave of international restrictive measures applicable in Moldova (Art. 15, Law 22/2016).

⁷⁹ Order no. 35 of 23.08.2018 of the SPCML (Instruction on enforcing international restrictive measures), Decision no. 200 of 09.09.2019 of the NBM (Regulation on regulation on requirements for the prevention and combating of money laundering and terrorism financing in the activity of banks) or Decision no. 34/2 of 30.07.2018 of the NCFM (Rules on implementation of international restrictive measures on the non-banking financial market). NBM Regulations: Nr. 0903214/24/3236 of 1 September 2015 on the FATF lists; Nr. 28-01108/20/1772 of 17 April 2018 on the UN Sanctions on North Korean individuals and entities.

ensure the implementation of the amended UNSCRs without delay, since the reporting entities are double-checking against various sources (SIS, SPCML websites and the Official Gazette of Moldova).

350. The Interagency Commission for Control of Exports, Re-export, Import and Transit of Strategic Goods issues licenses on trade with strategic goods, but there were no requests for import/export licences in relation to the DPRK or Iran and thus they have not been provided.

Identification of assets and funds held by designated persons/entities and prohibitions

351. Moldova has not identified any PF cases and as a result no assets or funds associated with PF-related TFS have been frozen. No STR has been filed in relation to proliferation or PF. There have been no investigations and prosecutions on PF, including in relation to border control. As described below, the authorities identified cases of smuggling with radioactive substances but none were confirmed as PF positive.

Box 11.1 – Smuggling with radioactive substances

On 15 May 2014 a criminal case was initiated by the GPO on the reasonable suspicion of the offense of smuggling the radioactive substance Uranium, which belongs to category no. 1 of special nuclear materials, into the territory of Moldova by an organised criminal group.

In co-operation with the National Investigation Inspectorate and the US Federal Investigation Office, special investigative measures were carried out. An undercover policeman had successfully infiltrated the group in order to gather more evidence for identifying the criminal actions of the members of the group. Moreover, under the judicial control and with the contribution of the Federal Investigation Office of the United States, the authorities purchased a sample of radioactive material (Uranium) for USD 15,000. Several people directly involved in the criminal activities of the group were identified as a result of the special investigative measures. In total, 11 members of the criminal group were identified, of which six were arrested. The criminal case was sent to the court and the offenders were convicted for smuggling. No links to PF or the relevant UNSCRs were found.

352. Between 2016 and 2018, seven cases of attempted smuggling with radioactive substances (uranium, caesium and mercury) were investigated by prosecution. At every instance, Moldova was used as a transit territory. In some cases, the radioactive substances had been smuggled through the Transnistrian region. During investigations initiated by the law enforcement authorities and SIS, the financial investigations revealed no connections with sanctioned entities or persons under the UNSCR regime on the DPRK or the former sanctioning regime on Iran. Based on the collected information, including financial analyses, the Moldovan authorities ascertained that the cases were only smuggling cases with the solemn aim for the offenders to obtain financial profits.

Box 11.2 – Investigation and seizure of Mercury/Hydrargyrum 2018

In 2018, the SIS received information that a group of people would smuggle a significant amount of the toxic substance "Hydrargyrum" into Moldova, with the intention to commercialise it at an attractive price.

An undercover investigator infiltrated in the criminal group as a potential buyer; as a result it was possible to obtain the necessary information to confirm or deny the suspicions.

All members of the criminal group were checked in the existent databases. For this purpose, the SPCML also verified the existence of possible suspicious financial transactions or bank accounts. There was a verification of

the goods in possession (movable and immovable property, their value and provenance), and the tax databases (enterprises, turnovers, taxes). Besides, an analysis was conducted by open information and open source intelligence, on the environment, profile, and biography of the members, aiming at identifying the relations with some groups/entities with a suspicious/terrorist character.

Simultaneously, during the investigations, the SIS organised bilateral meetings with representatives of the special services of the USA, which led to an exchange of information resulting in the positive outcome of the investigations. Finally, the investigated people were detained and convicted, and about 20 kg of the toxic substance "Hydrargyrum" was seized. Due to the absence of a connection of the perpetrators of smuggling with any proliferation activities, the persons were not added to the SIS lists.

353. Between 2012 and 2017, imports of products coming from Iran were recorded (e.g. dried fruits, spices), but they were not included in the scope of the UNSCR and therefore not prohibited. The products, goods and involved persons/entities were not subject to PF-TFS measures.

354. The Interdepartmental Committee for Control of Exports, Re-export, Import and Transit of Strategic Goods issues licenses on trade with strategic goods, and thus functions as a platform for domestic co-operation on PF. The Committee is composed of the MoF, MFA, MoJ, MoI, Minister of Defence, Minister of Economy, Minister of Industry, SIS, Customs Service and Licencing Chamber. Upon receipt of a request for a licence, the Committee conducts a financial analysis in order to establish the financial background of the person requesting the licence (including the BO). According to the authorities, if additional information is needed in cases of the issuance of licences, the Commission or any member thereof may directly request such information from any competent authority or the relevant FI. A request to the SPCML can be given in by suspicion on the origin of the goods and/or the natural/legal person requesting the licence, or upon initiation of a financial analysis. Such information request to the SPCML has not yet been made. The evaluation team is of the opinion that the permanent presence of the SPCML in the Committee would ensure the constant effective exchange of information.

355. There are mechanisms in place for exchange of intelligence and other information which is necessary for a potential investigation relating to breaches of PF-TFS. Such mechanisms are the same as for ML/FT investigations, which are regularly used by competent authorities (see IO.2 and Rec.40). Since, by the time of the on-site visit, there were no registered investigations on this matter, the assessment team was not able to assess the efficiency of this mechanism in case of investigation of violations and breaches of TFS. However, the authorities reassured that there are no particular impediments.

356. The Customs Service is responsible for the control of dual-use and strategic goods. To combat illicit trafficking in nuclear and other radioactive material, the CS performs controls within Moldova (both at land borders and at airport terminals). It makes use of a special radioactive/nuclear detection system, through which vehicles and persons are passed when crossing the border. The CS has the power to restrain such goods at the border. The CC contains criminal sanctions (including fines) on those involved in the trafficking of nuclear and radioactive material. However, at the time of the on-site visit, no such sanctions have been imposed as no breach had been detected.

FIs and DNFPBs' understanding of and compliance with obligations

357. The website of SIS, which contains the consolidated lists and a search engine, and the Official Gazette are considered the communication channels from authorities to reporting entities for exchanging communication and information on PF UNSCRs. Reporting entities should consult the website and Official Gazette themselves. Moldovan authorities did not demonstrate systematic publication of amendments to the sanctions lists.

358. Among the reporting entities and their supervisory authorities, there is little awareness on the differences between FT and PF sanctions lists. No specific measures of financial monitoring or verification of clients appear in place in relation to the UNSCRs related to PF. Reporting entities did not display a comprehensive understanding of PF-related sanctions evasion. Although the REs consulted during the on-site visit were aware of their obligations to screen for names and entities subject to sanctions imposed pursuant to the relevant PF-related UNSCRs, their level of understanding of these obligations was uneven. Banks demonstrated a higher level of awareness.

359. Generally, reporting entities have measures in place to screen clients against the UN lists. These screening measures have not resulted in matches of individuals or entities with the PF lists. Banks use software to screen clients, which is done at the moment of initiation of transactions. Of all REs, banks hold the most comprehensive information on BOs. Financial institutions other than banks, such as leasing and insurance companies, and DNFBPs indicated to apply manual screening as part of their procedures in place for the implementation of the UNSCRs of PF. The procedure has not been automated due to the recently introduced obligation to screen clients against PF lists (as a result of the newly adopted AML/CFT Law). Besides, SIS implemented a search engine to search UN lists for persons and entities involved in terrorist activities and proliferation of WMDs.⁸⁰

360. DNFBPs demonstrated a basic understanding of their obligations under PF-TFS. DNFBPs are generally aware of their obligation to screen clients against the sanctions lists, but did not demonstrate to take further steps to identify more difficult (company) structures, BOs and/or funds owned by designated entities or persons or any other PF-TFS evasion through transactional monitoring or analysis. Some DNFBPs indicated to rely on other institutions, such as banks, for the adequate execution of the obligations resulting from PF-UNSCRs.

361. The reporting entities did not have effective mechanisms in place for identification of, *inter alia*, front companies, shell companies, joint ventures and complex ownership structures which may be used by designated individuals and entities to evade the sanctions regime. The evaluation team is concerned that the scope of the screening is not sufficiently close to the scope of the freezing obligation under the FATF standards ('funds or other assets that are wholly or jointly, directly or indirectly owned or controlled by designated entities and funds or other assets of persons and entities acting on their behalf, or at their direction').

362. Only the NBM organised one training for banks on PF⁸¹. No trainings were held for other REs on PF and international restrictive measures. This may explain the low awareness of REs on the difference between the FT-TFS and PF-TFS regimes, and the respective necessary measures to be taken.

⁸⁰ <https://sis.md/ro/cauta-terrorist>

⁸¹ In 2017, banks profited from a training organised by the NBM jointly with representatives of the US Program Export Control and Related Border Security on countering PF, and an overview of PF sanctions and related issues.

363. The guidelines on the implementation of TFS, which have been issued by the SPCML and other supervisory authorities (see IO.10), do not explicitly mention PF-related sanctions, and do therefore not increase REs' awareness on these sanctions. The authorities considered that references to PF-sanctions were sufficiently clear when discussing the general regime of international restrictive measures. The evaluation team is not convinced that these guidelines are effective enough to prevent the evasion of PF-sanctions.

Competent authorities ensuring and monitoring compliance

364. The supervisory authorities have no specific procedures in place for monitoring compliance with PF-related UNSCRs. The supervisors consider the implementation of these UNSCRs during the regular on- and off-site controls. The reader should bear in mind that the supervision of DNFBPs in terms of AML/CFT is, in general, at a very early stage (IO.3). The absence of references to PF in the Moldovan legal framework, except for in the AML/CFT Law, may impede adequate monitoring and compliance controls on the implementation of the relevant UNSCRs. On a general note, reporting entities are required to establish and apply internal controls to adequately manage the enforcement, maintenance and cancellation of international restrictive measures. This is included in the secondary legislation of SPCML, NBM and NCFM. So far, there have not been any cases investigating offences relating to the REs' obligations under the PF-UNSCRs.

365. Despite the investigated cases of smuggling of chemical materials through Moldova, the SPCML and other supervisors have not undertaken an effort to conduct thematic inspections for PF-TFS.

366. As mentioned above, the Moldovan authorities have issued general, sectorial guidelines on implementation of international restrictive measures, but these do not make specific reference to PF. There is no guidance or other information which would reflect the latest sanctions obligations and their implementation.

367. The authorities primarily rely on banks in order to obtain accurate information on the BO of legal persons. When a cross-border movement of funds occurs, the competent authorities often make use of international cooperation to obtain data which would allow for the proper identification of BOs (see IO.5).

Overall Conclusion

368. **Overall, Moldova has achieved a Low level of effectiveness for Immediate Outcome 11.**

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 4

a) FIs participated in the NRA process which has improved their understanding of national ML threats and sectorial vulnerabilities. The internal risk assessments recently mandated by the NBM have further increased the awareness of business-specific risks amongst banks. However, the evaluators found that the overall understanding of ML/FT risks across the financial sector is still not sufficiently comprehensive. ML typologies considered are primarily centred on the “Global Laundromat” schemes, while the analysis of FT risks is limited to examining United Nations (UN) sanctions lists. Nonetheless, banks are engaged in the provision of traditional banking services and products that reduce the risk exposure of the banking industry. Designated non-financial businesses and professions (DNFBPs), except for notaries, lack the full appreciation of their exposure to ML/FT risks.

b) Banks have actively targeted shell companies in recent years and have somewhat mitigated risks therein. Other risk mitigating measures applied by banks and non-bank FIs are mostly confined to elements of enhanced customer due diligence (EDD) towards customers considered as high-risk based on the SPCML or supervisory guidance. Overall, the application of a risk-based approach (RBA) in the financial sector is still a work in progress. Measures applied by DNFBPs are even less tailored to individual conditions of customers.

c) Banks and some non-bank FIs (NBFIs) demonstrated adequate application of basic customer due diligence (CDD) and record-keeping requirements. Identification of politically exposed persons (PEPs) has improved and banks have become rather vigilant in correspondent relationships. However, some deficiencies in relation to beneficial owners (BOs) impact the overall effectiveness. Significant gaps were observed in the application of CDD measures by DNFBPs, which is the direct result of the absence of appropriate AML/CFT supervision over the sector.

d) For many years, suspicious transaction reporting (STR) had been largely based on a set of specific risk criteria provided by SPCML. This resulted in the development of a “*tick-box*” reporting culture which negatively affected the overall quality of STRs. Nonetheless, STRs contributed to the discovery of the two biggest ML cases and led to multiple successful ML investigations and prosecutions. The recent measures by the authorities to reform the STR system have yielded some results by reducing the total number of STRs and encouraging reporting entities (REs) to support suspicions with analysis.

e) The NBM’s efforts to improve corporate governance and intensify supervision resulted in banks giving higher priority to AML/CFT issues. Banks have put in place AML/CFT compliance functions that are properly placed and involve regular independent audits and training programs. Internal controls beyond banks are less developed. Although most of the DNFBPs have appointed compliance officers and developed basic AML/CFT policies on the basis of SPCML guidance, their internal controls are in a nascent state.

Recommended Actions

Moldova should take appropriate steps to ensure that:

a) REs conduct risk assessments that are appropriate to the nature, size and other characteristics of their business, thoroughly analyse ML and FT threats and vulnerabilities, and apply AML/CFT measures commensurate with their risks;

b) REs effectively implement CDD obligations and specific measures, particularly in relation to ascertaining BOs of complex legal structures, examining rationale for transactions as part of on-going due diligence, establishing the source of wealth and close associates of politically exposed persons (PEPs), detecting nested correspondent relationships and uncovering attempts to evade FT-related targeted financial sanctions (TFS);

c) The quality of STRs is further improved by providing granular ML/FT typologies to REs and enhancing supervision over their internal systems and processes for identifying and justifying ML/FT suspicions.

d) REs conduct comprehensive and in-depth internal AML/CFT audits, compliance officers of NBFIs decide independently to report suspicious transactions and key elements of internal control are effectively implemented by all DNFBPs.

e) The technical deficiencies in preventative measures (listed in the TC Annex) are addressed.

369. The relevant Immediate Outcome considered and assessed in this chapter is IO4. The recommendations relevant for the assessment of effectiveness under this section are R9-23.

Immediate Outcome 4 (Preventive Measures)⁸²

Understanding of ML/FT risks and AML/CTF obligations, and application of risk mitigation measures

370. Banks dominate the financial sector and are by far the most important industry in the country. The non-bank financing (microfinance and leasing) has been increasing, but still accounts for a tiny share of the market compared to banks. The capital market is small and insignificant, while life insurance policies are provided by only one insurer. Despite the large amount of currency traded in cash (approx. 13% of GDP annually), most of the FEOs are run by banks. In relation to FEOs that are not run by banks, the following mitigating elements apply: their services are limited to currency exchange in cash, but they do not transmit funds or deal with checks or other money-related instruments; their customers are predominantly resident and they are prohibited from dealing with legal persons. The non-bank PSPs (e-money providers) have relatively sophisticated products, but their overall turnover is rather low and thus, the weight given to the industry by the AT in determining the rating was limited. The DNFBP sector is much less material with only two casinos

⁸² Assessors' findings on IO4 are based on interviews with a range of private sector representatives, as well as the experience of supervisors and other competent authorities concerning the relative materiality and risks of each sector. The assessment team grouped the obliged sectors into categories in terms of their significance for the overall picture of compliance (see Chapter 1.). The FIs and DNFBPs met by assessors during the on-site visit included a selection of big and smaller banks which in total represent a significant share of the market in terms of the assets; payment companies; mutual life insurance companies; investment firms; money remittance companies, an agents of a money remittance company; securities registrars, real estate agents, firms operating in the precious metals and stones sector, law firms; accounting firms; gambling operators.

and a small number of real estate agents. The notaries are certifying real estate transactions and demonstrated better ML/FT risk awareness compared to other DNFBPs.

Financial Institutions

371. Banks account for the overwhelming majority of the financial services in Moldova. The banking landscape transformed dramatically since 2015 after the “Banking Fraud” and “Global Laundromat” scandals. Three banks were liquidated and the largest remaining banks have been placed under the NBM’s special supervision, while some foreign banks cancelled their correspondent relations with Moldovan counterparts. There are currently 11 banks operating in Moldova, including four foreign banks. Non-resident legal entities (LE) and domestic companies with foreign capital comprise only 5% of the banks’ overall customer base, although in 2018 they accounted for around 15% of total deposits and up to 20% of total payments (largely due to export/import-related transactions). Banks are engaged in the provision of traditional banking services (deposits/loans), and meet all their customers in persons. They also do not rely on third parties and introducers or provide private wealth management products. These factors reduce the overall risk exposure of banks.

372. Banks participated in the NRA process which has improved their understanding of national ML threats and sectorial vulnerabilities. The NBM also required banks in recent years to systematically carry out business-specific risk assessments and to formally document their findings. These measures have positively affected the awareness of major banks. Nonetheless, the evaluators found that the understanding of ML/FT risks among banks met on-site (except for one systemically important bank) is not sufficiently comprehensive. They rely overly on the risk criteria provided by SPCML in developing their understanding, and there seems to be a clear need for a more in-depth analysis of unique characteristics of each institution and the risk profile of customers.

373. Banks met on-site advised that ML/FT risks are assessed for products, customers, transactions and jurisdictions. However, most of the banks found it challenging to describe the nature, scale and complexity of their activities, and specific threats and vulnerabilities beyond outlining general dangers posed by PEPs, cash, persons on UN sanctions lists or certain geographic areas.

374. Banks were also unsure on how exactly their institutions could be used for ML/FT purposes. The broad typologies mentioned to the AT involve fictitious business arrangements similar to those found in the “Global Laundromat”. This limited understanding of ML/FT patterns and schemes could partly stem from difficulties in identifying and reporting suspicious transactions discussed below.

375. Since 2015, banks were instructed to identify shell companies among customers and mitigate risks therein. The specific measures applied to legal entities included intensifying scrutiny of their activities and business partners to uncover accounts used in a pass-through capacity, and checking the websites and legal addresses or sometimes visiting their offices. Banks met on-site claimed that these measures proved to be successful as they have led to terminating or suspending relationships with multiple shell companies and significantly reducing new encounters with similar entities. This was corroborated by the NBM and SPCML, while State Tax Service (STS) contributed to this development by applying risk-management systems against shell companies for tax compliance purposes (see IO.5).

376. Banks met on-site stated that the mitigation of risks related to transfers of funds to/from the Transnistria region remains a challenge. They partly rely on the agency responsible for clearing and settlement of such transfers, although the agency itself does not apply AML/CFT controls. On the

other hand, banks lowered their risk appetite for cross-border correspondent relationships after the “Global Laundromat” and closed down or refused opening Loro accounts for respondent FIs deemed as overtly risky. Some banks also conduct daily screenings of transactions as part of their ML/FT risk management to detect multiple quick transfers in small amounts to/from high-risk jurisdictions that involve same groups of people. Where the reasons behind transfers are not clear, the international PSPs are alerted to block any future transactions by the persons in question.

377. Banks classify customers on the basis of risk. The criteria provided by the SPCML and NBM are used as primary high-risk identifiers along with information about the customer, such as the source of funds, activity on the account and results of transactional monitoring. Customers assessed as high risk comprise less than 3% of banks’ clientele and usually include those from high-risk jurisdictions and PEPs. Based on the attributed risk, banks apply some elements of EDD such as branch managers giving approval to establishing business relations or requesting the proof of source of funds for relatively large transactions. Further risk-mitigating measures mentioned by banks include setting caps on cash transactions and training customer-facing staff on the ways to deal with high-risk customers. One bank has specially trained relationship managers who handle PEPs and the latter could carry out cash transactions in very limited amounts.

378. Some risk-sensitive decisions have been taken by banks such as the restriction or exclusion of certain business lines and application of additional measures to customers reasonably deemed as high-risk. However, this is frequently done based on instructions given by the NBM or the SPCML and not via carefully implemented risk assessment processes. Thus, the AT is concerned that banks may not be applying all the required measures to those customers that actually present higher ML/FT risks, but were not rated accordingly.

379. Moldova’s capital market is small and underdeveloped. Securities’ trading is carried out by 16 investment firms, including banks. Non-bank investment firms met on-site stated that they do conduct business-specific ML/FT risk assessments, although specific risks could not be named. They classify customers based on certain risk criteria (e.g. PEP status, geography), however RBA applied seems quite limited. The capital market has also been characterized by weaknesses in the tracking system of shares and shareholders (see IO.5). There are 11 securities registrars operating in Moldova and those met on-site did not demonstrate any understanding of ML/FT risks.

380. The domestic life insurance market is insignificant with only one company licensed to provide life insurance policies. The insurance companies met on-site admitted that the concept of RBA is quite new, although they try to identify PEPs and obtain additional information about those customers that cross annual thresholds for premiums. Some other measures have also been applied to address inherent vulnerabilities of life insurance policies such as restricting the surrender clauses to at least 2 years and setting high penalties to make early redemptions of insurance premiums unattractive. The payment of premiums in cash is limited to MDL 5,000 (approx. EUR 250), while beneficiaries must always be specifically identified in the contract and can only change through the policyholder’s written application.

381. Banks and non-bank PSPs demonstrated a limited awareness of FT risks faced by the sector, although the overall FT risk level in Moldova is low (see IO.9). E-money providers offer various services to their customers ranging from self-service terminals that accept cash and allow repayment of loans or topping up of online gambling accounts to e-wallets permitting cross-border transfers. E-money providers identify the misuse of their services for drug trade as the biggest ML risk and the mitigating measures used include thresholds on the amount of cash accepted by terminals and

turnover limits on e-wallets. Some e-money providers recently introduced the non-face to face verification of customers' identities that may increase risks in the industry and requires the NBM's attention.

382. Cash-based economy and its reliance on remittances from migrant workers (approx. USD 1.1 billion annually) result in up to 1,200 foreign exchange entities (approx. 800 run by banks) spread around the country and the sizeable volume of currencies traded in cash (approx. 13% of GDP in 2015). The non-bank exchange entities indicated that the industry's biggest challenge is the detection of structured transactions designed to avoid crossing the MDL 200,000 (approx. EUR 10,000) threshold. The sector needs better systems for data-collection and processing for this purpose. The risk mitigating measures applied to customers seeking the exchange of large amounts of currency are limited to filing threshold transaction reports to SPCML.

383. Non-bank financing has been growing, although still playing a minor role (approx. 3.5% of GDP in 2015) compared to banks. Microfinance organisations offer loans (lending limits are not set) to individuals and medium and small businesses. Loans to non-resident customers exceeding MDL 200,000 (approx. EUR 10,000) must be approved by the NBM. In recent years, the leasing industry has become attractive to both domestic and foreign institutional investors attesting to its growth potential. Leasing companies are allowed to service only resident customers and usually provide financing for agriculture machinery and personal use vehicles. The understanding of ML/FT threats and vulnerabilities by both microfinance organisations and leasing companies is limited to PEPs, and repayment of loans in cash or by third parties, which is considered risky customer behaviour.

DNFBPs

384. DNFBPs were required to formally conduct business-specific ML/FT risk assessments with the adoption of the new AML/CFT Law. However, their understanding of risks appears very limited. When asked about actual ML/FT risks, almost all the DNFBPs interviewed on-site would generally refer to risk scoring systems or variables (e.g. knowledge of the customer) rather than to specific analysis concerning threats or vulnerabilities.

385. Gambling industry, except for casinos, was nationalised several years ago. Currently, 2 land-based casinos are operating compared to 67 gambling operators, including eight casinos, in 2015. Two non-resident companies were recently contracted by the National Lottery of Moldova to run slot clubs and betting shops in the country. The authorities stated that reasons behind the changes included the need for consumer protection and fight against illegal gambling, while the number of casinos decreased due to higher licensing fees. The casinos mostly cater for non-resident customers and junkets are organised from other countries. The only casino met on-site lacked understanding of ML/FT risks, although some safeguards are in place to prevent misuse: winning certificates are not issued, nor are deposits accepted, and winnings are not exchanged for bank checks or transferred to customers' bank accounts. There are plans to introduce a unified information system that will allow the SPCML, STS and LEAs to monitor directly the transactions in casinos and other gambling operators. Although no license has been issued for online gambling, foreign-based online gambling operators provide their services in Moldova illegally and accept payments via domestic FIs.

386. Notarial certification is required for real estate transactions and transfers of shares of limited liability companies, although notarial escrows to facilitate those transactions are not used. Since PSA started operating one-stop shops for setting up legal entities, notaries are rarely approached for company formation services. Notaries met on-site identified tax evasion as the biggest risk in their activity. In particular, the real estate transactions are overwhelmingly carried out in cash and prices

set in contracts are deliberately deflated to avoid paying taxes. Notaries apparently discussed the issue with SPCML and proposed as a countermeasure to report all those transactions where the price was 30% lower than the average market price. SPCML rejected such an approach and tried to encourage more thorough analysis of transactions by notaries.

387. Real estate agents facilitate roughly one quarter of all real estate transactions by finding potential buyers, drafting contracts, accepting advance payments and assisting customers in their dealings with notaries. The agents met on-site were aware of deflated prices in real estate transactions and also knew about some basic AML/CFT requirements. However, they do not tailor CDD measures based on risk and seem to rely on notaries to mitigate any inherent threats.

388. Lawyers met on-site provide legal advice and draft legal documents to help facilitate buying and selling of business entities. However, they do not manage companies and are not permitted to open fiduciary accounts. Lawyers met on-site lack the understanding of ML/FT risks and some of them view AML/CFT obligations as a threat to the legal professional privilege. This creates confusion in the profession concerning the application of the new AML/CFT Law as the privilege would normally cover all aspects of lawyers' activity. Lawyers met on-site suggested that the best way to reconcile AML/CFT obligations and client confidentiality was to carry out CDD measures and report STRs only before signing the contract with customers as afterwards the privilege would always prevail.

389. Auditors met on-site consider the new AML/CFT requirements as an excessive burden due to the nature of their activities, which are limited to auditing and financial management consulting. They claimed to have never come across any schemes to evade taxes, although tax evasion is the most prevalent proceeds-generating crime in Moldova and the NRA criticized auditors for not spotting any suspicious signs when auditing banks involved in the Banking Fraud. Accounting and tax advisory services are also provided by numerous small entities and individual entrepreneurs. Limited information is available about their activity or ML/FT risk awareness as they are neither regulated, nor properly supervised for AML/CFT purposes.

390. There are 419 licensed manufacturers of and dealers in precious metals and stones (DPMS) and pawnshops operating on the market, which has been growing in recent years. DPMS and pawnshops met on-site were not aware of the major risk of smuggling of jewellery and other precious metals products. Risk-factors mentioned in relation to customers were limited to third party payments and suspicious appearance of buyers. Persons trading in other goods with cash over MDL 200,000 (approx. EUR 10,000) have also been subject to AML/CFT requirements since August 2018. The construction companies and car dealers met on-site found it very difficult to discuss any ML/FT risks and admitted that their AML/CFT expertise is poor.

Application of CDD and record keeping measures

Financial Institutions

391. FIs properly identify and verify customers and their representatives by obtaining the necessary identification data and verification documents. Banks also require the physical presence of their customers as part of the on-boarding process. Natural persons, are requested to provide officially-issued identify documents (e.g. ID card, passport), while foreign passports are checked for customs stamps to verify their validity. For legal entities, FIs rely on the information and documents recorded in PSA register (see IO.5).

392. Third party reliance for CDD purposes was only recently introduced by the new AML/CFT Law and so far has not been practiced by FIs. On the other hand, microfinance organisations met on-site treat customers investing in their bonds (lenders) differently from the rest of customers (borrowers) and would normally rely on banks servicing those lenders to carry out required CDD measures instead of doing it themselves.

393. There are exemptions from CDD requirements provided by the new AML/CFT Law (see IO.1). E-money and prepaid payment instruments subject to a monthly transaction threshold of MDL 5,000 (approx. EUR 250) are fully exempted from CDD requirements, and could be used for remote payments. To open e-wallets, customers needed to be physically present for CDD purposes. But e-money providers operate also self-service terminals for cash payments that are located in consumer shops and provide the possibility to pay for up to 200 services. In relation to those terminals, the said threshold can only be enforced per service, not per customer, which potentially allows a single customer to cross the threshold undetected and make payments for multiple services anonymously.

394. Banks and some non-bank FIs met on-site create customers' profiles against which their future transactions are examined. Thus, to understand the purpose and intended nature of business relations, these FIs obtain the information from customers about their needs (e.g. types of services sought, expected transaction volumes), and check their main activities and business partners for corporate customers via public sources. One bank mentioned also that customers' expertise in particular fields may be enquired as a way to verify their true intentions. FIs that have access to the paid content of PSA register can search in which legal entities an individual is involved as a founder (member) or manager. Although this service helps in verifying business activities of customers, in practice it is mostly available to banks as fees are considered too high for other FIs (see IO.5).

395. The AT has some concerns regarding the depth of verification of BOs of legal entities. FIs met on-site stated that they do always identify natural persons behind the customer. However, FIs determine BOs primarily based on legal ownership and heavily rely on official registries. As a result, persons exercising control over the customer via means other than ownership interest may sometimes not be sought after. Moreover, when the shareholding/ownership chain turns complicated and involves foreign legal entities, FIs might rely upon a self-declaration. The AT was informed that the share of complex legal structures in the banks' overall customer base is around 1.3%, although in 2018 they accounted for around 10% of total deposits and up to 12% of total payments. The authorities consider as complex those legal structures that combine at least two tiers of ownership and foreign capital, and where the shareholding or ownership interest is so dispersed that no owner holds more than 25% in the customer. However, this type of structures would not be regarded as complex in more sophisticated jurisdictions. The authorities expressed satisfaction with the improved quality of BO information held by banks and stated to not encounter any problems in retrieving the necessary data (see IO5).

396. FIs are generally unaware of characteristics of trusts and similar legal arrangements or their use in corporate structures. Although trusts cannot be formed under the domestic legal framework, Moldovan residents are not prohibited from acting as trustees for foreign trusts and some banks did report having trusts as part of their customers' ownership chain, albeit in very small numbers. One bank (systemically important) was able to clearly articulate who could be considered as controlling parties of trusts (e.g. trustee, settlor, protector and beneficiary) and what documents could be used to identify those (e.g. trust deed).

397. FIs interviewed on-site described transaction monitoring, customer screening and CDD updates as part of on-going due diligence applied. Major banks have recently up-graded their transaction monitoring software and are now using advanced anomaly detection algorithms. Smaller banks and non-bank FIs employ less sophisticated systems that generate alerts primarily based on SPCML-provided criteria on the identification of suspicious transactions (e.g. transfers to/from high-risk jurisdictions). Such alerts would have resulted in automatic reporting to SPCML before the new AML/CFT Law entered into force. However, FIs stated that since August 2018 they conduct further analysis by examining transaction histories and sources of funds to understand the rationale behind transactions.

398. Major banks use commercial databases to screen for UN sanctioned persons and foreign PEPs. Both customers and their BOs (at the start of business relations and periodically afterwards), as well as other parties in a transaction are subject to such screenings. The rest of FIs have put in place screening systems that are much less developed and do not always include BOs and transaction counterparties. FIs update CDD data regularly and high-risk customers are subject to more frequent updates. However, such updates do not necessarily include examining whether transactions carried out are consistent with customer profiles or expectations about the intended nature of business relations, unless specific trigger events occur (e.g. positive screening hits).

399. FIs are properly implementing their obligation to keep CDD data, account files, business correspondence and transaction records for at least 5 years. Since the Banking Fraud in 2014, when fraud-related bank records were apparently burned down, the supervisors have not observed any serious deficiencies in relation to record-keeping requirements.

DNFBPs

400. On-site interviews with DNFBPs demonstrated that the application of CDD measures varies among DNFBPs, but is generally inadequate across the sector. Although most of the DNFBPs met on-site have recently updated AML/CFT policies and procedures based on SPCML guidance and following the adoption of the new AML/CFT Law, their expertise in the subject is rudimentary as they are not subject to appropriate supervision (see Chapter 6 on IO.3). DNFBPs met on-site identify customers, but BOs and sources of funds are rarely inquired, and the concept of on-going due diligence is unfamiliar.

401. Land-based casinos identify customers upon entry and record their transactions. However, any subsequent monitoring of customer behaviour primarily aims to prevent or uncover casino frauds. Land-based casinos also do not seem to obtain any information on the source of funds even in the face of unusually large amounts of cash. Although some foreign-based online gambling operators provide their services in Moldova, supervisory authorities do not have any information about their activities or CDD measures applied, which raises further concerns about the level of AML/CFT compliance in the gambling industry.

402. The notaries met on-site have demonstrated a relatively better knowledge of CDD requirements compared to other DNFBPs. Notaries obtain basic identification data of customers, inquire if they act on somebody else's behalf and also request the proof of source of funds when certifying large transactions. However, their awareness of BO requirements is insufficient. The real estate agents appear to identify both sellers and buyers of real estate, but not their BOs and declared that they would rather avoid asking questions about the source of funds due to their repellent effect on potential buyers.

403. The lawyers met on-site have a vague understanding of the CDD requirements. They identify customers and conduct some background checks including via PSA register of legal entities. However, their main concern is to ensure that customers have the necessary resources to pay service fees. Auditors met on-site claimed to strictly follow international auditing standards, which also include AML procedures, and to identify customers and verify the authority of their representatives. Auditors also request customers to fill questionnaires stating their BOs and business activities as part of their reputational risk management, although there are no thorough checks carried out.

404. Dealers in precious metals and stones (DPMS) and other high-value dealers met on-site acknowledged that the implementation of the new AML/CFT Law is rather challenging and requires more detailed guidance and trainings on topics ranging from the identification of BOs to the application of RBA. Some of them also view AML/CFT requirements as a threat to their business interests and claimed that customers would not feel comfortable if they are asked about the source of their funds, essentially driving them away.

Application of enhanced or specific CDD

405. The AML/CFT Regulations adopted in 2018 by the NBM and NCFM have improved the application of enhanced and special measures by FIs.

PEPs

406. The same EDD requirements apply to both domestic and foreign PEPs under the new AML/CFT Law, which is positive development considering the concerns about corruption in Moldova (see IO.1). FIs and most of the DNFBPs met on-site stated to have developed lists of domestic PEPs and their family members based on asset declarations recorded by the National Integrity Authority (ANI). The rest rely on self-declarations and the customer-facing staff to recognise domestic PEPs. Some banks met are using commercial databases to ascertain foreign PEP status of customers and BOs both during the on-boarding and later when updating CDD data. Other REs depend exclusively on self-declarations by foreign customers and may sometimes conduct internet searches to clarify their status. All REs interviewed, including banks, found it challenging to define close associates of PEPs and admitted to experiencing practical difficulties in identifying those. The recently developed guidance on the identification of PEPs by the SPCML provides a definition of close associates, which is comprehensive enough and stresses both the personal and professional ties with PEPs, and may help improve the understanding of requirements over time.

407. Where PEPs, family members and close associates have been identified, FIs treat them as high-risk customers, although the application of specific measures varies across the financial sector. In the majority of banks met on-site the approval to establish business relations with PEPs is given by branch directors, while members of senior management make the relevant decision in the rest of FIs. Statements on the source of funds are usually requested from PEPs. One bank met on-site argued convincingly that it conducts extensive checks on both the source of funds and the source of wealth of PEPs, and reported instances when relationships have been refused due to concerns therein. Some FIs appear to also apply lower than ordinary thresholds to transactions carried out by PEPs and examine their consistency with the customer profile. Among DNFBPs, the application of additional measures to PEPs is very limited beyond the approval given by senior staff members.

Correspondent Banking

408. Banks have reassessed their correspondent relationships after the scandals and become more risk-sensitive in establishing new ones. All banks met on-site reported cancelling some Loro correspondent accounts due to concerns about account-holders' AML/CFT controls. Currently, banks mostly act as respondents for US and EU banking institutions, but they do also provide Loro accounts for Russian and other CIS-based banks. The awareness of AML/CFT requirements on correspondent relationships is generally adequate. Banks maintained to examine reputation of respondent institutions, assess their country risks, obtain AML/CFT programs and inquire about supervisory measures applied, and would repeat the procedure annually or ad-hoc should there be immediate concerns. The payable-through Loro accounts have been disallowed, however only one bank argued that it guards against Nested accounts.

New Technologies

409. Banks met on-site asserted that AML/CFT teams are consulted before introducing new products or delivery channels. Examples were given of projects involving P2P payments via ATM machines and mobile transfers that were scaled down by setting transaction limits and restricting their scope to existing customers due to AML/CFT concerns. However, as discussed above, the risk assessment processes in the banking industry are not sufficiently robust including those for new technologies. The e-money providers started introducing non-face to face verification of customers, and the AT was not informed of any efforts to assess and mitigate risks therein.

Wire Transfers

410. Banks and non-bank PSPs have been recently required by the NBM's AML/CFT regulations to ensure that wire transfers are accompanied by the full beneficiary information. However, the evaluators were advised that messaging systems used by banks prior to new regulations already required inclusion of all originator and beneficiary information. When the beneficiary information is incomplete or missing, banks apparently either suspend or reject a wire transfer and go back to an ordering FI for clarification. Banks do also screen both senders and beneficiaries of funds against the FT-related UN sanctions lists.

FT-Related Targeted Financial Sanctions

411. Implementation of TFS is largely inadequate across the financial sector. Major banks subject all new customers and counterparties in transactions to screening against FT-related UN sanctions lists. However, the timeframes for applying checks on existing customers range from one week to one year. There is also limited effort to identify funds indirectly controlled by UN designated persons or to uncover other forms of TFS evasion through transactional analysis. Moreover, some smaller banks and non-bank FIs do not apply TFS screening to BOs or counterparties in transactions.

412. All FIs are generally aware of the measures that must be applied once UN sanctioned persons are identified. Although no real-life examples could be provided, FIs claimed that they would refuse any business relations with such persons or suspend existing accounts and would file an STR to SPCML. DNFBPs interviewed on-site were aware of the UN sanctions lists, but some of them claimed that only foreign names considered as suspicious would be examined, while any updates to those lists are checked occasionally on the SIS website.

Higher-Risk Countries Identified by the FATF

413. Both FIs and DNFBPs met on-site demonstrated awareness of lists of jurisdictions that lack adequate AML/CFT systems as identified by FATF. These lists serve as one of the primary grounds

for risk assessments conducted by FIs. Banks that are headquartered outside of Moldova are also guided by group-wide lists of risky jurisdictions. FIs apply elements of EDD to customers from high-risk jurisdictions such as enhanced transaction monitoring and requesting the source of funds. Some banks stated that they would not accept customers from Iran and the Democratic Peoples' Republic of Korea (DPRK).

Reporting obligations and tipping off

414. REs had been encouraged for years to report all those transactions as suspicious where SPCML-provided risk criteria applied (see Table 11). This caused the number of STRs filed to SPCML skyrocketing, most of them of low quality. More than 4 million STRs had been submitted from 2013 to 2017 (mostly by banks) resulting in 542 disseminations, 24 prosecutions and 17 final convictions. The discussions with SPCML and the private sector revealed that REs had long been practicing a “*tick-box*” approach by formally checking existence of SPCML criteria and reporting STRs without conducting meaningful analysis. Nevertheless, the AT also recognises that these STRs contributed to the discovery of the two biggest ML cases and led to multiple successful ML investigations and prosecutions.

415. SPCML has been trying lately to change this “*tick-box*” reporting culture by reaching out to REs to stress the need for better reasoning of their suspicions and to clarify that automatic reporting on its risk criteria is no longer expected. The new STR reporting forms were also developed for each category of REs, which include mandatory fields for justifying suspicions and provide the possibility to report suspicious activity or patterns, although the forms have not yet been launched. The new AML/CFT Law requires submission of STRs in 24 hours from the moment when a suspicion is formed, whereas previously REs had to report within a day from when a transaction was carried out. This gives more time to REs for conducting required research and checking whether suspicions are indeed credible and must be reported to SPCML.

416. Banks met on-site commended SPCML’s new approach as a step forward to more efficient STR reporting system and claimed that since August 2018 they do try to understand reasons behind transactions before reporting them. Some banks provided trainings to their employees and acquired advanced transaction monitoring software to adapt to new realities. As a result, the number of STRs has been decreasing, which is a positive development (see also analysis under IO6). AT was also provided with examples of successful SPCML analyses concerning drug trafficking, real estate and PEPs that were triggered by banks’ recent STRs. Despite progress, all banks admitted that the number of STRs is still high and their overall quality remains an area for improvement. Some banks expressed the need to hire additional AML/CFT compliance staff to produce better STRs, while others wished for more detailed typologies reports from SPCML. AT also believes that to achieve further progress, the NBM must step up its supervisory efforts by examining the adequacy of internal processes of banks for identifying and reporting suspicious transactions.

417. The level of STR reporting across the non-bank FIs is uneven. Investment firms and leasing companies, microfinance organisations and foreign exchange offices submit almost no STRs, which could be attributed to a combination of the nature of their businesses, limited AML/CFT expertise and lack of appropriate supervision. In contrast, occasional spikes in STR reporting are observed among the non-bank PSPs and insurance companies. Thus, non-bank PSPs filed more than 600,000 STRs in 2017, almost as many as banks, compared to just 131 STRs in 2015. This is a staggering

variance, which is a clear indication of the automatic reporting practice noted above, rather than improved application of reporting obligations and must be dealt with by the NBM.

418. Notaries and casinos filed very few STRs in the last 5 years, while the rest of DNFBPs have not filed any, which is inconsistent with ML/FT risks identified in certain areas. The evaluation team also observed a degree of confusion about reporting requirements among some DNFBPs. For instance, lawyers have yet to find a way to reconcile the seemingly conflicting interests of protecting client confidentiality and reporting suspicious transactions, while notaries interviewed on-site were not sure whether to report all those real estate transactions to SPCML where prices are significantly deflated to apparently avoid payment of taxes.

419. No FT-related STRs have been submitted to SPCML in the last several years. Although banks have put in place automated transaction monitoring systems, their FT-related analysis seems limited to screening transactions against UN sanctions lists and spotting unusual activity related to quick transfers to/from high-risk jurisdictions. In the latter case, instead of thoroughly analysing rationale behind those transfers and reporting suspicious cases to SPCML, banks alert international PSPs involved in the chain to block any future transactions by the implicated persons. As a way to fill the clear need for CFT guidance among REs, SPCML has recently published guidelines on the identification of FT-related activities and transactions that include general descriptions of recent FT trends and methods, and some red-flag indicators relevant to certain products and services.

420. The SPCML provides annual feedback to REs about the number of cases opened and disseminations made to LEAs based on their STRs. The new AML/CFT Law authorised REs to request case-by-case feedback from SPCML. However, in practice this possibility has not been used frequently so far. The SPCML claimed that providing specific feedback would be denied only if it could damage an on-going investigation. A more general feedback on the quality of STRs is given at the regular typologies meetings organised by the SPCML for separate categories of REs. Overall, REs met on-site reported an increased engagement by both the SPCML and supervisors with the adoption of the new AML/CFT Law.

421. REs met on-site were generally familiar with the tipping-off prohibition. However, the legislation does not permit REs to refrain from CDD when this might alert the customer. REs also do not have an elaborate procedure for handling insistent customers to prevent disclosure. One bank reported that several years ago a customer complained about his/her transaction being reported to the SPCML. The bank could not tell how the information was made available to the customer and the SPCML asserted that there have been no issues with tipping-off identified since the Banking Fraud. Some banks also told the AT that they employ a centralised STR system whereby employees identifying potentially suspicious transactions are not informed about the decision to file an STR, which mitigates the tipping-off risk.

Internal controls and legal/regulatory requirements impending implementation

422. Increased supervisory efforts of the NBM in recent years resulted in the establishment of AML/CFT compliance functions by banks in the form of structural AML/CFT sub-units or dedicated officers inside broader compliance departments. These sub-units and officers report to responsible board members on a monthly or quarterly basis regarding their activity and changes in legislation. Staffing of the AML/CFT functions has been increasing, although one smaller bank reported employing more dedicated AML/CFT officers than all 3 major banks. It was also stressed by banks during the onsite visit that a successful transitioning to suspicion-based STR system requires

additional human resources. Banks headquartered outside of Moldova benefit considerably from AML/CFT resources of parent banks by using their group-wide risk management and data-analysis systems, and appeared more knowledgeable when discussing AML/CFT issues.

423. Banks interviewed on-site argued convincingly that decisions to file STRs are taken by heads of compliance departments or AML/CFT sub-units without undue influence. The dedicated AML/CFT officers also appear to have unrestricted access to CDD and other required data, and are being consulted in high-risk situations. Banks screen their employees for professional qualification and criminal records, however no additional steps are taken to vetting dedicated AML/CFT officers (e.g. reputation screening). One bank met on-site applies a mandatory procedure whereby its chief compliance officer interviews all prospective employees before their appointment. Trainings in AML/CFT issues have lately been given higher priority due to supervisory pressure. Introductory training courses are provided to newly hired staff and current employees are also periodically trained. These trainings focus more on legal requirements and relevant updates, and less on the identification of suspicious transactions, while delivery channels range from e-learning modules to face-to-face presentations and discussions.

424. Banks regularly conduct independent internal AML/CFT audits. One bank met onsite appeared to have properly scoped its audit program, thoroughly tested internal AML/CFT capabilities, and was able to clearly articulate deficiencies identified. The NBM has recently required all banks to carry out external AML/CFT audits by hiring some of the biggest professional services networks in the field. AT was shown summary findings of a number of those external audit reports, which demonstrate a more careful review of AML/CFT policies and procedures, and actual testing of internal controls and processes.

425. Internal controls beyond the banking industry are generally less developed. Non-bank FIs have AML/CFT programs in place, but their compliance functions are limited in capacity and expertise. There is usually one compliance officer who has major responsibilities other than those related to AML/CFT and can file an STR only with senior management approval. Independent audit functions, where they exist, do not cover AML/CFT issues, while training programs are confined to basic legal requirements. DNFBPs have AML/CFT compliance officers and recently updated internal policies and procedures with the SPCML's help, but their internal controls are in a nascent state.

Overall Conclusion

426. **Moldova has achieved a Moderate level of effectiveness for IO.4.**

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

FI:

a) Moldova has a robust licencing framework to prevent criminals and their associates from holding, or being the BO owner of a significant or controlling interest or holding a management function in a FI. The NBM and NCFM have recently conducted checks on the ownership and control structures of entities under their supervision belonging to the most material sectors. Supervisors have withdrawn or suspended licenses, although the decisions were not primarily based on AML/CFT infringements.

b) The FIs supervisors have an adequate level of understanding of ML risks for the majority of the sectors they supervise, which represent the most material areas in Moldova. Their understanding derives mainly from the NRA and from sectorial analysis.

c) The AML/CFT monitoring and supervision of FIs is carried out on a risk-sensitive basis to some extent. The NBM and NCFM perform off-site and on-site controls, including complex and thematic controls focusing only on AML/CFT issues. These controls include checking reporting regime, reviewing the application and efficiency of CDD measures, BO identification and other obligations established by the AML/CFT Law. At the time of the on-site, the microfinance sector has not yet been supervised in relation to implementation of AML/CFT requirements, nor has it been subject to the authorisation requirements or background checks performed by the NCFM.

d) Although the financial supervisors have undertaken steps to incorporate risk-based elements into their AML/CFT supervision, the supervision of FIs does not seem to be fully risk-based, mainly due to the absence of AML/CFT driven risk assessment models. While this absence might not be material for the banking sector at the moment, as all largest banks are being subject to constant enhanced monitoring, it is necessary to have these models in place in order to be able to apply a RBA once the application of these exceptional monitoring measures cease.

e) Both on-site and off-site supervisory actions performed by the financial sector supervisors have led to identification of the AML/CFT infringements, and as a result, sanctions have been imposed.

f) The entities subjected to an on-site supervisory action are closely monitored by the supervisors until they take necessary steps to eliminate the identified breaches. However, in the case of certain NBFIs, no further structural or major changes within the entity are triggered (e.g. in the governance or compliance functions of the entity or in the way they normally operate).

