



Anti-money laundering and counter-terrorist financing measures **MONACO**

Fifth Round Mutual Evaluation Report

December 2022



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 summarises the anti-money laundering and counter-terrorist financing (AML/CFT) measures in place in the Principality of Monaco as at the date of the on-site visit from 21 February to 4 March 2022. It analyses the level of compliance with the 40 Recommendations of the Financial Action Task Force (FATF) and the level of effectiveness of Monaco's AML/CFT system, and provides recommendations on how this system could be strengthened.

Key findings

- a) The authorities of Monaco base their understanding of ML risks on the results of NRA 2, according to which obtaining property by deception/scamming, corruption and VAT and income tax evasion are the main ML predicate offences. However, some ML risks have not been adequately explored. The understanding of TF risks needs to be improved. An action plan has been developed on the basis of NRA 1 in the light of the risks identified, and some measures have been implemented effectively. The authorities appear to co-operate effectively at the operational level.
- b) The investigating authorities have mostly indirect access to financial intelligence and other information which they use to find evidence and locate proceeds of crime related to ML, TF and associated offences. SICCFIN (Financial Channels Supervisory and Monitoring Service) plays a central role in the financial intelligence system. Most STRs come from banks; the contribution from professionals in other at-risk sectors is still limited. SICCFIN and the GPO endeavour to provide support and practical guidance to persons subject to their authority. SICCFIN also develops strategic products; however, some major issues have not undergone any special analysis.
- c) The number of ML investigations is still modest, primarily due to an inadequate number of parallel financial investigations. Investigations and prosecutions are partially in line with most aspects of Monaco's risk profile, but gaps remain with regard to complex cases. To a certain extent, Monaco has demonstrated its ability to secure convictions for ML involving proceeds of crime generated abroad and stand-alone ML convictions, but this does not cover ML acts committed by third parties, which is a significant deficiency given Monaco's status as an international centre. The sanctions that have been put in place are proportionate but not effective or dissuasive, and they have only been imposed once.
- d) Monaco has made efforts over the last few years to improve effectiveness in relation to asset recovery which have led to an increase in the implementation of provisional measures. However, the number of confiscation measures ordered is still very low and they do not concern property of corresponding value or property held by a third party. The confiscations achieved are not in line with Monaco's ML risk profile.
- e) There have been no convictions or prosecutions for TF in Monaco, which appears to be consistent with the country's risk profile to a certain extent. The country's authorities have undertaken TF training but lack specific procedures in this area and have been unable to demonstrate their full capacity to identify potential cases of TF. The only relevant investigation, which is still ongoing, has been dealt with as a matter of priority

by the authorities, who have explored various aspects of the case. Co-operation between competent authorities appears to be adequate; however, the lack of information-sharing with the French customs authorities is proving to be a major deficiency in practice.

- f) Overall, Monaco's legal framework is appropriate for the implementation of TF/PF-related TFS at the international, European and national levels. The new system is beginning to demonstrate its effectiveness. However, delays were observed in the transposition of designations until May 2021, and this is having an impact on the mechanism's effectiveness. Although large FIs have a satisfactory understanding of their obligations in relation to TF/PF-related TFS, the implementation of this system needs to be improved for smaller FIs and for DNFBPs. As for the non-profit sector, a key milestone was reached when the first sector risk assessment was formalised on 25 February 2022.
- g) FIs have a knowledge of the main ML risks in Monaco, which are mentioned in NRA 2, though few were able to explain more specifically those related to the characteristics of their client portfolios or activity profile. All FIs implement identification and identity verification measures when forming relationships and perform ongoing due diligence on the business relationship for its entire duration. The existence of regulatory deficiencies in relation to beneficial owners and PEPs creates weaknesses which affect all financial and non-financial sectors. The implementation of measures to freeze assets and economic resources is satisfactory on the whole, but varies from sector to sector.
- h) The effectiveness of market entry controls is good overall, if variable from sector to sector. The three supervisors' understanding of the risks associated with the majority of FIs and DNFBPs under their supervision is deficient. While the on-site inspections carried out by SICCFIN appear to be adequate, they have only been carried out on the basis of a risk-based approach since recently (2019). SICCFIN's Supervision Unit suffers from a significant shortage of human resources and IT tools suitable for its tasks. Over the period under review, Monaco's supervision policy was more similar to AML/CFT obligation awareness-raising than to supervision in line with international standards including the use of sanctions.
- i) The authorities' understanding of ML/TF risks associated with legal persons and legal arrangements is fairly satisfactory as far as activities pursued by different forms of companies are concerned, but is still limited in relation to the way in which legal persons are or may be misused for ML/TF. In the great majority of cases, the authorities have access via public registers to basic information on commercial companies. With regard to beneficial owners, the authorities access information held by FIs and DNFBPs by making requests while waiting to be able to view it in the RBO (Register of Beneficial Ownership) or the RdT (Register of Trusts), which are in the process of being completed. Most sanctions in relation to obligations to declare information, including with regard to changes, are not dissuasive and are rarely imposed.
- j) Although the law enforcement authorities endeavour to fulfil requests for MLA in a satisfactory manner, a large number of major and unusual legislative obstacles impede Monaco's international co-operation. Competent authorities seek co-operation from foreign counterparts to a certain extent, though this is limited in the light of the

jurisdiction's risk and context. SICCFIN's response times when replying to its counterparts are inappropriate in a financial intelligence context. Police co-operation is adequate, but the shortcomings in relation to identification of beneficial owners have an impact in practice. Co-operation in relation to supervision is still modest at this stage.

Risks and general situation

2. Monaco faces a significant ML risk originating mainly from external threats. This is due to the proportion of internationally oriented financial activities that offer a wide range of products and financial services, including in relation to wealth management. In addition, real property and the trade in property of high value, especially luxury items, are important sectors of Monaco's economy. In addition, NRA 2 indicates that obtaining property by deception or scamming¹ in its widest sense (including fraud, misappropriation, forgery and use of forged documents with intent to defraud and embezzlement) is the main ML predicate offence, ahead of corruption and trafficking in influence.²
3. Monaco, which is renowned for its safety, faces a low risk of terrorism. However, the authorities do not rule out this risk as they believe that the threat of terrorism has spread to the whole of the western world. As regards the TF risk, in view of Monaco's status as an international financial place, NRA 2 reasonably mentions the likelihood that funds may be raised abroad to finance attacks in other countries by exploiting Monaco's financial system.

Overall level of effectiveness and technical compliance

4. The effectiveness of Monaco's AML/CFT system is uneven. The vulnerabilities of FIs and DNFBPs are well understood by the authorities, but the risk analysis requires improvements. The outcomes achieved in relation to ML investigations and prosecutions, confiscation of proceeds of crime and international co-operation are inadequate. More satisfactory outcomes have been achieved in the areas of TF investigations and prosecutions, the use of financial intelligence and other information, the transparency of legal persons, and the application of targeted financial sanctions TFS. However, significant improvements are needed to strengthen supervision and the implementation of preventive measures (especially for DNFBPs).

5. In terms of technical compliance, Monaco has widely implemented FATF's six main Recommendations³ with the exception of TFS. It has a robust legal framework in relation to preventive measures applied by FIs and DNFBPs. However, some technical improvements need to be made in terms of supervision and transparency of legal persons, and to a lesser extent, the legal provisions concerning international co-operation.

Assessment of risk, co-ordination and policy setting (Chapter 2; IO.1; R.1, 2, 33 & 34)

6. Monaco has done a considerable amount of work to identify the ML/TF risks to which it is exposed. A second national risk assessment was adopted in 2021 (NRA 2). However, further analysis is needed regarding some sectors (casino, CSPs, trusts and virtual assets) and threats

¹ crimes of dishonesty

² NRA 2021, p. 143

³ R.3, R.5, R.6, R.10, R.11, R.20

(organised crime, external threats). The authorities' understanding of ML/TF risks is also limited by a lack of information, particularly on the financial flows into and out Monaco, which impact the relevance of some findings in NRA 2.

7. An action plan following NRA 1 was developed in the light of the risks identified, and some measures have been effectively implemented. The national AML/CFT/CFP Strategy following on from NRA 2 was adopted by the government on 26 January 2022 and includes some measures designed to reallocate resources based on risks. However, the Strategy does not address the risks identified *per se*. Furthermore, due to its recent adoption, resource reallocation had not been implemented at the time of the on-site visit. Lastly, the authorities have not yet finished developing an action plan on the basis of this Strategy, whose measures have not yet been quantified, targeted or prioritised.

8. Various liaison committees and contact groups facilitate communication and co-operation between the authorities in relation to AML/CFT at the operational and strategic levels. Co-operation and co-ordination in relation to proliferation did not appear to have been taken into account in the existing mechanisms. However, a new Co-ordination and Follow-up Committee for the National Strategy for Tackling ML/TF, Proliferation of Weapons of Mass Destruction and Corruption (hereafter Co-ordination Committee), where the competent authorities are well represented, was established a few days before the on-site visit.

Financial intelligence, ML and confiscation (Chapter 3; IO.6-8; R.3, 4, 29-32)

Use of financial intelligence

9. The investigative authorities have mainly indirect access to financial intelligence and other relevant information which they use during investigations. Information held by regulated persons is obtained with a certain delay. SICCFIN is a key source of financial intelligence; however, the authorities do not seem to consult it extensively during their investigations.

10. The GPO receives and uses of reports sent by SICCFIN, which produces in-depth and high-quality operational analyses. The investigative authorities welcome the improvement in reports from SICCFIN. Over the period under review, there were some cases where financial intelligence – most of it originating from reports from SICCFIN – led to successful ML investigations and prosecutions.

11. Suspicious transaction reports (STRs) mainly come from the financial sector, particularly from banks. The contribution from professionals in risk sectors is still limited. The authorities report that the quality of the STRs has improved, particularly from certain sectors (banks, casinos and chartered accountants); however, they also talk of some outstanding problems, particularly in the non-financial sector. Considerable delays in the filing of STRs were noted by the assessment team (AT) following the on-site interviews. The authorities have not taken commensurate measures to address this issue.

12. SICCFIN suffers from a significant lack of human and technological resources. Despite this, it produces strategic material, which is a widely used by the regulated entities, particularly on understanding the ML risks. However, some major problems (such as delays in the submission of STRs and risks relating to TF) have not been the subject of a strategic analysis by SICCFIN.

Investigation and prosecution of ML

13. The number of prosecutions for ML is low due to significant delays in the progress of investigations. This lack of progress is partly due to delays in obtaining mutual legal assistance

from other countries, coupled with inherent issues in Monaco's system (particularly with regard to the limited investigating powers of the Prosecutor General (PG) and, to a lesser extent, the Financial Investigations Section (SEF), as well as the lack of time limits for filing an appeal). In addition, there are no written policies or procedures for the prioritisation of investigations based on risks, nor any guidelines on the processing of ML investigations.

14. Investigations and prosecutions are only partly consistent with most aspects of Monaco's risk profile, with particular shortcomings in respect of complex cases. The number of convictions is very low. This is the result both of the low number of prosecutions and of a modest conviction rate deriving from evidentiary difficulties. Although an ML presumption mechanism was established in 2018, to date its use has been very limited, with only one conviction handed down in reliance on the presumption since its introduction. There have been no convictions for third-party ML or in complex cases involving legal persons.

Confiscation

15. Monaco has made efforts to improve effectiveness in asset recovery. However, there is no strategy or official policy in place. With regard to ML, as a result of the low number of convictions, very few confiscation orders have been made. Furthermore, none of the orders covers property of equivalent value or property held by third parties. As to the proceeds of predicate offences, powers of confiscation are limited and there are no visible results in practice.

16. Provisional measures are implemented, but only to a modest extent. This is mainly due to the difficulties and delays in identifying and locating assets and implementing provisional measures, as a result of the GPO's limited powers. In addition, the authorities lack mechanisms and sufficient resources to manage seized assets. There are no instances of the confiscation of instrumentalities of money laundering or predicate offences.

17. The authorities have adopted a proactive, targeted approach towards identifying undeclared or falsely declared cross-border transportation of cash and bearer instruments, which seems on the whole to work in practice. However, co-operation with French counterparts is not fully developed and the authorities' resources to detect cases are limited in some respects. In addition, the application of provisional measures is also still very limited because of the inherent shortcomings in the legal system. To date the authorities' efforts have led only to one case in which measures to recover undeclared assets were ordered.

Terrorist and proliferation financing (Chapter 4; IO.9-11; R.5-8)

Investigation and prosecution of TF

18. There have been no prosecutions or convictions for TF in Monaco. While this appears to be consistent to an extent with Monaco's risk profile, there are some gaps in the TF risk analysis (see IO.1) that prevent the assessment team from concluding with certainty that it is fully justified.

19. Over the period under review, the GPO dealt with two cases concerning potential links to TF; one turned out to be an ML case and was closed, while the other is still being investigated. The competent authorities have explored various aspects of this case. It does not fit the typologies identified in NRA 2 and has not prompted the authorities to review their understanding of the risks.

20. The competent authorities have received some useful CFT training; however, they do not have specific procedures or guides in this area, and in practice they have not been able to demonstrate full capacity to identify potential TF cases.

Preventing terrorists from raising, moving and using funds

21. Monaco's legal framework enables the implementation of TFS under the UNSCRs. Since the May 2021 reform, TF-related TFS have been implemented via Ministerial Decisions which enter into force upon publication by the DBT on the Government of Monaco website. This new framework has reduced the delays that were liable to occur under the previous system, in particular through the automatic adoption of UN lists, provided that the Ministerial Decision is timely published.

22. The general level of understanding of TF-related TFS obligations and their implementation appear to be satisfactory in the private sector even though some professionals, particularly in the non-financial sector, do not receive specific guidance or training from the supervisory authorities.

23. Monaco carried out an initial assessment of non-profit sector risks which was formalised in February 2022.⁴ However, due to its recent adoption, the assessment could not be used to construct a risk-based approach (RBA). The existing awareness-raising and supervision measures cannot be regarded as proportionate and targeted. In addition, there is no formal and sustained co-ordination between all departments and directorates involved in the authorisation or supervision of non-profit organisations (NPOs).

24. No positive matches with persons designated under the relevant UNSCRs have been identified; consequently, no asset-freezing measures have been implemented.

Financial sanctions related to the financing of proliferation

25. The mechanism for implementing PF-related TFS is similar to the TF mechanism. Obligated entities understand their basic PF-related TFS obligations. No PF fund-freezing measures have been taken under these resolutions.

26. As with TF-related TFS, implementation of these obligations varies according to the sector. While the larger FIs have automated tools enabling designated persons and entities to be identified quickly, other smaller FIs and the majority of DNFBPs perform semi-automatic or manual checks and have encountered a few difficulties that may impact the frequency and scope of these checks.

27. The supervisory authorities have not issued any guidelines or guidance or provided any special training on PF or PF-related TFS. Off-site checks and on-site inspections are still limited and where breaches are identified the recommendations made are generally not followed up.

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

28. FIs have a moderate understanding of ML/TF risks. At the time of the on-site visit, they were aware of the findings set out in NRA 2 and the latest generic guidelines, but they had not yet taken action in terms integrating them in their own internal documents. Very specific risks associated with wealth management and mandated management or emerging risks (virtual assets) were mentioned by the banks.

⁴ Formalised on 25 February 2022, during the on-site visit.

29. Mitigation measures and due diligence by FIs seem to be effective to a certain extent, both for clients at increased risk and for standard clients. It should be noted, however, that there are some limitations in relation to updating internal risk analyses and procedures and dealing with PEPs (see R.12). In the case of DNFBPs, standard due diligence is not sufficiently implemented.

30. DNFBPs, with the exception of the casino sector, have a recent risk understanding which is an area for improvement, while their risk-based approach is generally limited to a few risk factors. Among DNFBPs, only legal and accounting professionals and company service providers (CSPs) check the BO control chain, when they fulfil legal obligations pertaining to companies or asset management.

31. All FIs have an internal control framework based on programmes and systems to ensure compliance with AML/CFT due diligence obligations, with three lines of defence. For DNFBPs, the internal control function is generally less sophisticated, with, at a minimum, four-eye review of transactions.

32. The number of STRs originating from the banking sector can be considered fairly satisfactory, although the large number of defensive reporting and excessively long transmission times raise questions about their quality. The number of STRs filed by casinos and jewellers is still limited even though these two sectors make up the majority of DNFBPs' customers.

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

33. Fit and proper checks on FIs and DNFBPs operated by an individual acting in a personal capacity or run in the form of companies (except joint-stock companies) are effective on the whole. However, no checks are carried out in the event of a change in shareholders, and hence potentially also beneficial owners (the BO definition is restrictive (see also c.10.10)), of joint-stock companies where they are not also approved by the ACPR (French Prudential Supervisory and Resolution Authority) or the CCAF (Financial Activities Supervisory Commission). Minor deficiencies have been identified in relation to checks carried out on persons holding managerial positions. While checks are performed on persons based abroad (e.g. within a parent company), this is not the case where these persons do not have a contract of employment in Monaco. However, these latter deficiencies do not concern financial companies subject to approval by the CCAF.

34. A risk-based approach (RBA) to supervision has been in place since 2019 for banking, management companies, estate agents and TCSPs, which makes it possible to determine the frequency of checks. Controls cover all professional obligations and their intensity is not determined by the RBA. SICCFIN encounters difficulties in gathering and using the necessary data from the supervised entities, which impacts its ability to carry out a targeted risk-based supervision. There is no risk-based supervision for other types of FIs and DNFBPs.

35. Sanctions are imposed on FIs and DNFBPs following on-site inspections revealing serious, repeated or systematic breaches of all or some of their AML/CFT obligations. The power to impose sanctions is held by the Prime Minister with regard to FIs and DNFBPs under the supervision of SICCFIN, and he is not required to implement sanctions proposed by CERC (Audit Review Commission). The sanction process is lengthy, as sanctions are imposed two to five years after the date of the on-site inspection. In addition, they are not proportionate to the severity of the breach or size or revenue and are neither effective nor dissuasive. With regard to professionals under the supervision of the GPO or the Chairperson of the Monaco Bar Association, no sanctions have been imposed for AML/CFT breaches.

Transparency of legal persons and legal arrangements (Chapter 7; IO.5; R.24-25)

36. Detailed information about on how various types of companies are formed is publicly available in Monaco.

37. According to the assessment of ML/TF risks associated with companies, civil-law partnerships (*sociétés civiles*), which make up 79% of companies in Monaco, and particularly those operating in the real property sector, are at the greatest risk of ML/TF, followed by limited liability companies in the yachting sector, those in the financial or real property sectors, and then Monegasque joint-stock companies (*sociétés anonymes monégasques*). Various effective risk mitigation measures are in place for commercial companies (such as the company authorisation system, the obligation of establishing a registered office and the obligation to provide financial statements for certain types of companies).

38. A register of beneficial ownership (RBO) and a register of trusts (RdT) have been put in place and are in the process of being completed. Although registration was required by 2020, only 31% of civil-law partnerships and 78% of commercial companies have declared their BO to the RBO. A total of 66 trusts have been declared to the RdT. The efforts that are being made to encourage compliance are not sufficiently effective and no sanctions have been imposed. Associations and foundations are not subject to an obligation to register their BO in the RBO. Other than SICCFIN in the case of the RBO, the competent authorities do not have access to information in the RBO and the RdT. The RBO and the RdT cannot be viewed as measures to improve the transparency of legal persons in Monaco given the disproportionate legal and practical constraints on access to information for FIs, DNFBPs and third parties.

39. The sanctions available for breaches of declaration and registration obligations, including with respect to changes, are not dissuasive given the small amounts, which are still in francs in some cases, and little use is made of them.

International co-operation (Chapter 8; IO.2; R.36-40)

40. The judicial authorities in Monaco receive MLA requests and perform search measures adequately. However, domestic law establishes particularly major and unusual obstacles to the return of MLA requests to requesting countries, such as the retention of documents in Monaco for two months, which in practice wipes out the authorities' efforts to co-operate and may seriously hinder investigations abroad.

41. As for extradition, Monaco refused more than one in two requests over the assessment period. This is mainly due to the restrictive interpretation of the dual criminality requirement and excessive and unreasonable procedural requirements.

42. Monaco generally seeks co-operation from its counterparts for investigative measures, although to an extent that is limited given the jurisdiction's risk profile and context. It made only a few requests to freeze or seize property abroad over the period, although there is now an upward trend. It made no requests for confiscation even though, in two cases that led to convictions, the property had left Monaco.

43. SICCFIN co-operates with counterparts, but with unusually lengthy response times in a financial intelligence context. This is mainly the result of difficulties in accessing data held by regulated entities. SICCFIN makes few requests to its counterparts in the light of the jurisdiction's risk profile. The DSP (Police Department) appears to co-operate with its counterparts. International co-operation in relation to supervision is still modest at this stage.

Priority actions

Monaco should:

Supervision and preventive measures

a) Strengthen supervision of FIs and DNFBPs by:

- Improving the risk-based supervision approach in place for banks, management companies, estate agents and TCSPs and by implementing a risk-based approach for AML/CFT supervision for all other types of FIs and DNFBPs and carry out risk-based off-site and on-site inspections;
- Significantly enhancing SICCFIN's staffing by recruiting and training officers on AML/CFT supervision, and by providing IT resources and tools for the use of gathered information in order to ensure a risk-based approach.

b) Strengthen enforcement and sanctioning powers for breaches of professional AML/CFT obligations by:

- Ensuring that supervisory authorities have powers to impose and enforce penalties for breaches of AML/CFT obligations;
- Ensuring that the sanction system applies to simple breaches and breaches identified during off-site monitoring;
- Imposing proportionate and dissuasive sanctions within a reasonable period of time.

c) Align the BO definition with the FATF's definition. Extend professional good character and integrity checks to all members of governance bodies, shareholders, BO and persons holding managerial or key positions for all types of companies pursuing FI or DNFBP activities. Implement periodic checks on these persons after authorisation has been obtained.

d) Issue guidelines for wealth management and private banking, which pose major risks, in order to promote a uniform risk-based approach, particularly in terms of internal analysis and risk classification.

International co-operation

e) Remove the fundamental obstacles to the effective and timely provision of formal international assistance, in particular by:

- Derogating from the two-month retention period for MLA requests foreseen in Article 204-1 of the Code of Criminal Procedure (CCP);
- Making MLA requests confidential, as required by relevant international standards;
- Not imposing excessive requirements such as restrictions on extradition.

f) Significantly improve SICCFIN delays to respond to foreign counterparts so that they are appropriate in an informal FIU co-operation context.

Tackling ML and confiscation

g) Encourage investigative authorities to make systematic and full use of financial intelligence in ML and profit-generating offences investigations. Facilitate access for competent authorities to the relevant registers.

- h) Draw up guidelines or methodological guidance for investigative authorities with regard to:
 - The use of financial intelligence;
 - The identification of potential ML cases;
 - A risk-based prioritisation of investigations;
 - Requests for international assistance in all ML, associated predicate offences and TF cases where there is an international link. Particular attention should be paid to the seizure and confiscation of property located abroad.
- i) Ensure that SICCFIN has human and technical resources that are consistent with the risk profile and context of the jurisdiction in order to successfully carry out operational and strategic analysis.
- j) Extend the General Prosecutor's Office (GPO) investigative powers, including coercive powers, in order to (i) enable property to be identified and located, and (ii) implement provisional measures. A time limit for filing an appeal should be introduced.
- k) Establish a formal strategy or policy in order (i) to carry out asset recovery and management (including in relation to proceeds and instrumentalities of predicate offences); and (ii) to encourage the law enforcement agencies to identify and implement provisional measures with a view to confiscating proceeds of crime.

Risk understanding

- l) Refine its national risk assessment in order to include:
 - A more detailed TF risk assessment, having greater regard to relevant indicators.
 - ML and TF risks associated with all of the different types of legal persons in Monaco by (i) analysing vulnerabilities in relation to obstacles to transparency of legal persons in Monaco, (ii) integrating certain additional weaknesses, such as those connected with the types of persons (natural/legal) who are members of the board of directors and shareholders/members of a legal person and with the geographical origin of members/shareholders and BO;
 - A more detailed analysis of risks associated with certain sectors and activities (casino, CSPs, trusts and virtual assets) and threats (organised crime);
 - A more in-depth and detailed analysis, distinguishing between internal and external threats;
 - The risk linked to the financial sector being used to launder proceeds of income tax evasion and other types of tax offences not criminalised in Monaco which are committed abroad.

Tackling TF

- m) Enhance the capacity of all the competent authorities to detect and investigate potential TF cases, including through appropriate CFT procedures (including parallel financial analysis in potential cases of terrorism) which would be distinct from procedures applicable in ML cases.

TF- and PF-related TFS and NPOs

- n) Remedy the technical deficiencies identified in relation to the new TFS implementation

mechanism, mainly in order to eliminate the risk of freezing measures being lifted.

- o) Put in place an effective communication mechanism, including through a system of automatic notification of FIs and DNFBPs upon publication of updates to lists.
- p) Apply targeted and proportionate measures to NPOs identified as being at risk of TF abuse following risk-based approach, notably by ensuring that awareness-raising is sustained and targeted and by coordinating a supervising process commensurate with the risks

Transparency of legal persons

- q) Continue with efforts to increase the transparency of legal persons by:
 - Ensuring that the RBO and the RdT are complete (including by adding BO information for associations and foundations), removing obstacles to accessing these registers by FIs and DNFBPs;
 - Adopting legal provisions requiring the registration of basic information in the register of associations and foundations;
 - Implementing effective measures to maintain all the basic information pertaining to (i) commercial companies registered in the RCI (Trade and Industry Registry) and civil-law partnerships in the RSC (Register of Civil-law Partnerships); (ii) the register of associations and foundations; (iii) the RBO and RdT.

Effectiveness and technical compliance ratings

Effectiveness ratings⁵

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

Technical compliance ratings⁶

R.1 – Assessing risk & applying risk-based approach	R.2 – National co-operation and co-ordination	R.3 – Money laundering offence	R.4 – Confiscation and provisional measures	R.5 – Terrorist financing offence	R.6 – Targeted financial sanctions – terrorism & terrorist financing
LC	LC	LC	PC	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	LC	LC	PC

⁵ Immediate outcome effectiveness ratings: High, Substantial, Moderate and Low.

⁶ Technical compliance ratings can be Compliant (C), Largely Compliant (LC), Partially Compliant (PC) and Non-compliant (NC). Some recommendations may be Not Applicable (N/A).

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	PC	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
LC	C	C	LC	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	PC	PC	PC	LC	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
PC	LC	LC	PC	PC	LC
R.37 – Mutual legal assistance	R.38 – Mutual legal assistance: freezing and confiscation	R.39 – Extradition	R.40 – Other forms of international co-operation		
PC	LC	LC	LC		

MUTUAL EVALUATION REPORT

Preface

1. This report outlines the AML/CFT measures in place as at the date of the on-site visit. It analyses the level of compliance with the 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. It was based on information provided by the authorities of the country and obtained by the evaluation team during its on-site visit to the country from 21 February to 4 March 2022. The evaluation was carried out by an assessment team consisting of:

- Ms Fedoua EL FILALI, Head of the National and International Financial Investigations Division, Financial Intelligence Unit, Morocco;
- Ms Astghik KARAMANUKYAN, Deputy Head, Financial Monitoring Centre, Central Bank, Armenia;
- Ms Canòlic MINGORANCE, *Magistrat, Tribunal de Corts*, Andorra ;
- Mr Franck OEHLERT, AML/CFT Expert, Anti-money Laundering Department, Banque de France, France;
- Mr Jérémie OGÉ, AML/CFT Adviser to the Ministry of Justice, Grand Duchy of Luxembourg;
- Ms Catherine SWAN RABEY, Crown Advocate, Legislative Counsel, Law Officers of the Crown, Guernsey;
- with the support of the MONEYVAL Secretariat represented by Ms Irina TALIANU, Ms Ariane SCHNEIDER and Ms Lorena UNGUREANU.
- The report was reviewed by Ms Oxana GISCA, Head of the Supervision and Compliance Department, Financial Intelligence Unit, MOLDOVA, the IMF, and the FATF Secretariat.

3. Monaco previously underwent a MONEYVAL mutual evaluation in 2013 which was conducted according to the 2004 Methodology. The 2013 evaluation report is available at <https://rm.coe.int/rapport-de-la-4eme-visite-d-evaluation-lutte-contre-le-blanchiment-de-168071681f> (French only).

4. This mutual evaluation concluded that the country was compliant with five Recommendations, largely compliant with 30 and partially compliant with 14. Monaco was compliant or largely compliant with 13 of the 16 Core or Key Recommendations.

1. ML/TF RISKS AND CONTEXT

5. The Principality of Monaco is located on France's Mediterranean coastline, close to the border with Italy. With a total area of 2 km², it is the world's second-smallest country. In 2019, it had a total of 38 100 inhabitants, 22.5% of whom were Monegasque nationals⁷. In 2020, Monaco's GDP was EUR 5.97 billion.⁸

6. Monaco has been a constitutional and hereditary monarchy since the Constitution of 1962⁹. Executive power lies with the Prince, who is the head of state; departments of state are headed by the Prime Minister, who is assisted by the five members of the Council of Government (equivalent to ministers). Legislative power is exercised jointly by the Prince and the National Council, a unicameral parliament whose 24 members are elected for five-year terms by direct universal suffrage. Judicial power is exercised on the Prince's behalf by independent courts and tribunals¹⁰.

7. Monaco's legal system is a civil law-based system wherein the Constitution is at the top of the hierarchy of norms. In order to assert the principle of the primacy of the Constitution in the domestic legal system over international treaties, Monaco does not ratify conventions contrary to it. Next in order of importance in Monaco's legal system are laws, general principles of law, sovereign orders (SOs) and orders necessary to implement laws.

8. Monaco participates in international affairs, including through its diplomatic ties with France. It is not a member of the European Union (EU) nor of the European Economic Area (EEA); however, by virtue of its customs union with France, it has formed part of the Community Customs Union since 1968. The country is also a *de facto* member of the Schengen Area and adopted the euro as its official currency in 1999.

9. Monaco is also a member of many international organisations, including the United Nations (UN), the Council of Europe (CoE), the Organisation for Security and Co-operation in Europe (OSCE), the World Trade Organisation (WTO), the Egmont Group and the International Criminal Police Organisation (Interpol). Although it is not a member of the European Union's Agency for Law Enforcement Co-operation (Europol), it has a protocol of co-operation with this organisation.

1.1. ML/TF risks and scoping of higher-risk issues

1.1.1. ML/TF risks

10. This part of the report summarises the assessment team's understanding of ML/TF risks in Monaco. It is based on the documents provided by Monaco, documentation which is publicly accessible and discussions held with the competent authorities and the private sector during the on-site visit.

⁷ NRA 2021, p. 20. A quarter of the population is made up of French nationals, a quarter is made up of Italian nationals and the remainder is made up of 142 other nationalities.

NB: Reservation with regard to dual nationals who only declare one of their nationalities.

⁸ <https://www.monacostatistics.mc/Economy-and-Finance/GDP>

⁹ <https://en.gouv.mc/Portail-du-Gouvernement/Legislation/Acts/Constitution-of-the-Principality-of-17-December-1962>

¹⁰ The Court of Review, the Court of Appeal, the Court of First Instance, the GPO and the Supreme Court.

11. Monaco faces a not insignificant ML threat originating mainly from external threats. This is due to the proportion of internationally oriented financial activities that offer a wide range of products and financial services, including in relation to wealth management. In addition, real estate and the trade in high-value property, especially luxury items, are important sectors of Monaco's economy. In addition, NRA 2 indicates that scam in its widest sense (including fraud, misappropriation, forgery and use of forged documents with intent to defraud and embezzlement) is the main ML predicate offence, ahead of corruption and influence peddling.¹¹ However, these conclusions must be nuanced because in many cases (nearly a third on average), the Monegasque authorities were unable to identify the predicate offence due to factors including its having been committed abroad.

12. NRA 2 also mentions tax evasion, which is limited to VAT and profit tax evasion, among the predicate offences. This is because income tax evasion is not a criminal offence in Monaco as income tax does not exist for natural persons who are residents of Monaco. This offence is a topical subject on the international stage, attracts much media coverage and is a major reputational issue.¹² However, NRA 2 does not cover the risk of ML linked with income tax evasion committed abroad (and any other form of tax evasion that is not contrary to Monegasque law). The Monegasque authorities have not conducted any analysis on this subject nor have they considered that the non-criminalisation of income tax evasion may constitute a weakness in the associated ML risk. However, the assessors note the efforts made by the authorities to facilitate automatic exchange of tax information through the implementation in 2016 of the OECD's dedicated mechanism, through which Monaco communicates with 70 jurisdictions.

13. Monaco is exposed to illegal cross-border flows. Its international profile, particularly through the banking and financial services it offers, makes it a prime target for suspect financial flows. The NRAs point out that in most cases where it is identified, the predicate offence is committed abroad and the proceeds of the crime are laundered in Monaco. For the most part, these proceeds originate from neighbouring jurisdictions, especially France and Italy.

14. No organised criminal groups are active in Monaco. However, structured criminal networks occasionally establish themselves and engage in criminal activities such as drug trafficking, pimping and money laundering.¹³

15. In addition, the customers of FIs and DNFBPs in Monaco include many non-residents who can thus be foreign politically exposed persons (PEPs), which increases the need for enhanced due diligence in relation to ML, corruption and influence peddling.

16. Monaco, which is known for its safety, is exposed to a low risk of terrorism. However, the authorities do not rule this risk out and believe that this threat has spread to the whole of the western world.

17. As regards the TF risk, in view of Monaco's status as an international centre, NRA 2 reasonably mentions the likelihood of funds being raised abroad to finance attacks in other countries while exploiting Monaco's financial system and its characteristics.

18. The first assessment of risks of the non-profit sector was only recently formalised (in

¹¹ NRA 2021, p. 143

¹² <https://www.monacohebdo.mc/actualites/international/revelation-pandora-papers/> (French only)

¹³ The police of Monaco and the French police jointly smashed a structured network of criminals in 2020. <https://lobservateurdemonaco.com/infos/judiciaire/affaires-criminelles-marquante-2020> (French only)

February 2022¹⁴), and therefore, at the time of the on-site visit, it was impossible to have had a risk-based approach in this sector. In addition, there is no formal and sustained co-ordination between all departments and directorates involved in the authorisation or supervision of non-profit organisations (NPOs). In light of the number of NPOs registered in Monaco and the lack of visibility in this sector, the possibility of their being misused for TF purposes cannot be ruled out.

19. Monaco does not suffer from a financial inclusion problem. However, NRA 2 mentions a significant increase in refusals to open accounts following the closure of certain credit institutions, which led in July 2020 to the adoption of a law on the “right to hold an account” for Monegasque nationals, residents and legal persons incorporated in Monaco.

20. Monaco distinguishes between four categories of sectors at risk of ML. The first, in which there is a high risk, is made up of yachting/chartering, estate agents, property dealers¹⁵, sports agents and private banking. The second category, in which there is a moderately high risk, is made up of management companies/securities and retail banks, traders of high-value property¹⁶ and the casino. Particular emphasis is laid on the casino, which poses a risk level that is very close to high due to significant vulnerability and a high and growing threat. The third category is made up of medium-risk sectors: notaries, lawyers and company service providers (CSPs), whose vulnerability has decreased considerably over the last few years due to mitigation measures, primarily the introduction of automatic exchanges of tax data through the OECD. Lastly, the fourth category encompasses sectors with a moderately low risk, namely bailiffs, pawnbrokers, money changers, chartered accountants, multi-family offices (MFOs), legal advisers and insurers.

21. Virtual asset service providers (VASPs) are an emerging sector in Monaco which has been subject to AML/CFT obligations since December 2020. At present, only three VASPs are registered in Monaco, and one of them appears not to be active according to the Register of Commerce and Companies.¹⁷ However, some VASP activities to which FATF standards are applicable are excluded from the regulatory scope. At present, the authorities do not have precise knowledge of the size of the market. In addition, the assessors were informed during the on-site visit that, in practice, no company registered in Monaco provides services of this kind. However, the authorities consider that the ML threat faced by this sector is “moderate” and “growing”, without explaining the reasons behind this conclusion.

22. Monaco does not have a reporting system based on a maximum threshold for cash payments. However, mitigation measures in relation to this payment method exist, because a maximum limit of EUR 30 000 was introduced for cash payments many years ago and covers the whole of the period under review. This threshold applies to all transactions carried out in one or more operations which appear to be linked, within a period of six months (Article 35 of the AML/CFT Law). In addition to this threshold, if the total amount of a payment (made in one or more transactions which appear to be linked, over a period of six months) is equal to or greater than EUR 10 000, regulated entities are required to carry out due diligence in relation to the customer concerned and/or special examination within the meaning of Article 14 of the AML/CFT

¹⁴ Formalised on 25 February 2022 during the on-site visit (from 21 February to 4 March 2022).

¹⁵ In Monaco, the activity of a property dealer is not governed by a specific law, nor subject to specific conditions, unlike other real estate professionals. There is no legal definition, although it is widely recognized that a property dealer acquires a property with the aim to renovate it and resell it with a capital gain.

