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4th ROUND MUTUAL EVALUATION OF Bosnia and Herzegovina

EXIT FOLLOW-UP REPORT SUBMITTED TO MONEYVAL

**WRITTEN ANALYSIS ON PROGRESS IN RESPECT OF THE CORE AND
KEY RECOMMENDATIONS**

7 September 2020



This progress report was adopted at MONEYVAL's 60th Plenary meeting (Strasbourg, 14 - 18 September 2020). For further information on the examination and adoption of this report, please refer to the Meeting Report of the 60th plenary at <http://www.coe.int/moneyval>.

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LIST OF ACRONYMS USED

AML/CFT	Anti-money laundering and combating financing of terrorism
APMLFT	Administration for the Prevention of Money Laundering and Terrorist Financing
BD	Brčko District
BiH	Bosnia and Herzegovina
BOs	Beneficial Owners
CC	Criminal Code
CDD	Customer Due Diligence
CEPs	Compliance Enhancing Procedures
CFT	Combating the financing of terrorism
DNFBP	Designated Non-Financial Businesses and Professions
EU	European Union
EUR	Euro
FATF	Financial Action Task Force
FBiH	Federation of Bosnia and Herzegovina
FID	Financial Intelligence Department
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
GPO	General Prosecutor's Office
ICTY	International Criminal Tribunal for the Former Yugoslavia, and Other Restrictive Measures
ISA	Insurance Supervision Agency
ICRG	FATF's International Co-operation Review Group
LEA	Law Enforcement Agency
MER	Mutual Evaluation Report
ML	Money Laundering
MLA	Mutual legal assistance
MFA	Ministry of Foreign Affairs
MVTS	Money Value Transfer Service Providers
SAR	Suspicious Activity Report
SR	Special recommendation
STR	Suspicious transaction report
UN	United Nations
UNSCR	United Nations Security Council resolution

Third Regular Follow-up Report of Bosnia and Herzegovina

Application to be removed from the regular follow-up process

Note by the Secretariat

I. Introduction

1. The purpose of this paper is to introduce Bosnia and Herzegovina's (BiH's) third follow-up report to the Plenary concerning the progress that it has made to remedy the deficiencies identified in the 4th round mutual evaluation report ("MER") on selected FATF Recommendations.

Background information

2. At its 48th Plenary meeting (14 to 18 September 2015), MONEYVAL adopted the mutual evaluation report (MER) of BiH under the 4th round of mutual evaluations. As a result of the 4th round MER, 3 FATF Recommendations¹ were evaluated as "compliant" (C), 21 as "largely compliant" (LC), 22 as "partially compliant" (PC), 2 as "non-compliant" (NC) and 1 was "not applicable" (N/A). BiH received the following PC and NC ratings:

<i>4 core Recommendation rated PC</i>
Recommendation 5 (Customer due diligence) Recommendation 13 / Special Recommendation IV (Suspicious transaction reporting) Special Recommendation II (Criminalise terrorist financing)
<i>5 key Recommendations rated PC</i>
Recommendation 3 (Confiscation and provisional measures) Recommendation 23 (Regulation, supervision and monitoring) Recommendation 26 (The FIU) Special Recommendation I (Implement UN instruments) Special Recommendation III (Freeze and confiscate terrorist assets)
<i>14 other Recommendations rated PC</i>
Recommendation 12 (DNFBP – R.5,6,8-11) Recommendation 15 (Internal controls, compliance and audit) Recommendation 16 (DNFBP – R.13-15 and 21) Recommendation 17 (Sanctions) Recommendation 21 (Special attention for higher risk countries) Recommendation 25 (Guidelines and feedback)

¹ It should be pointed out that the FATF Recommendations were revised in 2012 and that there have been various changes. All references to the FATF Recommendations in the present report refer the version of the standards before their 2012 revision.

<p>Recommendation 29 (Supervisors)</p> <p>Recommendation 30 (Resources, integrity and training)</p> <p>Recommendation 31 (National co-operation)</p> <p>Recommendation 32 (Statistics)</p> <p>Recommendation 33 (Legal persons – beneficial owners)</p> <p>Special Recommendation VI (Money or value transfer services)</p> <p>Special Recommendation IX (Cross border declaration and disclosure)</p>
<p>2 other Recommendation Rated NC</p>
<p>Special Recommendation VIII (Non-profit organizations)</p> <p>Recommendation 24 (DNFBP – Regulation, supervision and monitoring)</p>

3. Following the adoption of the 4th round MER, BiH was placed in the expedited follow-up procedure. MONEYVAL requested the Bosnian authorities to present the first expedited follow-up report under the 4th round follow-up process by September 2016.
4. In September 2016, the Secretariat prepared its written analysis on progress made by BiH with respect to Core and Key Recommendations for the examination by MONEYVAL at its 51st Plenary meeting (27-29 September 2016).
5. As a result of the discussion of this analysis, the Plenary concluded that, pursuant to MONEYVAL's revised streamlined rules of procedure for follow-up for the 4th round (Rule 13, last revised in April 2016), BiH was invited to report back on its progress and request exit from regular follow up procedures at the last Plenary in 2019). The Secretariat encouraged an earlier application for exit (e.g. in September 2017 or 2018). In the meantime, BiH was requested to keep the Plenary informed on its progress through the Tour de Table procedure, in particular on the envisaged new CC of the RS, on the amendments to the by-laws related to R.13/SR.IV, and on further measures to address the outstanding deficiencies under R.23.
6. The 59th Plenary concluded that BiH did not yet fulfil the requirements for removal from the 4th round follow-up procedure. Given that only two outstanding deficiencies under SR.III were holding BiH back from being removed from the follow-up process, the Plenary invited the country to address the two outstanding deficiencies and to report back on progress at the 60th Plenary.
7. For the purpose of this report BiH has provided the Secretariat with the relevant information on its progress made.
8. The present analysis focuses only on SR.III and provides an update on all Core and Key recommendations based on the practice followed on applications for removal from the 4th round follow-up procedure. It should thus be understood that only part of the Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) system has been reviewed. Recent information has been included which may potentially impact, so far as it is possible to ascertain in a desk-based review, on the current effectiveness of implementation of the relevant FATF Recommendations.
9. On a general note concerning all desk-based analysis: the procedure is by its nature less detailed and thorough than an MER. Effectiveness aspects can be taken into account only through consideration

of data and information provided by the authorities. It is also important to note that the conclusions in this analysis do not prejudge the results of future assessments, as they are based on information which was not verified through an on-site process and was not, in all cases, as comprehensive as it would have been during a mutual evaluation.