DNFBPs

g) Licensing and/or authorization requirements are applied to auditors, lawyers, notaries, casinos and DPMS, while background checks are conducted to lawyers and notaries, those being limited to the absence of criminal records as well as being subject to ethical requirements. As a result, there are several issues that hamper the effectiveness of the system to prevent criminals from holding or being a BO of a DNFBP.

h) Besides the SPCML, many supervisors for some of the DNFBPs' have been recently created or appointed. As a result, their degree of knowledge of the ML/FT risks of supervised entities is still an

area for improvement. However, some of them have already started taking some steps in order to assess ML/FT risks (e.g. State Assay Chamber and Supervisory Council to the Auditing Companies)

i) There are concerns about the effectiveness of DNFBPs supervision, as some of the REs met on-site demonstrated weak awareness of their AML/CFT obligations, despite being legally subject to supervision before the entry into force of the current AML/CFT regime. The main measures implemented by DNFBPs' supervisory authorities in relation to the current AML/CFT regime include the outreach actions to raise awareness of the entities under their supervision and implementing relevant own internal rules and procedures for supervisory activities.

ALL:

j) FT risks are insufficiently incorporated into the supervisory regimes, and are sometimes diluted into the general concept of AML/CFT without taking into consideration specific typologies and indicators related to TF.

k) While the range of sanctions available in AML/CFT Law laws seems to be dissuasive enough, there are some concerns in relation to the application of existing measures, as the number of applied sanctions is low and in those cases where fines are applied instead of written warnings, the amounts are moderate.

Recommended Actions

a) Continue the efforts to detect any changes in the status of the licensed entities, independently of the FIs alerts, and consider adjusting the frequency of updating the existing fit and proper requirements to the risk posed by each type of FI.

b) For DNFBPs, adjust the fit and proper requirements and background checks according to the risks.

c) Introduce a fully risk-based approach in supervision of FIs and DNFBPs, through the implementation of AML/CFT risk assessment models (based on information from several sources, such as RE's self-assessments) that allow supervisors to properly assess and measure AML/CFT risks to be able to rank the entities under their supervision according to their risk, understand the areas of risk concentration and plan risk-based on-site and off-site inspections accordingly. In the case of DNFBPs supervisors, further actions to assess, identify and understand the sectorial risks are needed in order to apply such effective RBA supervision.

d) AML/CFT thematic controls should focus more on areas of high significance such as the reformed STR reporting system, or the application of a RBA and proportionate and dissuasive sanctions should be applied as a result.

e) Supervisors should actively pursue the implementation of the sanctioning regime provided by the AML/CFT Law, as a result of the detection of breaches of provisions of the same Law.

f) Supervisors should provide more trainings and further outreach actions adapted to the needs, typologies and risk profile of each of the supervised sectors, gradually moving away from trainings that only cover the general provisions of the new AML/CFT Law. Furthermore, recently appointed supervisors would benefit from further trainings by the SPCML to extend their knowledge of entities under their supervision.

g) Supervisors should take extra steps to ensure that the all REs would effectively improve their governance and compliance functions following a supervisory action, along with addressing the particular deficiencies identified.

427. The relevant Immediate Outcome considered and assessed in this chapter is IO3. The recommendations relevant for the assessment of effectiveness under this section are R26-28 and R.34-35.

Immediate Outcome 3 (Supervision)

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

Financial institutions

National Bank of Moldova (NBM)

428. Moldova has a robust licencing framework to prevent criminals and their associates from holding, or being the BO of a significant or controlling interest or holding management function in FI. The NBM is the authority empowered to grant, withdraw or suspend the licenses for the banks, PSPs and the FEOs established in Moldova. In practice, the NBM has not issued any new banking licenses since 2008, due to the fact that no relevant applications have been submitted. In 2015, the NBM withdrew licences of three banks that were involved in the “Banking Fraud” scheme and allowed the execution of transactions without an economic justification and breaching the NBM requirements. At the same time, the NBM successfully took measures to ensure the “fit and proper” requirements on the ownership structures of the three largest banks by removing shareholders that did not comply with the integrity and other requirements pertaining to their property.

429. Regarding non-bank PSPs (NBPSPs), 2 licenses have been withdrawn by the NBM since 2014 based on the entities’ request at the termination of their activity. At the time of the on-site visit there were 6 NBPSPs operating in Moldova, of which 1 is a payment institution (PI), one is a postal operator and four are electronic money institutions (e-money institutions). The NBM is empowered to grant and withdraw licenses of FEOs and foreign exchange bureaus based on the infringements of AML/CFT rules. However, in practice, the license withdrawals are rarely AML/CFT related.

430. In the licencing process, the NBM performs fit and proper tests at the market entry, by checking the criminal records, integrity and financial soundness of the potential acquirer of significant (over 1%) share of the capital of the entity. In the course of the checks, the NBM requests and reviews a set of documents from the potential acquirer(s), including a list of shareholders of the acquirer (when applicable) and certificates of absence of criminal records, for both residents and non-residents. During the licensing/authorisation process, the BOs are duly identified.

431. Background checks are also extended to associates, as a list of affiliates (related parties, relatives, controlled companies and previous activities of the acquirer) has to be submitted by the applicant to the NBM when requesting a license or the acquisition of a significant share of the capital of the entity. In order to further understand who the potential acquirer is related to, the NBM takes into account the information obtained through the supervisory actions they conduct, as well as information in possession of other local authorities. These requirements apply to the banks and PSPs who are obliged to submit a list of close connections to the NBM.

432. When performing the background checks based on reasonable grounds or AML/CFT-related suspicion, the NBM requests relevant information from the SPCML and the GPO. All of the described checks, including BO identification, are conducted at the time of the review of the applications for licensing/authorisation and are periodically reviewed and reassessed. REs are obliged to notify the NBM within 10 days about any changes in the information submitted with the application, including about the changes in the BOs of the entity or any indirect beneficiary. The NBM has to expressly authorise (or deny) those changes, including those in BO. Once approved, the NBM continuously monitors the BOs and shareholders with a qualified holding, to ensure that they still meet the integrity requirements for licensing/authorisation. In case the NBM fails to identify the BOs or shareholders or the integrity criteria are no longer met, the NBM is empowered to suspend all their rights and can force them to sell all shares within a specific timeframe. The NBM publishes the names of the groups of shareholders that are suspended and information about the obligation to sell their shares.

433. The NBM has established an assessment plan of shareholders of entities under NBM supervision. As of March 2018, all shareholders were checked and on the basis of the findings some sanctions were applied. In 2 cases were the shareholders failed to submit the BO information, the NBM has started legal sanctioning proceedings. The most common grounds for refusal of granting a license or not authorising the acquisition of a qualified holding in a FI are: the failure to identify the BO; the declared BO is not the real person exercising the control; or the failure to disclose the real source of the funds. According to the legislation currently in force the requirements to identify the BO do not extend to foreign exchange offices (FEOs).⁸³ However, it must be noted that the FEOs in Moldova provide exchange services only in local currency to natural persons and are not conducting transfers abroad.

434. The NBM cooperates with other relevant institutions, both at a national (such as the NCFM and SPCML) and international (supervisory counterparts) level when assessing the integrity and the absence of AML/CFT-related criminal records of potential acquirers (see Box 3.1 and 3.2). The NBM requests information on whether the potential buyer or the administrators (managers) were active on a regulated market. Gathered information allows the NBM to draw conclusions on the good reputation of the potential buyer(s). The NBM has refused in some cases the proposed acquirers based on information received from the SPCML.

Box 3.1 – Reputation checks by NBM with foreign supervisory authorities

In order to take a decision on the acquisition of one bank licenced by the NBM by a proposed acquirer from an EU country, information was requested by the NBM from the relevant foreign supervisory authorities on the proposed acquirer's previous and present reputation and activity in the financial sector. In particular, information was requested about the following persons: (i) the proposed acquirer and its managers, (ii) the BO of the acquirer, (iii) persons previously and/or currently controlled by the proposed acquirer who have been acting in the same supervised sector and held a license for activity. This request of information included communication of: (i) cases where measures and/or sanctions had to be applied by the Central Bank, (ii) any violations of the AML/CFT legislation; (iii) any evidence that these persons had not been transparent, open and cooperative with the Central Bank; and (iv) any cases of withdrawal of a permission/ authorization/license granted to these persons. In addition, the NBM requested the Central Bank of the relevant country to state whether the activity of the mentioned persons could be qualified as being compliant with the rules and

⁸³ According to authorities the relevant legislative changes (obligation to check the BOs of foreign exchange entities) are currently being drafted.

practices of prudent and sound administration in their respective states. The NBM requested information also from the relevant foreign Capital Market Supervisory Authority. Provided information by relevant foreign supervisory authorities allowed the NBM to check the reputation, integrity and professional competences of direct/indirect proposed acquirers, their managers and BOs of the proposed acquisition. In this case, the NBM concluded that the BOs were indeed the ones that were declared as such.

Box 3.2 – Reputation checks by NBM with the SPCML and other national authorities

The NBM, the SPCML, the SIS and the STS cooperated in the evaluation process of a proposed acquirer of a bank (physical person and resident of Moldova). The acquirer stated the donation from his father (based on a donation contract concluded in another country) as source of the funds to acquire the shares of the bank. The funds came from the loans granted by his father to an offshore company (borrower). The NBM requested the SPCML to examine and investigate whether the source of the funds that were going to be used for the proposed acquisition were obtained through a criminal offence and/or through an attempt of ML/FT, or if there were any other risks related to the proposed acquisition. In order to investigate tax issues, relevant information was requested from STS. The NBM conclusions in relation to the assessment of the proposed acquirer against the criteria established by the banking legislation (reputation, absence of ML indicators, identification of the BO) were largely based on the information provided by the domestic competent authorities, which revealed that the potential acquirer and his father had connections with people involved in ML schemes, which were investigated in criminal cases. The information provided by the relevant domestic competent authorities, as well as information available to the NBM, allowed the justification to refuse the permission for the acquisition of the shares, thus preventing potential criminals and their associates from entering into the Moldovan banking sector.

National Commission for Financial Markets (NCFM)

435. The NCFM is the authority responsible to grant, withdraw and suspend the licenses and authorisations for the capital market sector, the insurance sector and the microfinance sector.

436. The investment firms have been licensed from 2015 onwards, with the entry into force of the Law on Capital Markets. All investment firms, both banking and non-banking ones, fall under the responsibility of the NCFM. When issuing the licences/authorizations, the NCFM identifies the BOs, qualified shareholders and BOs of the qualified shareholders of companies operating the capital markets sector. The NCFM conducts also the background checks to ensure the credibility and reputation of said parties. In order to do that, an extensive questionnaire issued by the NCFM, in place since March 2018, has to be filled. This questionnaire includes ID and personal data, information on revenue and tax information, affiliation, etc. The statements made while answering the questionnaire have to be supported by the necessary documents. These types of background checks are also extended to other parties besides BOs and qualified shareholders, such as administrators (managers). The financial entities have the obligation to notify any changes in beneficial ownership or in the shareholder structure of the company to the NCFM. NCFM will then re-evaluate the background checks and will have to approve (or deny) such changes. When determining the “fit and properness” (including criminal background) of a shareholder that wants to increase their qualified participation, it is a common practice for the NCFM to seek cooperation from the SPCML through the bilateral agreement.

437. In case the qualified shareholders or BOs do not fulfil the credibility and reputation requirements or they are residents of a jurisdiction that has links to corruption or is not

implementing transparency standards, the NCFM will not grant the license, will suspend or withdraw it if it was already granted or will not authorise the potential acquisition of a qualified holding. Equally so, if an investment firm fails to inform the NCFM about any changes on its administration, shareholders, BOs, etc., the supervisor is empowered to withdraw their license to operate in the capital markets. Amongst the capital markets sector, only one license has been withdrawn, and it was at the request of the entity.

Box 3.3 - License withdrawal of Investment Firm

The NCFM discovered (based on the information received on daily transactions registered outside the regulated market) the acquisition of the capital of an investment firm qualifying holding conducted in 2015. Contrary to the legal provisions, the NCFM was not notified in advance about the intention to sell/buy the qualifying holding. The NCFM issued an order suspending the voting rights of the new shareholder, sanctioned the seller of the shares and the manager of the investment firm (in accordance with the provisions of Art. 304³ of the Contravention Code) and issued a written warning on the non-compliance with the laws. At the same time, the new shareholder submitted to the NCFM the documents for assessment of relevant acquisition. The NCFM established, based on the information provided by the SPCML, that the new shareholder was suspected of (attempting) ML and requested the new shareholder to sell within 30 days the shares acquired due to violation of the legislation. At the same time, following the monitoring of the activity on the capital market, it was found that the investment firm did not provide any of the activities indicated in its license for a period of 6 months, which is why the NCFM took the decision to suspend the investment firm's license for a period of 30 days and prescribed to take the measures for the alienation of the 100% stake of the firm's share capital by the qualifying person. As a result of non-compliance with the prescriptions mentioned in the license suspension decision, the NCFM withdrew also the license of the concerned investment firm.

438. The same licencing mechanisms apply to the insurance industry, which is small and underdeveloped in Moldova. The non-life insurance dominates the market with only one life insurance company. The policies are distributed mainly through brokers and agents. All 26 BOs of significant shareholders of insurance companies (just two of them are non-residents and have successfully submitted a certificate of absence of criminal records) and qualified shareholders of those companies have been duly identified by the NCFM and they have not changed since their creation. Only 2 out of 15 insurance companies have a 100% foreign share (from an EU country).

439. The microfinance sector in Moldova encompasses two types of entities: microfinance organisations (currently called non-banking credit organisations) and savings and credit associations. This type of entities are non-profit associations and operate under territorial restrictions, determined by the type or license they are granted ("A" and "B" licenses operate on a regional level). They operate exclusively through bank accounts and are only allowed to attract funds and give out credit to their members, similarly to credit unions. The NCFM started to place microfinance organisations under their supervisory scope, as well as subjecting them to the authorisation and "fit and proper" requirements from 1 October 2018. Prior to that they were required only to register. The savings and credit associations were subjected to authorisation at the time of the on-site.

440. The leasing companies are subjected to the same licensing, supervision and background checks of the NCFM since the 1st of October, 2018, inheriting this responsibility from the SPCML (the former supervisor in the AML/CFT). The sector has a negligible weight in the financial system.

DNFBPs

441. DNFBPs in Moldova are licenced/authorised by the relevant competent authorities (see Table 8 in Chapter 1). The licensing and authorisations requirements vary for the different DNFBP sectors and entry controls do not always ensure that criminals or their associates are not the beneficial owners of or hold a controlling interest of the DNFBPs.

Public Services Agency (Casinos and DPMS)

442. The Public Services Agency (PSA) is the authority in charge of granting and withdrawing licenses to operate to both the casino and the DPMS sectors (including pawnshops). The licencing is done on the basis of the documents provided and the fee paid by the applicant. Background checks are not performed. However, it should be noted that controls on the absence of criminal and judicial records are performed at an earlier stage of the licensing process, when registering at the Customer Protection Agency (CPA), as it is a prerequisite to obtain the license.

443. Since January 2017, all forms of gambling in Moldova were declared state monopoly except for casinos, which are still private operators. At the time of the on-site visit, only 2 of those casinos were still operating. No licenses have been issued for online casinos by Moldovan authorities.

444. Although the Ministry of Finance is the competent supervisory authority for organisers of gambling, in practice casinos are supervised by different authorities in their respective fields (e.g. for customer protection or tax purposes). This implies that, in order for a license to be withdrawn, the authority that detects the infringement would be the one who would have to request its withdrawal. Thus, in terms of AML/CFT, the authority that would have to make the request for withdrawal to the PSA is the SPCML, based on any infringements of compliance with the casino's reporting obligations. Furthermore, and regardless of the authority, the PSA's decisions for withdrawal have to be approved by the court. In practice, 2 licences have been withdrawn but both of them due to non-compliance with the customer protection provisions.

The State Assay Chamber (SAC)

445. The State Assay Chamber (SAC) is the supervisory authority for AML/CFT issues for dealers in precious metals and stones (DPMS) and manages the registry for the DPMS. There are currently 416 licence holders. According to the SAC, all business operators in this area are licensed and in practice there was only one case where an illegal operator was detected by the Police. The tax burden has been minimised in order to decrease unregulated activity of DPMS.

Chamber of Notaries

446. There are currently 311 active notaries, the activities of which are subject to licensing. The license is granted by the Chamber of Notaries after an 18-month internship, qualification exams and passing relevant competition organised by the licensing company operating under the Ministry of Justice (MoJ). Integrity and good reputation of notaries is also checked before granting the license. The list of documents to be provided by the candidate includes a certificate on absence of criminal records and an affidavit of no criminal liabilities. There were no examples of withdrawal of licences. Authorities consider that, given the procedures described above, the risk of unregulated/unlicensed activity is absent.

Union of Lawyers

447. In order to operate as a lawyer in Moldova, the candidate needs to successfully complete an internship of 1,5 years and 3 exams consecutively. If passed, the licensing commission of the Union of Lawyers issues a decision to accept the candidate and the MoJ eventually issues the license.

Integrity checks are conducted by a relevant ethics committee and any deviations from it gives grounds to license withdrawal and convictions, when applicable. No examples of application of such measures were provided, which raises concerns in the context of the country profile where often legal professionals have been involved in media scandals and frauds.

448. Lawyers are not allowed to manage businesses and accounts as it is prohibited to engage in any economic activity not related to legal activity. Any infringements in this regard are also subject to license withdrawal. The Union of Layers has withdrawn a license from a lawyer who acted as a CEO of a company.

ALL supervisors

449. Moldova have undertaken steps to reinforce transparency of the shareholders' structure of FIs, by ensuring their BOs identification during licensing processes as well as performing "fit and proper" and criminal background checks. However, there are still some concerns in relation to the scope of such measures as well as the frequency of updates. Microfinance and FEOs (lower-risk sectors) have become only recently subject to authorization requirements. In relation to DNFBPs, licensing and/or authorization requirements are applied only to auditors/accountants, lawyers, notaries, casinos and DPMS, while background checks are only conducted to lawyers and notaries, those being limited to the absence of criminal records as well as being subject to ethic requirements. As a result, there are several issues that hamper the effectiveness of the system to prevent criminals from holding or being a BO of a FI or a DNFBP.

Supervisors' understanding and identification of ML/FT risks

Financial institutions

450. The FI supervisors' understanding of ML risks is adequate for the majority of sectors under their supervision and derives mainly from the NRA and from sectorial analysis. The financial supervisors reassess periodically the risk profile of the sectors under their remit. For instance, the NBM has developed a mechanism for remote supervision consisting of a periodical reporting schedule in relation to cash-based transactions and international transactions through the swift system. This instrument enables the NBM to detect certain further potential risks that could lead to some illegal transactions and they can act accordingly. The NCFM also has at their disposal such mechanisms consisting in daily reports from their supervised entities.

451. Another tool that supervisors use is the self-assessment conducted by the REs. This information will allow supervisors to reassess, when necessary, the risk profile in terms of ML/FT of certain entities and identify those posing major risks. REs have to take into account the results of the NRA, as well as the indicators/factors provided by the NBM and the NCFM when developing such assessments. The reports contain information about the internal organisation of the banks, their business model and the risks associated with it, the services offered to both business and private customers, analyses of clients and their risk categories, activities and transactions, with a focus on those particular typologies of transactions that present higher ML/FT risks and vulnerabilities, as well as a general conclusion and an action plan for improvement. The NBM had received the self-assessment from all banks, except two, at the time of the on-site visit and had also formally requested through a letter the self-assessments of the other sectors under its supervision.

452. NBM divides the foreign exchange entities, into two categories: FEOs and foreign exchange bureaus in the framework of commercial banks. Overall, the volume of transactions they facilitate

amounts to approximately EUR 1.5 billion annually. FEOs are only allowed to perform transactions with natural persons and those transactions tend to be of a small amount.

453. In relation to correspondent banking relationships, since the “Global Laundromat” case many Moldovan banks lost their correspondent accounts with their counterparts. Thus, the NBM assessed such risk as decreasing. Nonetheless, banking entities have to perform the appropriate CDD measures in relation to the corresponding bank they operate with in order to avoid any further potential risks.

454. In relation to PSPs, the flow of annual transactions it represents amounts to 1.1 million EUR. However, this sector has been experiencing a reduction of its market share during recent years of up to 25% of the GDP. The products it offers are mainly paying out services as well as social payments through the Moldovan Postal Services. Since the adoption of the NRA the sector has started to develop their internal self-assessment, approximately half of which have already been submitted to the authorities.

455. The NCFM understands the risk of the securities market as medium-low, considering that it only amounts to 1% of the Moldovan GDP and it is a market still under development, as the financial instruments traded are not excessively sophisticated. Regarding the insurance, just one company offers life insurance and general insurance represents a 1.06% of the GDP, thus its level of risk is rated as medium-low.

456. For microfinance sector, risk is deemed as medium, as the savings and credit associations are only relevant in rural areas. The main vulnerability associated with this sector – in particular with microfinance associations – was the absence of an AML/CFT supervisory body up until October 2018.

457. At the time of the on-site, the ANRCETI was still in the stage of assessing the reports received from their supervised entities. However, the agency participated in the NRA process and was conducting trainings on sectorial trends alongside the SPCML.

458. FT risks are insufficiently considered by supervisors and are often diluted into the general concept of AML/CFT without identifying and understanding specific typologies and indicators related to FT. Although some activities to raise awareness have been performed in relation to FT risks, those mainly consisted of updating on the relevant UNSCRs, disseminating relevant guidelines from the FATF and explaining the results of the NRA. No further guidance has been provided and no further assessment of FT risks has been conducted. Both supervisors mainly linked FT risks only to the international sanctions lists.

459. Overall, the financial supervisors consider that the ML risk in supervised sectors have decreased since the adoption of the NRA as a result of the supervisory actions undertaking, such as placing the three major banks in Moldova under an intensive supervisory regime due to a lack of transparency in their shareholders structure and incompliance with certain AML/CTF requirements.

DNFBPs

460. The SPCML, appointed as the supervisor of real estate, DPMS and casinos has a good understanding of the risks as derived from the NRA (to which it substantially contributed). In addition, the SPCML started to perform several trainings and outreach actions in order to further assess the ML/FT specific risks as well as to raise awareness of their obligations and risks.

461. In terms of self-assessments, since it is a newly established obligation by the AML/CFT, no DNFBP supervisor has received any self-assessment from their REs so far.

462. Due to the recent appointment of supervisors for some of the DNFBPs their degree of knowledge of the ML/FT risks of supervised entities is still an area for improvement. However, some of them have already started taking some steps in order to assess ML/FT risks. For instance, the State Assay Chamber considers that the sector of DPMS is not subjected to high risks, although some of them could be identified such as sales of smuggled items or sales of items without the documents proving their origin. For pawnshops, the main risks identified were not knowing the BO or legalising smuggled or stolen goods through a retail network. This list of factors was published on the SAC's website along related questionnaires.

463. Similarly, the Supervisory Council of the MoF supervising the audit activity has identified some risks to its sector such as failure to properly identify and evaluate the ML/FT risks, to implement the internal methodology on AML/CFT or to identify and report suspicious activities besides the transactions fulfilling the reporting criteria based on thresholds provided by the FIU. The level of awareness of ML/FT risks demonstrated by the Supervisory Council was limited, as it only referred to the failures to identify and properly evaluate the risks, to properly implement the methodology on AML/CFT and to identify and report STRs (according to the SPCML criteria). The Council organises AML/CFT-related trainings alongside the SPCML but, those are limited to how the entities under their supervision should adjust their internal policies and procedures according to the new AML/CFT legislation.

464. Chamber of Notaries has assessed and understands the main risks of their sector, which are: the failure to identify the real prices of real estate, cash transactions, lack of mechanisms to identify BOs and lack of knowledge on the source of funds. The Chamber has proposed various ML risk mitigating measures (e.g. to allow only bank transfers for real estate transactions and to change the suspicious transaction indicators to report in case of difference of a 30% of more between the market and actual prices for real estate transactions).

465. The Lawyers Union considers that ML/FT risks in their sector are difficult to assess but in general they are low and lawyers should therefore not be considered as REs. There is the misconception that if the lawyers' customers had already established a business relationship with other REs (such as banks, real estate agents, securities companies, etc.) then there is no need for lawyers to implement full CDD. The Lawyers Union expressed the opinion that granting them access to the BO database would facilitate their work as supervisors.

ALL supervisors

466. Overall, the financial supervisors as well as the SPCML demonstrated a good understanding and identification of the ML risks of the sectors under their supervision, with some exceptions such as the foreign exchange and microfinance sectors. Other DNFBPs' supervisors understand the risk in their sectors to a lesser extent, given their recent creation or appointment as supervisors in relation to AML/CFT. These authorities would greatly benefit from further trainings by the SPCML, and other measures to improve their knowledge on particular risks typical for the entities under their supervision. FT risks are insufficiently understood.

Risk-based supervision of compliance with AML/CTF requirements

Financial institutions

National Bank of Moldova (NBM)

467. The AML/CFT monitoring and supervision of FIs is carried out on a risk-sensitive basis for the most material sectors in Moldova.

468. The dedicated AML/CFT subdivision within the NBM has been in place for approximately 18 months prior to the on-site visit. The AML/CFT division has been reinforced since 2017 (following the adoption of the NRA) and is composed, of seven senior members. The NBM has also adjusted the AML/CFT Regulations addressed to the supervised entities (Orders No. 200, 201 and 202 from 2018) and has adjusted its internal supervisory Manual in order to incorporate the risk-based approach provisions in the supervision process in 2018.

469. The NBM has taken several steps in order to apply a RBA in relation to both on-site and off-site supervisions. For example, the process of planning on-site controls starts with a desk-based reviews and the consultation of several external sources such as registers, whereby several risk alerts are taken into account, including any previous deficiencies on the AML/CFT side as well as other prudential indicators such as the amount of capital, assets management, liquidity ratios, etc. The tools and mechanisms used by NBM include analysing off-site reports or transactions on cash and domestic/international payments. Another risk analysis tool is the internal risk assessments that all REs have to conduct and submit annually. These self-assessments not only give the entities the possibility to better allocate their resources depending on the level of risk, but also allows the NBM to use that information for a RBA based AML/CFT supervision.

470. To perform the off-site supervision, the NBM has access to information and reports from the banks that allow them to identify whether there are certain AML/CFT risks or cash flows of a potential illicit nature. This information includes swift transactions, cash transactions, daily analysis of inflows and outflows, daily reports on credits, withdrawals, register of accounts opened in banks and results of the internal audits. The analysis of swift and cash transactions is done monthly and, on a quarterly basis, a briefing note towards the management is issued in order to show the results of the analysis and stats on major money flows, highlighting some unusual transactions. If higher-risk transactions are detected, this fact can lead to either an on-site control or to perform a deeper off-site analysis to targeted clients and transactions or performs on-site thematic inspections.

471. Once the sample of targeted clients is selected, the NBM goes on-site and checks those customers' IDs, the verifications that the reporting entity has conducted on them, the measures undertaken to identify its ultimate BO, information collected on the administrators (managers) or the monitoring that the bank has performed on their transactions, amongst other issues. Additionally, if a customer falls under a certain high-risk category, the NBM also checks on-site whether the level of risk of this client is correctly rated by the bank and whether the EDD measures are being applied.

472. Other topics that are covered by the NBM's on-site controls are: (i) the existence and effectiveness of a specific software to monitor and execute a real time screening of clients against sanctions list; (ii) the extent of high-risk clients that the bank has, specially PEPs and whether the entity applies KYC measures (also for lower risk customers as well); (iv) the correspondent relationships management (including AML/CFT-related issues, their customers or any potential sanctions imposed). It should be noted that, since the "Global Laundromat Case", payable-through accounts are no longer allowed (as a de-risking measure) and the requirements on corresponding relationships have been strengthened.

473. During its on-site controls, the NBM checks the compliance with the reporting obligations. In case any AML/CFT infringements are detected, the NBM informs the SPCML about them so that the SPCML can start monitoring the entity.

474. The national cooperation of the NBM in the framework of their on-site inspections includes all competent authorities (the SPCML, the STS, the SIS and the Anticorruption Prosecutor's Office), depending on the type of the inspection and/or findings. There is closer cooperation with the NCFM (e.g. the NCFM and the NBM conduct joint on-site controls).

475. In relation to the banking sector, the NBM performs yearly one complex control on prudential matters for every bank. Additionally, unplanned controls are also carried out and their number, duration and themes vary depending on the NBM's planning for each year. Within all NBM's controls, AML/CFT matters are sometimes included but the authorities maintained that the subjects are closely intertwined and it is difficult to extract the specific AML aspect from the whole. From June 2015, the three largest banks comprising approximate 70% of the total assets in the banking sector of Moldova are under intensive supervision, which entails a daily monitoring of their activity. Based on daily reports (balance sheet, profit and loss report, cash reports, wire transfers reports, other prudential reports – liquidity, tier capital, loan loss provisions, etc.) the specialised group within the NBM is analysing the data in order to determine if there are any transactions or activities that need additional control or measures.

476. FEOs are inspected on monthly basis and on-site inspections planning is decided once a year based on the analyses of the turnover of transactions, the results of the previous inspection and the region or location of FEOs. As a result, each FEO is being verified at least once every 1-2 years. These are general controls which include some elements of AML/CFT (e.g. mainly the detection of unreported transactions). Thus, it can be inferred that FEOs might be not sufficiently supervised in AML/CFT matters.

477. Regarding non-banking payment service providers, an annual plan of on-site controls is done in October each year, meaning that risks are revised annually. Depending on the infringements found in previous controls, these can be conducted on a more frequent basis (e.g. quarterly). All transactions performed by PSPs are carried out through the Automated Interbank Payment System (for national payments in Moldovan lei).

Table 47: On-site inspections conducted by the NBM

		2013	2014	2015	2016	2017	01.10.2018
Banking sector	Number of complex onsite inspections	13	8	3	1	5	5
	Number of thematic inspections	1	6	4	4	1	1
Non-banking PSPs	Number of complex onsite inspections	-	-	7	6	3	1
	Number of thematic inspections	-	-	-	4	1	-
Foreign exchange offices	Number of on-site controls (general supervision combined with AML/CFT supervision)	382	569	376	408	226 + 26 (AML/CFT specific)	74
Type of violation. Number of violations found (different than number of customers to which the type of violation assigns)							
Banking sector	Non identification of customers	12	6	1	2	4	0
	Non obtaining specific documents for identification of customers and their beneficial owners	10	12	3	4	4	0
	Non identification and verification of identity of beneficial owners	13	9	3	3	5	2

		2013	2014	2015	2016	2017	01.10.2018
	Lack of information regarding the nature and scope of business relationship	12	9	2	2	6	2
	Non monitoring of customer's transactions and lack of information regarding source of funds	14	13	3	2	6	4
	Non application of specific enhanced due diligence measures for customers and lack of appropriate assessment of ML/FT risks	3	9	3	1	5	3
	Non application of enhanced due diligence for customers in cross border correspondent relationship	0	0	0	0	0	0
	Non application of enhanced due diligence for customers that are PEP	1	3	0	0	0	0
	Non application of enhanced due diligence for customers that receive funds from high risk countries or jurisdictions	1	0	0	0	0	0
	Violations of requirements with regard to prohibition to hold anonymous accounts or to have relation with a fictitious bank	0	0	0	0	0	0
	Violations of requirements related to opening of accounts or establish business relation in cases when the bank can not apply CDD measures	0	0	0	0	0	0
	Violations of requirements related with record keeping	1	0	2	0	0	0
	Violations of requirements related with reporting of STRs, SARs and CTRs	12	12	3	2	3	3
	Violations of requirements related with internal control system	0	0	0	0	0	0
	Violations of requirements related with targeted measures for financial sanctions	0	2	0	0	0	0
Non-banking PSPs	Non-reporting cases	n/a	n/a	2	4	2	-
	Breaches concerning identification measures of clients	n/a	n/a	-	4	1	1

478. Regarding PSPs, the NBM performs off-site monitoring surveillance as a result of on-site controls. Subsequently, the NBM monitors the entity in order to ensure that the deficiencies are being properly addressed.

National Commission for Financial Markets (NCFM)

479. The AML division of the NCFM is in charge of supervising the three sectors under NCFM's responsibility and has two dedicated staff members: one in charge the legislative items and the other charged with supervision. This division appears to be insufficiently staffed. The actual on-site and off-site supervision are conducted by each subdivision of the NCFM in charge of each of the sectors under the NCFM's responsibility. That implies that the requirements for controls made on-site are

generic for each sub-division. Fully risk-based approach is not applied, since the level of risks for different sectors are not considered.

480. Regardless of the sector, the calendar of on-site inspections is usually scheduled annually. The number and types of entities to be inspected, as well as the lengths of the controls and the topics to be reviewed on an annual basis are decided through desk-based reviews of several indicators, such as customer risk profile, existence of a big clients database, other inputs such as information from the market or the internal AML/CFT programs and procedures of the supervised entities. An on-site control can be triggered by reports from other authorities or complaints from individuals.

481. On-site controls can either be complex or themed (ad-hoc). Complex controls are generally conducted by a team of three members of the corresponding subdivision of the NCFM and their scope includes both prudential and AML/CFT supervision. These controls can last up to a month, where one of the members of the NCFM checks the level of compliance of the supervised entity with the AML/CFT requirements (e.g. whether suspicious activities are properly identified and reported; implemented CDD measures; and record keeping, including, what documents are gathered from customers, etc.) The NCFM informs the SPCML about unreported suspicious transactions or activities discovered during their inspection. Themed (ad-hoc) controls can last from one day up to a week, and are used to check more particular issues. As an example authorities provided information on thematic ad-hoc on-site controls to two registry societies in 2016, which was triggered as a result of an unjustified number of transactions those entities were registering in relation to shares of commercial banks. There are no restrictions in legislation regarding the types of controls the NCFM is able to conduct, neither in length nor in scope.

Table 48: On-site controls conducted by the NCFM

		Securities	Insurance	Savings and credits associations B-license
2013	Number of inspections	-	4	15
	AML/CFT infringements	-	4	13
	Type of sanction/measure applied	-	4 written warnings	13 written warnings
2014	Number of inspections	-	12	20
	AML/CFT infringements	-	11	17
	Type of sanction/measure applied	-	- 11 written warnings - 9 communications to the SPCML	- 17 written warnings - 4 communications to the SPCML
2015	Number of inspections	-	9	13
	AML/CFT infringements	-	9	7
	Type of sanction/measure applied	-	- 9 written warnings - 8 communications to the SPCML	- 7 written warnings - 3 communications to the SPCML
2016	Number of inspections	2	2	4
	AML/CFT infringements	1	-	3
	Type of sanction/measure applied	1 written warning	-	- 3 written warnings - 2 communications to the SPCML

2017	Number of inspections	-	-	9
	AML/CFT infringements	-	-	5
	Type of sanction/measure applied	-	-	- 1 written warning - 4 communications to the SPCML
01.10.2018	Number of inspections	1	16	11
	AML/CFT infringements	1	14	6
	Type of sanction/measure applied	- 1 communication to the SPCML - 1 communication to the GPO - Initiation of the procedure for applying contraventional liability to the manager - Suspension of the certificate of qualification for 6 months.	- 14 written warnings - 3 communications to SPCML - 4 communications to the SFS	- 6 written warnings - 3 communications to the SPCML

482. The NCFM shares results of each on-site control with the AML Division, and the Board of Administrators has to approve the results. The most frequent deficiencies detected during on-site inspections in terms of AML/CFT are STRs that have not been properly identified, programs that were not updated and issues with the registry of clients. After the control, the NCFM also issues a detailed report for the entity where it lists all the deficiencies identified, establishes recommendations and sets deadlines for them to report back on the improvements made in order to address them. Furthermore, on an annual basis, the NCFM issues a Decision that includes a list of all deficiencies identified through the on-site controls conducted that year. The Decisions are published in the Official Gazette.

483. In terms of off-site supervision, besides the already mentioned information that the NCFM has access to and which is used to determine the scope of on-site controls, the NCFM has developed further supervisory mechanisms. Questionnaires (KYC models) are available on the NCFM's website. (e.g. KYC models include requesting information on the source of funds, PEPs, BOs and other CDD measures). NCFM checks during their controls whether REs are using such questionnaires or similar ones when performing their CDD obligations. The NCFM also publishes explanatory notes and other guidance through its website. Another off-site source of information for the NCFM is the yearly audit reports submitted by the REs. These reports are reviewed by each of the corresponding subdivisions within the NCFM and can lead to several actions, such as issuing recommendations, sanctions, on-site controls, etc.

484. The NCFM also verifies the reports on transactions performed on the securities market. As a result of these analysis, for instance, during the year 2016, within NCFM 205 securities transactions were verified (off-site), based on the documents requested from licensed and authorised persons on the capital market, of which 85 MTF (Multilateral Trading Facility) transactions with shares issued by 11 joint stock companies and 120 transactions performed on the regulated market with shares issued by 19 joint stock companies. As a result of the verifications, several violations were found in the transactions on the capital

market, and the documents related to five transactions on the regulated market with securities issued by 1 commercial bank were submitted for examination to the SPCML.

485. None of the supervisory mechanisms stated in this chapter were applicable to the microfinance organisations (non-banking credit organisations) before the 1st of October of 2018.

DNFBPs

SPCML

486. The NRA noted that, although real estate, leasing and traders of high-value goods did not entail a high risk of ML/FT, they were previously not supervised. To address this shortcoming, relevant changes were introduced with AML/CFT Law and the responsibility to supervise real estate, leasing and traders of high value goods, was assigned to the SPCML and a new subdivision with three members has been created within the FIU.

487. The SPCML has conducted in 2013-2017 six controls on leasing companies to check their internal controls and procedures. As a result, 2 sanctions were imposed (total value: 90,000 MDL (EUR 4,663)). In 2018 the supervision of the leasing companies was transferred from the SPCML to the NCFM. Nevertheless, since the NCFM has to create a register for non-banking credit organisations and does not yet have the necessary resources to monitor them for AML/CFT purposes, the SPCML continued to perform the supervision until 1 April 2019. ML/FT risk level of leasing companies is not deemed to be high, as they do not deal with the cash and transactions are conducted through the banks.

488. Despite the fact that the SPCML acquired the supervisory powers in relation to certain categories only recently, it has already participated in raising the awareness of the relevant RE through the training and issuing guidance. However, no supervisory actions as such have been performed. Nonetheless, the SPCML has a detailed timeline in place to introduce necessary supervisory functions and actions.

Ministry of Finance

489. The Supervisory Council within the MoF is the authority in charge of AML/CFT supervision of auditing companies. During 2014-2017, the Supervisory Council carried out 35 inspections of audit companies but no particular risk-based methodology or approach is followed.

The Supervisory Council performs desk-based monitoring by reviewing every year the reports and the replies to the questionnaires on the implementation of AML/CFT measures by the audit agencies. No cases of non-compliance have been detected by the Supervisory Council so far, but if any infringement was detected, they would inform the SPCML about it.

490. The Ministry of Finance is the designated supervisory authority for the casino sector on AML/CFT issues. The Consumer Protection and Market Surveillance Agency performs this function. Besides, all other relevant supervisors (e.g. PSA, State Tax Service, Police) perform controls on casinos within their own competences. If any AML/CFT infringement is detected, these authorities would inform SPCML which would then control compliance with the reporting obligations.

ANRCETI

491. The National Regulatory Agency for Electronic Communications and Information Technology (ANRCETI) is the AML/CFT supervisor for post offices since September 2018. One control on Posta Moldova (October 2018) was conducted by the time of the on-site visit, where AML/CFT issues were included. ANRCETI has started to conduct outreach actions and issue relevant instructions

(Instruction on prevention and combating ML and FT by postal service providers). No risk elements are taken into account in the initial supervisory actions.

Notaries Chamber

492. The Notaries Chamber was created in 2016, and is empowered with AML/CFT functions. No specific statistics was provided on the number of AML/CFT controls. The Chamber does not have any specific AML staff and such functions are being dealt with by the specialised committees within the chamber. In case any AML/CFT infringements are detected the Chamber's ethics committee is notified. However, notaries think that the MoJ should manage these proceeding, as the Chamber does not have the powers to sanction directly for AML/CFT breaches if members from the Chamber would be involved in non-compliance situations. Overall, there seems to be still a lack of legal framework in this regard (see Technical Compliance Annex on R.35).

Union of Lawyers

493. The Union of Lawyers has been empowered as the AML/CFT supervisor with the entry into force of the new AML/CFT Law. Given the fact that this is a freshly granted competence, not many supervisory actions have been performed. It is expected that the budget for 2019 will allow the Union to incorporate two members for AML supervision purposes only, such as transmitting reports to the FIU after issuing guidance on how to identify suspicious transactions for lawyers. Furthermore, they are also trying to contract external software and databases in order to ensure a better degree of compliance with the AML/CFT legislation, as the Union does not have any connections to any official register. In case AML/CFT compliance breaches are detected, the ethics and discipline committee shall be notified.

PSA

494. Public Services Agency (PSA) manages the new online monitoring system for all gambling operators, which is at a very initial stage and not yet fully functional. This tool will enable collection of data from all gambling entities, which will be accessible by several authorities such as STS or the SPCML. Although the authority that will be managing this system is going to be the PSA, other authorities have provided their sets of expectations to be included to this system. In relation to AML/CFT, the system will allow for an automatic reporting of suspicious transactions to the SPCML, based on the criteria provided by them, which should go beyond the "threshold approach" and also include typologies and indices relevant in the field to ensure that good quality STRs and SARs are also being reported.

State Assay Chamber (SAC)

495. The State Assay Chamber is also at an initial stage of controls. There are about 400 business operators under their supervision, including pawnshops. The State Assay Chamber has developed regulation/instructions on preventing AML/CFT. They also developed questionnaires for legal entities to start assessing the sector and requested the REs to start developing internal AML/CFT procedures that have to be approved.

ALL supervisors

496. Overall, the AML/CFT monitoring and supervision of FIs is carried out on a risk-sensitive basis which is concerning the most material sectors in Moldova. Nevertheless, to reach full AML/CFT driven supervision on banks, standalone data on ML/FT pecuniary sanctions (see CI below) are still to be kept. The main AML/CFT measures implemented by DNFBPs' supervisory authorities include the outreach actions to raise awareness of the entities under their supervision and implementing

relevant internal rules and procedures for supervisory activities. Further actions should be taken by DNFBPs' supervisory authorities to implement a risk-based supervision.

Remedial actions and effective, proportionate, and dissuasive sanctions

497. Supervisors impose sanctions when they detect any AML/CFT infringements, which range from written warnings, requirements to draft action plans to solve the deficiencies, communications to other authorities (in particular the SPCML), pecuniary fines (to the entity and/or its management), withdrawal of licenses, suspension of voting rights or removal of managers/compliance officers. While AML/CFT-related infringements are, indeed, detected by the supervisors during the course of their on-site controls (as evidenced, in Table 47 and 48 above), the statistics on pecuniary sanctions are kept by the authorities in an aggregated manner (that is, merged with sanctions imposed as a result of prudential supervision), consequently it is not possible to determine the exact amount that correspond purely to AML/CFT issues (see Table 49 below). The types of sanctions or remedial actions imposed are more in line with those provided by sectorial legislation or the Contravention Code rather than those established in the AML/CFT Act. Overall, it seems that the AML/CFT-related infringements and sanctions are diluted amongst prudential supervision issues and that, given its recent adoption. Furthermore, while the range of sanctions available in AML/CFT Law and sectorial laws seem to be dissuasive enough, there are some concerns in relation to the application of existing measures, as the number of applied sanctions is low and in those cases where fines are applied instead of written warnings, the amounts are moderate, especially in relation to DNFBPs.

Table 49: Sanctions and other measures applied to reporting entities by the supervisory authorities

	Types of sanctions / measures applied					
	2013	2014	2015	2016	2017	01.10.2018
Financial sector						
Banks	3 written warnings 1 fine to bank + 1 fine to bank management (EUR 13,171) 10 requirements to draft a compliance plan	5 written warnings 1 fine to bank (EUR 101,675) 3 requirements to draft a compliance plan	1 fine to bank + 12 fines to bank management (EUR 128,334) 3 requirements to draft a compliance plan 3 withdrawals of license	1 removal of manager / compliance officer 2 banks suspension of voting rights of shareholders	3 written warnings 3 fines to bank management (EUR 15,155) 1 prescription to remediate the identified violations	1 written warning 2 fines to bank + 3 fines to bank management (EUR 132,876)
Securities	-	1 fine (EUR 330)	-	1 written warning	-	1 written warning 1 informing FIU
Insurance	4 written warnings	11 written warnings 4 fines (EUR 800) 9 informing FIU	6 written warnings 5 fines (EUR 1,095) 8 other measures (unspecified)	-	-	14 written warnings 3 informing FIU 4 informing STS
MSBs and exchange offices	2 written warnings 2 fines (EUR 1,345)	23 written warnings 8 fines (EUR 2,251) 12 suspensions of activity	28 written warnings 2 fines (EUR 670)	3 written warnings 1 suspension of activity	3 written warnings	n/a
Savings and credit associations	-	17 written warnings 1 fine (EUR 200) 3 informing FIU	9 written warnings 2 fines (EUR 2,800)	3 written warnings 2 other measures (unspecified)	6 written warnings 1 other measure (unspecified)	6 written warnings 3 informing FIU
Microfinance organisations	-	7 fines (EUR 2,500)	3 fines (EUR 21,000)	-	-	n/a

Non-banking payment service providers	-	-	3 written warnings 4 action plans	4 written warnings 4 fines (EUR 14,997) 3 infringements reported to the FIU	2 written warnings 1 fine (EUR 1,779.31) 1 infringement reported to the FIU 1 suspension of activity for 6 months	1 written warning 1 infringement reported to the FIU 1 voluntary termination of activity
Postal services	-	1 written warning	-	-	-	n/a
Non-financial sector						
Casinos	3 fines (EUR 1,500)	15 written warnings 4 fines (EUR 1,500)	21 written warnings 1 fine (EUR 285)	-	-	n/a
DPMS	-	-	-	-	-	n/a
Notaries	2 fines (EUR 350)	4 fines (EUR 807)	3 fines (EUR 450)	-	-	n/a

498. The majority of sanctions imposed so far amount to written warnings requiring the entity to address the deficiencies identified in the control and urging the entity to take remedial measures. The NBM and the NCFM give strict timeframes to the inspected entities to address the deficiencies, and monitors the measures adopted until the issues are solved. In case where the entity does not comply with the prescription, fines were applied by NBM but separate statistics are not kept. In case several infringements are detected, the highest amount is applied. Sanctions are made public on the NBM's website.