¹⁶ Jewellers/watchmakers, antique dealers, art and motor vehicle traders and auctioneers.

¹⁷ NRA, p. 87. One of the three companies registered as VASPs does not have “active” status in the Register of Commerce and Industry (RCI).

Law. The measures to be taken are determined according to the level of risk posed by the customer or the nature of the business relationship or the transaction carried out.

23. Given its geographical position, Monaco is not a transit country and therefore not considered at risk regarding cross-border cash movements (the main routes between France and Italy do not pass through Monaco). The risk associated with cash and its use in Monaco is limited by the EUR 30 000 threshold for cash payments. The authorities believe that the risk of obliged entities not complying with this threshold is low given that this threshold is significantly higher than in other countries. However, rare instances of non-compliance have been detected (see IO.1). The NRA 2 assesses each sector's vulnerability by taking into account its exposure to cash: in this sense, the only sectors considered to be at risk are the jewellers and the casino. However, the analysis of the jewellery sector pointed out that although there is more than marginal use of cash, transactions exceeding EUR 10 000 are relatively rare. As for the casino, the proportion of transactions where payment is made in cash is around 90%, as opposed to less than 20% for the MC Financial Company (formerly SFE). The assessment team thus believes that the authorities have reasonably taken into account the cash-related ML risk.

1.1.2. Monaco's risk assessment and scoping of higher-risk issues

24. Monaco has conducted two national risk assessments (NRAs) which were completed in 2017 and 2021 and adopted by the Government of Monaco. Public versions of them were released in August 2017 and November 2021 respectively. Both were co-ordinated by SICCFIN and were based on the World Bank's methodology and IT tool, with operational support for NRA 1 and a strategic approach for NRA 2.

25. Monaco initiated its first NRA in 2015 and adopted the modules suggested by the World Bank. This exercise took place throughout 2016 and the results were decided in the first half of 2017 before being presented in June 2017. This first NRA had a narrow scope for reasons including the fact that it was the first exercise of this kind and essential information, mainly sector-related, was difficult to gather. As a result, the work focused on (i) analysing ML risks (threats and vulnerabilities); (ii) including only some sectors: banks, management companies, insurance, estate agents, the casino, chartered accountants, company service providers (CSPs), money changers, money transfer service providers, pawnbrokers and bailiffs. It had not been possible to fully analyse other sectors, mainly traders of high-value items (jewellers, antique dealers, motor vehicles, etc.), notaries and lawyers. The TF risk was not considered.

26. Three working groups were involved in NRA 2: one focusing on threats, which was made up of representatives of the judiciary, the General Prosecutor's Office (GPO), the Police (DSP) and SICCFIN, a second focusing on national vulnerabilities which was made up of representatives of SICCFIN, the Department of Budget and Treasury (DBT), the tax authorities, the Department of Economic Expansion (DEE), the judiciary and the DSP, and a third group focusing on sector-specific vulnerabilities.

27. At government level, NRA 2 involved the Prime Minister's office, the Ministry of the Interior (through the DSP), the Department of Finance and the Economy, the Department of Social Affairs and Health and the Department of Foreign Relations and Co-operation. Two independent administrative authorities, the Financial Activities Supervisory Commission (CCAF) and the Personal Data Supervisory Commission (CCIN), also took part in the exercise.

28. At private-sector level, representatives of the financial sector,¹⁸ DNFBPs, NPOs and the Monaco Freeport were involved in the NRA 2.

29. For this second NRA exercise, which was co-ordinated by SICCFIN, Monaco also used the dedicated World Bank tool. In addition to the sectors that had already been analysed during the first exercise, the following sectors were examined: real property traders, notaries, legal advisers, lawyers, jewellers/watchmakers, motor vehicles, yachting/chartering, art and antiques and sports agents. In addition, there was a more “forward-looking” analysis of sectors that are nascent or emerging or have just one player but carry special risks: crowdfunding, virtual assets and the freeport. This shows that Monaco is willing to be exhaustive in analysing its ML/TF risks.

30. A TF risk analysis was carried out for the first time during the second NRA, with data from the DSP, SICCFIN and the judicial authorities being pulled together. Additional analyses were also carried out: one concerning the financial exclusion risk, including an analysis of the impact of the law on the right to hold an account, which was passed in July 2020, and another on the risks associated with the different types of legal persons.

31. Monaco identifies the most important ML threats using data gathered by the various authorities and assigns ratings to them. NRA 1 revealed that corruption is the main threat, while NRA 2 concludes that scam in its widest sense (including fraud, misappropriation, forgery and use of forged documents with intent to defraud and embezzlement) is the main ML predicate offence, ahead of corruption and influence peddling.

32. The results of NRA 2 show that the national ML threat appears to be moderately high but growing, while the overall level of vulnerability is assessed as moderately high. Given the level of threat, the residual vulnerability and the mitigation measures put in place, Monaco believes that the ML risk is moderately high. However, Monaco’s status as an international centre and its international exposure point to a higher ML risk.

33. With regard to TF, the risk analysis was carried out by a group made up of members drawn from SICCFIN, the DSP, the DSJ (Department of Justice) and the GPO, the Ministry of the Interior for NPOs, the DBT and the French customs authorities.

34. The TF threat was assessed as low and growing, with the likeliest scenario being overseas fundraising to finance terrorist acts committed abroad, using Monaco as a transit country. The sources of TF appear to be mostly legitimate and to pass mostly through banks, to a lesser extent through sectors that use cash, and to a marginal degree through NPOs. Illicit financial flows are believed to be limited, and include mainly illegal trading of natural resources, weapons, medicines and smuggled items, although it has not been possible to verify this.

35. The analysis conducted by the Monegasque authorities appears to indicate that approximately 2.5% of NPOs in Monaco could be exposed to the TF risk and that the amount of the flows concerned is small.¹⁹ Since this document was adopted during the on-site visit, the assessment team cannot express a view on its conclusions.

36. NRA 2 includes a section about legal persons and presents their prevention obligations, a description of the characteristics of the different legal forms of legal persons with a view to identifying their vulnerabilities, and a study of the recurrence of the legal forms and sectors of activity of the Monegasque legal persons identified in the STRs received by the FIU from 2018 to

¹⁸ Members of the Financial Activities Association of Monaco (AMAF), the Insurance Chamber of Monaco (CMA), Crédit Mobilier de Monaco (CMM) and representatives of the currency exchange service sector.

¹⁹ The NPO sector assessment entitled “Les risques liés à l’exploitation des OBNL à des fins de financement du terrorisme” (Risks of NPOs being exploited for terrorist financing purposes), page 38.

2020 in order to determine the threats they face. The analysis ends by presenting the risk level faced by each legal form of legal person.

37. According to this analysis, the main risk is associated with civil-law partnerships operating in the real estate sector and limited liability companies (LLC) in the yachting sector. Then there are the LLC operating in the financial or real estate sectors and the other types of civil-law partnerships. Despite the mitigation measures, Monegasque joint stock companies (SAMs) also pose a high level of risk. The types of entities posing a moderate risk level include freelance activities (regardless of sector) and other LLCs. Other types of entities (administrative offices, SCAs (limited partnerships with shares), SCSs (limited partnerships) and SNCs (commercial partnerships)) pose a lower level of risk.

38. Particular attention was paid to the issues listed below during the on-site visit and they are reflected in the report:

- **The understanding of risks and the implementation of mitigation measures.**
- **The extent to which investigations, convictions and confiscations in ML cases are consistent with the threats to the country and its risk profile** – including the authorities' ability to detect different types of ML (third-party laundering, self-laundering and stand-alone offence).
- **International co-operation**, which is proving to be an essential part of Monaco's AML/CFT efforts due to the international nature of the financial activities pursued in the country, the number of its foreign residents and customers and the preponderance of external threats; the assessment team paid particular attention to the way in which the Monegasque authorities deal with requests concerning the tax offence in relation to income tax, and co-operation between supervisors.
- **Preventive measures taken by the private sector** – including in relation to PEPs and specific products such as those offered by private banks and TCSPs.
- **The effectiveness of risk-based AML/CFT supervision** – in particular, the extent to which the supervision process is actually risk-based and the financial, human and IT resources used to supervise regulated entities are adequate.
- **The transparency of legal persons and legal arrangements** – including the exhaustiveness and reliability of information in the different registers, preventive measures to mitigate risks and the effectiveness of sanctions.
- **The understanding of TF risks, including those associated with NPOs** – the extent to which competent authorities understand risks, including by identifying NPOs at high risk of TF, and whether adequate preventive measures are implemented by the private sector.

1.2. Elements of specific importance (materiality)

39. Monaco is an international centre. In 2020, its gross domestic product (GDP) was EUR 5.97 billion and GDP per capita was EUR 69 380.²⁰ In December 2020, the total value of assets

²⁰ IMSEE Monaco Statistics, Gross Domestic Product 2020, November 2021, page 10: Monaco's situation is atypical. In 2020, there were 38 350 residents and 55 919 active employees, 85% of whom resided outside Monaco. This unusual situation makes international comparisons difficult, particularly the standard indicator of GDP per inhabitant.

deposited in financial institutions was EUR 129 billion.²¹

40. Monaco has the largest number of millionaires and billionaires per inhabitant of any country in the world.²² Three sectors generate more than half (50.1%) of the wealth produced in Monaco: scientific and technical activities and administrative and support services (20.3%), financial and insurance activities (18.3%) and construction (11.4%).²³ In March 2022, the country was ranked 80th (out of 119 international centres) in the Global Financial Centres Index,²⁴ between Bangkok and Liechtenstein.

41. In 2022, the Tax Justice Network attributed a financial secrecy score of 74 out of 100.²⁵ According to international real estate rankings, Monaco has become the world's most expensive city (nearly EUR 70 000 per square metre in the most upmarket neighbourhoods).²⁶ In order of volume, France, Italy and Germany are Monaco's main trade partners (customers and suppliers).²⁷

42. By virtue of the diplomatic ties that have existed with France since 1963,²⁸ the customs union between the two countries²⁹ and their tax agreements,³⁰ Monaco is part of the EU Customs Union and is integrated into the European VAT system. It also belongs to the euro area, but retains its sovereign right to mint its own currency.³¹ Although Monaco is not a signatory to the Schengen Agreement, because of the freedom of movement that existed prior to it between France and Monaco, the Schengen Executive Committee³² has recognised the Heliport and the Port of La Condamine as authorised crossing points which are controlled jointly by the authorities of France and Monaco (Maritime and Airport Police Division of the DSP) and has authorised freedom of movement for all stays of less than three months.

43. In recent years, Monaco has taken laudable steps to promote fiscal transparency: it ratified the OECD Convention on Mutual Administrative Assistance in Tax Matters³³ in 2016 and was rated compliant overall in the last OECD report on the exchange of information on request (EOIR)³⁴ in 2018. It has shared information automatically since 2018 through the OECD's Common Reporting Standard (CRS). It has also signed 35 information exchange agreements enabling assistance with targeted tax-related requests.

However, in the calculation of GDP per capita, the selected reference population included residents and employed non-residents, of whom there were a total of 86 013 in 2020.

²¹ <http://www.ccaf.mc/en/the-ccaf-in-one-click/the-monegasque-financial?>

²² <https://worldpass.heyme.care/fr/blog/Les-10-plus-petits-pays-du-monde> (French only)

²³ IMSEE Monaco Statistics, Gross Domestic Product 2020, November 2021, page 9.

²⁴ <https://www.longfinance.net/programmes/financial-centre-futures/global-financial-centres-index/gfci-31-explore-data/gfci-31-rank/>

²⁵ [Financial Secrecy Index – Tax Justice Network](#)

²⁶ https://en.wikipedia.org/wiki/Economy_of_Monaco

²⁷ IMSEE (2021), Foreign Trade Observatory 2020.

²⁸ Relationship formalised since 1963 by a number of bilateral agreements including the "Convention on Neighbourly Relations" governing the entry, residence and settlement of persons.

²⁹ Regulation [No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code](#)

³⁰ [Directive 2006/112/EC of 28 November 2006 on the common system of value added tax](#)

³¹ Under the Monetary Agreement signed on 29 November 2011 between Monaco and the EU represented by the French Republic and the European Commission.

³² Decision of the Schengen Executive Committee of 23 June 1998.

³³ <https://www.oecd.org/tax/monaco-strengthens-international-tax-co-operation-ratifies-the-convention-on-mutual-administrative-assistance-in-tax-matters.htm>

³⁴ <https://www.oecd.org/tax/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-monaco-2018-second-round-9789264291157-en.htm>

44. Monaco's taxation system is unusual in that there is no direct or personalised taxation of income for natural persons, who are therefore not required to disclose information about their income or assets,³⁵ with the exception of sole traderships, which are liable to pay profit tax. The tax system is also favourable for companies, which are, as a rule, generally only taxed (at a rate of 25% since 1 January 2022 with possible deductions) where they make more than a quarter of their revenue from industrial or commercial activities outside Monaco, or where their activity in Monaco consists of earning revenues from patents or literary or artistic property rights. Monaco's tax system is thus based mainly on VAT, profit tax and registration fees for which liable natural and legal persons are subject to declaration and information obligations.

45. The financial and insurance sector alone generates 16.7% of Monaco's GDP. As at 31 December 2020, the country's banking sector was made up of 29 banks,³⁶ all of them being subsidiaries or branches of banking institutions established – in decreasing numerical order – in France, Switzerland, Luxembourg, Italy, the United Kingdom, Andorra and Lebanon. 17 of them are private banks which mainly offer wealth management services, sometimes have complex shareholding structures and engage in interbank transfers. 12 of them are retail banks which pursue activities typical of their profile (customers who are natural or legal persons, services offered, products sold, etc.).³⁷

46. As at 31 December 2020, the banks had 96 288 customers, of whom 33 931 were being served under mandates for management, consulting and/or order reception and transmission services. On the whole, the clientele of these institutions appears to be a very select group, given the number of customers under mandated management and very mixed, with a large majority of foreign customers (88-91%), whether one considers either natural persons or beneficial owners of legal persons. As for their countries of residence, 43% of customers who are natural persons are residing in Monaco, and this figure has remained steady since 2017. By contrast with retail banks, whose clientele is made up mainly of French, Italian and UK nationals, the customers of private banks are nationals of many countries (including Russia, Côte d'Ivoire, Switzerland and Turkey).

47. End of 2020, Monaco had 61 financial companies (management companies) incorporated in the form of SAMs (Monegasque Joint Stock Companies) or branches of foreign institutions. The capital of more than 60% of these companies is owned by legal persons established in the EU (27), Switzerland (8), Monaco (6), the USA (4) and other countries (2). Their activities include: (i) portfolio management, (ii) management of Monegasque funds, (iii) order reception and transmission, (iv) consulting and assistance in relation to portfolio management, order reception and transmission and management of foreign or Monegasque funds. Just over half of customers are natural persons (57%) of foreign nationality (96%). The commonest nationalities are European (French, Italian and British customers). Lastly, in terms of country of residence, about a third of customers reside in Monaco. As is the case with the nationalities of customers, the United Kingdom, Italy and France are the main countries of residence of most other customers. As regards the nationality of customers who are legal persons, the proportion of Monegasque customers is a little higher than the proportion of natural person customers who are Monegasque, but it is still low (8-10%). The countries in which legal person customers are registered are the

³⁵ NRA 2021, page 240.

³⁶ NRA 2021, page 271 (Chapter IV, Part I, Section 1).

³⁷ Savings accounts, current accounts, investment products, business loans, insurance products, mortgages, order reception and transmission services and discretionary investment management.

same as the countries in which natural persons reside. Almost all beneficial owners are foreign nationals.

48. No insurance companies are established in Monaco. Insurance policies are taken out from French insurance companies which are supervised by the ACPR or EU insurance companies which are authorised to operate in France. These insurance policies are sold by agents and brokers who are representing more than 150 insurance companies. In 2020, Monaco had 83 insurance agents or brokers selling life insurance policies or other investment-related forms of insurance – an activity where insurance professionals are subject to AML/CFT obligations. It should also be pointed out that a very large proportion of these products are sold by banks. A large proportion of customers who are natural persons are nationals of Monaco (30%) and over 55% of legal person customers are Monegasque. A large majority of beneficial owners (60%) are foreign nationals.

49. The other FIs belong to two sectors with a very limited number of identified players: money changers (3) and pawnbrokers (1). At the time of the on-site visit, there were no money transfer service providers (the only provider that existed ceased operating in 2018).

50. **In June 2021, three VASPs were registered in Monaco,³⁸ but one of them was not active according to information in the RCI. During the on-site visit, the assessment team realised that, in reality, none of them pursues activities in relation to virtual assets as defined by the FATF.**

51. Different types of DNFBPs operate in Monaco. As regards legal professionals, as at the end of 2020, there were 3 notaries, 3 bailiffs, 22 defending lawyers (*avocats-défenseurs*), 9 lawyers and 1 trainee lawyer³⁹ (who made up the Bar Association). The GPO is the AML/CFT supervisor for notaries and bailiffs and was the supervisor for lawyers until the end of 2020. Since 1 January 2021, lawyers have been supervised by the Chairperson of the Monaco Bar Association. It should be noted that lawyers are subject to the AML/CFT system only where they are involved, for and on behalf of their client, in any financial or real estate transaction or assist them in preparing for or carrying out transactions, which is in line with FATF standards. In addition, lawyers are required to send STRs to their supervisor.

52. Other DNFBPs are supervised by SICCFIN. As at the end of 2020, there were 3 casinos, 151 estate agents, 77 legal advisers, 47 chartered accountants and certified accountants, 144 jewellers/dealers in precious metals and precious stones, 37 TCSPs, 34 trustees, 26 auctioneers and 22 multi-family offices. Other professionals not categorised as DNFBPs by the FATF were also subject to the AML/CFT Law and under the supervision of SICCFIN: 305 property dealers, 40 antique and art dealers, 19 motor vehicle dealers, 62 sports agents, 1 crowdfunding adviser and intermediary, 3 Freeport warehouse keepers and 172 yachting professionals.

53. The Monegasque judicial authorities have reported money laundering cases (at the investigation or prosecution stage) concerning the sectors of CSPs, gambling, jewellery and high-value items, yachting, real estate and chartered accountants.⁴⁰

Taking account of their materiality and risks (see above), the assessment team weighted:

- **more heavily** preventive measures taken for banks (given the risk associated with

³⁸ NRA 2, page 642.

³⁹ When used on its own in this report, the term “lawyer” includes defending lawyers (*avocats-défenseurs*), lawyers and trainee lawyers.

⁴⁰ NRA 2, page 92.

private banks, the volume of assets (Table 1.1) and exposure to foreign customers); management companies (given the volume of assets (Table 1.1), the moderately high risk level assigned, the type of products offered and exposure to foreign customers); estate agents (taking account of the risk level, the advantages of resident status and the price of the property transacted in the sector), and casinos (in view of their exposure to cash transactions, the global visibility of the Monte Carlo Casino and the profile of its customers);

- **moderately** for trust and company service providers (TCSPs) (on account of their number, their risk profile and the existence of ongoing ML cases dealt with by the GPO); auctions, jewellers, notaries and lawyers (given their risk level and their number in Monaco); and
- **weakly** for money changers (given their risk level and materiality in Monaco), chartered accountants and auditors, and other DNFBPs (bailiffs, tax advisers), on the basis of their low risk level.

1.3. Structural elements

54. Monaco is a country governed by the rule of law and is politically and institutionally stable. It has all structural elements necessary to create an effective ML/TF prevention and control system.

55. According to the monarchical principle, the Prince has judicial power and delegates the its full exercise to courts, refraining from any direct or indirect intervention in judicial matters according to the principle of separation of powers.

56. The independence of judges is guaranteed by the Constitution (Article 88) and the irremovability⁴¹ of judges is a corollary of it. The independence of the General Prosecutor (GP) is guaranteed by the Judicial Service Commission (HCM), the role of which is to safeguard fundamental principles in a country governed by the rule of law. The judiciary is also independent in terms of its institutional organisation as it is run by an independent department, the Department of Justice, which is headed by a Secretary of State with powers similar to those of the Prime Minister, who is accountable to the Prince.

57. The National Council is the political authority that discusses and votes on laws. During the on-site visit, it appeared to the assessors that the opinions of representatives of certain professions, particularly lawyers, are actively sought as part of the legislative process in Monaco. This is a choice made by the authorities. Delegations regularly visit the National Council to discuss draft laws, including in relation to AML/CFT, as happened in January 2022.⁴²

1.4. Other contextual factors

58. Monaco has had an AML/CFT legal framework since 1993 (now Law No. 1.362 of 3 August 2009, hereinafter *AML/CFT Law*) and it has undergone several reforms.

59. Monaco is not analysed in the Corruption Perceptions Index in Transparency International's annual reports. However, in September 2021, GRECO (Group of States against

⁴¹ Members of the judiciary cannot be dismissed, suspended or transferred. However, that does not apply to prosecutors within the GPO or auxiliary members of the judiciary.

⁴² <https://www.conseil-national.mc/2022/01/19/transparence/> (French only)

Corruption) published an interim compliance report on Monaco with regard to the prevention of corruption in respect of members of parliament, judges and prosecutors.⁴³ The report mentions significant progress in terms of (i) members of parliament, although it notes that it would be desirable for declarations of their private interests to be disclosed, and (ii) members of the judiciary, although it points out that the composition of the HCM has not been rebalanced so that more members are elected by their peers, and that its activity reports are not published.

60. According to the NRA, no situations of financial exclusion in the strict sense⁴⁴ have been identified by the authorities of Monaco. As mentioned previously, a right to hold a bank account was introduced only recently by Law No. 1.492 of 8 July 2020.

61. According to the latest census, which was carried out in 2016,⁴⁵ there were 8 378 residents who were Monegasque nationals and 139 different other nationalities were represented in Monaco, mainly French (24%) and Italians (21%). There were also nationals of the United Kingdom (7.5%), Switzerland (3.5%), Belgium (2.9%), Germany (2.4%) and Russia (2%).

1.4.1. AML/CFT strategy

62. The AML/CFT/CFP strategy (which includes efforts to counter the financing of proliferation) was adopted on 26 January 2022. The Co-ordination and Follow-up Committee for the National Strategy for Tackling ML/TF, Proliferation of Weapons of Mass Destruction and Corruption (for which SICCFIN acts as a secretariat) is the guarantor of the effective implementation of the AML/CFT/CFP strategy and the follow-up and updating of the action plan.

63. The authorities report that a number of improvements were made during the period between NRA 1 and NRA 2, including with regard to certain national vulnerabilities; more specifically, the ability to gather and process financial intelligence through SICCFIN and the overall enhancement to its resources, as well as the favourable development of the legislative framework, particularly through the implementation of the fourth and fifth European AML directives. In the light of (i) the significant improvements made in relation to national vulnerabilities following the roll-out of the action plan arising out of NRA 1 and (ii) the findings of NRA 2, Monaco is choosing to focus its 2022-2024 action plan on sectoral vulnerabilities.

64. The national strategy is thus based on the following six pillars: (i) enriching the legislative and regulatory framework, taking into account the findings of NRA 2 and those of this mutual evaluation report; (ii) enhancing the technical and human resources of the competent authorities in terms of both staff numbers and training; (iii) giving more support to obliged entities by providing practical guides and targeted training, regularly disseminating useful information and implementing measures for certain groups of professionals; (iv) preventing risks through a better understanding of stakeholders and optimising supervision by enhancing access to useful data for the competent authorities and stepping up supervisory activities; (v) continuing with and strengthening national co-ordination and international co-operation to make them faster and more effective; (vi) improving the framework for tackling terrorist financing by enhancing staff training and optimising CFT organisation.

⁴³ <https://www.coe.int/en/web/greco/-/monaco-publication-of-interim-compliance-report-of-fourth-evaluation-round>

⁴⁴ NRA 2, page 784.

⁴⁵ IMSEE – Report on the 2016 census <https://www.monacostatistics.mc/Population-and-employment/Population-census/Results>

65. The 2017 action plan, which arose out of NRA 1 and includes flagship measures aligned with the identified risks, has been implemented by the authorities to a large extent. The reversal of the burden of proof in the Criminal Code is a prime example. However, for obvious time-related reasons, it had not been possible to implement the national strategy arising out of NRA 2 by the time of the on-site visit and so the assessment team was unable to evaluate the implementation of the measures set out in it. The authorities state that the associated action plan will be an extension of the one that is currently being implemented. However, as it has not yet been provided to the assessment team, it was impossible to fully assess the willingness to put into effect the various pillars put forward by the strategy, including: the estimated feasibility of the planned actions, the financial, human and technical resources to be deployed accordingly, the authority or authorities responsible for their implementing, the level of priority of these actions and the anticipated timeframes within which they will be carried out.

1.4.2. Institutional framework

66. Legislative power is shared by the Prince, who has the right of legislative initiative, and the National Council, which votes on them. Executive power lies with the Prince, and the government is run by a Prime Minister who is appointed by the Prince and represents him, and is in turn assisted by a Council of Government.

67. The Prime Minister is the head of the Council of Government. He is responsible for governing Monaco and has executive departments of state at his disposal to this end. He is assisted by five Members of the Government who head specialised government departments. The Sovereign has the prerogative of mercy and the right to grant amnesties. The Sovereign Prince is assisted in exercising certain constitutional powers by the Crown Council, particularly in relation to matters concerning state interests.

68. The competent and specialised authorities in relation to ML/TF and PF are as follows:

- The **Prime Minister**: His Excellency the Prime Minister represents the Prince. He is the most senior figure after the Prince and is appointed by the latter. He presides over meetings of the Council of Government and is responsible for governing the country. He has executive departments of state at his disposal to this end.
- The **Financial Channels Supervisory and Monitoring Service** (SICCFIN), the financial intelligence unit (FIU), is the central national AML/CFT authority. Established in 1994, it implements and co-ordinates the AML/CFT policy. Its role, scope of activity and powers are defined by the AML/CFT Law and the associated implementing sovereign order (SO No. 2.318). SICCFIN is an independent administrative entity which, for purely formal reasons, has been placed under the supervision of the Department of Finance and the Economy.
- The **Financial Activities Supervisory Commission** (CCAF) is an independent administrative authority responsible for supervising financial activities in Monaco, with the exception of AML/CFT activities. It is endowed with decision-making, control and sanctioning powers and takes decisions on applications to approve companies and collective investment undertakings after examining and checking them, ensures that transactions carried out by approved institutions comply with the rules, receives and deals with complaints that lie within its remit and imposes administrative sanctions where appropriate. It also enters into co-operation agreements with foreign counterparts.
- The **Department of Justice** (DSJ) is the central authority responsible for receiving requests for

mutual legal assistance (MLA). In practice, when it receives a request for MLA, it ensures that it is validly made and can be executed in Monaco (consideration of admissibility). If so, it is sent to the GPO to be fulfilled as requested. Depending on the investigative measures requested, the latter either fulfils the request directly or passes it on to an investigating judge. In both situations, if they do not take the requested action themselves, the judge or GPO can instruct the DSP to carry it out.

- The decisions to freeze funds which are taken on the basis of international economic sanctions declared by the UN and implemented by the EU are adopted by decision of the Prime Minister and implemented by the **Department of Budget and Treasury** (DBT). The DBT is also responsible for keeping up to date the national list of all natural and legal persons, entities and organisations subject to freezes of funds and economic resources in Monaco.
- The **Department of Tax Services** (DSF) has wide-ranging powers to gather and check information held by third parties in relation to VAT, profit tax and registration fees. There are different levels of tax audit: a formal audit, which can rectify mistakes in declarations; a desk-based check, which examines the consistency of information declared and can be automatic or carried out at the request of the Business Development Agency (DEE); and an on-site inspection, which is carried out if there are doubts about the consistency of the information in a declaration or suspicions of fraud or fraudulent behaviour.
- The **Business Development Agency** (DEE) plays a major role in the process of creating legal persons in Monaco, particularly during the authorisation process. It is also responsible for providing an identification number which enables any authorised person to carry on a business. It carries out checks during the lifespan of companies. It also develops and keeps the Register of Beneficial Ownership (RBO) and the Register of Trusts (RdT).
- The **Police Department** (DSP) signed an agreement with SICCFIN in April 2021 in order to enhance their AML/CFT co-operation. Police officers carry out checks at the borders of Monaco which enable them to collect declarations of cross-border movements of cash and negotiable bearer instruments. These declarations are passed on to SICCFIN investigators.
- The **Financial Investigation Section** (SEF) of the Police Department has the power to investigate financial offences of all types, including those where the amount of the loss or the proceeds of crime is large or which involve a financial institution, and all international requests for judicial assistance. Requests for MLA are executed by this section.
- The **General Prosecutor's Office** (GPO) of Monaco is a single prosecutor's office for all courts in Monaco in which the State Prosecution Service is represented. Its powers are set out in the Code of Criminal Procedure (CCP) and Law No. 1.398 of 24 June 2013 on the administration and organisation of the judiciary. The GPO is staffed by a General Prosecutor (GP), a Deputy Principal Prosecutor (who deals more specifically with financial cases and ML) and three deputy public prosecutors.
- The **investigating judge** (IJ) is a judge who is responsible for investigating the most serious or complex criminal cases and has the power to take all the necessary measures in establishing the truth. Matters can be referred to this judge by way of a request from the GPO or a complaint made by a party claiming damages, or he/she can act in the context of an on-the-spot investigation. Since November 2019, when an investigation unit was established, Monaco has had three IJs.
- The **French Customs Office in Monaco** (PUD) is the customs office established in Monaco by France pursuant to the Franco-Monegasque Customs Agreement of 1963, and works closely

together with the DSP. The office is located in Port Hercules and is staffed by nine people. It acts as a fully-fledged customs office (monitoring and assisting with customs clearance processes in respect of imported and exported goods, particularly vehicles and boats – checking their tax and customs status) and also performs other functions, such as monitoring the two fuel depots. As regards cross-border movements, the Monegasque authorities state that the yachting sector and the trade in art and antiques account for a large proportion of these.

- The ***Gambling Commission / Gambling Monitoring Service*** is involved in monitoring the AML/CFT system. It regularly sends monitoring notes to the Department of Finance and Economy, which forwards them to SICCFIN. If suspicious movements are detected, a report is systematically sent to the Legal Department of Société des Bains de Mer (SBM) so that it can examine the situation of each of them more closely.
- The ***Audit Review Commission*** (CERC) has been responsible since 2018 for proposing sanctions to the Prime Minister for serious, repeated or systematic breaches committed within regulated professions.

Supervision

69. AML/CFT supervision is conducted by one of three supervisory authorities in Monaco depending on the type of regulated professionals concerned.

70. The **GPO** is responsible for the supervision of notaries and bailiffs. Until December 2020, he/she was also responsible for the supervision of defending lawyers (*avocats-défenseurs*), lawyers and trainee lawyers, which is now the responsibility of the **Chairperson of the Monaco Bar Association**.

71. **SICCFIN** is responsible for the supervision of all FIs, VASPs and DNFBPs other than notaries, bailiffs and lawyers.

72. The table in section 1.4.5 lists the different types of obliged entities and their AML/CFT supervisors.

1.4.3. Financial institutions, designated non-financial businesses and professions (DNFBPs) and virtual asset service providers (VASPs)

73. An overview of the financial and non-financial sectors is presented in the table below.

Table 1.1 Overview of obliged entities (financial institutions and DNFBPs) in Monaco (December 2020)

Type of obliged entity	Number (December 2020)	Overall annual turnover (estimated) ⁴⁶ in 2019 (EUR)	(Estimated) number of employees in 2019
Credit institutions	29	GNP (total) 2 636 131 149	2 541
Finance companies	4	Unavailable	Unavailable
Management companies	61	306 065 737	452
Life insurance intermediaries (agents and brokers)	83	Unavailable	352
Bureaux de change	3	4 000 000	6
Pawnbrokers	1	7 000 000	8

⁴⁶ Estimated turnover is based on the information in NRA 2021.

Trust and company service providers (TCSPs)	37	60 000 000	342
Trustees	34	Unavailable	Unavailable
Multi-family offices	22	8 000 000	44
Casinos (SBM and SFE, now MCFC)	3	210 300 000	1 136
Estate agents	151	320 000 000 ⁴⁷	604
Property dealers	305	See figure for estate agents ⁴⁸	305
Legal advisers	77	40 000 000	308
Chartered accountants and approved accountants	47	60 000 000	280
Jewellers/dealers in precious metals and precious stones	144	200 000 000	576
Antique and art dealers	40	40 000 000	80
Motor vehicle dealers	19	450 000 000 ⁴⁹	209
Sports agents	62	23 000 000	Unavailable
Yachting professionals	172	300 000 000	1 376
Auctioneers	26	75 000 000	156
Warehouse keepers (Article 1, section 17, of the AML/CFT Law)	3	Unavailable	Unavailable
Crowdfunding advisers and intermediaries	1	Unavailable	5
Virtual asset service providers (including security token offerings)⁵⁰	2	Unavailable	31
Lawyers	32	35 000 000	256
Notaries	3	50 000 000	68
Bailiffs	3	Unavailable	16

1.4.4. Preventive measures

74. The efforts made to tackle ML/TF and corruption are specified in the AML/CFT Law, which gives a list of the organisations required to participate in these efforts and their obligations in this regard. The various provisions of this law have been clarified by SO No. 2.318.

75. The preventive measures introduced by the AML/CFT legislation cover, among other things, the requirements for obliged entities to conduct risk assessments and keep them up to date, conduct due diligence on customers, submit STRs and declarations of cross-border movements of cash and negotiable bearer instruments, keep documents necessary for transactions, and implement compliance programmes.

76. Monaco regulates the use of cash by forbidding natural or legal persons from making or receiving payments in cash with a total value equal to or greater than EUR 30 000. It should be noted that this limit is high, and far higher than those in neighbouring countries.

1.4.5. Legal persons and arrangements

77. There are five types of legal persons in Monaco: (i) commercial companies in the form of

⁴⁷ This is the amount of turnover in the real property sector in Monaco and comprises the activity of both estate agents and real property traders.

⁴⁸ See previous footnote.

⁴⁹ This turnover figure also includes vehicle rental.

⁵⁰ On-site interviews indicated that there are no active VASPs in Monaco.

sociétés à responsabilité limitée or SARLs (limited liability companies), *sociétés en commandite simple* or SCSs (limited partnerships), *sociétés en nom collectif* or SNCs (commercial partnerships), *sociétés en commandite par actions* or SCAs (limited partnerships with shares) and *sociétés anonymes monégasques* or SAMs (Monegasque joint-stock companies), (ii) civil-law partnerships in the form of *sociétés civiles immobilières* or SCIs (property investment partnerships), *sociétés civiles particulières* or SCPs (special civil-law partnerships) and *SAMs à objet civil* (civil-law Monegasque joint-stock companies), (iii) *groupements d'intérêt économique* or GIEs (economic interest groups), (iv) foundations and (v) associations.

Table 1.2: Overview of companies in Monaco (July 2021)⁵¹

Legal form	Number
Limited liability companies (SARLs)	2 782
Limited partnerships (SCSs)	75
Commercial partnerships (SNCs)	12
Monegasque joint-stock companies (SAMs)	1 207
Limited partnership with shares (SCAs)	2
Civil-law partnerships (SCIs and SCPs)	15 764
Economic interest groups (GIEs)	5
Total	19 847

78. In July 2021, there were nearly 20 000 companies in Monaco, which equates to one for every two inhabitants.

79. The recognition of trusts created under foreign law is provided for in Law No. 214 of 27 February 1936 on trusts. Monegasque law allows for the establishment or transfer of foreign trusts in Monaco (32 trusts as of July 2021), as well as the use of foreign trusts to deal with the assets of individuals, whether during their lifetime or after their death.

80. As at the same date, there were 21 foundations operating in various sectors such as education, health and sport and 955 associations which could be grouped into federations of associations.

1.4.6. Institutional supervisory and monitoring arrangements

Table 1.3 Institutional monitoring arrangements for FIs

Type of obliged entity	Approval authority	AML/CFT supervisory authority
FINANCIAL SECTOR		
Credit institutions	ACPR, CCAF, DEE	SICCFIN
Finance companies	DEE	SICCFIN
Management companies	CCAF, DEE	SICCFIN
Life insurance intermediaries (agents and brokers)	DEE	SICCFIN
Bureaux de change	DEE	SICCFIN
Pawnbroker	Concession – State monopoly	SICCFIN

81. Credit institutions and payment and e-money institutions must be approved by the French Prudential Supervisory and Resolution Authority to be able to operate in Monaco. This situation, which arises out of the exchange of letters between France and Monaco of 20 October

⁵¹ Data provided by the Business Development Agency on 12 July 2021.

2010, was made binding by SO No. 3.021.