Overview of BiH's Progress

Legislative developments

10. The Council Ministers of Bosnia and Herzegovina adopted a Decision to amend the Ordinance governing the implementation of the UNSCR 1267(1999), 30 June 2020.

Training and awareness-raising

11. According to the information provided in the Annex to this paper the authorities reported that, further to the recommendations made by MONEYVAL, particular attention has been paid to raising awareness among all stakeholders involved in prevention of ML/FT. A CFT/PF conference was organised by the OSCE Mission in BiH, Department of Security Co-operation, in partnership with the Ministry of Security of the BiH between 10 and 11 December 2019. In addition, a series of workshops, trainings and seminars were organised for different institutions in BiH, law enforcement agencies, supervisory bodies, and the private sector. A full list can be found on p. 222-248 of BiH's follow-up report.

II. Review of measures taken in relation to SR.III

Special Recommendation III – Freeze and confiscate terrorist assets (rating PC)

Deficiencies

Deficiency (1): No prescribed procedure to create a national list of terrorists under UNSCR 1373 or to make or to respond to third country requests that meet the criteria set out in UNSCR 1373;

Deficiency (2): Lack of a clear framework for supervision of compliance with the obligations under the current mechanism to freeze funds and assets used for TF and the sanctioning of its potential violations;

Deficiency (3): Insufficient outreach to the private sector and other key stakeholders;

Deficiency (4): Conditions for accessing frozen funds are not fully in line with the requirements of UNSCR 1452;

Deficiency (5): The Consolidated List is not published without delay;

Deficiency (6): Lack of awareness of the existence of the Consolidated List and the related obligations.

Measures adopted and implemented

Deficiency (1): No prescribed procedure to create a national list of terrorists under UNSCR 1373 or to make or to respond to third country requests that meet the criteria set out in UNSCR 1373

12. The assessment team in the 4th round MER of BiH noted that the Ordinance on the Implementation of Restrictive Measures in Support Established by Resolutions of the UN Security Council does not contain any provisions covering the implementation of UNSCR 1373.

13. To address this deficiency BiH has introduced a Decision on implementation of the UNSCR 1373 (2001) (hereinafter – the Decision). According to Article 3 of this Decision based on a reasoned proposal of an authorised body, the Ministry of Security of Bosnia and Herzegovina shall forward to the Council of Ministers of Bosnia and Herzegovina a proposal for passing a Decision on inclusion of a natural person, legal entity or other entity on the list of designated persons, against whom the restrictive measures as referred to in Article 4 of the Law on the Application of Certain Interim Measures for the Efficient Implementation of the Mandate of the International Criminal Tribunal for the Former Yugoslavia, and Other Restrictive Measures (*Official Gazette of Bosnia and Herzegovina*, No. 25/06) (hereinafter: the Law on ICTY) shall apply. Articles 4 and 5 of the ICTY Law provide for types of temporary financial measures under this Law and features of temporary measures.
14. With respect to responding to third country requests, Article 6 of the Decision the Ministry of Foreign Affairs of Bosnia and Herzegovina shall forward to the Ministry of Security of Bosnia and Herzegovina a request of another country to include a natural person, legal entity or other entity on the list of designated persons. In addition, it should be noted that when deciding upon a request, criteria of Article 4 (1) and (2) apply. Therefore, BiH has remedied these deficiencies.

Deficiency (2): Lack of a clear framework for supervision of compliance with the obligations under the current mechanism to freeze funds and assets used for TF and the sanctioning of its potential violations

15. The deficiency is broadly rectified. According to the adopted Decision by the Council of Ministers of Bosnia and Herzegovina, 30 June 2020, (Art.17(2)) amending the Ordinance governing the implementation of the UNSCR 1267(1999), the competent AML/CFT supervisory bodies, institutions and agencies in Bosnia and Herzegovina shall also supervise the implementation of this Decision. However, the amended Decision neither clarifies the monitoring process of compliance with its requirements nor explicitly clarifies whether the provisions of Art.15 and Art.16 of the Law on the Application of Certain Interim Measures for the Efficient Implementation of the Mandate of the International Criminal Tribunal for the Former Yugoslavia, and Other Restrictive Measures (*Official Gazette of Bosnia and Herzegovina*, No. 25/06) (hereinafter: the Law on ICTY), are applicable for violations under the amended Art.17. Regarding with the latter, the Authorities informed that the provisions of Art.15 and Art.16 will be applicable. On that note, as mentioned in the 2015 MER, it should be noted that none of the breaches provided by the Law on ICTY, is however relevant in the context of the framework under SR.III in general.

Deficiency (3): Insufficient outreach to the private sector and other key stakeholders;

16. The deficiency is broadly rectified. Beyond the list of FT-related trainings and workshops carried out for the private sector and supervisory authorities since 2016, the Authorities informed of a CFT/PF conference organised by the OSCE Mission in BiH, Department of Security Co-operation, in partnership with the Ministry of Security of the BiH between 10 and 11 December 2019. The conference covered thematic areas such as the Legislative and Institutional Framework in BiH, and the BiH Obligations Arising from the FATF Recommendations 6 and 7, including the obligation to check the UN consolidated list and the related obligations. Among others, the Conference was attended by representatives of banks operating in Bosnia and Herzegovina, representatives of Entity banking associations, representatives of Entity notary associations, representatives of the Ministry of Foreign Affairs of Bosnia and Herzegovina, representatives of the SIPA Financial Intelligence Department (FID), representatives of the co-organizers, the Ministry of Security of Bosnia and Herzegovina.