499. So far, no financial sanctions for AML/CFT issues have been imposed by the NCFM, they have just reported infringements to the SPCML, as the breaches detected were related to a lack of updates of their internal AML/CFT programmes and failures to report suspicious transactions/activities, according to the threshold criteria for reporting.

500. SPCML imposed two pecuniary sanctions on leasing companies for AML/CFT breaches in a total value of EUR 4,663 which can be considered as moderately dissuasive seeing the size of the sector in Moldova.

Impact of supervisory actions on compliance

501. There is a positive impact of the NBM and NCFM supervisory actions on compliance, mainly in stimulating the FIs to correct the identified breaches. The NBM accentuates the importance of remedial actions, and pays attention to the subsequent regular monitoring, which contributes to the improvement of AML/CFT compliance culture including through improving the internal risk assessments which allow REs to allocate better their resources to deal with the higher risk scenarios.

502. Some of the FIs have been subjected to the controls, mainly by the NBM and the NCFM and in some cases they have been subject to sanctions, including the suspension of a licence. Those entities were closely monitored until they presented the supervisor the necessary information and supporting documents demonstrating that they took remedial measures, shortly after the decision was issued. However, when addressing the deficiencies, not always structural or major changes were made, or shifts in governance or compliance functions occurred.

503. There is a common understanding that in general the AML/CFT breaches would not lead to any significant pecuniary sanctions, provided that the obliged entity would demonstrate its

willingness to remediate the shortcomings in a timely fashion. This, in itself, it is a positive outcome. Although the remedial measures (for breaches that have been identified) have a positive impact, in the absence of dissuasive fines, sustainable and effective self-compliance efforts by the FIs are not ensured. Due to the intermingled statistics it is difficult to state that pecuniary sanctions are playing their dissuasive and deterrent role and are being applied in a proportionate manner.

504. SPCML imposed two pecuniary sanctions on leasing companies in amounts which appear moderately dissuasive seeing the size and the dynamic of the sector.

505. In respect of DNFBPs, as some of the supervisors have been recently appointed and have not conducted any supervisory actions per se, their effectiveness and impact on compliance could not be assessed.

Promoting a clear understanding of AML/CTF obligations and ML/FT risks

506. Financial supervisors and the SPCML have been moderately effective in promoting a clear understanding of AML/CTF obligations and ML/FT risks, using different methods and tools. The NBM periodically organises workshops with the representatives of the REs to discuss the most recent legal requirements and their implementation.

507. NBM meets twice a year with the representatives of the REs to discuss about new trends concerning their respective sectors. If need be, the NBM conducts bilateral exchange of information with certain banks. The NBM details the new AML/CFT requirements by adopting sector-specific new regulations and by providing feedback to REs after the on-site controls. The NBM also highlights the informal (upon request) communication with the banks CCOs on certain requirements.

508. The NCFM has conducted trainings on various topics (e.g. AML/CFT Law and its Regulations, results of the NRA, BO identification etc.) and published the relevant AML/CFT information on its website (e.g. NRA results for the non-banking financial market, as well as its Action Plan; the Recommendations on a RBA to REs; examples of risk factors related to ML/FT for insurance sector; FATF Recommendations and TFS). NCFM's annual reports on its activities are also published on the NCFM website and comprise a separate section dedicated to supervision carried out in the AML/CFT field which points out the AML/CFT obligations and measures expected to mitigate risks. Furthermore, circulars were sent to professional participants of the non-banking financial market sector regarding the publication of the NRA report and the Action Plan, subsequently requesting the information on measures taken in order to minimise the assessed risk.

509. The NCFM has a fluid informal communication with the entities under its supervision and receives consultations almost on a daily basis on several AML/CFT compliance topics, mostly related to the requirements on the identification of BO.

510. The SPCML has conducted a number of trainings to the banking sector, as well as to DNFBPs on several subjects related to AML/CFT. Given its new status as supervisory authority for certain DNFBPs, the SPCML has conducted several specific workshops in order to make them aware of their status as REs, their obligations, the implementation of the AML/CFT requirements, the fact that they would be subject to inspections and sanctions, etc. During these workshops all REs were reminded of their obligations to perform their own risk assessments, having in mind the NRA and establishing

which the areas for increased focus were, including a set of indicators. In addition, the SPCML issues regularly guidance on several AML/CTF topics.⁸⁴

511. Supervisors of DNFBBs that have recently acquired their supervisory responsibilities, have mainly attended the meetings and workshops organised by the SPCML in order to become fully aware of their newly gained obligations. Some of the supervisors have conducted meetings with their supervised entities and some of them have issued some guidance (e.g. SAC issued guidance for DPMS sector).

Overall Conclusion

512. **Moldova has achieved a Moderate level of effectiveness for IO.3.**

⁸⁴ Order No. 15 from 8 June 2018, on identification and reporting of SARs and STRs; Order No. 16 from 8 June 2018, on identification of FT-related transactions; Order No. 17 from 8 June 2018, guidance on PEPs; Order No. 18 from 8 June 2018, on the reporting of transactions; Order No. 33 from 23 August 2018, on AML/CTF measures for leasing companies; Order No. 34 from 23 August 2018, on AML/CTF measures for real estate agents; Order No. 35 from 23 August 2018, on the application of international restrictive measures; Order No. 36 from 23 August 18, on the identification of the beneficial owner; Order No. 41 from 17 September 2018, guidance on cash transactions above MDL 200,000.

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

a) The NRA carried out by Moldovan authorities in 2015 does not provide a comprehensive analysis of ML/FT risks related to various types of legal persons or arrangements. However, it does consider the availability of BO information as part of the national vulnerabilities assessment. The extent to which shell companies are used to conceal the beneficiaries of illicit funds, particularly for tax evasion purposes, is generally well understood by competent authorities.

b) Moldova has implemented certain measures to prevent the misuse of legal persons in recent years. The STS introduced elaborate systems and processes to monitor dormant companies and uncover signs of VAT fraud. The SPCML has taken steps to encourage banks identify and cancel the business relationships with shell companies. However, limited measures have been applied by the Public Services Agency (PSA), which lacks the capacity to track down fictitious legal entities and strike them off the register.

c) The basic information on legal entities is either available online or can be obtained upon request from the PSA. There are however some concerns regarding the PSA's ability to keep the information accurate and updated. The newly created Central Securities Depository (CSD) will gradually consolidate the shareholder registries of joint stock companies (JSCs) into one consolidated register to ensure better governance and transparency.

d) The authorities rely primarily on banks to obtain the BO information. The bank account register managed by the STS will facilitate the rapid availability of the BO data to the competent authorities, once a technical solution is created to allow the SPCML and LEAs to directly access the register. However, difficulties identified in relation to complex legal structures under IO.4 imply that accurate and current BO information may not be always available. The BO register created by the PSA so far contains data only regarding newly-registered legal entities, and the PSA lacks the sufficient resources, expertise and mechanisms to ensure that the data is verified for accuracy and duly updated.

e) Trusts are not recognized in the domestic legal framework of Moldova, but their activity is not prohibited and banks have customers with trusts or similar legal arrangements in their ownership or control structure. There is insufficient understanding among the authorities and the banks of the nature of trusts and similar legal arrangements or the activity of TCSPs. Thus, the availability of accurate and current BO information on legal arrangements appears to be limited.

f) The PSA cannot apply sanctions for the failure to submit accurate or current basic and BO information. However, any changes to basic information are only valid once registered by the PSA and belated submissions are refused.

Recommended Actions

Moldova should:

a) conduct a comprehensive analysis of the extent to which legal entities created in Moldova can be, or are being misused for ML/FT, communicate the findings to relevant authorities and REs and take relevant risk-mitigating measures;

b) ensure the exchange of typologies of misuse of legal entities for ML/FT purposes between the relevant authorities, and keep statistics of STRs and criminal investigations therein;

c) provide the PSA with sufficient tools and resources to ensure that basic information on legal entities is kept accurate and current, and signs of potential misuse are detected *inter alia* by monitoring existing records based on high-risk indicators and cross-checking the information recorded with other sources, such as the STS-run tax database;

d) provide the PSA with sufficient tools and resources to ensure that the data recorded in the BO register is verified for accuracy and kept updated *inter alia* by training staff in BO requirements and cross-checking the data recorded with other sources such as the STS-run bank account register;

e) enable authorities to impose effective, proportionate and dissuasive sanctions against legal entities and individuals for breaches of the basic and BO information requirements, and consider authorizing the PSA to strike off the register legal entities for serious or repeated violations;

f) implement appropriate measures, including the mechanisms suggested in C.24.12, to ensure that nominee directors are not misused.

513. The relevant Immediate Outcome considered and assessed in this chapter is IO5. The recommendations relevant for the assessment of effectiveness under this section are R24 & 25.

Immediate Outcome 5 (Legal Persons and Arrangements)

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

514. Information about the creation, types and basic features of legal entities in Moldova is provided in different pieces of legislation. The registration requirements and procedures are set out in the Law on State Registration of Legal Entities, which designates the PSA as the registration authority. The PSA website (<http://asp.gov.md/en>) provides a description of the data and documents in Romanian, which must be submitted by applicants to register different types of legal entities.

515. There were 113,434 legal entities registered in Moldova as of March 2018. The most commonly used legal entities are limited liability companies (98,510), followed by JSCs (4,483), cooperatives (3,766) and state and municipal enterprises (1,572). There are 2,035 registered non-commercial organisations such as foundations, associations and institutions. The evaluators were not given the data on how many of those legal entities are foreign-owned or have at least one foreign shareholder or founder.

516. Moldova is not a signatory to the Hague Convention on the Law Applicable to Trusts and their Recognition, and its legislation does not allow for the creation of express trusts or similar legal arrangements. Nonetheless, Moldovan residents are not prohibited from acting as trustees for trusts formed under the foreign law. However, trust service providers, except for lawyers, are neither designated as REs, nor required to register with STS when having tax liabilities in Moldova.

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

517. The NRA carried out by Moldovan authorities in 2015 does not provide a comprehensive analysis of ML/FT risks related to various types of legal entities existing in the country. However, the NRA considers the availability of BO information as part of the national vulnerabilities assessment. It recognises the difficulties experienced by the banking industry in determining BOs of complex legal

structures, which was confirmed during the on-site interviews with banks (see IO.4). The NRA also considers the lack of mechanisms available to the PSA for obtaining BO information on legal entities registered in Moldova and proposes the creation of the BO register.

518. The NRA highlights that the access to identities of founders (members) of legal entities was recently made available free-of-charge, which is particularly important for customer verification purposes. Previously, only banks could afford access to such data as fees charged by the PSA were too high for other REs. However, the NRA fails to consider the vulnerabilities related to the ease of setting up legal entities via the PSA one-stop shops and the inability of the PSA to apply sanctions for violations of information requirements. Moreover, in order to search in which legal entities a particular individual is involved as founder (member) or manager, one needs to access the paid content of the PSA register. Thus, although such a search feature is indispensable for verifying customers' business activities, in practice it is mostly available to banks due to applicable fees.

519. The NRA provides the case study on VAT/carrousel fraud used for tax evasion, which is the most prevalent proceeds-generating crime in Moldova. The study describes a missing trader and other parties to the scheme, and the use of straw men to hide those behind the fraud. The NRA also refers to inadequacies in legislation that make it challenging to seize the assets of legal entities used for committing a crime or the illicitly acquired shares for future confiscation purposes. However, this falls short of thorough analysis of risks related to the use of different types of legal entities in serious economic crime domestically and in the cross-border context. The NRA also does not consider the potential for misuse of NPOs in the FT context although there are vulnerabilities concerning radicalisation and the recruitment of FTFs and funding sources of NPOs (see IO.10).

520. The authorities interviewed on-site demonstrated some further awareness of ML/FT risks related to the misuse of legal entities. The STS is well aware of the presence of shell companies and their attractiveness to conceal beneficiaries of illicit funds. The STS developed indicators of "pseudo-active enterprises" to help tax inspectors identify shell companies that could be misused for tax evasion purposes. The SPCML examined the legal entities with connections to Moldova that were implicated in the Panama Papers and uncovered some fictitious business arrangements. The SIS is aware of the risk of misusing Moldovan NPOs for financing mercenaries or FTFs, and has been monitoring the activities and transactions of some NPOs (see IO.10).

521. The AT believes that authorities could improve the understanding of risks of misuse of legal entities including in ways discussed below. The authorities have not attempted to quantify the scale of misuse as there are no statistics available on the number of STRs or criminal cases where legal entities have been implicated. The PSA has not estimated how many legal entities registered in Moldova exhibit the features of shell companies, which could be made possible if the STS and other authorities shared the information about such features and the PSA had sufficient resources to utilise elaborate IT systems. The authorities also have not analysed the characteristics of corporate entities that are most exploited by criminals or the actual schemes employed with few exceptions. There are almost no typologies reports available specific to the misuse of legal entities (e.g. TBML) that could enhance inter-departmental understanding, except for widely available descriptions of the "Banking Fraud" and "Global Laundromat". The evaluators also observed that authorities lack awareness of ML/FT risks related to trusts and similar legal arrangements that can operate in Moldova via professional trustees, and do not properly understand the nature of TCSPs, although the evaluators were told about banks having trusts as customers and foreign incorporation agents operating in Moldova.

Mitigating measures to prevent the misuse of legal persons and arrangements

522. The authorities have not comprehensively analysed the ML/FT risks concerning legal entities and arrangements in Moldova, which makes it difficult for evaluators to conclude whether measures applied by the country are appropriate to prevent their misuse. Nonetheless, the authorities have been somewhat successful in dealing with shell companies that extensively feature in typologies of fictitious business arrangements in Moldova.

523. The STS has recently modernised its information systems and created the electronic register of tax invoices to better monitor the activities of business entities and to prevent VAT fraud. These systems produce automated reports based on a set of indicators of “pseudo-active enterprises” developed by the STS, which may trigger further on-site inspections. Thus, in the last five years, the STS sent 157 cases to LEAs that involved shell companies potentially engaged in fictitious transactions. LEAs interviewed on-site were adamant in saying that all such cases are thoroughly investigated, but could not back up their claims with specific data. The evaluators were also not informed of any steps taken by STS or LEAs to strike those suspect companies off the PSA register.

524. After the “Global Laundromat” was exposed, the SPCML tried to identify similar schemes of using shell companies and fictitious loan deals to transit illicit funds through Moldova. A list of 150 companies, including Moldovan-registered, was developed and sent to banks, which were required to apply EDD measures and submit information on any activity on accounts of these companies to SPCML. The evaluators were told that no transactions have been carried out on those accounts since then. Banks have also become more active in identifying shell companies at the instruction of SPCML, which seems to have led to cancelling some existing business relationships and decreasing the number of new encounters with similar entities (see IO.4). Nonetheless, risks posed by shell companies persist in Moldova as they still feature in disseminations to LEAs made by SPCML and STS

525. The PSA has instructed its customer-facing staff to detect potential straw men and thus, discourage the formation of shell companies. The indications of straw men mentioned to the evaluators included “suspicious” appearance of applicants and unconvincing answers provided to questions over their business activities. However, there is no elaborate risk-management system to restrict the creation of or identify existing fictitious legal entities. The background checks applied to founders (members) or managers of legal entities at the time of registration include checking the UN sanctions lists and the SPCML list of offshore jurisdictions. Residence in one of those offshore jurisdictions will trigger a dissemination to the SPCML. There were 64 such disseminations by PSA in 2014-18 and 5 of them triggered SPCML’s analysis.

526. The PSA does not have IT systems that would enable tracking the indications of abuse of legal entities or cross-checking the information recorded in its register with other sources (e.g. STS tax database) and follow-up on suspicious cases. Even in situations when the PSA suspects straw men, it may not refuse the registration of a legal entity, but can only advise applicants against it. However, if applicants do still proceed with the registration, the PSA would neither closely monitor the legal entities subsequently created, nor share the information about them with other relevant authorities (e.g. STS, SPCML). Moreover, the PSA is limited in its power to strike off the register a legal entity for serious or repeated breaches of information requirements without the relevant court order. In 2014-2018, the PSA did however struck off around 10,000 dormant legal entities, i.e. legal entities that failed to submit financial reports to STS within 12 months from the registration or in the last three years.

527. The capital market in Moldova has been characterised with the weaknesses in the tracking system of shares and shareholders according to multiple credible sources. This has apparently contributed to the so called “Raider Attacks” i.e. fraudulent takeovers of shares from rightful owners in recent years. Currently, there are 11 registry societies operating in Moldova that provide the share registration and record-keeping services to JSCs. However, CSD was recently established to take over the share registration duties and create a unified register of corporate securities traded in Moldova. CSD has two more years to become fully operational and its effectiveness in addressing the weaknesses of the system could not be assessed. Bearer shares have been abolished in Moldova since 2007. Although previously allowed, the evaluators were informed that Moldovan-registered legal entities have never issued bearer shares.

528. The nominee shareholders are restricted to regulated capital market intermediaries (e.g. investment firms) and their nominee status is recorded by registry societies, which mitigates inherent risks of abuse. Although nominee directors are not regulated by the legislation, the appointment of directors in legal entities to represent interests of other parties is not expressly prohibited. The PSA did not demonstrate any awareness of the concept of nominee directors, while STS considers the number of times one person acts as a manager in companies exhibiting common traits (e.g. same activity, non-reporting) as a risk-factor. The authorities stated that the duty of directors to take decisions in good faith and avoid the conflict of interest would in practice restrict the appointment of nominees. The lawyers and auditors met on-site denied the provision of management services to legal entities and there was no evidence to suggest otherwise. Nonetheless, the evaluators believe that the authorities should pay closer attention to the potential misuse of nominee directors given the frequent use of shell companies and related straw men.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

529. The basic information on legal entities created in Moldova is made available through a number of mechanisms. The PSA runs the register of legal entities that records and maintains all required basic information except for the identification data of members of cooperatives. JSCs are required to maintain the shareholder registries on their own or via third party registry societies. The STS also keeps some identification details on all taxpayers, including legal entities, in its tax database.

530. Most of the information recorded by the PSA is available online free-of-charge. Although the general public can obtain certificates of registration and copies of statutory documents only upon request and subject to a fee, the evaluators were informed that LEAs and the SPCML have direct online access to these documents. The PSA examines the validity of documents submitted for registration and verifies the identities of founders (members) and managers based on official documents, and repeats the procedure whenever changes to the data occur. Such changes must be notified to PSA within 30 days of their occurrence and unless notified, they won't be considered valid. The PSA also refers to LEAs those cases where false data or falsified documents have been identified. However, the evaluators are concerned about the PSA's lack of the power to impose sanctions for violations of information requirements. Moreover, the PSA's inability to restrict the creation of or identify existing fictitious legal entities and to strike them off the register, further affects the reliability of its data, which was also questioned by some of the banks met onsite.

531. The shareholder registries of JSCs are not yet maintained in any centralised government-run databases, but are held either by JSCs individually or by registry societies. There are no specific mechanisms to ensure that changes in shareholding are duly reported to JSCs or registry societies,

but the evaluators were advised that such changes are only deemed valid once reflected in the shareholder registries, which mitigates the risk of non-reporting. Registry societies submit monthly reports to the NCFM, which include the list of persons holding over 5% of shares in public interest entities (FIs and listed companies). The STS and the SPCML are also entitled to request and obtain the shareholder data from registry societies for their needs, while LEAs can have access to these data only through lengthier general investigative powers. The evaluators learned about conflicts of interest and questionable record-keeping practices that helped facilitate “Raider Attacks” in the past, and welcome the creation of CSD that will gradually take over the duties of registry societies to ensure better governance and transparency.

532. The authorities primarily rely on banks to obtain the beneficial ownership information when a BO is not the same as the registered legal owner. All domestically-incorporated legal entities are required to keep their funds with FIs and thus, would normally have accounts in Moldovan banks. The authorities met on-site expressed satisfaction with the improved quality of BO information held by banks and claimed to not encounter any problems in retrieving the necessary data. However, the evaluation team observed serious deficiencies in relation to establishing BOs of complex legal structures by banks, which implies that accurate and current BO information may not always be available (see IO.4). Moreover, when investigating cross-border movement of funds between multiple domestic and foreign legal entities, identification of BOs frequently requires international cooperation, which is not always successful (see IO.2). DNFBPs, such as notaries, lawyers and auditors, lack awareness of BO requirements (see IO.4), although their involvement in company formation has been quite limited since the PSA started providing quick and easy registration procedure via one-stop shops.

533. The STS has recently created the register of bank accounts of legal entities, which includes information about BOs. The evaluators were told that the register will soon incorporate bank accounts of individuals and a technical solution is being developed that will allow the SPCML and LEAs to directly access the data. This is a significant development that may improve the availability of the BO information to competent authorities. However, the authorities did not explain what are the timeframes for updating the BO data and whether it will be examined for accuracy.

534. PSA has launched the BO register in August 2018, which can be accessed by the SPCML and supervisory authorities. The new AML/CFT Law requires all legal entities to establish their own BOs and provide the information to the PSA. So far, only newly registered legal entities have provided the relevant information and the PSA hopes to obtain similar data from existing entities once they approach to update the basic information or request the proof of incorporation. However, PSA is short of resources, expertise and mechanisms to ensure that the BO information obtained is verified for accuracy and duly updated. Thus, the PSA completely relies on declarations of legal entities and simply records the information provided. AT believes that supervisory authorities must guard against REs’ over-reliance on its data once the register becomes fully operational.

Timely access to adequate, accurate and current basic and BO information on legal arrangements

535. Trusts are not recognised in Moldova’s legal framework. However, trusts and similar legal arrangements formed under the foreign law are not prohibited from operating in the country and nothing precludes Moldovan residents to act as trustees for foreign trusts. TCSPs are not considered as REs under the AML/CFT Law, although the authorities claimed that no domestic businesses or individuals provide trust services and the evaluators could not find evidence suggesting otherwise.

536. The authorities rely on banks and their foreign counterparts to obtain the BO information on foreign trusts and similar legal arrangements. Banks have observed trusts in the ownership or control structure of their corporate customers, but their awareness of the characteristics or the controlling parties of trusts is insufficient (see IO.4). Thus, the evaluation team is concerned that the competent authorities may not always have access to accurate and current BO information on trusts and similar legal arrangements.

537. Moldova's legislation provides for the creation of UCITS such as investment funds, which could be considered as trust-like arrangements. There are some mechanisms to ensure that the BO information on such funds is available to competent authorities. In particular, investment firms that manage investment funds are required to annually provide information about their investors to NCFM, while the latter must make this information available to SPCML upon request. However, the evaluation team was informed that so far no investment funds have been created.

Effectiveness, proportionality and dissuasiveness of sanctions

538. The PSA has no power to apply sanctions against legal entities or relevant individuals for the violation of information requirements. However, the PSA will not register changes to the basic information unless they are provided on time (30 days). PSA's refusal would make such changes invalid, although "justified" excuses are also accepted for allowing belated submissions. In 2014-2018, the PSA uncovered 20 cases of false data or falsified documents submitted for the registration purposes and referred those to LEAs. No information was provided about further actions taken or criminal sanctions applied.

539. The failure to submit accurate BO information to the PSA may result in the refusal of registration of a legal person. However, there are no sanctions available when the existing legal entity fails to inform the PSA about changes among BOs or provides false or incorrect BO information. The authorities stated that PSA will refer such cases to SPCML, which is authorised to suspend transactions or freeze assets of legal entities, where reasonable grounds exist to suspect ML/FT, unless accurate BO information is provided. No such referrals have been made to SPCML thus far. The evaluators are concerned that the lack of sanctions may affect the reliability of the basic and BO information recorded by the PSA.

540. The evaluators were informed that the NCFM withdrew the authorisation of and initiated liquidation proceedings against one of the registry societies for violations concerning *inter alia* the identification of BOs, and issued a number of written warnings against other registry societies in connection with share registration and record-keeping practices in recent years.

541. There was no other information provided about the sanctions applied by supervisory authorities *specifically* for violations concerning the identification and verification of customers and their BOs (for general statistics of sanctions see Chapter 6 on IO.3). Thus, the evaluators could not conclude whether sanctions proved effective, proportionate and dissuasive. However, some of the inspections conducted by NBM in recent years focused on the quality of BO information and subsequent supervisory measures seem to have improved the identification of BOs by banks (see Chapter 5 on IO.4).

Overall Conclusion

542. **Moldova has achieved a Moderate level of effectiveness for IO.5.**

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

a) Moldova has a comprehensive legal framework for requesting and providing international co-operation, including MLA and extradition, which is regularly used by LEAs, FIU, supervisory and other competent authorities. In addition, there are a number of bilateral and multilateral agreements in place, which accelerate international co-operation.

b) Moldova has demonstrated effectiveness in providing and seeking international assistance in relation to MLA and extradition for cases related to ML and predicate offences. International feedback provided that the quality and timeliness of responses is generally satisfactory, although a few number of issues have been identified.

c) The authorities could not demonstrate that MLA requests relating to ML/FT (either received or sent) were given the highest priority, but depending on the circumstances, the authorities may take urgent action to execute a request.

d) Besides official ways of communication, the Moldovan authorities have also actively deployed informal communication.

e) Membership of various international organisations, such as Europol, Interpol and the Egmont Group, facilitated international co-operation, both for Moldova as a requesting party and as a requested party. The FIU has co-operated with foreign counterparts upon their own initiative and on behalf of other authorities. Results of the received information were used in the investigations of ML/FT cases.

f) Co-operation in relation to beneficial owners (BO) is of limited effectiveness, due to the difficulties in the BOs framework. This may affect the comprehensiveness of the data provided to the requesting foreign parties.

Recommended actions

Moldova should:

a) Improve statistics on requesting MLA and extradition, particularly by treating ML offences separated from predicate offences, and align them between the GPO and MoJ.

b) Ensure prioritization of ML cases and cases with ML aspects in practice, and further enhance the awareness of all competent authorities on the possibilities for international co-operation in ML and FT cases. It may consider implementing one general automated system for prioritizing and updating the status on requests.

c) Further improve responses to foreign requests.

d) Further improve the co-operation between FIU and LEAs in terms of diagonal co-operation, especially in cases with a cross-border element.

e) Enhance the accessibility to BO information at the domestic level.

543. The relevant Immediate Outcome considered and assessed in this chapter is IO2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40.

Immediate Outcome 2 (International Cooperation)

544. International cooperation is of significant importance for Moldova, given its vulnerability to be misused as a transit country for transnational organised crime. This exposes Moldova to an increased risk for ML and FT in neighbouring countries. Moreover, Moldova has recently been subject of two international schemes of ML. International co-operation is mainly established with countries in the region, particularly the Russian Federation, Ukraine and Romania.

Providing constructive and timely MLA and extradition

545. Moldova has a sound legal framework in place for providing MLA and extradition as described under Recommendations 37-39 of the TC Annex. Dual criminality is a precondition for the execution of MLA and extradition requests; however, the authorities indicated that this requirement has not caused limitations to the extent to which assistance was provided. The legal framework is complemented with 19 multilateral, 1 regional multilateral and 11 bilateral treaties to which Moldova is party.

546. The GPO and the MoJ are the central authorities for sending and receiving MLA and extradition requests. The GPO is responsible for answering to all received requests for information pertaining to the pre-trial phase of the criminal procedure. For this purpose GPO has established two sections for international cooperation, of which one is specialised for MLA and extradition. This section is, according to the authorities, sufficiently staffed. Additional human resources (advisors and experts) may be used, when supplementary capacity is needed.

547. The feedback received from the Global Network of the FATF in relation to the MLA provided by Moldova was generally positive: the assistance is constructively provided, and the responses are of good quality. A few countries identified small issues related to long delays in answering to a request (i.e. extensive transmission delays of formal requests for extradition), and the wrong use of communication channels for cooperation (i.e. requests submitted directly to the foreign institution, instead of through the official diplomatic channel). To that, in the context of the on-site discussions, the Moldovan authorities explained that, when incoming requests do not contain all necessary information for execution thereof, they will seek additional information from the requesting authority. This may cause delays, but in turn leads to the execution of the request instead of rejection.

Table 50: Moldova has received the following number of requests in the period 2013-2017

GPO

	Received		Pending (at the end of the year)		Refused		Executed	
	MLA	Extradition	MLA	Extradition	MLA	Extradition	MLA	Extradition
2013	376	10	34	6	21	1	321	3
2014	288	34	5	3	22	28	261	3
2015	273	26	28	1	17	15	211	3
2016	256	15	68	0	19	0	169	15
2017	211	11	25	7	4	1	182	3
Total	1404	96	N/A	N/A	83	45	1144	26

MoJ

	Received		Pending (at the end of the year)		Refused		Executed	
	MLA	Extradition	MLA	Extradition	MLA	Extradition	MLA	Extradition

2013	59	2	0	0	0	0	59	2
2014	63	1	0	0	0	0	63	1
2015	30	2	0	2	0	0	30	0
2016	32	3	0	0	0	3	32	0
2017	36	4	0	0	0	4	36	0
Total	220	12	N/A	N/A	0	7	220	3

548. Generally, the time for the GPO to respond to requests lies between two and six months, while for the MoJ on MLA requests the response time was four to six months and for extradition requests between six and 12 months. The low-impact requests, such as the hearing of witnesses, generally take up to two months. Requests are related mostly to the hearing of witnesses, suspects or defendants; handing over the official documents; identifying founders of companies; establishing bank account holders; or seizing of bank account information. Currently there are still six requests pending: 2 from 2017 and 4 from 2018. The reason for the delay is that additional information from the requesting party is needed. The Moldovan authorities followed up with one of the country on one of the pending cases of 2017 through a yearly reminder, whereas for the other no further action was demonstrated. For the 2018 cases reminders are sent every two months.

Table 51: Received requests by GPO and MoJ related to ML

	GPO		MOJ	
	Related to ML offence		Related to ML offence	
	<i>MLA</i>	<i>Extradition</i>	<i>MLA</i>	<i>Extradition</i>
2013	0	0	0	0
2014	1	2	0	0
2015	10	2	5	0
2016	11	1	2	0
2017	12	0	2	0
Total	34	5	9	0

549. The requests of Table 51 all concerned ML or its predicate offences (particularly fraud, smuggling and trafficking in human beings). No requests were made related to FT. Some requests were made related to terrorism.

550. The average time of execution of MLA requests related to the ML offence appears satisfactory. The authorities provided few case examples which demonstrated that in 2017 most of the requests were answered within a period of one to six months, or were responded to by asking for additional information. Because the Global Network of the FATF had sent a signal that timeliness could be an issue for Moldova, the evaluation team also considered the average response time for terrorism-related requests in 2017 and 2018. The five respective requests were executed within three months.

551. Requests for freezing, seizure and confiscation have been executed in almost all cases (see also IO.8). The evaluation team was informed that freezing upon international request before 2017 was applied by the GPO (for seizing) in case of rogatory letters or by the SPCML in case of Egmont Secure Website requests. In 2017 the CARA was established. Currently, both CARA and GPO can apply seizure based on rogatory letters, and they may apply freezing upon international request. In 2017 and 2018, CARA received two requests from abroad and one rogatory letter, of which two related to the ML offence and one to human trafficking. CARA presented the requested information (identification of assets, companies, bank accounts and the natural persons behind legal entities).

Ultimately no freezing was requested. CARA currently remains at the inception period of its freezing activities, upon domestic or international request.

Table 52: Incoming and outgoing requests for freezing, seizing and confiscation

	Incoming requests ⁸⁵			Amount (EUR)	Outgoing requests
	Received	Executed	Seizing		
2013 – ML	2	2	2	650.000	0
2014 – ML	1	1	1	N/A	2
2015 – ML	6	4	1 ⁸⁶	USD 2mln; RON 11mln; EUR 105.000	1
2016 – ML	3	3	3	EUR 11mln	
2016 – pred. offences	2	2	2	EUR 17mln	
2017 – pred. offences	1	1	1	2 apartments	
Total	15	13	10		3

Box. 2.1: Seizure upon a rogatory letter

One request which was successfully executed was in the context of an Italian proceeding concerning extortion and swindling committed by an Italian citizen who had several criminal records. He had been constantly involved in illicit activities. Investigations of the Italian law enforcement showed a clear link of the suspect to Moldova. In particular, the individual, from June to July 2015, had received over 2 million euro on his Moldovan bank account, allegedly the result of ML activities. The Italian competent authorities requested by rogatory letter the seizure and confiscation of criminal assets, located in the „Y” Moldovan bank account. As a result, the seizure of the financial means in the amount of EUR 2,000,200 was applied to the Italian citizen's account „X”, opened at the „Y” commercial bank in Moldova. On 20 April 2016, the Moldovan Ministry of Justice requested additional information from the Italian authorities concerning the disposal of the seized funds. It aimed to initiate urgently the confiscation procedure or any other legal proceedings under Italian legislation or following a confiscation decision of the NAC. No response was provided to the Moldovan MoJ. Later, in September 2016, the Italian authorities requested the repatriation of the seized criminal assets, but not the confiscation thereof. The assets remain seized in Moldova until the Italian authorities file a correct request for confiscation.

552. Since 2005, the GPO has an automated system (Webdocument) in place which registers all incoming and outgoing requests related to MLA and extradition. The GPO is currently implementing an e-case program, which will also manage all incoming and outgoing requests on MLA and extradition pertaining to domestic investigations. At the time of the on-site visit, this was not yet in function and the GPO could not yet make use of it. A request would be given priority depending on the circumstances of the case (when, for example, custody is requested or juveniles are involved), the risks of losing assets and whether an urgent request was made by the requesting authority. Some types of crimes (including ML, FT and tax evasion) are also prioritised according to the General Prosecution’s Order no. 44/7.1 of 28 September 2018 approving the Regulation on organising the activity of International Legal Assistance within the Prosecutor’s Office, although this document was

⁸⁵ The requests were made in relation to ML offences, unless otherwise noted (see 2016).

⁸⁶ One case was related to identifying assets, and not to seizing them. It has been executed.

not provided to the AT. The legal arrangements to safeguard the integrity of the requests are well-established. No information was provided as to how the MoJ registers and manages requests.

553. The decision to reject a request for MLA and extradition is primarily based on the international instruments and bilateral agreements in place, the principle of reciprocity, and the provisions of the CPC and Law no. 371 (Law on International Legal Assistance in Criminal Matters). Law no. 371, Articles 24 and 45, provides for an obligation to execute but also lays down the principle of dual criminality. The restrictions for executing requests are not unnecessarily strict, and international co-operation is in no other way hindered (see Rec. 37-39 TC Annex).

554. As an example, one request related to extradition was refused because the individual subject to the request had Moldovan citizenship, so the request did fulfil the criteria. Extradition has also been refused in cases when a person had the refugee status or was granted asylum on the territory of Moldova. Besides, when the offence is not criminally liable in Moldova and a person has not been announced as internationally wanted by Interpol or Interstate search (CIS system), extradition has also been refused. Reasons for refusing requests for MLA were when a rogatory letter for interviewing the accused was not issued by an act of indictment of the accused in the requesting country, when the requested criminal investigative acts were to be performed in Transnistria, or when the act was not criminally liable in Moldova.

555. The authorities demonstrated the use of direct communication channels, on the basis of multilateral or bilateral treaties or the principle of reciprocity. Besides, the current practice of judicial authorities proves that in case an incoming request is not sufficiently informative, an informal request may be sent to the requesting authorities to advance the process of responding. The informative, direct communication will be followed up in an official manner, such as a rogatory letter. The evaluation team considers this a good practice, which demonstrates that the authorities seek to find the most effective and swift solution for incomplete requests.

Seeking timely legal assistance to pursue domestic ML, associated predicate and FT cases with transnational elements

556. Moldova has been proactive in seeking legal assistance through outgoing MLA requests. Most of the requests relate to fraud, smuggling and trafficking and human beings. The profits of these crimes generally remain outside of Moldova. The authorities seek assistance were relevant in relation to almost every crime and with a diversity of countries. For example, in 2017 seven countries in total were involved in the ten ML-related MLA requests. The reader should bear in mind that the statistics below (table 53) mention the MLA requests related to predicate offences, even if they were related to ML, with the individual ML cases in brackets.

Table 53: Seeking assistance by GPO and MoJ

	GPO		MOJ	
	<i>MLA (for ML)</i>	<i>Extradition (for ML)</i>	<i>MLA</i>	<i>Extradition</i>
2013	329	110	8	5
2014	310 (13)	70	13	12
2015	243 (17)	77	1	11
2016	143	109	6	12
2017	167 (7)	81 (1)	10	3
Total	1192 (37)	447 (1)	38	43

557. Moldova has more incoming MLA requests than outgoing MLA requests, which may be explained by the risk profile of the country where predicate offences often have a transnational character. The authorities indicated that it had sent a considerable number of information requests through the Egmont Secure Web (ESW) in the aftermath of the “Global Laundromat” case, in order to reduce the waiting time for the replies. Afterwards, a MLA may be sent including information obtained from the ESW requests and replies. This practice was applied to increase the effectiveness of outgoing MLA requests.

558. The authorities indicated that obtaining effective and timely assistance from and cooperating with some states has been challenging in the aftermath of the two ML schemes. Either no or no complete responses were provided to the Moldovan outgoing requests. Besides rogatory letters, the GPO has also used international mechanisms (i.e. Europol and Eurojust) and inter-personal contacts to seek international assistance. In those cases where the sending of a rogatory letter would hinder an on-going investigation, the prosecutors would prefer using the quick exchange of information methods of Eurojust.

559. The authorities ensured the evaluation team that co-operation is sought in a timely and correct manner. No legal or administrative hindrance is experienced. The authorities only indicated that the international cooperation on ML and MLA could be further enhanced through specific trainings on financial investigations or through provision of additional resources (forensic accountants, financial experts see IO7) to improve the effectiveness of requests for international co-operation in the prosecution and convictions or these types of cases.

Seeking and providing other forms of international cooperation for AML/CTF purposes

560. Beyond MLA and extradition, Moldova is actively engaging in other forms of international co-operation with foreign authorities.

FIU

561. The SPCML is a member of the Egmont Group since May 2008 and adheres strictly to the Egmont Group Principles for the exchange of information. The SPCML does not need multilateral or bilateral agreements for cooperation with its counterparts. However, to facilitate the exchange of information, the SPCML has signed 46 MOUs with foreign counterparts. It has also signed one bilateral agreement with the FBI to facilitate the information exchange on the basis of the reciprocity principle. The process of exchange of information with Egmont Group Members takes place via the Egmont Secure Web, and through other secured channels in case of cooperation with non-counterparts (i.e. liaisons officers). Between 2013 and 2017, the SPCML sent 1,601 requests for information and received 180 requests for information from Egmont Group members. In the same period, the SPCML received 1,472 replies to their requests and sent 180 replies to requests of their counterparts. Within the process of international cooperation, the SPCML received 30 letters containing spontaneous dissemination of information and provided 20 letters of spontaneous dissemination.

Table 54: International cooperation requests by FIU

International co-operation	2013	2014	2015	2016	2017
INCOMING REQUESTS					
Foreign requests received by the FIU	21	16	38	37	68
Foreign requests executed by the FIU	21	16	38	37	68
Foreign requests refused by the FIU	0	0	0	0	0

Spontaneous sharing of information received by the FIU	2	2	3	7	16
Total (incoming requests and information)	24	18	41	44	84
Maximum number of days to respond to requests from foreign FIUs	6	6	5	6	4
Refusal grounds applied	0	0	0	0	0
OUTGOING REQUESTS					
Requests sent by the FIU	257	331	351	308	354
Spontaneous sharing of information sent by the FIU	3	1	5	3	8
Total (outgoing requests and information)	260	332	356	311	362

562. As a requested party, the maximum legal timeframe for SPCML to respond to foreign requests is 30 days from the day of receipt of the request, but in practice it takes only 4-6 days. The legal timeframe is explained by the potential need to obtain additional information from reporting entities. It is positively noted that in most of the cases, the SPCML provided a preliminary answer to the requesting party, containing data and information already at the SPCML's hand. Due to recent amendments to the internal procedures of the SPCML (Order no. 37/23.08.2018 with regard to operating procedures in financial analysis), the deadline for providing the replies to a requesting party is 10 days when it is not necessary to obtain additional information from reporting entities. When a request is indicated as high priority, the SPCML will provide the replies within 24 hours from the moment of receipt. This situation occurred in 35 urgent incoming requests for information. Until now, the SPCML has not refused any request for information coming from abroad. Even in the case the request contains unclear aspects, the SPCML inquires with the requesting FIU for additional explanation and seeks replying to the request as soon as possible.

563. Feedback from the Global Network on FIU-to-FIU cooperation indicated that the SPCML had been seeking international cooperation. Some jurisdictions positively stated that the timeliness of the SPCML's responses has improved, even in cases where it needed to request additional information from reporting entities. The information provided was said to be complete, accurate and useful for the requesting countries' need.

564. The SPCML acquired the competences and resources to obtain financial data and other information to reply to requesting parties. In terms of dissemination, one condition imposed is to not use the information as evidence and outside the scope for which it has been provided. A second condition is that the requesting party maintains confidentiality, and does not disseminate the information without the prior consent of the SPCML. The AT considers these conditions not unduly strict and in line with the FATF Standards (see Rec. 37-40). In cases the SPCML has obtained information from abroad in connection with an investigation performed by Moldovan LEAs, they have to request permission for dissemination to LEAs from the requested party.

565. The SPCML has no specific mechanism for prioritisation of requests for information. The requests are managed depending on their registering date at the SPCML. The only prioritisation is applied in case of urgent requests, which are managed according to the aforementioned internal procedure (SPCML Order no. 37/23.08.2018).

566. A high number of requests for information were sent by SPCML from 2013 to 2017, which was generated by the investigations in connection with the "Global Laundromat" case and the

“Banking fraud” case, both of them involving transnational elements and thus needing to obtain information from abroad. A detailed overview of the number of sent requests was not provided.

567. The SPCML has mechanisms in place for cooperation with non-counterparts through liaison officers of law enforcement agencies or diplomatic representatives (the examples of US, UK and Italy have been provided) which led to successful investigations of certain cases.

Box 2.2: SPCML requests for international cooperation

The SPCML successfully established international cooperation with the FIUs from Hungary, the Czech Republic and Lithuania, following an STR from a bank as well as a victim company concerning a Moldovan company which had received about EUR 1,24 million from Hungarian, Czech and Lithuanian companies. The SPCML conducted an investigation and initiated the international cooperation. It was established that the Moldovan company was involved in a “CEO fraud” type of crime. During the investigation, the SPCML also identified the BO of the suspected company, which appeared to be a person who had not been indicated in the banking documents. Thus, the SPCML sent seven requests for information through the ESW, five through Interpol and two via the EAG, both concerning the company and the BO, in order to identify any links to the countries concerned. Because of the information requests, criminal cases were initiated in Hungary, Lithuania and the Czech Republic. The SPCML assisted the relevant foreign authorities with delivering additional information and finally all embezzled funds have been returned to the foreign victim companies.

568. Foreign counterparts do not regularly give feedback on the follow-up of the information provided by the SPCML. It is therefore somewhat difficult to calculate the number of investigations initiated based on information provided by the SPCML. Certainly, in a number of cases (i.e. Laundromat case), the information provided by SPCML formed the basis of further investigations and proceedings initiated by foreign jurisdictions.

569. The SPCML provides support to Joint Investigation Teams established at the level of international organisations, such as Europol. This is demonstrated by a case example, in which an investigation was initiated on match-fixing activities, with the implication of several jurisdictions (Latvia, Hungary, Moldova and Finland). The SPCML and the APO performed a set of investigative measures aimed to combat the match-fixing phenomena and illegal betting among the Moldovan football clubs and during football matches. As result of these investigations, two foreign citizens from Singapore were arrested. Europol recognised the Moldovan efforts and established a Joint International Team for enhancing European FIU investigation and cooperation on the topic. This led to new intelligence and the identification of involved individuals.

570. According to information provided by authorities, the investigations initiated by LEAs are benefiting from the support and information obtained through international co-operation means of the SPCML. Between 2015 and 2018, the SPCML sent 25 requests for information to their counterparts via the Egmont Secure Web, upon the request of Moldovan LEAs. The statistics breakdown is presented in the table below. According to interviewed authorities, the SPCML is requested by LEAs to obtain information on accounts or individuals from foreign jurisdictions before an MLA is prepared. This mechanism is preferred by LEAs because of the swift reaction. It also ensures a more comprehensive picture of the investigated cases from a financial point of view. According to the LEAs, information obtained by the SPCML from their counterparts allows LEAs to establish further incentives for investigation for complementing the following MLA request.

Table 55: FIU requests based on LEA

Egmont requests made by FIU based on LEAs requests				
	2015	2016	2017	2018
General Prosecutor's Office	-	-	-	-
Prosecutor's Office for Combating Organised Crimes and Special Cases	-	1	10	2
Anticorruption Prosecutor's Office	-	1	4	-
Ministry of Internal Affairs	-	-	-	2
National Anticorruption Centre	3	1		1
State Tax Service	2	-	-	-

LEAs

571. The General Prosecutor's Office of Moldova is part of bilateral cooperation agreements with prosecutorial services or Ministries of Justice from various countries, such as Turkey, South Korea, People's Republic of China, Armenia, Romania, Republic of Belarus, Russian Federation and Azerbaijan. The purpose of these agreements is to enhance cooperation and to share of best practices in preventing and fighting criminality, corruption and ML, human trafficking and organised cross-border crime, terrorism, illegal circulation of drugs, psychotropic substances and illegal migration. The agreements also seek to foster mutual cooperation on the fight against these crimes.

572. The APO is also actively involved in diagonal international cooperation mechanism. There have been various cases where information supporting criminal investigations was obtained from abroad through the SPCML or other authorities. During the investigation into the Banking Fraud, the APO asked the National Bank of Moldova to obtain information from its counterpart of the Russian Federation. The obtained information was made available by NBM to the APO. It was thus demonstrated that Moldovan authorities established an efficient way of cooperation that involves cross-border cooperation. This mechanism is practically applied within the framework of investigations of LEAs.

573. Moldova has in place a Cooperation Agreement with Eurojust since 2016. Further to ratification of the agreement, a contact point between Eurojust and the GPO was established. Its main task is to carry out the exchange of data and information via the secured channel of Eurojust. Moldova received requests referring to cases investigated in France, Bulgaria, Czech Republic, Canada, Italy, the Netherlands, Belgium, Romania, the United Kingdom and Poland through the Eurojust contact points. Moreover, in 2017 and 2018, prosecutors from Moldova participated in nine co-ordination sessions organised by Eurojust on international prosecutions, which are connected to national criminal investigations in Moldova. In two of these cases, Moldovan prosecutors took part in JITs.

574. Moldova is cooperating with Europol through its contact officer, who is designated by the Ministry of Internal Affairs. The cooperation is reflected in the work of JITs composed of prosecutors and LEAs from various countries (see Table 30).

575. Moreover, within the Ministry of Internal Affairs, the Interpol National Central Bureau of Moldova is established. When the SPCML or another competent authority may need information that may be available at the level of Interpol, the Ministry of Internal Affairs establishes the necessary communication for obtaining this information.

Supervisory authorities

National Bank of Moldova (NBM)

576. The National Bank of Moldova is regularly cooperating with foreign counterparts in order to exchange data and information regarding potential shareholders of the banks and identification of beneficial owners of the qualifying holders, prior to approval by a bank administrator and before issuance of a bank licence.