Table 1.4: Institutional supervisory arrangements for DNFBPs

Type of obliged entity	Approval authority	AML/CFT supervisory authority
NON-FINANCIAL SECTOR		
Trust and company service providers	DEE	SICCFIN
Trustees	DEE	SICCFIN
Multi-family offices	DEE	SICCFIN
Casinos (SBM and MCFC, formerly SFE)	DEE Concession – State monopoly, authorisation from the government	SICCFIN
Estate agents	DEE	SICCFIN
Property dealers	DEE	SICCFIN
Legal advisers	DEE	SICCFIN
Chartered accountants and approved accountants	Appointment by Ministerial Order, DEE, ⁵² Council of the Association of Chartered Accountants ⁵³	SICCFIN
Jewellers/dealers in precious metals and precious stones	DEE	SICCFIN
Antique and art dealers	DEE	SICCFIN
Motor vehicle dealers	DEE	SICCFIN
Sports agents	DEE	SICCFIN
Yachting professionals	DEE	SICCFIN
Auctioneers	DEE	SICCFIN
Warehouse keepers	DEE	SICCFIN
Crowdfunding advisers and intermediaries	DEE	SICCFIN
Virtual asset service providers (including security token offerings)	Prime Minister, DEE	SICCFIN
Lawyers	Appointment by Sovereign Order further to a report written by the Head of the DSJ after an opinion has been given by the first president of the Court of Appeal, the Principal State Prosecutor, the president of the Court of First Instance and the Bar Council	GPO until end of 2020. Chairperson of the Monaco Bar Association since 1 January 2021
Notaries	Appointment by Sovereign Order further to a report by the Head of the DSJ written after an opinion has been given by the	Principal State Prosecutor's Office

⁵² The DEE does not issue approvals, and merely registers them with the remark “miscellaneous regulated professionals” so that a Statistical Identification Number (NIS) can be assigned. The only notable exception is accountancy firms taking the form of civil-law Monegasque joint-stock companies, which are dealt with by the DEE (standard consideration of a SAM, the Ministerial Order is conditional on the directors being able to practise the profession of chartered accountant in Monaco).

⁵³ The Council of the Association issues a reasoned opinion prior to authorisation/withdrawal of authorisation to practise the profession of chartered accountant or approved accountant, including as to the equivalence of qualifications.

	first president of the Court of Appeal, the Principal State Prosecutor, the president of the Court of First Instance and the longest-serving notary	
Bailiffs	Appointment by Sovereign Order as proposed by the Head of the DSJ	Principal State Prosecutor's Office

1.4.7. International co-operation

82. Strong international co-operation is essential in the context of AML/CFT in Monaco, given the country's size, its exposure to ML of illegal revenues generated abroad (e.g. from corruption or tax evasion), the risk of its being used as a transit country, including through the use of its financial system with its unique characteristics, as well as its real estate and luxury goods sectors being used for ML/TF purposes.

83. Monaco has a legal framework which enables international mutual assistance in criminal matters to be given and requested. It has ratified the main international conventions in this field (see R.36 and IO.2) and operates based on the reciprocity principle.

84. In addition, as previously mentioned, Monaco has taken significant steps to promote tax transparency in recent years. However, since income tax evasion is not criminalised in Monaco, the issue of how requests from foreign counterparts in relation to this type of offence are dealt with remains.

85. Of the 29 credit institutions established in Monaco, 14 are branches of foreign credit institutions and the other 15 are SAMs with foreign shareholders. There are no insurance companies in Monaco, but insurance agents and brokers offer policies from insurance companies based in France or companies based in the EU which are authorised to operate in France (see c.26.2). As such, co-operation by the authorities of Monaco with foreign supervisors is especially important.

2. NATIONAL AML/CFT POLICIES AND CO-ORDINATION

2.1. Key Findings and Recommended Actions

Key Findings

- a) The Principality of Monaco has done a considerable amount of work to identify the ML/TF risks to which it is exposed. The existing vulnerabilities within FIs and DNFBPs are understood by the authorities. However, the analysis is not thorough enough. The risk that the financial system will be used to launder the proceeds of income tax fraud is not analysed. Lastly, no clear distinction is made between internal and external threats, while the risk assessment regarding: i) certain activities and sectors (casinos, CSPs, trusts and virtual assets), and ii) threats (organised crime, lack of detail concerning external threats) is limited. These shortcomings have an impact on the authorities' understanding of risks.
- b) The authorities' understanding of ML/TF risks is also limited by lack of information, particularly regarding incoming and outgoing financial flows, which reduces the relevance of NRA 2's conclusions. This also affects the understanding of the risks relating to TF.
- c) Based on the risk identified following NRA 1 (2017), an Action plan was adopted, and some measures have actually been implemented. Following NRA 2, a National AML/CFT Strategy was adopted by the government on 26 January 2022, which includes some measures designed to reallocate resources according to risks. However, the strategy does not address the risks identified *per se*. Furthermore, due to its recent adoption, the reallocation of resources had not been implemented at the time of the on-site visit. The authorities have not yet drawn up an action plan on the basis of this strategy.
- d) To date, Monaco has not applied any derogations from the FATF Recommendations. Provision is made for the application of enhanced measures for high-risk scenarios and simplified measures for lower risks, although the latter are not justified by the results of the NRA.
- e) Various liaison committees and contact groups provide operational and strategic ML/TF communication and co-operation between the authorities. Co-operation and co-ordination on counter-proliferation financing (CPF) does not seem to be catered for by the existing mechanisms. However, a new Co-ordination and Monitoring Committee for the national strategy to combat ML/TF, the proliferation of weapons of mass destruction and corruption, with large representation amongst the authorities, was set up a few days before the on-site visit.
- f) FIs and DNFBPs were involved in the NRA 2 process. The NRA 2 was published in December 2021 on the SICCFIN website, and the results have been shared with most of the private sector. Regulated entities maintained that they are aware of the risks identified in NRA 2; however, they have not yet incorporated them into their internal documents.

Recommended Actions

- a) Monaco should conduct an in-depth analysis of the risk related to income tax fraud and

other types of tax offence committed abroad and not punished by the laws of Monaco, by (i) examining and assessing the scale of the related ML threat; (ii) considering that non-criminalisation may be an inherent vulnerability; and (iii) providing an exhaustive analysis of national and sectoral vulnerabilities of relevance to this type of offence.

- b) Monaco should refine its analysis of risks linked to certain sectors and activities (casinos, CSPs, trusts and virtual assets) and threats (organised crime) through a more detailed examination of the information available in its next NRA. A more in-depth and granular analysis should be carried out, making a distinction between internal and external threats.
- c) TF risk analysis should be more detailed and take more account of relevant indicators.
- d) The authorities should take measures to collect statistics on incoming and outgoing financial flows. They should also reassess risks in areas where the lack of data had an impact on the ML/TF risk understanding.
- e) On the basis of this updated risk analysis, Monaco should (i) tie in the actions set out in its national strategy with identified ML/TF risks and (ii) translate the national strategy into an action plan targeting, quantifying and prioritising risk mitigation measures in a practical manner.
- f) The objectives and activities of the competent authorities should be aligned with national AML/CFT policies by (i) incorporating the results of NRA 2 into their roles and priorities and (ii) gearing their internal policies to the risks identified.
- g) The authorities should provide more guidance for the private sector in the implementation of the recommendations deriving from NRA 2, the introduction of specific considerations into their internal risk analysis and, where appropriate, amendments to their policies and procedures based on the findings of NRA 2.
- h) The authorities must ensure that the Co-ordination and Monitoring Committee for the national strategy to combat ML/TF, the proliferation of weapons of mass destruction and corruption is an effective platform for co-operation for all the competent authorities and is given the necessary means to perform its tasks properly.

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

2.1.1. Immediate Outcome 1 (Risk, Policy and Co-ordination)

1.1.1. Country's understanding of its ML/TF risks

Methodology used for the NRA

87. The Principality of Monaco published its first ML NRA in June 2017, based on the World Bank methodology (hereinafter “NRA 1”). The TF risk was not assessed at that time. Monaco completed its second NRA in July 2021 (“NRA 2”), using the same World Bank’s dedicated tool. All the authorities took part in the NRA 2 process, showing commitment and making efforts to assess the ML/TF risks.

88. The NRA is the main tool used to demonstrate country’s understanding of ML/TF threats, vulnerabilities and risks. The ML threat in Monaco so identified is multifaceted and can come from all horizons. This is due to the numerous different foreign communities present in Monaco and to the fact that the banking system is specialised in asset management, which attracts foreign capital

(factual information on the NRA can be found in Chapter 1 of this report).

89. The structure of the results of NRA 2 as well as its conclusions raise concerns. NRA 2 analyses threats according to the information and statistics available to various relevant authorities (namely the DSP, the DSJ and SICCFIN). However, it is not clear how these statistics were combined to provide an integrated general conclusion.

90. Despite considerable efforts to collect and use data, the analysis of risks is not sufficiently thorough. NRA 2 lacks granularity and depth in some areas of analysis. For example, there is no separate analysis of internal and external threats and the range of main predicates identified is too diffuse and covers a large array of potential offences. As the authorities' understanding of ML/TF threats is limited to the NRA 2, its shortcomings are impacting the perception of the risks. Furthermore, in general, the authorities seem to use the concepts of "risk", "threat" and "vulnerability" interchangeably, both in the NRAs and during interviews and written exchanges. The NRA makes no use of the notion of "consequence".

Understanding of ML risks

91. ML vulnerabilities are understood by the authorities, and there is a broad consensus on the NRA 2 conclusions. The NRA identifies five sectors in with a high ML risk: yachts, real estate agents, property dealers⁵⁴, sports agents and private banking. Although only two of these sectors are relevant under the FATF methodology, the assessment team notes that this shows a desire on the part of the authorities to take account of the risks arising from different sectors relevant to the risk and the context in Monaco. However, the vulnerabilities of some sectors, such as casinos and CSPs, are not fully considered.

92. For example, the MC Financial Company or MCFC (formerly the SFE⁵⁵) is a subsidiary of the SBM which centralises gaming-related transactions and financial services for casinos, such as receiving deposits and issuing loans to the most important players. As the MCFC is regarded by the authorities as a reporting entity, potential vulnerabilities linked to its activity are included in the risk analysis carried out on casinos. However, the limitation of the financial activities of the MCFC to those linked with the gaming facilities offered by its parent company (the SBM) stems from practice and is not based on any legal, regulatory or statutory provisions governing it. The MCFC does not apply any limit to payments in cash to high-spending gamblers.

93. The authorities consider that the risk in the CSP sector is moderately high; however, no full assessment has been carried out to understand the risks deriving from the interaction between the banking sector and CSPs. The situation is aggravated by the fact that the CSPs met on site did not seem to properly grasp the risks associated with their sector.

94. In addition to sectoral vulnerabilities, NRA 2 identifies the following national vulnerabilities: registers (of beneficial owners, bank accounts and trusts) have been set up but are not yet fully operational, the software goAML (a tool intended for use by SICCFIN's investigations team) is not yet in service, and co-operation between Monaco's authorities and French customs is not yet as good as it might be despite closer ties in recent times. The authorities show that they are aware of a number of important limitations affecting the AML/CFT system. Furthermore, the lack of staff at some of the competent authorities (particularly SICCFIN, the Financial Investigations Section (SEF) and the General Prosecutor's Office (GPO)) is referred to several times.

95. The main threats identified by NRA 2 are scams (36%, grouped together with embezzlement, forgery and the use of forgery, misappropriation) and corruption (29%, grouped

⁵⁴ Marchands des biens

⁵⁵ Société Financière d'Encaissement

together with trafficking in influence), followed to a lesser degree by VAT fraud and corporation tax fraud (9%). All the authorities met during the on-site visit stated that these predicate offences reflect the ML threats in Monaco, sometimes in various orders of priority. The authorities were well aware of NRA 2 but its limitations affected their understanding of the risks. The AT did not observe any attempt to go beyond the conclusions of NRA 2 or to look at its findings with a critical eye with a view to improving understanding of the risks. One exception relates to the DSP, which is able to articulate the threats and vulnerabilities connected with trusts (particularly the lack of expertise among the law enforcement agencies and the lack of transparency inherent in this type of legal arrangement).

96. The authorities did not mention the risk that Monaco's financial sector could be used to launder the proceeds of tax offences (other than VAT fraud and companies tax evasion), committed abroad. Since income tax fraud is not criminalised in Monaco, the authorities do not collect any data to be analysed; as a result, the NRA 2 does not provide any assessment of the threats posed by this type of offence. It does not consider the non-criminalisation of income tax fraud may constitute a vulnerability inherent to the associated ML risk. In view of the context of the jurisdiction (see Chapter 1), the assessment team considers that these are major shortcomings.

97. As several essential aspects were not considered in the NRA, the assessors cannot conclude that its conclusions are fully reasonable. The NRA fails to specify whether the statistics used to evaluate the threat considered the volume of criminal proceeds and their recurrence. In addition, grouping together various types of scams into one and the same category makes it impossible to gauge exactly which one poses the greatest ML risk and hence, to take the appropriate mitigating measures. Furthermore, this gives a considerable weight to scams. NRA 2 does not provide any information on the financial flows in and out of Monaco and this makes it impossible to draw any reliable conclusion on cross-border risks, either of ML or of TF. These data are particularly relevant in the context of a financial centre. There is no analysis of the results of the supervisory controls.

98. The main indicators used to assess the threat are suspicious transaction reports, investigations, prosecutions and convictions. However, requests for mutual assistance and information from other jurisdictions do not seem to have been entirely exploited in the conclusions of NRA 2⁵⁶ despite their key importance for an international centre. The results are not based on an overview of the amount of proceeds of crime generated by or passing through the country. Nor is there any estimation of the proceeds of crime subject to ML. Furthermore, the large proportion of unidentified predicate offences committed abroad⁵⁷ raises doubts as to whether the threats presented in NRA 2 are exhaustive and properly assessed.

99. Monaco has not reported any organised crime groups operating on its territory. However, structured networks of criminals do occasionally manifest themselves and engage in criminal activities such as drug trafficking, pimping and money laundering.⁵⁸ This aspect is not sufficiently dealt with in the NRA and more detailed analysis is required concerning the ML threats arising from organised crime.

⁵⁶ In NRA 2, sub-chapter b) "Statistics linked to domestic procedures", p. 39, presents statistics relating to international co-operation procedures engaged in by the DSP. However, the conclusions do not seem to be included in the analysis of threats as the conclusion diverges from that of the NRA (corruption accounts for double the number of requests for mutual assistance compared to the fraud which follows).

⁵⁷ The NRA recognises that in 61% of laundering cases, the predicate offence was committed abroad. It also notes that for 31% of the STRs received by SICCFIN, and a large number of the cases dealt with by the DSP, the origin of the predicate offence has not been determined.

⁵⁸ In 2020, the Monaco police force, working with the French, dismantled a structured network of criminals. <https://lobservateurdemonaco.com/infos/judiciaire/affaires-criminelles-marquante-2020>

100. The authorities' understanding of the ML/TF threats linked to legal persons is relatively satisfactory and is reflected in the NRA 2 (non-public version). However, some vulnerabilities were not included in the first analysis: access to and transparency of information on BOs, the types and geographical origin of managers, associates and shareholders, or the BOs of legal persons, particularly from high-risk countries. Furthermore, the analysis bases its conclusions on data from a limited number of STRs received by the FIU between 2018 and 2020 and does not include data from investigations and prosecutions, or studies related to TF risks, even though on the latter point, the authorities explained that the deficiencies highlighted in relation to the ML are valid for TF. It should also be noted that the public version of NRA 2 does not refer to this work, which may limit the awareness of professionals on the matter (see also IO.5).

101. Other than SICCFIN, the authorities' understanding of the risks linked to virtual assets is limited. Contrary to what is stated in NRA 2, there are no virtual asset service providers (VASPs) in Monaco, but the risk that companies might carry out such transactions without declaring it is not sufficiently taken into account. Several banks have identified business opportunities by including foreign VASPs amongst their clients. Other threats and/or vulnerabilities have been identified by the financial sector, like the emergence of clients declaring their source of wealth as speculations on virtual assets. The authorities are not aware of these risks and have not steered the private sector in this direction.

Understanding of TF risks

102. NRA 2 regards the risk of TF as "medium-low and rising" while noting that the number of such STRs tend to steadily decline since 2017. Like the threat, the overall vulnerability of Monaco to TF was found to be medium-low.⁵⁹ This conclusion on the level of risk seems reasonable; however, in view of its status as an international financial place, combined with an external threat (therefore difficult to control), it still needs to be clarified what risk mitigation measures Monaco has put in place to assess its TF risk as such. Although the TF vulnerabilities are described to a certain degree in the non-public NRA ("medium-low and rising"), the authorities refrain from assigning a specific risk level.

103. According to the information available, the most likely FT scenario is the raising of funds abroad to finance terrorist acts abroad, using Monaco as a transit country, which seems a reasonable conclusion. NRA 2 also states that the source of funds with a potential TF link tends to be legitimate, originating in import-export, donations to humanitarian or religious organisations, constructions, trust-related activity or money remitter activity (although this has not been present in Monaco since 2018). The potential criminal sources appear to be limited, and identified as the illegal trade in natural resources, arms, medicines and contraband (unverified sources).

104. Monaco's authorities considered various factors when preparing the TF risks conclusions. However, certain gaps in the data collection had a considerable impact on the analysis of TF risks and their understanding. The analysis of NPOs at risk of TF was only formalised during the on-site visit, and the authorities lack visibility over a large share of the sector, and on the transactions carried out by certain NPOs (see IO.10). Although the authorities have considered the FT threat specific to different sectors, as well as generic and sector specific FT vulnerabilities, they have not categorized different sectors according to their FT risk (or vulnerability) level.

105. The authorities' understanding is limited to stating that Monaco may be used as a transit country for financial flows intended to finance terrorism but fails to identify Monaco's specific risk as an international centre. In addition, the details of the only case of TF identified by the authorities, which was investigated during the on-site visit, are not considered in the NRA and are not the subject of any separate analysis (see IO.9). The NRA does not examine in detail matters

⁵⁹ Summary of the report, page 9.

the business relations with countries vulnerable to terrorism, the source and destination of money flows into and out of the jurisdiction, the areas of activity of NPOs or any links with politically exposed foreign persons who may be linked to state-sponsored terrorism.⁶⁰

2.1.2. National policies to address identified ML/TF risks

106. The 2017 action plan, arising from NRA 1, reflects the authorities' determination to address the ML risks and contains appropriate measures. Some of the results are commendable, such as the incorporation into the CC of the reversal of the burden of the proof for ML (Article 218-4) and the establishment of a register of beneficial owners and trusts (which is still being completed). Other key measures, such as the increase in the staff of the GPO, have been implemented although considered to be "difficult and costly".

107. Following the publication of NRA 2 at the end of 2021, the national AML/CFT/CPF Strategy (hereafter the Strategy) was adopted by the government on 26 January 2022. This strategy, which includes measures intended to reallocate resources according to risk, is based on 3 guiding principles – prevention, dissuasion, and national co-ordination and international co-operation (more information can be found in Chapter 1 of this report).

108. The Strategy does not address *per se* the risks identified in NRA 2. The measures address general vulnerabilities, without distinguishing how particular activities aim at mitigating particular risks.

109. Furthermore, some measures included in the Strategy partly remedy the vulnerabilities identified. For example, the authorities plan to remedy the absence of a balance of payments through a system meant to approximate the trade and capital flows with France, which is ultimately in the possession of this information. Such system would *de facto* enable Monaco to gain an overview of the flows into and out of its territory.

110. The Strategy has not yet been converted into an action plan. As a result, the different pillars have not been translated into practical measures which are (i) quantifiable, in terms both of the budget needed and of the objectives to be achieved; (ii) targeted, that is to say assigned to various competent authorities; and (iii) prioritised, in terms of dedicated resources, potential difficulties with implementation and deadlines for implementation. Lastly, because its recent adoption, the reallocation of resources according to risk had not been implemented at the time of the on-site.

111. The National Strategy Follow-Up Committee was appointed in February 2022, just after the adoption of the Strategy, to co-ordinate its implementation, ensure effective application and raise any questions. Due to its recent appointment, the AT cannot assess its effectiveness as a co-operation platform.

2.1.3. Exemptions and application of enhanced and simplified measures

112. Monaco did not introduce any exemptions for FIs or DNFBPs regarding the implementation of FATF recommendations. FIs and DNFBPs may apply simplified measures but only following an analysis of the ML/TF and corruption risks, taking the NRA into account. In practice, simplified measures are rarely used by the private sector. The assessment team was not aware of the use of NRA 2 results by the private sector to justify or authorise exemptions in

⁶⁰ The NRA states that "over the period under consideration (2017-2020), there was only one request for intelligence relating to TF from a counterpart FIU relating, among other things to a foreign PEP". This statement is not found among the overall conclusions concerning the TF threat. In addition, the risk analysis relating to PEPs in the chapter on TF is carried out on all the STRs, most of which relate to ML.

relation to low-risk scenarios.

113. Where the ML, TF or corruption risk appears to be high based on a risk analysis, reporting entities must take enhanced due diligence measures. However, the legislation does not oblige FIs and DNFBPs to ensure that higher ML/TF risks identified are incorporated in their risk assessments. In practice the risk matrices adopted and used by the private sector reproduce those of their parent company and rarely include risks which are emanating only from the NRA.

114. Some elements of the NRA 2 constituting “classic” AML/CFT high-risk areas (for example, the risk of corruption and PEPs) are among the criteria which call for enhanced measures. However, risk factors specific to Monaco identified by NRA 2 are not always taken into account by the private sector. For example, the main predicate offence identified by the NRA – scam – is not to be found amongst the risks considered by the private sector’s risk classification. Yet, some FIs have mentioned in their mapping other specific risks, stemming mainly from their parent company (for example, insider trading).

2.1.4. Objectives and activities of competent authorities

115. Some of the measures and objectives of the competent authorities included in the 2017 action plan, demonstrate authorities’ will to meet the challenges identified in NRA 1. However, an updated action plan incorporating the results of NRA 2 was not yet elaborated.

116. *SICCFIN (FIU)* – SICCFIN developed a Handbook, published in November 2021, which provides guidance and instructions for the financial analysts in their daily work. The Handbook contains some risk elements prioritising for example the TF cases. However, in practice, SICCFIN prioritises more generally its objectives and activities and it is not clear how these are adjusted to the risks identified (see IO. 6). It was not demonstrated that the FIU prioritises its work by, for instance, concentrating on cases involving laundering of the proceeds of corruption or fraud, which are the main risks identified by NRA 2.

117. *Investigations and prosecutions* – On the basis of the results of NRA 2, the police department (DSP) identified several measures which form part of its own separate strategy requiring to be incorporated into the national AML/CFT Strategy. These measures relate to (i) officer training; (ii) increasing technical resources; (iii) establishing closer ties with the private sector (particularly the SBM); (iv) staff recruitment; and (v) developing a relationship with French customs. Although these activities address the vulnerabilities identified within the DSP, it has not been demonstrated that the objectives and activities of the authorities in charge of ML/TF cases (DSP and prosecutor’s department) are in line with the ML/TF risks identified. No priority has been set to steer the investigation and prosecution authorities’ activities. It should be noted that there are concerns as to whether these departments have enough resources to deal with ML risks (see IO.7).

118. *SICCFIN (supervision)* – The supervisory authorities, which have a relatively satisfactory understanding of the general ML/TF risks in the financial and non-financial sectors, paid particular attention to the results of NRA 2. However, they have not adjusted their resources and objectives accordingly, mainly due to lack of staff. Furthermore, the prioritisation of their supervisory activities following the NRA2 is reflected only for some categories of regulated entities (see IO.3).

119. The objectives and activities of the competent authorities are, to a certain degree, consistent with national ML/TF policies, as is demonstrated by the implementation of the action

plan developed following NRA 1.⁶¹ As the AML/CFT Strategy was adopted one month before the on-site visit, it is difficult to conclude as to whether its implementation has resulted in a targeted action to address the ML/TF risks identified.

2.1.5. National co-ordination and co-operation

120. There is good co-operation and co-ordination between the Monaco authorities. The authority in charge of implementing and co-ordinating the AML/CFT policy is SICCFIN.

121. There are various liaison committees and contact groups tasked with communication and co-ordination between the authorities on measures to combat ML/TF. Co-operation and co-ordination on combating proliferation do not seem to be covered by the existing mechanisms. However, a new co-ordinating and monitoring committee for the national strategy to combat money laundering, the financing of terrorism, the proliferation of weapons of mass destruction and corruption was set up just a few days before the on-site visit. This committee will also serve as a co-ordination platform for the activities of the working groups. Due to its recent creation its effectiveness could not be assessed.

122. Several working groups provide operational and strategic AML/CFT co-operation and co-ordination:

- *the Co-ordination Committee*, set up 18 years ago comprises supervisory agencies, and is tasked with organising information sharing between the departments responsible for banking, investment, insurance, asset management and administration of offshore legal persons, and with raising any matters of shared interest regarding the co-ordination of the supervision of such activities. It brings together representatives of SICCFIN, the Minister of Finance and the Economy, who is the chair, the Business Development Agency (DEE), the Department of Budget and Treasury (DBT) and the Financial Activities Supervisory Commission (CCAF). It meets four time a year;
- *the AML/CFT Contact Group*, which operates under the authority of the Department of Justice, is tasked with ensuring that information is shared between the judicial authorities (prosecutors' office and courts), the police and SICCFIN, and addressing any matters of interest at operational level. The group meets twice a year. On 25 February 2022, Monaco added the fight against the proliferation of weapons of mass destruction to its remit;
- *the Liaison Committee*, which was set up 17 years ago and meets twice a year, is tasked with ensuring that information exchange between the government departments concerned by AML/CFT and corruption and the regulated entities;
- *the Monitoring Committee for the national strategy* is tasked with co-ordinating the national strategy, ensuring that it is properly implemented and raising any other matter of interest. Although it has only just been set up, the fact that it involves all the competent authorities seems to equip it with an effective structure for exchanging information and for co-operation and co-ordination.

123. At operational level, the FIU and the law enforcement agencies work together closely when they are investigating financial crime, making use of formal and informal co-operation channels. Information and intelligence circulate between the various authorities without any restriction of a practical or legal nature.

124. Informal co-operation with the private sector is conducted through the following

⁶¹ On 30 June 2021, of the 82 activities scheduled in the action plan, 35 had been completed, 15 were under way, 2 were no longer applicable, and 30 had not been carried out. The assessment team notes that the latter include those relating to tax evasion issues.

mechanisms and measures:

- informal meetings between the Monaco Association for Financial Activities (AMAF) and SICCFIN, which enable representatives of financial institutions, grouped within AMAF, to discuss any matter relating to AML/CFT with SICCFIN;
- informal meetings with other representatives of the private sector, which are regularly initiated by SICCFIN or the entity concerned, enabling the latter to discuss their needs and any matters relating to the operation application of AML/CFT measures.

2.1.6. Private sector's awareness of risks

125. The measures taken by Monaco so ensure the FIs, DNFBPs and other sectors concerned by the application of the FATF recommendations are aware about the results of the NRA are satisfactory.

126. The representatives of the private sector were invited to contribute to NRA 2 by answering questionnaires. The response rate from most professions was of 100% or at least 75%, which reflects the strong commitment to the process. To enable regulated entities and their representatives to follow the progress of the NRA, a series of meetings was held (separate from those in which each profession's AML/CFT issues were discussed):

- between June and September 2020, meetings run by SICCFIN were held with representatives of the regulated professions. They were an opportunity to emphasise the aims of the NRA and the need for an extensive response to the questionnaire from the professionals concerned, and to present the timetable. The meetings were due to take place in the first quarter of 2020 but were delayed because of the COVID-19 pandemic;
- on 12 November 2020, a first progress report was made, with the aim to engage in communication on the NRA, call on professionals to get involved, and examine the initial feedback;
- on 15 April 2021, a second follow-up meeting was held, where some initial feedback was shared on the participation in the exercise.

127. The second NRA was the subject of an important consolidation meeting, (on 22 July 2021) where the Minister of State (i.e. the Prime Minister), the Minister of Finance and the Economy, the Minister of Justice, the President of the National Council and representatives of the private sectors which took part in the process. Monaco published a public version of NRA 2 on the SICCFIN website in November 2021 (French only) and a bilingual version in December 2021.

128. The regulated entities met during the on-site visit confirmed that they were aware of the risks identified in the NRA and that they were considered in their own risk policies and procedures; however, the assessment team noted that in practice, only one private sector entity included them into their internal documents.

Overall conclusions on IO.1

129. The authorities' understanding of ML risks is broadly aligned with the results of NRA 2, which rates scams, corruption and VAT and corporate tax fraud as the main predicate offences. The authorities did not address the risk of laundering of the proceeds of income tax fraud committed abroad. Limitations in risk assessment are noted for certain sectors and activities (casinos, CSPs, trusts and virtual assets) and threats (organised crime, lack of granular analysis of external threats). The risk of TF, which was assessed for the first time in NRA 2, is described as "medium-low"; although this conclusion seems reasonable, some indicators were not taken into account in the analysis.

130. The 2017 action plan developed after NRA 1 is consistent to a large degree with the risks

identified therein. By contrast, the national AML/CFT strategy deriving from NRA 2, which has just been adopted, does not address the risks identified *per se* and has not been converted into an action plan, meaning that resources are still not allocated according to risks. The authorities seem to co-operate effectively at operational level. As the Co-ordination Committee, which also deals with the proliferation of weapons of mass destruction, was set up only a few days before the on-site visit, it is difficult to conclude on its effectiveness at strategic level. Major improvements are needed, particularly with regard to the analysis of certain ML risks and to the level of understanding of TF risks. **The Principality of Monaco is rated as having a moderate level of effectiveness for IO.1.**

3. LEGAL SYSTEM AND OPERATIONAL ISSUES

3.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 6

- a) The investigating authorities have mostly an indirect access to financial intelligence and other relevant information. Delays are noted when receiving information from the private sector. SICCFIN is a key source of financial intelligence; however, the authorities do not seem to consult it to the full extent in the course of their investigations.
- b) Law enforcement authorities use financial intelligence and other relevant information in their investigations. No guidelines or methodological tools to assist them in exploiting financial intelligence are available.
- c) The GPO receives and makes use of the reports submitted by SICCFIN, the latter producing thorough and good quality operational analyses. While welcoming the improvement in the quality of the SICCFIN reports, the LEA would expect them to be more detailed. A number of success stories are to be reported on the use of financial intelligence in ML investigations and prosecutions, mostly arising from SICCFIN disseminations.
- d) Suspicious transaction reports (STRs) mainly come from the financial sector, particularly from banks. The contribution from professionals in risk sectors is still limited. The authorities report that the quality of the STRs has improved, particularly those from banks, casinos and chartered accountants; however, some difficulties remain, particularly in the non-financial sector.
- e) STRs are sent on paper by post or courier which does not constitute a secure means of transmission. The on-site interviews revealed considerable delays in the submission of STRs. The measures taken by the authorities address this issue are not satisfactory.
- f) SICCFIN does have a system for prioritising STRs but it doesn't fully take into account the risks identified in the NRA.
- g) SICCFIN makes considerable efforts to communicate formally and informally with the reporting entities, providing them with grouped guidelines and feedback when necessary. The GPO, for its part, provides systematic feedback to all entities submitting STRs.
- h) SICCFIN suffers from a significant lack of human and technological resources. Despite this, it produces strategic analysis, which is a widely used by the private sector, particularly where it comes to understanding ML risks. However, some major problems (such as delays in the submission of STRs and risks relating to TF) have not been the subject of a strategic analysis by SICCFIN.
- i) There are mechanisms for co-operation between the competent authorities, which were used extensively during the assessment period. However, they do not seem to have been fully deployed to increase the efficiency of the system in its entirety. Co-operation and co-ordination between the authorities seems to have increased recently.

Immediate Outcome 7

- a) Monaco has a longstanding legal and institutional framework for ML investigations and

prosecutions and the competent authorities are knowledgeable. Monaco has taken measures to improve effectiveness in identifying cases of ML which have begun to show results, especially since legislative changes made in 2018. However, there are still concerns as to the consistency of the cases identified with the country's risk profile and the extent to which parallel financial investigations are carried out.

- b) Because of significant delays in the progress of investigations, the number of ML prosecutions is low. This lack of progress is due in part to delays in obtaining mutual legal assistance from other countries. However, it is also the result of inherent problems in Monaco's system, in particular (i) the limited investigating powers of the Prosecutor General and, to a lesser extent, the SEF; (ii) insufficient staff numbers at the GPO and in investigating judges' offices; and (iii) the absence of any time limits for filing appeals. Moreover, there is no policy or written procedure for the prioritisation of investigations based on risks nor any guidelines on the processing of ML investigations.
- c) Prosecutions and convictions for ML are only partly consistent with Monaco's risk profile. The number of convictions is very modest, and this is the result both of the low number of prosecutions and of a modest conviction rate, deriving from evidentiary difficulties. Despite the commendable establishment of an ML presumption mechanism in 2018, to date its use has been very limited, with only one conviction handed down in reliance on the presumption since its introduction. No convictions have been handed down for laundering offences by a third party or in complex cases involving legal persons.
- d) Monaco has achieved convictions in cases involving predicate offences committed abroad and self-laundering. However, the criminal sanctions imposed are neither effective nor dissuasive. Furthermore, it has not been possible to enforce them⁶² because the persons concerned have left Monaco, and this raises serious questions as to the effectiveness of this aspect of the current system.
- e) The Monaco authorities implement alternative criminal justice measures to address ML when it is impossible to achieve a conviction, but only to a limited degree.

Immediate Outcome 8

- a) Monaco has begun work to improve effectiveness in asset recovery. However, there is no strategy or official policy in this area. With regard to ML, as a result of the low number of convictions, very few confiscation orders have been made. Furthermore, none of the orders covers property of equivalent value or property held by third parties. As to the proceeds of predicate offences, powers of confiscation are limited (see R.4) and there are no visible results in practice.
- b) Provisional measures are applied but only to a modest degree. This is mainly the result of the fact that the PG has no coercive powers, which causes difficulties and delays in identifying and locating assets and the application of provisional measures. Moreover, the authorities do not have adequate mechanisms or resources to manage seized assets.
- c) The recovery of assets for which confiscation orders have been made has either not

⁶² Except in one case, in which the decision became final shortly after the on-site visit, on 22 April 2022, at which point the 18-month prison sentence began.

taken place or has not been confirmed. No asset sharing, repatriation or compensation of victims has taken place.

- d) There are no instances of the confiscation of instrumentalities of money laundering or predicate offences.
- e) The authorities have adopted a proactive, targeted approach towards identifying undeclared or falsely declared cross-border transportation of cash and bearer instruments, which seems on the whole to work in practice. However, co-operation with French counterparts is not fully developed and the authorities' resources to detect cases are limited in some respects. The application of provisional measures is also still very limited because of the inherent shortcomings in the legal system. To date the authorities' efforts have led only to one case in which measures to recover undeclared assets were ordered.
- f) The results achieved with regard to confiscation in Monaco are only very modest and are not consistent with the risks identified.

Recommended Actions

Immediate Outcome 6

- a) Monaco should facilitate direct access by the authorities to the relevant registers mentioned under Table 3.1.
- b) Monaco should ensure that SICCFIN has human and technical resources commensurate with the risk and context of the jurisdiction to carry out operational and strategic analysis.
- c) SICCFIN should: (i) begin a strategic analysis of TF risks; (ii) analyse the delays in the submission of STRs and take measures to reduce them significantly; (iii) draw up targeted guidelines for the reporting entities, particularly those in sectors where the inherent risk of ML/TF is high; and (iv) continue to provide training and feedback to improve the quality and quantity of STRs.
- d) LEA should be encouraged to systematically use financial intelligence and be provided with guidelines or methodological tools facilitating use of financial intelligence in investigations.
- e) SICCFIN should draw up and apply a system for prioritising STRs depending on the specific risks identified in Monaco, consistent with the prioritisation system set up by the LEA (see IO.7).
- f) The competent authorities should fully use the potential of existing co-operation and co-ordination mechanisms. The LEA should provide SICCFIN with detailed feedback on the quality of their disseminations.
- g) Monaco should ensure that it has electronic and secure means of delivering STRs.

Résultat Immédiat 7

- a) The identification of ML cases should be improved, in line with Monaco's risks and its context, with a focus on cases involving complex features (such as ML by a third party through legal persons). For this purpose, guidelines should be drawn up (i) to facilitate the identification of potential cases of ML in MLA requests; (ii) to open preliminary investigations; and (iii) to seek international co-operation where necessary. Monaco

should also take measures to encourage the use of parallel financial investigations, particularly with regard to offences entailing a financial gain (for example, through training, secondments and targeted guidelines).

- b) Monaco should take measures to secure more rapid progress in ML investigations. These measures should include (i) the extension of the GPO's investigating powers (including granting him/her coercive powers, cf. R.31); (ii) the more systematic use by authorities in their investigations of their rights of access to information on accounts and assets; and (iii) increasing the dedicated resources of the GPO and investigative judges, including the recruitment of magistrates and technical assistants with specific skills to the GPO and investigating judges' offices. Monaco should also remedy the additional shortcomings noted in R.31.
- c) Monaco should take measures to prioritise investigations and prosecutions of ML cases in accordance with the country's risks (including ML carried out by facilitators in certain sectors such as banking and involving offences committed abroad such as fraud, corruption and tax offences). These measures should include guidelines and policies or written procedures at the level of the GPO, investigating judges' offices and the DSP.
- d) The possibility of appealing to the courts against investigative acts should be reviewed and amended so as to avoid unreasonable delays, in a manner that is compatible with Monaco's legal system and the right to a fair trial.
- e) Monaco should also look into the reasons for the limited deployment of the ML presumption mechanism so as to encourage its greater use. Measures should also be taken to help reduce the obstacles to prosecution of ML by a third party, and efforts should be made to achieve convictions in this type of case.
- f) Monaco should review its practices when determining sentences and implement policies or guidelines to ensure that in all ML cases, the criminal sanctions imposed are effective and dissuasive. The circumstances in which a person may be held pending trial should be reviewed and amended in a manner that is compatible with human rights so as to enable penalties to be enforced.
- g) Monaco should set up a process to ensure that alternative criminal justice measures are systematically considered where it is impossible for justifiable reasons to achieve a conviction for ML.