17. In line with the aforementioned, the authorities informed of their outreach and training activities programme for 2020 which was interrupted by the pandemic caused by the Covid-19. The authorities also informed that the Programme will restart in September 2020 with an OSCE project on CFT awareness raising which it will be followed by a UNOCT conference in December 2020.
18. Moreover, the authorities mentioned that all training activities mentioned in the list of the provided follow-up report (pg. 222 – 248) include the issue of freezing of funds of listed persons. However, the Secretariat is not in a position to assess these training activities and their impact.

Deficiency (4): *Conditions for accessing frozen funds are not fully in line with the requirements of UNSCR 1452*

19. According to the Amended Decision adopted by the Council of Ministers of Bosnia and Herzegovina (Art.9(4)), 30 June 2020, it can be concluded that the conditions for accessing frozen funds have been brought in line with the requirements of UNSCR 1452. In particular, access to basic expenses is ensured, as the Ministry may approve their use even where the Committee does not issue a negative decision within 48 hours after the receipt of such a request.

Deficiency (5): *The Consolidated List is not published without delay;*

Deficiency (6): *Lack of awareness of the existence of the Consolidated List and the related obligations.*

20. Deficiencies 5 and 6 are of effectiveness nature which were identified by the assessment team during the interviews held with the representatives of the governmental and private sectors. The Secretariat is not in a position to properly assess any measures taken by BiH as this is a desk-based review exercise.

Overall conclusion on SR.III

21. Taking into account the recent legislative developments to comply with the requirements of SR.III, it can be concluded from this desk-based review that **the level of compliance with SR.III has been brought to LC**. However, in light of the country's forthcoming 5th round mutual evaluation, BiH is urged to rectify all effectiveness-related deficiencies outlined in the analysis of SR.III and take all necessary steps in order to comply with requirements of the 2012 FATF Standards (R.6 and R.7).

III. Review of the measures taken in relation to the Core Recommendations rated PC

22. This section sets out the Secretariat's analysis of the progress which BiH has made in relation to the Core Recommendations rated PC.
23. It should be noted that Bosnia and Herzegovina had already taken measures to address some of the deficiencies identified in the 4th round MER. These measures were analysed in the 1st Expedited Follow-up Report (hereinafter – Expedited FUR) and submitted for examination by MONEYVAL at its 51st plenary meeting (27-29 September 2016).

Recommendation 5 – Customer Due Diligence (rating PC)

Deficiencies

Deficiency (1): No mandatory explicit obligation to apply CDD measures to all existing clients;

Deficiency (2): Relevant by-laws (e.g. Decisions and Rulebooks) on application of AML/CFT measures should give more detailed specifications (guidance) to financial sector. Shortcomings in the implementation of beneficial ownership requirements;

Deficiency (3): Lack of guidance and trainings on the application of risk-based approach (simplified and enhanced CDD);

Deficiency (4): Inconsistent implementation of measures to be taken in case of enhanced due diligence (some FI were not entirely clear on the distinction between CDD and ECDD while there was little recognition of reduced or simplified due diligence);

Deficiency (5): Unable to fully measure the effectiveness of implementation of the newly introduced AML/CFT Law.

Measures adopted and implemented

Deficiency (1): No mandatory explicit obligation to apply CDD measures to all existing clients

24. In the 4th round MER of Bosnia and Herzegovina the assessment team identified only one technical deficiency with respect to R.5 which was related to the lack of explicit requirement to apply CDD measures to all existing clients.
25. In order to remedy this deficiency, the BiH authorities adopted changes and amendments to the AML/CFT Law (“Official Gazette No 46/16”). According to Article 4 of the Law on changes and amendments a new paragraph (2) was introduced to Article 6 of the AML/CFT Law which now requires the reporting entities to carry out CDD measures with respect to all existing clients. This deficiency is addressed by BiH.

Deficiency (2): Relevant by-laws (e.g. Decisions and Rulebooks) on application of AML/CFT measures should give more detailed specifications (guidance) to financial sector. Shortcomings in the implementation of beneficial ownership requirements

26. Other identified deficiencies by the assessment team under R.5 are related to effectiveness. It’s worth mentioning that at the time of the Expedited Follow-up report BiH already informed on the measures taken to address this deficiency. In particular it was acknowledged that the authorities made significant efforts by publishing guidelines on the implementation of the AML/CFT Law applicable to all reporting entities, including sectorial guidelines for the insurance and securities sectors (please also refer to paragraph 15 of the Expedited FUR).
27. Following the discussion of the Expedited Follow-up report at the 51st plenary meeting, the BiH authorities during the reporting period continued enhancing the application of AML/CFT measures. As could be seen under Section “Legislative developments” Bosnia and Herzegovina has adopted changes and amendments to different law and by-laws for reporting entities to assist them in implementing AML/CFT requirements. These amendments are aimed at assessing risk, on-going monitoring, appointment of a compliance officer and others AML/CFT matters. These steps clearly show the commitment of BiH to address deficiency and enhance implementation of AML/CFT requirements.

Deficiency (3): Lack of guidance and trainings on the application of risk-based approach (simplified and enhanced CDD)

28. Another effectiveness deficiency that was noted in the 4th round MER of Bosnia and Herzegovina was lack of guidance and trainings on the application of the risk-based approach (simplified and enhanced CDD). In the Expedited FUR it was noted that the BiH regulatory and supervisory bodies in cooperation with the FID (the FIU of BiH) and other national and international organisations dealing with AML/CFT matters have organised a number of specialised training activities for the private sector on the application of the risk-based approach (please refer to paragraphs 16 and 17 of the Expedited FUR).
29. In addition to the measures that had already been taken, for the purpose of this paper BiH provided supplementary information on trainings that were carried out since September 2016. Information on these trainings could be found on pages 19, 225-231, 243-246 of the Annex to the follow-up report. This information clearly shows that BiH is striving to enhance its national AML/CFT system, including the application of AML/CFT requirements by the private sector.