577. From on-site discussions, it can be concluded that the NBM is actively involved in the international mechanism of cooperation, and uses the available channels for obtaining the necessary information from abroad to fulfil its tasks and obligations. The NBM demonstrated a sufficient level of awareness in relation to the possible channels for international cooperation, and proved that it practically used these channels. The NBM signed bilateral agreements with various supervisory institutions from abroad, i.e. with Romania, the Russian Federation, Republic of Belarus, Kazakhstan, Estonia, Latvia, Cyprus, Germany and Lithuania. The NBM meanwhile is in the process of negotiating cooperation agreements with supervisory authorities from Italy, France and Austria and with the Central European Bank and European Banking Authority. Agreements with the latter two institutions will allow the NBM to properly perform its duties on supervision of the subsidiaries of European banks acting in Moldova.

578. Moreover, according to the NBM's internal procedures on AML/CFT, when high risk transactions with foreign countries are observed, the NBM may obtain additional information from the respective country supervisory authority. In terms of figures, the process of exchange of information on AML/CFT issues performed at the level of NBM is reflected in the table below.

Table 56: International cooperation by NBM

International cooperation	2012		2013		2014		2015		2016		2017	
Requests sent by supervisory authorities on AML/CFT	6	0	7	0	8	0	10	0	7	0	17	0
Number of requests sent and executed by foreign authority	6	0	7	0	8	0	10	0	7	0	17	0
Number of requests sent and refused by foreign authority	0	0	0	0	0	0	0	0	0	0	0	0
Average time of response (days)	30	-	30	-	30	-	30	-	30	-	30	-

579. The NBM is actively involved in international cooperation related to investigations performed by the Monitoring of Shareholders Transparency Unit (which was created in 2015). In 2016, the NBM sent nine requests to its counterparts from seven jurisdictions, to which it received eight replies. In 2017, the NBM sent nine requests to its counterparts from seven jurisdictions, to which it received six replies.

580. During the NBM's AML/CFT monitoring process on supervised entities, international cooperation has been successfully used for identification of certain violations of the regulatory framework, as may be seen from the case examples below.

Box 2.3: Case –international co-operation National Bank of Moldova

As a result of the bank fraud that occurred in 2014 in three commercial banks, the NBM established close co-operation with Latvian and Estonian supervisory authorities in order to exchange information regarding customers' identification and transactions related to fraudulent loans. Following the information received from

the foreign counter-parts and violations identified, the Executive Committee approved in 2016 sanctions as fines to all management members of the three commercial banks in the maximum amount (around EUR 5,000 for each member) according to the legislation in force.

581. The NBM uses indirect cooperation when identifying the source of funds coming from abroad. In such cases, the NBM cooperates closely with the SPCML to obtain the necessary information, especially in cases where there is a need to obtain financial information from abroad regarding the acquirement of qualified holdings in banks' capital. The NBM requested the SPCML in four cases to investigate the nature of economic operations carried out in Moldova and beyond its borders by a proposed acquirer and legal persons controlled by the acquirer, as well as to investigate the proposed acquisition in order to detect a potential economic offense or attempts of economic offense, including ML or FT acts. In three of these cases, based also on the information obtained from abroad by the SPCML and further communicated to the NBM, the NBM decided to refuse the proposed acquirer to make the proposed acquisition.

Box 2.4: Case – Domestic and international co-operation

A potential acquirer/physical person, resident of Moldova, applied for permission to acquire a qualifying holding in Commercial Bank A. In the evaluation process, cooperation between the SPCML, SIS and the STS was established.

The acquirer had stated that money received from his father in the form of a donation, based on a donation contract, would serve as the acquisition source of shares. The contract was concluded between the potential acquirer and his father and drafted outside Moldova. The proposed acquirer stated that the funds came from loans granted by his father to an off-shore company (the borrower).

The NBM communicated to the SPCML all available information with regard to the means that the acquirer intended to use when acquiring the bank's shares: (1) the information related to the source of declared money by the acquirer; (2) the donation received from his father; (3) the acquirer's unwillingness to prove the origin of money; (4) the lack of any activity carried out by the acquirer; (5) the lack of a stable source of revenue; (6) the disposal of cash, and so on. The NBM mentioned that the acquirer's father previously granted a loan to an off-shore company. The granting of this loan had not been authorised by the NBM under the Law on Foreign Exchange Regulation (no. 62-XVI, 21 March 2008). The NBM warned the SPCML that, according to the information from the mass media, the company is one of the legal persons whose stamps were detected and retained by the General Prosecutor's Office in a number of offices located in Chisinau.

The SPCML requested information from similar bodies from the USA, the British Virgin Islands and Latvia on the company which had benefited from a loan granted by the acquirer's father.

The competent authorities all provided information on the father's activities, the relationship between the father and the potential acquirer and with other people involved in ML schemes investigated under criminal investigation. After this, the NBM could draw a conclusion related to the assessment of the proposed acquirer according to the quality criteria established by the banking legislation (reputation, existence of ML indicators, identification of the beneficial owner).

The information provided by the competent authorities, together with information detained by the NBM, led to refusal of the acquisition request and prevented potential offenders and their associates from entering into the Moldovan banking sector.

Other supervision authorities

582. The NCFM has a number of cooperation agreements with foreign counterparts in place, aimed at regulating the exchange of information within their area of competence. No cases of the international cooperation mechanisms used in practice for AML/CFT purposes were reported.

583. Posta Moldovei is member of a number of international bodies, such as Telematics Cooperative and EMS Cooperative, Regional Commonwealth in Communications. It actively participates in seminars and meetings organised by these organisations, aimed at improving the quality of postal services. Moldova is a member of the Postal Union since 1992, thus forming a single postal territory with similar services from other countries. However, from the AML/CFT point of view, Posta Moldovei did not use the available channels for international cooperation no such need has yet occurred.

584. CARA has the capacity to exchange information with foreign counterparts through secure channels of the International Centre for Police Cooperation, including Europol and Interpol. Moreover, CARA may perform the exchange of information through the CARIN network. Since CARA is a newly created agency, it was not possible to assess the efficiency of the international cooperation mechanisms it has at its disposal. Previous to the establishment of CARA, the SPCML was a member of the CARIN network and thus was able to obtain information through this channel. This information has been used in investigations and proceedings initiated in Moldova. Since the adoption of the new AML/CFT Law, the CARIN network may be used indirectly by the SPCML through CARA, which continues to ensure the access of SPCML to the information on seized and freezing measures adopted internationally. This mechanism, at least to a certain level, guarantees the continuation of information exchange through the CARIN network.

585. The STS is also involved in mechanisms for international cooperation, but the information exchange process is used only for fiscal purposes in line with STS' mandate. STS has negotiated 50 bilateral agreements for fiscal information exchange. Besides, it is a member of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum)- Moldova is a party to the Convention on Mutual Administrative Assistance in Tax Matters. According to the STS, it may request information from competent authorities from abroad, upon the request of a Moldovan authority, but the obtained information may be submitted to Moldovan LEAs only upon the agreement of the requested party. Moldova has not yet been reviewed by the OECD's Global Forum on its compliance with the Global Forum's standards.

International exchange of basic and beneficial ownership information of legal persons and arrangements

586. The authorities seek and respond to international cooperation requests related to identification and exchange of basic and beneficial ownership information of legal persons established in Moldova. The feedback provided by the Global Network did not suggest any particular deficiencies in this regard.

587. The newly created Public Services Agency database maintains BO data. According to the PSA, the access of the retained data is free for public authorities and LEAs. However, the centralised database on BOs is currently under establishment, thus it was not possible to assess whether the database is practically used by relevant Moldovan authorities.

588. In order to identify the BOs, Moldovan authorities (particularly the SPCML) must access various sources of information, comprising, among others, the following: the information held by reporting entities and obtained by them during CDD measures; the information on actual users of the

IP addresses in case of transactions performed by internet banking; and the State Registry of Legal Entities. SPCML ascertained that no difficulties were encountered in obtaining information on BOs, and that the obtained information may be disseminated upon request to foreign FIUs.

Overall Conclusion

589. Moldova has achieved a Substantial level of effectiveness for IO2.

TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerical order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2012. This report is available from <https://rm.coe.int/report-on-fourth-assessment-visit-anti-money-laundering-and-combating-/1680716bd1>.

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

3. This is a new Recommendation that was not assessed in the 2012 MER.

4. *Criterion 1.1* – Moldova launched the NRA process in 2015 and finalized it at the beginning of 2017. The basic objectives of the NRA are to identify, analyse, understand and mitigate the risk of ML/FT Moldova faces, and to contribute to the efficient allocation and management of resources. The NRA was carried out using the World Bank methodology benefitting from World Bank technical assistance and with additional support from OSCE and EU. It included use of questionnaires, analysis of variables (*i.e.*: number of private banking accounts, term deposits for individuals and legal persons, loans for individuals and for legal persons, wire transfers from and to Moldova), qualitative and quantitative data, and information from independent sources (including researches).

5. *Criterion 1.2* – By Government Decision 697/2015, the SPCML was designated as the national coordinator for the NRA process, including analysis and data collection from different state agencies, SROs, and the private sector. Since its adoption, the AML/CFT Law (Art. 6, par. 8) provides that the SPCML shall continue to be the coordinator of NRA process and shall be responsible for its update at least every 3 years.

6. *Criterion 1.3* – The current assessment is the first NRA report conducted by Moldova. According to the AML/CFT Law, the AML/CFT risk assessment shall be up-dated at least every three years. The Action Plan for the NRA covers a three-year period (2017-2019), which mirrors timeframe for the NRA mandatory update.

7. *Criterion 1.4* – The SPCML has the legal obligation (Art. 6 of the AML/CFT Law) to inform the public authorities, professional associations and reporting entities about the ML/FT risks identified at the national level. The NRA report and NRA Action Plan were publicized in 2017 through publication on the FIU website and through a public event where public authorities, private sector, international organisations and foreign FIUs were invited. Both documents were disseminated to the participants.

8. *Criterion 1.5* – After the completion and adoption of NRA, the 2017-2019 Action Plan (AP) was drafted, to address the identified risks. The AP contains information on the risk, main objectives, main implementers, co-implementers, practical actions, estimated budget and deadlines. Alongside the ML section, the AP has a solid FT component and includes risk-based mitigating measures, is comprehensive and allows the application of the RBA in the allocation of resources. To date, the Moldovan authorities reported that following the adoption of the AP, several FIU Guidelines and NBM Regulations for the reporting entities have been adopted, and the NBM increased the resources

allocated to AML/CFT Division (the number of employees increased to 8 people). In addition, the Ministry of Justice approved the Order which creates an inter-institutional WG charged with amending the AML/CFT legal and institutional framework.

9. *Criterion 1.6* – The AML/CFT Law provides for partial exemptions from CDD requirements in relation to certain e-money instruments and cash transactions (Art. 5 (9)) under certain conditions (transactions under EUR 260, payments used to purchase services and goods...) and only on the basis of a proper risk assessment demonstrating the existence of a low risk of ML and FT.

10. *Criterion 1.7* – The AML/CFT Law envisages two avenues for the implementation of the ECDD measures: rule-based and risk-based. According to Art. 8, the RE shall apply enhanced customer due diligence measures proportional with the identified risk. In case of correspondent banking and PEPs transactions, reporting entities shall apply enhanced measures in all cases. The evaluation team is of the opinion that this is in line with Paragraph 15 of the Interpretive Note to the FATF Recommendation 10. According to Art. 6 of the AML/CFT Law, the REs are obliged to undertake actions to assess the risks of ML and FT in their own area of activity, by taking into account the assessment at the national level (NRA), as well as the criteria and factors established by the authorities with supervisory functions. This is in line with the requirements of E.C. 1.7 (b).

11. *Criterion 1.8* – Art. 7 (5) of the AML/CFT Law specifically covers that the REs willing to apply simplified CDD measures have to collect sufficient information to prove that the conditions provided by the Law are met, *“on the basis of the assessment of money laundering and terrorist financing risks at the national level”*. The circumstances that shall trigger the application of simplified CDD are fully aligned to the examples provided by Paragraph 18 of the Interpretive Note to FATF Recommendation 10.

12. *Criterion 1.9* – Art. 15 of the AML/CFT Law lists the bodies which exercise supervision over implementation of the provisions of the act, including the RBA obligations for FIs and DNFBPs. For violation of these obligations, the same article of the AML/CFT Law provides for sanctions. Supervisory authorities shall use the RBA to ensure that the extent of taken measures in relation to REs are proportional to the identified risks based on the results of the assessment of risk profile related to supervised REs (art. 15, par. 3 of the AML/CFT Law). The deficiencies under R. 26 and 28 have an impact on Moldova’s compliance with this criterion.

13. *Criterion 1.10* –

a) Art. 6 (1) of the AML/CFT Law requires REs to undertake actions to identify and assess the ML/FT risks in their own area of activity. In the assessment process the REs should take into account the NRA, as well as the criteria and factors established by the authorities with supervisory functions.

b) In the process of ML and FT risks assessment, the reporting entities use different variables (indicators) related to the domain of activity, including the reason for opening an account or the purpose of business relationship, the volume of deposited assets or the amount of transactions carried out by the customer, the frequency and duration of business relationship (Art. 6 (6)). Para (3) requires REs to use the RBA and ensure that actions to prevent and mitigate ML/FT are proportional with the ML/FT risks identified.

c) The results of the ML and FT risk assessment are approved and regularly updated by the RE (Art 6 (1)).

d) The results of the REs ML/FT risk assessments shall be provided on request to the SPCML or to the authorities with supervision functions.

14. *Criterion 1.11* –

a) Art 13 of AML/CFT Law obliges the REs to have policies, carry out internal controls and hold procedures, in order to mitigate and manage effectively the ML/FT risks identified. Art. 6, par. 1 of the AML/CFT Law requires REs to have the results of the risk assessment approved internally, but there are no provisions to ensure approval by senior management (with the exception of entities supervised by NCFM which made the senior management approval compulsory through the NCFM Regulation on AML/CFT (Art. 12).

b) Under Art. 6 (7) of AML/CFT Law, the reporting entities shall be able to demonstrate the FIU and to the authorities with supervision functions that the extent of CDD measures is appropriate, by taking into account the identified ML and FT risks.

c) Based on the results of the ML/FT risk assessment (see R1.10 (a)), the REs shall use the RBA, to ensure that the prevention and mitigation actions are proportional with the risks identified in their own field of activity (Art. 6 (2)). The obligations regarding monitoring and application of enhanced measures proportionate to identified risks is provided in Art. 8 AML/CFT Law.

15. *Criterion 1.12* – The only simplified measures allowed by the AML/CFT Law pertain to CDD (Art. 7 of the AML/CFT Law). The simplified CDD measures can be taken when the clients, by their nature, may have a low risk of ML or FT. The application of simplified measures is not permitted in the case of an ML/FT suspicion.

Weighting and Conclusion

16. All the criteria are met or mostly met. Minor deficiencies have been noted especially cascading from other technical compliance recommendations. ***Recommendation 1 is rated Largely Compliant (LC).***

Recommendation 2 - National Cooperation and Coordination

17. Moldova was rated partially compliant with former R. 31 in the 2012 MER. The rating was based on the following deficiencies: the existing policy mechanism for cooperation and coordination between domestic authorities appeared ineffective in ensuring that all necessary cooperation and coordination happened in practice; a lack of proper cooperation between SPCML and law enforcement authorities other than the CID; an absence of cooperation mechanisms between law enforcement authorities involved in ML/FT investigation; a failure to demonstrate effective cooperation.

18. *Criterion 2.1* – Moldova adopted AML/CFT policies which are informed by specific risks identified in the country. Shortly after the 2012 MER, the AML/CFT Strategy for 2013 – 2017 and its Action plan was adopted. One of the key components of the Strategy was to ensure national and international cooperation. Subsequently, in 2017, the NRA was adopted and the Action Plan for 2017-2019 was approved by the Government. Both documents are referring to national and international cooperation and coordination and are setting up measures to improve these mechanisms.

19. *Criterion 2.2* – The SPCML is the main authority responsible for the national AML/CFT policies (Art. 18 AML/CFT Law). Article 19(1)(i) of the same law further outlines the responsibilities of the

SPCML, which include the coordination of activities of the competent authorities in the area of AML/CFT. Art. 15(1) of the AML/CFT Law provides that other relevant authorities at the operational level are authorities with supervision functions of the reporting entities; law enforcement, judicial and other competent authorities; and at the level of policies and programs: the government; parliament; competent authorities; and specialised associations.

20. *Criterion 2.3* – The SPCML is responsible for the elaboration and implementation of national policy documents on the national AML/CFT Strategy and ensures the coordination of activities of the competent authorities in this field. The cooperation between competent authorities on AML/CFT issues is performed on the basis of mutual assistance principle and may have as base the cooperation agreements (Art. 17 (1) AML/CFT Law). The cooperation for elaboration and enacting of the policies and programs on the referred area is ensured through SPCML which will cooperate with Government, Parliament, competent authorities and specialised associations. At operational level, SPCML will cooperate with LEA through a liaison officer. After the adoption of the NRA, the NRA Action Plan 2017-2019 was developed by a WG consisting of representatives of a variety of governmental institutions, including the General Prosecutor’s Office, the National Bank, the Ministries of Justice, Finance and Economy and the National Anti-Corruption Centre. The AML/CFT Strategy 2013-2017 established the principles for the operational cooperation between domestic counter-parts. Although expired at the time of the on-site visit, the authorities maintained that until the approval of a new Strategy, the general co-operation principles stipulated in the former Strategy remain still valid. However, seeing that the Strategy is out-dated, the evaluators cannot consider the criterion as fully met.

21. *Criterion 2.4* – The AML/CFT Law places ‘proliferation of mass destruction weapons’ on a similar weight as prevention and combating of ML and FT (Article 2(1)). Article 3 includes proliferation of WMDs as source of suspicious activity or transaction. The AML/CFT Law thus provides competences for the SPCML to freeze transactions suspected of proliferation of WMDs. The co-operation and coordination mechanisms for combating ML/FT apply also for the proliferation of WMDs, an offence which is further defined in Art. 140¹ of the CC. However, the provided mechanism does not actively attribute competences to the authorities on export control over proliferation-sensitive goods and technologies, although these authorities are considered a critical source of information on the abuse of such goods and services for financing of proliferation and on information of the proliferators themselves.

Weighting and Conclusion

22. Moldova meets two criteria under the Recommendation 2. The domestic operational cooperation framework needs to be up-dated and the coordination of policies on combating the financing of proliferation of WMD issues needs to be further developed. ***Recommendation 2 is rated Largely Compliant.***

Recommendation 3 - Money laundering offence

23. In the 2012 MER, Moldova was rated largely compliant with former Recommendation 1. Factors underlying the rating were mainly related to the effectiveness, as only a low number of ML convictions had been achieved; and there was uneven understanding by the judiciary on the need for a prior conviction to achieve ML convictions.

24. *Criterion 3.1* – The wording of Art. 243 of the CC follows the requirements of the Palermo Convention, as acknowledged in the 4th Round MER. The Law no. 60 of 7 July 2016 amended Article 243 and solved the deficiency noted in the 4th Round MER by reinstalling the term “acquirement” instead of the previously used, more restrictive “purchase”⁸⁷.

25. *Criterion 3.2* – As it was already generally understood at the time of the previous evaluation, the ML offence encompasses proceeds (“illegal proceeds”) obtained from any sort of criminal conduct (including tax evasion). The 4th round MER had already indicated that Moldovan legislation had covered all categories of predicate offences designated by the FATF standards and the present team can see no changes having taken place in this field.

26. *Criterion 3.3* – Moldova does not apply a threshold approach or a combined approach that includes a threshold approach, but instead applies a principle of the universality of the predicate offence.

27. *Criterion 3.4* – Article 132¹ of the CC⁸⁸ includes a definition of the term “goods” in the sense of: i) special confiscation (Art. 106), ii) the ML offence (Art. 243) and iii) the FT offence (Art. 279), defined in a broad manner and practically entirely in line with the definition of “property” in the FATF Methodology. The ML offence applies to goods which are “illegal proceeds”⁸⁹ but, as it was pointed out in the previous MER, there is no definition for this term in the CC. There is, however, a comprehensive definition in the AML/CFT Law (Art.3) which, on the one hand, appears to be applicable only in the context of the said Law but on the other hand, it has already been considered at the time of the previous evaluation by the Moldovan jurisprudence (the generally accepted Glossary to the CC) as a legitimate basis of interpretation in criminal cases of ML⁹⁰. Although the AML/CFT Law being currently in force is a different piece of legislation than it was at the time of the previous evaluation, nothing seems to imply that this change has had any impact on the manner by which the respective definition from the AML-CFT Law is directly used in the context of the ML offence (particularly as the same term is defined identically in both the old and the current AML-CFT Law⁹¹).

28. *Criterion 3.5* – There is no legislation to require a conviction for a predicate offence when proving, for the purposes of establishing a ML offence, that property is the proceeds of crime. In this context, Art. 243 CC only requires that the perpetrator “knew or should have known that goods were illegal earnings/income”. Having said that, the assessors need to note that the legal framework had practically been the same at the time of the previous round of evaluation, when the judiciary’s apparent insistence on a prior conviction was criticised in the 4th MER. While the recently adopted Guidelines on the Methodology of Criminal Investigation of Money Laundering and Terrorist Financing Crimes⁹² provide that a previous conviction for the predicate offence is not required for the ML offence, this instrument has no binding force on the courts and hence there is no proof the previous situation has changed.

⁸⁷ Paragraphs 107-109 of the 4th round MER emphasized that the word “purchase” is beyond any doubt a more restrictive term than “acquirement” which difference is quite clear not only in English but, as described above, also in the Romanian terminology. The Romanian term “achiziționarea” is more restrictive than “dobândirea” and does not cover instances when one obtains goods without giving money or other value in exchange.

⁸⁸ Art. 132¹ was introduced in 2016, after the adoption of the 4th round MER

⁸⁹ “Venituri ilicite” in the original (alternative translations in various materials include “illicit proceeds”, “illegal earnings” etc.)

⁹⁰ See more in details in para 124 to 127 on page 40 of the 4th MER.

⁹¹ Art.3 in both laws.

⁹² Approved by the Order of General Prosecutor No.41/26 of 6 September 2018.

29. *Criterion 3.6* – Paragraph 4 of Article 243 CC on the ML offence establishes an extraterritorial effect for predicate offences committed abroad, provided they are subject to dual criminality. In such case, such offences can form the basis of a domestic ML offence in Moldova.

30. *Criterion 3.7* – There is no positive legislation regarding the criminalisation of self-laundering and no principal or fundamental legal objections to that. The previous round evaluators were convinced that the ML offence is understood and actually interpreted by practitioners so as to cover the laundering by the author of the predicate offence. The application of the definition is not further limited by domestic law or reservations to international instruments, thus the ML offence applies for persons committing the predicate crime.

31. *Criterion 3.8* – The general principle of free assessment of evidence is covered by Art. 27, 99(2) and 101(2) of the CPC which set out that evidence shall be assessed by the judge and person carrying out a criminal investigation according to their own convictions after examining all evidences managed. All evidence shall be assessed from the point of view of its pertinence, conclusiveness, usefulness and validity, and the entire body of evidence shall be assessed from the point of view of its comparability. It can thus be considered that the constitutive elements of the ML offence, and also in particular the intent and knowledge required to prove the ML offence, may be inferred from factual circumstances.

32. *Criterion 3.9* – The available sanctions for individuals for the basic ML offence is of three months⁹³ to five years imprisonment or a fine of 1,350 to 2,350 conventional units⁹⁴, with or without the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years. In aggravating circumstances (by two or more persons or by use of an official position) the fine amounts to 2350 to 5350 conventional units⁹⁵ and/or by imprisonment for 4 to 7 years. For more serious cases (by an organised criminal group or a criminal organisation; or on an especially large scale) the imprisonment goes to 5 to 10 years. The sanctions for ML offence are comparable to, and in most of the cases even go beyond those for other economic crimes in the Moldovan CC. However, the minimum imprisonment time for “simple” ML does not appear sufficiently dissuasive.

33. *Criterion 3.10* – The ML offence sets out sanctions for legal persons. A fine can be laid down, ranging from 8,000 to 11,000 conventional units⁹⁶ with the deprivation of the right to practice certain activities, or the legal entity may be liquidated. For the aggravated forms of ML, fines ranging from 10,000 to 13,000⁹⁷ and 13,000 to 16,000 conventional units⁹⁸ may be laid down, or the liquidation of the legal entity. These sanctions are proportionately comparable to (and typically less severe than) ranges of punishment which are stipulated for other economic crimes. On the other hand, the basic ML offence is threatened with fines equivalent to EUR 20,000 to EUR 27,500 and the even highest fine for the most serious ML offence is around EUR 40,000 only. Such a mild sanctioning regime has not a fully dissuasive character as the General Part of the CC would have allowed for introducing fines up to 60,000 conventional units⁹⁹ (see para [4] Art. 64 CC).

⁹³ In conjunction with Art. 70 par. (2) of the General Part of the CC.

⁹⁴ 67,500-117,000 MDL; EUR 3,375-5,850

⁹⁵ 117,500-267,500 MDL; EUR 5,875-13,375

⁹⁶ 400,000-550,000 MDL; EUR 20,000 - 27,000

⁹⁷ 500,000-650,000 MDL; EUR 25,000 – 32,500

⁹⁸ 650,000-800,000 MDL; EUR 32,500 – 40,000

⁹⁹ 3,000,000 MDL; EUR 150,000

34. Criterion 3.11 – The ancillary offences are covered adequately as described in the previous evaluation report. No relevant changes have taken place since.

Weighting and Conclusion

35. Most of the essential criteria are met or mostly met. There are minor deficiencies pertaining to the minimum sanctions for “simple” ML, which doesn’t appear to be sufficiently dissuasive.

Recommendation 3 is rated Largely Compliant.

Recommendation 4 - Confiscation and provisional measures

36. Moldova was rated *Partially compliant* with former Recommendation 3 due to: lack of explicit coverage of the body (“corpus”) of the ML offence; inconsistency in criminal legislation as regards confiscation from third party legal persons; incapability to confiscate (at least the equivalent value) of proceeds the perpetrator or a mala fide third party transferred to a bona fide third party without compensation; overly high evidentiary standards for the application of provisional measures (sequestration) together with restrictions as regards the property that belongs to third parties and legal entities. To the technical deficiencies effectiveness concerns were added¹⁰⁰.

Criterion 4.1 – The confiscation regime is set out in the Art.106 and Art.106¹ of the Criminal Code. In order to implement the recommendations of the 4th round MER and of the assessment report by the Conference of the Parties to the CETS 198 in relation to confiscation regime.

a) In 2016 new amendments have been brought to the CC to include letter g) in par.(2) of Art.106 on Special Confiscation, that provides now explicitly for the confiscation the goods “*which constitute the object of money laundering or terrorist financing offences*”.

b) Art. 106(2) (a) and (b) provides for the confiscation of the goods used or intended to be used to commit an offence (instrumentalities), and goods resulted from offences, as well as any incomes obtained from these goods (proceeds). As a result of an amendment made in compliance with recommendations in the 4th round MER, Art.106(2)a) CC no longer requires that the goods used or intended to be used for the commission of a crime must belong to the perpetrator.

¹⁰⁰ Moldova has a particular situation whereby the English term “*seizure*” (as defined by the FATF Glossary) has two distinct, alternative meanings depending on the purpose of the legal action of taking possession of the object/property. While “*seizure*” would normally cover any measure consisting of the deprivation of objects/property for various reasons or purposes, the Moldovan legislation made a clear distinction according to whether the respective object/property is necessary as evidence (in Romanian original “*a ridica/ridicarea*”) or it subject to a provisional measure (“*a sechestra/sechestrarea*”). The former measure is foreseen in the CPC¹⁰⁰ as an evidentiary method, through which any objects or documents important for the criminal case can be taken from the person holding them or from the place where they are while the latter is the only provisional measure applying to secure, among others, the proceeds and instrumentalities of crime with anticipated confiscation. For the reader’s ease, to distinguish between the two concepts, the former measure will be referred as “*seizure as evidence*” while the latter as “*sequestration*” (as it had already been indicated in the 4th MER too). If, during a criminal investigation, it is considered that a provisional measure is needed (with a view to confiscation), a Court Order is needed as in the case of any (not “*seized as evidence*”) object/ property. “*Seized as evidence*” objects, recognized or not as material evidences, can be confiscated without being sequestered, when they have been transmitted to State Tax Service according to Government Decision 972/2001 or kept under LEAs supervision (but those are rather rare cases in practice). For these reasons, only the measure of “*sequestration*” bears actual relevance in the context of this Recommendation and IO.8 so it will only be considered and analysed.

c) The legislation remains the same as at the time of the 4th round MER. Property that is proceeds of the financing of terrorism (related either to terrorist acts or terrorist organisations) as well as property used in, or intended or allocated for use in the financing of terrorism, terrorist acts goes under confiscation according to art.106 (2) a) and g).

d) Art. 106(1) CC provides, in its second sentence, for the possibility of value confiscation in case the goods do not exist anymore, cannot be found or cannot be recovered.

37. Criterion 4.2 –

a) In 2017 a new article 207¹ and a new chapter „*The criminal assets recovery*” (Art. 229¹ – 229⁷) were introduced in the CPC. Art. 229² CPC¹⁰¹ establishes the procedure of tracing the criminal assets and accumulating evidence. Para. (2) of this article sets out the exhaustive list of offences which would oblige the criminal investigative body to order to the CARA the tracing of criminal assets and gathering the evidence, in conjunction with and as stipulated by Art.258 (c) of the CPC. According to Art.229⁶ of the CPC, in case of proceeds-generating offences for which parallel financial investigations can be carried out, the evaluation and management of criminal assets is ensured by the ACAR, while in other cases by the Ministry of Finance. According to the provisions of the Article 33 of the AML/CFT Law the SPCML, the law enforcement and judicial authorities shall apply efficient measures for identification, tracing, freezing, seizing and confiscation of goods obtained from ML, other from associated offences, from terrorism financing and proliferation of WMDs. According to the provisions of Art.202 of the CPC, the criminal investigative body *ex officio* or the court may undertake measures for securing the recovery of damages caused by the crime, for seizure or extended confiscation, and for guaranteeing the execution of a punishment by fine. Art. 229² CPC¹⁰² establishes the procedure of tracing the criminal assets and accumulating evidence. Para. (2) of this article sets out the exhaustive list of offences which would oblige the criminal investigative body to order to the ACAR the tracing of criminal assets and gathering the evidence, in conjunction with and as stipulated by Art. 258 (c) of the CPC. According to Art.229⁶ of the CPC, in case of proceeds-generating offences for which parallel financial investigations can be carried out, the evaluation and management of criminal assets is ensured by the ACAR, while in other cases by the MoF.

b) The sequestration, as stipulated by Art. 204 CPC, may serve various purposes from securing the eventual special confiscation or extended confiscation of goods to securing the recovery of damages or guaranteeing the execution of a punishment by fine. For the purposes of this evaluation, Paras. (3) and (4) of Art. 204 CPC set out that in order to ensure an eventual special or extended confiscation of goods, subject to sequestration may be the goods going under confiscation, set forth in Art. 106 (2) and Art. 106¹ of the Criminal Code, or their counter-value. The sequestration is imposed by a court order brought in an *ex parte* procedure and, if necessary, can be applied forcibly, by use of coercive means (Art. 207 CPC). There is no provision in the Moldovan legislation compelling the Prosecution to inform the defendant at the sequestration stage. Art. 305 (1) of the CPC provides that the requests for the special investigative and sequestration measures shall be examined by the investigation judge *in camera*.

c) Art. 251 of the CC provides the offence of “*Appropriation, Alienation where not permitted by the law, Concealment of Pledged, Freeze, Leased, Sequestered or Confiscated Goods*”, which shall be punished by fine

¹⁰¹ “Tracing the illicit goods and evidence gathering”

¹⁰² “Tracing the illicit goods and evidence gathering”

in amount of 1,350 to 1,850 conventional units¹⁰³ or by imprisonment for up to 3 years. Art. 216 of the Civil Code defines null and annulable transactions, where a transaction is null on grounds established by the Code, which includes instances where the transaction is contrary to the Law.

d) According to the Art. 57(2)9) CPC, the criminal investigative officer has the duty to manage the special investigation measures to identify goods lost as a result of the commission of the crime. Art. 132¹ of the CPC sets out the scope of the special investigative activity and establishes that the special measures enumerated in Art. 132² could be undertaken in cases of serious crimes, extremely serious crimes and exceptionally serious crimes. Among these, Art.132²(f) provides for the monitoring and control of the financial transactions and the access to the financial information which can also be performed on the basis of a decision of the instruction judge, upon the request of the prosecutor.

Criterion 4.3 – The amendment of Para. (3) of Art.106 of the CC was introduced by the Law No. 607 in July 2016 to clarify how to apply the confiscation regime when the goods were transferred (either onerously or free of charge) to a *bona fide* third party i.e. who did not know or shouldn't have known about the origin and the purpose of using the goods. When the goods were transferred free of charge, they must be confiscated, while in case of a transaction for consideration, the equivalent value of the goods is to be confiscated. Whereas the law is silent on from whom the “corresponding value” should be confiscated in the second case, the logic of the text (which is in line with the authorities' understanding) suggests that it must be the perpetrator (or a *mala fide* third party) who had already received a payment for the original property item. These changes in the CC were made to address the shortcomings of the previous round.

38. *Criterion 4.4* – According to the Art. 229⁶ of the CPC, in case of offences for which parallel financial investigations are carried out, the evaluation and management of criminal assets is ensured by the CARA, while in other, less significant cases by the Ministry of Finance. During the criminal investigation, CARA issues a freezing order for criminal assets for a period up to 15 days. Art.207¹ and 229⁷ CPC provide for the possibility to capitalize sequestered criminal assets, even before a Court decision is pronounced. Art. 11 of Law on CARA provides that the Agency shall be responsible for the valuation, management and recovery of criminal assets. The CARA may contract natural and legal persons, subject of public and private law, the specialization of whom will ensure the most efficient realization of attributions of valuation and management of retained criminal assets.

Weighting and Conclusion

39. ***Recommendation 4 is rated Compliant (C).***

Recommendation 5 - Terrorist financing offence

40. In the 2012 MER, Moldova was rated largely compliant with former SR.II. The assessors found the scope of applicability of the generic offence of a terrorist act (Art. 278) not sufficiently wide regarding its applicability to the population of any country, and that the definition of a terrorist organisations and an individual terrorist in the FT offence implied that the funds must have been linked to a specific offence of terrorist nature. Furthermore, legislation needed clarification so as to clearly provide for coverage of financing of terrorist organisation and individual terrorists for any purpose, including legitimate activities. Since the 2012 MER, the provisions of the Criminal Code relating to terrorism and terrorism financing (Arts. 278-279-279¹⁻³) have been amended by Law no.

¹⁰³ 67,500 – 92,500 MDL; EUR 3,375 – 4,625

60 of 7 April 2016 (entry into force 6 May 2016), Law no. 207 of 29 July 2016 (entry into force 7 November 2016) and Law no. 119 of 23 June 2017 (entry into force 4 August 2017).

41. *Criterion 5.1* – The offence of financing of terrorism remains criminalised by par (1) Art. 279 CC with a wording which closely follows Article 2 of the FT Convention and completes its coverage, as an additional aspect of the FT offence, by *“the provision of financial services”* i.e. providing assistance through financial services to the actual financier, so as to channel the funds through the financial system. As for the financing of a terrorist act, the FT offence encompasses all offences of terrorist nature which term, as defined by Art. 134¹¹ CC, covers the generic offence of terrorist act (Art. 278 CC) which, as noted above, has been amended to fully comply with Art 2 (1b) of the FT Convention as well as all domestic criminal offences that implement the terrorist offences listed in the Annex to the FT Convention.

42. *Criterion 5.2* - The wording and scope of the FT offence provided in Art. 279 CC was generally (or, in most of the cases, literally) in line with this Criterion already at the time of the previous evaluation, with two notable differences. The main shortcoming noted in the 4th MER was the lack of a clear provision that the financing of terrorist organisations and individual terrorists for any purpose (including legitimate activities) is covered. This has since been adequately remedied by completing paragraph (1)(b) Art. 279 CC which now clearly refers to funds that will be used by an organised criminal group, a criminal organisation, or a person who commits or attempts to commit a crime of a terrorist nature *“for any purpose”*. The other issue was that the same provision of the FT offence defined both terrorist organisations and individual terrorists by their respective relationship to an offence of terrorist nature. While this particular feature of the FT offence has not since changed, the GPO made it clear in its recent *“Methodological Guidelines for the ML and FT prosecution”* of 6th September 2018 that the offence does cover the financing of terrorist organisations and individual terrorists even in the absence of a link to a specific act of terrorist nature. While this Guideline is binding for all prosecutors and criminal investigative bodies, it has yet to be tested before the Court.

43. *Criterion 5.2^{bis}* – Article 279³ of the CC, newly introduced since the last MER, criminalises travelling abroad for terrorist purposes, including for the purpose of planning, training, committing or participating in terrorist offences or receiving terrorist training. It also introduces the organisation or facilitation of such travel abroad for terrorist purposes as an offence. Art. 279³ CC is included among the offences of terrorist nature in Art. 134¹¹ CC’.

44. *Criterion 5.3* – Art. 279 of the CC makes reference to *“goods of whatsoever nature obtained through any means”* which covers both legitimate or illegitimate sources. As to the broad definition of *“goods”* reference is made to Art. 132¹ CC (see EC 3.4 above).

45. *Criterion 5.4* – Art. 279(2) CC provides that a FT offence is considered consummated *“irrespective of whether the crime of a terrorist nature has been committed or whether the goods have been used to commit this offence by a group, organisation or person mentioned under §1(b)”*. As mentioned in 5.2 the wording of the FT offence still implies that financing of a terrorist organisation or an individual terrorist is indirectly linked to an offence of terrorist nature. The assessors welcome the introduction of the PGO Methodological Guidelines discussed in 5.2 which interpret the FT offence the opposite way and oblige all prosecutors not to seek for such links when proving FT but this broad interpretation has yet to be tested before the Courts.

46. *Criterion 5.5* – As described under Criterion 3.8 above, the general principles and the rules of evidence provide that the object, the objective side, the subject and the subjective side of a crime

shall be considered, which demonstrates that the intent and knowledge required to prove the offence can be inferred from objective factual circumstances.

47. *Criterion 5.6* – The FT offence of Article 279(2) CC lays down sanctions of imprisonment from five to ten years with the deprivation of the right to hold certain positions or to exercise a certain practice for a period of two to five years. This range of punishment is comparable to (and is slightly more severe than) criminal sanctions for other offences that penalize support to terrorist activities (see under Art. 279¹ CC) and can thus be considered proportionate and dissuasive.

48. *Criterion 5.7* – The CC establishes sanctions in the form of fines for legal persons convicted of the FT offence, ranging from 8,000 to 11,000 conventional units¹⁰⁴ and liquidation of the legal entity. Comparable ranges of punishment exist for legal entities convicted of similar terrorism-related offences (see Art. 279¹⁻² CC) which demonstrates the proportionality of the sanctions but the highest amount of fine does not seem sufficiently dissuasive (see reasoning under EC 3.10 above), The legislation does not contain any provision precluding parallel civil or administrative liability of legal persons in case of a criminal investigation related to FT offence and the measures described are without prejudice to the criminal liability of natural persons.

49. *Criterion 5.8* – The ancillary offences are fully covered by the Moldovan CC: attempt to commit the FT offence (Art. 27), participation (including as an accomplice) (Art. 41), organisation (Art. 45), and contribution to a group (Art. 41). Furthermore, Art 279 (1) (b) provides the criminal liability for an attempt to commit a FT offence; the organisation or preparation of the offence; and/or participation in the offence or attempted offence; and/or organisation, recruitment or directing of others to commit or participate in the preparation or commission of the offence; and/or commission or attempt to commit a FT offence via an organised criminal group or organisation.

50. *Criterion 5.9* – Terrorism, including FT, is included as a designated category of predicate offences for ML.

51. *Criterion 5.10* – The assessors of the 4th round MER considered the wording to define the actual coverage of the provision of FT offence not sufficiently accurate. The revised Article 279(2)CC provides now that a FT offence is considered consummated notwithstanding the location of the offence, either on or beyond the territory of Moldova.

Weighting and Conclusion

52. There are minor deficiencies related to the dissuasiveness of sanctions and the apparent, although arguable need for an indirect link with a terrorist act. ***Recommendation 5 is rated Largely Compliant.***

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

53. In its 2012 MER, Moldova was rated non-compliant with former SR.III. The assessors noted the following deficiencies: assets not directly involved in transactions were not covered by the freezing mechanism; assets could be frozen only up to 30 working days; there was a lack of a clear legal structure for the conversion of designations into Moldovan law under procedures initiated by third countries; there were no effective and publicly known procedures in place for considering de-listing and unfreezing, authorising access to frozen funds for necessary expenses etc.; there was limited

¹⁰⁴ 400,000 – 550,000 MDL; EUR 20,000 – 27,500

awareness and monitoring of compliance; and UNSCR requirements were implemented only to a certain extent, in particular by the non-banking financial institutions and DNFBPs.

54. *Criterion 6.1* –

a) The authorities maintained that the Ministry of Foreign Affairs and European Integration (MFAEI) in conjunction with the SIS is the competent authority for proposing persons or entities to the 1267/1989 and 1988 Committees. However, there are no explicit legal provisions to appoint the MFAEI or any other authority as the competent authority for proposing persons or entities to the 1267/1989 and 1988 Committees.

b) The SIS actively monitors the territory of Moldova to identify persons with links to terrorism or FT and is responsible for creating a supplementary list regarding the persons, groups and entities involved in terrorism activities (the “SIS list”) (Art. 34 (14) of the AML/CFT Law). In addition, the SIS has the obligation to create and manage the specialised database on the status, dynamics and trends of the extent of the international terrorism, terrorist, terrorist organisations, including international ones, its leaders, persons involved in the work of such organisations, natural and legal persons providing terrorist with support, including financial (Art. 8 of the Law no. 120/2017). An internal order regarding the operational activity of the competent structure within the SIS establishes the specific operational measures for detecting and preventing terrorist activities, including combating the FT. According to this same document, the SIS may apply special measures in order to obtain necessary information and data at national and international level. According to authorities, this would include also identifying the targets for designation, based on the designation criteria set out in the relevant UNSCRs even though there are no relevant explicit legal requirements.

c) The authorities maintained that the evidentiary standard of proof to decide whether or not to make a proposal for designation is of “*reasonable grounds*”. However, there is no reflection in the legislation on the evidentiary standard to be applied by the competent authorities when making a decision on processing a designation. When designating a person, SIS may serve: (a) the lists drawn up by the international organisations which Moldova is a party to and bodies of the European Union on persons, groups or entities involved in terrorist activities; (b) a final judgment of a court in Moldova under which an organisation of Moldova or another state is declared as being a terrorist organisation; (c) a final court judgment on the termination or discontinuation of the activity of an organisation involved in terrorist activities; (d) a final court judgment on conviction of a person for committing a terrorist offence; (e) a final judgment of a foreign court approved in the manner set out herein by national courts in respect of persons, groups or entities involved in terrorist activities (Art 10(2) of the Law no. 120/2017). This might limit the application of the evidentiary standard of proof of “*reasonable grounds*” or “*reasonable basis*” when deciding whether or not to make a proposal for designation.

d) The authorities confirmed that the procedures and standard forms for listing are used to the fullest extent possible in case of designation, following the direct applicability of the UNSCRs in Moldova.

e) The authorities confirmed that when proposing a person or entity, the authorities would provide as much relevant information as possible on the proposed name, a statement of the case, which contains as much details as possible on the basis for listing; and (in the case of proposing names to the 1267/1989 Committee), specify whether their status as a designating state may be made known as required by the Standards. The SIS collects relevant data through multiple sources, including its

own special database and through their access to foreign databases, in accordance with Art. 8(2)(d and f) of the Law no. 120/2017.

55. *Criterion 6.2* –

a) The SIS may designate persons or entities on its own motion for the “SIS list” described under C.6.1. b) (Art. 34 (13) and (14) AML/CFT Law).

b) The procedures developed by the SIS enable them to identify targets for designation, based on the designation criteria set out in UNSCR 1373. However, there are no explicit legal provisions which would allow the authorities to give effect to actions initiated under the freezing mechanisms of other countries pursuant to UNSCR 1373(2001).

c) There is no mechanism in place to ensure that a prompt determination is made when receiving a request from another country, that the request is supported by reasonable grounds.

d) The evidentiary standard of proof of “*reasonable grounds*” is applied when deciding whether or not to make a designation and, as authorities stated, the same approach is applied irrespectively of whether the designation proposal is made on the motion of foreign country or relevant domestic competent authorities. However, there is no reflection in the legislation on the evidentiary standard to be applied by competent authorities when making a decision on processing a designation and final court decision for terrorism activities for designation based on the foreign request (Art. 10 (2) e) of the Law 120/2017) might limit the application of evidentiary standard.

e) There are no legal provisions or procedures, which need to be followed when requesting another country to give effect to the actions initiated under the freezing mechanisms.

56. *Criterion 6.3* –

a) The competent authorities have powers and procedures to collect and solicit information to identify persons or entities with respect to whom there are grounded suspicions of involvement in any form in terrorism or FT (Art. 7 and Art. 8 (2)(i) of the Law no. 120/2017; Art 34 (13) and (14) of the AML/CFT Law).

b) The SIS informs the concerned persons, groups and entities about the fact of their listing, reasons for listing and legal ways for contesting the decision (Art. 34 (15) of the AML/CFT Law). However, there are no legal or judicial requirements to hear or inform the person or entity against whom a designation is being considered. Thus, it can be inferred that authorities can act *ex parte*.