Immediate Outcome 8

- a) Monaco should implement a strategy or a formal policy for the recovery and management of assets, including the proceeds of predicate offences, which includes clear objectives that make it possible to assess results.
- b) The legislation should be amended so that the power to order confiscations and provisional measures applies to all predicate offences.
- c) The GPO should have powers enabling him/her to identify and locate assets and apply provisional measures. Monaco should also implement a proper system for the management of seized or confiscated assets, including the possibility of calling on experts where necessary. The system should cover asset sharing, repatriation and compensation of victims.

- d) Monaco should introduce measures to ensure that the confiscation of instrumentalities of money laundering or predicate offences takes place, including in cases where this is not carried out for evidentiary purposes. These measures should include legislative amendments enabling instrumentalities to be seized, and training for the authorities.
- e) With regard to the non-declaration or false declaration of cross-border transportation of cash and bearer instruments, co-operation with French counterparts should be stepped up both to raise awareness among the public about their declaratory obligations and to improve detection of potential infringements. Monaco should also consider equipping the DSP with sniffer dogs and giving it more extensive powers to check the source and destination of cash (cf. R.32). In addition, Monaco should review the entirety of the cross-border declaration system to eliminate technical obstacles to confiscation or to any other provisional or executory measure.
- f) Monaco should consider adopting legislative amendments enabling confiscation of the proceeds of offences without prior conviction.

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

3.2. Immediate Outcome 6 (Financial Intelligence)

3.2.1. Use of financial intelligence and other information

132. The lea (General Prosecutor's Office (GPO) and police department (DSP)) have access, mostly indirectly, to a range of financial intelligence and other information (see table 3.1), which they consult and use regularly in the course of their investigations to collect evidence and trace proceeds of ML, TF and related predicate offences. The AT based its conclusions on various types of information but in particular on statistics provided by SICCFIN, interviews with the competent authorities and interviews with representatives of the private sector.

133. The DSP gathers intelligence at national and international level. At national level, the DSP does not have direct access to any databases containing financial intelligence besides its own register of criminal records and on-going cases. To consult the various registers and databases it must send a written request to SICCFIN or the Business Development Agency (DEE) (see table 3.1). The DSP can obtain information from the private sector in the course of an investigation with the prior approval of an investigating judge (which is rapid and unrestricted), where the information encroaches on the right to privacy. Although the authorities maintain that information can be swiftly obtained in urgent cases (within two days), the reporting entities generally reply within 15 days. The time taken in urgent cases seems appropriate, but the average waiting time of 15 days entails significant delays, undermining the effective use of financial intelligence.

134. At international level, the DSP actively reaches out to foreign counterparts to obtain financial intelligence and receives information from international police platforms provided by Europol and Interpol (see IO.2).

135. The GPO, which leads investigations, obtains access to financial intelligence and other relevant information via instructions to the DSP, which issues the actual requests to the bodies

concerned. The GPO also relies to a great extent on SICCFIN to obtain financial intelligence through (i) SICCFIN disseminations and (ii) spontaneous requests based, in particular, on MLA requests, civil proceedings or media reports (see Box 3.1). Besides its exchanges with state agencies, the GPO makes requests to its foreign counterparts (see IO.2). Lastly, it deals with the STRs received from notaries and bailiffs (also from lawyers until 2020).

136. As the LEA have only indirect access to the relevant information, Monaco's FIU, SICCFIN, is a key source of financial intelligence and other information. SICCFIN receives STRs from reporting entities and has an unrestricted right to ask them for additional information, without the need for a prior STR. It also receives parts of STRs sent to the GPO and the Chairperson of the Bar Association. It may also request information from other government agencies, and exchanges information (through spontaneous requests and communications) with its foreign counterparts, although not to the full extent (see IO.2). All this information, and the results of its financial analyses, are recorded in its MONADES⁶³ system. Lastly, SICCFIN has access to private databases, which it consults regularly.

137. To obtain intelligence, SICCFIN regularly turns to the reporting entities, either on the basis of a prior STR, or spontaneously. Generally, SICCFIN gives 15 days for the response, save in urgent cases or particular situations, when the time limits are reduced to five or two days. If there is no reply within the deadline set, a reminder is sent. SICCFIN has faced significant delays in obtaining information from regulated entities and this has had an impact on its swift reaction to potential cases.

Table 3.1: Main registers and databases to which the competent authorities have access to:

Type of access	SICCFIN	DSP
FICOBAM bank accounts file	Direct	Indirect (SICCFIN)
Register of Commerce and Industry (RCI)	Direct	Indirect (application to the DEE)
Register of Beneficial Ownership (RBO)	Direct	Indirect (SICCFIN)
Register of Trusts	Direct	Indirect (SICCFIN)
Private sector	On request	Indirect (application to investigating judge)
Police files	On request (DSP)	Direct
Private databases	Direct ⁶⁴	Direct ⁶⁵
Real estate information	On request (DSF)	Indirect (application to investigating judge)
Hotel information	On request (DSP)	Direct

138. As the Register of Beneficial Owners (RBO) has not yet been completed, the competent authorities access and use the information on BOs held by the FIs and DNFBPs, through case-by-case requests (see IO.5). The deficiencies in the quality of the BO information kept by the private sector, as well as the delays noted in the provision of such, have a negative impact on the capacity of the competent authorities to access reliable and current BO information.

139. Despite the significant obstacles, the authorities do use financial intelligence and other relevant information to collect evidence and trace proceeds of crime linked to ML. The AT notes

⁶³ internal data management system

⁶⁴ WorldCheck, Lexis Diligence, Compliance Daily Control, Ardis (Polixis), Orbis.

⁶⁵ WorldCheck, Infogreff, Wealth-X.

that neither the GPO nor the DSP have dedicated methodological or procedural tools to guide prosecutors and police officers in the use of financial intelligence to establish evidence or to trace assets. They do not have access to specialists in accounting, finance or company service providers who might assist them in the process of analysis.

140. Potential ML activities are mainly identified through reporting by SICCFIN (see table 3.2). In addition, ML proceedings were initiated by the GPO based on other sources than SICCFIN, mainly DSP work or press articles (see box below), which demonstrate the authorities' capacity to use relevant financial intelligence from various sources. However, statistics to further support this observation are not available, making it difficult to draw a more detailed conclusion. During the assessment period, six parallel financial investigations were opened on the basis of an MLA request (see IO.7). This is not entirely in line with Monaco's risk profile, although the authorities have recently been increasingly proactive in starting such investigations.

Box 3.1: Investigation opened by the GPO on the basis of a source other than SICCFIN

The GPO took a spontaneous interest in the person renting the most expensive flat in Monaco. Having had the person identified by the DSP, the GPO made a request to SICCFIN to check if the person figured in the SICCFIN system (MONADES), and if so, to conduct a financial analysis. SICCFIN identified the person concerned and prepared a report for the GPO, which in turn, asked the DSP to open an investigation. The DSP conducted checks on the lessor and the lease, addressed bank inquiries to the AMAF to locate the accounts opened by the lessor in Monaco and those of the person's spouse (a PEP) and other business contacts revealed by SICCFIN's work. The DSP also interviewed compliance officers at various banks where certain transactions took place.

141. The SICCFIN disseminations to the GPO are all used for subsequent investigation. The SICCFIN reports include, as appropriate, information contained in the STR, the relevant bank documents and records, additional data requested from reporting entities and SICCFIN's analysis. SICCFIN's disseminations cannot be used as evidence during the investigation phase or in court.

142. Considering the DSP indirect access to financial intelligence, it seems that the SICCFIN is not sufficiently requested by the DSP and the GPO during their financial investigations (about 80 requests per year). The LEA make relatively few follow-up requests to SICCFIN after the disseminations. However, a significant increase in the GPO requests to SICCFIN (by 1040%) is to be noted since the beginning of 2020. According to the authorities this stems mostly from the new impulse given by the GPO to ML issues, enabled on the one hand by the new provisions on the presumption of ML and, on the other, by the co-operation within the Contact Group which led to improvements the quality of SICCFIN disseminations.

143. As stated by the GPO, the information requests are sent to SICCFIN mainly to check if the person is known the MONADES, or when information from foreign FIUs is needed. The authorities gave an example of a successful information exchange with SICCFIN, which led to the opening of an investigation (see Box 3.1 above). They also state that many on-going investigations are based on GPO requests to SICCFIN.

Table 3.2: ML proceedings based on reports from SICCFIN

	2016	2017	2018	2019	2020	2021	Total
Reports from SICCFIN to the GPO⁶⁶	8	12	16	20	28	21	84
<i>Prompted by one or more STRs</i>	8	6	13	14	22	16	63

⁶⁶ Under Monegasque law, all reports from SICCFIN to the PG must lead to the opening of an investigation.

Prompted by information from a foreign FIU	0	0	1	1	0	0	2
<i>Prompted by other information⁶⁷</i>	0	6	2	5	6	5	19
Proceedings discontinued	2	6	7	6	8	3	29
Investigations under way	0	1	3	4	17	16	25
Prosecution	2	4	4	9	3	2	22

144. Over the assessment period, a quarter of SICCFIN reports gave rise to prosecution. The authorities explained the lower proportion in 2020 by recent reports which are still being investigated. The shortcomings identified in IO.7 may have an impact on the use of financial intelligence by the investigating authorities.

145. SICCFIN points out GPO high staff rotation and the overall limited human resources as a probable cause for the limited use of financial intelligence. Nonetheless, the GPO welcomes the improvement of the quality of SICCFIN's reporting in recent years, which is the result of discussions between the competent authorities. This improvement is also noted through the decrease over the last three years of the number of SICCFIN disseminations dismissed, although this could also be due to the introduction of the presumption of ML in the CC in 2018.

146. The authorities have been able to give examples of cases in which financial intelligence was used successfully in ML investigations and proceedings (see box below).

Box 3.2: Investigation opened by the GPO following a report by SICCFIN

In June 2019, SICCFIN referred a matter to the GPO, having received an STR concerning two individuals following the observation on accounts opened in Monaco of financial movements which were accounted for to banks through the production of contracts for the sale of vintage vehicles for over EUR 10 million. This referral gave rise to the opening of an investigation into money laundering offences.

The investigating office carried out checks through Interpol and its counterparts in another country, enabling it to establish that the movements in question were being investigated in that country for the offences of misuse of a company's property and money laundering.

Many exchanges had taken place as part of a process of police co-operation through which it had been possible to co-ordinate the investigations at judicial level and delineate the scope of action of each authority so as to carry through both procedures.

As a result of this co-operation, requests for international mutual assistance in criminal matters were duly met in both countries, it was possible to determine the destination of the funds concerned and the damage was estimated at EUR 24 million.

The case is still running and joint operations with the foreign country were carried out in November 2020 to bring the perpetrators in for questioning and seize the property acquired using the proceeds of the original offence.

147. The authorities state that most of the SICCFIN disseminations relates to corruption combined with misappropriation and trafficking in influence. Together, misappropriation, forgery and the use of forged documents, embezzlement and suspected fraud account for over a third of reports by SICCFIN to the GPO. This broadly corresponds to the results of NRA 2, which is not surprising since the NRA is to a large extent based on the same data. ML of tax fraud

⁶⁷ Information transmitted under Article 61 of the Code of Criminal Procedure (used in particular before the implementation of the 4th AMLD), by persons not subject to the law and for whom the FIU could not initiate an investigation because there was no legal basis to do so; along with information from other sources deemed by SICCFIN to be of interest to the Principal State Prosecutor's Office.

proceeds represents only a minority of reports. However, it should be noted that this only includes VAT fraud and corporate tax fraud and not ML of other types of tax offences committed abroad (which are not punished in Monaco), to which Monaco is highly exposed (see Chapter I).

148. As to the use of financial intelligence and other information in TF cases, the investigating authorities rely on the same sources as referred to above and on the DSP's national intelligence service. Over the assessed period, SICCFIN filed two TF disseminations based on STRs. One of the two investigations on potential links with TF is based on one of these reports. One of the investigations, for which it was found as related to ML, has been closed; the other is still under way (see IO.9). As the case is still on-going no conclusion can be drawn on the effective use of financial intelligence. Overall, the assessors cannot confirm that financial intelligence and other information is being effectively used in TF cases.

3.2.2. Reports received and requested by the competent authorities

STRs

149. SICCFIN receives STRs from the majority of reporting entities safe notaries, bailiffs and lawyers. Notaries and bailiffs submit STRs to the GPO, which is not a self-regulatory body as required by the FATF (see criterion 23.1). This was also the case until 2020 for defending lawyers, lawyers and trainee lawyers. Following the change to the legislation they are now required to submit STRs to the Chairperson of the Bar Association.

150. STRs addressed to SICCFIN are always sent on paper, as postal recorded delivery, or by courier. Postal delivery does not make it possible to ensure full confidentiality of the information. This system makes it necessary for SICCFIN employees to manually scan the reports and transcribe their content into the internal data management system, MONADES. Although this procedure could potentially affect the speed of the submission and processing of STRs, the small size of the jurisdiction and the number of STRs received over the assessment period indicate that this issue did not actually arise concerns in practice.

151. Before 2019, the GPO did not always forward the STRs it received to SICCFIN. This situation was remediated after 2019 and now SICCFIN receives all STRs. In practice, when an STR is received, the GPO automatically opens an investigation through the DSP and, in parallel, notifies SICCFIN⁶⁸ of the facts and requires the FIU to provide all information related to the case. Feedback from SICCFIN is particularly useful and often enables the GPO to gather sufficient elements in order to take a decision on the case.

Table 3.3: STRs sent to SICCFIN, the GPO and the Chairperson of the Bar Association

	2016	2017	2018	2019	2020	2021	TOTAL
SICCFIN	725	711	590	675	655	685	4 041
GPO	12	16	12	12	6	8	66
Chairperson of the Bar	N/A	N/A	N/A	N/A	0	1	1
TOTAL	737	727	602	687	661	694	4108

152. Over the last five years, the number of STRs received has declined slightly (see also IO.4,

⁶⁸ Since the change in the legislation in February 2022, SICCFIN has analysed STRs which are automatically forwarded to it by the Principal State Prosecutor's Office.

table 5.1). The authorities explained that in 2016 and 2017, several banks merged and this led to a review of customer portfolios which, in turn, gave rise to many STRs. The subsequent reduction, in 2018, was linked to the termination of the activities of Monaco's only money remitter, namely La Banque Postale (via Western Union). Since then, the number of STRs has steadily risen. There was an increase in the number of STRs in the first quarter of 2020, followed by a decline due to the global pandemic.

153. STRs come primarily from banks which is partly in line with Monaco's risk profile. Historically, professionals in the financial sector are the most inclined to send STRs to SICCFIN. The contribution of other risk sectors (such as asset management companies and real estate agents) is still somewhat limited (see IO. 4, table 5.1). To remedy this, the authorities have recently published sectoral guides, in line with the level of risk established by NRA 2. The effect on the reporting behaviour of the concerned entities is still to be demonstrated.

154. STRs received by the GPO are mostly submitted by notaries, then, to a lesser extent, by bailiffs and least frequently, by lawyers (up to 2020). The Chairperson of the Bar Association has received one STR since the change in the law in 2020 which gave him/her the power to receive STRs from lawyers. This level of reporting by lawyers does not seem to fully reflect the associated risks in Monaco. Therefore, at this stage, the change in the legislation does not seem to have had any positive effect on lawyers' reporting practices.

155. An analysis of the STRs received by SICCFIN has revealed that the predicate offences are mostly committed abroad and that in nearly a third of the STRs received the predicate was unknown. However, where predicate offences were identified, a combination of corruption and trafficking in influence were cited (13% of the STRs), with tax offences in second place (9% of the STRs). Individually, the remaining types of predicate offence amount to very small proportions. This seems to be consistent with the risk and the context in Monaco.

156. STRs are generally accompanied by useful documents and information. However, SICCFIN regularly sends follow-up requests to obtain additional information after an STR has been submitted, although no statistics were available. These requests generally seek further details (on bank accounts, counterparties in financial transactions additional natural or legal persons, etc.) intended to deepen SICCFIN's analysis. The authorities maintained that this contributed to the improvement of the quality of the STRs.

157. SICCFIN often sends spontaneous information requests to the private sector, without prior STR. On average, over the period concerned, 1 400 such requests were made per year in the form of circulars.⁶⁹ There were no concerns expressed regarding such requests; however, responses to urgent requests can be obtained within a reasonable timeframe, the average delay of 15 days does not seem appropriate.

158. SICCFIN stated that the quality of STRs received has improved, particularly those from banks, casinos and accountants; however, STRs emanating from the non-financial sector are still not sufficiently detailed, and therefore, follow-up information requests must be made.

159. Over the last five years, the STRs triggered by negative press articles account on average for 30% of the total, with an increased trend (38%) over the last two years. A significant part of these STRs constitute "defensive reporting", which not only have little financial intelligence value, but are also submitted long after the transaction has been carried out. Nevertheless, some STR

⁶⁹ Requests sent to all banks, CSPs and asset management companies to ask if the persons concerned are known to the regulated entities.

samples provided to the assessors by SICCFIN proved to be of a generally high standard.

160. The GPO, for its part, mentions several serious problems with the STRs it received. Most of the reporting entities file very few reports which are mostly tardy, incomplete, and “defensive” reports. Many are sent only because the customer is a politically exposed person (PEP). The GPO noticed an improvement in the quality of the STRs received from bailiffs and notaries, but this does not seem to have impacted the number of proceedings initiated on the basis of these. Although all STRs give rise to an investigation, some are still on-going and did not yet lead to a prosecution (see IO.7). Lastly, the Chairperson of the Bar Association stated that the one STR he had received was detailed and of a high standard.

Table 3.4: Number of reports based on STRs submitted by SICCFIN to the GPO

	2016	2017	2018	2019	2020	2021	Total
STRs submitted to SICCFIN	725	711	590	675	655	685	4 041
Reports to the PG based on one or more STRs	8	6	13	14	22	16	79
Number of STRs corresponding to these reports	50	13	33	25	52	35	208

161. SICCFIN’s STRs dissemination rate to the GPO is relatively low. Only 5% of STRs serve as a basis for reports to the competent authorities (cf. Table 3.3), which raises concerns about the quality of the information and analysis they contain. Apart from the factors described above, this may be explained further by the findings below.

162. While the quality of STRs seems to vary according to sector, the delays in their submission remain a source of concern. Delays of 40 to 100 days have been noted (see IO.4) even for banks. This is not systematic but nor are these isolated cases. However, an appropriate assessment of the amount of “belated” STRs is difficult to be made as SICCFIN does not have a clear picture of the problem (for example, the authorities did not collect data on the timespan between the execution of transactions and the submission of the STR). The authorities explain these delays by the fact that some STRs are based on press articles, which means that the regulated entity conducts a retrospective analysis of the account, or by tardy obtention of supporting documents for a transaction.

163. SICCFIN has already taken some measures to deal with this situation, such as dedicated feedback sessions with regulated entities on the need to send timely STRs. However, the AT deplores the lack of more compelling measures to address these delays.

164. The delays in the submission of STRs may have an impact on SICCFIN’s postponement actions. SICCFIN may postpone the execution of any transaction which is subject to an STR. Under the relevant provisions, customer’s assets are frozen by Order of the President of the Court of First Instance on application by the GPO, who him/herself is notified by SICCFIN about any doubtful transaction. The postponement applies for five working days. The extension of the postponement measure can be granted by Order of the Court President beyond its initial timespan.

165. The same procedure applies where SICCFIN is informed by a foreign FIU that a doubtful transaction is about to take place in Monaco. SICCFIN postponed two transactions on the basis of a foreign FIU request.

Table 3.5: Transactions objected to by SICCFIN

Year	2016	2017	2018	2019	2020	2021	Total
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Number	0	2	2	5	6	1	16
<i>Requested by a foreign FIU</i>	0	0	1	1	0	0	2
Amount (in millions of Euros)	0	2.95	18.11	25.80	69.13	4.2	120.1
<i>Requested by a foreign FIU</i>	0	0	8.3	0.1	0	0	8.4
Preliminary investigation and seizure/freezing order	0	2	2	5	6	1	16

166. The postponement of a transaction by SICCFIN is regarded as a decisive, preliminary step for the subsequent actions of the GPO. One postponement out of three leads to prosecution by the GPO, which demonstrate that SICCFIN makes appropriate use of this power. SICCFIN made very few postponements over the assessment period though, and this does not seem to properly reflect the risk and context in Monaco. Nonetheless, the assessors noticed an upward trend, which reveals an increasingly proactive approach by the authorities.

167. SICCFIN and the GPO try to support and guide the regulated entities in their reporting obligations. The regulated entities are satisfied with their formal and informal relations and exchanges with SICCFIN although they are not systematically given feedback following an STR. The authorities have stated that they prefer to give feedback on several STRs at once to each entity and to draw up guidelines rather than give specific feedback on every STR. The authorities maintained that the private sector is increasingly pro-active in them on informal matters, a establish long-term dialogue being established. The GPO systematically provides case-by-case feedback to the regulated entities.

168. Turning to FT, SICCFIN received 23 such STRs over the assessment period. Neither the GPO nor the Chairperson of the Bar received any such STRs. The authorities stated that a negative press article was generally triggering FT STRs. However, in some significant cases, regulated entities have noticed unusual transactions, which were then supported by negative information found on open sources. The TF STRs examined by the AT were well structured and documented. The authorities state, however, that in most cases, no potential link with TF was found. Two TF reports were referred by SICCFIN to the GPO, based on three STRs, two of which related to the same case but were submitted by different entities.

169. Monaco does not have a system of threshold cash declarations. Nevertheless, NRA 2 highlights two STRs relating to cases of payments in cash of over EUR 30 000, which is the statutory upper limit on payments in cash.

Declarations of cross-border transportation of cash and other financial information

170. The cross-border transportation of cash and bearer instruments is subject to a declaratory system provided for in the AML/CFT Law, which designated the DSP as the authority in charge of their collection.

171. To raise awareness on this obligation, information is posted on the government website, at the heliport and on the website of the Monaco port company, the Société d'Exploitation des Ports de Monaco (SEPM). The legislative provisions and the declaration form can be downloaded from the websites. The form can be sent to the police department by post or e-mail.

172. Under the relevant legislation, all the declarations the DSP collects are kept for five years, so that any requests by foreign counterparts can be met. They are also passed on to SICCFIN, which enters them into its MONADES system and uses them in the course of its operational analyses. Over the assessment period, the number of declarations of cross-border transportation of cash decreased (-85% between 2016 and 2021 – see IO.8, table 3.13). In addition, any item of

interest noted by the DSP is communicated to SICCFIN for them to use in their analysis (see I0.8).

3.2.3. FIU's analyses and disseminations supports the competent authorities' operational needs

173. SICCFIN is an autonomous administrative FIU, which performs its duties independently (see R.29). A proposal for its budget is addressed to the Department for Finance and the Economy, and the budget may be rectified according to match projects and operations carried out in the course of a year. Between 2016 and 2020, the budget actually allocated to the FIU increased considerably (+632%).

174. The SICCFIN analytical team consists of six people (apart from the SICCFIN director): a head of unit, a head of division and four heads of section. Throughout the assessment period, SICCFIN suffered from a significant lack of human and technical resources, affecting its ability to meet the competent authorities' needs. The authorities took certain measures to address this shortcoming including by recruiting two analysts in 2019 and a third one in 2021; nonetheless, the authorities agree that the human resources of the analytical team is limited.

Table 3.6: SICCFIN staff

Year	2016	2017	2018	2019	2020	2021
Number of employees	3	4	3	5	5	6
Vacant posts	Not specified	Not specified	Not specified	Not specified	2	1

Operational analysis

175. The procedure for the processing of STRs and information received from foreign FIUs is organised according to the Internal Procedural Handbook for the Processing of STRs and Intelligence Sharing with Foreign FIUs (hereinafter the Handbook), published in November 2021. The authorities state that this handbook updates the previous separated procedures (such as the procedure for referring reports to the GPO, the procedure for the processing of STRs and the anti-TF procedure) and merges them in a single document. The operational analysis standardised by SICCFIN in its Handbook seems generally satisfactory safe for the lack of a proper prioritisation system, which fails to take account of NRA 2's conclusions. In terms of effective analysis, there is no significant difference between the periods before and after November 2021.

176. When SICCFIN receives an STR from a regulated entity, it immediately acknowledges receipt, except if the reporting entity has expressly stated that they do not wish to be informed. Before registering the report, SICCFIN checks its quality, namely whether (i) the forms are complete and have been properly filled in; (ii) the accompanying documents are all enclosed; and (iii) these documents can be used.

177. If anything is missing or incorrect, SICCFIN is obliged to go back to the professionals concerned to ask them to complete the forms received or to provide more information, such as proof of the opening of accounts. In practice, the FIU regularly addresses additional requests to the private sector after receiving an STR. Since (i) the regulated entities' replies are also sent by post and (ii) SICCFIN significantly lacks human resources, this impacts effectiveness.

178. Once the details (from the STR, the foreign source or the government agency) have been recorded in MONADES, the head of the FIU's analytical team analyses at the case and makes a first check in MONADES to see if the persons, entities and/or banking contacts are already known, before assigning the investigation to a specific analyst. The result of this preliminary examination will affect how exhaustive the analysis will be, what priority should be given to the STRs and how

promptly the process should be carried out.

179. The initial assessment of the STR/intelligence results in a risk rating of high, medium or low. In practice, the majority of STRs (40% over the last two years) were rated as medium risk; next are rated as low risk (32%), then those considered high risk (28%). The Handbook (published in November 2021) describes a condition-based system and lists the underlying criteria to decide on the risk level of the intelligence. The high-risk criteria given in the Handbook include, *inter alia*, requests from foreign FIUs and STRs relating to TF. This categorisation does not fully reflect the risks identified in NRA 2.

180. The analyst in charge of the case must manually enter the data contained in the STRs, in the foreign FIUs request or in the information received from other government agencies into NOMADES. He/she then conducts the operational analysis, which consists in (i) identifying the source/destination of funds; (ii) identifying the main features; (iii) identifying the mechanisms (i.e. transfers made from a Monaco bank account to a foreign one, banker's cheques issued, dividends received from a foreign body, loans granted in the context of a real estate purchase, involvement of a PEP, etc.) (iv) identifying the missing or additional material needed to continue the operational analysis (for the purposes of potential requests for intelligence at national level); and (v) determining whether any predicate offences have been committed abroad (for the purposes of potential requests for intelligence at international level).

181. The operational analysis is then completed by an exploratory analysis based on data from inside and outside SICCFIN. It is also during this phase that the SICCFIN officer is required to make one or more requests (i) to the regulated entity which prepared the STR; (ii) to any other regulated entities; (iii) to one or more foreign FIUs; and/or (iv) to other agencies and authorities in Monaco,⁷⁰ particularly to the DSP, with regard to judicial information (see Table 3.6). Requests for additional information are signed by the team head. Information from the authorities is received on request within a suitable timeframe (one week), which may be shorter if SICCFIN marks the request as urgent.

182. SICCFIN does not have any sophisticated analytical tools for the investigation and analysis of financial intelligence, as noted in NRA 2. The analysts use the Lotus Notes database to draw up flows and event diagrams and to have an overview of the cases. However, this tool is not sufficient to provide a full case management support and does not help to process complex cases. The authorities informed the assessment team that they have purchased the goAML software package, which should remedy this problem; however, its implementation, installation and configuration will not be completed without some delay.

183. Confirmatory analysis seeks to bring together the findings of previous stages and determine whether the case calls for a dissemination to the GPO in which case a report is drawn up, summarising the results of the aforementioned analyses. The decision to make a dissemination is taken by the head of the analytical team and confirmed by the Director of SICCFIN. The authorities stated that there had never been a case when a dissemination was refused.

184. If a dissemination is not deemed necessary but there are reasons to believe that the analysis would be useful for foreign FIUs, a spontaneous information is sent. If the predicate offences and the laundering of their proceeds did not take place in Monaco but abroad, SICCFIN

⁷⁰ PG, DSP, DEE, Chairperson of the Bar Association, Department of Tax Services, Employment Department, Department of Traffic Services and others.

automatically contacts the corresponding foreign FIUs to pass on the information it has acquired. However, in practice, in spite a positive trend, SICCFIN passed on only very little information to its foreign counterparts spontaneously over the assessment period (see IO.2).

185. In practice, two or three months pass on average between the reception of the STR/intelligence and its communication, where appropriate, to the GPO, which seems appropriate. The assessors did not note any cases of belated dissemination; however, the delays noted in the submission of STRS by regulated entities do give rise to concerns on timeliness.

186. SICCFIN recently demonstrated its capacity to monitor a bank account. In the case in question, the STR submitted based on a press article, contained material of a nature to trigger a report to the GPO; SICCFIN therefore asked the regulated entity to inform it if the person concerned carried out a transaction.

Strategic analysis

187. Strategic analysis is carried out by three people including the team head and the two heads of section. Despite significant staff shortages, SICCFIN does produce strategic analyses, which constitutes a source of information on ML/TF risks for the regulated entities.

188. The most common ML typologies and trends are included in several annual reports. These reports are distributed to the competent authorities and made available on-line to the regulated entities, which confirmed their usefulness, particularly where it comes to understanding ML risks. SICCFIN has never conducted a strategic analysis of TF risks though. Nor has there been any specific analysis of the significant delays in the reception of STRs.

Disseminations

189. The SICCFIN disseminations can be triggered by one or more STRs or other information from regulated entities, foreign FIUs or national authorities/agencies. Based on the information analysed, the FIU includes in the reports addressed to GPO, hypothesis on potential criminal offences. These presumptions are only indicative based on the administrative analysis.

190. The assessors note that SICCFIN produces detailed operational analyses of a high quality, confirmed to a certain degree by the number of prosecutions based on SICCFIN reports (see Table 3.2). Although all SICCFIN reports are the subject of a preliminary investigation, the investigating and prosecuting authorities consider that there is room for improvement in that more details could be included in the disseminations. Recently, the LEA have acknowledged an improvement in the quality of SICCFIN's analytical products as a result of exchanges held in the Contact Group.

191. Over the assessment period, only one conviction for ML was achieved following a SICCFIN dissemination, for several reasons: (i) the lengthy investigation time (cf. IO.7), making it that SICCFIN reports lead to convictions ten years later after the dissemination to the GPO, (beyond the assessed period); (ii) the poor quality of some "defensive" STRs belatedly sent to SICCFIN; (iii) SICCFIN's lack of resources, including the absence of an on-line declaration systems, analytical instruments and limited human resources.

192. Over the assessment period, SICCFIN received 23 STRs for TF and 20 information requests and spontaneous reports from foreign counterparts. After analysis, SICCFIN submitted two reports (based on three STRs) to the GPO. One of the cases turned out to be related to ML. The second is on-going investigation. However, in view of shortcomings identified in the authorities' understanding of TF risks coupled with the lack of methodological tools and trained staff on (TF) financial analysis, the assessors cannot confirm that this is fully in line with the

country risk.

3.2.4. Co-operation and information/financial intelligence exchange

193. Monaco disposes of mechanisms of co-operation between the competent authorities, which were extensively used during the assessed period. However, they do not seem to have been fully exploited to increase the effectiveness of the system as a whole. Co-operation and co-ordination between the authorities seems to have increased recently.

194. There are no legislative or other obstacles to co-operation and information-sharing between the competent authorities (FIU, investigating authorities and supervisory authorities). SICCFIN receives responses to its requests to the investigating authorities within a reasonable time, and vice-versa. The assessment team is not aware of any cases of refusal or significant delays. In general, SICCFIN and the other competent authorities seem to co-operate actively at operational level, particularly in the context of the working groups which enable them to share financial intelligence and other relevant information regularly in the course of their investigations and analyses. SICCFIN makes about 300 requests per year to the DSP – which the assessors consider to be a significant figure –, to which replies are received within three days.

Table 3.7: Requests by SICCFIN to the DSP

Year	2016	2017	2018	2019	2020	2021	TOTAL
Number	223	306	225	370	331	305	1 760

195. SICCFIN's analytical products are sent to the GPO, which informs SICCFIN, as the investigation goes on, about the progress and on any decision to close the case by way of motivated latter. Every year, the GPO produces and up-dates a table, which is communicated to SICCFIN, on the progress made on all cases emanating from FIU disseminations.

196. As Monaco is a small territory SICCFIN, the regulated entities, the judicial authorities, the police authorities and other state bodies are located very close to one another, and documents are often handed over personally to guarantee the confidentiality and security of distribution channels. Furthermore, since 2021, the SICCFIN communicates with the GPO and the DSP via the secure Internet application Cryptobox. This is a secure, end-to-end encrypted means of depositing or exchanging documentation, the French version of which has been validated by the French Agency for the Security of Information Systems (ANSSI) and by the Monaco Digital Security Agency (AMSN). This solution is not used with other government agencies, however.

197. Besides its exchanges with the investigating authorities, the FIU also co-operates with supervisory bodies. In practice, throughout the assessment period, the SICCFIN supervision team contacts the analytical team before each on-site visit to obtain relevant information on the regulated entity concerned. The two SICCFIN teams also work together to provide the private sector with training and guidelines on AML/CFT. Furthermore, since 2020 when the lawyers were made answerable to the Chairperson of the Bar Association, a SICCFIN official has been invited to a conference of the association. Lastly, the GPO is assisted by two SICCFIN officers when make on-site visits to regulated entities (four or five such visits took place during the assessment period).

198. Co-operation between the competent authorities also takes place in the form of the biannual meetings of the Contact Group on AML/CFT, held under the authority of the DSJ. The aim of this group is to share information between the judicial authorities, the police authorities and SICCFIN. The meetings of the Liaison Committee, the Contact Group, the Co-ordination

Committee and the other formal and informal meetings are also essential to enable the competent authorities to exchange financial information and intelligence. Lastly, cooperation is achieved through information sharing, operational feedback, activity reports, the FIU's strategic analysis and the various publications on the competent authorities' websites.

Overall conclusions on IO.6

199. The investigating authorities have access, for the most part indirectly, to financial intelligence and other information, which they use to establish evidence and trace the proceeds of crime linked to ML, TF and predicate offences. Information from the private sector is not always promptly obtained which impact effective treatment of cases.

200. SICCFIN plays a key role in AML/CFT system. Despite a lack of human and technical resources, the FIU has shown its capacity to produce analyses of a high standard, which are used by the investigating authorities. Most STRs come from banks and the contribution from some of the professionals at risk sectors remains limited. SICCFIN and the GPO maintain that the quality of the STRs improved, but the delays noted in their submission and the results reflected by the SICCFIN disseminations and their use at the PGO level do not fully support this view.

201. SICCFIN and the GPO are making efforts to provide training and guidelines to the regulated entities. SICCFIN also produces strategic material; however, some important issues have not been the subject to such analysis. The competent authorities co-operate extensively in the context of the various mechanisms set up to share financial intelligence. **Monaco is rated as having a moderate level of effectiveness for IO.6.**

3.3. Immediate Outcome 7 (ML investigation and prosecution)

202. Monaco has an inquisitorial-style legal and institutional system for the investigation and prosecution of ML. Investigatory work is carried out by the Financial Investigations Section (SEF) at the instruction of the GPO or, when a judicial investigation is opened by the investigating judges. Discretion to bring a prosecution lies with the PG (Article 34 of the Criminal Code). Since the last assessment, a number of measures have been taken to improve efficiency in this area, arising primarily from NRA 1.

3.3.1. ML identification and investigation

ML identification

203. At the institutional level, the decision to open an investigation lies with the GP, who may instruct the SEF to launch a preliminary investigation or ask an investigating judge to open a judicial investigation. When opening a judicial investigation, the investigating judge has very broad powers and may assign the investigating work to the police force (i.e. in practice, to the SEF), which will act under his/her authority. The members of the SEF, the GPO and the investigating judges' offices are experienced, well trained, proficient and committed professionals, who co-operate satisfactorily. They have a good understanding of the AML framework.

204. Potential ML cases are mainly identified on the basis of SICCFIN disseminations, as can be reasonably expected in a financial centre. Other sources of identification noted are: (i) investigations opened by the DSP following the receipt of complaints and declarations of cross-border transportation of cash and border controls, (ii) investigations initiated by the GPO and (iii) STRs submitted to the GPO (by notaries, bailiffs and, up till December 2020, lawyers).

However, the use of STRs as means of identifying potential cases of ML is affected by the shortcomings identified under I0.6.