Deficiency (4): Inconsistent implementation of measures to be taken in case of enhanced due diligence (some FI were not entirely clear on the distinction between CDD and ECDD while there was little recognition of reduced or simplified due diligence);

Deficiency (5): Unable to fully measure the effectiveness of implementation of the newly introduced AML/CFT Law.

30. Deficiencies 4 and 5 refer to practical implementation of AML/CFT measures by the private sector. As noted in para 7(b) of Rule 13 of the Rules of procedure for the 4th round MEs effectiveness could be taken into account to the extent possible given the nature of a paper-based “desk-review”. As this is a “desk-based” review exercise, the Secretariat is not in a position to assess to the fullest extent possible the impact of these steps and measures taken by BiH. Considering that the 5th round focuses on effectiveness of national AML/CFT systems and BiH will undergo this exercise, accordingly these steps will be assessed in depth during this evaluation.

Overall conclusion on R.5

31. As noted above BiH had only on technical compliance deficiency which was successfully addressed and four effectiveness deficiencies. BiH took necessary steps to remedy deficiencies 2 and 3. Deficiencies 4 and 5 could not be properly assessed as this is a desk-based exercise. **Nevertheless, BiH has achieved a level of compliance equivalent to LC with R.5.**

Recommendation 13 / Special Recommendation IV

Deficiencies

Deficiency (1): By-laws do not cover funds but rather transactions (R.13 / SR.IV);

Deficiency (2): Large amount of STRs are only reported in the aftermath of supervisory action (R.13);

Deficiency (3): Defensive reporting undermines the quality of STRs and reduces their actual number even further (R.13);

Deficiency (4): Overreliance on CTR reporting in practice leads to disregard of STR reporting (R.13);

Deficiency (5): Subjective test of suspicion is rarely applied in practice, leading to overreliance on list of indicators provided by the authorities (R.13);

Deficiency (6): Lack of STR reporting in relation to TF although high risk of terrorism in the context of BiH (SR.IV);

Deficiency (7): Lack of specific indicators in by-laws contributes to lack of awareness in terms of TF issues among private sector, despite high vulnerability to terrorism (SR.IV).

Measures adopted and implemented

Deficiency (1): By-laws do not cover funds but rather transactions (R.13 / SR.IV)

32. In the 4th round MER it was noted that the definition of “transactions” in Article 3 of the AML/CFT Law was sufficiently broad to cover funds in the absence of transactions. However, subsequent ancillary provisions dealing with reporting still refer to “transactions”, which might create confusion as to the application of this wider reporting requirement. In particular the relevant by-laws, which provide guidance on the practical application of the requirements under the AML/CFT Law, only referred to the reporting of transactions not funds.
33. The BiH authorities informed that this deficiency will be clearly addressed following the adoption of the new AML/CFT Law. Nevertheless, for the purpose of this exercise BiH has not taken any concrete measures to remedy this deficiency. In this regards it remains.

Deficiency (2): Large amount of STRs are only reported in the aftermath of supervisory action (R.13)

Deficiency (3): Defensive reporting undermines the quality of STRs and reduces their actual number even further (R.13)

34. To address these deficiencies in the Expedited FUR it was noted that the FID had provided feedback on the results of its analysis to 41 reporting entities. This included cases in which STRs were submitted only after supervisory activity and should have been submitted earlier. The FID reportedly discussed the issue via above-mentioned feedback with reporting entities and with responsible supervisors. No other additional information was provided by BiH for the purpose of this paper. Nevertheless, it appears that BiH had taken steps to some extent to remedy this deficiency.

Deficiency (4): Overreliance on CTR reporting in practice leads to disregard of STR reporting (R.13)

35. According to the statistics (table 4.1 on page 162 of the Annex to this paper) provided by BiH it could be clearly seen that the reporting entities still mostly rely on CTRs in practice.
36. The BiH authorities noted that the CTR reporting is a technical requirement of the AML/CFT Law and is related to a specific threshold and not a suspicion. Nevertheless, the BiH authorities noted that different activities have been carried out with the reporting entities to improve the quality of STRs. In particular, the authorities pointed out that trainings and workshops were organised in the framework of the IPA 2013 Twinning project.
37. These measures clearly show that the authorities are taking steps to remedy this deficiency. However, this is a desk-based review and the Secretariat is not in a position to assess the impact of these measures on the reporting regime, including the quality of STRs.

Deficiency (5): Subjective test of suspicion is rarely applied in practice, leading to overreliance on list of indicators provided by the authorities (R.13)

38. In the 4th round MER the assessment team noted that the absolute reliance on the list of indicators provided by the authorities leads to a lower number of STRs submitted by reporting entities. Reporting under the premise of a subjective test is barely ever the case as usually when reports are filed the entity only points to the indicators that they see matching the case.
39. To address this deficiency the BiH authorities noted that they had taken measures to raise awareness of obliged entities of their reporting requirements. In particular by carrying out sector-specific trainings, publishing annual reports and the NRA report which all included trends and typologies that could demonstrate how different financial sectors can be misused for ML/TF purposes. Nevertheless, the provided information is very limited as no concrete documents were submitted by BiH to support their statements. Also, it is complicated to assess the impact of all these measures on reporting requirements subsequently STRs quality.
40. Despite the fact that the BiH authorities had taken steps to enhance the STR reporting regime it still questionable whether these measures have a positive impact and also the quality of all these steps.