57. *Criterion 6.4* – The sanctions adopted in accordance with the provisions of Art. 41 of the UN Charter and the decisions of the Sanctions Committee are directly applicable in Moldova (Art. 5 of the Law 25/2016 on International restrictive measures). Additionally, the lists of the UNSC regarding the persons, groups and entities involved in terrorism activities and proliferation of weapons of mass destruction shall be applied directly and have immediate effect on the territory of Moldova (Art. 34(12) of the AML/CFT Law). However, the AML/CFT Law is applicable only for the reporting entities, thus not for all natural and legal persons. As a result, for other natural and legal persons which are not reporting entities the implementation is enforceable after their publication in the Official Gazette (within 10 days, which is not ‘without delay’). Deficiencies identified under C.6.2

(c) and (d) have an impact on implementing TFS based on UNSCR 1373 as it is prescribed in footnote 21 of the FATF Methodology.¹⁰⁵

58. Criterion 6.5 –

a) The REs shall immediately apply restrictive measures, including freezing measures, in relation to goods owned or held or controlled by persons, group or entities included in the lists of persons, groups and entities involved in terrorism activities and proliferation of WMDs that are subject of TFS (Art. 33, 34(1) and (2) of the AML/CFT Law). The restrictive measure is immediately applied and maintained for an undetermined period of time. The REs shall inform the SPCML on the application of the restrictive measures, no later than 24 hours from the moment of application. In its turn the SPCML shall inform, no later than 24 hours, the SIS and MFAEI, in order for them to inform the competent bodies and authorities of UN (Art. 34 (4) of the AML/CFT Law). There are no sanctions established in the AML/CFT Law for natural and legal persons which are not reporting entities.

b) The restrictive measures shall be applied in respect of “*goods*”, including of those obtained from or generated by goods owned or held or controlled, directly or indirectly, by persons, groups and entities included in the sanctions lists. The AML/CFT Law defines “*goods*” as *financial means, as well as funds, income, any category of corporeal or incorporeal, movable or immovable, tangible or intangible values (assets) and acts or other legal instruments in any form, including in electronic or digital form [...]*. There is no specific obligation to freeze funds or other assets that are jointly owned or controlled by designated persons.

c) A general provision in Law no. 25/2016 states that the UNSCR sanctions are directly applicable and constitute rights and obligations for individuals and any other subject of law of Moldova (Art. 5). AML/CFT Law prohibits REs from performing activities and transactions in the favour or in benefit of the listed persons, groups and entities (Art. 34 (1)). Only the SPCML, in coordination with the SIS, may authorise an exception to the restrictive measures to ensure a minimum living standard; provide for urgent medical treatment; pay taxes and duties to budget and mandatory insurance premiums; or other extraordinary expenses or the maintenance of goods to which the restrictive measures were applied (Art. 34 (8) of the AML/CFT Law). Art. 16 of Law 25/2016 provides the mechanism for obtaining the exceptions on application of restrictive measures.

d) The MFAEI maintains a central record of all mandatory international restrictive measures in force and publishes the relevant information on the official website of the MFAEI¹⁰⁶ (Art. 18(1) of the Law 25/2016). MFAEI keeps also the database on the implementation of the international restrictive measures concerning the freezing of funds and economic resources (Art. 18 (1) of the Law no. 25/2016). The SIS elaborates, updates and publishes in the Official Gazette of Moldova the consolidated list of persons, groups and entities involved in terrorism and in proliferation of weapons of mass destruction activities which includes all categories of designation (Art. 34 (16) of the AML/CFT Law). The information on the amendment of the UNSC lists, related to listing or delisting of one or more persons, groups or entities, shall be transmitted immediately by the SIS to the REs, authorities with supervision

¹⁰⁵ The footnote 21 of FATF Methodology provides for UNSCR 1373, the obligation to take action without delay is triggered by a designation at the (supra-)national level, as put forward either on the country’s own motion or at the request of another country, if the country receiving the request is satisfied, according to applicable legal principles, that a requested designation is supported by reasonable grounds, or reasonable basis, to suspect or believe that the proposed designee meets the criteria for designation in UNSCR 1373.

¹⁰⁶ <http://www.mfa.gov.md/international-restrictive-measures/>

functions of the REs and to the SPCML (Art.34 (17) of the AML/CFT Law). In addition, the REs have the obligation to monitor the UN, EU and SIS websites (Art.34 (18) of the AML/CFT Law).

e) REs shall transmit to the SPCML, no later than 24 hours after application, the information on the application of the respective measures, which in its turn, shall inform, within 24 hours, the SIS and MFAEI for transmission of information to competent bodies and authorities of the United Nations Organisation and European Union (Art. 34(4) of the AML/CFT Law). There is no legal provision to report to competent authorities on attempted transactions.

f) The rights of *bona fide* third parties are protected (Arts. 16(8) and 12(4) of AML/CFT Law).

59. *Criterion 6.6* – Moldova applies the following publicly known procedures for de-listing and unfreezing the funds or assets of persons and entities no longer meeting the designation criteria:

a) According to the authorities, the procedures established by the UNSCRs will be followed directly. There are no procedures to submit de-listing requests to the UN sanctions Committees 1267/1989 and 1988 in the case of persons and entities designated pursuant to the UN Sanctions regime, which, in the view of the country, do not or no longer meet the criteria for designation.

b) The SIS has the authority to issue a decision on removal of restrictive measures on one or more persons, groups or entities on the basis of the amendments on the exclusion of related persons, groups or entities from the UNSCRs lists (Art. 34 (10) of the AML/CFT Law). The decision of the SIS shall be taken immediately, but no later than 24 hours from the moment of the amendment of the UNSCRs list. The decision is further communicated to the SPCML, which in its turn has the obligation to communicate it to the RE which applied the freezing measure. However, there are no specific legal authorities and procedures or mechanisms to de-list and unfreeze the funds or other assets of persons and entities designated pursuant to UNSCR 1373, that no longer meet the criteria for designation.

c) There are no specific legal provisions or procedures in place to allow, upon request, review of the designation decision before a court or other independent competent authority. However, authorities affirmed that the existing general procedures for appealing on criminal or administrative decision can be applied also in case of designations under the SIS lists.

d) There are no procedures to facilitate review of the designation by the 1988 Committee, including those of the Focal Point mechanism established under UNSCR 1730.

e) There are no procedures for informing designated persons and entities of the availability of the *United Nations Office of the Ombudsperson*, pursuant to UNSCRs 1904, 1989, and 2083 to accept de-listing petitions.

f) In case of doubt on the identity of a person, group or entity on the designation list, the REs should inform the SPCML, which, in turn after consultation with the SIS, informs the RE about the necessity of application or non-application of restrictive measures (Art. 34(6) of the AML/CFT Law). However there are no publicly known procedures to unfreeze the funds or other assets of the persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism (i.e. a false positive), upon verification that the person or entity involved is not a designated person or entity (C.6.6 (f)).

g) The decisions on the application or non-application of restrictive measures shall be communicated to the RE that applied the respective measure (Art. 34(10) of the AML/CFT Law). However, no further guidance has been provided to FIs and other persons and entities, including

DNFBPs, that may hold targeted funds or other assets, on their obligation to respect a de-listing or unfreezing action.

60. *Criterion 6.7* – Upon request of any interested party, the SPCML, in coordination with the SIS, may authorise payments from the amount of goods subject of restrictive measures for: ensuring of minimum living standard according to official indices estimated for Moldova; urgent medical treatment; payment of taxes and duties to budget and mandatory insurance premiums; and other extraordinary expenses or related to maintenance of goods to which the restrictive measures have been applied (Art. 34 (8) of the AML/CFT Law). The decision of the SPCML on authorization or refusal of the authorization of payments can be claimed in the administrative litigation procedure and the decision of judge can be claimed on appeal in the manner established by the legislation (Art. 34 (9) of the AML/CFT Law). There are no provisions envisaged for application of the relevant measures for persons designated under UNSCR 1373.

Weighting and Conclusion

61. Moldova has partially implemented the criteria under R.6. There are no explicit legal provisions to appoint and authorize competent authority for proposing persons or entities to the 1267/1989 and 1988 Committees (C.6.1 a)) and to identify targets based on the designation criteria set out in the relevant UNSCRs (C.6.1 b)). There is no reflection in the legislation on the evidentiary standard to be applied by competent authorities when making a decision on processing a designation and there are some limitations (C.6.1 c) and C 6.2 d)). There are no explicit legal provisions which would allow the authorities to give effect to actions initiated under the freezing mechanisms of other countries pursuant to UNSCR 1373(2001) (C.6.2 b)) and no specific provisions on mechanism applied for determination of “reasonable grounds” or “reasonable basis” when receiving foreign requests (C.6.2 c)). There are no legal provisions or procedures, which need to be followed when requesting another country to give effect to the actions initiated under the freezing mechanisms (C.6.2 d)). Deficiencies identified under C.6.2 (c) and (d) have impact on implementing TFS based on UNSCR 1373 as it is prescribed in footnote 21 of the FATF Methodology (C.6.4) and there are also deficiencies in relation to C.6.5 e), C.6.6 a) – g) and C.6.7. ***Recommendation 6 is rated Partially Compliant (PC).***

Recommendation 7 – Targeted financial sanctions related to proliferation

62. These requirements were added to the FATF Recommendations in 2012 and were therefore not previously assessed.

63. *Criterion 7.1* – The legal basis for the application of TFS under UNSCRs 1718, 1737¹⁰⁷ and their successor resolutions is the same as for TFS related to terrorism and terrorism financing (see C.6.4). The deficiencies identified under C.6.2 (c) and (d) have impact on the implementation of TFS based on UNSCR 1373 as it is prescribed in footnote 21 of the FATF Methodology.

64. *Criterion 7.2* – According to the authorities, the SIS is the competent body for the implementation and enforcement of TFS for both terrorism and proliferation. As described under R 6.1 (b) this is not explicitly stated in the Law.

¹⁰⁷ UNSCR 1737 and its successor resolutions were terminated with the adoption of UNSCR 2231 (2015).

- a) The REs shall immediately apply restrictive measures as described under R6.5(a). Art 5 of the Law 25/2016 on international restrictive measures extends this obligation to all public authorities and institutions, legal entities and individuals or any other subject of the law in Moldova.
- b) The freezing obligations extend to the full range of funds or other assets required by R.7 (see C.6.5(b)). The deficiency identified under C. 6.5 (b) applies in regard to PF TFS.
- c) See R6.5(c).
- d) The MFAEI maintains a central record of all mandatory international restrictive measures in force and a database on the implementation of the international restrictive measures concerning the freezing of funds and economic resources (Art. 18(1), Law 25 2016). The SIS elaborates, updates and publishes in the Official Gazette of Moldova the consolidated list including all categories of designation (Art. 34(16), AML/CFT Law). It also has the obligation to immediately inform the reporting entities about the amendment of the lists of designation. Besides, the reporting entities have the obligation to monitor the UN, EU and SIS websites. In August 2018 the SPCML approved Instructions 35 on enforcing international restrictive measures applicable for all Res.
- e) Art. 34(4) of the AML/CFT Law stipulates that the REs shall inform the SPCML, within 24 hours about the application of the respective measures. The SPCML, in its turn, shall inform, within 24 hours, the SIS and MFAEI about the application of restrictive measures. Attempted transactions are not covered by the relevant legislation.
- f) The rights of *bona fide* third parties are protected through Arts. 12(4) and 16(8) of the AML/CFT Law.

65. *Criterion 7.3* – Monitoring and ensuring compliance with the TFS legal requirements by all REs is ensured through Art. 15 of the AML/CFT Law. Failure to comply is considered an infringement to the Law and may result in administrative, pecuniary, civil and disciplinary sanctions (Art. 35 AML/CFT Law).

66. *Criterion 7.4* – As described in Criterion 6.6, the Moldovan legislation does not contain publicly known procedures to submit de-listing requests to the relevant UN sanctions Committee. The existing general procedures for appealing a criminal or administrative decision provide for the possibility of appealing the decision of enlistment in case of a false positive result.

- a) There are no specific procedures which enable or inform listed persons and entities to petition a de-listing request at the Focal Point mechanism established under UNSCR 1730.
- b) As described in Rec. 6.6(f), when a RE informs the SPCML about a potential inadvertent match, the SPCML would consult and verify with the SIS and inform the REs about the necessity to uphold the listing. However, there is no publicly known procedure to unfreeze the funds or other assets of listed persons or entities which are wrongly matched (i.e. for a false positive).
- c) SIS may authorise the performance of payments from the amount of goods subject to restrictive measures, for the purposes of: ensuring a minimum living standard; urgent medical treatment; the payment of taxes and duties to budget and mandatory insurance premiums; other extraordinary expenses or related to maintenance of goods to which the restrictive measures have been applied (Art. 34(8) AML/CFT Law). It is not explicitly provided in law that the respective authorisation and formalities are according to the applicable UNSCRs.
- d) As described in Rec. 6.6(g), the decision on the application/lifting of restrictive measures is communicated to the REs in accordance with Art. 34(10) of the AML/CFT Law, but no further guidance has been provided to REs on their obligations in respect of a listing/de-listing action.

67. *Criterion 7.5* – There are no provisions or measures implementing this criterion.

Weighting and Conclusion

68. There are moderate deficiencies identified regarding PFS in Moldova and only one EC is fully met. Sanctions may not be implemented in due time; there is no provision in the legislation requiring all natural and legal persons to freeze funds or other assets of designated persons or entities; there is no obligation to freeze funds or other assets that are jointly owned or controlled by designated persons; and it is not ensured that funds or other assets are being made available to designated persons. The requirements laid down in Criterion 7.5 is entirely absent from Moldovan legislation. ***Recommendation 7 is rated Partially Compliant.***

Recommendation 8 – Non-profit organisations

69. In the 2012 MER, Moldova was rated LC with the former SR.VIII. Two main shortcomings were identified: no mechanism had been introduced for the periodic/systemic reassessment of the FT vulnerabilities of the NPO sector; and there existed no systemic/programmatic monitoring of the sector with a view to detecting potentially FT-related illicit activities. Since the 4th round, the standard has changed considerably, especially by clarifying the application of the RBA to NPOs.

70. *Criterion 8.1* – The general legal framework that regulates the legal status, registration, functioning as well as the rights, obligations and accountability of non-profit organisations in Moldova is largely the same as it was at the time of the previous evaluation. The Civil Code regulates the legal status of all legal persons (registration, readjustment, liquidation and deregistration procedures), and Chapter II Section 5 provides specific provisions with regard to the NPOs, (which can operate in three legal forms: associations, foundations and institutions) and the compulsory clauses to be stipulated in their statutes.

a) The SIS undertakes periodical assessment of certain categories of NPOs which are considered as vulnerable from FT perspective and are therefore subject to an enhanced monitoring (including with regard to their financial activities). However, the undertaken risk assessments do not identify the subset of organisations that fall within the FATF definition of NPO or features and types of them.¹⁰⁸

b) The authorities (the SIS) have identified and monitored financial transactions of a certain number of NPOs, which might be risky from the FT perspective. However, there is no specific domestic measure or *ad hoc* review aimed at identifying the nature of potential threats terrorist may pose to the NPOs.

c) There has been no specific review of the adequacy of measures, including laws and regulations, that relate to the part of the NPO sector which may be abused for FT support, in order to be able to take appropriate and effective actions to address the risk identified¹⁰⁹.

d) The NRA Action Plan for 2017 – 2019 included the action 2.1 “Identifying measures to periodically evaluate the non-profit sector from the perspective of terrorism financing risks”. Moldovan authorities mentioned in interviews during the on-site that they were in process of completing NPO

¹⁰⁸ Moldova completed NPO sector risk assessment on 1st November 2018 (after the on-site).

¹⁰⁹ Moldova completed NPO sector risk assessment on 1st November 2018 (after the on-site).

sector risk assessment.¹¹⁰ As described under point 1, the SIS undertakes periodical assessment of certain NPOs which are considered as vulnerable from FT perspective. The MoJ is required to provide the SIS with information on the initiation of the procedure for registration of NPO by citizens of countries from risk areas, as well as any changes in their incorporation, within 5 days from the date of the submission of an application (Art. 11 of Law 120/2017).

71. *Criterion 8.2 –*

a) Moldova has policies to provide transparency in the setting up and activities of NPOs, to promote accountability, integrity and public confidence in the administration and management of the sector. The responsible authority for registration of any type of NPOs is the PSA. The Law 837-XIII/1996 on social associations, which regulates the right to association of persons and sets out the principles of creation, registration and cease of the activities of public associations, of property and administration of public associations assets, the liability for the infringement of law, the international relations of public associations, as well as the rights, obligations and conditions of operating activities by public associations. Law no. 837-XIII/1996 establishes that public associations must provide in their charter, among other information, the main parameters of the financial reporting and the manner in which it is made public (Art. 16). Accounting Law no. 113/2007 applies also for NPOs (Art. 2) which are under the same fiscal regime as any legal entity. All the financial information reported on annual basis by NPOs is included in the database of the STS, which is accessible to authorities. The Civil Society Development Strategy for 2017-2020, approved by the Law no. 51/2018 reflects Moldova's commitment to systematically strengthening the conditions for the dynamic development of the civil society. The Law no. 581/1999 on foundations establishes that foundations must provide within their charter the scope of the foundation and data on the founders and assets belonging to the entity (Art. 10). On annual basis, the foundation must provide to the MoJ the report on, among others, the general activity of the entity, the sources of financing, beneficiaries of the activity of the foundation and the value of the financial means used for covering the administrative expenses. The report shall contain the name of the members of the foundation's board, of their collaborators and their close relatives who benefited from the means and services provided by the foundation (Art. 22 letter c). The activity report of foundations is publicly available. In addition, Art. 14 (9-11) of the AML/CFT Law, the registering competent authority (PSA) shall verify whether the founder, administrator or beneficial owner of an NPO is not included in the financial sanctions lists, or (suspected) affiliation to persons, groups and entities involved in terrorism. In case such suspicion occurs, an STR shall be submitted to the SPCML.

b) The SIS undertook outreach and educational programs to raise and deepen awareness among NPOs 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. During 2015 – 2017 awareness raising programs were organised to which over 800 persons participated, with the main subject the risk of abuse of NPOs by terrorist entities and other related topics.

c) The authorities informed the AT that best practices to address the FT risk and vulnerabilities to protect NPOs from FT abuse have been developed together with a consortium of private institutions and independent experts. However, no document has been provided.

d) The NPOs are obliged to have bank accounts. According to Art.161 of the Fiscal Code, in order to be registered, the non-commercial organisations should present documents confirming the existence

¹¹⁰ Moldova completed NPO sector risk assessment on 1st November 2018 (after the on-site).

of bank accounts. However, there are no measures in place to encourage NPOs to conduct transactions via regulated financial channels.

72. *Criterion 8.3* – There are several state bodies involved in the supervision of NPOs and Moldova imposed a broad range of obligations which cover most measures mentioned as examples in sub-par. 6(b) of INR.8. Until March 2018, the MoJ ensured the registration, recording and monitoring of the activities of NPOs. The PSA is responsible for NPOs’ registration after that date. The STS monitors the economic activity of NPOs insofar it concerns their tax obligations, state taxes and duties, conditions for exemption or taxation on income tax (Article 52 of the Fiscal Code). The National Council of Statistics monitors the consumption and expenditure of NPOs on a quarterly basis (Article 13(1) of Law on Official Statistics). The CS monitors their compliance according to legal provisions on the goods crossing the customs border of Moldova, the collection of import duties and customs export, customs clearance, customs control and surveillance (Article 2 of the Customs Code) and the SIS monitors their activities on issues of preventing and combating terrorist acts (Article 11(2) of Law no. 120/2017). Apart from SIS monitoring, the supervision and monitoring measures applied by Moldova are not risk based. There is no regulation stating that risk bases measures should be applied to NPOs

73. *Criterion 8.4* –

a) Monitoring of the NPO sector was carried out by the MoJ (until March 2018) and by the PSA (since March 2018) based on the provisions of the Law no. 837-XIII/1996¹¹¹ in relation to compliance of the activity of the public association (including NPO) with its statutory purposes and tasks. The sources of income, the obtained amount of the means, the payment of taxes and other financial activity of the NPOs is monitored by the bodies of the financial control and fiscal administration (Art. 38 (2) from the Law 837-XIII/1996). The financial control of the foundations is exercised by the financial body and the STS, according to the relevant legislation in place (Art. 32 (2) Law 581/1999). As described above, the NRA did not include the assessment of the risks related to NPOs sector. Consequently, except the SIS monitoring, the NPOs’ compliance with requirements of R.8 is not monitored based on risks. The partial rating of 8.3 impacts on this sub-criterion.

b) Sanctions for violations by NPOs or persons acting on behalf of these NPOs are available. In case the NPO undertook measures that lead to breaches of the legislation, the MoJ may issue a written warning to the management of the NPO (Art. 42 (3) Law 837-XIII/1996). If within 10 days from the written notification of the MoJ the NPO did not undertake measures for remediation of the breaches, the MoJ may propose to suspend the activity of the NPO by the decision of court, for a period of up to six months (Art. 43). The NPO may be dissolved by court decision in case within one year, the organisation was repeatedly notified on the necessity to remedy the breaches of the legislation and these breaches were not cleared (Art. 36 (4) letter f from the Law 837-XIII/1996). In case of foundations, failing to present the annual report of the foundation within two years will lead to elimination of the foundation from the State register, based on court decision, by request of the MoJ. The Law no. 581/1999 provides that the foundations may be subject to liquidation, based on court decision, at the MoJ request. The liquidation may occur, if, among other cases, the activity of foundation is exceeding the scope established through its chart or if the scope and means used for this are contrary to public order, or if the activity of the foundation is affecting the independence or territorial integrity of Moldova (Art. 35 letter b) and c)). For fiscal breaches, the general tax regime - which provides a complex set of sanctions including fines - applies. In this case, the sanctions shall be

¹¹¹ Modified by Law 31/2018

imposed by the STS (art. 235, art. 236 from Fiscal Code). Sanctions (fines) can be also applied based on Art. 330 of Contravention Code (presentation of false or delayed statistics). The Customs can impose sanctions on NPOs for specific breaches related to regime of import and export of goods, since the custom contravention are applicable also to legal persons (Art. 229 from Custom Code). The sanctions available in relation to NPOs seem to be proportionate and dissuasive.

74. *Criterion 8.5 –*

a) Generally, the data regarding NPOs can be found in the PSA Register. The information is publicly available and accessible by MoJ, STS, National Bureau of Statistics, MFA, SPCML, SIS etc. The PSA ensures access of the competent authorities to the information of the registered entities. As described under R.40, the cooperation between relevant authorities on AML/CFT issues is regulated by the provisions of the AML/CFT Law which provides the comprehensive legal basis for exchange of information between competent authorities (Art. 17 from AML/CFT Law).

b) In relation to FT, Moldova has established authorities with a range of powers, especially through Law no. 120/2017 and AML/CFT Law and as consequence, the SIS, among other authorities, appears to have adequate investigative expertise and capability to examine NPOs suspected of either being exploited by, or actively supporting, terrorist activity or terrorist organisations.

c) The authorities have full access to information on the administration and management of NPOs as this is publicly available in the PSA Register. As described in previous ECs, the NPOs are obliged to keep and present the tax declarations in paper or electronic format which include: primary documents, accounting registers, financial reports and other documents afferent to the organisation and keeping of accounting records (hereinafter called accounting documents). The accounting documents may be seized by the authorities as any other object. Both the NPOs and the accountants would be under an obligation by law to provide the requested information to the police, supplemented by coercive means available

d) Moldova has in place a legal framework to ensure that information is shared between competent authorities. According to Art.19 (1)(b) of the AML/CFT Law the SPCML shall inform immediately SIS in case of FT pertinent suspicions. According to Art.14 of the AML/CFT Law when there are suspicions regarding the affiliation of the founder, administrator or beneficial owner of the non-commercial organisation to terrorism entities and organisations, the PSA shall notify immediately the SPCML and the SIS. The natural and legal persons, irrespective of the type of property and legal form of organisation, are obliged to provide assistance to authorities with competences in the area, including to immediately make available at their disposal the movable and immovable goods, other objects and documents, as well as information held about activities, events, circumstances or persons of interest that are necessary for performing special investigative measures (Art.16 (2) of the LPCT).

75. *Criterion 8.6 –* The SPCML uses procedures and mechanisms for international cooperation that are provided under the AML/CFT Law (Art. 17), to handle requests regarding to NPOs. In cases investigated at the level of LEAs, the information may be obtained from abroad in relation to investigated NPOs, through SPCML, as part of indirect cooperation. At international level, the SPCML may exchange information with competent authorities of other countries, regardless of their status, ex officio or upon request. Within the competent authorities, especially SPCML and SIS have set up specialised units that are entrusted with specific competences and attribution for performing exchange of information on NPOs. On the basis of Art. 48 of the Law no. 120/2017, the SIS

cooperates with law enforcement agencies and special services of other states, as well as with international organisations according to the international treaties to which Moldova is party.

Weighting and Conclusion

76. Moldova adopted various laws and specific provisions pertaining to NPOs through which is ensured the transparency of the activity of the sector and of the founders and beneficiaries of the dedicated actions of the NPOs. Nevertheless, moderate deficiencies remain pertaining mostly to the application of risk-based supervision of NPOs, comprehensive risk assessment in compliance with FATF requirements and encouraging NPOs to conduct transactions via regulated financial channels beyond the obligation to have bank accounts. ***Recommendation 8 is rated Partially Compliant.***

Recommendation 9 – Financial institution secrecy laws

63. Moldova was rated compliant with the previous R.4 in the 4th round MER. The FATF standards in this area have not been amended since then. However, the applicable laws changed and the new analysis has been undertaken.

64. *Criterion 9.1 -*

(a) *Access to information by competent authorities* - The AML/CFT Law provides for clear exemptions from the principle of confidentiality when FIs submit information on “*transactions and activities of natural and legal persons*” to SPCML and supervisory authorities or grant them access to such information (Art. 16(4)). FIs and their employees are also permitted to divulge information as provided by the AML/CFT Law, despite any disclosure restrictions imposed either by contract or legislation (Art. 12(4)).

(b) *Sharing of information between competent authorities* - The AML/CFT Law provides for the express derogation to the principle of confidentiality enabling SPCML to cooperate with and disclose relevant information to supervisory authorities, LEAs and foreign FIUs (Art. 16 (2)). NBM is authorised to exchange confidential data with other domestic and foreign supervisors, and state authorities responsible for combating ML/FT offences by virtue of the Law on National Bank of Moldova (Art. 36 (4)), the Law on Banking Activity (Art. 129 (1) and 130 (3) and the Law on Payment Services and Electronic Money (Art. 103 (4) and 13 (6)). However, there are no explicit exemptions from confidentiality provisions in relation to NCFM’s power to exchange information with competent authorities domestically and internationally.

(c) *Sharing of information between FIs* - The AML/CFT Law allows FIs to share information on STRs and other data submitted to SPCML or supervisory authorities, as well as information on internal ML/FT analysis or ML/FT investigations related to a customer with similar institutions located in Moldova or other jurisdictions having equivalent AML/CFT requirements (Art. 12(5)). Moreover, the Law on Banking Activity allows banks to divulge confidential data to members of the group concerning the supervision on a consolidated basis and for the purposes of combating ML/FT (Art. 97(5)). Banks are also exempted from secrecy provisions when disclosure of confidential information serves legitimate interests (Art. 97(3)). However, the lack of clear exemptions from confidentiality clauses in relation to correspondent banking (R.13), wire transfers (R.16) and reliance on third parties (R. 17) implies that FIs should act within the confines of existing privacy laws, which normally require obtaining express written consent from customers to disclose their data.

Weighting and Conclusion

65. The lack of explicitly defined powers of NCFM to exchange the confidential information domestically and internationally, as well as the absence of specific exemptions from secrecy provisions related to the exchange of information between FIs where this is required by R.13, 16 and 17 affects the overall rating. **Recommendation 9 is rated Largely Compliant.**

Recommendation 10 – Customer due diligence

66. Moldova was rated as PC with the previous R.5 in the 4th round MER. The AML/CFT Law did not apply to savings and credit associations. Certain transactions and products assumed as presenting a low ML/FT risk were exempted from CDD requirements. There was no prohibition for non-bank FIs to keep anonymous accounts, and no clear requirements existed to determine whether customers acted on somebody else's behalf. Both the FATF standards and the applicable law were significantly revised since then.

67. *Criterion 10.1* - FIs are prohibited from opening or keeping anonymous or accounts in fictitious names, and anonymous savings books (Art. 5(4) AML/CFT Law). Similar prohibitions are in the AML/CFT regulations of NBM (Para.47, AML/CFT regulation for banks; Para. 44, of the AML/CFT regulation for non-bank PSPs) and NCFM (Para. 30¹ of the AML/CFT regulation for its supervised non-bank FIs).

When CDD is required

68. *Criterion 10.2* – FIs must undertake CDD measures when: establishing business relations; carrying out occasional transfers of funds above MDL 20,000 (approx. EUR 1,000); carrying out other occasional transactions above MDL 300,000 (approx. EUR 15,000) either in a single operation or several operations that appear to be linked; there is ML/FT suspicion regardless of any derogations, exemptions or limits; and there is a suspicion in authenticity, sufficiency and accuracy of previously obtained identification data (Art. 5 (1) AML/CFT Law). However, only those insurance/reinsurance intermediaries that are legal entities are required to undertake CDD measures, although natural persons are also allowed to engage in insurance/reinsurance intermediation. Moreover, non-bank entities providing foreign exchange trading platforms (Forex brokers) are not subject to the AML/CFT Law. The AML/CFT Law provides for the exemption from CDD requirements in relation to e-money and pre-paid payment instruments subject to monetary thresholds and provided PSPs assess the ML/FT risks as low (Art. 5 (9)).

Required CDD measures for all customers

69. *Criterion 10.3* – FIs are required to identify customers and verify their identity on the basis of identity documents, as well as information, data or documents obtained from reliable and independent sources (Art. 5(2)(a) AML/CFT Law).

70. *Criterion 10.4* – The AML/CFT Law requires FIs to verify whether a person purporting to act on behalf of a customer is so authorised, and to also identify and verify the identity of that person (Art. 5(7)).

71. *Criterion 10.5* – The AML/CFT Law requires FIs to identify the BO and apply appropriate risk-based measures to verify BO identity, so that FIs are satisfied that they know who the BO is (Art. 5 (2)(b)). The requirement to verify the BO's identity based on information or data obtained from a *reliable source* applies to all FIs, except for FEOs, via the AML/CFT regulations of NBM (Para. 35, the AML/CFT regulation for banks; Para. 31, the AML/CFT regulation for non-bank PSPs) and NCFM

(Para. 20 of the AML/CFT regulation for its supervised non-bank FIs). FIs must also keep records of measures taken to identify BOs and provide them to the SPCML and supervisory authorities upon request (Art. 5 (15) AML/CFT Law).

72. *Criterion 10.6* – FIs are required to understand and, where necessary, obtain and assess the information on the purpose and intended nature of the business relationship (Art. 5(2)(c) AML/CFT Law).

73. *Criterion 10.7* –

74. FIs are required to conduct on-going monitoring of the business relationship. This includes scrutinizing transactions to ensure that they are consistent with the information held by the FI about the customer, the customer's activity and risk profile, including the source of goods (funds and other assets), and keeping data, information and documents updated (Art. 5 (2)(d), of the AML/CFT Law). The FIs must be able to demonstrate to SPCML and supervisors that the extent of these measures is appropriate to ML/FT risks (Art. 6 (7), the AML/CFT Law).

Specific CDD measures required for legal persons and legal arrangements

75. *Criterion 10.8* – FIs are required to examine whether transactions are consistent with the information about the customer's activity as part of the on-going monitoring process (Art. 5(2)(d) AML/CFT Law) and thus, must first understand the customer's business. FIs are also required by the AML/CFT regulations of NBM and NCFM to obtain information on the nature of legal persons' activity. FIs are required to understand the ownership and control structure of the customer (Art. 5(2)(b) AML/CFT Law), and must also consider whether it is unusual or too complex and presents higher ML/FT risks (Art. 8(3)(g) AML/CFT Law).

76. *Criterion 10.9* – The AML/CFT regulations of NBM for banks (Para. 26(2)) and non-bank PSPs (Para. 24(2)) require obtaining the name, legal form, head office and/or business address of a legal person, as well as the registration certificate or extract from the official register, articles of incorporation and the name of a manager authorised to manage the account. However, these regulations do not require banks and non-bank PSPs to obtain the names of *all relevant persons* having a senior management position in the legal person, while foreign exchange offices are not subject to any of the above requirements. The AML/CFT regulation of NCFM requires its supervised non-bank FIs to obtain all data and documents required under c.10.9 (Para. 23(20)).

77. *Criterion 10.10* –

(a) & (b) The AML/CFT Law defines BO as a natural person(s) who ultimately owns or controls a natural or legal person, or who is the beneficiary or manager of an investment firm, or on whose behalf a transaction or activity is being conducted and/or who owns directly or indirectly or controls at least 25% of the shares or voting rights in a legal person or goods under fiduciary management (Art. 3 AML/CFT Law). The Law on Capital Markets defines managers of investment firms as natural persons who hold leading positions in an investment company and may influence its decision-making (Art. 6). Authorities also explained that goods under fiduciary management include funds gathered by collective investment undertakings such as investment firms and investment funds for their subsequent re-investment in accordance with the Law on Capital Markets.

(c) Where no natural person who either ultimately owns or controls a legal person is identified as the BO, after exhausting all possible means and provided there are no grounds for suspicion, FIs may consider a natural person who holds the position of an administrator as the BO (Art. 5(15) AML/CFT Law). Under the Civil Code, administrators are considered as natural person(s) who are strategic

decision-makers in a legal person and act on its behalf in relationships with third parties (Art. 61(1)(2)). The authorities clarified that strategic decision-making powers imply the capacity to take decisions that affect the whole or a substantial part of the customer's business or its financial standing. Thus, the "administrator" can be considered as the natural persons who hold the position of senior managing official.

Criterion 10.11 – In relation to BOs of legal arrangements, the AML/CFT Law specifically deals with only those fiduciary arrangements where beneficiaries are designated by particular characteristics or category. In such situations, FIs are required to obtain sufficient information for identifying beneficiaries at the time of pay-out or when the beneficiary exercises its vested rights (Art. 5(13)).

78. The NBM's AML/CFT regulation for banks (Para. 26.3) is more comprehensive and requires banks to obtain "*full names of the founder, administrator, protector (if any), beneficiaries or classes of beneficiaries, and any other person who ultimately exercises effective control*" when establishing business relations or conducting occasional transactions with *legal entities* providing fiduciary services. However, the requirement does not apply to banks' customers that are natural persons and act in the capacity of trustees. No such requirements exist for non-bank PSPs and FEOs that are also supervised by NBM.

79. The NCFM's AML/CFT regulation (Para. 62) similarly requires its supervised FIs to identify founders, administrators and beneficiaries of goods (funds or other assets) under fiduciary management, but only when dealing with *legal entities* providing such services and not with *natural persons* acting as trustees.

CDD for Beneficiaries of Life Insurance Policies

80. *Criterion 10.12* – In case of life insurance and annuity policies, in addition to required CDD measures for the customer and BO, (i) names of beneficiaries must be taken; (ii) sufficient information must be obtained on beneficiaries designated by characteristics or by other means to be able to determine their identity at the time of pay-out; and (iii) the identity of beneficiaries in both cases noted above must be verified at the time of pay-out (Art. 5(11) AML/CFT Law). In the case of assignment, in whole or in part, of an investment-related life insurance or annuity policy, FIs aware of the assignment must identify a natural or legal person receiving for its own benefit the value of the policy assigned (Art. 5(12) AML/CFT Law).

81. *Criterion 10.13* – The NCFM's AML/CFT regulation (Para. 26) requires FIs to include the beneficiary of a life insurance policy as a relevant risk factor in deciding whether to apply EDD measures, and to take reasonable measures to identify and verify the identity of the BO where the beneficiary presents a higher risk. However, no such requirement exists in relation to the beneficiary of an annuity policy, which is an investment-related life insurance product, apart from checking its PEP status (Art. 8(7) AML/CFT Law).

Timing of verification

82. *Criterion 10.14* – FIs are required to verify the identity of the customer and BO when establishing business relations or carrying out occasional transactions (Art. 5 (1) AML/CFT Law). FIs are permitted to complete verification after the establishment of the business relationship as part of simplified CDD when ML/FT risks are low (Art. 7 (2) AML/CFT Law). But, establishing the business relationship prior to verification is allowed even if it is not essential for an uninterrupted conduct of business, and there is no specific requirement to complete verification as soon as reasonably practicable.

83. *Criterion 10.15* – The AML/CFT Law provides for a general requirement to have risk management procedures (Art. 6 (3)). However, this does not amount to the specific requirement to adopt risk management procedures concerning conditions under which a customer may utilise the business relationship prior to verification.

Existing customers

84. *Criterion 10.16* – The AML/CFT Law provides the general requirement to apply CDD measures to existing customers based on risk including when circumstances of a customer change (Art. 5 (6)). AML/CFT regulations provide more specific risk-based timeframes from 1 to 3 years to update CDD data as part of on-going due diligence. However, these timeframes for applying CDD to existing customers do not take into account the moment when new national requirements are brought into force. Thus, the AML/CFT legislation fails to require CDD for existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of the data obtained.

Risk-Based Approach

85. *Criterion 10.17* – FIs are required to undertake EDD measures whenever ML/FT risks are higher. These measures include senior management approval, enhanced on-going monitoring and obtaining information on the source of customer's goods (funds and other assets) (Art. 8(2) AML/CFT Law). Specific EDD measures are also provided for unusual transactions, cross-border correspondent relationships and PEPs (Art. 8), which have certain deficiencies (see analysis of R.12 & 13).

86. *Criterion 10.18* – The AML/CFT Law requires FIs to assess risks and allows application of simplified customer due diligence (SDD) measures where lower ML/FT risks are identified (Art. 6 (3) and Art. 7). It lists certain low-risk factors that may provide grounds for SDD (Art. 7 (3)). SDD measures may include establishing business relations prior to verification, reducing the degree of on-going monitoring, and obtaining limited information on the purpose and intended nature of the business relationship (Art. 7 (2)). SDD measures are also not allowed whenever there is ML/FT suspicion (Art. 7 (4)). As explained earlier, FIs are required to demonstrate to authorities that the extent of CDD measures is appropriate to ML/FT risks (see 10.7) and undertake EDD measures whenever ML/FT risks are higher (see C.10.17), which precludes the application of SDD in higher risk scenarios.

Failure to satisfactorily complete CDD

87. *Criterion 10.19* - The AML/CFT Law provides that if CDD measures related to identification and verification of customers and BOs, and understanding the purpose and intended nature of the business relationship cannot be carried out, FIs should not establish or continue business relations or conduct a transaction, and must also consider whether an STR must be filed to SPCML (Art. 5.3). This requirement does not extend to situations where FIs cannot carry out an on-going monitoring of the business relationship.

CDD and tipping-off

88. *Criterion 10.20* – There are no legal provisions permitting FIs to not pursue CDD measures where this would tip-off the customer in cases of ML/FT suspicion.

Weighting and Conclusion

89. Moldova has addressed some deficiencies in relation to R.10 identified in its 4th round MER with the recently adopted AML/CFT Law. However, there are still moderate shortcomings. The Criteria negatively affected include 10.9, 10.11, 10.13-10.16, 10.19 and 10.20. **Recommendation 10 is rated Partially Compliant.**

Recommendation 11 – Record-keeping

90. Moldova was rated as LC with the previous R.10 in the 4th round MER. There was no specific legal provision requiring FIs to maintain records that would permit the reconstruction of individual transactions. It was also established that no provision existed on maintaining CDD data and transaction records longer than five years at the request of LEAs. The FATF standards and applicable legislation was revised since then and the new analysis has been undertaken.

91. *Criterion 11.1* – The AML/CFT Law requires FIs to maintain transaction records for five years after the termination of a business relationship (Art. 9(1)), and to keep records on occasional transactions for five years following their completion (Art. 9(2)).

92. *Criterion 11.2* – FIs must keep all information and documents obtained through CDD measures, archives of accounts, business correspondence, and the results of analyses and research aimed at identifying complex and unusual transactions for the period of 5 years after the termination of a business relationship or the date of an occasional transaction (Art. 9(2) AML/CFT Law). The record-keeping requirements do not extend to the results of analyses undertaken by FIs in contexts other than identifying complex, unusual large transactions.

93. The authorities explained that archives of accounts include names of account holders and their BOs, and opening and closing dates of accounts. This falls short of the requirement to keep account files, which would normally encompass all supporting documents, data and information in respect of an account. However, this deficiency is partly mitigated by the NBM's AML/CFT regulations for banks (Para. 88) and non-bank PSPs (Para. 85), and the NCFM's AML/CFT regulation (Para. 72) that require REs to keep all primary documents obtained during the CDD process regarding the business relationships with customers. The documents must be kept for a period of five years (plus another five years electronically) after the termination of the business relationship or after the date of the occasional transaction.

94. *Criterion 11.3* – The AML/CFT Law requires that records kept by FIs in relation to transactions carried out during a business relationship must be sufficient to allow reconstruction of individual transactions so as to serve as evidence in criminal or other legal proceedings (Art. 9 (1). This requirement does not extend to records kept on occasional transactions. This deficiency is partly mitigated by NBM's AML/CFT regulations for banks (Paras. 88.4 and 40.4) and non-bank PSPs (Para. 84) that require keeping records of all transactions carried out and related monitoring protocols (type, volume, currency, destination of funds, etc.) that would normally allow reconstruction of individual occasional transactions. NCFM's AML/CFT Regulation provides a similar requirement (Para. 72). There is no express requirement for non-banking foreign exchange offices that records kept on occasional transactions must be sufficient to permit reconstruction of individual transactions.

95. *Criterion 11.4* – FIs are required to put in place appropriate systems and procedures to rapidly respond to information requests from SPCML and supervisory authorities regarding transactions and business relationships with customers (Art. 9(3) AML/CFT Law).

Weighting and Conclusion

96. FIs are not required to maintain the results of any analyses undertaken except those aimed at identifying complex and unusual transactions. There is no express requirement for foreign exchange offices that records kept on occasional transactions must be sufficient to permit reconstruction of individual transactions. ***Recommendation 11 is rated Largely Compliant.***

Recommendation 12 – Politically exposed persons

97. Moldova was rated largely compliant with the previous R.6 in the 4th round MER. There was a lack of appropriate risk-management systems to determine whether customers and beneficial owners were PEPs. The FATF standards were revised since then and the applicable law also changed, so a new analysis has been undertaken.

98. *Criterion 12.1* – The AML/CFT Law defines PEPs as natural persons who have been entrusted with prominent public function at the national and/or international level, and those who served as members of governing bodies of political parties within the previous year (Art. 3). It is also elaborated that PEPs at the international level include heads of state, heads of government, ministers and their deputies, members of parliament, judges of high-level courts, members of boards of central banks, senior military officials, ambassadors, members of senior management of state enterprises and leaders of political parties (Art. 3). These definitions broadly cover essential elements of the FATF definition of foreign PEPs.

(a) The AML/CFT Law imposes an explicit obligation on FIs to have appropriate risk management systems for identifying PEPs, and extends this requirement to the beneficial owner of a customer (Art. 8(5)(a)). SPCML guidance on PEPs (Order №17 from 08.06.2018) recommends a relatively detailed procedure on how to identify PEPs, including though internet-based searches, media reports and commercial databases (Chapter II).

(b) The AML/CFT Law requires obtaining senior management approval for establishing or continuing the business relationship with PEPs (Art. 8(5)(b)). Similar provisions are provided in the AML/CFT regulations of NCFM and NBM.

(c) The AML/CFT Law requires FIs to take appropriate measures to determine the source of goods (funds or other assets) involved in business relations or transactions with PEPs (Art. 8(5)(c)). The NBM's AML/CFT regulations and SPCML's guidance follow the same wording. Thus, it appears that FIs are not required to take reasonable measures to establish the source of wealth (origin of the entire body of wealth) of customers and their beneficial owners identified as PEPs.

(d) FIs must carry out enhanced on-going monitoring of business relations with PEPs under the AML/CFT Law (Art. 8(5)(d)).

99. *Criterion 12.2* – The AML/CFT Law does not distinguish between foreign PEPs and those at the national level or individuals entrusted with a prominent function by an international organisation (Art. 3). Thus, FIs must apply the same ECDD measures to all types of PEPs. It is further elaborated that PEPs at the national level include individuals entrusted with prominent public function under the Moldovan legislation, also members of management boards of state-owned or municipal enterprises and commercial societies, leaders of political parties and senior military officials, while international organisation PEPs include directors, deputy directors and members of management

boards of international organisations (Art. 3). This definition is elaborated by the SPCML guidance on PEPs (Order №17 from 08.06.2018), which provides an extensive list of domestic PEPs.

100. *Criterion 12.3* – Immediate family members and close associates are subject to the same EDD measures as PEPs under the AML/CFT Law (Art. 8 (5)). The definition of close associates is however limited to joint beneficial ownership of legal entities, other types of joint business relations, and the sole beneficial ownership of a legal entity that is known to have been set up for the *de facto* benefit of a PEP (Art. 3).

101. *Criterion 12.4* – FIs are required to take measures to determine whether beneficiaries of investment-related life insurance and annuity policies and/or where appropriate, their beneficial owners, are PEPs under the AML/CFT Law (Art. 8 (7)). These measures must be taken, at the latest, at the time of the pay-out or in case of assignment of the policy to a third party, in whole or in part, at the time of assignment. If higher ML/FT risks are identified, FIs must take additional measures such as informing senior management before the pay-out and conducting enhanced examination of the entire business relationship. Besides, it is provided that REs shall apply due diligence procedures in case of transactions with high-risk customers (including PEPs), which may include ‘taking measures to inform the body empowered by law’ (Art. 60(1) AML/CFT Regulation of NCFM). There is however no firm obligation to consider filing an STR to SPCML in such a pay-out situation.

Weighting and Conclusion

102. FIs are not required to take reasonable measures to establish the source of wealth of PEPs and the definition of close associates is too restrictive. There is also no specific requirement to consider filing an STR whenever higher ML/FT risks are identified with beneficiaries of investment-related life insurance or their BOs who are PEPs. ***Recommendation 12 is rated Partially Compliant.***

Recommendation 13 – Correspondent banking

103. Moldova was rated Largely Compliant on the former Recommendation 7 in the 4th round MER. The main factors underlying the rating were insufficient safeguards against correspondent relationships with respondent institutions with insufficient AML and FT controls.

104. *Criterion 13.1* – According to the AML/CFT Law (Art. 8 (4)) and the AML/CFT Regulation of NBM (Art. 36) in the cross-border correspondent banking relations, FIs shall in addition to CDD measures provided in Art. 5 of the AML/CFT Law undertake following measures: a) the accumulation of sufficient information about the respondent institution, in order to fully understand the nature of its activity and to establish its reputation and quality of its supervision, from publicly available information; b) evaluation of inspections carried out by the corresponding institution for the purpose of prevention and combating ML and FT; c) obtain the approval of the person with senior management positions before the establishment of relations with the corresponding institutions; d) the establishment, in written form, the responsibility of each institution. While NBM Regulation no. 202 (Art. 55) contains similar requirements aimed at non-banking PSPs, there are no similar requirements which would apply to other non-banking financial institutions (NBFIs) to other relationships similar to cross-border correspondent banking.

105. *Criterion 13.2* – FIs shall ensure that the corresponding institution has verified the identity of customers which have direct access to the accounts of corresponding institution, has applied on-

going CDD measures and is able to provide, on request, relevant data CDD measures (AML/CFT Law Art. 8 (4) (e)).

106. *Criterion 13.3* – The AML/CFT Law (Art. 5 (4)) and the AML/CFT Regulation of NBM (Art. 31) expressly prohibit establishing or continuing a business relationship with a fictitious bank or a bank about which it is known that allows a fictitious bank to use its accounts or which makes anonymous accounts available to its customer. However, the term “*fictitious bank*” is not defined in the AML/CFT Law or in the AML/CFT Regulation. The definition of the AML/CFT Act instead defines “*shell bank*” which is not used in other provisions of the Law. However, “*fictitious banks*” are defined in the Recommendations for Cross-Border Relationships issued by the NBM and this definition is mostly aligned with the FATF relevant term. Both terms “*fictitious*” and “*shell*” banks are used interchangeably.

Weighting and Conclusion

107. Moldova has requirements in place regarding correspondent banking relationships for banks and non-banking PSPs. However, no such requirements are established for other relationships similar to correspondent banking. Moldova meets or mostly meets the criteria under this recommendation. ***Recommendation 13 is rated Largely Compliant.***

Recommendation 14 – Money or value transfer services

108. Moldova was rated Partially Compliant on the recommendation regarding AML requirements for money/value transfer services (former Special Recommendation VI) in the 4th round MER. The main factors underlying the rating were no formal prohibition to provide MVTS services without a license, no list of MVTS providers and the fact that the effectiveness of the supervision and sanctioning regime was not demonstrated.