205. The authorities do not have written procedures to identify potential ML cases, whether through incoming MLA requests or other sources.⁷¹

206. Since 2020, the GPO has examined all incoming MLA requests to find elements which may be linked to ML. This is a positive development in view of the particular relevance of such requests for a financial centre, where the principal threat of ML comes from outside the jurisdiction. However, only six parallel financial investigations have been opened as a result, and this is not consistent with Monaco's risk profile.

Table 3.8: Number and sources of ML investigations⁷²

	2016	2017	2018	2019	2020	2021	Total
Total number of ML investigations	N/A	32	37	40	44	39	192
Number arising from STRs submitted directly (by notaries, bailiffs, lawyers*)	N/A	16	12	12	6	7	53
Number arising from SICCFIN disseminations	N/A	8	12	16	20	28	84
Number arising from reports from other sources	N/A	4	9	8	9	11	41

**STRs received by the GPO up to December 2020 (now sent to the Chairperson of the Bar Association)*

**Box 3.4: Case study – Complex ML investigations
(Organised crime, international co-operation, use of legal persons)**

During the assessment period, an investigation into the cryptocurrency sector made it possible, through police co-operation, to uncover fraudulent operations by an organised crime network. As the investigation is still ongoing, it is not possible to include more details in this report.

(Natural and legal persons established in Monaco and in three other jurisdictions, with bank accounts opened in Monaco and in four other jurisdictions)

Another case study relating to an investigation led by the PG involving natural and legal persons established in Monaco and in other jurisdictions is ongoing.

⁷¹ After the on-site visit, a circular was sent by the DSJ to the PG requesting that mirror investigations become a systematic practice in the future.

⁷² The slight difference between the total number of ML investigations and their sources has no impact on the AT's analysis. These statistics were provided by the Monegasque authorities.

207. Since NRA 1, certain measures have been put in place to improve effectiveness in the area of identifying and investigating ML, such as increases in staff numbers. In the DSP, the number of staff members who deal only with financial crime has increased from five to thirteen officials, and they are given regular training in this area. Their work has been complemented by the creation of a cybercrime unit. At the GPO, since 2020, a specific prosecutor (the Deputy Principal State Prosecutor) has been assigned to financial crime. The creation of a third investigating office in 2019 has enabled the introduction of co-referral to investigating judges for the most serious and complex cases. According to the PG and the investigating judges, there is a need to recruit technical assistants specialising in tax and accounting, with knowledge in the area of the type of complex arrangements highlighted in SICCFIN disseminations or identified during investigations. Apart from this, the authorities consider their resources to be adequate. However, the assessment team has some doubt as to whether resources are sufficient, particularly within the GPO (which performs several tasks simultaneously including the supervision of AML/CFT by notaries and bailiffs) and in the investigating judges' offices (the number of cases assigned to each judge has remained constant despite the increase in staff, at around 75 cases per judge).

Investigation and prosecution

208. Monaco 's efforts to improve effectiveness are commendable, and a more proactive approach in identifying ML cases and the investigations carried out has been noted, particularly with regard to certain cases which were dropped but have now been reopened. For instance, since 2019 in particular, there has been an increase in the number of ML investigations, some of which have related to organised criminal groups (see Table 3.8).

209. In addition, in 2020, for the first time, Monaco set up a joint investigation team (JIT) with another country, and this is also being considered for another current case. According to the authorities, most of the current ML investigations are complex or very complex. In addition to the case described in the Box No. 3.4, the authorities provided an example of an investigation involving natural and legal persons based in Monaco and in three other states, with bank accounts operating in Monaco and four other states. The whole range of powers provided for is used during ML investigations, including special investigation techniques (mainly telephone tapping). Technical experts may also be called on (for example, accountants or IT specialists). However, the assessment team is not in a position to confirm the degree of complexity of these investigations, which are ongoing and hence confidential.

210. However, the effect of these various initiatives has not yet manifested itself in outcomes, although positive signs are beginning to emerge. Concerns remain about the extent to which potential ML cases are identified. The number of ML cases is still low and only partly matches the country's profile. According to the authorities, in the cases currently being looked into by the investigating judges, only about nine legal persons have been charged and no explanation has been provided for why this number is so low, given the risks that these legal persons pose in Monaco (see IO.5). A good illustration of this kind of problem is one highly publicised case concerning accusations of corruption by a whistleblower against a legal person. Before the on-site visit, the authorities had only ever looked into the conduct of the whistleblower and had failed to investigate the offences of corruption that had been denounced despite the fact that closely related proceedings had been brought for corruption in some other jurisdictions.⁷³

⁷³ The assessment team was informed that an investigation into corruption had been opened during the on-site visit.

211. During the on-site visit, the assessment team was told that at the investigating judges' office, of the 60 cases being dealt with, about 23 related to a predicate offence committed in Monaco. Although the domestic crime rate is low, this number of cases involving domestic predicate offences is lower than would be expected when compared to the number of convictions obtained during the assessment period for offences generating proceeds. More specifically, during the assessment period, 1 029 persons were convicted of offences of drug trafficking, fraud or theft. Questions remain about the reasons why more investigations are not conducted into ML involving predicate offences committed in Monaco.

212. According to information provided by the authorities, most drug trafficking cases related to possession for personal use rather than financial gain. Although this may in part account for the lack of investigations into drug trafficking, it seems unlikely that it is true of all such cases and it in any event it does not explain the lack of ML cases involving domestic fraud or theft. Consequently, the low number of investigations relating to predicate offences committed in Monaco compared to convictions involving offences generating proceeds suggests that parallel financial investigations are not always conducted or, if they are, they are ineffective.

213. Fundamental deficiencies were noted in the progress of investigations, with only a very small proportion having resulted in prosecutions during the assessment period. Between 2017 and 2021, the 192 ML investigations (see Table 3.7) gave rise to only 19 prosecutions (*cf.* Table 3.9).

214. The authorities ascribe the length of investigations primarily to the need to obtain mutual legal assistance, which is particularly important for financial centres, where the main ML risks stem from predicate offences committed abroad. While the authorities confirmed that they regularly send MLA requests, it often takes a considerable amount of time before they receive a reply.

215. Although most cases are linked with France or Italy, jurisdictions with which Monaco has effective cooperation, the authorities also referred to the involvement of other jurisdictions, which are slower to respond and without whose help some investigations cannot progress. While the assessment team understands that delays in receiving a reply can affect many cases, this cannot be a decisive factor for all cases. Delays in receiving mutual legal assistance are also affected by the shortcomings noted under IO.2.

216. Apart from difficulties linked to mutual legal assistance, the slow pace of investigations is caused by shortcomings inherent in Monaco's system.

217. The investigating powers of the GPO are limited because they are only non-coercive (save in the event of flagrance). The powers which are generally required to take an ML investigation forward are only available to investigating judges under Monegasque law. In practice the PG carries out "preliminary investigations" in the absence of any legislative basis. Although the possibility of using information obtained in this way was acknowledged by the Court of Appeal in 2019,⁷⁴ this decision has not yet been confirmed by the Court of Review.

218. Since August 2021, legislation has been in place specifying that the SEF should have a right of access to bank accounts and safes (Article 64-1 of the AML/CFT Law). However, this access has not yet been granted, making it impossible to assess the effectiveness of this positive step. In practice, the GPO (through the SEF) sometimes obtains information by requesting it from the

⁷⁴ Judgment No. R 5429 of the Court of Appeal of 17 June 2019 clarifying the powers of the GP.

private sector⁷⁵ (see IO.6). However, the quality of the information received may vary. Furthermore, other than referring the matter to an investigating judge, the GPO and the SEF do not have any enforcement powers in the event that information requests are not complied with (which can happen frequently, particularly when tax services and notaries are involved).

219. Consequently, when it is necessary to exercise coercive powers, the PG always has to call on the investigating judges to open a judicial investigation, as they have a broader range of investigating powers. However, this tends to weigh down the process, making investigations longer. The assessment team was informed that a draft law has been prepared to extend the GP's investigating powers in the context of preliminary investigations but its status, and the provisional date of its adoption, are still uncertain. According to the assessment team, these measures would be extremely beneficial, and their implementation should be a priority. Another beneficial measure would be to recruit more technical assistants to the GPO and the investigating judges' offices (see above) to make case processing more efficient.

220. Furthermore, in Monaco, unlike other jurisdictions, there is no time limit for the filing of appeals or any restriction on the number of times that the same legal point may be raised. This adds to the length of judicial proceedings.

221. As to the prioritisation of investigations, there is no policy or procedure for a risk-based approach, as the authorities deal with investigations solely according to general criteria for treating matters urgently such as the imprisonment of suspects or the risk of loss of evidence. This does not seem to cause any delay in the initial examination of cases, which are generally sent by the GPO to the SEF or the investigating judge within three days, without any form of prioritisation. However, bearing in mind the number of ML cases being dealt with by the SEF (over 50) and the investigating judges (over 50 per judge), it is unclear how investigations are prioritised when several are under way at once, and whether the more serious cases are given precedence. The authorities stated that a quarterly review of cases being investigated by the DSP (SEF) is conducted by the GPO and the investigating judges. However, in the assessment team's view, investigations would benefit considerably from a formal policy for prioritising cases between the SEF, the GPO and the investigating judges, reflecting the ML risks in Monaco and fostering a consistent approach by all the authorities.

222. The high staff turnover in the GPO and investigating judges' offices is another obstacle to opening ML investigations. Given the exiguity of Monaco's territory, mostly French judges are appointed to perform these functions, and they stay for only a limited time (three to five years on average), which is often a shorter period than that required to complete an investigation. Consequently, there is a risk that when they leave, a considerable amount of knowledge and information is lost. Therefore, setting up a formal prioritisation policy, backed up by guidelines for the processing of investigations, would be a major advantage.⁷⁶ In the DSP, despite a lower turnover than in the GPO and investigating judges' offices, it would be advisable to devise a formal policy on officers' roles and activities to ensure a consistent national approach to the processing of investigations.

3.3.2. Consistency of ML investigations and prosecutions with threats and risk profile,

⁷⁵ It is also worth noting the limits relating to the identification of BOs described under IO.4 and IO.5.

⁷⁶ In this respect, the Justice Secretary's circular to the PG of 17 February 2022, summing up the practices developed over the years, would be a good starting point.

and national AML policies

223. The investigations carried out and prosecutions initiated by the competent authorities with regard to ML are only partly in keeping with Monaco's risk profile, threats and AML framework.

224. According to NRA 2, and in view of Monaco's status as an international centre, the ML threat stems primarily from predicate offences committed abroad. The countries most likely to be involved are France and Italy, then Russia and Belgium. Scams in the broadest sense (including fraud, embezzlement, misappropriation, forgery and the use of forged documents) are the main predicate offences, followed by corruption and influence peddling. The main activity sectors at risk of ML are, in descending order, banks, asset management companies, real estate agents, property dealers, yacht companies and sports agents (See IO.1).

225. With regard to the national AML framework, Monaco did not have a strategic approach or formal policy on investigation and prosecution of ML during the assessment period. Nevertheless, the outcomes relating to the themes addressed in NRA 2 were taken into account by the DSP in a document which set priorities with regard to training, particularly on cryptocurrencies, crowd-funding, PEPs, trusts, legal persons and corruption. However, because of their belated adoption, the assessment team is not in a position to assess how effective the implementation of these priorities has been.

ML prosecution

226. The low number of prosecutions (see Table 3.10) makes it difficult to draw any positive conclusions about their consistency with Monaco's risk profile. The information provided on ML cases was general in nature, particularly with regard to prosecutions which did not result in a conviction. However, and subject to the aforementioned provisos, in cases where it was possible to identify the predicate offence, the data mostly indicate crimes of dishonesty in the broadest sense including fraud, forgery and the use of forged documents and misappropriation (see Table 3.9). For most prosecutions, the predicate offence was committed abroad (mainly in Italy and France).

227. Most cases relate to the banking sector although two investigations involved Monaco yacht companies (and resulted in a prosecution) and another, real estate agents. The presence of other sectors considered to be at risk (such as sports agents) was noted only at the investigation stage.

228. Only four final judgments were given during the assessment period and the profile of these cases was very simple (chiefly concerning cash deposits and withdrawals). This is not consistent with Monaco's risk profile.

Table 3.9: General statistics on predicate offences identified in ML convictions

	2016	2017	2018	2019	2020	2021
Total number of convictions	N/A	2	0	1	1	²⁷⁷
Type of predicate	N/A	Fraud		Forgery and use of forged	Aggravated theft	Forgery and use of

⁷⁷ At the time of the on-site visit, the convictions handed down in 2021 were being appealed.

offence identified	Forgery and use of forged documents	documents	forged documents
	Tax fraud committed abroad	Tax fraud committed abroad	Conspiracy to commit fraud
Misappropriation			

**Box 3.5: Cases consistent with the risk and threat profile
(ML with a predicate offence committed abroad, self-laundering)**

The Court of Appeal, 3 July 2017

(ML case identified following a report by SICCFIN)

In 2010, SICCFIN notified the GPO of the existence of large and suspect cash deposits on the account of Mr B., an Italian national managing several companies. Mr B. had deposited large sums of cash on his account to gamble at the Casino or to reimburse the loan granted to him by the SFE (now the MCFC), and he seemed likely to be engaging in ML activities.

In January 2011, an investigation was opened at the request of the PG on a charge of laundering of the proceeds of an offence committed between 2003 and 2010. In February 2011, MLA requests were sent out. The investigating judge delegated powers to the DSP, which established that between 2002 and 2011, Mr B. had deposited on the account opened in his name at the SFE a sum of EUR 3 961 000 in cash, either directly or through the intermediary of 10 other people, and that over the same period, he withdrew EUR 2 881 000, also in cash. According to the Italian Register of Enterprises, in September 2013, Mr B. was a partner or director of 49 real estate companies. He had fraudulently evaded assessment and payment of taxes and VAT in Italy, but he had never been prosecuted or convicted by the Italian courts because the time limit for prosecution had expired.

The Court of Appeal of the Principality of Monaco upheld the judgment of the Court of First Instance of 13 December 2016 sentencing Mr B. to one year's imprisonment for having knowingly acquired and held proceeds generated by tax offences committed in Italy and then transferring this money to an account opened with the SFE to fund gambling at the casino. These actions constituted the offence of money laundering in the form of self-laundering.

The Court of First Instance, 10 January 2017

(ML cases identified following a complaint and an application to join the proceedings as a civil party submitted by the SFE)

The SFE lodged a complaint and an application to join the proceedings as a civil party against Mr G. in March 2009 accusing him of forgery of private business and banking documents and use of these forged documents.

Mr G., who was of Italian origin and a customer of the SFE, used forged bank cheques drawn on an Italian bank totalling EUR 1 800 000 to buy gaming chips at a casino in Monaco.

The Court of First Instance convicted him in absentia for the use of forged private business and

banking documents, sentenced him to 18 months' imprisonment, issued a warrant for his arrest and ordered him to pay the SFE damages amounting to EUR 1 803 000, corresponding to the material damage caused by the use of 18 falsified checks for an amount of 100,000 euros each in addition to that of EUR 3 000 euros for proceedings fees.

229. The prosecutions that have been taken forward do not reflect all the major aspects of the threats identified in Monaco and its risk profile, particularly with regard to certain more complex features (transfer of funds between several countries, use of complex legal arrangements, use of sophisticated financial products). In addition, with the exception of a very small number of investigations, cases identified as being connected with a particular sector (such as banking or yachts) are aimed only at the activities of the customers in this sector and do not concern the activities of a business or its employees working in the sector. Furthermore, no case has highlighted links with PEPs. Consequently, investigations and prosecutions are only partly in line with the threats in Monaco and its risk profile.

3.3.3. Types of ML cases pursued

230. Although the authorities have not pointed to any obstacle with regard to the organisation of hearings in the courts or the existence of a backlog of cases, the number of prosecutions is still low. All the final judgments given relate to self-laundering.

Table 3.10⁷⁸: Number of ML prosecutions (of all types)

	2016	2017	2018	2019	2020	2021	Total
By person	N/A	5	10	2	7	2	26
By case	N/A	3	7	2	5	2	19

231. According to the authorities, the low number of prosecutions is the result of the slow pace of investigations (see above). Consequently, when proceedings are initiated, this often happens very many years after the investigation was opened, as is borne out by the convictions that have been achieved. This is likely to undermine efforts to preserve the quality of the evidence. The authorities did not provide any information on the types of ML alleged in the prosecutions currently underway.

232. During the assessment period, four final convictions for ML were handed down⁷⁹. This low figure is a reflection of the number of prosecutions, but the conviction rate is also a source of concern, as only about a third of prosecutions have led to a conviction. Although the failure of a certain amount of prosecutions demonstrates a proactive approach on the part of the prosecutors as it shows that they do not persist with cases only if they are certain of success, two thirds of prosecutions not resulting in a conviction is still a significant proportion.

233. According to the authorities this is not the result of any inherent failings of Monaco's legal system. The judges of the Court of First Instance and the Court of Appeal confirmed that they accepted all types of evidence, including circumstantial evidence such as inferences that could be drawn from silence or a lack of plausible explanations. That was also confirmed by some examples of judicial decisions provided by the authorities. Furthermore, in the judges' opinion,

⁷⁸ According to the data provided by the Monegasque authorities, subject to the data in Table 3.2.

⁷⁹ A decision of the Court of First Instance of 13 July 2021, against which an appeal had been lodged, was upheld after the on-site visit, by the Court of Review, on 29 April 2022.

prosecutions were well prepared and presented, and the low rate of conviction could not be attributed to failings by the GPO.

234. The main reason the authorities gave for the failure of ML prosecutions was that predicate offences were not properly made out (except for one case, where the failure was due to a procedural defect), and this was illustrated by some of the relevant case law. More specifically, the authorities pointed out how difficult it was to obtain evidence concerning the source of the proceeds of offences committed abroad.

235. In this connection, the authorities highlighted the reform of the Criminal Code adopted in 2018, which introduced a mechanism for the presumption of ML. This is unquestionably a major development in the facilitation of evidence, also making it possible, in certain cases, to remedy the problem of the excessive length of investigations that has been noted. In practice, however, to date the use of the presumption has led only to a single conviction, in 2021, which was under appeal at the time of the on-site visit (see Box 3.6). The authorities attributed this to the non-retroactivity of the criminal law, which means that it can only be applied to investigations opened after 2018. However, as the presumption mechanism has been in force now for over three years, it is nonetheless difficult to justify its very limited use.

Box 3.6: Conviction for ML via the presumption mechanism, predicate offence committed abroad

The Court of Appeal, 22 November 2021 (case detected following a spot check on the street)

(Self-laundering, predicate offence committed abroad, conviction of a natural person, first use of the presumption mechanism provided for under Article 218-4 of the Criminal Code)

Following a police spot check on a public thoroughfare in November 2020, Z.L. was found in possession of EUR 15 000 in cash which had not been the subject of a cross-border transportation declaration. Following detailed checks on police premises, Z.L. was placed in police custody having attempted to document the source of the cash using a false invoice. A judicial investigation was opened on 20 November 2020 for offences of (i) laundering of the proceeds of an offence committed in France between January 2019 and November 2020, (ii) forgery of a private document and use thereof in Monaco on 17 November 2020, and (iii) failure to make a declaration to the supervisory authority of a cross-border transportation of cash into Monaco on 17 November 2020.

A search at his home in France following an MLA request resulted in the discovery of EUR 185 000 in cash. A body search and a search of his vehicle registered in France and used to travel to Monaco led to the discovery of a total of EUR 19 956 in cash, a luxury watch, several bank cards, playing cards and casino cards, telephones and SIM cards, cash dispatch notes and various banking and tax documents. The cash, the watch and the vehicle were seized.

Pursuant to Article 218-4 of the Criminal Code, it could be presumed that the funds were the direct proceeds of a crime or an offence without identifying or characterising the predicate offence if the accused was incapable of presenting legal evidence of his activity and income. Accordingly, the transportation to Monaco of some of the cash in the defendant's possession without meeting the requirement to declare it to the authorities was found to constitute concealment.

The accused's statements concerning the sources of the sums and the evidence presented in court

failed to demonstrate the legal source of the cash transported to Monaco and found at his home in France. Furthermore, a search by a computer expert on the telephones and IPad seized from him highlighted many operations liable to generate illegal income, including fraud, forgery of documents and the use of multiple identities to set up companies in different countries.

By a decision of the Court of First Instance of 13 July 2021, the accused was sentenced to eighteen months' imprisonment and a EUR 10 000 fine, having been kept in custody. The decision was upheld by the Court of Review on 29 April 2022, after the on-site visit.

236. With regard to the types of ML prosecuted, in all cases the predicate offences were committed abroad. According to the statistics provided, a single legal person was prosecuted and this did not lead to a conviction. The authorities stated that this was not the result of the status of the defendant (natural or legal person) but for reasons linked to double jeopardy. In addition, a circular of 10 November 2021 from the Justice Secretary (for the attention of the PG) states that there is no legal obstacle to the conviction of legal persons, including on the ground of ML, which was confirmed by the judges from the Court of First Instance and the Court of Appeal. However, the assessment team has not been presented with any information demonstrating Monaco's ability to act in practice against legal persons on the ground of ML.

237. For the four final judgments handed down for ML offences, the predicate offence was committed abroad. Given that Monaco does not have territorial jurisdiction for the predicate offence, this necessarily involved autonomous laundering. Therefore, while there are no convictions for autonomous ML involving predicate offences committed in Monaco, the judgments handed down illustrate the willingness of the authorities to prosecute the offence of ML separately, without the need to prosecute the predicate offence. The assessment team does not have any evidence to suppose that the courts would adopt a different approach to cases involving a predicate offence committed in Monaco.

238. However, all the judgments relate to self-laundering. For the prosecutions that did not result in a conviction, no details were provided as to the various types of cases of ML concerned (self-laundering or laundering by a third party). Consequently, Monaco has demonstrated neither the capacity to prosecute laundering by a third party nor to obtain convictions in such cases, which is a particular concern given that the main threat of ML comes from outside the country. Without the capacity to prosecute cases involving laundering by a third party, it is impossible to achieve convictions for ML against persons present in Monaco who are facilitating the use of the jurisdiction's system by criminals operating abroad (such as persons working in the financial sector).

3.3.4. Effectiveness, proportionality and dissuasiveness of sanctions

239. Under Monegasque law, a broad range of criminal sanctions may be imposed for the offence of ML, including fines of up to EUR 90 000, which can be increased tenfold, to EUR 900 000, and the maximum amount of which can be multiplied by twenty in the event of aggravating circumstances (Article 218-1 of the Criminal Code). Prison sentences of up to ten years (or twenty in the event of aggravating circumstances) may also be imposed. Additional sanctions that may be imposed for ML include disqualification from acting as a company director or manager (cf. R.3).

240. However, in practice, the sanctions imposed for ML cannot overall be considered to be effective, proportionate and dissuasive. In the absence of any relevant data, the assessment team is not in a position to verify that substantial penalties are imposed for the most serious and

complex offences. The examples provided do not show that the courts make use of the whole range of penalties available to them under the law where it comes to prison sentences imposed on natural persons, only one of which was enforced.⁸⁰ As to legal persons, no penalty for ML was imposed on such persons during the assessment period.

241. Only a limited number of sanctions were imposed for the offence of ML because of the very low number of convictions. This makes it difficult to form a view on what happens in practice when it comes to determining penalties in the event of ML. However, subject to this proviso, it should be noted that for most fines, the amount applied was the maximum that could be imposed for ML without any aggravating circumstance, or at least came at the top of the scale of penalties available, in contrast with the prison sentences imposed, which were much lower down. The authorities confirmed that these penalties were comparable to those imposed for other serious offences. The difference between the penalties imposed in 2019 (9 months) and in 2020 (36 months) seem to indicate that penalties are proportionate. However, they cannot be considered to be dissuasive. Furthermore, no additional penalty was imposed.

Table 3.11: Number and total length or amount of penalties imposed for ML (natural persons only)

Type of penalties imposed	2016	2017	2018	2019	2020	2021
Number of prison sentences	N/A	2	N/A	1	1	2 ⁸¹
Maximum length (in months)	N/A	15		9	36	18
Minimum length (in months)	N/A	12		9	36	12
Average length of prison sentences	N/A	13.5		9	36	15
Number of suspended prison sentences	N/A	N/A	N/A	N/A	N/A	1
Average length of suspended prison sentences (in months)	N/A					15
Number of fines imposed	N/A	1	N/A	1	1	2
Maximum fine (in EUR)	N/A	90 000		90 000	50 000	150 000
Minimum fine (in EUR)	N/A	90 000		90 000	50 000	10 000
Average (in EUR)	N/A	90 000		90 000	50 000	80 000
Additional penalties imposed	N/A	N/A	N/A	N/A	N/A	N/A

242. The penalties imposed were not enforced, save in one case (see Box 3.6, a prison sentence of 18 months). One of the main reasons for this is the fact that the persons concerned had left Monaco at the time of sentencing because of the delays noted at the investigation stage. From the four cases of ML which reached final judgment during the assessment period, on average about ten years elapsed between the opening of an investigation and a conviction (examples are the judgments of the Court of Review of 8 July 2020, the Court of Appeal of 21 November 2016 and the Court of Appeal of 16 December 2019). The use of the presumption mechanism seems to have the potential to shorten some of these delays, but this has been illustrated by only one case (Court of Appeal, 22 November 2021⁸²). The assessment team was informed that final decisions imposing fines are currently being enforced by the tax services but no explanation was given as to the delays.

⁸⁰ A decision which became final and was enforced after the on-site visit.

⁸¹ At the time of the on-site visit, the convictions handed down in 2021 were under appeal.

⁸² This became final after the on-site visit, through a decision of the Court of Review of 29 April 2022.

243. With regard to prison sentences, the authorities explained that despite the fact that a defendant can be placed in police custody at the beginning of an investigation, if this custody goes on too long, the investigating judge is obliged to release him/her. Although an extradition request is currently pending, in practice Monaco makes few of these (see IO.2). However, if the penalties imposed are not enforced, they cannot be considered to be effective or dissuasive.

3.3.5. Use of alternative measures

244. When it is impossible to achieve a conviction for ML in Monaco, the use of alternative criminal justice measures is possible. However, during the assessment period, this was illustrated only to a limited degree, with only three such cases being identified.

245. In the first case, proceedings for the offence of ML were abandoned by the investigating judge in favour of the offence of using forged documents. In the second case, the court found that it did not have territorial jurisdiction for the offences of ML, and having ordered an acquittal on this charge, the court found the defendant guilty of the offence of falsification of cheques.⁸³ In the third case the accused was acquitted of ML and was instead convicted of possession of a counterfeit cheque.

Box 3.7: Case study showing the use of alternative measures

Mr T cashed a cheque on his private bank account which he had falsified and he knew had originated in a theft (by an unidentified perpetrator). The cheque for an initial amount of EUR 563 had been falsified so that it was made out for a different beneficiary and a different amount (EUR 8 063). The Court of First Instance acquitted Mr T on the ground of ML, ruling that there was no evidence establishing that he was aware at the time of the offence that his actions could enable the person who had given him the cheque to commit an ML offence. Nonetheless, Mr T was found guilty of the offence of handling a forged cheque and sentenced to one month's imprisonment.

Overall conclusions on IO.7

246. Monaco has made some efforts in recent years to improve the effectiveness of ML investigations and prosecutions, and this has resulted in an increase in the number and complexity of investigations. However, the number of investigations is still modest, mainly because not enough parallel investigations are carried out. In addition, prosecution numbers are low and conviction numbers very low, mainly as the result of long delays at the investigation stage, which can last up to ten years. Investigations and prosecutions are only partly consistent with most aspects of Monaco's risk profile, with particular shortcomings in respect of complex cases. Monaco has shown its capacity to achieve convictions for ML involving the proceeds of offences committed abroad and for self-laundering, but this does not extend to ML offences by a third party, which is a major shortcoming in view of its financial centre status. The penalties imposed are proportionate in some respects but are neither effective nor dissuasive and, with one exception, have not been enforced. Monaco has used alternative measures in a limited number of cases only. **Monaco is rated as having a low level of effectiveness for IO.7.**

3.4. Immediate Outcome 8 (Confiscation)

⁸³ The court decision is currently being appealed by the GP.

247. In Monaco confiscation is a purely judicial measure. The competent authorities have conventional means such as the analysis of bank accounts, the seizure of documents and surveillance to identify, locate and assess laundered assets, financial flows, instrumentalities of crime and property of equivalent value.

248. Monaco implements a system of declaration based on a threshold (of EUR 10 000) for cross-border transportation of cash and bearer instruments. Verification of compliance with the obligation to declare is carried out by DSP officers (cf. R.32).

249. Management of seized or confiscated property is the PG's responsibility. Provisional measures may also be ordered by the investigating judges where necessary.

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

250. According to Monaco's judicial authorities, the seizure and confiscation of proceeds and instrumentalities of crime and property of equivalent value is a priority, and the courts systematically consider seizure and confiscation measures. However, Monaco has not introduced a strategy or formal policy making confiscation, provisional measures or the management of seized or confiscated property a priority. This means that there are no objectives or other measures in place setting priorities and enabling Monaco to assess its effectiveness in this area. Furthermore, the authorities were not in a position to provide statistics on the application of provisional measures for offences other than ML (see below). The absence of detailed and easily accessible information on this subject makes it even more difficult to take a strategic approach, including when it comes to the authorities identifying and preventing shortcomings and setting priorities with regard to confiscation.

251. Furthermore, during the assessment period, there were no written materials governing the application of provisional measures (such as circulars or criminal policy instructions addressed by the DSJ to the GPO dealing with operational measures or good practices).

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

252. The authorities confirmed that with regard to ML, Monaco's legal system permits the confiscation of all types of property, including property of an equivalent value and property held by third parties, and where the ML is linked to the proceeds of foreign and domestic predicate offences and to proceeds transferred abroad. The authorities also indicated that asset tracing is systematic and provided examples of this. The judges of the Court of First Instance and the Court of Appeal confirmed that there is no legal obstacle to making a confiscation order, and that to date no request for confiscation has been rejected.

253. However, the number of confiscation orders obtained is inevitably low, in view of the low number of convictions handed down (see IO.7). During the assessment period, for the four final convictions handed down for ML, only two confiscation orders were made.⁸⁴ According to the authorities, in the other two cases, no property was identified within Monaco. However, no measures were taken to locate or confiscate the property of the person concerned outside

⁸⁴ A third confiscation order was made in relation to a conviction which became final after the on-site visit.

Monaco.

254. It is also possible under Monaco's legal system to make a confiscation order in the context of a conviction for a predicate offence (although the powers of confiscation are more limited here – see R.4). However, no case of this sort was identified by the authorities.

255. The results achieved by Monaco in terms of confiscation are very low, with three confiscations in ML cases, of a combined total value of EUR 2 488 618,⁸⁵ and no confiscations in relation to other offences.

Table 3.12: Number of confiscation measures ordered on the ground of ML (2016-2021)

	2016	2017	2018	2019	2020	2021	Total
Number of confiscation measures ordered	0	0	0	1	1	1 ⁸⁶	3
Value of the confiscation measures (EUR)	0	0	0	253 000	2 028 153	207.465 + property (watches and luxury vehicle)	2 488 618

256. The two confiscation measures ordered during the assessment period relate to predicate offences committed abroad. However, there are no instances of the confiscation of property of an equivalent value, property transferred abroad or property held by third parties (although one of the cases related to property held on behalf of the defendant which was also linked to third parties).

Box 3.8: Confiscation of money in a bank account

(Confiscation of banking assets – Self-laundering, predicate offence committed abroad)

The Court of Appeal, 16 December 2019

Following a SICCFIN dissemination to the GPO (2010) regarding suspicious bank transactions on an account opened by Mr. P., a judicial investigation was opened (2010) on a charge of money laundering. The investigations revealed that Mr. P. had opened a bank account in Monaco and that the only funds on this account were deposits of cash made by Mr. P. himself between 2008 and 2009 amounting to a combined total of over EUR 600 000. A search of his safe resulted in the seizure of several documents (a cheque book, cash withdrawal slips, notices of transactions).

An international request for judicial assistance issued in 2010 by an Italian investigating judge in relation to an investigation against Mr. P. revealed that he had been prosecuted in Italy for offences of criminal association, forged invoices, VAT fraud and tax evasion.

Accordingly, the judges of the Court of First Instance held that the accused's conflicting

⁸⁵ One of the convictions including a confiscation measure became final only after the on-site visit.

⁸⁶ This conviction became final after the on-site visit.

statements, which were belied by the facts, showed that he was aware of the illegal source of the funds. It was also held that the offences of embezzlement and tax fraud had been committed in Italy. As a result, Mr P. was sentenced to 12 months' imprisonment and ordered to pay a fine of EUR 90 000. The court also ordered the confiscation of the sums on his bank account (over EUR 400 000).

The Court of Appeal upheld the judgment as to Mr P.'s culpability on the ground of ML, while reducing the prison sentence to nine months and the amount of assets to be confiscated from his bank account to EUR 253 000. The Court found that the conflicting statements on the source of the funds deposited were not enough, given that a presumption of the illegal origin of the funds did not apply at the time of the facts, to make out the predicate offence. The Court noted that the accused had been convicted several times in Italy but that only one of these convictions had been for tax fraud through the use of forged invoices or fictional documents relating to non-existent transactions and no predicate offence could be made out on this ground. According to the authorities, this decision was enforced on 20 August 2020. However, as the enforcement decision has not been supplied, it has not been confirmed that the assets have been recovered.

Box 3.9: Confiscation of money in bank accounts and shares

(Confiscation of banking assets and shares – Self-laundering, predicate offence committed abroad)

Court of Review, 8 July 2020, M.P.M

Following a SICCFIN dissemination to the GPO in 2011 concerning suspicious financial transactions, a judicial investigation was opened against X on a charge of laundering of the proceeds of an offence between 2001 and 2011. The report revealed a network made up of several siblings in the same family, who had been convicted in Italy for aggravated theft and criminal association with a view to commit fraud. They were acting under the cover of bogus lending agencies and targeting estate agencies or foreign individuals in need of liquid assets. The persons concerned had several open accounts in banks in Monaco and had acquired shares in a real estate company registered in Monaco in 2008. The bank accounts were blocked and provisional measures were also applied with regard to the shares.

The Court of First Instance noted the existence of final convictions by the Italian judicial authorities for offences of aggravated theft and criminal association with a view to committing fraud, which could indicate that offences preparatory to ML had occurred. While the judicial investigation was not able to formally establish a precise correlation between the potential proceeds of these various offences and the suspicious financial transactions, movements and flows observed on the accounts opened and/or used, the defendant was unable to provide evidence of the legal source of the funds. As a result, he was declared guilty of the offence of money laundering.

The Court of First Instance sentenced the defendant to three years' imprisonment and ordered the confiscation of the assets in the relevant bank accounts and the shares. The sums subject to the confiscation order amount to EUR 2 028 153. The judgement was confirmed on 20 January 2020 by the Court of Appeal (which imposed an additional fine of EUR 50 000 in view of the illicit income generated by the profusion of fraudulent transactions) and on 8 July 2020 by the Court of Review. The assets were not recovered.

257. Recovery of the assets subject to the confiscation measures ordered during the assessment period either did not take place or could not be confirmed, and therefore no asset sharing, repatriation or compensation of victims taken place.

258. The authorities stated that they have confiscated the instrumentalities in practice but did not provide any statistics, or any examples or case studies involving the instrumentalities of ML or predicate offences. As a result, the effectiveness of this aspect of the system was not demonstrated.

259. A further issue is that although the law in Monaco allows for the confiscation of instrumentalities used in the commission of an offence, they may only be seized for the purpose of evidence (see R.4). While seizure is not legally a prerequisite for confiscation, the confiscation process is likely to be less effective if there is no seizure. Furthermore, it was noted that the authorities did not fully understand whether it was possible to confiscate, for example, mobile phones, vehicles and computers used by criminals when preparing an offence, if these items were not required as evidence that the offence had been committed. Consequently, in practice, it appears that the confiscation of instrumentalities would only be considered for evidentiary purposes.

260. According to the authorities, the use of provisional measures to prevent the dissipation of assets is systematically considered during investigations of ML and other forms of financial crime, for all property linked with the defendant or a third party. This approach was confirmed in a circular from the Secretary of Justice (for the attention of the GPO, dated 17 February 2022), which provides for a systematic financial component in the PG's investigations.

261. Under Article 100 of the Code of Criminal Procedure (CCP), investigating judges may carry out an ordinary seizure (i.e. without an order and without adversarial proceedings) at the request of DSP officers. Seizures on this basis may relate to bank accounts and real estate and are particularly useful in emergencies. However, this basis is fragile as it is not founded on a confiscatory approach but an evidentiary one, whose purpose is to establish the truth. The authorities explained that for this reason, in practice, investigating judges make use of this procedure while waiting to have enough evidence to use Article 596-1 of the CCP, which it is only possible to apply when a judicial investigation is opened. Under this article, by an order of the investigating judge following an opinion of the PG, the effects of the seizure may be maintained pending a final conviction. However, the scope of application of Article 596-1 of the CCP covers only offences of ML, corruption and influence peddling.