Deficiency (6): Lack of STR reporting in relation to TF although high risk of terrorism in the context of BiH (SR.IV)

Deficiency (7): Lack of specific indicators in by-laws contributes to lack of awareness in terms of TF issues among private sector, despite high vulnerability to terrorism (SR.IV)

41. The assessment team in the 4th round MER highlighted that there is a serious concern with regard to STR reporting on suspicion of TF. The by-laws issued by the supervisory authorities do not contain any TF related indicators although the country does face TF risks.
42. To address this deficiency the BiH authorities during the reporting period conducted several workshops on CFT issues (please see table 7.1 in the Annex to this paper) to raise awareness of the reporting entities. As a result of these measures according to the statistics provided by BiH banks reported 9 TF STRs in 2016 and in 2017 one TF STR was submitted by a microcredit organisation. It appears that these workshops had a positive impact on TF reporting. Nevertheless, according to the information submitted by BiH there were no TF reporting in 2018 and 2019.
43. Also, it should be noted that TF indicators are provided in the Ordinance on the implementation of the Law on the Prevention of Money Laundering and Financing of Terrorist Activities “Official Gazette of Bosnia and Herzegovina”, number 41/15 (25 June 2015). This clearly shows that BiH is taking remedial steps to address these deficiencies.
44. In addition, BiH informed that process of revision of TF indicators is pending. A list of new indicators was drafted by the FIU with support of ministries of interior of RS, F BiH and BDBiH. Also, these indicators were discussed in the framework of projects IPA 2013 and iPROCEEDS. Once the revision of the TF indicators is finalised the Ordinance will be amended in due course.

Overall conclusion on R.13 / SR.IV

45. Most of the deficiencies identified in the 4th round MER are related to effectiveness. As could be seen from the information provided by BiH, the authorities are taking steps and measures by carrying out trainings and providing guidance to enhance the reporting regime. Nevertheless, as was previously stated effectiveness could be taken into account to the extent possible given the nature of a paper-based “desk-review”. As this is a “desk-based” review exercise, the Secretariat is not in a position to assess to the fullest extent possible the impact of these steps and measures taken by BiH.

Considering that the 5th round focuses on effectiveness of national AML/CFT systems and BiH will undergo this exercise, accordingly these steps will be assessed in depth during this evaluation. Considering the above stated it can be concluded that **BiH has achieved a level of compliance equivalent to LC with R.13 and SR.IV.**

Special Recommendation II - Criminalise terrorist financing (rating PC)

Deficiencies

Deficiency (1): The terrorist financing offences in the four Criminal Codes are not wide enough to encompass the provision of funds to terrorist organisations or individual terrorists other than for the purposes of a terrorist act;

Deficiency (2): Some elements of the treaty offences in the annex to the TF Convention are not covered by the CC BiH and so are not within the ambit of the terrorist financing offence;

Deficiency (3): The legislation is insufficiently clear as to whether the offence of terrorism in the CC FBH, CC RS and CC BD, and therefore the offence of terrorist financing, applies in relation to acts that may cause damage solely to the Entities and Brčko District themselves;

Deficiency (4): The absence of any significant enforcement activity to date in the context of the known risks of terrorist financing, and lack of clarity in some quarters as to the legal framework, raise serious concerns as to effective implementation.

Measures adopted and implemented

Deficiency (1): *The terrorist financing offences in the four Criminal Codes are not wide enough to encompass the provision of funds to terrorist organisations or individual terrorists other than for the purposes of a terrorist act.*

46. In the 4th round MER, it was noted that the TF offences in all four CC are not wide enough to cover the provision of funds to terrorist organisations or individual terrorists other than for the purposes of a terrorist act.
47. In order to remedy this deficiency and bring the TF offences in line with the requirements of SR.II.1 (c) the BiH authorities adopted amendment to the CC of BiH (Article 202), FBiH (Article 202), BD (Article 199) and RS (Article 300).
48. These amendments brought the TF offences of all four in line with criterion SR.II.1(c). This deficiency has been remedied by BiH.

Deficiency (2): *Some elements of the treaty offences in the annex to the TF Convention are not covered by the CC BiH and so are not within the ambit of the terrorist financing offence*

49. As was noted in paragraphs 183-185 of the 4th round MER of BiH some elements of the treaty offences in the annex to the TF Convention are not covered. In particular it was highlighted by the assessors that dispositions of Articles 191, 194 and 198 do not cover some of the requirements of the UN International Convention on the Taking of Hostages, the Vienna Convention on the Physical Protection of Nuclear Material, the Rome Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Rome Convention for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf.

50. At the time of the Expedited FUR the BiH authorities advised that they are preparing changes to the relevant articles in the BiH CC (Art. 191 – Taking of hostages; Article 194 – Illicit Procurement and disposal of Nuclear Material; Article 198 – Endangering the Safety of Air Traffic or maritime navigation or of Fixed Platforms). Nevertheless, no information was submitted by the BiH authorities to confirm whether this deficiency was addressed.

Deficiency (3): The legislation is insufficiently clear as to whether the offence of terrorism in the CC FBiH, CC RS and CC BD, and therefore the offence of terrorist financing, applies in relation to acts that may cause damage solely to the Entities and Brčko District themselves

51. The evaluators further recommended that the authorities should consider confining jurisdiction for all TF offences to the state-level courts. This would bring the legal framework in line with practice. If the Entities and Brčko District (BD) retained jurisdiction for TF offences, then their Criminal Codes would require amendment to address technical deficiencies. The authorities have advised that the implementation of this recommendation would not be in line with the existing constitutional arrangement of BiH.
52. It is worth noting that this deficiency was also analysed during the ICRG² process and discussed in depth at the January 2017 face-to-face meeting (FATF/ICRG(2017)34). At that time, it was noted that this does not seem to comply with the CFT Convention which refers to acts against any government or international organisation. Nevertheless, it was also noted that this aspect is covered by the State-level CC of BiH. In addition the BiH officials confirmed that the state-level courts have jurisdiction over the most serious offences. In practice all terrorism and TF cases have been pursued at the State level. Considering the above stated and conclusion of the ICRG, this deficiency is addressed.