109. *Criterion 14.1* – The person (the term “*person*” includes both natural and legal persons) who intends to provide payment services as a payment institution is required to obtain a license to conduct the business before it starts to provide payment services, as established by Article 10 of the Law on Payment Services and Electronic Money No. 114/2012 (LPSEM). According to LPSEM Art. 11, the authority in charge of issuing and also withdrawing those licenses is the NBM. The payment institution is entitled to provide only the services specified in the license that has been issued. The Law also provides the requirements that the entity has to satisfy in order to apply for the license in its Article 14, the grounds on which the decision to grant the license is based on, including possessing adequate internal control mechanisms and procedures for preventing and combating ML and FT, as well as the reasons that justify the rejection of an application for a license. The general provisions, licensing requirements, process, minimum capital requirements, requirements to administrators, qualifying holdings, the issuance and reissuance of licenses and other further particularities are extensively developed in chapter II of the Regulation 123/2013 of Non-Bank Electronic Money Issuers and Payment Service Providers, in each of the corresponding 6 sections.

110. *Criterion 14.2* – LPSEM considers any infringement of the provision of the Law and other normative acts to be subject to the sanctions provided in Art. 99 (Art. 97). Suspension and/or withdrawal of the license is one of the sanctions provided. According to article 402 of the Contravention Code, the bodies in charge to identify any MVTS operator that carry out activities without a license are the financial and tax inspection bodies of the Ministry of Finance. Likewise, article 293² of the Contravention Code establishes the sanctions applicable for carrying out the

activity of providing payment and/or electronic money issuance without registration or without a license, if the license is mandatory, or for violating the licensing conditions, if such actions cause prejudice to an individual, to a legal entity or to the State or if they are accompanied by an appropriation of revenue.

111. *Criterion 14.3* – MVTS are considered reporting entities and subject to the all AML/CFT requirements (Art 4 (1)(i)). The authority with supervision functions for the MVTS sector is the NMB (Art. 15 (1) (a)).

112. *Criterion 14.4* – Although agents are not subject to the same licensing requirements as payment service providers and electronic money issuers, they are not entitled to start their activity before they are listed in the public register of payment institutions of the NBM, (Article 27(2) LPSEM). In order to be listed in the register, the payment institution that intends to provide its services through an agent shall submit to the NBM the relevant information about the agent, including its internal control mechanisms in relation to AML/CFT, the administrators of the agent, and their reputation and expertise (Art 27(3) LPSEM). These provisions of the LPSEM are only applicable to licensed payment institutions that conduct their activities through branches or agents with their office in Moldova.

113. *Criterion 14.5* – LPSEM only makes reference to the agents AML/CFT programmes when it comes to their registration process, meaning that the PSP will have to provide the NBM with a description of the internal control mechanisms of the agent to comply with the requirements of the legislation on preventing and combating ML/FT. Furthermore, according to Art 14 (2)(7)(d) of LPSEM, during the application process, the entity also has to provide the internal procedures regarding the measures required to comply with obligations in relation to the AML/CFT Law; covering the activities of not only the applicant but also its branches and agents as well. Art. 31 of LPSEM establishes a general requirement to ensure the agents' compliance with the requirements of "legislative and normative acts" and states that the PI remains liable for any acts (or non-acts) relating to its branches, agents or outsourced operational service providers. Chapter VIII of Decision No. 202 further develops the requirements in terms of CDD that the PSPs have to apply in relation to their agents. For instance, Art. 58 and 59 of the Decision No. 202 establish the obligation for the provider to monitor the degree of compliance of the agent with the aforementioned AML/CFT programmes.

Weighting and Conclusion

114. The applicable legislation regarding the MVTS sector covers the main requirements of this Recommendation. ***Recommendation 14 is rated Compliant (C).***

Recommendation 15 – New technologies

115. Moldova was rated PC with the previous R.8 in the 4th round MER. There was no direct requirement for FIs to pay special attention to ML threats linked to new or developing technologies. Not all FIs were required to put in place policies to prevent misuse of new technologies. The FATF standards were revised since then by incorporating requirements on a non-face to face business in R.10, and putting more emphasis on the identification and mitigation of risks arising from new products and technologies in R.15. The applicable law also changed and a new analysis has been undertaken.

116. *Criterion 15.1* – The AML/CFT Law requires FIs to assess the impact of launching and developing new products and services, and the use of new or developing technologies for new or pre-existing products and services on their ML/FT risk exposure (Art. 6(10)). The NRA conducted in 2017 does not contain the assessment of ML/FT risks related to such new products and technologies as new payment methods or non-face to face verification systems of customers. The evaluators were not made aware of any other assessments of risks conducted by competent authorities.

117. *Criterion 15.2* –

(a) The AML/CFT Law provides for the timing when FIs must identify and assess ML/FT risks (Art. 6(10): (i) before launching and developing new products and services; and (ii) before the use of new or developing technologies for new or pre-existing products and services.

(b) The AML/CFT Law provides for the general requirement for FIs to put in place procedure for managing and mitigating ML/FT risks (Art. 6 (3)). The NBM's AML/CFT regulations for banks (para 12.13) and non-bank PSPs (Para. 11.11) specifically require the inclusion of procedures in AML/CFT programs aimed at minimizing ML/FT risks related to the use of information technologies acquired or developed by banks and non-bank PSPs. The NCFMs' AML/CFT Regulation provides a similar requirement (Para. 9(1)).

Weighting and Conclusion

118. Moldova has not analysed and assessed ML/FT risks related to new products and technologies employed by FIs as part of its NRA. ***Recommendation 15 is rated Largely Compliant.***

Recommendation 16 – Wire transfers

119. Moldova was rated as LC with the previous SR.VII in the 4th round MER. There was a lack of requirements concerning domestic transfers of funds by postal services. FATF standards in the area have been significantly revised since then and new analysis has been undertaken.

Ordering FIs

120. *Criterion 16.1* – NBM's AML/CFT regulations for banks (Art. 25.2, 66, 67, 68 & 69) and non-bank PSPs (Art. 22.2, 64, 65 & 67) require all transfers of funds above MDL 20,000 (approx. EUR 1,000) to be accompanied by required and accurate originator information, and required beneficiary information.

121. *Criterion 16.2* – Where individual cross-border wire transfers from a single originator are bundled in a batch file for transmission to beneficiaries, NBM's AML/CFT regulations for banks (Art. 71) and non-bank PSPs (Art. 69) require that the batch file should contain required and accurate originator information, and full beneficiary information, while the originator's account number or unique transaction reference number must accompany individual transfers.

122. *Criterion 16.3* – All cross-border wire transfers irrespective of the *de minimis* threshold must be accompanied with the required originator and beneficiary information under the NBM's AML/CFT regulations for banks (Art. 70) and non-bank PSPs (Art. 68).

123. *Criterion 16.4* – The AML/CFT Law provides that the CDD measures, including the verification of customers' identification data, must be undertaken in all instances when there is ML/FT suspicion (Art. 5(1)(d)).

124. *Criterion 16.5 & 16.6* – The requirements above concerning the originator information accompanying wire transfers apply equally to both domestic and cross-border transfers.

125. *Criterion 16.7* – The ordering FIs are required to keep the originator information for at least five years under the AML/CFT Law (Art. 9(2)). Although ordering FIs must keep all relevant records of transactions, neither the AML/CFT Law nor the NBM's AML/CFT regulations specifically require maintaining the beneficiary information.

126. *Criterion 16.8* – The NBM's AML/CFT regulations for banks (Art. 72) and non-bank PSPs (Art. 70) prohibit the execution of transfers of funds unless the requirements concerning the information accompanying transfers of funds are complied with.

Intermediary FIs

127. *Criterion 16.9* – The NBM's AML/CFT regulations for banks and non-bank PSPs do not require intermediary FIs to make sure that the originator and beneficiary information accompanying a cross-border wire transfer is retained with it.

128. *Criterion 16.10* – The NBM's AML/CFT regulations for banks and non-bank PSPs do not require intermediary FIs to keep a record, for at least five years, of all information accompanying a cross-border wire transfer when technical limitations prevent retention of the information with a related domestic transfer.

129. *Criterion 16.11* – Intermediary FIs are required to implement effective procedures including, where appropriate, ex-post or real-time checks on whether wire transfers lack the required originator or beneficiary information under the NBM's AML/CFT regulations for banks (Art. 79) and non-bank PSPs (Art. 76).

130. *Criterion 16.12* – Intermediary FIs are required to apply effective risk-based procedures to determine whether to execute, reject or suspend a wire transfer that lacks the required originator or beneficiary information, and to take appropriate follow-up actions under the NBM's AML/CFT regulations for banks (Arts. 81-84) and non-bank PSPs (Arts. 78-80).

Beneficiary FIs

131. *Criterion 16.13* – Beneficiary FIs are required to implement effective procedures including, where appropriate, ex-post or real-time checks on whether wire transfers lack the required originator or beneficiary information in accordance with the NBM's AML/CFT regulations for banks (Art. 73) and non-bank PSPs (Art. 71)

132. *Criterion 16.14* – Beneficiary FIs are required to verify the identity of the beneficiary for wire transfers above MDL 20,000 (approx. EUR 1,000) under the AML/CFT Law (Art. 5 (1)(b)), as well as the NBM's AML/CFT regulations for banks (Art. 25.2) and non-bank PSPs (Art. 22.2). Beneficiary FIs must keep the beneficiary information for at least 5 years.

133. *Criterion 16.15* – Beneficiary FIs are required to apply effective risk-based procedures to determine whether to execute, reject or suspend a wire transfer that lacks the required originator or beneficiary information, and to take appropriate follow-up actions under the NBM's AML/CFT regulations for banks (Arts. 76-78) and non-bank PSPs (Arts. 73-75).

Money or value transfer service operators

134. *Criterion 16.16* – Provisions of the NBM's AML/CFT regulations for banks (Art. 63) and non-bank PSPs (Art. 61) regarding the information accompanying transfers of funds apply to all MVTS

providers when sending or receiving transfers in any currency. Non-bank PSPs are also specifically required to make sure that their agents comply with the Moldovan AML/CFT legislation (Arts. 58-60).

135. *Criterion 16.17* – The AML/CFT Law includes the general obligation to identify and report suspicious transactions to SPCML, and the NBM's AML/CFT regulations for banks (Art. 78) and non-bank PSPs (Art. 75) say that beneficiary FIs will submit an STR when the ordering FI systematically fails to provide required originator or beneficiary information. However, this does not amount to a requirement for MVTS providers which control both the ordering and beneficiary side of a wire transfer to consider all the information from both sides when deciding whether to file an STR, and to report suspicious transfers in an affected country.

Implementation of Targeted Financial Sanctions

136. *Criterion 16.18* – FIs conducting wire transfers are subject to provisions of the AML/CFT Law that give effect to UNSCRs 1267 and 1373, and their successor resolutions (Art. 34). However, deficiencies identified under R.6 affect FIs' ability to implement targeted financial sanctions.

Weighting and Conclusion

137. The deficiencies identified in relation to intermediary FIs, MVTS providers controlling both the ordering and beneficiary sides and implementation of TFS affect the overall rating. ***Recommendation 16 is rated Largely Compliant.***

Recommendation 17 – Reliance on third parties

138. Moldova was rated non-compliant with the previous R.9 in the 4th round MER. There were no legal provisions applicable to third parties when FIs relied upon them for CDD purposes. The FATF standards in this area were revised since then to stress the importance of a third-party country risk. The applicable law also changed and the new analysis has been undertaken.

139. *Criterion 17.1* – The AML/CFT Law permits reliance on domestic FIs and DNFBPs that are reporting entities, and similar institutions located in other jurisdictions to perform CDD measures concerning the identification and verification of customers and beneficial owners, and understanding the purpose and intended nature of business relationships (Art. 10. 1). The ultimate responsibility for the implementation of CDD measures rests with relying FIs (Art. 10.3).

(a) & (b) In order to be able to resort to third parties, the AML/CFT Law requires the relying FIs to have the possibility to immediately obtain CDD data from third parties, and to put in place effective procedures in order to rapidly access copies of identification data and other documents related to CDD (Art. 10(2)). However, FIs do not seem to be required to obtain immediately CDD data from third parties, but should merely ensure that they are able to do so. The AML/CFT Regulation of NCFM says that FIs under its supervision should have in place AML/CFT programs that aim to minimize ML/FT risks following the launching of new or the development of existing technologies that favour anonymity (Art 6.4 and 37¹).

(c) The AML/CFT Law requires that third parties must be adequately supervised and implementing CDD and record-keeping requirements similar to those provided in the Moldovan AML/CFT legislation (Art. 10 (2) (c)). Thus, the implementation of this sub-criterion is affected by deficiencies identified under R.10 and R.11.

140. *Criterion 17.2* – The AML/CFT Law prohibits reliance on third parties that are located in jurisdictions considered by FIs as high-risk (Art. 10 (2)(d)).

141. *Criterion 17.3* – There are no specific legal provisions applicable to third party reliance within the same financial group, and thus, the general requirements apply. SPCML is publishing the lists of countries where banks and companies are at high-risk of being misused for ML purposes, although they do not include high-risk and other monitored jurisdictions as identified by the FATF. SPCML has also published guidelines on the identification of ML suspicions that call on FIs to consider reports and lists developed by certain international organisations including the FATF. However, these SPCML guidelines are primarily concerned with ML-related risks.

Weighting and Conclusion

142. FIs are not required to obtain immediately CDD data from third parties, but should merely ensure that they are able to do so. Deficiencies identified under R.10 and R.11 also affect the sub-Criterion 17.2(c). The guidance given to FIs in determining the level of country risk is limited to ML-related concerns. ***Recommendation 17 is rated Largely Compliant.***

Recommendation 18 – Internal controls and foreign branches and subsidiaries

143. Moldova was rated Partially Compliant on the former Recommendation 15 and Non-Compliant with former Recommendation 22 in the 4th round MER. The main factors underlying the ratings were, respectively: (i) no requirements for all reporting entities to establish and maintain internal procedures, policies and controls to detect unusual and suspicious transactions and report to the FIU; no requirements for the non-banking financial sector that the AML/CFT compliance officer and other appropriate staff have timely access to customer identification data and other CDD information, transaction records, and other relevant information and no requirement for the non-banking financial system to maintain and adequately resourced and independent audit function to test compliance (including sample testing) with these procedures, policies and controls; and (ii) no legal requirements for foreign branches and subsidiaries to observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit.

144. *Criterion 18.1* – The reporting entities have obligation to establish policies, carry out internal controls and procedures in order to mitigate and manage effectively the ML and FT risks identified at national level, as well as, directly within the reporting entities (Art 13 (1) the AML/CFT Law). The policies, internal controls and related procedures have to be proportionate to the risk of ML and FT and to the nature and dimension of the reporting entities (Art 13 (2) the AML/CFT Law). The requirement for banks to approve internal policies and procedures is also established by article 12 of the Regulation No. 200 of 09.08.2018. Also. Chapter XI of that Regulation also establishes the requirements for an efficient internal control system. Similar requirements are also provided for non-bank PSPs in Art. 11 and chapter XII of Regulation No. 202 of 09.08.2018.

(a)- (d) Reporting entities own policies, controls and procedures must include: names of persons, including of those with senior degree management positions, responsible for ensuring of the compliance of policies and procedures with legal requirements on prevention and combating of ML and FT; an on-going program for training of employees, rigorous selection of personnel on the basis of the criterion of high professionalism in their employment; an on-going program for training of

employees; and performing of independent audit regarding the testing of compliance with policies, internal controls and related procedures (Art 13 (3) (b)- d), the AML/CFT Law)

145. *Criterion 18.2* – Article 13 (5) of the AML/CFT Law states that reporting entities communicate and implement provisions of own programs for prevention of ML/FT within subsidiaries, paying agents and representations, including those located in other countries. However, it does not state which provisions should be shared and/or implemented, it also does not specifically reflect the minimum contents these programs have to contain, which at least have to be the same requirements as the ones for the AML/CFT programs of national reporting entities. Furthermore, the additional requirements that AML/CFT programmes for branches and subsidiaries have to contain, that is, sharing information required for the purpose of CDD and ML/FT risk management, the provision of customer, account and transaction information at group-level and the adequate safeguards on confidentiality and use of the information exchanged are not explicitly covered either. Instead, the AML/CFT Law refers to the generic term “reporting entities perform the exchange of data with their held subsidiaries (...)”, which is not fully in line with requirements for this criterion.

146. *Criterion 18.3* – The AML/CFT Law states that if reporting entities have subsidiaries, paying agents or representative offices in other jurisdictions where the minimum requirements regarding AML/CFT are less strict than those established in Moldova, they should implement the requirements of the Moldovan legislation, including those on data protection, to the extent that the law of the jurisdiction permits it (Art. 13 (7)). Reporting entities are required to apply additional measures to mitigate the ML/FT risks in case the legislation of the other jurisdiction does not allow the application of the policies and procedures established by the Moldovan AML legislation, and should inform the authorities with supervision functions about this fact (Art. 13 (8)). Further on, the Moldovan supervisory authorities are empowered to implement additional measures should they consider that the mitigation measures applied by the reporting entities are not sufficient, including the obligation to not establish or terminate specific transactions or business relationships in the jurisdiction concerned, or even to interrupt any activity in that jurisdiction (Art. 13 (8)).

Weighting and Conclusion

147. The obligation for reporting entities to have internal controls in line with the minimum requirements is established by the AML/CFT Law. However, the controls and procedures of branches and subsidiaries are not as expressly covered. ***Recommendation 18 is rated Largely Compliant.***

Recommendation 19 – Higher-risk countries

148. Moldova was rated as partially compliant with the previous R.21 in the 4th round MER. FIs were required to pay special attention to transfers to/from countries that inadequately apply FATF recommendations, but not to business relationships with customers from those countries. In case of non-bank FIs, countermeasures were limited to EDD measures. The FATF standards were revised since then by incorporating requirements related to unusual transactions in R.20 and stressing the need to advise FIs on weaknesses in AML/CFT systems of other jurisdictions in R.19. The applicable law also changed and the new analysis has been undertaken.

149. *Criterion 19.1* – The AML/CFT Law lists some high-risk factors that require the application of EDD measures including when customers are residents of jurisdictions with high ML/FT risks (Art.

8(3)(b)) or when funds are transferred to jurisdictions that lack effective AML/CFT systems (Art. 8 (3)(m)). The NBM's regulation for banks supplements this list by also requiring ECDD measures when transfers are made from jurisdictions that lack effective AML/CFT systems (Art. 55(9)). However, no such requirement exists for non-bank PSPs.

150. The AML/CFT legislation does not specifically refer to FATF lists or public statements as the basis for considering jurisdictions high-risk or lacking effective AML/CFT systems, although the AML/CFT Law does mention mutual evaluations, assessment or monitoring reports as credible sources. In addition, the guidelines published by SPCML call on FIs to consider the FATF list of high-risk jurisdictions in the process of identifying suspicious transactions.

151. *Criterion 19.2* – The AML/CFT legislation of Moldova does not provide for the application of relevant countermeasures when this is called for by the FATF or independently except for prohibiting FIs from relying on third parties located in high-risk jurisdictions (see R.17) and requiring EDD measures in relation to natural and legal persons from such jurisdictions (see c.19.1).

152. *Criterion 19.3* – The lists of countries where banks and companies are at high-risk of being misused for ML purposes is published by SPCML, but they do not include high-risk and other monitored jurisdictions as identified by the FATF. SPCML has also published guidelines on the identification of ML suspicions that call on FIs to consider reports and lists developed by certain international organisations including the FATF. However, these SPCML documents are primarily concerned with ML-related suspicious transactions.

Weighting and Conclusion

153. There are moderate shortcomings under R.19. ECDD measures are not required for non-bank PSPs when receiving transfers from countries for which is called for by the FATF. Moldovan legislation also does not provide for the application of relevant countermeasures when called upon by the FATF or independently with two exceptions and FIs are not specifically advised about the weaknesses in CFT systems of other countries. ***Recommendation 19 is rated Partially Compliant.***

Recommendation 20 – Reporting of suspicious transaction

154. Moldova was rated PC with former R.13 and SR.IV. Although the burden of deficiencies was mainly related to effectiveness issues, there were several technical shortcomings: (i) the scope of the reporting requirement, (ii) restriction in reporting of transaction or activities, (iii) ambiguity in wording of reporting obligation, (iv) some exemptions in reporting regime, (iv) limitation of FT reporting obligation only to “*transactions*”.

155. *Criterion 20.1* – The reporting obligation is stated in Art. 11 of AML/CFT Law which requires the reporting entities to immediately inform the SPCML about “*suspicious goods, activities or transactions suspected to be related to ML, associated offences or FT*”. In terms of FT reporting obligation makes reference to the notion of “terrorism financing” defined in Art. 3, which in its turn makes reference to Art 279 of Criminal Code. The suspicious reports shall be put in special forms and be remitted to the SPCML no later than 24 hours after the identification of action or circumstances generating suspicions. “*Goods*” are defined by Art 3 of the AML/CFT Law as “*financial means, as well as funds, income, any category of corporeal or incorporeal, movable or immovable, tangible or intangible values (assets) and acts or other legal instruments in any form, including in electronic or digital form that attest a title or a right, including any share quota (interest) in respect of those values (assets)*”.

“Associated offences” are considered to be any proceeds-generating criminal act provided by the Criminal Code.

156.*Criterion 20.2* – The suspicious transactions must be reported if they are in course of preparation, attempting, accomplishment, or are already performed. There is no threshold for reporting.

Weighting and Conclusion

157.All criteria are met. ***Recommendation 20 is rated Compliant.***

Recommendation 21 – Tipping-off and confidentiality

158.Moldova was rated PC with previous R.14. The ambiguity in the protection of non-employee natural person who takes part in directing, managing, or representing a RE was the main technical deficiency in previous round. The shortcomings pertained to insufficient protection of non-employee natural persons (directors, officers etc.) and lack of specific sanctions applicable to natural persons for the violation of the prohibition of “tipping-off”.

159.*Criterion 21.1* – Art. 16, (8) of AML/CFT Law regulates the protection of reporting entities, employees, persons with management functions and their representatives for the disclosure of information to the FIU or supervisors on the basis of this Act, provided that the disclosure was done in good faith. Art. 12 states that disclosure of information for the purpose of the enforcing the present law does not constitute a breach of the disclosure restrictions of information imposed by contract or by a legislative act, or through an administrative act, and does not entitle liability even in case of non-confirmation of the suspicion of activity or transaction. On the basis of instructions issued by the supervisors, the REs should ensure the protection of employees and other natural persons participating in its management, from any threat or hostile action in relation to the transmission of information under the provision of the law.

160.*Criterion 21.2* – Art. 12, par. 1 of AML/CFT Law, provides that REs, employees, persons with functions of responsibility and their representatives are obliged not to disclose to the customers or third parties the data on the transmission of information to the FIU and to the authorities with supervision functions or the data on executed analysis and financial investigations regarding the actions of ML, associated offenses or FT that take place or may take place. Art.35 of the AML/CFT Law provides the sanctions that may be applied for infringements of these provisions.

Weighting and Conclusion

161.All criteria are met. ***Recommendation 21 is rated Compliant.***

Recommendation 22 – DNFBPs: Customer due diligence

162.Moldova was rated as partially compliant with the previous R.12 in the 4th round MER. The weaknesses identified in relation to FIs also applied to DNFBPs. In addition, although formally designated as reporting entities under the AML/CFT Law, accountants were not subject to CDD requirements due to lack of sector-specific enforceable means. The applicable legislation was revised since then and the new analysis has been undertaken.

163.*Criterion 22.1* – CDD requirements apply to DNFBPs in the same way that they apply to FIs, except as explained below. Trust and company service providers (TCSPs) are not designated as

reporting entities under the AML/CFT Law. Auditors providing professional services independently are not required to comply with CDD requirements. Additionally, the AML/CFT Law applies to all persons trading in goods when they engage in cash transactions in an amount of MDL 200,000 (approx. EUR 10,000) or more.

(a) Gambling operators including internet casinos are reporting entities according to Art. 4 (1) d of the AML/CFT Law and are required to apply CDD measures when customers place a bet or receive winnings in an amount of MDL 40,000 (approx. EUR 2,000) or more through a single operation or several operations that appear to be linked (Art. 5.1 (c)). However, other financial transactions such as the purchase from or exchange with the casino of tokens, payments for the use of gaming machines and depositing to or withdrawal of funds from online gambling accounts, do not seem to be covered.

(b) Real estate agents are subject to general CDD requirements but they are not specifically required to apply CDD measures with respect to both purchasers and vendors of the property (Art. 4.1.e of the AML/CFT Law).

(c) Dealers in precious metals and stones (DPMS) are subject to AML/CFT Law when they engage in cash transactions in an amount of MDL 200,000 (approx. EUR 10,000) or more through a single operation or several operations that appear to be linked (Art. 5.1.f, the AML/CFT Law).

(d) Lawyers and notaries are required to apply CDD measures when they engage in financial or real estate transactions on behalf of their clients or prepare for, or carry out, transactions for their clients concerning activities listed under R.22 (d) except for (i) management of securities accounts, (ii) organisation of contributions for the creation, operation or management of companies, and (iii) creation of legal arrangements (Art. 4.1.g, the AML/CFT Law). Audit firms, and legal entities and individual entrepreneurs providing accounting services are subject to general CDD requirements (Art. 4.1.k, the AML/CFT Law).

(e) TCSPs are not subject to CDD requirements.

164. *Criterion 22.2* – Record-keeping requirements provided in the AML/CFT Law apply to DNFBPs in the same way that they apply to FIs (See R.11). However, there are no sectorial regulations that would require keeping records on occasional transactions that would be sufficient to permit their reconstruction.

165. *Criterion 22.3* – PEP requirements provided in the AML/CFT Law apply to DNFBPs in the same way that they apply to FIs (See R.12). The methodological AML/CFT guidelines issued by the Ministry of Finance for audit firms, DPMS and gambling operators warn about continuous risks posed by PEPs and recommend regular updates to scenarios and thresholds for monitoring the activity of PEPs to make sure they are consistent with the identified risks (Paras. 26 and 28).

166. *Criterion 22.4* – Requirements related to the development of new products and business practices, and the use of new or developing technologies provided in the AML/CFT Law apply to DNFBPs in the same way that they apply to FIs (See R.15).

167. *Criterion 22.4* – Requirements related to the reliance on third parties provided in the AML/CFT Law apply to DNFBPs in the same way that they apply to FIs (See R.17).

Weighting and Conclusion

168. The deficiencies identified in relation to FIs under R.10, 11, 12 and 17 are also relevant for DNFBPs. In addition, not all DNFBPs listed under R.22 are subject to CDD requirements; limited financial transactions in casinos trigger CDD measures; real estate agents are not specifically required to apply CDD measures with respect to both purchasers and vendors of the property; and there is no requirement to keep records that would permit reconstruction of individual occasional transactions. **Recommendation 22 is rated Partially Compliant.**

Recommendation 23 – DNFBPs: Other measures

169. Moldova was rated NC in previous round in R 16. The deficiencies identified under previous R13, 14, 15 and 21 downgraded the rating of R16. The Parliament of Moldova has changed AML/CFT Law in order to address identified deficiencies.

170. *Criterion 23.1* – Art. 11 of AML/CFT Law envisages the reporting obligation for REs stated under Art. 4 which includes the DNFBPs. Para 11 contains the exemptions based on the legal privilege for lawyers, notaries, other independent legal professionals, audit entities, legal entities and individual enterprises providing accounting services, which is in line with FATF Recommendations. Corporate structures such as TCSPs are not known under Moldovan legislation.

171. *Criterion 23.2* – The AML/CFT Law envisages general requirements for all REs including DNFBP in terms of implementation of internal controls requirements. The assessment of implementation of internal controls requirements is done under R18.

172. *Criterion 23.3* – The AML/CFT Law envisages general requirements for all REs including DNFBP in terms of implementation of higher-risk countries requirements. The assessment of implementation of higher-risk countries requirements is done under R19.

173. *Criterion 23.4* – The AML/CFT Law envisages general requirements for all REs including DNFBP in terms of implementation of tipping-off and confidentiality requirements. The assessment of implementation of tipping-off and confidentiality requirements as made under R. 21 applies.

Weighting and Conclusion

174. Most of the criteria are met or mostly met. The main deficiencies mostly pertain to implementation of higher-risk countries requirements. **Recommendation 23 is rated Partially Compliant.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

175. Moldova was rated as partially compliant with the previous R.33 in the 4th round MER. The information gathered in the process of registration of legal entities lacked reliability, and no information on beneficial ownership was provided. The FATF standards and applicable legislation were revised since then and the new analysis has been undertaken.

176. *Criterion 24.1* – Moldova regulates the creation of a range of legal entities, such as limited liability and joint stock companies, collective and limited partnerships, cooperatives, and state-owned and municipal enterprises, as well as non-commercial foundations, associations and institutions. Information about the types, forms and basic features of these entities is provided in the relevant pieces of legislation. The Law on State Registration of Legal Entities sets out the registration requirements and procedures for legal entities, and designates the Public Service Agency (PSA) as the registration authority (Art. 11).

177. The processes for obtaining and recording information referred to in c.24.3 and identification data of founders (members) of legal entities by PSA are provided in the Law on State Registration of Legal Entities (Art. 7 and Art. 33). The shareholder registries of JSCs and record-keeping requirements therein are dealt with under the Law on Joint-Stock Companies (Art. 17 and Art. 18). Moreover, the AML/CFT Law requires legal entities to obtain and record their beneficial ownership information (Art. 14). The PSA provides on its website (<http://asp.gov.md/en>) a description of the data and documents in Romanian, which must be submitted by applicants to register different types of legal entities.

178. *Criterion 24.2* – The AML/CFT Law requires SPCML and other competent authorities to carry out and update the national risk assessment every 3 years (Art. 6.8). However, specific risks associated with each type of legal entities in Moldova have not been assessed. The NRA refers to a typology concerning the VAT carousel fraud, but no meaningful analysis was undertaken as to how legal entities could be used for ML/FT purposes. As part of the NRA, authorities also mention difficulties experienced by banks in determining beneficial ownership, and inadequate legislation concerning the seizure of assets of legal entities used for committing a crime or of illicitly acquired shares for future confiscation purposes.

Basic Information

179. *Criterion 24.3* – All types of legal persons must be registered by the PSA to be considered created. The information obtained and recorded by PSA in the process of registering legal persons under the Law on State Registration of Legal Entities covers all requirements of c.24.3 (Art. 33). Most of this information is available online for free (<http://www.cis.gov.md/>) in Romanian, while a certificate of registration and copies of statutory documents can be obtained in 3 working days subject to a fee (Art. 34 and Art. 34¹).

180. *Criterion 24.4* – The identification data on founders (members) of legal persons (except for members of cooperatives) and where appropriate, their ownership interest, as well as information referred to in c.24.3 for all legal persons must be submitted to and maintained by the PSA under the Law on State Registration of Legal Entities (Art. 33).

181. JSCs are required to maintain shareholder registries either on their own or via third party registrars (Art. 10, Sections 5 and 6, the Law on Capital Market). These registries contain information about the number and class of shares (including the nature of associated voting rights) held by each shareholder (Art. 14 and Art. 17 of the Law on Joint-Stock Companies).

182. The shareholder registries of JSCs must be maintained within Moldova, although there is no requirement to notify the PSA about their location. Nonetheless, the AML/CFT Law requires all legal persons including JSCs to obtain and record BO information and to submit it to PSA (Art. 13, (2)). In case of public interest entities, which include some FIs and listed companies, shareholdings over 5% must also be notified to NCFM (Art. 125 (1)), the Law on Capital Market).

183. *Criterion 24.5* – The PSA examines the legality of the documents submitted for registration and verifies the identities of executive directors and founders (members), and repeats the same procedure whenever changes to the recorded data and documents are provided by legal persons under the Law on State Registration of Legal Entities (Art. 11 (1), Art. 16 (2) and Art. 36 (2)(b)). Such changes must be notified to the PSA within 30 days of their occurrence and unless notified, they won't be considered valid (Art. 16 (4)). PSA will also refer to LEAs those instances where forged documents have been identified (Art. 27 (4)).

184. The mechanism employed to ensure that changes in JSCs' shareholding are notified to JSCs or third-party registrars in due course (3 days) is that such changes are only deemed valid once reflected in the registry (Art. (18)(2) of the Law on JSCs). JSCs and third-party registrars are also required to register the categories of shares (including the nature of associated voting rights).

Beneficial Ownership Information

185. *Criterion 24.6* – The AML/CFT Law requires legal persons to obtain and hold up-to-date information on their beneficial owners, and provide this information to the PSA at the time of registration (Art. 14(2)). In relation to investment funds, investment firms managing those funds are required to obtain information on the identity of customers and their beneficial owners, as well as of founders and beneficiaries of funds, and submit this data to the NCFM under the AML/CFT Law (Art. 14(12) and Art.1(15)). Thus, the NCFM keeps records of BOs of investments carried out by investment firms (Art. 14(14)). Additionally, the AML/CFT Law requires reporting entities to not rely exclusively on the BO information recorded by PSA or NCFM when carrying out CDD measures, but to apply a risk-based approach (Art. 14(8) and Art. 14(18)).

186. *Criterion 24.7* – The PSA verifies the accuracy of BO information submitted by legal persons in accordance with the AML/CFT Law (Art. 14(1)). Legal persons must submit any subsequent changes to the BO information to the PSA immediately upon their occurrence (Art. 14(2)). As noted above, the investment firms, which are REs, must ensure that the information they hold about BOs of investment funds is up-to-date, and submit the updated information to the NCFM annually (Art. 14(12) and Art. 14(14), the AML/CFT Law).

187. *Criterion 24.8* – Legal persons are not specifically required to appoint one or more persons who will be accountable to competent authorities for the provision of BO information and giving further assistance. The failure to provide accurate, complete or updated BO information to the PSA will result in the refusal of registration under the AML/CFT Law (Art. 14(3)). The PSA cannot apply sanctions against those legal entities that have already been registered, but fail to update or provide inaccurate BO data. Instead, the AML/CFT Law stipulates that the PSA will refer such cases to the SPCML for further analysis (see c.24(13)). In case of investment funds, investment firms managing those funds are required to file BO information to the NCFM (Art. 14(15)). Investment firms are REs under the AML/CFT Law and are required to cooperate with NCFM, which is their supervisory authority, to the fullest extent possible.

188. *Criterion 24.9* – The authorities explained that the PSA keeps the BO information obtained from legal persons and subsequent updates indefinitely based on its internal regulations, although the specific legal provision was not provided. FIs and DNFBPs including investment firms and registry societies are required to keep the information and records on their customers and BOs collected through CDD measures for 5 years from the day the customer ceases to be a customer as detailed in R.11 and R.22. In case of dissolution, the documents related to the economic and financial operations of a legal entity, as well as the minutes of general meetings of shareholders and executive boards are kept by the National Archive for 10 years. The authorities stated that these documents and records should normally include the relevant BO data.

Other Requirements

189. *Criterion 24.10* – The basic information on legal persons recorded by the PSA (except for the identities of members of cooperatives that are not recorded by PSA), is publicly available. Authorities did not explain how competent authorities and in particular LEAs can have timely access to

shareholder data of JSCs, although the SPCML and supervisory authorities are entitled to request and receive the information recorded by third party registrars, which are designated as REs. The SPCML and supervisory authorities are also granted access, promptly upon request, to the BO information maintained by the PSA and the NCFM under the AML/CFT Law (Art. 14(5) and Art. 14(17)), while LEAs have to resort to general investigative powers.

190. *Criterion 24.11* – Legal persons in Moldova are not able to issue bearer shares or bearer share warrants since 2007. The Law on Capital Market says that securities can only be issued in a dematerialized nominative form, which permits the identification of shareholders (Art. 7(7)). The authorities explained that bearer shares and warrants had not been issued prior to 2007.

191. *Criterion 24.12* – Nominee shareholders in Moldova are restricted to regulated capital market intermediaries (e.g. investment firms) and their nominee status is recorded by registry societies, which mitigates the risks of abuse. There are no legal provisions prohibiting the use of nominee directors, although Moldovan authorities stated that the duty of directors to take decisions in good faith and avoid the conflict of interest (Art. 185-188, the Civil Code) would restrict the appointment of nominees. The NCFM may refuse the request for, or suspend the licence of an investment firm if there are objective and demonstrable grounds to believe that the respective firm's management is not sound and prudent (Art. 39(5) Law on Capital Market). No other mechanisms were mentioned to prevent the misuse of nominee directors.

192. *Criterion 24.13* – The PSA has no sanctioning power against legal or natural persons for violating information requirements under R.24. The AML/CFT Law stipulates that the PSA will refer to the SPCML those cases where legal persons fail to update or provide inaccurate BO information (Art. 14 (4)). The SPCML in turn is authorised, where reasonable grounds exist to suspect ML/FT, to suspend transactions or freeze assets of such legal entities for up to a month (Art. 33 (4)). The freezing measures may be prolonged by the court decision and the assets could be subject to confiscation unless accurate BO information is provided (Art. 33 (15-16)). It is also a criminal offence to make false declarations to a competent body for the purpose of generating legal consequences, which is punishable by a fine of MDL 12,000 (approx. EUR 600) or by imprisonment for up to 1 year (Art. 352¹, Criminal Code).

193. *Criterion 24.14* – As described above (see C.24.1), most of the basic information on legal persons (except for the identities of members of cooperatives and JSCs' shareholder registries), recorded by PSA is available online for free, although in Romanian only. The certificates of registration and statutory documents of legal entities are provided by PSA in 3 working days upon request in accordance with the Law on State Registration of Legal Entities (Art. 34(3)). The data recorded in shareholder registries of JSCs can be rapidly exchanged internationally only via SPCML (see R.9). LEAs can use general investigative powers to obtain the BO information on behalf of foreign counterparts (see R.40).

194. *Criterion 24.15* – The SPCML monitors the quality of responses provided by other FIUs to its requests for information including on basic and BO information of legal entities. The findings of this exercise are then reflected in the SPCML's annual activity reports. Other authorities do not have similar processes in place to monitor the quality of assistance provided by foreign countries.

Weighting and Conclusion

195. Moldova has made progress in making most of the basic information on legal entities available online, and establishing mechanisms for obtaining the BO information and making it easily

accessible to some competent authorities. However, deficiencies have been identified in relation to a number of criteria, most importantly the lack of assessment of ML/FT risks related to all types of legal persons and the inability of the PSA to impose sanctions for failure to comply with the requirements. **Recommendation 24 is rated Partially Compliant.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

196. In the 4th round MER, R. 34 was rated as non-applicable. The domestic legislation did not allow for the creation of express trusts and similar legal arrangements. The FATF standards were significantly revised since then and thus, the new analysis has been undertaken.

197. *Criterion 25.1* – Moldova is not a signatory to the Hague Convention on the Law Applicable to Trusts and their Recognition, and its legislation does not provide for the creation, operation and management of express trusts or similar legal arrangements. Thus, sub-criteria (a) & (b) do not apply. There is no prohibition on resident persons to act as trustees of express trusts formed under the foreign law. However, only lawyers are designated as REs under the AML/CFT Law and when acting as professional trustees, they must undertake CDD measures and keep BO information (see R.22).

198. *Criterion 25.2* – There is no requirement to keep the information referred to in R.25 accurate and up-to-date, except for lawyers when preparing for, or carrying out, transactions related to the management of legal arrangements. Other trust service providers are not designated as REs under the AML/CFT Law.

199. *Criterion 25.3* – REs must determine BOs of their customers (Art. 5(2)(b)) and although CDD measures could help identify trustees in practice, they fall short of the requirement on trustees to disclose their status to FIs and DNFBPs.

200. *Criterion 25.4* – Trustees are not prevented by legislation from providing competent authorities or FIs and DNFBPs with any information about trusts.

201. *Criterion 25.5* – LEAs are authorised to obtain information held by trustees and other parties such as FIs and DNFBPs via their general investigative powers (see R.30 & R.31). SPCML and supervisors also have necessary powers to be able to obtain timely access to information held by reporting entities (see R.27, R.28 & R.29).

202. *Criterion 25.6* – Moldova's ability to provide rapid access to basic information held by domestic registries and authorities, and LEAs powers to obtain the beneficial ownership information on behalf of foreign counterparts is discussed in c.24.14.

203. *Criterion 25.7* – There is no direct obligation on a trustee to meet the requirements set out in R.25 (except for lawyers as discussed above) and thus, any sanctions do not concern those requirements (see R.28 for sanctions concerning lawyers).

204. *Criterion 25.8* – The failure to comply with requests for information made by LEAs may incur criminal liability for persons acting as trustees or other parties. Authorities did not explain what specific criminal, civil or administrative sanctions can be used when competent authorities are not given timely access to information concerning trusts.

Weighting and Conclusion

205. Moldova's legal framework does not recognize express trusts or similar legal arrangements, and thus, a number of sub-criteria do not apply. However, there is no obligation on trustees to disclose their status to REs, which constitutes a material deficiency. **Recommendation 25 is rated Partially Compliant.**

Recommendation 26 – Regulation and supervision of financial institutions

206. Moldova was rated Partially Compliant with the former Recommendation 23 in the 4th round MER. The main factors underlying the rating were that the allocation of supervisory responsibilities were not clear, the exclusion of "A" savings and credit association from the supervision in AML/CFT matters, no requirements to carry out fit and proper tests of senior managers and executive/supervisory board members in insurances and no procedures to prevent criminals from holding or being the beneficial owner of a significant or controlling interest or holding a management function in case of leasing companies.

207. *Criterion 26.1* – Article 15.1 of the AML/CFT Law establishes the authorities with supervisory functions for each RE:

- NBM is supervisor for financial institutions (banks); foreign exchange units (other than banks); and payment service providers and issuers of electronic money and postal service providers;
- NCFM is supervisor for registry societies, investment firms, sole central depository, market operators (legal persons operating a business at the Moldova Stock Exchange), system operators, insurers (reinsurers), intermediaries in insurance and/or reinsurance of legal entities, National Bureau of Vehicles Insurers, non-state pension funds, microfinance organisations and savings and credit associations;
- From the 1st of October 2018 onwards, the responsibility to supervise leasing companies was fully reallocated from SPCML to the NCFM (including the licensing and background checks of leasing companies) according to the Art. 3 and 23.1 of the Law on Non-Banking Credit Organisations.
- The National Regulatory Agency for Electronic Communications and Information Technology (ANRCETI) is the supervisor of the providers of postal services acting in accordance with the Law 36/2016 on postal communications. Article 25.1 designates Posta Moldova as the universal postal provider.

208. *Criterion 26.2* – All Core Principle financial institutions are required to be licensed, as well as other financial institutions, including MVTs providers, pawnshops and currency exchange offices. (Art. 8 Law 202/2017 on banking activity Regulation 23/09-01 (15 August 1996); Art. 41 of Law 62-XVI/2018; NBM Decision 304/2016 on the regulation on licensing, control and sanctioning of foreign exchange entities; Art. 7.6, 10 and 11 Law 114/2012; Art. 34 and 35 Law 171/2012; Art. 20 of Law 407/2006; Art. 28 of Law 139-XVI/2007). Shell banks are not permitted to be established under current legislation. Any bank shall obtain a banking license in the conditions specified under the Title II of Law No. 202/2017 on banking activity, thus ensuring that banks carry out a real economic activity in the country.

209. *Criterion 26.3* – Legislative measures are in place to prevent associates of criminals from holding or being a BO of a significant controlling interest, or holding a management function in a financial institution. According to Art. 15 (8) of AML/CFT Law the supervisory authorities, within their limits of the competences, shall take sufficient measures in order to prevent the control, the acquisition of

majority of shares and/or of controlling quota or holding of management functions or the beneficial ownership of the reporting entities by the criminals and organised criminal groups, their accomplices and/or shareholders acting together.

Banks

210. As part of the bank licensing process, the NBM requests and examines information about the identities of its shareholders, whether direct and indirect, including BOs, natural or legal persons, that will have qualifying holdings (Article 12 Law No. 202/2017). In the process of examining qualified holdings, the NBM assesses "*fit and proper*" criteria (Art. 48 Law no. 202/2017), which are also applied to members of the management and key personnel of the bank. The NBM also evaluates the proposed acquirers' associates, who exercise control over the proposed acquirer, including the ultimate BO, as well as all proposed indirect acquirers and ultimate BOs of a group of persons acting in concert (through the definitions contained in Article 3 Law No. 202/2017). Qualified holding is a direct or indirect holding acquired in an entity, which represents at least 1% of the share capital or voting rights or which makes it possible, where holding less than 1% of the share capital or of the voting rights, to exert control over the entity's management through influencing the decision-making at general meetings or of the management body (Article 3 Law No. 202/2017). Where there are no qualifying holdings, the applicant bank shall inform NBM about the 20 largest shareholders. The transfer of an equity interest in a bank shall require the written authorization of the NBM.

211. For banks, a "*significant interest*" means a direct or indirect interest representing the equivalent of 5% or more of the equity or of the voting rights, or that makes it possible to exercise a significant influence over the management or policies of that entity (article 3 of the Law on Financial Institutions no. 550-XIII). The transfer of an equity interest in a bank shall require the written authorization of the NBM.

212. Pursuant to the provisions of Law no. 202/2017 (Art. 51.6), the NBM ensures the on-going compliance with the quality requirements under Art. 48. In the event of non-compliance with these requirements, under Articles 51 (6) and 52, the NBM may withdraw the prior approval granted under Article 45 and/or apply other appropriate sanctioning measures.

213. During the process of evaluating the proposed acquirers, the NBM, cooperates with the competent domestic and external authorities, and the competent national authorities will provide the requested information to the NBM (Art. 49 of the Law no. 202/2017 and Art. 15 (8) of the AML/CFT Law).

Foreign exchange offices (FEOs)

214. The Law on Foreign Exchange Regulation 62-XVI/2008 provides that while licensing the FEOs, the NBM shall require the criminal records and personal profiles of the administrators, deputies and the chief-accountants. In the licencing process, the FEOs shall supply the criminal records of their associates or shareholders. In case of non-resident associates or shareholders, the original criminal record issued by a specialised Agency of the Ministry of Interior of Moldova shall be accompanied by the copies of their identity/registration documents approved by the administrator of the FEO.

MVTS

215. According to the Art.15 and 84 of the Law on Payment Services and Electronic Money 114/2012, in the licencing process the administrators and persons that hold qualifying holdings must prove good reputation, knowledge and appropriate experience. Regulation on the activity of non-bank

electronic money issuers and non-bank payment service providers, approved by the DCA of the NBM no. 123 of 27 June 2013 (Para 22-26) states that “*good reputation*” includes professionalism, good faith, integrity, lack of criminal record and lack of measures or sanctions applied for professional reasons.

Capital market

216. Persons in charge of investment firms (managers) must correspond to the list of criteria relating to their professional history, moral integrity and work ethics (Art. 39 Law on Capital Market No. 171/2012). This includes absence of sanctions applied by the NCFM, NBM or a similar foreign organisations regarding banning or suspending the rights to act in the capital market or in banking sector; and having no criminal record on crimes in connection with carried activity, corruption, ML, crimes against property, abuse, taking or giving bribe, forgery and use of forgery, embezzlement, tax evasion or other offenses. Similar requirements exist for the persons with qualifying holdings in a security company regarding checking their reputation, experience, and financial soundness (Art. 40. The Law on Capital Market No. 171/2012).