262. The application of provisional measures is also provided for in the specific context of the reception by SICCFIN of an STR. If SICCFIN considers it necessary because of the seriousness or urgency of a case, it may block the execution of any transaction on behalf of the customer covered by the report so as to analyse, confirm or refute the suspicions reported and forward the results of the analysis to the competent authorities. However, the application of this power by SICCFIN is still limited (cf. IO.6). SICCFIN may prevent transactions from being carried out for five days maximum, after which the assets concerned may be placed under sequestration by Order of the President of the Court of First Instance at the request of the GP. Such orders therefore extend the blocking measure beyond the initial period. Sequestration may also be combined with any seizure measures ordered by the investigating judge.

Table 3.13: Application of provisional measures in ML cases (2016-2021)

	2016	2017	2018	2019	2020	2021	Total
Transaction blocked by SICCFIN	0	2	2	5	6	4	15
Assets frozen by the investigating judge	1	2	6	0	9	6	24
Value of frozen assets in EUR	1 901 712	442 656	114 426 525	0	99 863 900	73 868 587	290 503 380
Property placed under sequestration by Order of the Court of First Instance	N/A	1	2	5	6	1	15
Value of the sequestered assets in EUR	N/A	2 187 260	17 835 194	351 869 075	101 167 791	4 246 984	477 306 304

263. The authorities keep statistics on the application of provisional measures for ML, but much more limited information is available in respect of provisional measures for predicate offences. Nevertheless, the authorities were able to demonstrate that during the assessment period, there were six seizure orders for predicate offences, covering several types of assets, including bank accounts worth a total of EUR 5 351 385 EUR, narcotics, works of art and highly valuable items of jewellery. However, this amount is still modest in view of the risks and context in Monaco, where high value property is very common.

264. ML statistics show a general upward trend in the number of provisional measures. Furthermore, recent provisional measures have been applied to real estate and vehicles located abroad, which is a positive development and reflects certain improvements made by Monaco (see IO.7).

265. However, there is still a considerable disparity between the amounts seized or frozen and the amounts confiscated. In ML cases, this is the inevitable consequence of the low number of convictions (see IO.7). As to other offences, no justification was provided for why seizure had not resulted in confiscation. The results in terms of the use of provisional measures are more satisfactory than with regard to confiscations. However, the number of cases involving the application of provisional measures is still low, particularly when compared to the number of investigations. Several reasons have been suggested for this.

266. Firstly, with regard to the identification and location of assets, the difficulties and delays noted above stem from the same sources as described in IO.7 (including the limited investigating powers of the GPO and the SEF) and the shortcomings identified under IO.6.

267. As to the application of provisional measures, the delays observed prevent the assets concerned from being seized or frozen. To a certain extent these delays can be ascribed to the fact that the GPO does not have the power to initiate the application of provisional measures during preliminary investigations. More specifically, the power of the GPO to request an order by the President of the Court of First Instance is subject to a preliminary objection to the transaction by SICCFIN, as has been confirmed by a court decision⁸⁷ (cf. R.4). Consequently, the only measure

⁸⁷ Court of Appeal, judgment of 26 September 2019

which the GPO can take to prevent the dissipation of assets is to ask the investigating judge to open a judicial investigation. This inevitably causes delays because of the increased workload of investigating judges.

268. The absence of an effective system for the management of seized property is also problematic. The authorities expressed doubts as to their capacity to deal with property requiring active management as they did not have any technical assistance for asset management, for example when decisions to sell property had to be made. This limits the degree to which provisional measures are applied. According to the authorities, although it is legally possible to seize intangible property such as a company, this has not occurred because of the management-related difficulties involved. The DSP, judges and prosecutors have asked for a platform to be set up for the recovery and management of assets, but this has not been established to date.

3.4.3. Confiscation of falsely or undeclared cross-border transactions of currency/BNI

269. Monaco has legal requirements in place with regard to the obligation to declare cross-border transportation of cash and bearer instruments, of an amount greater than EUR 10 000. This obligation to declare applies to all natural persons entering or exiting the territory of Monaco. Under the Customs Union between Monaco and France, any cash or bearer instruments with a value in excess of EUR 10 000 must be declared to the DSP (the declaration is then forwarded to SICCFIN for processing and incorporation into its databases) and to French customs (via the DALIA application). Failure to observe this obligation to declare is a criminal offence and it is enforced on the spot by the DSP, which can draw up a report and send it to the competent judicial authorities (cf. R.32).

270. The daily population movement in Monaco amounts to about 40 000 to 50 000 people, most of whom arrive and leave by boat and about 20 000 of whom leave every evening by train. On land, there are about fifty border crossings with France and Italy, some of which involve simply crossing a street or climbing a flight of stairs. The only entry point by air is Monaco Heliport and the traffic here is much less significant. As a result, most declarations are collected from boat passengers (91%) and far fewer stem from land traffic (8%) or air traffic (0.5%).

271. DSP officers show a high level of professionalism, commitment and understanding of the major risks linked with cross-border traffic. The checks carried out are targeted, and factors taken into account include previous declarations, criminal records, applicable search warrants, possession of cash or property worth more than EUR 10 000 or other circumstances which could indicate a failure to declare or ML offences. All items of potential interest revealed by detailed checks are also reported to SICCFIN.

272. The Marine and Airport Police Division carries out daily identity checks on passengers and crew arriving by sea (mainly at Port Hercule and Fontvieille harbour) and at the heliport. Information given in declarations (which are submitted in advance on cruise ships) is incorporated into the DSP's databases and may be subject to detailed checks where necessary. With regard to the only entry point by air, a DSP officer is posted at the heliport to check passengers' identity documents and collect cross-border declarations.

273. The authorities carry out about 70 000 random identity checks annually as well as monitoring movements at the land borders and within the country. About 1% of these random checks give rise to more in-depth checks carried out at police stations, to ascertain that the person concerned is not in possession of undeclared cash or bearer instruments.

Table 3.14: Numbers and amounts of cross-border cash declarations (2016-2021)

Year	Declarations on entering	Amount (EUR)	Bearer instruments on entering	Declarations on exiting	Amount (EUR)	Bearer instruments on exiting
2021	108	9 million	0	38	4 million	0
2020	91	7 million	0	36	3 million	0
2019	565	232 million	0	123	16 million	0
2018	587	115 million	0	164	19 million	0
2017	692	179 million	0	284	32 million	0
2016	672	154 million	0	275	36 million	0

274. According to the DSP, the declarations system works satisfactorily where cross-border sea and air traffic is concerned. As to land transport, there are concerns because of the low number of declarations made and amounts entered. To date, identified cases of non-declaration on arrival by land have related to people entering by car or on foot. According to the DSP, this is due in part to the need to provide more information about the need to fill in a declaration, particularly for persons travelling to Monaco via Nice Airport. The DSP recognises the need to improve co-operation with the French authorities to raise public awareness about declaration requirements for both incoming and outgoing travellers.

275. Other factors explaining the low detection rate for breaches of the obligation to declare detected include insufficient co-operation with French customs, although the DSP has stated its intention to take steps to remedy this; and the fact that the DSP does not use trained sniffer dogs to detect cash.

276. Besides identification through on-the-spot checks, non-declaration of cross-border transportation of cash was detected in one case through official documents disclosed in the course of civil proceedings before the Court of First Instance to which the PG was a party. According to these documents a sum in cash had been taken abroad. This evidence enabled a criminal investigation to be opened on a charge of non-declaration and concealment of this offence. The proactive approach taken in this case is commendable.

Table 3.15: Statistics⁸⁸ on breaches of the obligation to declare

Year	2016	2017	2018	2019	2020	2021
Number of non-declarations or false declarations	N/A	N/A	N/A	1	2	1
Amount of the non-declared or falsely declared assets (EUR)	N/A	N/A	N/A	50 000	55 000	12 000

Box 3.11: Case study of a failure to make a cross-border declaration

(Cash and sports betting slips)

In a recent case (2020), the GPO was informed by the DSP that during an identity check, a person who had failed to make a declaration was found to be in possession of EUR 10 000 and 100 sports betting slips worth a total of EUR 20 000. An investigation was opened to determine the source of the funds. The checks carried

⁸⁸ In 2017 and 2018, the DSP did not have statistics on the amount of undeclared or falsely declared assets.

out by the investigators revealed that the person concerned had several prior convictions in France; he was unable to explain why he was in possession of these assets.

Through productive co-operation with the police force in the country of origin, it was possible, to determine the source of the betting slips in his possession. In this context checks were carried out in the third country, particularly with regard to the establishment in which the betting transactions were made. Preliminary proceedings for money laundering were opened in Monaco, to determine the source of the funds for which the person concerned could give no explanation. These proceedings are still under way.

277. However, despite the efforts made by the authorities to identify cases of non-declaration or false declaration, only one case has resulted in measures being applied to recover the assets concerned following a conviction for ML (cf. Box 3.6, IO.7). Two judicial investigations are also under way. The authorities explained that until recently, the law made no provision for seizure, just the possibility to “retain” assets for the offence of breaching the obligation to declare for a maximum of two weeks, with a requirement to return the cash or instruments to the bearer after that time.⁸⁹ The retention period was renewable once on authorisation by the PG, for a period of two weeks prior to 2020, which was increased to 60 days in 2020. Confiscation of assets solely on the basis of a failure to declare was not possible and in most of the cases referred to by the authorities, the two-week time limit, even when renewed by the PG, was not long enough to identify any offence other than the failure to declare. As a result, assets had almost always to be restored to the bearer. As to execution by means of prosecution for non-declaration, there has been no such prosecution to date, meaning that no penalty such as a fine has been applied. The GPO's explanation for this is that the persons concerned had left the jurisdiction.

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

278. As pointed out previously, Monaco does not have any strategy or formal policy for confiscation enabling it to assess the results achieved. As to consistency with the risks identified, the two confiscation orders made on the ground of ML relate to offences committed abroad, which is consistent with the outside threat posed to Monaco. However, the very poor results achieved in terms of confiscation and the fact that the assets confiscated were not actually recovered are clearly not compatible with the risks identified.

Overall conclusions on IO.8

279. Monaco has begun work in recent years to improve the effectiveness of asset recovery, and this has resulted in an increase in the application of provisional measures. However, the number of confiscation orders is still very low and do not apply to property of an equivalent value or held by third parties. The main causes are major delays at the investigation stage and in the application of provisional measures. Instrumentalities used to commit money laundering or predicate offences are not confiscated. The capacity to manage seized property is limited, and this also affects the implementation of provisional measures. Apart from in one case involving a conviction for ML, no confiscations or other executory measures such as fines have been ordered in connection with cross-border transportation of cash and bearer instruments. The confiscation results are not consistent with the ML risks in Monaco. **Monaco is rated as having a low level**

⁸⁹ Following a legislative amendment in 2022, when proceedings are brought, the President of the Court of First Instance may issue, at the PG's request, a sequestration order for all or part of the funds covered by the obligation to declare, applying until the final judgment is handed down.

of effectiveness for 10.8.

4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

4.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 9

- a) There have been no prosecutions or convictions for TF in Monaco. While this appears to be consistent to an extent with Monaco's risk profile, the gaps in the TF risk analysis (see IO.1) makes it difficult to conclude that this is fully in line with the risks faced by the country.
- b) Over the period under review, the GPO investigated with two TF cases; one turned out to be ML and was closed, while the other is still being investigated. The competent authorities have explored various aspects (including financial) of the latter. The case, which does not fit the typologies identified in the NRA, has not prompted the authorities to review their understanding of risk.
- c) One of the TF cases was identified based on a SICCFIN analysis of STRs followed dissemination to the GPO. The other case, which is still on-going, came to light following a police check. No other sources were used to identify potential cases.
- d) The competent authorities have received some useful training on CTF. However, they do not dispose of specific procedures or guidance in this area, and their capacity of identifying potential TF cases was not fully demonstrated.
- e) While co-operation between the competent authorities appears to be adequate, co-ordination between the DSP and French customs in combating TF is insufficient in practice.
- f) When it comes to combating terrorism, Monaco relies on the Memorandum of Understanding signed with France, which does not include any points specific to TF. Monaco's national AML/CFT/CPF strategy does, however, include a CFT component.

Immediate Outcome 10

- a) Monaco's legal framework enables the implementation of TF-related TFS under the UNSCRs. Since May 2021 reform, these have been implemented via ministerial decisions which apply from the time the DBT publishes them on the Government of Monaco website. This new framework reduced the delay of transposition, in particular through the automatic adoption of UN lists in ten working days. However, there are no measures in place to counter the risk that to keep the designation in force, in case ministerial decision will not be issued after the ten-day period. (also see R.6).
- b) Monaco has never proposed a designation pursuant to Resolution 1267 and subsequent resolutions, nor has ever received or made a formal request for designation pursuant to UNSCR 1373. Since February 2022, the task of identifying targets of designations has been performed by an Inter-ministerial Advisory Committee. However, the effectiveness of this mechanism cannot be confirmed, as it was set up only recently.

- c) Monaco has taken a proactive approach to recognising terrorists and terrorist organisations designated at regional level by transposing EU and French freezing measures. This is considered an logical mitigation measure given the close relationship with these jurisdictions and the terrorism and TF risks they face.
- d) Level of understanding of TF-related TFS obligations by the private sector appears to be adequate, despite the lack of specific guidance and training from the supervisory authorities.
- e) Implementation of the TF-related TFS varies across different sectors. While larger FIs have automated tools enabling designations to be identified quickly, smaller FIs and the majority of DNFBPs perform semi-automatic or manual checks and have encountered some difficulties that may impact the frequency and scope of the screening. The mechanism for communicating lists of designations via the Government of Monaco website does not include sending notifications to regulated professionals.
- f) No positive matches with persons designated under the relevant UNSCRs were identified. Consequently, no asset freezing measures were implemented.
- g) A mechanism for co-ordination and information-sharing on TF-related TFS was established in February 2022. However, its effectiveness cannot be assessed, as the committee in question is a recent initiative and had never met by the time of the on-site visit.
- h) Monaco conducted its first formal risk assessment of the non-profit sector in February 2022.⁹⁰ Due to its recent nature, the outreach and oversight measures applied to this sector are neither proportionate nor targeted. Nor is there any formal and sustained co-ordination between all the departments and directorates involved in the authorisation and oversight of NPOs.
- i) The measures implemented in Monaco are only partially consistent with the overall TF risk profile, not least because of the incomplete nature of the TF risk assessment in NRA 2 (see I.O.1).

Immediate Outcome 11

- a) The mechanism for implementing PF-related TFS includes the automatic adoption of UN lists and publication of ministerial decisions, since the May 2021 reform, thus reducing the delays that were liable to occur under the previous system. Technical deficiencies remain, in particular as regards the risk of a freezing measure being lifted if the ministerial decision is not published within ten working days (*cf.* R.7). At the time of the on-site visit, no PF-related freezing measures had been taken pursuant to UNSCR 1718 (2006) and subsequent resolutions, or to UNSCR 2231 (2015), as no assets belonging to designated individuals or entities had been identified.
- b) Monaco's practice of transposing EU regulations regarding Iranian and North Korean nuclear activities is considered to be a proactive approach in the fight against proliferation.

⁹⁰ Leading to the publication of a document on 25 February 2022 during the on-site visit (from 21 February to 4 March 2022).

- c) Generally speaking, the obliged entities understand their basic obligations with respect to PF-related TFS, despite the lack of specific guidance and training provided by the supervisory authorities on PF or PF-related TFS.
- d) As with TF-related TFS, implementation of these obligations varies according to the sector. While the larger FIs have automated tools enabling designated persons and entities to be identified quickly, other smaller FIs and the majority of DNFBPs perform semi-automatic or manual checks and have encountered some difficulties that may impact the frequency and extent of these checks.
- e) Off-site and on-site inspections remain limited and the recommendations made when shortcomings are discovered are not usually followed up.
- f) Monaco has not introduced effective monitoring to identify possible cases of evasion of PF-related TFS and of the regime for exporting dual-use goods that are attractive to proliferation-related networks.
- g) A mechanism for co-ordination and information-sharing on PF-related TFS was created in February 2022. Given, however, that the mechanism was set up only recently and had never held a meeting at the time of the on-site visit, its effectiveness has yet to be proven.

Recommendations

Immediate Outcome 9

- a) In order to enhance the effectiveness of the CFT repressive system, the authorities should improve their TF risk analysis and understanding by (i) including more relevant indicators, (ii) taking into account the materiality of Monaco as an international centre, and (iii) incorporating the findings of TF cases. Based on this enhanced risk understanding, Monaco should develop guidelines, typologies and red flag indicators for competent authorities and the private sector.
- b) Monaco should significantly step-up co-operation with the French customs authorities on CFT matters.
- c) Monaco should better prepare its authorities to detect and investigate potential TF cases by (i) developing appropriate FT investigation procedures (including conducting a parallel financial analysis in potential terrorism cases) for all competent authorities; and (ii) continuing to provide them with appropriate specific CFT training.

Immediate Outcome 10

The Principality of Monaco should:

- a) Remedy the technical deficiencies identified with respect to the new TFS implementation mechanism, including by eliminating the risk of a freeze being lifted in the absence the ministerial decision is issued before the end of the ten-day period (see R.6).
- b) Establish an effective mechanism to identify individuals and entities that meet the criteria for national designation and possible inclusion in the UN lists.
- c) Ensure sustained and meaningful outreach to FIs and DNFBPs regarding their obligations in relation to the implementation of UNSC resolutions (e.g. by

providing additional guidance and training).

- d) Complete the revision of the Government of Monaco's website and introduce a notification system for regulated professionals so as to ensure more effective communication regarding freezing, de-listing and unfreezing measures.
- e) Ensure that with regard to TF, the Advisory Committee on freezing measures is operational and that it includes all relevant authorities (including the GPO and the Chairperson of the Bar Association) and regularly discusses TF-related TFS issues.
- f) Conduct a more thorough assessment of the risks of the NPO sector vulnerability to TF abuse, taking into account the threats and vulnerabilities associated with non-profit activities, including the different checks used for each type of NPO and the type/area of activity. The NPO sector should be consulted in this process, in order to refine the understanding of the risks faced by the sector.
- g) Apply targeted and proportionate measures to NPOs identified as being vulnerable to terrorist financing abuse, according to a risk-based approach, including:
 - Conducting sustained and targeted outreach to NPOs identified as being vulnerable to TF abuse;
 - Co-ordinating a process of supervision and monitoring of NPOs, including through an effective information-sharing mechanism, commensurate with identified TF risks.

Immediate Outcome 11

The Principality of Monaco should:

- a) Remedy the technical deficiencies identified with respect to the new TFS implementation mechanism, not least in order to eliminate the risk of a freezing measure being lifted in the absence of a legal provision or other enforceable means of ensuring that the ministerial decision is issued before the end of the 10-day implicit freezing period (cf. IO.10).
- b) Introduce effective controls to identify possible evasion of PF-related TFS and the regime for exporting dual-use goods that are attractive to proliferation-related networks.
- c) Provide the necessary CPF training to the competent authorities (including on the risks of exploitation of dual-use goods, indicators of sanctions evasion, typologies and best practices published by international bodies) to build capacity in this area.
- d) Ensure that with respect to PF, the Advisory Committee on freezing measures is operational, includes all the relevant authorities (among them the GPO and the Chairperson of the Bar Association), and regularly discusses PF-related TFS issues.
- e) Provide sustained training and outreach to obliged entities, including DNFBPs, on CPF-related matters, including the technical aspects of detection and implementation of PF-related TFS, indicators of evasion of PF sanctions, and others.
- f) Increase the frequency and extent of on-site controls by ensuring that the specifics of PF-related TFS are addressed and followed up.

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

4.2. Immediate Outcome 9 (TF investigation and prosecution)

281. Monaco's legislative framework for combating TF is to a large extent in line with international standards in this area (see R.5).

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

282. There have been no prosecutions or convictions for TF in Monaco. While this appears to be somehow consistent to Monaco's risk profile, there are some gaps in the TF risk analysis (see IO.1) that raise concerns and therefore, the AT cannot conclude that the absence of prosecutions and convictions is fully in line with the risks the country is facing.

283. NRA 2 rates the TF risk as "medium-low" in Monaco. Since there is no dedicated TF analysis in NRA 1, it is not possible to draw any conclusions on the authorities' perception on the evolution of risk. The risk scenario identified, which the assessors consider to be reasonable, is the funds raised abroad are used for TF purposes in a third country, Monaco being used as a country of transit, through its banks. The authorities do not provide other specific FT scenarios that could be envisaged in Monaco. The TF risks (or vulnerabilities) were not ranked in the NRA2. Some inconsistencies in the conclusion about the risk level presented in the NRAs (exhaustive vs public) have been noted (see Chapter 1 and IO.1).

284. The TF risks assessment was based mainly on the STRs received by SICCFIN (55 between 2017 and 2021, cf. table 4.1) and cross-border declarations of cash and bearer negotiable instruments (BNI), supplemented by data from the DSP (identity and vehicle checks). The authorities state that this is the only relevant data they had at their disposal for this type of assessment. The authorities appear to interpret the lack of relevant indicators as a proof and a consequence of the "medium-low" TF risk assigned to Monaco.

285. With regard to cases processed by SICCFIN, the TF risk analysis explores the origin and destination of funds, their source (i.e., the activity from which they derived), the category of the reporting entity submitting the STR as well as and the main reason for filing the STR. The information so collected indicates that Monaco is the country of origin of the funds in 58% of cases, and the country of destination in 29% of cases. As for the nationality and residence of the persons concerned, the analysis shows links with TF risk areas.

286. An analysis on TF risks potentially related to PEPs was carried out, but the data was collected from entire pool of STRs, not only the TF ones, which distorts the authorities' findings as to the risk of "state terrorism". The NRA does, however, note the presence of a PEP in a TF-related STR. Although they have been examined in some detail, the data derived from TF STRs have not been analysed with a view to identifying certain typologies or red flags to clarify, refute or confirm the authorities' perception of risk.

287. Legal persons have not been subject to TF risk analysis (see IO.5). The authorities have advised that the flaws highlighted by the risk analysis of legal persons can be considered for both ML and TF. That would seem to explain why the Monaco authorities are not implementing a TF specific approach in their repressive system.

288. With respect to declarations of cross-border movements of cash, the authorities have identified the nationalities of those making the declarations. Insufficient co-operation between the French customs authorities and the police department, however, makes it difficult to obtain reliable data, as the French customs do not always inform the Monaco police about the border checks they conduct. French customs communicate with the DSP only where they consider that an investigation might be initiated by the Monaco colleagues.

289. In their FT risk assessment, the authorities considered the absence of foreign requests from foreign counterparts (neither DSJ nor the DSP) in connection with suspected acts of terrorism. In relation to TF, Monaco recorded one extradition request, which proved to be in fact linked to organised crime.

290. The investigative authorities have a sound knowledge and understanding of TF risks as identified in NRA 2. Nevertheless, this risk analysis did not include certain indicators that are relevant to the risk and context in Monaco (see IO.1). For example, Monaco has not analysed incoming and outgoing financial flows, disaggregated by country of origin or destination. The authorities acknowledge that such information is lacking, explain that this is the absence of a central bank, and confirmed that they are exploring the possibilities of using an alternative mechanism.

291. Turning to NPOs, the risk analysis was finalised and adopted during the on-site visit, therefore the AT is not in the position to comment on whether or not its conclusions are reasonable (see IR.10). Moreover, due to its recent adoption this analysis did not have any impact on effectiveness.

292. Although some goods and services relevant to TF are mentioned in the risk analysis (prepaid cards, consumer credit, use of cash), more in-depth analysis is needed. Investment funds and management companies, which in Monaco have particularities, have not been considered from the perspective of TF risk. In general, no analysis of the financial products offered or marketed, whether (i) specific to Monaco or not, or (ii) associated with a higher TF risk or not, has been performed. The NRA focuses on what has been observed in terms of TF, but does not consider in what ways Monaco is vulnerable to TF abuse.

4.2.2. TF identification and investigation

293. The authorities responsible for identifying TF cases are: (i) SICCFIN, which receives and analyses STRs from regulated entities, co-operates with its counterparts and receives cross-border declarations of cash; (ii) the DSP, which has the widest remit in this area: the agency responsible for intelligence, working directly with its French counterparts under the Terrorism Prevention Agreement, as well as with the multiple channels for international police co-operation, and overseeing investigations under the supervision of the GPO; and (iii) the GPO, who directs investigations once a case has been identified. It should be noted that, with a view to identifying TF risks, as of 2016, the authorities have significantly boosted the capabilities of the DSP's intelligence service and co-operate closely with their French counterparts.

294. During the period under review, two TF investigations were initiated. The first investigation, which turned out to be an ML case, was closed with no further action. The case had been triggered by an STR was sent to SICCFIN, which carried out its analysis consisting in appropriate due diligence and inquiries made to foreign counterpart. As no links with TF were established, the individual was charged with ML but when the judicial investigation failed to produce sufficient evidence, an order for dismissal was issued and the case was transferred to

foreign authorities. The second investigation, which was launched following a police traffic check, was closed in the summer of 2021 and then reopened on the basis of new information in March 2022. The case is currently ongoing and confidential, so no further details can be provided. It should be noted, however, that the case does not fit the typologies identified in the NRA. There are no convictions for terrorism nor such on-going investigations in Monaco.

295. The LEA based their TF investigations on a referral from SICCFIN and a street check carried out by the police (in what turned out to be an ML case). No conclusion can be drawn on their ability to identify TF cases using other sources. To date, the DSP has not identified any potential TF cases; however, it routinely co-operates with its French counterparts, an arrangement that was placed on a more formal footing in March 2021 with the Terrorism Prevention Agreement. While this agreement deals with criminal offences related to terrorism, the DSP states that it has enabled them to gain a better understanding of TF as a phenomenon, and to be able to identify a potential case if need be. SICCFIN's understanding of TF risks goes beyond the conclusions of the NRA.

296. The investigative authorities seem to have sufficient resources to deal with potential TF cases should they arise. When SICCFIN or the DSP identifies a potential TF case, they inform the GPO, who onboards the case and directs the proceedings, requiring the police to carry out specific investigative measures. The GPO has a co-ordinating role and actively co-operates with the police. On the other hand, the SICCFIN, receives STRs or information from its counterparts and conducts a financial analysis. If this analysis produces sufficient evidence, the information is passed on to the GPO. Besides this practice, the authorities have no specific TF procedures or methodologies.

297. One area of concern is the co-operation between the DSP and the French customs authorities. Due to their organisations structure, the relevant information obtained by the French custom is passed to the Nice public prosecutor's office rather than to the GPO in Monaco, which creates discrepancies in practice.

Table 4.1: TF cases dealt with by the competent authorities

Year	2016	2017	2018	2019	2020	2021	Total
Cases dealt with by SICCFIN	N/A	17	10	7	9	12**	55
STRs	N/A	10	5	3	5	2**	25
Requests from foreign FIUs	N/A	7	5	4	4	10**	30
Referrals to the GPO	N/A	0	0	2	0	0**	2
Police investigations	0	0	0	2*	0	N/A	1
Prosecutions	0	0	0	0	0	0	0
Convictions	0	0	0	0	0	0	0

*One TF case referred by SICCFIN was reclassified as an ML case by the GPO.

**Figures not available yet for 2021

298. Over the period 2017-2021, SICCFIN received 25 STRs and 30 requests from foreign FIUs in relation to TF. It forwarded two disseminations to the GPO, both of which triggered by an STR.

299. The examples of anonymised TF STRs provided to the AT appear to be of a good quality. SICCFIN has pointed out, however, that they relate mainly to media reports and that, the main reason for not being disseminated to the GPO is the absence of evidence supporting the initial TF suspicion. In most cases (91% of the transactions concerned), the regulated entities refused the execution of the transaction and if the person concerned is not physically present in Monaco, no link with Monaco could be established.

300. Information from three TF STRs was disclosed to the GPO. SICCFIN also initiated exchanges with DSP who checked potential links between the persons concerned by the STRs and Monaco, and addressed information requests to foreign counterparts if needed.

Box 4.1: Action taken by the competent authorities in response to an STR concerning suspected TF

At the end of January 2018, SICCFIN received an STR from a Monegasque bank concerning an account opened in 2014 and held by a resident who was in Monaco for professional reasons. More specifically, the STR concerned a transfer of EUR 10 000 to an association registered in country A. Executed in July 2017, the transaction came to the bank's attention when it learned, through press articles, that the association on the receiving end had been provisionally closed in December 2017 on the orders of the competent authorities in country A, for radical preaching.

SICCFIN's investigations corroborated the information furnished by the bank. By examining the bank account of the individual concerned, it was able to look into the EUR 10 000 transfer as well as other transactions. Not only was the closure of the association confirmed by country A's highest administrative court, but the same country had also issued a freezing order against the association in December 2017. In accordance with the agreements between Monaco and country A, this freezing measure was transposed to Monaco.

Based on this information, SICCFIN, communicated with two other agencies:

- the DBT, which confirmed that no assets held by the association had been seized in Monaco;
- the DSP, in response to SICCFIN's queries, checked the various databases at its disposal. The searches did not reveal any negative information regarding the account holder. As the association had no particular links with Monaco, it was not known to the police either.

A further request from SICCFIN to the bank did not produce any additional relevant information. Given that there had been only one transaction, carried out five months before country A issued the freezing order against the association, SICCFIN concluded that there was insufficient evidence to warrant a referral to the GPO. A spontaneous report to the FIU of Country A was sent in February 2018.

301. In the above-mentioned case, SICCFIN demonstrated the ability to further investigate TF cases by contacting the relevant stakeholders, namely the regulated entity that filed the STR, the DSP for the purpose of carrying out checks on the individual, and the DBT. However, the case indicates that it failing to establish a link between the person concerned and Monaco, SICCFIN merely passes the case on to the relevant foreign counterpart.

302. As regards requests from foreign FIUs, the authorities advised that these were sent to the Egmont Group as a whole, to locate funds belonging to certain individuals. SICCFIN states that it made the appropriate inquiries among the regulated entities and administrative authorities, all of which proved negative, and that it replied to its counterpart FIU within two days. In rare cases, SICCFIN received targeted requests from counterparts, for which information was requested from the DSP. In absence of any relevant data, the cases was not referred to the FPO.

303. The various authorities met are sufficiently aware of the severity of TF as crime, and are able to implement provisional measures should the need arise. When the TF case (currently under investigation) materialised, the authorities showed that they were able to investigate the

financial links of the person concerned, although they did not do anything different from a ML case.

304. In the one ongoing case, the investigation is being conducted by the GPO and the DSP, which analyses at different aspects of the transaction, including the natural and legal persons in question (background, character, environment, assets, etc.) and the operation itself (origin and destination of funds, supporting documents, etc.). However, no checks were performed on the people who had business relations with the suspect. There has been no in-depth analysis of the context or related aspects of the investigation that might provide more details about the risk associated with the activities or the associates of the person concerned. This case was not used by the authorities to adjust practice of detecting of TF cases, despite the presence of certain practical elements provided by this case.

305. In terms of intelligence, the systematic co-operation between the French authorities and the DSP constitutes a strength in the fight against TF in Monaco. Certain communities have been identified as being "at-risk" due to their nationality or their activities in France. The DSP monitors these communities, supervising their entry and exit into and out of the national territory, as well as their economic and social activities in Monaco. Similar measures are taken with persons about whom foreign counterparts send negative reports and/or intelligence.

306. The AT welcomes the DSP active co-operation with the SBM and the recent establishment of a formal public-private partnership with the casino, to make it easier to report any ML/FT suspicions. So far, this approach has not produced any results where terrorist financing is concerned.

307. SICCFIN staff and LEA received specific CFT training from the Counter-Terrorist Financing Division at TRACFIN in 2017. This training covered TF typologies, patterns and mechanisms, and was very highly appreciated by all the authorities, who consider themselves better equipped to deal with TF-related cases. In addition, the authorities continue to benefit from other counterterrorism and CFT, in particular from the Italian authorities (SEF officers), from the Royal United Services Institute - RUSI (SEF, SICCFIN and the GPO), and from the French National School for the Judiciary (ENM) in the case of prosecutors.

308. Similarly, SEF staff attended training run by the Italian authorities from 15 June to 15 July 2021 on international AML/CFT principles. Together with the GPO and his/her deputy, they also completed a RUSI training in April 2021. Lastly, the DSP developed an AML/CFT handbook, which is intended to assist investigators in identifying red flags indicators that may point to the existence of unusual or suspicious transactions or activities in the course of their investigations. This handbook is not intended to provide a detailed guide to specific criminal investigation methods, however.

309. As regards the private sector, apart from UN sanctions lists screening at the inception of a business relationship with a customer (see IO.4), no specific detection system or warning criteria in relation to TF were mentioned during the on-site visit. Some banks benefit from their parent companies' risk analyses of the products they provide, but there is no local approach.

4.2.3. TF investigation integrated with – and supportive of – national strategies

310. The national AML/CFT/CPF strategy includes a TF component, but the measures therein are marginal and not detailed or prioritised (see IO.1). In 2018, Monaco set up a crisis unit to be activated in the event of an attack on Monegasque soil. It consists of four sections, and the

authorities stated that the issue of TF would be there addressed. The authorities also rely on the General Security Protocol recently signed with the French authorities, which aims to prevent the commission of terrorist acts in France and Monaco, and to enable prompt, co-ordinated action to be taken in the event of an attack. The focus is on the risk of terrorism, however, and not specifically TF. Also, the Protocol does not cover risks emanating from jurisdictions other than France.

311. No changes to the national AML/CFT/CPF strategy have been envisaged in the light of the one ongoing TF investigation, despite the fact that the case might bring novelty in the typologies already identified.

4.2.4. Effectiveness, proportionality and dissuasiveness of sanctions

312. The absence of prosecutions and convictions makes it impossible to comment on the effectiveness of sanctions. The sanctions set out in legislation are nevertheless proportionate and dissuasive.

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

313. No measures have ever been applied as there have been no such cases. Possible alternative measures include banning entry into Monaco, which is the most common measure in the jurisdiction, and applied even where TF is merely suspected, as happened in the case originally classified as TF but which turned out to be ML.

Overall conclusions on IO.9

314. There have been no convictions or prosecutions for TF in Monaco, which is consistent to a certain extent with the country's risk profile. The investigative authorities are aware of the TF risks as identified in NRA 2 and overall TF risk level appears appropriate. However, due to shortcomings in the risk assessment, the AT cannot conclude that the lack of TF prosecutions is fully consistent with the country's risk profile. Although the Monaco authorities have received CFT training, they do not have specific procedures in place and have not been able to show that they are fully capable of detecting potential TF cases. The one TF investigation, which is still ongoing, has been prioritised by the authorities, who have explored different aspects of the case. This investigation, however, has not led the authorities to rethink the risks, or the system for detecting TF cases. Co-operation between competent authorities appears to be adequate but the lack of information-sharing with French customs is a major deficiency in practice. **Monaco is rated as having a moderate level of effectiveness for IO.9.**

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

4.3.1. Implementation of targeted financial sanctions for TF without delay

Legislative and institutional framework

315. Monaco's legal framework enables the implementation of targeted financial sanctions (TFS) under United Nations Security Council Resolutions (UNSCR) 1267/1989 and 1988, national, EU and French designations (see R.6).

316. Monaco recently amended its regime for the implementation of TF-related TFS, through SO No. 8.664 of 26 May 2021 and Prime Ministerial Decision No. 2021-1 of 4 June 2021, as described below.

317. The assessment team based its conclusions on the statistics provided in relation to TFS, as well as discussions with the competent authorities (including the DBT, SICCFIN, the DSP and the DSJ), the supervisory authorities, and with a wide range of regulated professionals.

318. The DBT is the authority responsible for updating the national list of asset freezing measures, which combines of all the UN, EU, French and national designations. The national list is intended to facilitate the process of providing information to the public, and in particular to regulated entities. It is available on the Government of Monaco website, with a note indicating that it is intended purely for information purposes, with only the ministerial decisions and their appendices being enforceable.

319. On 11 February 2022,⁹¹ an Advisory Committee has been set up to deal with the freezing of funds and economic resources (Art. 7-2 of SO No. 9.098 of 11 February 2022). This committee is chaired by the Minister of Finance and the Economy, and its members are the DSP, DREC, SICCFIN and the DBT. Its main purpose is to (i) make listing recommendations to the Prime Minister, (ii) promptly formulate an opinion if so requested by another State, (iii) propose that the Prime Minister takes a decision to recommend a listing to the relevant UNSC committees (iv) propose that the Prime Minister makes a request to another State, (v) formulate opinions on requests for the release or use of frozen assets, (vi) ensure that the government agencies involved in the freezing procedures share information. Generally, the Committee is tasked with any issues with a view to improve the effectiveness of the system. While this measure represents a significant improvement, its effectiveness cannot be assessed as the committee was set up only recently and no meetings had been held by the time of the on-site visit.

Implementation of TF-related TFS without delay

320. With regard to UNSCR 1267/1989 and 1988, until May 2021 Monaco had a national transposition mechanism through the adoption of ministerial orders which were applicable as soon as they were published in the Monaco Gazette. In practice, however, for most of the assessment period, it took on average 24 days to transpose UN designations (see Table 4.4).