Deficiency (4): The absence of any significant enforcement activity to date in the context of the known risks of terrorist financing, and lack of clarity in some quarters as to the legal framework, raise serious concerns as to effective implementation

53. At an effectiveness level, the authorities were strongly advised to make greater efforts to investigate and prosecute TF, and to provide greater resources to the judicial and prosecutorial authorities for this purpose.
54. The BiH authorities provided statistics (pages 142-143 of the Annex to the follow-up report) that during the period 2016 – 2019 12 indictments were issued which are related to crimes of organising terrorist groups, public incitement to terrorist activities, recruiting for terrorist activities, illegal forming and associating to foreign para-military or para-police formations, crimes of terrorism, and crimes related to terrorist activities.
55. According to the information provided by BiH the Prosecutor's Office carries out checks on the financial component in each specific case, i.e. in all 12 cases related to the financing of terrorist activities in relation to the criminal offenses of terrorism and departure to foreign battlefields. However, no evidence was found. In addition, the BiH authorities highlighted that on February 27, 2019, the Chief Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina issued Mandatory

² Bosnia and Herzegovina was referred to the ICRG process in April 2015 by MONEYVAL due to a lack of progress since the adoption of the 3rd round MER. Following this referral, the ICRG identified strategic deficiencies for the Action Plane among the deficiencies from the 3rd round MER. In addition, the ICRG noted that identifying strategic deficiencies does not mean that there are no other AML/CFT deficiencies of less importance.

Instructions regarding the conduct of a financial investigation in certain cases of corruption, organised crime and money laundering and in any other case where there is a basis for conducting a financial investigation.

Overall conclusion on SR.II

56. According to the information provided by BiH it can be concluded that some of the deficiencies were remedied. In particular, all four CC were brought in line with SR.II.1(c), additional explanations were provided to clarify whether the terrorism and TF offences in the CC FBiH, CC RS and CC BD, and apply in relation to acts that may cause damage solely to the Entities and Brčko District themselves. Nevertheless, there are still some issues related to treaty offences in the annex to the TF Convention. This deficiency does however not prevent the conclusion that **BiH has achieved a level of compliance equivalent to LC with SR.II.**

IV. Review of the measures taken in relation to the Key Recommendations rated PC

57. This section sets out the Secretariat's analysis of the progress which BiH has made in relation to the Key Recommendations rated PC.

Recommendation 3 – Confiscation and provisional measures

Deficiencies

Deficiency (1): The confiscation of instrumentalities is subject to imprecise conditions in most cases;

Deficiency (2): The continued application of high evidential standards by the courts in some parts of the country means that the number of confiscation orders remains low overall;

Deficiency (3): Limited use of provisional measures means that a high proportion of confiscation orders cannot be enforced;

Deficiency (4): Value based confiscation is not being applied sufficiently.

Measures adopted and implemented

Deficiency (1): *The confiscation of instrumentalities is subject to imprecise conditions in most cases*

58. The evaluation in the 4th round MER found that the confiscation of instrumentalities was subject to imprecise conditions in most cases. In this regard the authorities were advised to review the overly vague conditions attached to the confiscation of instrumentalities.

59. The BiH authorities have introduced amendments to CC of BiH (Article 74(1)), CC of RS (Article 82), CC of FBiH (Article 78(1)) and CC of BD (Article 78) which allowed confiscation of instrumentalities at all level without being dependent on any specific conditions. These provisions are in line with the requirements of R.3.

Deficiency (2): *The continued application of high evidential standards by the courts in some parts of the country means that the number of confiscation orders remains low overall*

Deficiency (3): *Limited use of provisional measures means that a high proportion of confiscation orders cannot be enforced*

Deficiency (4): Value based confiscation is not being applied sufficiently

60. Other deficiencies identified by the assessment team are related to effectiveness. As was previously stated effectiveness could be taken into account to the extent possible given the nature of a paper-based “desk-review”. As this is a “desk-based” review exercise, the Secretariat is not in a position to assess to the fullest extent possible steps and measures taken by BiH. Considering that the 5th round focuses on effectiveness of national AML/CFT systems and BiH will undergo this exercise, accordingly these steps will be assessed in depth during this evaluation.

Overall conclusion on R.3

61. BiH has taken measures to remedy the technical deficiencies. With respect to effectiveness deficiencies as this is a “desk-based” review exercise, the Secretariat is not in a position to assess steps and measures taken by BiH. **Nevertheless, BiH has achieved a level of compliance equivalent to LC with R.3.**

Recommendation 23 – Regulation, supervision and monitoring (rating PC)

Deficiencies

Deficiency (1): Legal uncertainty about the supervisory functions in relation to the brokerage activities of the banks;

Deficiency (2): Failure to include criminal associates into the scope of the measures aimed at prevention of criminals from holding a controlling interest or management function in financial institutions;

Deficiency (3): The requirements of criterion 23.3 in relation to the leasing activities are not met;

Deficiency (4): No clear requirements for clean criminal records in relation to the Directors and the Management Board of banks registered in RS;

Deficiency (5): The measures to prohibit persons with a criminal record from being shareholders or board members of securities intermediaries does not extend to all criminal liabilities;

Deficiency (6): Lack of requirement for professional qualifications and expertise of the directors and senior managers for investment funds;

Deficiency (7): No licencing or registration requirements the FI referred to in EC 23.7;

Deficiency (8): Lack of effective on-going supervision and monitoring in the non-banking financial institutions;

Deficiency (9): Effectiveness concerns in relation to the threshold approach in licensing in the banking and securities sector.