Insurance

217. The acquisition by an individual or legal person, directly or indirectly, individually or together with other persons acting together, of the property or management on the qualified participations in the social capital of an insurer or reinsurer with over 10%, 20%, 33% or 50% of the shares with voting rights thereof, shall be subject to the prior approval of the supervisory authority (Article 29 (3) Law on Insurance). It is mandatory to inform the supervisory authority (the NCFM) within 7 days from the date the transaction (acquisition) has been performed (Article 29 (1) Law on Insurance). The NCFM will check whether the person meets the legal requirements to become a shareholder or a manager, without exceptions, including the legal capacity and absence of criminal records.

Postal services

218. Any entrepreneur that intends to provide postal services shall file to the ANRCETI a compulsory notification of such intention through the standard form accompanied by documents confirming the entrepreneur’s registration (Article 34 Law 36/2016). Within 15 days from the submission at maximum, the authority shall issue to the notifying person a standard certificate, its registration in the Public Register of the postal service provider, as well as on his rights and obligations. Any changes in the notification shall be communicated to the authority within 10 days after such change occurs, except if it corresponds to the cease of the activity (in that case it has to be notified at least 30 days before the date of cessation).

219. The sanctioning regime, including the suspension and withdrawal of the authorization for postal offices is provided by Art. 38 of Law 36/2016. If the postal service provider infringes the general authorization regime conditions and/or provisions of any other law or regulation, the authority shall issue a decision requiring termination of the infringements and/or measures to remedy them. If the provider does not comply with the decision, a court decision at the request of the authority can order suspension of the provision of postal services. Furthermore, if the provider fails to remove, within a fixed timeframe, the circumstances that triggered the suspension, the authorization for the provision of postal services may be withdrawn by a court decision at the request of the regulatory authority.

Leasing and microfinance

220. The leasing companies are subjected to the same licensing, supervision and background checks by the NCFM as described earlier for other entities supervised by NCFM.

221. *Criterion 26.4 –*

a) Core principles institutions:

222. On the latest report “Basel Core Principles for effective banking supervision” for Moldova (2014), the country was rated materially non-compliant on 13 principles, largely compliant on 13 principles and compliant on 3 out of the 29 principles. There were several concerns raised regarding the effectiveness of the ML/FT surveillance in banks, in particular due to the lack of transparency in bank ownership and the difficulties experienced by banks in identifying UBOs. Overall, an adequate risk-based supervision could not be demonstrated at the time of the report.

223. Since the report was published legislation has changed and the AML/CFT Law provides obligation to apply the RBA by supervisors, including by the NBM (see criterion 26.5). The NBM has adjusted the AML/CFT Regulations addressed to the supervised entities as well as its internal supervisory Manual in order to incorporate the RBA provisions in the supervision process. In terms of the consolidated supervision of a banking group, if a foreign supervisor conducts controls in Moldova, it will warn the national competent authority and will inform about the findings. Other FIs besides banks are just Moldovan legal entities, so supervision at a group-level is not at the moment at least in practice applicable. Furthermore, several steps have been made by the NBM in order to change its onsite and offsite supervisory regime into a more risk-based one. For example, in the process of planning an on-site inspection, several risk alerts are taken into account, including any previous deficiencies relate to AML/CFT (Item 2 of the chapter “basic AML/CFT Control procedure” of the Manual on bank supervision regarding the prevention and combat of money laundering and terrorist financing). Similarly, there is detailed process to assess the risks the bank is exposed to by focusing on special high-risk factors (Annex E of Manual on bank supervision regarding the prevention and combat of money laundering and terrorist financing).

b) For all other financial institutions

224. The AML/CFT Law requires the competent authorities to monitor the compliance of obliged persons with the provisions in that law and apply RBA in supervision (Art 15 (3) AML/CFT Law) and empowers the authorities to take supervisory actions (Art 35 AML/CFT Law).

225. *Criterion 26.5 –* The authorities with supervision functions, based on the results of the assessment of the risk profile shall use the risk-based approach and take proportional measures (Art 15 (3) AML/CFT Law). The risk profile is reviewed periodically as well as when there are major events or changes in the management in the activities of the reporting entities (Art 15 (3) AML/CFT Law). In the risk based approach exercise, the authorities with supervision functions shall at least: i) identify and clearly understand the sectorial and national risks of money laundering and terrorism financing; ii) have access to all relevant information on sectorial, national and international risks related to customers, products and services of the reporting entities; iii) determine the frequency and intensity of direct and indirect supervision, depending on risk profile of the reporting entities and risks of money laundering and terrorism financing (Art. 15 (4) AML/CFT Law). The notion of supervisor having analysed the internal AML/CFT policies, controls and procedures of REs is established by article 15 (2) (c) of the AML/CFT Act, by stating that supervisors have to “*monitor and verify the application (...) of the subordinated normative acts of the own programs of the reporting entities (...)*”. In practice, both the NBM and the NCFM verify the existence of the AML/CFT program

of the RE and if it is in-line with the provisions of the Law when undertaking a supervisory action, as their sectorial legislations also establish (the AML/CFT regulation of NCFM and the Manual on bank supervision and combat of money laundering and terrorist financing for the NBM).

226. *Criterion 26.6* – According to Art. 15 (3) of the AML/CFT Law, the authorities with supervision functions, based on the risk profile of the reporting entities, shall use the RBA to ensure the extent of the supervisory measures taken. The risk profile is reviewed periodically as well as when there are major events or changes in the management in the activities of the reporting entities.

Weighting and Conclusion

227. Recommendation 26 is rated Compliant.

Recommendation 27 – Powers of supervisors

228. Moldova was rated PC on former Recommendation 29 in the 4th round MER. The main factors underlying the rating were: supervisory powers' legitimacy (except NBM) was disputable; supervisory authorities were not authorised in respect of Post Office and leasing companies to conduct AML/CFT inspections; no explicit competence of the NCFM to conduct on-site inspections; no legal basis meeting the formal requirements for the supervisory authorities to compel production of records, documents and alike in respect of Post Office and leasing companies; and no supervisory powers to apply sanctions against entities' directors and senior management.

229. *Criterion 27.1* – The general provision establishing the powers of all authorities with supervision functions is covered by Article 15 of the AML/CFT Law. These powers include issuance of orders, decisions, instructions and other normative acts in the field of ML/FT, approve and publish guidelines and recommendations, verify the application of the provisions of the AML/CFT Law, conduct direct and indirect supervision or to apply the sanctions. For the financial institutions, each supervisory body has its own legislation and regulation, further developing the supervisory powers to monitor and ensure compliance with the respective laws.

230. *Criterion 27.2* – Art.15.2.c) of the AML/CFT Law empowers supervisory bodies of reporting entities to monitor the implementation of the law and its subordinated normative acts, of internal programs, of reporting entities and instructions on the implementation of customer due diligence measures, identification of the customers and beneficial owner, reporting, storing data on performed transactions and activities, as well as regarding the enforcement of measures and procedures related to internal control. However, the AML/CFT Law does not specifically cover on-site inspections as part of the powers of the authorities with supervision functions.

231. The NBM and NCFM are entitled to conduct on-site inspections on the entities under their remit, according to their respective legislations, more precisely, article 44.b) of Law No.548 and article 23.2 of Law No.1/2018, respectively, although, with its current wording, the scope of these inspections seems to be limited to prudential supervision and does not cover AML/CFT matters. However, in practice, on-site inspections performed by the NBM and the NCFM cover both prudential supervision and AML compliance.

232. *Criterion 27.3* – The AML/CFT Law does not explicitly provide for the possibility of supervisors to compel production of any information relevant to monitoring compliance with the AML/CFT requirements. Instead, article 20.2.a) of the Law provides the SPCML with the right to request and receive within the time limit specified in the request any necessary information and documents

available to reporting entities and their customers in order to confirm the suspicious nature of any transaction, which is narrower than the standard. Similarly, the powers to compel records required by this Recommendation are granted to the financial supervisors (the NBM and the NCFM) through their respective sectorial laws. For instance, article 44.c) of Law No.548 on the NBM or article 23.6 of Law 1/2018 on non-bank credit organisations (NCFM). However, it is unclear whether those powers are broad enough to also apply to AML/CFT matters or are just limited for the purpose of prudential supervision, the regulation of the activity of financial institutions or the proper implementation of each of the sectorial laws.

233.*Criterion 27.4* – Authorities with supervision functions may apply measures and sanctions as provided by article 35 of the AML/CFT Law. These sanctions include disciplinary and financial sanctions and the withdrawal or suspension of authorization or license in case the respective activity constitutes the object of authorization or licensing. NBM and NCFM are also entitled to impose sanctions based on the sectorial laws, mainly by articles 141.1 and 141.2 of the Law on the activity of banks No.202 for the NBM and article 24 of Law 1/2018 for the NCFM. Furthermore, article 81 of the NCFM Regulation for non-banking financial market participants no.38/1 also provides a set of supervisory measures to be applied by the NCFM to reporting entities where deficiencies in their compliance with the AML/CFT legislation have been observed.

Weighting and Conclusion

234.*The* AML/CFT Law grants the supervisory authorities most of the powers required by this Recommendation, although when it comes to compelling the production of information to reporting entities, the Law just makes reference to the SPCML, in a way narrower than the standard. Sectorial legislation grants the financial supervisory authorities' powers to perform onsite inspections and enables them to request the reporting entities to compel the production of records. However, it remains unclear whether these powers granted by the sectorial legislation are limited to prudential supervision or are broad enough to also apply for AML/CFT purposes. ***Recommendation 27 is rated Largely Compliant.***

Recommendation 28 – Regulation and supervision of DNFBPs

235.Moldova was rated Partially Compliant with former Recommendation 24 in the 4th round MER. The main factors underlying the rating were: no supervisory authority and no supervision on independent accountants and real estate agents; the supervisory powers and allocation of supervisory responsibilities for lawyers were unclear; the sanctioning regime for the DNFBP sector was incomplete; there were no requirements to carry out fit and proper tests of senior managers and executive/supervisory board members for casinos; and no requirements to prevent criminals from holding or being the beneficial owner of a significant or controlling interest or holding a management function of a casino.

Casinos

236.*Criterion 28.1* –

a) According to article 30.2, Law 291/2016 on the Organisation and Development of Gambling, “*the casino is an activity is subject to licensing*” and the eligibility criteria for granting, suspension and withdrawal of the licence are provided in article 31 of the law 291/2016. Both the licensing of the activity and the suspension/withdrawal of said license must be carried out in accordance with the provisions of Law No. 160/2011. Among the withdrawal criteria is, as provided by article 31.13.b) of

Law 291/2016, the non-observance of the procedures for recording financial transactions provided by the legislation in force on the prevention and combating of money laundering; Also according to the Law 160/2011, the competent authority that has the powers to grant and withdraw licenses for casino activities is the Public Services Agency.

b) Article 11 of Law No. 291/2016 provides that the directive positions in the casino as well as the chief accountant must have previous relevant experience in similar positions, not having criminal or judicial records and not having been banned to hold similar positions within a gambling operator. However, the provisions are limited to directors and the chief accountant but do not expressly cover shareholders. Art. 15 (8) of the AML/CFT Law states that the authorities with supervisory functions shall take sufficient measures to prevent the control or majority of shares and/or of controlling quota or holding of management functions of beneficial owner of the RE by the criminals and organised criminal groups, their accomplices and/or shareholders that act in concert. The concerns related to “*associates of criminals*” expressed in EC 26.3 apply.

c) The MoF is the authority with supervision functions for organisers of gambling. This includes the monitoring and verification of the application of the provisions of the AML/CFT Law, the subordinate normative acts, and the AML/CFT programs adopted by casinos in their capacity of RE. According to Law 291/2016 the State regulation, state supervision and state control of gambling activities are exercised by the Consumer Protection and Market Surveillance Agency

DNFBPs other than casinos

237. *Criterion 28.2 & 28.3* – For each category of DNFBP defined as a RE by the AML/CFT Law there is a supervisory authority assigned as follows: i) Real estate agents, lessors and “Other natural and legal persons selling goods in the amount of at least 200,000 MDL or its equivalent in cash”: SPCML; ii) Dealers in precious metals and stones: State Chamber for Marking Supervision (State Assay Chamber) (according to article 15.1.f); iii) Lawyers, notaries: Notary Chamber for notaries and the Union of Lawyers for lawyers.

238. *Criterion 28.4* –

a) The AML/CFT Law provides for the powers of the authorities with supervision functions (including self-regulatory bodies such as the notaries’ chamber and the union of lawyers) to monitor compliance with the AML/CFT requirements (Art. 15 (2)(c));

b) Art. 15 (8) of the AML/CFT Law states that the authorities with supervisory functions shall take sufficient measures to prevent the control or majority of shares and/or of controlling quota or holding of management functions of beneficial owner of the RE by the criminals and organised criminal groups, their accomplices and/or shareholders that act in concert.

c) The AML/CFT Law provides all supervisory authorities with the power to apply measures and sanctions as provided by Art. 35.

All DNFBPs

239. *Criterion 28.5* – See Criterion 26.5

Weighting and Conclusion

240. Most of the essential criteria of this Recommendation are specifically covered by the AML/CFT Law, but few details are provided about how these supervisory functions are translated into specific measures in practice for each typology of DNFBP. ***Recommendation 28 is rated Largely Compliant.***

Recommendation 29 - Financial intelligence units

241. Moldova was rated LC with the former FATF Recommendation 26. All identified deficiencies were related to effectiveness issues, which will be assessed under IO6.

242. *Criterion 29.1* – The Moldovan FIU changed its position in the Governmental Administration since the last evaluation report. With the adoption of the new AML/CFT Law, the SPCML became an independent public body, functioning as an autonomous and independent central specialised authority. According to Art. 18(3), the FIU executes its functions freely and independently and shall be sufficiently equipped with human, financial and technical resources to ensure efficient activity at national and international levels. Art. 19 of AML/CFT Law authorises the SPCML to receive and analyse STRs and other related information relevant to ML, associated predicate offences and FT as well as to disseminate the results of that analysis.

243. *Criterion 29.2* – The SPCML receives, records, analyses, processes and submits to competent authorities the information regarding:

- the suspicious activities and transactions related to ML, associated offences and terrorism financing, reported by the reporting entities, as described under R. 20 and 23;
- Other relevant information obtained under the provisions of the AML/CFT Law: i) cash transactions over 100,000 MDL (approx. EUR 5,000) either performed in one single operation or through several operations that seem to have a connection and; ii) wire transactions above MDL 500,000 (approx. EUR 25,000).

244. *Criterion 29.3* – Under Art. 20 of the AML/CFT Law, the SPCML is entitled to request a wide range of information from REs, state authorities as well as from natural and legal persons. This includes necessary information and documents available to the reporting entities, their customers and the public administration authorities to determine the suspected nature of activities or transactions. Furthermore, Art. 19, par. 4 of AML/CFT Law obliges national public authorities and supervisory authorities to provide the Moldavian FIU free and online access to their information.

245. *Criterion 29.4* – The analytical (operational and strategic) process of the SPCML is conducted on the basis of the “*Regulation on the Activity of the Office for Prevention and Fight against Money Laundering*” approved on 5 April 2018 (hereafter “*FIU Regulation*”) which determines the scope of functions of the structural units of SPCML, and by Annex 1 to the FIU Regulation “*Instruction on the processing, analysis, dissemination and archiving of information on suspicious activities and transactions*” (hereafter “*FIU Instructions*”).

a) The *Operational analysis* is defined by the FIU Instructions as the study of information performed on a regular basis, focused on individual cases and specific objectives, conditioned by the type and amount of information received from the reporting entities and from other sources. The FIU Regulations defines the activities of the *Operational Analysis Division*, which receives, records, analyses and processes the information on suspicious ML activities, offences related to ML and FT introduced by the reporting entities, as well as other relevant information obtained under the legal provisions. The *Operational Analysis Division* is also responsible for drafting notes and analytical reports; conducting financial investigations using the information from available databases, requesting information from reporting entities, including confirmatory documents from investigating subjects, within the limits of their competence.

b) The *strategic analysis* consists developing analytical studies on trends and typologies; identification of sectors with high risk of ML/FT; raising the awareness of the Government, Parliament, competent public authorities, including supervisors, and the general public about the danger of ML/FT and developing proposals for optimizing the national system for preventing and fight against ML and FT. The work of the *Strategic Analysis Division* focuses on the sectors with high risk of ML and terrorism financing. It is also responsible with identifying typologies of ML and FT; providing feedback to reporting entities on the accuracy of their reports; developing analytical notes on trends and patterns for law enforcement bodies, oversight bodies and other authorities with direct or indirect competencies in the field etc...

246. *Criterion 29.5* – The SPCML shall inform the competent law enforcement authorities immediately after establishing “*pertinent suspicions*” related to ML, FT or other proceeds generating offenses. The SIS shall be also notified in cases of suspected FT. According to Art. 16, par. 3 of AML/CFT Law, FIU information cannot be disclosed without prior written consent, cannot be admitted as evidence within a criminal investigation and cannot be the basis of a sentence. In terms of dissemination of information upon request, Art. 17 (8) of AML/CFT Law, provides that the SPCML shall respond to requests for information if they are sufficiently motivated by ML/FT or associated predicate offences suspicions. In cases where there are factual reasons to suppose that the transmission of such information would have a negative impact over an on-going financial investigation or analysis, the disclosure would clearly be disproportionate to legitimate interests of a natural or legal person, or the disclosure would be irrelevant to the purposes for which it was requested, the request can be refused. Under the FIU Regulation, the *Security and Information Technology Department* shall maintain the protection of information in all stages. More detailed information on the secure and protected channels used by the SPCML under EC 29.6 (a).

247. *Criterion 29.6* – The general basis for the security and confidentiality of information is defined in the AML/CFT Law.

a) According to the AML/CFT Law, the SPCML creates and maintains an information system, including its official web site, and ensures its functionality, as well as protection, security and limited access to its data (Art. 19, par.1, let. m). Art. 16, par. 5 provides that the direct access of third parties to information resources held by the SPCML is prohibited. The director of the SPCML is the person responsible to ensure the confidentiality and protection regime of state, commercial, banking, professional and personal data secrecy (Art. 22 (1) (I)). The FIU Instructions provides that STRs and threshold reports shall be received from REs through secure data transmission network; encrypted email; or on paper (in exceptional cases provided by legislation). The data received in electronic format via the secured data transmission network is stored in the original form in the electronic archive on the central server of the SPCML and the copy of the received data is stored in the related database and is accessible via the specialised soft SPCML - MS. The minimum selection criteria are provided and the manner of handling the information is prescribed. Further on, the FIU Instructions details the information dissemination process.

b) The staff of the SPCML is composed of public servants with special status, other public servants and contracted staff (art. 23, par. 1 of AML/CFT Law). The Law 158/2008 on public service and the status of a public servant, and the Government Decision 201/2009 on the enforcement of the Law No. 158/2008, regulate the security clearance of public servants. To be appointed the public servants must have the following clearance documents: an “estimation of integrity (from the National Integrity Authority), a certificate of professional integrity (from National Anticorruption Centre) and

a clearance from the Intelligence Security Service on risk factors that could affect the general rule of law, state security and public security. The authorities explained that the contracted staff has provides logistical services and doesn't have access to operational information.

c) Only the SPCML employees have access to information and have the right to process this information upon prior authorization obtained from the management of the FIU.

248. *Criterion 29.7* – Art. 18 of AML/CFT Law designates the SPCML as an independent central specialised authority.

a) According to Para. 3 of the same article, the SPCML executes its functions freely, without any external, political or governmental interference that may compromise its operational independence and autonomy. The director of the SPCML is the person who takes decision on the initiation, performing and completion of financial investigations and the receipt, recording, analysis, processing and dissemination of the information to the competent authorities on suspicious activities (Art. 22 (1) (b and c)).

b) Art 20 of AML/CFT Law authorizes the SPCML: i) to sign agreements, memoranda on cooperation and information exchange with national authorities, competent offices from other countries and specialised international organisations, ii) request necessary information from the competent institutions, including similar offices or institutions from other countries and iii) submit responses to the received requests. Under Art 22 of AML/CFT Law, the director of FIU independently initiates and signs cooperation agreements with national authorities and organisations, similar institutions from other countries and specialised international organisations.

c) The SPCML is an independent central specialised authority.

d) The management of the SPCML is appointed by the Government of Moldova for a five-year period. The management should pass the security clearance process and has immunity during working period. The director of the SPCML has authority to approve the organisational structure in accordance with the structure and limit of personnel approved by the Government, appoint the employees, modify, suspend and terminate the working relations, solve the issues related to establishment of salary increases and granting of bonuses (Art. 22 of AML/CFT Law).

249. *Criterion 29.7* – The SPCML is a member of Egmont Group since May 2008.

Weighting and Conclusion

250. Recommendation 29 is rated Compliant.

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

251. Moldova was rated PC in the previous round of evaluations for the former Recommendation 27, as the LEAs were not in a position to properly investigate ML/FT offences. The effectiveness concern was the over-emphasis on the predicate offences rather than ML offences.

252. *Criterion 30.1* – Criminal investigation of ML, predicate offences and terrorism financing is regulated by the Moldovan CPC and Law on special investigation activity 59/2012. The competences of the criminal investigative bodies and prosecutor's offices are defined in the articles 266 – 271 of the Moldovan CPC. As a rule, the criminal investigative body of the National Anticorruption Centre (NAC) shall conduct investigations on money laundering cases. Criminal investigations on crimes of terrorist nature, including terrorism financing shall be conducted by the Prosecutor's Office for

Combating Organised Criminality and for Special Cases (PCCOCS)¹¹². ML investigations shall be conducted by PCCOCS when the offence is committed by crimes committed by an organised criminal group or a by a criminal organisation or when an investigation on a predicate has already started and subsequently the ML component is developed. During the criminal investigation, the prosecutor, within the limits of his material and territorial competence, personally conducts the case and verifies the lawfulness of the procedures undertaken by the investigative body. Art. 271 of the CPC provides that the Prosecutor General and his/her deputies may dispose by order that any criminal investigative body conducts the criminal investigation in line with the provisions of the Code. (National Anticorruption Centre, Ministry of Internal Affairs, Prosecutor Offices and Customs Service).

253. The Prevention and Combating Organised Crime Action Plan for 2018-2019 provides the *necessity* to improve the analytical capacities of parallel financial investigations and criminal prosecution in order to efficiently implement the legislation on prevention and combating ML.

254. *Criterion 30.2* – Art. 229² of the CPC provides that in order to recover criminal assets and accumulate necessary evidence, the criminal investigation body shall perform parallel financial investigations. A comprehensive definition of “*parallel financial investigations*” is provided by Art. 6 (20¹) of the CPC. Parallel financial investigations are recommended through PG Instructions on financial investigations (2017) with the purpose to: i) identifying ML cases; ii) identify the criminal assets with a view to confiscation and iii) identify potential other crimes or persons involved (by following the money trail). Parallel financial investigations are considered to be a priority.

255. *Criterion 30.3* – According to the provisions of the AML/CFT Law the SPCML, the law enforcement and judicial authorities shall apply efficient measures for identification, tracing, freezing, seizing and confiscation of goods obtained from ML, other from associated offences, from terrorism financing and proliferation of WMDs. According to the provisions of the Art. 202 of the CPC, the criminal investigative body *ex officio* or the court may undertake measures for securing the recovery of damages caused by the crime, for seizure or extended confiscation, and for guaranteeing the execution of a punishment by fine.

256. *Criterion 30.4* – According to the Law 48/2017 on CARA, the agency shall carry out parallel financial investigations and draw up the protocol on the results of these investigations, as well as making the criminal assets temporarily unavailable, according to the Criminal Procedure Code. CARA shall also value, manage and capitalize the criminal assets made temporarily unavailable and to keep the records of criminal assets, including based on the requests coming from competent authorities from abroad. On the international cooperation side, CARA shall negotiate the repatriation of criminal assets, and carry out international cooperation and exchange of information with foreign competent authorities.

257. *Criterion 30.5* – The law enforcement and judicial authorities shall apply efficient measures for identification, tracing, freezing, seizing and confiscation of goods obtained from ML, other from associated offences (see EC 30.3). Hence, this applies to the NAC and APO.

Weighting and Conclusion

258. All ECs are met. ***Recommendation 30 is rated Compliant.***

¹¹² Moldovan authorities specified that “Special Cases” is a sui generis notion for all cases given in its competence which do not fall under the notion of “Organised Crime”

Recommendation 31 - Powers of law enforcement and investigative authorities

259. Moldova was not reassessed in the course of the 4th round on former Recommendation 28 as in the 3rd round the rating was Compliant.

260. *Criterion 31.1* –

a) Under Art. 132², par. (1), point (1) let. f) of CPC, the all LEA including specialised prosecutor's offices that conduct criminal investigations into ML have the power to monitor or control of financial transactions and access to financial information. Under Art. 134², par. (1) of CPC, monitoring or control of financial transactions and access to financial information constitutes operations that disclose the contents of financial transactions carried out through financial institutions or other competent institutions or receiving documents or information from financial institutions related to deposits, accounts or transactions that belong to a person. Monitoring and control of financial transactions and the access to financial information can be ordered in case of criminal investigation of crimes listed in par. (2) of Art 134 CC including money laundering (Art. 243).and terrorism financing (Funding Terrorism, Art. 279). This measure cannot be applied to DNFBPs or other natural or legal person and does not apply to production of all records. However, according to Art. 126, seizing of objects and documents can be applied to all natural or legal persons, including banks and DNFBPs. In line with par. 2 of the same article if a document contains information that is a state, trade, banking secret and the seizure of information on telephone conversations, this measure can only be allowed upon the authorization of the investigative judge.

b) According to Art. 125 par. (1) of the CPC, the criminal investigative body shall have the right to conduct a search if the evidence obtained or the special investigative materials substantiate a reasonable assumption that the instrumentalities of crime were designated to be used or used as the means for committing a crime, objects and valuables obtained as a result of a crime are at a specific premises or in any other place or with a specific person. A search may also be conducted for objects or documents that could be important for the criminal case and that cannot be obtained by other evidentiary methods. Under specific conditions (urgent cases or in flagrant crimes), the search may be conducted based on a reasoned order of a prosecutor without the authorization of the investigative judge, who shall later verify the legality of this procedural action (Art. 125 (4) CPC).

c) Art. 93 par. 2 point 1 of CPC provides that the witness statements shall be admitted in evidence.

d) Seizing of objects ("*sequestration*" please see *Note under R4 and IO8) is provided by Art. 204 CPC Seizing of objects for evidentiary purposes can be conducted independently or in the context of other investigative measures such as house search. Under Article 126 of the CPC the criminal investigative body, based on a reasoned order, shall have the right to seize any objects or documents important for the criminal case if the evidence obtained or the special investigative activity materials refer precisely to the place and the person holding them.

261. *Criterion 31.2* – According to the provisions of art. 132¹ special investigative activity includes all criminal investigative actions of public and/or secret nature conducted by the criminal investigative officers within criminal investigation only under the conditions and in the manner provided by the CPC. Thus, seeing the provisions of Art. 243 and 279 CC in conjunction with Art. 132¹ CC, both crimes are classified as serious crimes (acts for which criminal law provides for punishment by imprisonment from 5 years up to 12 years inclusively) for which the CPC provides the possibility of carrying out special investigative measures, including: undercover investigations (Art.

136); wiretapping and recording of communications (Art. 132⁸ and Art. 132⁹), accessing computer systems (Art. 132², 134¹ and 134⁴) and controlled delivery (Art. 138² and 138³).

262. *Criterion 31.3* –

a) Art. 167 of the Fiscal Code of Moldova provides that the financial institutions are obliged to provide to STS the information concerning accounts opened by residents and non-residents natural/legal persons using the automated electronic documents information system. The Moldovan authorities confirmed that the LEAs have direct access to this database. However, at the time of the on-site visit, the database of natural persons was not yet operational.

b) According to PG Instructions on financial investigations (2017), all LEAs are required to identify, trace and initiate freezing and seizing of property. The prosecutor’s request to the investigative judge on authorisation of provisional measures is examined in closed hearing. According to Art. 305 of the CPC “a motion on criminal investigative actions, special investigative measures or coercive procedural measures shall be examined by the investigative judge in a closed hearing with the participation of the prosecutor and, as the case may be, the representative of the body performing the special investigative activities.”

263. *Criterion 31.4* – Within national cooperation, the SPCML shall perform the information exchange on their own initiative or upon request (Art. 17 (5), (7) of the AML/CFT Law). According to Article 16 the transmission of materials, documents, including electronic ones, notes and analytical reports administered managed by the FIU to criminal investigative authority, prosecutor’s office, court and other relevant authority cannot be qualified as disclosure of commercial, banking, tax, professional secrecy or personal data.

Weighting and Conclusion

264. There is no mechanism to identify in a timely manner whether natural persons hold or control accounts. **Recommendation 31 is rated Largely Compliant.**

Recommendation 32 – Cash Couriers

265. In the 2012 MER, Moldova was not re-rated for the former SRIX as in the third round (MER adopted in 2009) was rated largely compliant. The main deficiencies were related to bearer negotiable instruments which were not all covered by the declaration regime and insufficient focus on recovery of criminal proceeds.

266. *Criterion 32.1* – Moldova has implemented a declaration system for incoming and outgoing cross-border transportation of cash by the Law no. 62/21 March 2008 on Foreign Exchange regulation, which provides for a declaration system in respect of transportation, import, export and declaration of currency values and bearer securities, as follows:

Table 57: Moldova’s declarations system

OUTGOING Article 29 Article 33	Bearer securities (other than travellers checks)	< EUR 10,000	No declaration required
		> EUR 10,000	Written declaration required
	Currency values Traveller checks	< EUR 10,000	No declaration required
		> EUR 10,000	Written declaration required
INCOMING	Bearer securities (other	< EUR 10,000	No declaration required

Article 29 Article 33	than travellers checks)	> EUR 10,000	Written declaration required
	Currency values Traveller checks	< EUR 10,000	No declaration required
		> EUR 10,000	Written declaration required

267. The declaration system is applicable for all individuals, residents and non-residents, and is applicable to physical cross-border transportation. The import and the export of cash (in national or foreign currency), as well as traveller's cheques by way of parcels is not allowed in Moldova. Article 34(2) of Law on Foreign Exchange (Law no. 62/2008) provides that sending cash in foreign and national currency into or out of Moldova via international postal services is allowed only for numismatic purposes and under certain limitations. Sending traveller's checks in foreign currency via international postal services into and/or from Moldova is prohibited, except under certain circumstances. The legal definition of payment instruments (Art. 3(6) of the Law on Foreign Exchange) covers the FATF concepts on currency and bearer negotiable instruments.

268. *Criterion 32.2* – Moldova has established a written declaration system for all persons carrying cash or BNIs equal or above a pre-set threshold of EUR 10,000 (or equivalent). A new form of declaration of cross-border cash movement is under development by the CS.

269. *Criterion 32.3* - This criterion is not applicable.

270. *Criterion 32.4* – There are no particular provisions in legislation from which can be detracted that the CS, or another designated competent authority, has the authority to request and obtain further information where a false declaration or disclosure or a failure to declare has been detected.

271. *Criterion 32.5* – Moldova applies administrative or criminal sanctions for a false declaration or disclosure. Administrative sanctions are established in Art. 287 (Violation of customs rules) of the Administrative Code (Law no. 218, 24 October 2008) and criminal sanctions in Art. 248 of the CC (Smuggling). Failure to declare or failure to declare truthfully goods, objects or other assets worth 615,000 MDL (EUR 123,000) or less shall be sanctioned by a fine of 25 to 75 conventional units¹¹³. Persons who make a false declaration or disclosure concerning an amount exceeding 615,000 MDL are liable for criminal sanctions for smuggling. This offence shall be punished with imprisonment for 3 to 10 years for natural persons, whereas a legal entity shall be punished by a fine in the amount of 6,000 to 11,000 conventional units¹¹⁴ with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.

272. *Criterion 32.6* – Information obtained through the declaration system is monthly made available by the CS to the SPCML (Art. 4(2) AML/CFT Law). In case of identified suspicious on importing and/or exporting currency to/from Moldova, the CS shall immediately notify the SPCML (Art. 4(3) AML/CFT Law).

273. *Criterion 32.7* – Co-ordination between the CS and the SPCML is ensured through the obligation to declare and share information (see C.32.6). On issues of law enforcement, SPCML co-operates with liaison officers of the competent authorities (Art. 17(3) AML/CFT Law). On a broader field, the CS cooperates with the Ministry of the Interior (police), the Prosecutor's Office for Combating Organised

¹¹³ 1250 - 3750 MDL; EUR 62,50 – 187,50

¹¹⁴ 300,000 – 550,000 MDL; EUR 15,000 – 27,500

Crime and the Border Police on common investigations related to smuggling based on the interdepartmental Orders.

274. Criterion 32.8 –

a) The Moldovan legislation does not explicitly provide the CS with the abilities to freeze or restrain currency or BNIs for a reasonable time in order to ascertain whether evidence of ML/FT exists in case of suspicion.

b) If a false disclosure is ascertained, the Customs Service officer shall make a complaint appertaining to customs fraud and depending on the value of goods, it shall be established if an administrative or a criminal case is to be pursued. In this case the Customs Service can restrain the currency or BNI.

275. Criterion 32.9 – The information regarding threshold declarations at the border and ML/FT suspicious reports filed by the Customs are detained by the SPCML as described in EC 32.6. The SPCML has the power to exchange information and co-operate with foreign counterparts as described in R40.

276. Criterion 32.10 – The information collected through the declaration system may be used only for customs purposes and may be disclosed to third parties or public authorities only under certain conditions (Art. 17 Customs Code). A receiving jurisdiction must provide an adequate level of protection of personal data, and for international data exchange, the SPCML imposes compliance to the same confidentiality requirements as provided domestically (Art. 36 and 17(4) AML/CFT Law). There are no indications that the declaration system may impede neither the trade payments nor the freedom of capital movement.

277. Criterion 32.11 – When there are reasonable grounds to believe the funds are related to ML/FT or predicate offenses, the criminal investigative body of the CS shall start a criminal investigation and lay of charges under the CC. If the suspicion is confirmed, sequestration and confiscation measures may be decided by the judicial authority under the conditions described in R.4 (including special confiscation or extended confiscation). When the Border Police detects the transportation of currency related to ML/FT, its criminal investigative body may also start an investigation.

Weighting and Conclusion

278. The customs authorities do not have sufficient instruments to obtain additional information with regard to origin of the funds or BNIs and they have the capacity of restraining currency or BNIs only in presence of a criminal case or a court decision. ***Recommendation 32 is rated Largely Compliant.***

Recommendation 33 – Statistics

279. In the 2012 MER Moldova was rated partially compliant with the former R. 32. The main deficiencies ascertained by assessors were a lack of statistics maintained on reports generating cases opened by the FIU; a lack of statistics maintained on cases opened by a LEA based on FIU disseminations (including predicate offences); and an absence of statistics on information exchange between supervisory authorities.

280. Criterion 33.1 – According to the provision of Art. 6, par. (12) of the AML/CFT Law, the SPCML, the authorities with supervision functions, the law enforcement agencies, and other competent institutions, must maintain and update statistical data in a consolidated version in the field of their

competence. Statistics will include at least: number of reporting entities; data on reporting, investigation, criminal prosecutions and convictions (number of STRs, number of investigated cases, number of persons under investigation, number of persons convicted for ML or FT etc...), types of associated offenses and the value of the frozen, seized or confiscated goods. Data on the number of cross-border requests for information that were executed, received, rejected or partially or fully solved are also kept.

281. The MoJ has a specialised service of *"Information and Technology"*, which manages the data base "Criminalistics and Criminological Information Registry". The database records offenses, criminal cases and persons who have committed crimes.

282. The GPO keeps statistics on the results of its activity, including criminal cases, through the „INFO-PG“ program, which has been approved in 2007. Recently, the GPO launched the automated informational system *"Criminal investigation: E-Case"*, to register, storage, process, and use of information regarding criminal cases at the stage of criminal investigation, from the moment of the beginning of a criminal case. *E-Case* is a mandatory instrument for all Prosecutors' Office employees and until March 2018 had already over 1,000 users, who were able to access over 30,000 criminal cases and over 110,000 procedural acts already introduced in the system. A case management system in its essence, *E-Case* can also generate statistics.

283. Moldova has two central authorities responsible for MLA requests: the GPO during the pre-trial stage and the Ministry of Justice during the trial stage. There are no legislative provisions which require record-keeping of MLA or other international requests but the authorities maintained that both institutions keep its own statistics on incoming and outgoing requests on MLA based on internal procedures.

284. The Courts Administration Agency acting under the MoJ collects, analyse and systematize data on judicial statistics (Government Decision 593/2017).

285. It is unclear which agency is responsible for keeping statistics on frozen, seized or confiscated goods.

Weighting and Conclusion

286. Moldova mostly meets the criterion of this recommendation; however, it is unclear which agency is responsible for keeping statistics on frozen, seized or confiscated goods. ***Recommendation 33 is rated Largely Compliant.***

Recommendation 34 – Guidance and feedback

287. Moldova was rated Partially Compliant on former Recommendation 25 in the 4th round MER. The main factors underlying the rating: no information on results of financial investigations conducted by the FIU available to financial institutions; little information is provided to financial institutions on recent trends (typologies); there were no sector-specific guidelines for FI and DNFBP; and that the supervisory authorities and the FIU do not provide any feedback to the DNFBP sector.

288. *Criterion 34.1* – The AML/CFT Law provides for the obligation of supervisory authorities to approve and publishes guidelines and recommendations necessary for the implementation of the AML/CFT provisions (Art. 15 (2)(b)).

289. According to Art 11 (10) of AML/CFT Law, the SPCML and authorities with supervision functions shall periodically provide the reporting entities with information on the results of the

examination of the information received under the Law. According to the 2018 FIU Regulations, the Strategic Analysis Division is responsible with providing feedback to reporting entities on the accuracy of completing the reporting forms, and on typologies and trends in the field.

Weighting and Conclusion

290. Recommendation is rated Compliant (C).

Recommendation 35 – Sanctions

291. Moldova was rated Partially Compliant with former Recommendation 17 in the 4th round MER. The main factors underlying the rating were: no clear designation of authorities to impose sanctions; the penalties for non-compliance with the AML/CFT Law were incomplete and not clearly specified; fines were not enough dissuasive and could not be applied in a proportionate manner; there was no possibility to sanction directors and senior management of Post Office and leasing companies and some effectiveness issues.

292. *Criterion 35.1* – The available sanctions for any breaches of the provisions of the AML/CFT Law are covered by Article 35 and covers all reporting entities as follows: i) public statement in mass media; ii) requirement to terminate the respective behaviour and to refrain from repeating it; iii) withdrawal or suspension of authorization, license of activity; iv) temporary ban to hold management positions; v) pecuniary sanctions in the form of fine: in twice amount of the value of benefit derived from the breach, or in the amount of equivalent in lei of the sum of up to EUR 1,000,000; in the amount up to the equivalent in lei of the sum of up to EUR 5,000,000 euro, or 10% of the turnover for the previous year – for some FIs (*i.a.* banks, securities, insurers, lessors and payment service providers).

293. The gravity, duration and frequency of breach, intention, degree of responsibility, financial capacity of subject, benefit obtained as a result of breach, prejudice caused to third parties by breach, cooperation of subject and previous breaches, shall be taken into consideration when applying the sanctions (Art 35 (3), the AML/CFT Law).

294. The sanctions provided in the AML/CFT Law are applied by the authorities with supervision functions, specified in Art. 15 (1) (a-h) (NBM, Notary Chamber, Union of Lawyers, MoF, State Assay Chamber), Ministry of Economy and Infrastructure and SPCML), in accordance with the normative acts regulating the supervision activity (Art 35 (4) the AML/CFT Law).

295. Besides those established by the AML/CFT Law, the NBM is also empowered to apply its own set of penalties provided by articles 141.1 and 141.2 of the Law on banking activity No.202. One of the infringements where this range of sanctions is applicable, according to article 140.1.p of the same Law, when *a bank has committed a serious breach of (...) the provisions of the AML/CFT Law and/or the normative acts issued for the application of this law, including by failing to comply with the decision to terminate the transaction issued by the organ empowered to prevent and combat money laundering and terrorism financing.*

296. Similarly, the NCFM also has its own range of sanctions available that complement those that the AML/CFT Act also empowers it to apply. In the NCFM case, these sanctions are provided by article 24 of the Law on non-bank credit organisations no.1/2018 and are applicable under certain circumstances, including when the shareholders/associates and/or its administrators have violated

the obligations envisaged in the legislation on combating money laundering and terrorism financing (AML/CFT Law).

297. Pecuniary sanctions provided in the AML/CFT Law Art 35 are applied by the competent authorities and the fines shall be applied to legal, natural persons and persons with senior management positions (Art 35 (6 and 7) the AML/CFT law). Legal persons are liable based on the provisions of para 2 letter e) for breaches committed for their benefit by any person acting individually or as part of an authority of the respective legal person and that holds a senior management position within the legal person on the basis of: a) power to represent the respective legal person; b) power to take decisions on behalf of the respective legal person; c) power of the exercise of control within the respective legal person (Art 35 (11) the AML/CFT Law). Legal persons are also held liable when lack of supervision or control by a person mentioned in para 11 made it possible to commit the breaches subject to liability provided in par 2 letter e) for their benefit by a person under the authority of legal person (Art 35 (12) the AML/CFT Law).

298. Sanctions are available for NPOs according to the Law on Social Associations (see c. 8.4 (b)).

299. Sanctions for violations of the requirements for UN sanctions regimes also fall under the AML/CFT Art 35 (Art 35 (1) and Art 34) and are in the same range.

300. Overall, the sanctions appear to be proportionate (range from warnings to EUR 5,000,000 fines and withdrawal of licence) and dissuasive.

301. *Criterion 35.2* – Some of the sanctions can be applied to natural and legal persons as it is apparent from the wording of Art. 35 (public statement, warnings, temporary ban to hold management positions). Para 7 of Art. 35 clarifies that the fines shall be applied to legal, natural persons and persons with senior management positions.

Weighting and Conclusion

302. *Recommendation 35 is rated Compliant.*

Recommendation 36 – International instruments

303. In the 2012 MER, Moldova was rated Largely Compliant for former Recommendation 35 and Partially Compliant for former Special Recommendation I. Deficiencies identified on these Recommendations included reservations on implementation of certain aspects of FT criminalisation as stipulated by the Terrorist Financing Convention (TFC) and insufficiencies in the effective implementation of the standards in relation to ML criminalization. Further shortcomings noted in the 4th MER (deficient and incomplete implementation of the relevant UNSCRs and further issues of effectiveness) however do not belong under the scope of the present Recommendation 36.

304. *Criterion 36.1* – Moldova has ratified the Vienna Convention (Parliament's Decision no. 252-XII of 2 November 1994); the UN Convention against Corruption (Law no. 158 of 6 July 2007); the TFC (Law no. 1241 of 18 July 2002) and the Palermo Convention (Law no. 15 of 17 February 2005). It should be noted that it is party to, inter alia, the 2005 Warsaw Convention of the CoE.¹¹⁵

305. *Criterion 36.2* – Moldova has broadly implemented the provisions of the Vienna Convention, the FT Convention and the Palermo Convention. There are deficiencies identified with regard to

¹¹⁵ CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198).

confiscation in light of MLA (Art. 5 Vienna Convention, Art. 13 Palermo Convention). Further legislative amendments are needed with regard to the scope of offences subject to self-laundering (Art. 23(2)(e)), the ad hoc provision criminalizing concealment (Art. 24) and prosecution, adjudication and sanctions (Art. 30) as established in the Merida Convention¹¹⁶.

306. Moldova has not made reservations regarding the Vienna Convention and the Merida Convention. The reservations on the Palermo Convention and the Terrorism Financing Convention do not impair implementation of these conventions.

Weighting and Conclusion

307. Moldova ratified all the conventions required by R36. The Palermo and FT Convention have been largely implemented in the Moldovan legal order. Steps remain to be taken regarding the implementation of the Merida Convention. ***Recommendation 36 is rated Largely Compliant.***

Recommendation 37 - Mutual legal assistance

308. In the 2012 MER, Moldova was rated PC with former R.36 and SR.V. The shortcomings pertained to vague and indecisive reasons for refusal in the MLA Law and issues in the in FT criminalisation which might impede MLA. Moldova was rated compliant on the former R.37. The current version of R.37 consolidates the MLA aspects of all three former Recommendations mentioned above.

309. *Criterion 37.1* – Since 2012, Moldova has not made major relevant changes in the MLA legislation. The international judicial assistance continues to be regulated by Chapter IX of the CPC and the Law on International Legal Assistance in Criminal Matters 371/2006, (MLA Law), which together establish a detailed and complementary (although at certain points also competing and sometimes diverging – see below) legal mechanism for the provision of mutual legal assistance as well as requesting and granting extradition (R.39.). MLA is also governed by the international treaties and bilateral agreements to which Moldova is party¹¹⁷ as well as other treaties and bilateral agreements. The possible forms of mutual legal assistance cover a wide range of procedural legal assistance discussed below under EC 37.8. The rapid provision of foreign requests is however not specifically stipulated by Moldovan legislation as there are no legal provisions on the deadlines or prioritisation in this field.

310. *Criterion 37.2* – The MLA requests can be officially filed, either through diplomatic channels or directly, with the Ministry of Justice or the General Prosecutor's Office depending on the stage of the criminal proceedings unless, on the basis of the principle of reciprocity, another procedure is provided (Arts. 532 and 540 CPC). The GPO and the MoJ are responsible for sending the incoming MLA requests to the respective criminal investigative body or to the competent court. The applicable MLA procedures are provided for by the CPC and the MLA Law. Guidance on International Judicial Cooperation has been adopted and published on the website of the MoJ¹¹⁸, detailing the competences

¹¹⁶ Moldova was assessed on its implementation of the Merida Convention between 2010 and 2015 by the UNODC: https://www.cna.md/public/files/raport_uncac_2016_03_08_moldova_final_country_report.pdf. No significant legislative amendments have been made on the respective articles.

¹¹⁷ The 1959 European Convention on Mutual Legal Assistance in Criminal Matters and its additional protocol; the 1957 CoE Convention on Extradition and its two protocols and the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS n° 141). The Republic of Moldova signed and ratified the 2015 CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS n°198).

¹¹⁸ www.justice.gov.md

and procedures to be followed within the framework of international judicial cooperation. The GPO has a case management system in place for the registration and progress of execution of MLA requests, while the Ministry of Justice still have not implemented its own, separate system which, once it is introduced, will not be used by all MoJ subdivisions; rather these subdivisions may opt for their own case registration system.