321. Since the end of May 2021, a new national mechanism established the automatic adoption of UN sanctions lists which are applicable in Monaco immediately, i.e., the publication on the UNSC website triggers an implicit freezing decision applicable for up to 10 working days. This implicit decision must be confirmed by the publication of a ministerial decision. The reform has helped to overcome the delays that used to occur under the previous system. However, technical compliance shortcomings (see R.6) raise concerns about the risk of freezing being lifted in the absence of a legal provision or other enforceable means for ensuring that the ministerial decision is issued before the end of the ten working days.

322. Although there is still a risk that a freezing could be lifted after this 10-day period, it has never happened in practice since the introduction of the reform. The statistics provided show that under the new system, the ministerial decision is issued within 24 hours after the publication of the lists on the UN website, in contrast to the delays observed under the previous arrangement (see Table 4.4).

⁹¹ i.e. ten days before the on-site visit (21 February – 4 March 2022)

Table 4.4: Timeframes for implementing UN sanctions (2020-2021)

Monaco regime	UN sanctions regime	Date of publication by the UN	Purpose of the decision	Date of publication of ministerial order or decision	Number of days
Previous system (ministerial orders)	ISIL (Da'esh) and Al-Qaida Sanctions Committee	04/02/2020	To add 1 entry	28/02/2020	24
		18/02/2020	To remove 2 entries	13/03/2020	24
		23/02/2020	To add 2 entries	20/03/2020	26
		04/03/2020	To add 3 entries	27/03/2020	23
		24/03/2020	To remove 1 entry	17/04/2020	24
		21/05/2020	To add 1 entry	12/06/2020	22
		16/07/2020	To add 1 entry	07/08/2020	22
		10/09/2020	To amend 11 entries	02/10/2020	22
		08/10/2020	To add 1 entry	30/10/2020	22
		19/02/2021	To remove 2 entries	19/03/2021	28
		23/03/2021	To amend 8 entries	16/04/2021	24
		06/04/2021	To amend 1 entry	30/04/2021	24
		17/06/2021	To add 1 entry	18/06/2021	1
		06/09/2021	To remove 1 entry	07/09/2021	1
New system (ministerial decisions)		24/11/2021	To add 1 entry	25/11/2021	1
		21/12/2021	To add 1 entry	22/12/2021	1
		30/12/2021	To add 2 entries	31/12/2021	1

Proposed UN designations

323. Although, by the time of the on-site visit, the Principality of Monaco had never recommended a listing pursuant to UNSCR 1267 and subsequent resolutions, or pursuant to UNSCR 1373, and had never received a proposal from another country, the relevant procedures for such designations are laid down in the country's legislation.

324. Since February 2022, the task of identifying designations' targets has been carried out by the Interministerial Advisory Committee whose effectiveness can not be yet demonstrated as it was set up only recently (see paragraph 312). In theory, if a member of the Committee identifies a person or entity that might meet the listing criteria, the Committee will meet to decide whether a proposal to the Prime Minister should be made, according to which he takes a decision to recommend a listing to the UN Security Council committees. In order to ensure the effectiveness of this process, the authorities concerned could consider setting up dedicated operational mechanisms to identify potential targets who could be discussed by the Advisory Committee and, where necessary, recommended to the Prime Minister as candidates for listing.

National and regional designations

325. Monaco implements UNSCR 1373 designations at national level (SO No. 8.664) and at regional level by transposing EU and French freezing measures. In practice, Monaco is kept informed of all freezing measures taken by France so that it can follow suit, by virtue of its international commitments to apply the same freezing measures as those enacted by France and the EU. In practice, transfers of funds between France and Monaco are treated as domestic transfers, under the agreement signed between the two countries after obtaining a derogation⁹² from the European Commission, which is conditional on automatic adoption of the EU's freezing lists.

326. The main national listing criteria are specified in Article 7 of SO No. 8.664 (as amended on 11 February 2022) and relate to (a) any person or entity that commits or attempts to commit terrorist acts or participates in or facilitates the commission of terrorist acts, (b) any entity owned or controlled, directly or indirectly, by any person or entity designated under a), and c) any person acting on behalf of or at the direction of any person or entity designated under a).

327. Monaco has not initiated any requests for designation or received any proposals for designation from other countries. The competent authorities attribute this to the fact that they have never identified, in the course of their duties, persons or entities that might meet the listing criteria.

Communication mechanisms and waiting periods

328. The Principality of Monaco communicates information on listed persons to regulated professionals by publishing the national list on the Government of Monaco website. In the absence of a notification system, the effectiveness of the communication mechanism remains limited.

329. The DBT updates the list within 24 hours following publication by the UN. Also, the arrangements for consolidating, updating and publishing the list appear only in the DBT's internal procedures dated 18 February 2022 (see R.6). In practice, a duty list has been put in place at the DBT to ensure that, even at weekends, someone is available to prepare freezing measures for

⁹² [Decision of 4 May 2010](#) – Derogation under Article 17 of Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds

signature by the Prime Minister and to post details of the measures on the Government website. In addition, the delegation of signing authority in the absence of the Prime Minister has recently been extended to his/her head of office (Art. 1 of the Ministerial Order of 9 February 2022).

330. In addition, a reconstruction of the Government of Monaco website is under way to allow regulated entities to sign up for automatic notifications whenever a freezing, de-listing or unfreezing measure is published. While this initiative is to be commended, its effectiveness cannot be determined because at the time of the on-site visit it has not been completed.

331. Overall, these measures illustrate Monaco's determination to improve its communication mechanisms and timeframes. Their effectiveness is yet to be demonstrated due to its recent nature.

332. The guidelines issued by SICCFIN⁹³ (July 2021) and those issued by the Chairperson of the Bar Association (October 2021) address, respectively, the freezing obligations under the new system. These guidelines are only intended for regulated entities supervised by these two authorities (and so do not include bailiffs or notaries, who come under the supervision of the GPO). In terms of their content, comprehensive clarification is lacking on the key aspects concerning practical implementation of these obligations (in particular, as regards the adoption of appropriate control arrangements, the scope of checks, the handling of alerts or specific guidance for professionals who do not possess automated screening tools).

333. Generally, the regulated entities met on site, all sectors and professions included, have an adequate understanding of the general requirements of the system with regard to TF-related TFS (in particular as regards immediate effect of sanctions, the obligation to send an STR and to inform the DBT, and consulting the consolidated national list on the Government of Monaco website).

334. Some DNFBPs, including real estate agents and legal advisers, however, demonstrated limited understanding concerning the frequency of screening against sanction s lists (weekly, monthly, or even bi-annually or "on a risk-sensitive basis"). That may hamper effective implementation of TF-related TFS without delay. A lack of formal control procedures was also noted in the case of certain regulated entities in the non-financial sector (e.g. jewellers, auctioneers). Generally, following the 2021 reform with respect to TFS, very few regulated entities have updated and sent details of their internal procedures to SICCFIN (fewer than 8%).

335. Large FIs have automated tools for monitoring of asset freezing measures. These systems automatically search the customer database (at predefined intervals), screen the transactions (in real time), and generate alerts on the basis of predefined scenarios. As regards other FIs, some have semi-automated systems, where screening is triggered by the user, however, once screening is initiated, it generates alerts automatically.

336. As regards DNFBPs, automated or semi-automated systems are the exception (e.g., law firms with World-Check licences), with the manual method being the most common one. Difficulties are sometimes encountered by regulated entities that use manual method to perform the necessary checks against the national consolidated list, especially if they keep customer information in paper or hybrid format.

337. The monitoring of compliance is carried out by SICCFIN, the GPO or the Chairperson of the Bar Association (see IO.3). The frequency of supervisory actions remain limited compared to

⁹³ [Lignes Directrices à destination des professionnels monégasques](#), page 75 et seq.

the total number of regulated professionals; usually there are no follow up measures on the recommendations made by the supervisors about observed implementation shortcomings.

338. Also, in the absence of concrete examples, the assessors remain concerned about the lack of effective co-ordination between the various parties involved (SICCFIN, the GPO and the Chairperson of the Bar Association) and the DBT.

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

339. Despite its small size, Monaco has a significant number of NPOs, about 1 000 (according to the 2021 NRA), or roughly one NPO for every 40 residents. As for the legal forms they can take, associations dominate the sector (there are almost 900 of them, including about 60 federations), with only 20 foundations. Some basic information about NPOs is available on the official NPO website, which should be upgraded, modernised and updated to provide more information about the sector.

340. In Monaco, NPOs are not subject to the AML/CFT Law. The financial transparency of the sector has been improved through (i) changes to the laws and regulations on associations, federations of associations, and foundations, including accounting requirements (see R.8), (ii) early-stage investigations, and (iii) the various existing mitigation measures (such as the EUR 1 000 limit on cash donations). However, these changes were introduced before the risk assessment of the sector. Since the above measures were not based on the NPOs risk assessment, they do not specifically target the NPOs being at risk of terrorist financing abuse.

Associations and federations

341. Associations are governed by Law No. 1 355 of 23 December 2008. The provisions of this law also apply to federations of associations. Associations may be formed freely, without prior authorisation or declaration, but in order to acquire legal personality and legal status an association must be declared and made public (50 to 60 associations are declared every year).

342. In practice, in order to engage in financial activities, legal personality is required, and thus registering with the authorities. In addition, the majority of the directors must be domiciled in Monaco, unless an exemption is granted following approval by the Council of State.

343. In general, only accredited associations are eligible to receive public funding. In exceptional cases, a non-accredited association may be granted one-off, non-renewable assistance within a period of three years, provided that it pursues goals for the public benefit, or contributes to promoting Monaco.

344. At the time of the on-site visit, only 181 associations were accredited. The Expenditure Control Authority (CGD) carries out accounting audits of all associations which receive public funds, whether they are accredited or not. The assessment team, however, has reservations about the nature of these measures, which do not specifically target TF abuse, and about the effective supervision and monitoring of the other non-accredited associations.

345. As for associations governed by foreign law wishing to operate in Monaco, these require special administrative authorisation, which is issued for one-year period and have to be renewed. The directors must undergo a background check. To date, only three associations have been granted such authorisation (two are engaged in the activities in the sports sector and the other is religious).

346. It became evident from the discussions with the authorities that at the time of the on-site visit no cases of associations operating without authorisation had been identified. Nevertheless, the assessors are of the opinion that in the absence of a comprehensive analysis of the sector which is periodically updated, the existence of unauthorised associations and the likelihood of TF abuse cannot be completely ruled out. The authorities should therefore consider gather data on all associations in order to ensure better monitoring, including of non-accredited ones.

Foundations

347. Foundations are governed by Law No. 56 of 29 January 1922, as amended in June 2018. Applications for authorisation to establish a foundation must be submitted to the Secretariat General of the Government, which then publishes a notice of filing in Monaco's official gazette. If no objections are raised within a period of three months, the authorisation to establish a foundation is issued by sovereign order, on a proposal from the Government, following approval by the Commission for the Supervision of Foundations, the Communal Council and the Council of State (a process takes approximately twelve months).

348. Once the authorisation order has been published in the official gazette together with the approved statutes, the foundations acquire legal personality and legal status. Two thirds of the directors are required to be a resident in Monaco for at least one year. In practice, background checks are systematically conducted by the DSP on the two thirds who are residents.

349. The main sources of funding for NPOs provided for by law are (i) donations (limited to EUR 1 000 for donations in cash), (ii) legacies (subject to prior authorisation issued by sovereign order upon approval by the Council of State, with approximately six legacies allowed per year), (iii) grants and (iv) the possibility of making public appeals for donations at events held on Monegasque territory (subject to prior approval by the Department of the Interior). In practice, however, during the period under review, the Monaco authorities lacked an overview on the actual sources of private funding for the non-profit sector.

350. With respect to grants (there are approximately 150 grant-funded entities), an agreement with the state is required if the amount exceeds EUR 150 000, accompanied by annual audit of the accounting records with a view to determine whether funds were used properly. Failure to submit the accounting reports on time may result in the grant being suspended.

351. As for the possibility of making a public request for donations at events held on Monegasque territory (lotteries, tombola, charity galas), prior approval is required from the Department of the Interior, stating who is to receive the funds raised.⁹⁴ The DSP is asked to make inquiries about the applicant association. After the event, a financial report on the operation must be sent to the Department of the Interior for further checks to ensure, for example, that the event was in line with the purpose of the association, and that receipts and expenditure correspond. Except during the pandemic, approx. ten such requests are launched per year, often by the same NPOs.

352. As regards the risk of TF, given Monaco's status as an international centre, the 2021 NRA⁹⁵ not unreasonably refers to the likelihood of Monaco being used as a transit country for funds raised overseas to finance acts of terror, by exploiting the Monegasque financial system and its

⁹⁴ Law No. 590 of 21 June 1954 governing public subscriptions

⁹⁵ NRA 2, II. Terrorist financing, 3. Vulnerabilities relating to terrorist financing, page 168

particular features. Given large number of NPOs registered in Monaco, and the lack of oversight over the sector, the possibility of them being abused for TF purposes cannot be ruled out.

353. 2021 NRA highlighted a deficiency concerning characteristics of NPOs that fall under the FATF definition. In June 2021 Monaco has started risk assessment of NPO sector; risk assessment report was published on 25 February 2022. The subgroup of NPOs falling under the FATF definition consists of 262 (out of 1 035) associations and foundations registered in Monaco.

354. A questionnaire was drawn up by SICCFIN in consultation with the Department of the Interior, based on the criteria from the World Bank methodology. NPOs' response rate to questionnaire was 42% (i.e. 421 replies). In addition to the replies to the questionnaire, the other sources used for the assessment were (i) information collected during accounting audits, (ii) NPO annual reports and (iii) information collected from the financial sector by SICCFIN.

355. Based on the analysis performed, 77 NPOs were identified that finance projects abroad (outside Monaco) without any undergoing controls by the Monaco authorities. Of these, 39 NPOs operating mostly in Europe and Africa, do not have procedures for tracking the funds, for identifying and verifying the identity of the beneficiaries of grants awarded, for monitoring with a view to ensure that funds reach their intended destination, in case when the beneficiaries are not the final recipients.

356. Based on the data collected, the analysis conducted by the Monaco authorities indicate that approximately 2.5% of Monaco NPOs could be exposed to TF risk and the volume of funds is small. Although these conclusions are not alarming, the assessment team has reservations given the fact that the analysis was only recently formally documented and there is a lack of oversight of the sector and the operations carried out by some NPOs.

357. During the on-site visit discussions with the relevant authorities confirmed the lack of visibility over the sector, particularly in the absence of information about the number of humanitarian NPOs operating at national level, those receiving public funding for activities in crisis zones, and those with links to conflict zones which do not receive public funding.

358. The Department for Foreign Affairs and Co-operation (DREC) works with a small percentage of international humanitarian NPOs in Monaco. Similarly, DREC contacts local associations whenever the objective aligns with its own priorities, and can provide funding for specific projects, although it can also ask to see supporting documentation. Of the 30 associations that have received funding, approximately one third are active in conflict zones. No specific measures are taken in relation to the risk of terrorist financing abuse, however.

359. From the annual questionnaires submitted by banks, SICCFIN was able to identify approximately 872 accounts opened for associations in Monaco, concentrated in four banks. This enables some oversight over the operations carried out by these NPOs. It appears that the majority of NPOs are in the standard risk category (53%) with a significant proportion (44%) in the high risk category. Following discussions with the regulated professionals, it appeared that assigning different levels of risk to NPOs seems inappropriate in the absence of a proper risk analysis.

360. The Department of the Interior in Monaco is responsible for monitoring and following up cases involving NPOs.

361. Foundations come under the scrutiny of the Supervisory Commission for Foundations (CSF), which meets at least once a year and submits an annual report to the Prime Minister on the administrative and financial situation of each foundation. The CSF verifies the consistency of the

of information submitted, including the report on the financial aspects, sent by the CGD. No TF-related anomalies were found with respect to foundations by the time of the on-site visit. However, no on-site inspections of foundations were conducted by the CSF during the period under review.

362. The CGD conducted 108 audits of associations during the financial year of 2021. These audits identified only minor shortcomings, such as missing invoices, or accounting errors that can often be quickly rectified by the members of association. No TF-related failures were found with respect to the associations during the controls carried out. Such supervision is not targeted.

363. A “Good Conduct Guide for Non-profit-making Associations for the Risk of Terrorist Financing” was published in September 2016 by SICCFIN on its website⁹⁶ and sent in hard copy by the Department of the Interior to a particular group of associations.⁹⁷ In addition, a good conduct guide, prepared by the Department of the Interior and subordinate agencies in conjunction with the Directorate of Legal Affairs, was sent to heads of associations in July 2021. This guide contains some information on the risks of TF abuse and recommendations on preventative measures to be adopted. Outreach appears to be sporadic and does not cover certain categories of NPOs that may be at risk (foundations).

364. Regular co-operation between the Monaco authorities, in particular between SICCFIN and the Department of the Interior, exists in practice, but there is a lack of formal arrangements for information-sharing and good practices. The co-operation does not extend to all relevant actors, in particular DREC, the CSF and the CGD, which limits its effectiveness. In addition, more staff tasked with monitoring (there are currently two in the Department of the Interior and four in the CGD) are needed to ensure effective monitoring of the NPO sector and follow-up actions.

4.3.3. Deprivation of TF assets and instrumentalities

365. Even though Monaco has legislative requirements and mechanisms in place, no confirmed positive matches have been identified with persons designated under the relevant UN Security Council resolutions on TF.

366. No measures have been taken in Monaco (including under UN sanctions regimes) to freeze or confiscate funds or economic resources belonging to terrorists, terrorist groups, or persons financing terrorism.

367. The number of TF-related STRs processed by SICCFIN was down over the period 2017-2020 (with six per year on average) and none were directly related to freezing measures. TF STRs are processed on a priority basis by SICCFIN (under the “PCR Flash” procedure), and of the 43 cases processed,⁹⁸ two were referred to the GPO (in 2016 and 2019). One investigation was closed and the other is still ongoing. To date, Monaco had no prosecutions or convictions in relation to TF (see IO.9).

368. As for SICCFIN exercising its right to object, none of the measures taken during the reference period concerned TF (see IO.6).

4.3.4. Consistency of measures with overall TF risk profile

⁹⁶ <https://www.siccfin.mc/Publications-LCB-FT-C/Guide-a-destination-des-associations>

⁹⁷ 200 associations operating in the field of humanitarian aid, the care sector, etc.

⁹⁸ 23 TF STRs and 20 requests from foreign FIUs.

369. The measures introduced in Monaco are partially consistent with the overall TF risk profile. The assessment team believes that Monaco could improve its analysis of specific risks relevant to an international financial place.

370. The TF risk was first assessed in NRA 2 as “medium-low” and “rising”. This assessment, however, remains incomplete (see Chapter 1 and IO.1), making it difficult to form a comprehensive understanding of TF risk, and assess to what extent the measures are consistent with the risk profile.

371. Although Monaco has never detected any terrorist or TF activity within jurisdiction, the exposure to terrorism and TF of its neighbours might have consequences for Monaco, especially given the very close economic and political ties between the two neighbouring jurisdictions and with the EU.

372. Some awareness of the risks is evident from the large number of measures taken by Monaco before the on-site visit (mentioned above). While this approach demonstrates a better response to risks, for most of the period under review the measures were insufficient.

373. Since May 2021, various steps have been taken to strengthen Monaco's framework for TFS implementation. In addition to the previously discussed reform of the sanctions' implementation framework, another example of recent measures is the adoption of the national strategy for tackling ML/TF (end of January 2022) aiming to optimise the way CFT is organised. Because of the recent nature of these actions at the time of the on-site visit the measures applied by the competent authorities were not yet tailored to the identified risks. Furthermore, no TF issues have been formally raised at the meetings of or in exchanges of information between the existing groups and committees in Monaco: the Contact Group (SO 4.104 of December 2021), the Liaison Committee (Articles 49 and 50 of SO 2.318 of 2009), the Co-ordination Committee (SO of 27 September 2002).

Overall conclusions on IO.10

374. Monaco has put in place a broadly appropriate legal framework for the implementation of TF-related TFS. The new arrangements introduced to address the delays in implementing TFS have begun to prove their worth since they came into force at the end of May 2021. Moderate technical deficiencies remain, however (see R.6). Furthermore, up until then, for most of the period under review, there had been major delays relating to the transposition of designations, which hampered the effectiveness of the mechanism. As regards the non-profit sector, an important step was taken when Monaco produced its first formal sectoral risk assessment on 25 February 2022. Because of the recent nature of this initiative, some moderate deficiencies remain, namely, the lack of oversight of the NPO sector at risk of TF abuse, the absence of targeted measures for the prevention of TF, limited and irregular outreach measures, and the lack of formal arrangements for co-ordination between the competent authorities. **Monaco is rated as having a moderate effectiveness level for IO.10.**

4.4. Immediate Outcome 11 (PF financial sanctions)

Contextual factors

375. The Principality of Monaco is an international centre, specialising in the provision of banking services and with a large foreign clientele. Monaco is not a proliferation arms market (*cf.* NRA 2021).

376. The Principality of Monaco does not have diplomatic or trade relations with North Korea.

377. With Iran, Monaco maintains diplomatic relations, and has trade and tourism links worth EUR 333 300 (85th position) in the case of exports (up 190.1% between 2018 and 2019) and EUR 27 300 (103rd position) in the case of imports (down 74.8% between 2018 and 2019). This trade can be regarded as insignificant given the total volume of Monaco's exports and imports. It should be noted that the UN Security Council approved the JCPOA⁹⁹ and restrictive measures against Iran through resolution 2231 (2015) on 20 July 2015, followed by a relaxation of economic sanctions by the EU and the UN. Monaco aligns itself with the European provisions and UNSCR 2231.

378. EU dual-use regulations apply in Monaco because of its customs union with France. Controls in this area are the responsibility of French customs (France's Directorate General of Customs and Excise (DGDD)¹⁰⁰). In practice, co-ordination with the DSP is not satisfactory. Furthermore, the national authorities have not carried out an analysis of Monaco's economic fabric to identify the companies concerned by the dual-use regulations. In addition, pursuant to SO No. 8.010 of 12 March 2020, a Monegasque commission was set up and entrusted with the licensing and control of sensitive equipment¹⁰¹ that could be considered equivalent to dual-use items.

379. Monaco has had a co-ordination mechanism for PF-related TFS in place since February 2022 (the Advisory Committee mentioned in IO.10). Its effectiveness remains to be demonstrated, however, due to the fact that it was established only recently and, at the time of the on-site visit, had never held a meeting. Moreover, according to on-site discussions with the competent authorities and meeting reports provided to the assessment team, the AML/CFT committees (e.g. Liaison Committee, Contact Group) have not addressed issues related to proliferation or its financing.

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

380. With respect to UNSCRs 1718 and 2231 and subsequent resolutions, until May 2021¹⁰² Monaco applied a national mechanism to transpose UNSCRs through the adoption of ministerial orders applicable upon publication in the official gazette. These ministerial orders were amended when an updated version of the list of natural and legal persons, entities and bodies covered by these measures was published by the UNSC. In practice, however, the process took 39 days (*cf.* Table 4.5).

381. The new legal framework for the implementation of PF TFS is identical to the one applied in relation to TF (*cf.* IO.10). Although there have been no updates since the entry into force of the new national mechanism, the principle of automatic adoption means that UN sanctions lists are

⁹⁹ UNSCR 2231(2015), endorsing the Joint Comprehensive Plan of Action (JCPOA), provided for the termination of all the provisions of the UNSCRs on Iran and proliferation financing, in particular UNSCRs 1737(2006), 1747(2006), 1803(2008) and 1929(2010), but introduced specific restrictions including TFS. The resolution accordingly lifts the sanctions as part of a step-by-step approach including reciprocal commitments approved by the Security Council. The JCPOA entered into force on 16 January 2016.

¹⁰⁰ Art. 38 of the French Customs Code applies to Monaco in matters relating to dual-use goods.

¹⁰¹ Hardware and software enabling the interception, tapping, analysis, retransmission, recording or processing of correspondence sent, transmitted or received on electronic communications networks

¹⁰² Until May 2021, pursuant to SO No. 1.675 of 10 June 2008 as amended, the Principality of Monaco adopted all PF-related TFS adopted by the UNSC through the ministerial orders of 25 June 2009 concerning the Democratic People's Republic of Korea and of 30 July 2008 concerning Iran's nuclear activities.

directly applicable to Monaco for a period of 10 days from the time they are published on the UNSC website (*cf.* IO.10). This enables implementation without delay in relation to the lists referred to in the PF-related UNSCRs provided that the ministerial decision is taken before the end of the 10-day period; moderate technical deficiencies remain, however (see IO.10). Also, the effectiveness of these changes cannot be confirmed as there have been no new decisions concerning UNSC asset freezing in connection with PF since the new system came into force.

Table 4.5: Implementation of new UNSC designations related to PF (2020-2021)

Sanctions regime	Date of publication by the UN	Purpose of the decision	Date of publication of the ministerial order	Number of days
Sanctions Committee pursuant to Resolution 1718 (2006) – North Korea	11/05/2020	To amend 1 entry	19/06/2020	39

382. In line with its international commitments, Monaco also replicates EU measures to freeze funds. In terms of counter-proliferation, therefore, Monaco adopts the designations made by the EU pursuant to Regulations (EU) 267/2012 of 23 March 2012 concerning Iran's nuclear activities, 2017/1509 of 30 August 2017 concerning North Korea and 2018/1542 of 15 October 2018 concerning restrictive measures against the proliferation and use of chemical weapons.

383. In practice, however, before the May 2021 reform, delays of 24 days on average (*cf.* Table 4.7) were observed in the transposal of relevant EU regulations. SO No. 8.664 establishes the principle that European freezing measures are to be adopted via a ministerial decision (*cf.* IO.10). Judging by the two examples that have occurred since the reform, transposal now occurs within 24 hours (*cf.* Table 4.6).

Table 4.6: Implementation of EU freezing measures related to PF (2020-2021)

Monaco regime	EU regime	Date of publication by the EU	Purpose of the decision	Date of publication of ministerial order or decision	Number of days
Former system (ministerial orders)	Implementing regulation 2020/847 concerning Iran's nuclear activities	18/06/2020	To amend 10 entries	10/07/2020	22
	Implementing regulation 2020/1129 concerning North Korea	30/07/2020	To amend 26 entries	11/09/2020	43
	Implementing regulation 2020/1463 concerning proliferation	12/10/2020	To amend 1 entry	30/10/2020	18

	Implementing regulation 2020/1480 concerning proliferation	14/10/2020	To add 7 entries	30/10/2020	16
	Implementing regulation 2020/1695 concerning Iran's nuclear activities	12/11/2020	To remove 1 entry	04/12/2020	22
New system (ministerial decisions)	Implementing regulation 2021/1242 concerning Iran's nuclear activities	29/07/2021	To remove 1 entry and amend 21 entries	30/07/2021	1
	Implementing regulation 2021/1300 concerning North Korea	05/08/2021	To amend 15 entries	06/08/2021	1

384. While this assessment does not cover the implementation of other sanctions, the assessors see these matches as a positive indication that, since the introduction of the new system in 2021, TFS have been implemented without delay, and believe that this proactive approach can be considered a mitigation measure where PF is concerned.

Communication mechanisms and periods

385. The mechanisms described in the context of IO.10 are also used for the purpose of communicating PF-related TFS to obliged entities, including through the compilation of the national consolidated list of asset freezing measures. As mentioned above, however, at the time of the on-site visit, there was no mechanism in place for notifying new updates. As a result, some FIs or DNFBPs may not be aware of such updates.

386. Another point to note is that the guidelines issued by SICCFIN (July 2021) and those issued by the Chairperson of the Bar Association (October 2021) respectively include a section specifying the freezing obligations under the new system for both TF TFS and PF TFS. These guidelines are not intended for all obliged entities (e.g. notaries and bailiffs) and do not cover specific aspects of full and practical implementation of PF TFS obligations.

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

387. No freezing measures have been adopted under UNSCRs 1718 and 2231 in Monaco, possibly due to the fact that the country has only limited links with the countries concerned and to the absence of assets and funds held by the persons and entities listed under these resolutions.

388. The requirement for FIs and DNFBPs to provide the DBT with information on funds and economic resources which have been the subject of freezing measures was not implemented during the period under review, as no assets or funds belonging to the individuals and entities listed under these resolutions were identified in Monaco. Moreover, the channels, content of these

declarations and the process to be followed are not specified neither in the current legislation nor in the guidelines.

389. At the same time, no transactions or acts involving natural or legal persons targeted by measures to freeze funds and economic resources necessary for the implementation of economic sanctions decreed by the UN, the EU or France have been reported to SICCFIN, the GPO or the Chairperson of the Bar Association, as the case may be.

390. There appears to be no formal, effective co-ordination between these three supervisory authorities and the DBT. In addition, SICCFIN and the DBT are part of the Advisory Committee on freezing measures set up in February 2022, and one of whose tasks is "to ensure exchanges of information between the government agencies concerned by the procedures for freezing funds and economic resources, and to address any issues of mutual interest in order to improve the effectiveness of the system in place". The PG and the Chairperson of the Bar Association, however, are not represented on the aforementioned Committee, which had never held a meeting at the time of the on-site visit. Such co-ordination would provide an opportunity to identify assets and funds of designated persons and entities or of natural or legal persons likely to act on their behalf or at their direction, to discuss the reporting process and any shortcomings with respect to asset freezing and to address them accordingly.

391. No PF-related STRs had been recorded in Monaco at the time of the on-site visit. Between 2016 and 2020, SICCFIN did, however, receive three STRS in connection with the ministerial order concerning the Democratic People's Republic of Korea and 59 STRs in connection with the ministerial order concerning the Islamic Republic of Iran, since under Monaco's AML/CFT system, the reporting obligation of each obliged entity extends to transactions and acts involving natural or legal persons domiciled, registered or established in these jurisdictions. According to these figures, it appears that obliged entities are detecting and reporting cases related to the above-mentioned orders, which could be considered a mitigation measure in the fight against proliferation financing.

Table 4.7: Number of STRs in connection with the Islamic Republic of Iran, the Democratic Republic of Korea and UNSCRs 1718/2231 (2016-2020)

	2016	2017	2018	2019	2020	Total
Number of STRs in connection with the Islamic Republic of Iran	10	19	8	11	11	59
Number of STRs in connection with the Democratic People's Republic of Korea	0	0	2	1	0	3
Number of STRs in connection with UNSCRs 1718/2231	0	0	0	0	0	0

392. Furthermore, as stated under the section "Contextual factors", in practice, the system of monitoring dual-use goods would benefit from enhanced co-ordination between the DSP and the French customs authorities in order to improve the capacity to identify PF mechanisms and possible cases of TFS evasion.

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

393. Generally speaking, obliged entities have a fairly adequate understanding of their PF-related TFS obligations (the same arrangements apply as for TF-related TFS), although there is

still confusion at times between the national list of freezing measures and the list of countries identified by the FATF. In addition, some professionals, particularly in the non-financial sector, do not seem to understand the scope and specific aspects of their PF-related TFS obligations.

394. Moreover, the implementation of these obligations varies according to the sector. While the larger FIs have automated tools (World-Check, FIRCSOFT, SIRON AML) that enable designated persons and entities to be identified quickly, other FIs (including the insurance sector) and DNFBPs perform semi-automated or manual checks. The latter experience difficulties in performing the necessary checks every time the consolidated national list of freezing measures, published in Excel format, is updated. The problem is compounded in the case of certain types of DNFBPs that keep customer and transaction information in paper format. This is likely to have a negative impact on the frequency and extent of these checks.

395. With regard to lawyers, the Chairperson of the Bar Association reported that 74% of law firms in Monaco have World-Check (i.e. 14 out of 19). As for professionals under the authority of the GPO, 67% of them (i.e. four out of six) have the World-Check database. For the obliged entities with automated tools whom the assessors met on site, the built-in alert system does not require exact matches, but operates with margins ranging from 60 to 80%. Some even reported having processed partial matches, which is an indication of good practice.

396. The frequency of screening and consultation varies according to the sector. Some DNFBPs, including real estate agents and legal advisers, perform checks weekly, monthly, or even bi-annually.

397. Some types of DNFBPs (e.g., jewellers, auctioneers) have no formal procedures for searches performed on the basis of the consolidated national list of freezing measures or, prior to the 2021 reform, Monaco's official gazette.

398. The majority of obliged entities do not have dedicated procedures or policies in place for PF TFS. Generally speaking, the ones that are part of a group adopt the group-wide policy on combating PF, without necessarily understanding the PF risk to which they are exposed. In addition, almost all of the obliged entities met during the on-site visit have not updated their internal procedures in light of the new regulatory changes regarding freezing measures or have not sent the relevant details to SICCFIN.

399. The obliged entities were aware that, in the event of a positive match, an STR must be sent straightaway to SICCFIN, the GPO or the Chairperson of the Bar Association, and the DBT notified, in accordance with the regulations in force.

400. A further point to note is that, during the period under review, there were no VASPs conducting activities in connection with virtual assets as defined by the FATF.

4.4.4. Competent authorities ensuring and monitoring compliance

401. Verification of compliance with PF-related TFS obligations is carried out on a routine basis via SICCFIN's off-site and on-site controls.

402. Since January 2021, the Chairperson of the Bar Association has been entrusted with supervising lawyers in Monaco, and, in this capacity, carried out an inspection at a law firm at the end of 2021.

403. The GPO, as the supervisory authority for notaries and bailiffs (and, until December 2020, for lawyers as well) carries out TFS checks during inspections, usually accompanied by two officers from the supervisory division of SICCFIN, who in practice participate in the checks.

404. The quality of on-site controls appears to be adequate overall, despite the lack of information on the nature of the controls specifically related to PF. The number of controls is limited, however, when set against the total number of obliged entities.

405. Another point to note is that Monaco's legal framework does not include sanctions for obliged entities who fail to submit annual questionnaires and details of their internal procedures. This has a negative impact on the quality of off-site controls and on the effectiveness of on-site supervision (*cf. IO.3*). Also, fewer than 8% of obliged entities subject to SICCFIN supervision sent details of their internal procedures to SICCFIN after the regulatory change relating to TF/PF TFS.

406. Between 2016 and 2020, the 209 controls carried out by SICCFIN highlighted several points. With regard to FIs, several entities were subject to recommendations, in particular concerning the frequency of screening or the monitoring of freezing measures introduced by another entity in the group. In the case of DNFBPs, the recommendations made by SICCFIN relate chiefly to the absence of an automated system, the frequency of controls and the lack of formal arrangements.

407. With respect to bailiffs, notaries and, until December 2020, lawyers under the supervision of the GPO, checks in relation to compliance with TFS obligations were carried out by two SICCFIN officers accompanying the GP, with the latter noting some minor points at the time of the three inspections which took place in 2019 and 2020 respectively and for which there has not been a follow up.

408. It is worth pointing out that the recommendations made by SICCFIN are not followed up or accompanied by proposals for a remedial action plan with, for example, timelines. To date, SICCFIN has no visibility over any steps that might have been taken by the obliged entities to remedy failures, nor over other follow-up to the recommendations issued.

409. Since the May 2021 reform, SICCFIN has carried out 17 on-site inspections which produced findings similar to those previously noted. Following the inspection at a law firm in October 2021, the Chairperson of the Bar Association did not find any anomalies or violations in relation to TFS. As for the controls carried out by the GPO, accompanied by a SICCFIN officer, in 2021, some anomalies were noted with respect to bailiffs in connection with, among other things, deficient freezing procedures.

410. The frequency of these controls remains limited relative to the total number of obliged entities and usually there are no accompanying measures to follow up on the recommendations made about observed anomalies.

411. During the inspections, no breaches of the obligation to send an STR and to inform the DBT were identified by the supervisory authorities in connection with a freezing measure.

412. Among the administrative sanctions issued by the Prime Minister since Monaco was last assessed, there have been five sanctions, against three real estate agencies, a legal adviser and a jeweller, for various failures, some of which relate to TFS, including failure to formally document the due diligence carried out in terms of asset freeze monitoring, or failure to check the names of customers against the list. However, the sanctions regime suffers from the same shortcomings as those identified under IO.3.

413. The guidelines issued by SICCFIN¹⁰³ (July 2021) and those issued by the Chairperson of the Bar Association do not provide specific clarification regarding the key aspects of full and practical implementation of these obligations. The limited understanding of these aspects hampers effective implementation of TFS without delay.

414. In addition, Monaco's main professional associations (Monegasque Association for Financial Activities, Order of Certified Public Accountants, Monegasque Association of Compliance Officers and the Monegasque Association of Corporate Service Providers) have been informed by the DBT of the new reform concerning freezing procedures so that they can notify their members.

415. At the same time, the training provided by the supervisory authorities is generic and deals only to a small extent with TFS-related aspects. All of the obliged entities met during the on-site visit had attended only in-house courses or courses run by external providers. Some sectors, in particular DNFBPs, mentioned the need for training delivered by the authorities and for sectoral guidelines to enable them to better understand the scope of their TFS obligations.

Overall conclusions on IO.11

416. Since the May 2021 reform, the asset-freezing mechanism has made it possible to implement the PF UNSCRs adequately, in particular through the principle of automatic adoption of UN lists for a period of ten days before the relevant ministerial decision is published. However, moderate technical deficiencies remain (see IO.10). The delays noted in transposing designations for most of the assessment period have had an impact on the effectiveness of the mechanism. Also, the latter has yet to fully demonstrate its effectiveness in implementing TFS without delay, as no assets have been frozen under the PF UNSCRs.