Measures adopted and implemented

Deficiency (1): *Legal uncertainty about the supervisory functions in relation to the brokerage activities of the banks*

62. The assessment team found out that there is a legal uncertainty in application of the AML/CFT Law and the entities banking laws in relation to the brokerage activities undertaken by the banks. It was also noted that during the on-site interviews this legal uncertainty was confirmed by both the representatives of banks and some of the authorities.
63. No relevant action appears to have been taken to clarify the legal uncertainty about the supervisory functions in relation to the brokerage activities of banks, for which the AML/CFT Law of BiH and the Banking Agencies Laws of FBiH and RS appoint different supervisors (the Securities Commissions from FBiH, RS and BD according to the former; and the Banking Agencies of FBiH and RS according to the latter).

Deficiency (2): Failure to include criminal associates into the scope of the measures aimed at prevention of criminals from holding a controlling interest or management function in financial institutions

Deficiency (3): The requirements of criterion 23.3 in relation to the leasing activities are not met

Deficiency (4): No clear requirements for clean criminal records in relation to the Directors and the Management Board of banks registered in RS

Deficiency (5): The measures to prohibit persons with a criminal record from being shareholders or board members of securities intermediaries does not extend to all criminal liabilities

64. In the 4th round MER the assessment team determined that criminal associates are not covered by measures aimed at prevention of criminals from holding a controlling interest or management function in financial institutions. In particular the assessment team noted that the leasing market entry procedures in FBiH and RS are silent on requirements to prevent criminals or their associates from holding or being the beneficial owners of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils, etc. Also, it was noted that there are no other requirements in place to prevent criminals and their associates from owning of significant or controlling interest in microcredit organisations of the FBiH. In addition, the assessment team highlighted that in the securities market of FBiH, RS and BD there is no prohibition related to criminal associates.
65. In the Expedited FUR it was noted that the RS authorities have advised that certain recommended actions in relation to prevention of criminals from controlling securities institutions were addressed by amendments to the Law on investment funds (*Official Gazette RS*, 92/06 and 82/15) and by the newly adopted Ordinance on issuing a permit for acquiring a qualified share in investment funds management company of RS (*Official Gazette RS*, 105/15). However, upon analysis of these amendments it didn't seem that they extend the scope of the prohibition to conduct business with securities to all crimes nor create a prohibition related to criminal associates.
66. In addition, with respect to FBiH the "Law on Changes and Amendments to the Law on Securities Market" was adopted and entered into force on 13 April 2017. These amendments contain provisions on prohibition against criminals and their associates from holding a significant or controlling share.
67. With respect to BD according to Article 36b (2) and (4) and Article 3 of the Law on Securities Market it is prohibited for criminals and their associates from holding a significant or controlling share in the securities market intermediaries.

68. Considering the above it can be concluded that BiH has addressed the identified deficiencies to a large extent.

Deficiency (6): Lack of requirement for professional qualifications and expertise of the directors and senior managers for investment funds

69. The 4th round evaluators further concluded that there was a lack of requirements for professional qualifications and expertise of directors and senior management of investment funds in FBiH, RS, and BD.

70. With respect to the RS, this has been remedied through Article 10 of the Act on Changes and Amendments to the Investment Fund Act of the RS (*Official Gazette RS*, 82/15, 06.10.2015), which introduced a new Article 27a which sets out requirements for the professional qualifications and expertise of directors and senior management of investment funds.

71. In March 2017 the FBiH adopted the Law amending the Law on Investment Funds, which came into force on 13 April 2017. Article 3(2)a establishes professional qualifications and expertise of the directors and senior management of the investment funds and sets out appropriate standards on the basis of fit and proper criteria.

72. The deficiency with respect to the BD is addressed through Article 27 of the Law on Investment Funds of the Brčko District of BiH, which sets out requirements for the professional qualifications and expertise of directors and senior management of investment funds. Pursuant to Article 27 (2), the BD Securities Commission issued the „Rule Book on conditions for performing the duties of the management members of the company for management of investment funds”, which elaborates on requirements for professional qualifications and expertise.

73. Considering the above stated it can be concluded that BiH has addressed this deficiency.

Deficiency (7): No licencing or registration requirements the FI referred to in EC 23.7

74. In the 4th round MER the assessors noted that the prohibition on carrying out certain occupations does not ensure that the types of activities (receiving and/or distributing money or property for humanitarian, charitable, religious, educational or social purposes; transfer of money or values; factoring, forfeiting; safekeeping, investing, administering, managing or advising in the management of property of third persons; issuing, managing and performing operations with debit and credit cards and other means of payment; issuing financial guarantees and other warranties and liabilities; giving loans, crediting, offering and brokering in the negotiation of loans) are adequately subject to licencing or registration.

75. However, BiH has not yet addressed this deficiency by introducing licencing and regulation provisions for FIs not covered by Core Principles.

Deficiency (8): Lack of effective on-going supervision and monitoring in the non-banking financial institutions

76. The assessment team in the 4th round MER identified two effectiveness deficiencies. One of these deficiencies was related to a lack of on-going supervision and monitoring of the non-banking financial institutions.

77. In order to remedy this deficiency, the BiH authorities provided statistics (pages 57-58, 181-182 and 185-186 of the Annex to this paper) on on-site inspections conducted in 2016-2019 with respect to non-banking financial institutions. According to this information it could be seen that some steps have been taken to conduct on-site inspections to MCOs and leasing companies. However, based on this information it is not clear whether other non-banking financial institutions are covered by on-site inspections.
78. Also, the BiH authorities provided information on the RS on-site to insurance and securities sectors. However, it is not clear whether the on on-site inspections to non-banking financial institutions are carried out in the FBiH and BD.
79. This deficiency is addressed to some extent.

Deficiency (9): Effectiveness concerns in relation to the threshold approach in licensing in the banking and securities sector

80. In the 4th round MER it was noted that the threshold approach in licensing in the banking and securities sectors may result in unregulated capital increase, deliberately with a purpose to avoid fulfilment of the requirements set in the legislation.
81. No information was provided by BiH to address this deficiency.