311. *Criterion 37.3* – As at the time of the previous evaluation¹¹⁹, Art. 534 of the CPC provides for the grounds for refusal of an MLA request, which are all in line with the restrictions stated in international treaties Moldova is party to and none of them can be considered unreasonable or unduly restrictive. The same cannot be said, however, about the other set of grounds for refusal provided by Art. 4(1) of the MLA Law, some of which (subparagraphs c/ and d/) had already been criticised in the 2012 MER for being too vague and restrictive. Specifically, subparagraph (c) extends the *ne bis in idem* standard to extremes where mutual assistance can be refused in respect of any criminal offence which could, even theoretically, be subject to Moldovan criminal jurisdiction while subparagraph (d) uses a wording (“*any other reason bearing a personal character*”) that makes it so versatile that it might be generally applicable, on a discretionary basis, for any personal circumstances. Considering that Art. 4(1) of the MLA Law has not changed since the previous round of evaluation; all objections raised in the 2012 MER remained valid.¹²⁰

312. *Criterion 37.4* – The grounds of refusal of MLA, provided in the CPC, do not include fiscal matters. Neither the CPC nor the MLA Law allow for the refusal of MLA requests on the grounds of secrecy or confidentiality requirements.

313. *Criterion 37.5* – Art. 6 of the MLA Law provides that Moldova shall ensure, within the limits of the law, at the request of the requesting State, the confidentiality of the requests for legal assistance and the documents annexed thereto. If the condition of confidentiality cannot be assured, Moldova notifies the foreign state, which will then decide.

314. *Criterion 37.6* – As a general rule, the dual criminality requirement is applicable to all (and not only coercive) procedural actions (Art. 534(1)7 CPC). This was acknowledged and noted as a deficiency in the 3rd and 4th Round MERs. The situation remains unchanged. Notwithstanding this, the authorities explained that according to Art. 534(1), MLA “may be” refused only, which thus denotes a discretionary decision and not an obligatory rejection. However, the clear requirement of a dual criminality test in all MLA cases clearly contravenes EC 37.6 even if the authorities maintain that they would afford the requested assistance regardless of the dual criminality constraints in all cases where coercive measures applicable by an investigative judge (Art. 41 CPC) are not involved.

315. *Criterion 37.7* – For execution of an MLA request, the dual criminality principle neither requires the offence to be placed in the same category of offence nor to be denominated by the same terminology by both states.

316. *Criterion 37.8* – Art. 533(1) of the CPC defines the scope of legal assistance that can be *provided*. It particularly lists a number of powers and investigative techniques which may be requested and provided in the course of MLA in the performance of certain procedural activities. These are: i) notifying individuals or legal entities abroad about procedural acts or court judgments; ii) hearing persons as witnesses, suspects, accused, defendants, civilly liable parties; iii) on-site investigations, searches, seizures of objects and documents and their transmission abroad, sequestration,

¹¹⁹ See para 1429 of the 4th round MER

¹²⁰ See para 1431-1432 of the 4th round MER for a more detailed analysis.

confrontations, presenting for identification, identification of telephone subscribers, wiretapping, expert reports, confiscation of goods obtained from the commission of crimes and other criminal investigative actions provided by this Code; iv) summoning witnesses, experts or persons pursued by criminal investigative bodies or by the court; v) taking over the criminal investigation upon the request of a foreign state; vi) searching for and extraditing persons who committed crimes or to serve a punishment depriving them of liberty; vii) acknowledging and executing foreign sentences; viii) transferring convicts; ix) submitting information on criminal histories; x) and other actions not contradicting the CPC. The MLA Law contains complementary legislation in this respect which also extends to investigative measures not specified in the CPC (e.g. hearings by videoconference in Art. 28 or cross-border surveillance in Art. 30.)

Weighting and Conclusion

317. Most of the essential criteria are met by Moldova. However, dual criminality is still required beyond the provision of coercive measures, certain grounds for refusing MLA are still vague and restrictive as they were at the time of the previous evaluation, and one of the central authorities (the MoJ) does not yet have a case management system in place to support the monitoring of the requests. ***Recommendation 37 is rated Largely Compliant.***

Recommendation 38 – Mutual Legal Assistance: freezing and confiscation

318. Moldova was rated largely compliant for the former Recommendation 38 in the 3rd Round MER and it was not re-rated in the course of the 4th Round. The deficiency identified pertained to lack of information on coordination arrangements for seizure and confiscation.

319. *Criterion 38.1* – In accordance with art. 540¹ of the CPC the rogatory letters requesting search, seizure or the return of objects or documents, and sequestration or confiscation shall be executed in line with the legislation of Moldova in which respect the domestic regime for confiscation and provisional measures was found compliant with FATF Recommendation 4 above. Notwithstanding that, as noted under EC 37.1 in respect of foreign requests in general, no expeditious action is specifically stipulated by Moldovan legislation as there are no legal provisions on the deadlines or prioritisation in this field.

320. *Criterion 38.2* – There are no legal provisions in Moldovan law to specifically allow for providing assistance to requests for cooperation on the basis of non-conviction based confiscation proceedings.

321. *Criterion 38.3* – The Moldovan legislation does not specifically provide for *establishing* arrangements for co-ordinating seizure and confiscation actions with other countries. Reference was made to CPC provisions covering the setting up of Joint Investigation Teams (Art. 540) which however have no direct relevance regarding this Criterion. Mechanisms for managing and disposing of sequestered and confiscated property, as described above under EC 4.4 are in principle applicable for property sequestered or confiscated as a result of international cooperation. In addition, MoUs on legal assistance in criminal matters with various countries lay down general provisions of seizing and confiscation measures. Such MoUs have been signed with, *inter alia*, Ukraine, Turkey and Bosnia and Herzegovina.

322. *Criterion 38.4* – Art. 229⁵ (2) CPC provides that criminal assets found in Moldova in relation to offenses committed abroad shall remain in Moldova or shall be repatriated to the appropriate foreign state, within the framework of international legal cooperation. This general rule apparently

covers any cases where criminal assets are found and secured in Moldova, including cases where such actions took place as a result of a foreign request. Art. 113(4) of the MLA Law, however, stipulates that assets, which have been confiscated as a result of a foreign request, may only be transferred upon demand of the foreign state which requested the confiscation, and only in case these assets are of “special interest” (which is not explained) and as long as reciprocity is guaranteed. As a result, there only appears a narrow and discretionary path for the repatriation of such assets. In addition, there are no domestic legal provisions that would allow for sharing confiscated property with other countries.

Weighting and Conclusion

323. Due to the shortcomings mentioned in 38.3 in the legislation regarding MLA on freezing and confiscation, and the necessary improvement on expeditious action mentioned in 38.1 as well as further improvements 38.3 and 4. ***Recommendation 38 is rated Partially Compliant.***

Recommendation 39 – Extradition

324. Moldova was not re-evaluated in the 4th Round for the former Recommendation 39 as in the course of the 3rd Round the country was rated “largely compliant”. The deficiencies were legal imperfections that may negatively affect the extradition.

325. *Criterion 39.1 –*

a) A foreign citizen or stateless person who is either being under criminal investigation or having been convicted in a foreign state for the commission of an act subject to punishment in that state may be extradited to this foreign state upon the request of its competent authorities. Extradition can be granted based on any international treaty to which both countries are parties or, in lack of such a treaty, on written obligations under conditions of reciprocity. The extradition can only be granted if the act is also punishable under the legislation of Moldova (see below) and the maximum punishment for that offence is at least one year of imprisonment or, in case of extradition for executing a sentence, at least six months of imprisonment to be served, unless international treaties provide otherwise (Art. 541 CPC). Both ML and FT offences meet this standard and are thus extraditable offences, as the maximum punishment available for these offences exceed the threshold mentioned above (5 and 10 years, respectively).

b) The extradition requests must be submitted either directly or through diplomatic channels to the Ministry of Justice or to the General Prosecutor’s Office, depending on whether the extradition serves the purposes of a criminal investigation or the execution of a sentence against a convict. Specifically, Art. 541(3) CPC provides that the Ministry of Justice is the competent authority for extradition requests related to persons who have been convicted, while the GPO is competent for requests related to persons under criminal investigation.

c) Conditions for the refusal of extradition requests are provided by Art. 546 CPC with additional rules in Art. 43(1) of the MLA Law. Most of these conditions are fully in line with internationally acknowledged principles and thus cannot be considered unduly or unreasonably restrictive. Having said that, the mandatory refusal in case of crimes committed on the territory of Moldova (apparently including transborder/transnational criminality) as well as the extensive interpretation of the *ne bis in idem* principle, extending to cases where national bodies are still investigating the same act for which extradition is requested. As for the latter, broad interpretation, it can be found in Art. 546(2)2

CPC and it seems to contradict Art. 5 of the MLA Law which is based on the usual, traditional scope of the same principle. These features of the extradition regime can indeed be considered unduly restrictive in light of the relevant international standards such as the European Convention on Extradition.

326. *Criterion 39.2* – Both the CPC (Art. 546 (1)) and the MLA Law (Art. 42 (2.a-2.c)) provide that Moldova shall not extradite either its own citizens or persons granted the right to asylum or the status of political refugee. Art. 44 of the MLA Law expressly provides that the refusal of extradition of its own citizen or of the political refugee shall oblige Moldova upon the request of the requesting state, to submit the case to its competent authorities so as to be able to exercise the criminal investigation and the trial should such a need arise. In such case, proceedings in the criminal investigation phase are to be transmitted to the Prosecutor General's Office, while those within the trial phase – to the Minister of Justice. Further rules regarding the transfer of proceedings can be found in Arts. 34 to 38 of the same Law. Meanwhile, however, the CPC rules in Art. 546 (4) that if Moldova refuses extradition for any reason (including own nationals) then, upon the request of the requesting state, only “*the possibility shall be examined*” whether to take over the criminal investigation in regard of the person who is a citizen of Moldova or a stateless person – that is, the CPC only requires considering the possibility to take over the proceedings, which is a merely discretionary provision, in clear contradiction with Art. 44 of the MLA Law.

327. *Criterion 39.3* – Art. 45 of the MLA Law provides that extradition may only be admitted if the act, for which the person whose extradition is requested is accused or convicted, is qualified as a crime both by the law of the requesting state and by the Moldovan law, unless the double criminality requirement is waived by an international treaty to which Moldova is a party. When applying the dual criminality test, the differences between the legal classification and the names given to the respective offences under the two laws are not considered to be relevant.

328. *Criterion 39.4* – Art. 545 of the CPC provides that upon the request of the competent authority of a foreign state extradition may be granted without following the formal extradition procedures if the person consents to simplified extradition and his/her consent is confirmed by the court. If an arrestee consents to his/her extradition under the simplified procedure, submission of the official request for extradition and the documents specified in Art. 542 of CPC shall not be necessary.

Weighting and Conclusion

329. While Moldova meets most of the essential criteria, some conditions for the refusal of extradition requests can be considered unduly and unreasonably restrictive, it is unclear whether and what level of discretion the domestic authorities have in deciding whether to initiate domestic proceedings against own nationals as an alternative to their extradition. ***Recommendation 39 is rated Largely Compliant.***

Recommendation 40 – Other forms of international cooperation

330. In the 2012 MER, Moldova was rated largely compliant for Recommendation 40. The underlying factors for overall conformity were, *inter alia*, an absence of a legal basis for the NBM to sign bilateral agreements (e.g. MoUs) which could facilitate and allow for prompt and constructive exchanges of information directly between counterparts, no explicit legal basis for the NCFM to provide assistance in a rapid, constructive and effective manner to foreign counterparts, to exchange information

directly with foreign counterparts, a lack of legal basis for any sort of international co-operation in relation to supervisory authorities for leasing companies and the Post Office. The lack of statistics also impeded the evaluation of effectiveness of supervisory authorities' international co-operation.

331. *Criterion 40.1* – Moldovan legislation envisages grounds for providing a wide range of international assistance among competent authorities in relation to ML, associated predicate offences and FT, particularly in the AML/CFT Law. The legal assistance is usually provided upon request but exchange of information is also spontaneously possible. It is performed on the basis of reciprocity and in accordance with the AML/CFT Law, international agreements of Moldova and other laws and regulations applicable for the matter. The SPCML, supervision and law enforcement authorities and the CARA have all acquired competence to exchange information and documents in their area with foreign competent authorities.

332. *Criterion 40.2* – The Moldovan competent authorities have an extensive legal basis for international cooperation (in particular Art. 17 AML/CFT Law). No particular impediments exist with regard to the means available for execution of international cooperation requests. The authorities use clear and secure gateways, such as the Egmont Secure Web for international exchange of information; diplomatic channels; Interpol; Europol; and channels dedicated for confidential correspondence. The SPCML maintains formal rules on external requests: an average of five working days is needed if information is already at hand; if this is not the case the deadline may be extended. The safeguards on confidentiality of evidence and information are incorporated in the AML/CFT Law (Arts. 12 and 16) which obliges confidentiality of legal assistance granted to another state.

333. *Criterion 40.3* – Authorities are required to execute international requests on the basis of cooperation agreements and international treaties. MoUs between the SPCML and competent foreign authorities have been concluded by the SPCML. The NBM can execute requests for international cooperation without agreements. The law enforcement authorities may set up JITs with a specific objective and for a limited period of time, which shall be based on a mutual agreement. The Ministry of Internal Affairs has signed bilateral cooperation agreements with competent authorities of various countries to facilitate international cooperation in a number of different areas. There are no strict deadlines provided in the law for negotiating and signing such agreements which might impede timeliness.

334. *Criterion 40.4* – The SPCML, supervision authorities and law enforcement authorities shall, within reasonable terms, present the results of the requests to the provider of the information (Art. 17(7) AML/CFT Law).

335. *Criterion 40.5* – There are various circumstances in which a request for assistance may be refused, but those do not relate to fiscal matters, or secrecy or confidentiality of financial institutions or DNFBPs. The nature or status of the requesting counterpart authority is not relevant for international cooperation. The SPCML may refuse to disclose information in the course of on-going financial investigations or analyses if this would negatively impact the investigation, and, in exceptional circumstances, when such disclosure would be disproportionate to the legitimate interests of a natural or legal person (Art. 17(8) AML/CFT Law). In exceptional cases, the SPCML may refuse to follow the request for information if this would be irrelevant to the purposes for which it was requested, which is a requirement unnecessarily restrictive. Regarding professional secrecy and the use of confidential information, Article 129 (1)(a) of Law No. 129 on Banking Activity establishes that these issues¹²¹ shall not preclude the exchange of information between the NBM and

¹²¹ Further detailed in Articles 126 and 127 of the same Law, respectively

the competent authorities from Moldova or from other states, or between the NBM and the entities¹²² established in Article 129 of the aforementioned Law, whether from Moldova or from other states.

336. *Criterion 40.6* – The use of obtained information after national and international cooperation requests shall be determined in advance. Use of such information for other purposes shall be subject to prior written approval of the SPCML (Art. 17(9) AML/CFT Law).

337. *Criterion 40.7* – The SPCML may execute information requests if they are subject to compliance to the confidentiality requirements as provided in the Moldovan AML/CFT Law (Art. 17(4) AML/CFT Law). Moreover, the Moldovan authorities shall follow the requirements of international agreements on keeping confidentiality of information and documents received as part of the request for international legal assistance. There are mechanisms in place for protection of personal data (Law no. 133/08.07.2011 on personal data protection, Order of the Minister of Justice 358/18.08.2015). As a requesting party, Moldova can inform the requested party for the confidentiality of legal aid application and any attached documents. The SPCML and supervisory authorities may refuse to provide information if the requesting state applies lower standards in the area of AML/CFT (Art. 17(11) AML/CFT Law).

338. *Criterion 40.8* – The SPCML is able to access different sources of information held by other authorities (Art. 17(10) AML/CFT Law). However, law enforcement and supervisory authorities have not acquired this competence.

339. *Criterion 40.9* – Art. 17 of the AML/CFT Law regulates “National and international co-operation” and provides for the legal basis for information exchange, when motivated by suspicions of ML, associated offences and terrorism financing. Article 17(4) of the AML/CFT Law establishes that the SPCML may perform, ex officio or upon request, transmitting, receiving or exchanging information and documents with competent authorities of other jurisdictions, regardless of their status, based on the principle of reciprocity or on co-operation agreements. Article 19(1)(j) lists as one of SPCML functions’ and powers’ the ability to exchange information in the area of prevention of ML and FT with other jurisdictions and international organisations.

340. *Criterion 40.10* – Article 17(7) of the AML/CFT Law specifically covers that, regarding all the information received within international co-operation, the SPCML shall present the provider, within reasonable terms, with detailed information on the outcome of their examination.

341. *Criterion 40.11* –

a) As stated in the previous criterion, Article 17 of the AML/CFT Law establishes that the SPCML can exchange “*information and documents*” on an international level.

¹²² Entities from Moldova or from other states, which include: a) authorities entrusted with the duty of supervising other financial sector entities and the authorities responsible for the supervision of financial markets; b) authorities or bodies charged with responsibility for maintaining the stability of the financial system through the use of macro prudential rules/instruments; c) bodies or authorities entrusted to apply safeguard measures with the goal of protecting the stability of the financial system; d) contractual or institutional protection schemes consisting in an agreement of contractual or legal settlement of the responsibilities protecting the banks and ensuring, in particular, liquidity and solvency to avoid default, where necessary to banks; e) bodies involved in the liquidation and bankruptcy of banks and in other similar procedures; f) auditors of banks, investment firms, insurers and other non-bank financial institutions (Art. 129(1)(a) Law no. 202 on Banking Activity)

b) Article 20 of the AML/CFT Law provides the powers of the SPCML in relation to obtaining information from reporting and other entities and introduces that all these powers shall also be exercised by the Office when dealing with international requests from their foreign counterparts.

Exchange of information between financial supervisors

342. *Criterion 40.12 –*

NBM

343. The NBM is not required to execute foreign requests on the basis of an international agreement. But, according to the Art. 7(11¹) of Law 548-XIII/1995 on the National Bank of Moldova, the NBM may conclude agreements on co-operation and exchange of information with authorities from other states that are empowered with competences in the field of regulation and supervision of the financial and banking sector. Exchange of information shall be circumscribed exclusively to the purpose of performing the tasks that the respective authorities are in charge with, and the information provided by the NBM shall be subject to requirements of keeping the professional secrecy similar to those imposed internally. Art. 36(4)(e) of the same Law stipulates that, notwithstanding professional secrecy, information may be disclosed in the framework of co-operation agreements. The NBM concluded several MOUs with foreign counterparts.

NCFM

344. According to Art. 5 of the Law 192/1998 on the NCFM and Art. 15 of the ‘Regulation on the organisation and functioning of the NCFM’, the NCFM holds the right to cooperate with the appropriate specialised international organisations and to become their member. It may provide assistance and exchange information with regard to the non-banking financial market and its participants, with specialised international organisations and similar authorities from other states, in accordance with the applicable legislation. However, as noted in the 4th Round MER, the Law does not refer to providing assistance in a rapid, effective and constructive manner. There are no mechanisms in place to facilitate the constructive exchange of information.

National Regulatory Agency for Electronic Communications and Information Technology (ANRCETI)

345. The ANRCETI is the supervisor for the post offices. No information on its powers to exchange information with foreign counterparts was provided.

346. *Criterion 40.13 –*

NBM

347. As described in Criterion 40.12, according to Article 7.1 of Law No. 548 on the NBM, the NBM may negotiate bilateral agreements and exchange information, even under certain circumstances when such information is covered by professional secrecy. The current legislation remains silent on the range of information that the NBM is allowed to exchange with their foreign counterparts, and whether the information held by the financial institutions themselves is included under the scope of the provisions. Furthermore, the NBM’s competences to exchange information seem delimited by the requirement to reach punctual agreements with the respective counterpart.

348. However, the NBM states that, while the legislation provides the requirements for information exchange, spontaneous exchange is not forbidden and they are allowed to seek information from counterparts on an informal basis without a formal agreement necessarily in place. This also includes sharing of information held by FIs. On top of that, the NBM points out that, when the

information relates to AML/CFT issues (mainly identification of the UBOs of the banks), given its urgent nature, the exchange typically takes place before a standard agreement is formalised.

NCFM

349. Article 5 of Law No. 198 on the NCFM establishes that the NCFM has the right to provide assistance and to exchange information on the non-banking financial market and its participants with foreign counterparts. Although the reference to “participants” in this provision may be interpreted as if the NCFM can exchange information held by its supervised entities, the general nature of the provision does not specify sufficiently the range of information that may be used in information exchange. The NCFM states that, while no cases have occurred where it was requested to exchange information belonging to entities under its supervision, theoretically this exchange could be established as long as it fulfils the legal requirements related to data protection and secrecy. In order to ensure this, the NCFM would have to review the confidentiality measures of the requesting counterparty.

350. The NCFM has successfully concluded cooperation agreements with counterparts from a number of jurisdictions, including Poland, Italy, Ukraine, Northern Macedonia, Azerbaijan, as well as Member States of the Commonwealth, amongst others.

National Regulatory Agency for Electronic Communications and Information Technology (ANRCETI)

351. The ANRCETI is the supervisor for the post offices. No information on its powers to exchange information with foreign counterparts was provided.

352. *Criterion 40.14 –*

NBM

353. As explained under previous criteria, while the NBM states that, in practice, it shares information on AML/CFT matters, the relevant legal provisions regulating the information exchange in general, do not explicitly regard AML/CFT matters. The information exchange should be circumscribed to the purpose of fulfilling supervisory tasks that the respective authorities are in charge with (prudential and regulatory *i.a.*), and the information provided by the NBM shall be subject to requirements of keeping the professional secrecy similar to the domestic ones. Art. 15(1) of the AML/CFT Law designates the NBM as the AML/CFT supervisor for the reporting entities under their remit, and hence, the AML/CFT information exchange becomes a part of the supervisory functions of the NBM.

NCFM

354. Similarly to the NBM, the legislation regulating the activity of the NCFM provides its competence to provide assistance and to exchange information with regard to the non-banking financial market and its participants, with specialised international organisations and similar authorities from other states, according to the legislation. No reference is made to “supervisory” functions (be it prudential or AML/CFT related). The present assessors endorse the concerns expressed by the previous evaluation team related to the absence of mechanisms in place to facilitate the constructive exchange of information.

National Regulatory Agency for Electronic Communications and Information Technology (ANRCETI)

355. No information on its powers to exchange information with foreign counterparts was provided.

356. *Criterion 40.15 –*

NBM

357. Art. 130(3) of the Law on bank's activity provides that, with the aim of strengthening the stability and integrity of the financial system, the NBM may exchange information with authorities from Moldova or authorities or bodies from other states responsible under law for the detection and investigation of breaches of law regarding joint stock companies and/or the prevention and combating of ML and FT. Corroborated with the legal provisions related to the NBM's ability to perform international information exchange (see previous criterion), this demonstrates the ability to make inquiries on behalf of foreign counterparts. Moreover, Article 115 of the same law specifically provides that the NBM shall conduct, participate or facilitate with the verification of information, either directly or via a financial auditor or expert empowered for that purpose, upon request of a foreign counterpart. When it does not realise the check itself, the NBM shall allow the applicant competent authority or a financial auditor or expert empowered for checking to execute the check. The check relates to a bank, an investment firm, a financial holding company, a mixed financial holding company, a non-bank financial institution, an ancillary services undertaking, a mixed-activity holding company or a subsidiary situated in another state.

358. While Article 103 of Law No. 114 on payment services and electronic money provides for the situations where information related to the non-banking payment services can be disclosed or supplied and to which authorities it can be provided, there are no specific provisions dealing with the ability to conduct inquiries on behalf of foreign counterparts or the authorisation of foreign counterparts to conduct inquiries themselves.

NCFM and ANRCETI

359. No information was provided concerning the competence of the NCFM or ANRCETI to conduct inquiries on behalf of foreign counterparts.

360. Criterion 40.16 –

NBM

361. Law no. 202 on Banking Activity, Art. 128(2), provides that the information received by the NBM from another state shall only be disclosed with the express agreement of the authorities that sent them and, if applicable, for the purposes only which the authorities gave their consent for.

362. In relation to non-banking payment services providers, Article 103(7) of Law No. 114 on payment services and electronic money establishes that, where the professional secret information comes from another state, it may be disclosed or supplied only on the express agreement of the competent authorities which supplied it and, where needed, exclusively for the purpose for which it provided its agreement.

363. No information related to the foreign exchange offices was provided.

NCFM and ANRCETI

364. No information was provided concerning the competence of the NCFM or ANRCETI to conduct inquiries on behalf of foreign counterparts.

Exchange of information between law enforcement authorities

365. *Criterion 40.17* – The law enforcement authorities use channels such as Interpol and Europol for the exchange of information in the course of criminal investigations. This use does not necessarily involve the identification and tracing of assets. Other information exchange channels are MoUs

concluded bilaterally with foreign counterparts¹²³ and multilateral agreements concluded within the Community of Independent States and the Organisation of the Black Sea Economic Cooperation. According to Art. 94 of Law No. 3 of 25.02.2016 on the Prosecutor's Office, the Prosecutor's Office may have direct international relations and conclude contracts and agreements with similar foreign institutions within the limits set by law. Since February 2018, the Asset Recovery Bureau of the National Anticorruption Centre is designated as the CARIN national contact point for executing and requesting foreign requests.

366. *Criterion 40.18* – Moldova has cooperation agreements in place with Eurojust, which facilitate the exchange of information via the secured channel of Eurojust. A number of agreements are in force between Moldova and Interpol and Europol. Within the Ministry of Internal Affairs, a designated contact officer is tasked with liaising between the Ministry and the Interpol and Europol presences in Moldova. Moldovan law enforcement authorities have the power to carry out special investigative measure upon request of international organisations and law enforcement authorities of other countries (Art. 132³ (1) CPC). The police may cooperate with similar bodies from abroad and may be part of international police forces for training missions (Art. 6(4) of Law nr. 94/02.06.2017 on Police). The CS has the ability to cooperate in the exchange of information with foreign counterparts and to execute the international obligations in the area of customs (Art. 8 of Law no. 302/21.12.2017).

367. *Criterion 40.19* – The joint investigation teams are regulated by Article 540² of the CPC. The competent authorities from at least two states may set up, by mutual agreement, a joint investigation team with a specific objective and for a limited period of time, which may be extended by mutual consent of all parties, in order to carry out criminal investigation in one or more of the states that set up the team. The joint investigation team can be set up in the following circumstances: i) within a pending criminal investigation; ii) for criminal investigations requiring coordinated and concerted action in several countries.

368. *Criterion 40.20* – International cooperation on AML/CFT issues is performed based on the mutual assistance principle, cooperation agreements and international treaties to which Moldova is party (Art. 17(1) AML/CFT Law). According to the legal provisions in force, the SPCML may perform the indirect exchange of information for international cooperation, by accessing different sources of information held by other public institutions and entities (Art. 17(10) AML/CFT Law). The information obtained based on international co-operation may be used for other purposes than initially requested, given prior approval of the SPCML (Art. 17(9) AML/CFT Law). No express reference is made in the legislation ensuring that the competent authority that requests information makes it clear for what purpose and on whose behalf the request is made.

Weighting and Conclusion

369. *Recommendation 40 is rated Largely Compliant.*

¹²³ Ten such MoUs have been concluded by Moldova so far.

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	[LC]	<ul style="list-style-type: none"> The deficiencies under R. 26 and 28 have an impact on Moldova's compliance. There are no provisions to ensure approval by senior management (with the exception of entities supervised by NCFM) for policies, controls and procedures on risk management/mitigation of FIs and DNFBPs.
2. National cooperation and coordination	[LC]	<ul style="list-style-type: none"> The national AML/CFT Strategy 2013-2017 is out-dated whereas a new strategy is not yet in place. The mechanism for combating financing of proliferation of WMD does not actively attribute competences to the authorities on export control over proliferation-sensitive goods and technologies.
3. Money laundering offence	[LC]	<ul style="list-style-type: none"> The minimum imprisonment time for the basic ML offence for natural persons is not sufficiently dissuasive. The mild sanctioning regime on the basic ML offence for legal persons is not sufficiently dissuasive.
4. Confiscation and provisional measures	[C]	
5. Terrorist financing offence	[LC]	<ul style="list-style-type: none"> It is not firmly confirmed by courts that the FT offence covers the financing of terrorist organisations and individual terrorists even in the absence of a link to a specific act of terrorist nature. The highest amount of sanction for legal persons for a FT offence does not seem sufficiently dissuasive.
6. Targeted financial sanctions related to terrorism & FT	[PC]	<ul style="list-style-type: none"> There are no explicit legal provisions to appoint and authorize MFAEI (or other authority) for proposing persons or entities to the 1267/1989 and 1988 Committees and to identify targets based on the designation criteria set out in the relevant UNSCRs. There is no clear reflection in the legislation on the evidentiary standard "<i>reasonable grounds</i>" to be applied by competent authorities when making a decision on processing a designation (both on UNSCR 1267 and 1373). There are no explicit legal provisions which would allow the authorities to give effect to actions initiated under the freezing mechanisms of other countries pursuant to UNSCR 1373(2001). There are no legal provisions or procedures, which need to be followed when requesting another country to give effect to the actions initiated under the freezing mechanisms. Deficiencies identified under C.6.2 (c) and (d) have impact on implementing TFS based on UNSCR 1373 as it is

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<p>prescribed in footnote 21 of the FATF Methodology (C.6.4).</p> <ul style="list-style-type: none"> • There is no specific obligation to freeze funds or other assets that are jointly owned or controlled by designated persons. • There is no legal provision to report to competent authorities on attempted transactions. • There are no procedures to submit de-listing requests to the UN sanctions Committees 1267/1989 and 1988 in the case of persons and entities who do not or no longer meet the criteria for designation. • There are no specific legal authorities and procedures or mechanisms to de-list and unfreeze the funds or other assets of persons and entities designated pursuant to UNSCR 1373, that no longer meet the criteria for designation. • There are no specific legal provisions or procedures in place to allow, upon request, review of the designation decision before a court or other independent competent authority. • There are no procedures to facilitate review of the designation by the 1988 Committee, including those of the Focal Point mechanism established under UNSCR 1730. • There are no procedures for informing designated persons and entities of the availability of the of the <i>United Nations Office of the Ombudsperson</i>, pursuant to UNSCRs 1904, 1989, and 2083 to accept de-listing petitions. • There are no publicly known procedures to unfreeze the funds or other assets of the persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism (i.e. a false positive), upon verification that the person or entity involved is not a designated person or entity. • No guidance has been provided to FI and other persons and entities, including DNFBPs, that may hold targeted funds or other assets, on their obligation to respect a de-listing or unfreezing action. • There are no provisions envisaged for application of the relevant measures under C.6.7 for persons designated under UNSCR 1373.
7. Targeted financial sanctions related to proliferation	[PC]	<ul style="list-style-type: none"> • The deficiencies identified under C.6.2 (c) and (d) have impact on the implementation of TFS based on UNSCR 1373. • There are no explicit legal provisions to appoint and authorize a competent authority to identify targets based

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<p>on the designation criteria set out in the relevant UNSCRs.</p> <ul style="list-style-type: none"> • There is no specific obligation to freeze funds or other assets that are jointly owned or controlled by designated persons. • There is no legislation which would require REs to report any undertaken action regarding attempted transactions. • There are no specific procedures which enable or inform listed persons and entities to petition a de-listing request at the Focal Point mechanism established under UNSCR 1730. • There is no publicly known procedure to unfreeze the funds or other assets of listed persons or entities which are wrongly matched. • It is not explicitly provided in law that SPCML's authorisation and formalities to perform payments from the amount of goods subject to restrictive measures is according to the applicable UNSCRs. • No guidance has been provided to REs on their obligations in respect of a listing/de-listing action. • There are no provisions or measures implementing C.7.5.
8. Non-profit organisations	[PC]	<ul style="list-style-type: none"> • The undertaken risk assessments do not identify the subset of organisations that fall within the FATF definition of NPO or features and types of them. • There is no specific domestic measure or <i>ad hoc</i> review aimed at identifying the nature of potential threats terrorist may pose to the NPOs. • There has been no specific review of the adequacy of measures, including laws and regulations that relate to the part of the NPO sector which may be abused for FT support. • There are no measures in place to encourage NPOs to conduct transactions via regulated financial channels beyond having a bank account. • The measures applied to promote effective supervision to NPOs at risk of FT are not fully risk-based. • The monitoring of NPOs' compliance with requirements of R.8 is not risk-based.
9. Financial institution secrecy laws	[LC]	<ul style="list-style-type: none"> • There are no explicit exemptions from confidentiality provisions in relation to NCFM's power to exchange information with competent authorities domestically and internationally. • The lack of clear exemptions from confidentiality clauses in relation to correspondent banking (R.13), wire transfers (R.16) and reliance on third parties (R. 17) impact the

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		compliance of R.9.
10. Customer due diligence	[PC]	<ul style="list-style-type: none"> • The AML/CFT Law does not sufficiently cover certain FIs: insurance/reinsurance brokers are only required to undertake CDD measures when servicing legal entities, while non-bank entities providing foreign exchange trading platforms (Forex brokers) are not subject to the AML/CFT Law at all. • There is no specific requirement to verify the BOs identity based on information or data obtained from a <i>reliable source</i> in case of FEOs. • Banks and non-bank PSPs are not required to obtain the names of <i>all relevant persons</i> having a senior management position in the legal person, while foreign exchange offices are not subject to any of the above requirements. • In case of legal arrangements, the requirement to obtain full names of any person who ultimately exercises effective control does not apply to banks' customers that are natural persons and act in the capacity of trustees. • The identification of BO in case of legal arrangements is limited for non-bank PSPs and FEOs. • For FIs supervised by NCFM, in case of legal arrangements, the requirement to obtain full names of any person who ultimately exercises effective control does not apply to customers that are natural persons and act in the capacity of trustees. • There are no specific requirements to include the beneficiary of an investment-related life insurance or annuity policy as a relevant risk factor in deciding whether to apply enhanced customer due diligence (ECDD) measures apart from checking their PEP status. • Establishing the business relationship prior to verification is allowed even if it is <i>not</i> essential for an uninterrupted conduct of business. • There is no specific requirement to complete verification as soon as reasonably practicable. • There is no specific requirement to adopt risk management procedures concerning situations where the business relationship is established prior to verifying the identity of customers or BOs. • There is no requirement to apply CDD to existing customers at the moment when new national requirements are brought into force on the basis of materiality and risk, and to conduct due diligence on such existing relationships at appropriate times, taking into account whether and

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
		<p>when CDD measures have previously been undertaken and the adequacy of the data obtained.</p> <ul style="list-style-type: none"> • The requirement of C.10.19 does not extend to situations where FIs cannot carry out an on-going monitoring of the business relationship. • There are no legal provisions permitting FIs to not pursue CDD measures where this would tip-off the customer in cases of ML/FT suspicion.
11. Record keeping	[LC]	<ul style="list-style-type: none"> • The record-keeping requirements do not extend to the results of analyses undertaken by FIs in contexts other than identifying complex, unusual large transactions. • Not <i>all</i> supporting documents, data and information in respect of an account are required to be kept, despite NBM's mitigating measure to keep <i>all primary</i> documents. • There is no express requirement in relation to non-banking foreign exchange offices to keep records on occasional transactions sufficiently to permit reconstruction of individual transactions.
12. Politically exposed persons	[PC]	<ul style="list-style-type: none"> • FIs are not required to take reasonable measures to establish the source of wealth (origin of the entire body of wealth) of customers and their beneficial owners identified as PEPs. • The definition of close associates is too limited to cover family members of close associates of all types of PEP. • There is no express obligation to consider filing an STR to SPCML whenever higher ML/FT risks are identified with beneficiaries of investment-related life insurance or their BOs who are PEPs.
13. Correspondent banking	[LC]	<ul style="list-style-type: none"> • There are no requirements relating to C.13.1 which would apply to NBFIs (other than non-banking PSPs) to other relationships similar to cross-border correspondent banking.
14. Money or value transfer services	[C]	
15. New technologies	[LC]	<ul style="list-style-type: none"> • The NRA conducted in 2017 does not contain the assessment of ML/FT risks related to new products and technologies as new payment methods or non-face to face verification systems of customers.
16. Wire transfers	[LC]	<ul style="list-style-type: none"> • There are no regulations which specifically require maintaining the information on the beneficiary of wire transfers. • There are no requirements for intermediary FIs to make sure that the originator and beneficiary information accompanying a cross-border wire transfer is retained

Compliance with FATF Recommendations		
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		<p>with it.</p> <ul style="list-style-type: none"> • There are no requirements for intermediary FIs to keep a record, for at least five years, of all information accompanying a cross-border wire transfer when technical limitations prevent retention of the information with a related domestic transfer. • There is no requirement for MVTS providers which control both the ordering and beneficiary side of a wire transfer to consider all the information from both sides when deciding whether to file an STR, and to report suspicious transfers in an affected country. • Deficiencies identified under R.6 affect FIs' ability to implement targeted financial sanctions.
17. Reliance on third parties	[LC]	<ul style="list-style-type: none"> • FIs are not required to immediately obtain CDD data from third parties, but merely ensure that they are able to do so. • Deficiencies identified under R.10 and R.11 affect the implementation of C.17.1(c). • The guidance given to FIs in determining the level of country risk is limited to ML-related concerns.
18. Internal controls and foreign branches and subsidiaries	[LC]	<ul style="list-style-type: none"> • The requirements to communicate and implement provisions of own programs for prevention of ML/FT do not specifically reflect: the minimum contents the group-wide programs against ML/FT have to contain; and the additional requirements as to what information AML/CFT programmes for branches and subsidiaries have to include.
19. Higher-risk countries	[PC]	<ul style="list-style-type: none"> • There is no express requirement for FIs to apply ECDD measures towards customers from countries for which is called for by the FATF. • There are no provisions that provide for the application of the relevant risk-mitigating countermeasures when this is called for by the FATF or independently, except in one case. • SPCML's list of high-risk countries does not include high-risk and other monitored jurisdictions as identified by the FATF. • Other SPCML documents that call on FIs to consider reports and lists are primarily concerned with ML-related suspicious transactions, and not with CFT.
20. Reporting of suspicious transaction	[C]	
21. Tipping-off and confidentiality	[C]	
22. DNFBPs: Customer due diligence	[PC]	<ul style="list-style-type: none"> • Trust and company service providers (TCSPs) are not designated as reporting entities under the AML/CFT Law. • Auditors providing professional services independently are

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		<p>not required to comply with CDD requirements.</p> <ul style="list-style-type: none"> • Not all financial transactions of gambling operators are covered by the legislation. • Real estate agents are not specifically required to apply CDD measures with respect to both purchasers and vendors of the property. • Lawyers and notaries are not in all cases stipulated in C. 22.1(d) required to apply CDD measures. • TCSPs are not subject to CDD requirements. • There are no sectorial regulations that would require DNFBPs to keep records that would be sufficient to permit the reconstruction of occasional transactions. • Deficiencies identified under Rec. 12 and 17 impact the compliance of C.22.2 and 22.4.
23.DNFBPs: Other measures	[PC]	<ul style="list-style-type: none"> • The deficiencies identified under Rec. 18 and 19 impact the implementation of C.23.2 and 23.2.
24. Transparency and beneficial ownership of legal persons	[PC]	<ul style="list-style-type: none"> • No assessment was conducted on the specific risks associated with each type of legal entities in Moldova, and on how legal entities could be used for ML/FT purposes. • Legal entities are not specifically required to appoint one or more persons who will be accountable to competent authorities for the provision of beneficial ownership information and giving further assistance. • It is unclear how competent authorities (in particular LEAs) have timely access to shareholders data of JSCs. • LEAs have not obtained all the powers necessary to access BO information maintained by the PSA and NCFM. • It is unclear what mechanisms are used to prevent the misuse of nominee directors. • The PSA has no sanctioning power against legal or natural persons for violating requirements on transparency and beneficial ownership under R.24. • Deficiencies identified under Rec. 9 and 40 have an impact on the implementation of c.24.14. • There are no processes in place to monitor the quality of responses received to requests for basic and BO information from abroad, except from within the SPCML regarding other FIUs' responses.
25. Transparency and beneficial ownership of legal arrangements	[PC]	<ul style="list-style-type: none"> • Resident persons, which are not REs (except for lawyers in certain circumstances), may act as trustees of express trusts formed under a foreign law, whilst they are not required to undertake CDD measures and keep BO information. • For trust and service providers (except for lawyers in

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		<p>certain cases) there is no requirement to keep the information referred to in R.25 accurate and up-to-date.</p> <ul style="list-style-type: none"> • There is no requirement on trustees to disclose their status to FIs and DNFBPs. • The deficiency identified in C.24.14 has an impact on the implementation of C.25.6. • There is no direct obligation on a trustee to meet the requirements set out in R.25 (except for lawyers) and thus trustees (except for lawyers) are not subject to a sanctioning regime. • It is unclear what specific criminal, civil or administrative sanctions can be used when competent authorities are not given timely access to information concerning trusts.
26. Regulation and supervision of financial institutions	[C]	
27. Powers of supervisors	[LC]	<ul style="list-style-type: none"> • The wording of the AML/CFT legislation does not sufficiently detail whether on-site inspections performed by the NBM and NCFM cover both prudential supervision and AML/CFT compliance. • Legislation does not explicitly provide for the possibility of all supervisors to compel the production of any information relevant to monitoring compliance with the AML/CFT requirements. • It is unclear whether the powers of SPCML, NBM and NCFM are broad enough to also apply to AML/CFT matters or are just limited for the purpose of prudential supervision.
28. Regulation and supervision of DNFBPs	[LC]	<ul style="list-style-type: none"> • The requirement for directive positions and the chief account to have previous relevant experience and no criminal or judicial records do not expressly cover shareholders. • Deficiencies identified under C.26.3 and C.26.5 impact the implementation of C.28.1(b) and C.28.5.
29. Financial intelligence units	[C]	
30. Responsibilities of law enforcement and investigative authorities	[C]	
31. Powers of law enforcement and investigative authorities	[LC]	<ul style="list-style-type: none"> • There is no operational database to identify in a timely manner whether natural persons hold or control accounts.
32. Cash couriers	[LC]	<ul style="list-style-type: none"> • There is no particular provision implementing C.32.4. • There is no explicit provision implementing C.32.8(a).
33. Statistics	[LC]	<ul style="list-style-type: none"> • It is unclear which agency is responsible for keeping statistics on frozen, seized or confiscated goods.
34. Guidance and feedback	[C]	
35. Sanctions	[C]	

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36. International instruments	[LC]	<ul style="list-style-type: none"> The deficiencies identified under Rec. 3 and 38 impact the implementation of C.36.2. The Merida Convention is not sufficiently implemented.
37. Mutual legal assistance	[LC]	<ul style="list-style-type: none"> There are no legal provisions setting the deadlines or prioritisation of handling foreign MLA requests. The MoJ does not have a case management system for the registration and progress of the execution of foreign requests in place. The wording of the MLA Law on reasons for refusal of MLA is too vague and restrictive. There is a requirement of dual criminality in all MLA cases, regardless of whether coercive actions were involved.
38. Mutual legal assistance: freezing and confiscation	[PC]	<ul style="list-style-type: none"> There are no provisions stipulating expeditious action in response to incoming rogatory letters. There is no particular provision implementing C.38.2. There are no explicit provisions for <i>establishing</i> arrangements for co-ordinating seizure and confiscation actions with other countries. There is limited possibility to repatriate assets found in Moldova in relation to offences committed abroad.
39. Extradition	[LC]	<ul style="list-style-type: none"> The extradition regime is unduly restrictive when it comes to conditions for the refusal of extradition requests, especially regarding the extensive interpretation of the <i>ne bis in idem</i> principle and the mandatory refusal in case of crimes committed in Moldova. It is unclear whether and what level of discretion the domestic authorities have in deciding whether to initiate domestic proceedings against own nationals as an alternative to their extradition.
40. Other forms of international cooperation	[LC]	<ul style="list-style-type: none"> The possibility for the SPCML to refuse to send information if this information is considered irrelevant for the purposes for which it was requested is unnecessarily restrictive. LEAs and supervisory authorities do not have the competence to access different sources of information held by other authorities. The provisions regulating exchange of information by NBM, NCFM and ANRCETI are unclear (C.40.12-40.16). It is unclear whether LEAs are able to use international cooperation channels for the purposes of identifying and tracing assets. There is no express reference in the legislation ensuring that the competent authority that requests information makes it clear for what purpose and on whose behalf the request is made.

GLOSSARY OF ACRONYMS

AML/CFT	Anti-Money Laundering/Combating Financing of Terrorism
ANRCETI	National Regulatory Agency for Electronic Communications and Information Technology
ANI	National Integrity Authority
APO	Anticorruption Prosecutor's Office
BNIs	Bearer Negotiable Instruments
BOs	Beneficial Owners
CARA	Criminal Assets Recovery Agency
CC	Criminal Code of Moldova
CDD	Customer Due Diligence
CFID	Customs Fraud Investigations Department
CIS	Commonwealth of Independent States
CoE	Council of Europe
CPC	Criminal Procedure Code of Moldova
CPI	Corruption Perception Index
CS	Customs Service
CSD	Central Security Depository
DNFBPs Professions	Designated Non-Financial Businesses and Professions
DPMS	Dealers in Precious Metals and Stones
DPRK	Democratic People's Republic of Korea
EAG	EurAsian Group
ECDD	Enhanced Customer Due Diligence
EDD	Enhanced Due Diligence
EMIs	Electronic Money Institutions
ESW	Egmont Security Web
EU	European Union
FATF	Financial Action Task Force
FEO	Foreign exchange office
FIs	Financial Institutions
FIU	Financial Intelligence Unit

FT	Financing of terrorism
FTFs	Foreign Terrorist Fighters
GPO	General Prosecutor's Office
IS	Islamic State
JIT	Joint Investigation Teams
JSC	Joint Stock Companies
LEAs	Law Enforcement Agencies
MDL	Moldovan Lei
MER	Mutual Evaluation Report
MFAEI Integration	Ministry of Foreign Affairs and European
ML	Money Laundering
MLA	Mutual Legal Assistance
MoF	Ministry of Finance
MoI	Ministry of Interior
MoJ	Ministry of Justice
MVTS	Money or Value Transfer Services
NAC	National Anti-Corruption Center
NAR	National Risk Assessment
NBFIs	Non-Banking Financial Institutions
NBM	National Bank of Moldova
NCFM Markets	National Commission for Financial
NPOs	Non-Profit Organisations
NRA	National Risk Assessment
OC	Organised Crime
OCG	Organised Crime Groups
OSCE in Europe	Organisation for Security and Cooperation
PCCOCS	Prosecutor's Office for Combating Organised Crime and Special Causes
PEPs	Politically Exposed Persons
PF	Proliferation Financing
PNG	Persona Non Grata
PPS	Public Prosecution Service
PSA	Public Services Agency

RBA	Risk-Based Approach
REs	Reporting Entities
SAC	State Assay Chamber
SAR	Suspicious Activity Report
SDD	Simplified Due Diligence
STS	State Tax Service
SIS	Security and Intelligence Service
SPCML	Service for Prevention and Fight of Money Laundering
STR	Suspicious Transaction Report
STS	State Tax Service
TCSPs	Trust and Company Service Providers
THB	Trafficking in Human Beings
TFC	Terrorist Financing Convention
TFS	Targeted financial sanctions
UBO	Ultimate Beneficial Owners
UCITS	Collective Investment Undertakings
UN	United Nations
UNSCR Resolution	United Nations Security Council
VTC	Voluntary Tax Compliance
WB	World Bank
WG	Working Group
WMDs	Weapons of Mass Destruction
WTO	World Trade Organisation

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Anti-money laundering and counter-terrorism financing measures

Republic of Moldova

Fifth Round Mutual Evaluation Report

This report provides a summary of AML/CFT measures in place in the Republic of Moldova as at the date of the on-site visit (1 to 12 October 2018). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Moldova's AML/CFT system, and provides recommendations on how the system could be strengthened.