Overall conclusion on R.23

82. BiH has addressed most of the deficiencies identified by the assessment team in the 4th round MER. However, some technical deficiencies still have not been addressed. As for the effectiveness it should be noted that as this is a “desk-based” review exercise, the Secretariat is not in a position to assess to the fullest extent possible steps and measures taken by BiH. Considering that the 5th round focuses on effectiveness of national AML/CFT systems and BiH will undergo this exercise, accordingly these steps will be assessed in depth during this evaluation. **Nevertheless, BiH has achieved a level of compliance equivalent to LC with R.23.**

Recommendation 26 – the FIU (rating PC)

Deficiencies

Deficiency (1): The FIU does not publicly release periodic reports including trends and typologies;

Deficiency (2): Dissemination procedure regarding cases referred to entity and cantonal level law enforcement agencies could not be assessed;

Deficiency (3): Doubts whether in practice the FID has timely access to all necessary administrative, financial and law enforcement information and data held on an entity level;

Deficiency (4): Lack of adequate IT system to allow in-depth analysis;

Deficiency (5): Lack of explanations in relation to statistics undermines assessment of effectiveness.

Measures adopted and implemented

Deficiency (1): The FIU does not publicly release periodic reports including trends and typologies

83. In the 4th round MER the assessment team noted that the FID does not publish reports on trends and typologies.
84. To address this deficiency the BiH authorities informed that the FID annually publishes reports which contain trends, typologies and sanitised cases (www.sipa.gov.ba). However, on the SIPA's website only one report could be found which was published in July 2015. This is a first semi-annual report for the period January – June 2015 which contains data on transaction reporting by obliged entities and on the FID's analytical and investigative activities and international cooperation. It also contains a section on trends and typologies although these are limited to ML and do not treat TF (with the exception of one case example), despite the TF risks that the country is increasingly exposed to in recent years. No other annual reports have been published for recent years.
85. Considering the above stated it can be concluded that the deficiency is addressed to a lesser extent.

Deficiency (4): Lack of adequate IT system to allow in-depth analysis

86. The BiH authorities informed that in the framework of EU IPA 2013 Twinning Project „Support of the fight against money laundering“, some of the activities were aimed at upgrading the AMLS (IT system), which is to be fully used by the end of November 2019. Upgraded AMLS will significantly improve analysis process. In particular this upgrade will allow:
- using the modern version of Oracle and Enterprise which offer direct connection of analyst notebook to programmes such as i2;
 - Direct electronic communication with all obliged entities both directions with all needed attachments;
 - Access to external databases;
 - “REPORT” function – providing results of checks of all databases for one entity by one click;
 - Visualisation of links between entities;
 - Export to excel data needed for analyses.

87. This clearly shows that the FID has the necessary IT tools to conduct in-depth analysis.

Deficiency (2): Dissemination procedure regarding cases referred to entity and cantonal level law enforcement agencies could not be assessed

Deficiency (3): Doubts whether in practice the FID has timely access to all necessary administrative, financial and law enforcement information and data held on an entity level

Deficiency (5): Lack of explanations in relation to statistics undermines assessment of effectiveness

88. The assessment team identified these deficiencies in the 4th round MER of BiH which are of an effectiveness nature, as this is a “desk-based” review exercise, the Secretariat is not in a position to assess to the fullest extent possible steps and measures taken by BiH. Considering that the 5th round

focuses on effectiveness of national AML/CFT systems and BiH will undergo this exercise, accordingly these steps will be assessed in depth during this evaluation.

Overall conclusion on R.26

89. With respect to deficiencies under R.26 the BiH authorities have taken steps to remedy them to a large extent. However, it should be noted that some of the deficiencies are related to effectiveness and cannot be assessed to the fullest extent possible. **Nevertheless, BiH has achieved a level of compliance equivalent to LC with R.26.**

Special Recommendation I – Implement UN instruments (rating PC)

90. See analysis under SR.II and SR.III as deficiencies in these recommendations are also applicable to SR.I.

V. Conclusions

91. Since the adoption of the 4th round MER of Bosnia and Herzegovina at the 48th MONEYVAL's Plenary (Strasbourg, 14-18 September 2015) the authorities took significant steps and adopted relevant amendments to address deficiencies that are related to the Core and Key Recommendations which were rated "partially compliant".
92. In particular on the Core Recommendations BiH has taken the necessary steps to achieve a level of compliance equivalent to LC with R.5, SR.II and R.13/SR.IV. With respect to the Key Recommendations BiH has achieved a level of compliance equivalent to LC with R.3, 23, 26 and SR.I. This has already been acknowledged by the Committee at previous plenary meetings.
93. With the adoption of Decision to amend the Ordinance governing the implementation of the UNSCR 1267, the level of compliance with SR.III has been brought to LC, based on a desk-based review. In light of the jurisdiction's 5th forthcoming round mutual evaluation, BiH is urged to rectify all effectiveness-related deficiencies outlined in the analysis of SR.III and take all necessary steps in order to comply with requirements of the 2012 FATF Standards (R6 and R.7).
94. The Secretariat proposes that the MONEYVAL Plenary invite the authorities to pay closer attention to the outstanding minor gaps identified under key and core Recommendations. Furthermore, in view of the country's forthcoming fifth round mutual evaluation, the BiH authorities should be encouraged to continue their endeavours to enhance preventive measures to combat ML/FT, and intensify their planned actions in terms of guidance, training and supervision. This will put BiH in a stronger position to demonstrate effectiveness.
95. Overall, it is the view of the MONEYVAL Secretariat that BiH has taken sufficient steps to remedy deficiencies under core and key Recommendations rated PC. Consequently, the Secretariat considers that BiH fulfils the conditions under Rule 13, paragraph 4 for removal from the follow-up process.

The MONEYVAL Secretariat

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