417. While the understanding of PF TFS obligations is adequate for large FIs, it is less so for smaller FIs and DNFBPs. Moreover, the obliged entities have not updated their internal procedures to reflect the new mechanism. For the supervisory authorities, the controls carried out remain fairly limited in number and are not followed up. Monaco has not put in place effective supervisory measures to improve the ability to identify PF mechanisms and possible cases of sanctions evasion, and nor has it developed effective co-ordination mechanisms in this area.

Monaco is rated as having a moderate level of effectiveness for IO.11.

¹⁰³[Lignes Directrices à destination des professionnels monégasques](#), page 75 et seq.

5. PREVENTIVE MEASURES

5.1. Key Findings and Recommended Actions

Key Findings

- a) Banks and asset management companies have a moderate understanding of ML/TF risks. At the time of the on-site visit, they were aware of the NRA 2 findings and the latest generic guidelines, but had not yet drawn any relevant conclusions in terms of analysing their own risks. Some very specific risks linked to the business of asset management and discretionary investment management mandates (market abuse, insider trading) or emerging risks (virtual assets), which are not part of the main risks identified in NRA 2 or in its published version, were mentioned by the banks. Other FIs, mainly insurance brokers and bureaux de change, have a moderate understanding of risk.
- b) The at-risk sectors mentioned in the guidelines published by SICCFIN in July 2021 relate mainly to atypical Monegasque sectors such as real estate agents, yacht and chartering companies and sports agents, which account for only a negligible share of the customers of the FIs interviewed. This underscores the fact that the guidelines do not sufficiently address the main risks which Monaco, as an international centre, faces.
- c) The DNFBPs, with the exception of the casino, have started developing a risk understanding that remains to be improved. Their risk-based approach is generally limited to a few risk factors (cash, geographical location, PEP).
- d) As regards identifying BOs, most FIs interviewed simply apply the regulatory threshold (cf. c.10.10) of 25% of capital or voting rights. Some institutions did, however, confirm that they went further than the apparent control of capital and voting rights in an effort to identify natural persons who exercise other forms of control or ultimate decision-making power over the legal person.
- e) Among the DNFBPs, only the legal and accounting professions, along with CSPs, carry out checks on the chain of control of the BO, when providing services in connection with the statutory requirements governing Monegasque commercial or asset holding companies.
- f) The mitigation measures put in place and the due diligence conducted by FIs seem to be effective to some extent, both for customers at increased risk and for standard customers. It should be noted, however, that there are limitations when it comes to updating internal risk analyses and procedures and dealing with PEPs (cf. R.12). In the case of DNFBPs, with the exception of casinos, standard due diligence is not sufficiently implemented. However, there are gaps in the casino's diligence measures when it comes to high rollers.
- g) As regards TFS, those FIs and DNFBPs which have them use automated tools while other, smaller DNFBPs consult the national list of freezing measures, with varying degrees of frequency. There is nothing to indicate, therefore, that, in the context of these manual checks, measures to freeze funds and other economic resources are implemented within not more than 24 hours after listing by the UN sanctions committee, as recommended by the FATF.
- h) All FIs have an internal control framework based on programmes and systems to ensure compliance with AML/CFT due diligence obligations, with three lines of defence, whereas in the

case of DNFBPs, the internal control function is generally less sophisticated, with, at a minimum, four-eye review of transactions.

i) The number of STRs originating from the banking sector can be considered fairly satisfactory, although the large number of so-called "covering" STRs and excessively long transmission times raise questions about their quality. The number of STRs submitted by casinos and jewellers remains limited, even though these two sectors account for the bulk of DNFBPs' customers.

Recommendations

The authorities should:

a) Ensure that reporting entities carry out risk assessments appropriate to the nature, size and other characteristics of their business, analyse in depth the ML and TF vulnerabilities and threats specific to Monaco, including in relation to private banking, in particular through training, information or outreach.

b) Supplement, as necessary, the sectoral or thematic guides, for example asset management/private banking, BOs, PEPs or other, in accordance with the risk factors identified in the Interpretive Note to R.10, §15 c) which mentions private banking among the high risks.

c) Take measures to ensure that reporting entities' understanding of TF risk is effective and adequate, in particular by stepping up training, information and outreach in Monaco, and see to it that the measures are effectively implemented through follow-up by audit and internal control departments.

d) Take measures to improve the quality of STRs, in particular by providing guidance and additional red flags indicators, by further developing the typologies. Ensure that the reporting entities understand and timely fulfil their STR obligations and that the internal audit and control departments monitor their sustainable implementation.

e) Ensure that reporting entities effectively implement their AML/CFT obligations, in particular when it comes to identifying and verifying the BOs of complex legal structures, examining the justification given for transactions as part of ongoing due diligence, and obtaining information on the source of wealth of PEPs and their family members, in particular through follow-up action or more regular interviews; and ensure effective implementation through follow-up by audit and internal control departments.

f) Ensure that the internal AML/CFT procedures of reporting entities are regularly updated at appropriate intervals and take account of the specific risks inherent to their sector and Monaco, in particular through follow-up action or more regular interviews.

g) Formalise and increase monitoring of high value players in the gaming sector, establish an approval mechanism by a sufficiently senior management level and ensure effective implementation through follow-up by audit and internal control departments.

418. The relevant Immediate Outcome for this chapter is IO.4.¹⁰⁴ The Recommendations relevant for the assessment of effectiveness under this section are R.9-23 and elements of R.1, 6, 15 and 29.

¹⁰⁴ When assessing effectiveness under Immediate Outcome 4, assessors should take into consideration the risk, context and materiality of the country being assessed. Assessors should clearly explain these factors in Chapter One of the mutual evaluation report under the heading of Financial Institutions, DNFBPs and VASPs, as required in the instructions under that heading in the Methodology.

5.2. Immediate Outcome 4 (Preventive Measures)¹⁰⁵

419. The AT weighted the implementation of preventive measures as being more important for banks, asset management companies, real estate agents and casinos, moderately important for trusts (CSP), auction houses, jewellers, notaries and lawyers, and less important for bureaux de change, accountants and auditors and other DNFBPs (bailiffs, tax advisers). Some sectors do not have much of a presence in Monaco, or the businesses in question are of little relative importance. For example, there are no money transfer services or insurance companies based in Monaco, and only two bureaux de change. The VASP sector is still in its infancy. The entity interviewed on-site proved to be an IT services provider whose business does not fall within the scope of the VASP activities covered by FATF standards.

420. It should also be noted that Monaco has imposed AML/CFT obligations on many other non-financial occupations not mentioned in the FATF standards (property dealers, yacht and chartering companies, sports agents, MFOs), either because the authorities have assigned these occupations a high level of ML/TF risk or because they are subject to EU directives. Monaco has thus looked beyond the traditional professions of accountants, lawyers, real estate agents and dealers in precious metals and stones that are commonly found among DNFBPs in other FATF jurisdictions.

421. Although it did not meet with and assess these entities, the assessment team did nevertheless consider them via the due diligence carried out on them by professions that are subject to FATF standards. This was done in order to understand how these activities identified as risk-bearing in NRA 2 are taken into account by other reporting entities in their AML/CFT arrangements. Details of the weighting of each sector can also be found in Chapter 1.

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

(i) Banks and asset management companies:

422. The understanding of ML/TF risks and obligations among most FIs (banks and asset management companies) is moderate. Although the FIs are aware of the main ML risks in Monaco, as mentioned in NRA 2. Few were able to explain more specifically the risks related to the characteristics of their client portfolios or their business profile. Those institutions that do have a more evolved risk understanding generally rely on risks already included in their group's mapping system.

423. The guidelines recently published in July 2021 by SICCFIN are generic and do not capture the particular needs of Monegasque FIs when in fact those FIs, being specialised in asset management with a significant share of discretionary investment management mandates, have activities, operations, products and services that set them apart from conventional banking activity. It should also be noted that even retail banks in Monaco have wealthy customers. The Monaco authorities point out that as an international centre, Monaco has traditionally been geared towards managing assets for high-end customers, both resident and non-resident, and extol the merits of large foreign groups and professionals of different nationalities, which make

¹⁰⁵ The first paragraph should give a short summary of what relative importance assessors have given to the different types of financial institutions, designated non-financial businesses and professions and VASPs, taking into account the risk, context and materiality of the country being assessed. This should be supplemented by a cross-reference to the more detailed information in Chapter One on how each sector has been weighted (based on risk, context and materiality) (as required in the instructions under that heading in the Methodology).

Monaco a place firmly focused on the international horizon.¹⁰⁶ That being so, the lack of sufficiently detailed or dedicated guidelines in this area might explain the lack of in-depth knowledge of sectoral ML/TF risks among reporting entities, which is reflected in a moderate level of understanding. When specific risk factors/criteria are mentioned in the guidelines, moreover, they mainly relate to specific Monegasque sectors such as real estate agents, yachting/chartering and sports agents, even though these account for a negligible share of the customers of the FIs interviewed.

424. Furthermore, while the vast majority of banks and asset management companies interviewed were unable to cite any particular risks to which their own activities exposed them, some did mention the risk of market abuse and insider trading, even though these are not among the key risks highlighted in NRA 2. More precisely, the private banking offers tailored services to its clients, based on more sophisticated products than traditional banking and therefore entailing specific risks. This shows that alongside the main exogenous/external threats to Monaco identified in NRA 2 and included in the SICCFIN guidelines, other risk factors linked to endogenous/internal threats are perceived by some banks. The latter thus demonstrated a better understanding of the risks facing them than other institutions in their sector.

425. The greatest residual ML risk in Monaco comes from private banks, not least because of the scale of their international operations, the products and services they offer, and the type and geographical origin of their customers. Representatives of this sector have an understanding of their own risks that goes beyond those identified in the NRA. Their understanding remains moderate, however, because although they cite risk factors such as the distribution channels used, or difficulties in identifying BOs, other potential risks feature less prominently in their analysis (e.g. culture of confidentiality in certain regions, the amount of financial assets transactions or the complexity of certain financial products, etc.).

426. The FIs interviewed stressed the importance of the role of NRA 2 in understanding TF risks, which most had previously been unaware of. The lack of detailed analysis of TF risk in NRA 2 does nevertheless limit the extent to which it is understood by the financial sector. For example, because there is no analysis of the risk posed by NPOs,¹⁰⁷ FIs apply different levels of risk to the latter. At the time of the on-site visit, some FIs had not yet included TF in their risk analysis. Only one FI had specifically highlighted TF risk in view of Monaco's proximity to jurisdictions with posed significant TF threats, but this was done more in response to the group's TF policy than in acknowledgment of the risks identified in NRA 2.

427. With respect to the risks around legal persons and legal arrangements, the understanding is also moderate and is based primarily on the analysis available in the NRA (see IO.5). FIs are aware of the vulnerabilities related to the activities of legal persons (e.g. yachting) and the type of legal person (SAM, SARL), but much less aware of those pertaining to the transparency of information concerning them (use of frontmen, shell companies, etc.).

428. FIs that have trusts among their customers do not always consider them as particularly risky, despite the fact that they often operate in connection with financial centres or even countries on the FATF list. The FIs interviewed stated that they applied a standard level of risk if the beneficiary of the trust was a Monaco resident, irrespective of their nationality of origin or

¹⁰⁶ Source, description of Monaco as an international centre on the CCAF website

¹⁰⁷ The NPO risk analysis was adopted shortly before the end of the on-site visit, so the reporting entities were not aware of it at the time when they were interviewed.

whether the trustee was located in at-risk countries or territories (countries on the FATF or OECD list).

429. The conclusions below are borne out by SICCFIN's audit reports, which show that a significant proportion of audited banks have deficiencies due to poor understanding of risks or insufficient implementation of ML/TF obligations. On a more positive note, all the institutions interviewed already had a risk classification and customer profiling.

(ii) other financial institutions:

430. Other financial institutions have only a small presence in Monaco, or are not very important in terms of materiality. No insurance companies are based in Monaco. Because, there are no tax benefits, life insurance is of no interest to Monegasque clients. It is sold almost exclusively through banks. Life insurance represents only a marginal share, less than 1%, of the business of the insurance brokers/agents interviewed, whose main focus is on property and casualty insurance. Two bureaux de change operate in Monaco and the one interviewed reported having done very little business over the past two years due to a lack of customers because of the pandemic. The only player in the money transfer sector ceased trading in 2018.

431. The understanding of ML/TF risks and obligations among other FIs is uneven and depends to a large extent on the size of the entity interviewed. While most of these FIs have a good knowledge of the findings of NRA 2, not all of them had as yet incorporated the lessons learned into their own internal procedures in terms of risk analysis. In particular, the smaller institutions, which sometimes do not have formal procedures, had not yet translated the NRA 2 findings into their own internal risk classification.

(iii) DNFBPs:

432. The understanding of risk in the real estate sector and among jewellers and auction houses is largely confined to noting the findings of NRA 2. The recently acquired risk understanding needs further improvement and fails to take account of their own specific risks. In general, the high-risk factors and criteria mentioned relate to large or cash transactions, and to Monegasque resident or non-resident status and PEP status.

433. Sector-specific guidelines for DNFBPs were published in January 2022 in the form of Practical Guides. Since, however, with the exception of the ones intended for real estate agents, these handbooks are aimed at the sports agent and yachting/chartering sectors, which are outside the scope of the activities covered by FATF standards, they have had little impact on DNFBPs' understanding of risk within the meaning of the FATF.

434. Despite the existence of dedicated guidance, the real estate agents interviewed exhibited only moderate risk understanding, limited to a few risk criteria mentioned in the regulations, notably PEP status or cash payments. Their analysis is based solely on the transaction aspect, as they do not have a sufficiently comprehensive customer database, which in turn limits their understanding of customer risk. Also, they believe that the limited number of transactions and their role as intermediaries effectively mitigate their exposure to ML/TF risks. In their view, the banks and notaries through which financial transactions are carried out are best placed to detect transactions involving ML/TF risks. The assessment team considers that this approach is not entirely justified and creates vulnerabilities for the sector (for example, when transactions are conducted through foreign banks).

435. Notaries believe that the main ML risks relate to the customer risk, identified according to certain criteria (for example, when the customer is a PEP or a non-resident looking to invest

funds in Monaco) and are satisfied as long as the funds come from Monegasque banks. This demonstrates a moderate risk analysis and understanding, based solely on a few benchmarks.

436. The legal and accounting professions and CSPs generally demonstrated an understanding of risk that could stand to be more thorough. During the interviews, law firms, accountants, bailiffs and CSPs showed that their understanding of the ML/TF risks to which they were exposed was confined mainly to business transactions involving cash flow.

437. In general, the legal and accounting professions work on the assumption that, as long as they are not directly involved in handling funds on behalf of their clients, when assisting clients with legal formalities, concluding contracts, advising clients, drafting legal documents, or conducting litigation, there is little or no ML/TF risk.

438. Of all the DNFBPs, the casino sector has the best understanding of ML/TF risks. The risk factors and the entire AML/CFT framework are set out in a 2021 AML/CFT white paper that forms a genuine corpus of AML/CFT procedures. It includes a detailed analysis of the risks, which are classified from low to high, as well as a relatively complete mapping of the risks and details of the mitigation measures put in place. The mapping takes into account the threats and vulnerabilities identified, according to the risks around gambling (e.g. table games, slot machine games, or the purchase of chips and tokens without playing), means of payment (e.g. high risk where new customers make excessive or repeated use of cash payments directly at the tables, it being noted that, from 2022, such payments are to be made only at the cashier's desk), or the use of certain non-accepted forms of ID (e.g. passports of convenience issued by certain countries, which do not correspond to a place of habitual or actual residence, in which case another form of ID is required).

5.2.2. Application of risk mitigating measures

(i) General measures

439. Among the mitigating factors there is the EUR 10 000 threshold for declaring cross-border movements of cash. Nevertheless, the amount above which cash payments must be declared, namely EUR 30 000, is significantly higher than in neighbouring countries. A further point to note is that access to banking services for non-residents is conditional on having a substantial income or bank deposits. Accordingly, persons wishing to settle in Monaco who do not have a regular income must, in order to obtain a residence permit as a newcomer, deposit a minimum amount in a Monaco bank.

440. Since 2017, the AMAF has recommended that all banks apply a single common threshold of EUR 500 000, whereas, before, each bank set its own minimum threshold, often according to its own commercial policy. This relatively high minimum deposit required to open an account could thus help to prevent Monaco from being used to launder funds by non-nationals. The banks interviewed reported having rejected numerous customers, more for reasons to do with insufficient assets than on AML/CFT grounds. The fact that they are selective about the customers they take on is a form of risk mitigation. Some institutions also stated that they had little appetite for higher-risk customers. Conversely, however, the high level of assets demanded of customers could potentially afford opportunities to launder relatively large sums and may therefore be considered a heightened risk factor. The authorities did not express any opinion on the high deposit requirement as a risk mitigating or aggravating factor, nor is this topic mentioned in NRA 2.

(ii) Banks and asset management companies:

441. The FIs had risk mapping, which has been mandatory since the legislation changed in August 2018. This mapping is reviewed regularly, at least twice a year or as needed. In general, their risk matrix has four levels of risk: standard, high, very high, and PEP risk which is classified separately. Few institutions classify their customers as low risk.

442. The most common risk criteria used to classify customers are: nationality, place of residence, occupation/business (and/or source of wealth), location of occupation/business, level of assets/ bank deposits (the concepts of high net worth clients or ultra-high net worth clients), which are synonymous with high risk, are also used), media exposure or the existence of negative information, PEP or sovereign wealth fund status and, lastly, criteria relating to the complexity of the asset structure.

443. FIs reported that they had classified their customers according to the levels of risk identified in their mapping exercises and that they applied proportionate mitigating measures, which ranged from "standard" to "very high". Enhanced measures are applied for the categories of customers that are most at risk. These include more frequent updating of records, enhanced due diligence measures, which in some cases go as far as identifying the BO of the business relationship with the customers concerned, more thorough checks on the source of funds, etc.

444. While in some cases the FIs thus showed the above-mentioned risk mitigation measures to be generally adequate, the shortcomings observed, for example in terms of understanding of the risks specific to Monaco, or insufficient implementation of due diligence relating to BOs, or in terms of the frequency with which risks and customer records are updated (see below), have a negative impact on the overall effectiveness of these mitigation measures

445. In addition, various deficiencies were noted in the design of the risk matrices used to categorise customers, in particular when the matrices come from the parent company and, as a result, are not sufficiently sensitive to Monegasque risks. For example, no FI had yet incorporated the findings of NRA 2 into its own risk matrix. As a result, the findings of the last NRA have not yet had any bearing on the risk levels assigned by banks to their customers. Depending on the institution interviewed, the frequency with which the risk analysis is updated varies from one to three years. While annual updating is adequate, the three-year timeframe mentioned by some institutions has the potential to create delays in addressing new risks, such as crypto-assets.

446. The FIs interviewed stated that they reviewed customer records with a frequency that varies according to the level of risk assigned to the customer. The intervals range from seven to five years for so-called "standard" cases, to two years for "high risk," or one year in the case of PEPs (who are considered very high risk), or in some cases a few months (four to 12 months) for other customers also classified as very high risk. This indicates that the effectiveness of the risk-based approach is moderate and needs to be improved, especially for cases classified as "high risk", as two-year intervals are too long here. It also indicates varying sensitivity to risk among the institutions concerned, even though they have the same risk profile. After all, as an international centre, Monaco has traditionally been focused on wealth management and discretionary investment management mandates, including in the case of retail banks.

447. SICCFIN audits revealed approaches that were ill-suited to the customers concerned or matrices that were insufficiently discriminating, as well as inconsistencies in the assignment of certain risk ratings, in contradiction with the institution's own internal procedures.

(iii) other financial institutions:

448. Most of the other FIs met (insurance broker/agent/, bureau de change) had risk mapping based on the regulatory criteria provided for in Monaco's AML/CFT legislation, and a system for classifying customers as low, standard or high/very high risk.

449. Given their limited relative importance/materiality, their risk mapping is far less sophisticated than that of large FIs. ML/TF risk mitigation measures are applied primarily when entering into a relationship given the nature of the business, where the focus is more on occasional transactions than a long-term business relationship.

450. Either the customers are, to a very large extent, occasional, as in the case of bureaux de change, or the life insurance transactions (purchase, redemption/payout) are infrequent. Most life insurance transactions are carried out by banks, moreover. The brokers interviewed do only a marginal part of their business in life insurance, and apply the procedures prescribed by the insurance company or group.

451. None of the other FIs interviewed had adapted their mapping to NRA 2 yet. The main criteria used were cash, transaction size, and split transactions. The opportunities to divide up foreign exchange transactions are limited in Monaco, however, because of the size of the market. Detecting split transactions is part of the due diligence measures, as is detecting unusual transactions (e.g. involving gold or currencies that are no longer in circulation).

(iii) DNFBPs:

452. Most of the DNFBPs met were able to describe how they implemented risk-based measures mainly when certain criteria were identified (e.g. PEP, cash payment, geographical origin of the customer). The general lack of understanding of risk, however, impacts the implementation of mitigation measures, making it difficult to assess whether the measures put in place are fully proportionate.

453. All the DNFBPs met had formal procedures in place, or were in the process of introducing them. Some had already classified their customers according to different levels of risk (low, standard, high). This is particularly true of auction houses that are part of a group, but it is also the case for jewellers. As regards real estate agents, not all had a database containing all their customer records yet, and mitigation measures vary according to criteria based on case-by-case transactional analysis. The lawyers interviewed also expressed an interest in additional mitigation measures, along the lines of the CARPA accounts that exist in France.

454. The casino sector has mitigation measures set out in a 2021 white paper that forms a genuine corpus of AML/CFT procedures and rules. This document is designed to address the failings identified in previous SICCFIN investigations. It calls for customers to be classified as low/standard risk or high risk, depending on whether they are already known and have a gambling account with the MCFC (the entity in charge of keeping the accounts of players with whom there is an established business relationship) or according to risk criteria identified in the classification. In addition, the rule whereby new customers wishing to pay in cash must do so at the cashier's desk rather than directly at the tables only applies from January 2022 so, although adequate measures were implemented from 2021, for most of the period under review a risk-based approach was insufficiently applied.

455. As part of the mitigation measures, a limit on the amount that can be paid into slot machines was introduced, along with enhanced measures to monitor the exchange of chips or cash and the introduction of a special card in order to track players.

456. Casinos are also extremely vigilant about issuing winning certificates. Unless the appropriate information is provided about the source of the initial funds and the economic background, these cannot be issued. Similarly, the issuance of payment receipts is subject to prior verification to ensure that the customer did actually play and win the amount stated. In addition, customers are reminded in the above-mentioned documents (winning certificates and payment receipts), and also in the cash deposit declaration slip, of the obligation to declare cross-border cash movements in excess of EUR 10 000.

457. However, while adequate procedures are now in place to manage the standard risk, managing the high risks posed by players who wager large amounts is still more a matter of mitigation, with measures determined on a case-by-case basis, and less consideration given to the specific risks posed by players of this type. Such measures involve legal advisers reviewing customer records and carrying out additional searches on specialised sites or the Internet, in order to issue an opinion on whether large customers should be accepted. It is worth noting that, in the case of high rollers, the MCFC can advance chips in exchange for guarantees or cheques, when players run out of funds.

5.2.3. Application of CDD and record-keeping requirements

(ii) Banks and asset management companies:

458. All the FIs met implement identification and verification measures when entering into a business relationship and conduct ongoing due diligence throughout the relationship. They do not establish business relationship remotely, given a business model oriented towards wealth management, which does not lend itself to this type of relationship. They stated that they had not opened or administered any omnibus accounts. The authorities interviewed on this subject did, however, report having encountered one isolated and long-standing case of an omnibus account being opened with an FI.

459. The FIs confirmed that they did not open accounts or execute transactions until the identification and identity verification procedures were completed. They also reported that they frequently refused to open accounts. As an example, for the year 2020, the total number of refusals was 378, the number of account closures 2 278, and the number of new accounts opened 1 054. Between 2019 and 2020, the number of accounts fell by 1 224 from 97 512 to 96 288, although the reasons given have more to do with customers possessing insufficient assets than with ML/TF concerns.

460. Some asset management companies which are part of a group frequently rely on the group's depositary bank to implement due diligence in cases where they have customers in common. Thus, 14% of asset management companies are likely to delegate customer identification to a third party. The supervisory authority did not identify any significant deficiencies during its on-site inspections. The asset management companies which have no group depositary bank to rely on, carry out customer identification and identity verification due diligence themselves.

461. The clientele of the asset management companies is relatively small, so the number of refusals to enter into a relationship is not significant.

462. The onboarding, the customer identification and the ongoing due diligence among the banks and asset management companies interviewed, appear to be fairly well documented, including knowledge of the economic background of the business relationship and of the source

of funds, bearing in mind that the client are private bank customers. The FIs interviewed use customer forms to collect information which is then cross-checked with supporting documents and information obtained from commercial databases (World-Check, Dow Jones, Factiva, etc.). Cross-checks against these and other government databases (e.g. official registers) rarely go beyond the supporting documents required when the account is opened, however. A special effort is made for high-net worth clients and ultra-high net worth clients, PEPs, or when there are specific risk criteria (e.g. reputational risk). All this needs to be weighed against the fact that most of the FIs met had as yet only a moderate understanding of risk, however.

463. Furthermore, while all the FIs interviewed had automated transaction monitoring tools, SICCFIN has nevertheless issued recommendations to around 50% of the banks audited since 2016. In addition, the moderate risk understanding seems to indicate that the scenarios used in the detection of risky transactions have not necessarily kept pace with the risks to which Monaco is exposed. Since the sectors identified as risk-bearing in the latest SICCFIN guidelines (real estate, yachting, chartering and sports agents) represent only a negligible share of clients and transactions, this is not likely to improve the overall effectiveness of the system.

464. When it comes to identifying the BOs of legal persons, FIs exhibit moderate effectiveness. The majority of FIs corroborate the information obtained from the customer with information found in international databases. Some FIs go further by asking for the minutes of the last general meeting of shareholders or perform on-site checks with the help of branch offices or partners (such a procedure was mentioned by only one bank). Some methods of verifying the BO (e.g. requests for organisational charts showing the structure of the company) were not mentioned at all during the on-site visit, however, and some FIs go less far than others in identifying and verifying the BO, raising questions about BO identification and verification by the less diligent institutions. The RBO is not a reliable source for the private sector as it was introduced only recently and there are various methodological obstacles to obtaining information (see IO.5).

465. Most FIs interviewed simply apply the regulatory threshold (cf. c.10.5) of 25% of capital or voting rights, with some institutions going below this threshold to 10%, citing tax reasons. A few FIs, however, confirmed that they went further than the apparent control of capital and voting rights in an effort to identify individuals who exercise other forms of control or ultimate decision-making power over the legal person.

466. Since 2016, supervisory actions have identified weaknesses in the identification of BOs, particularly in connection with the chain of ownership or control (25% of supervisory actions). As regards asset management companies, BO identification needs to be improved and more fully documented (29% of controls identified failings in this area). In effect, asset management companies do identify the ultimate BO, but without necessarily collecting all the information needed to trace the chain of ownership and establish a legal connection between the structure and the BO.

467. With regard to legal arrangements, these accounted for 640 customers in 2019, up 25% since 2017. Trusts and other similar legal entities account for around 2.5% of the total number of corporate bank customers. Some banks stipulate in their rules that they are not to accept "trust deeds" because of the legal risks these pose. In such cases, the banks rely on certificates provided by the trustees. There is also a Register of Trusts (RoT) in Monaco, but it was not possible to ascertain its effectiveness as it was introduced only recently.

468. The banks and asset management companies interviewed do not apply simplified due diligence measures, but only standard or enhanced ones.

469. Record keeping is satisfactory, with some institutions retaining data for longer than the regulatory 5-year period under tighter rules imposed by their parent company, which can require records to be kept for up to 10 years.

(iii) other financial institutions:

470. Insurance services are available from agents and brokers who represent over 150 insurance companies. Most of those offering life insurance or investment products are attached to banks and therefore apply the same due diligence rules as the latter. In this respect, the FIs interviewed demonstrated a good knowledge of the due diligence performed on life insurance policies. The observations made above regarding customer identification, compliance with due diligence obligations, monitoring and record keeping by banks, also apply to them.

471. Because their business involves dealing with customers who are, by definition, occasional, bureaux de change carry out customer identification at the time of each transaction. For pawnbroking, the supervisory authority, SICCFIN, has noted that the company in question generally updates the documentation and information relating to its customers throughout the business relationship.

472. Some shortcomings were noted in relation to knowledge of customers' socio-economic environment, corroboration of the source of funds and assets or knowledge of the BO. The fact is that these other financial professions have difficulty in collecting all the legal documentation required to make a connection between the structure and the BO.

473. The pawnbroker's clientele is relatively small. The number of refusals to accept customers is correspondingly low. As for bureaux de change, there were no reports of customers, who are by nature occasional, being turned away. Customer identification documents are communicated by the commission agents to the pawnbroker, but the latter does not carry out any specific checks on the due diligence performed. The bureaux de change do not delegate customer identification to third parties.

474. Other FIs are not required to have an automated transaction monitoring system; most of their monitoring is done manually. The supervisory authority has not found any breaches of record-keeping requirements among these other institutions.

(iii) DNFBPs:

475. All the DNFBPs met implement identification and verification measures when establishing a business relationship and conducting ongoing due diligence throughout the business relationship. The intensity of due diligence varies according to the DNFBPs concerned and depends to a large extent on the type of transactions they perform and the clientele served. The task of conducting due diligence is facilitated by the small number of annual transactions for certain categories of DNFBPs (for example, there are only 400 real estate transactions per year in Monaco), with the exception, however, of auction houses and jewellers, which carry out numerous transactions.

476. None of the DNFBPs met enter into a business relationship remotely or perform transactions remotely, with the exception of certain auction houses that can handle sales remotely via the Internet. Major auctions are held only in the physical presence of the customers, however.

477. Due diligence measures are implemented when establishing a business relationship but they may also be repeated every time a transaction or new action is performed with the

professional concerned. This is particularly the case for real estate agents and notaries who carry out only a small number of transactions with the same client. The DNFBPs confirmed that they do not enter into relationships with customers until CDD requirements have been met.

478. Refusals to existing customers are rare. Some professionals such as accountants, auditors, bailiffs and auction houses report that they do occasionally refuse clients, for ethical reasons, when there is doubt about the economic background of a transaction or when the legality of a transaction is unclear. For example, where an auction purporting to be a charity event has a hidden commercial objective. Accountants and auditors may refuse to provide services if there is doubt about the client's integrity.

479. The lawyers interviewed during the on-site visit use questionnaires or ID forms every time they enter into a new relationship, in order to carry out due diligence relating to the identification of the client and the BO. In addition, when they act as legal advisers in the creation and management (convening of general meetings) of, or disposal of shares or blocks of shares in, client companies, this enables them to collect all the information needed to trace the chain of ownership in order to establish a legal connection between the structure and the BO. They stated that they did not act for clients in real estate transactions. Accountants and auditors also collect information about the chain of control of BOs when carrying out legal formalities for corporate clients.

480. Some DNFBPs reported that they did not have any trusts among their customers (e.g. real estate agents). The exception is CSPs, which offer administration and management services to companies and legal arrangements. None of the CSPs interviewed acted as trustees, nominee directors or shareholders. The CSPs confirmed that they carry out due diligence on all transactions whenever they act as authorised agents in complying with tax obligations and managing their customers' affairs, and in consultancy work. They have an adequate knowledge of BOs, including in the case of trusts, and of the common law systems governing trusts.

481. The casino sector carries out ongoing due diligence according to procedures laid down in a white paper published in 2021. Identification and verification measures have been put in place for all customers at the entrance to casinos, including for occasional customers conducting cash transactions in amounts equal to or greater than EUR 2 000. Since January 2022, cash can only be exchanged at the casino cashier's desk. For most of the period under review, therefore, cash-token exchanges took place at the gaming table, without customer ID checks.

482. In addition, regular customers and customers who place large bets are required to have a player account with the MC Financial Company (MCFC), which has the customer sign an account application form in order to collect all the necessary information relating to knowledge of the business relationship. However, even though a dedicated team conducts an analysis by trawling commercial databases to corroborate the information provided, the collection of documentation and information on the economic background and source of funds to provide customer knowledge of persons placing large bets is not sufficient given their risk profile. Casino oversight has been significantly strengthened in a satisfactory manner, therefore, except when it comes to oversight of high rollers, where there is still room for improvement.

483. There is no regulatory requirement for DNFBPs to implement an automated transaction monitoring system, with the exception of CSPs. With a few exceptions, therefore, due diligence is manual and conducted on an ad hoc basis. It should be noted that the casinos have an automated transaction monitoring system, which was rolled out in 2021.

484. As a general rule, DNFBPs comply with their record keeping obligations. Some are also required under the rules governing their profession to keep records for 10 years if not longer. Significant shortcomings in terms of BO identification and customer knowledge were, however, observed among the DNFBPs supervised.

5.2.4. Application of EDD measures

Politically exposed persons

485. All the FIs and DNFBPs interviewed are aware of the need to detect PEPs and associated persons, and in one case (jewellers) even went so far as to include a driver as a close associate of a PEP. The search for PEPs is carried out among customers, their agents and BOs with PEP status when establishing a business relationship and throughout such relationship. The limitations noted in terms of BO identification do nevertheless have an impact on the identification of PEPs.

486. Efforts to identify PEPs are first conducted when establishing a relationship via a declaration made by the customers themselves as well as through open source Internet searches and, in the case of those institutions that have them, search tools for detecting PEPs. Later on, further efforts are made to detect persons who have acquired PEP status in the course of the business relationship.

487. All banks and asset management companies possess tools of this kind and have access to private databases of PEPs (e.g. World-Check, CDDS, Factiva, Dow Jones). In addition, the casinos have AML/CFT software that allows both automatic verification of customers using World-Check and manual verification.

488. Except in the case of CSPs, there is no regulatory requirement for DNFBPs to implement an automated monitoring system. With a few exceptions, therefore, monitoring is done manually and varies in intensity and frequency. For those that do not have an automated monitoring system, cross-checking is done using Excel spreadsheets or visually, which can be a source of errors and rules out the possibility of using exact matching. The action to be taken in cases where two or more persons have the same name was rarely mentioned, moreover.

489. All the FIs and DNFBPs interviewed were aware that the decision to enter into a business relationship with a PEP (customer, agent or BO) requires enhanced due diligence and can only be taken by a senior member of the management team.

490. At the time of the on-site visit, Monegasque regulations stipulated that PEP status was to be lifted three years after leaving office. Such a timeframe is not in line with FATF standards. The FIs and DNFBPs met stated that they applied this time limit, except in the case of "high-risk" PEPs who may continue to be treated as PEPs for up to five years after they leave office. A change in the legislation has since reduced this period to one year.¹⁰⁸ Some FIs and DNFBPs met have confirmed that they are already applying the shorter timeframe introduced under the new rules, and stated that they no longer carry out enhanced due diligence beyond the statutory period. This has a negative impact on the effectiveness of all reporting entities in applying the FATF standards concerning PEPs.

Correspondent banking

¹⁰⁸ Provisions applicable since 12 February 2022 in the case of the law, and since 5 March 2022 in the case of the Sovereign Order.

491. None of the FIs interviewed had an ongoing correspondent banking relationship. There is every reason to believe that no correspondent banking relationships exist in Monaco. The Monegasque FIs, which are subsidiaries or branch offices (many of them European) of large groups, are either connected to their parent company or, under agreements between France and Monaco, linked up to the European payment systems. They have no need, therefore, to establish bilateral relationships with other institutions by opening correspondent accounts.

New technologies

492. None of the FIs interviewed establish business relationship remotely. Similarly, DNFBPs always meet with their customers physically. Some banks may offer e-banking and hence the possibility of managing accounts remotely, but the associated services are limited and do not involve executing transactions.

493. FIs do not sell or buy crypto-assets, and do not currently offer crypto-asset-denominated investment products or crypto-asset custody services to their customers. When customers wish to buy or sell crypto-assets, or indicate that they have crypto-asset holdings, they refer them to appropriate platforms. In this regard, the institutions interviewed were aware of the risks associated with these new technologies and stated that they refused to work with certain platforms. Although banks do not currently offer this type of investment, including funds invested in crypto-assets, it is something they are considering. In addition, the banks interviewed reported that they already have customers who list operations (speculation) in the crypto-asset market as the source of their (considerable) wealth, and that they have difficulty verifying the source of the funds.

494. The notaries and real estate agents interviewed are aware that electronic signing of legal documents is possible but do not offer their customers this option.

Rules relating to wire transfers

495. The banks met confirmed that they see to it that all the requisite payer and payee details are complete and accompany the transfer in accordance with the provisions of the European wire transfer regulation, which has been extended to Monaco. If the system detects missing or incomplete information, the banks ask the intermediary PSP to provide further details, and if repeated lapses are noted in connection with the same PSP, an STR is filed.

496. The supervisory authority checked a few examples of irregularities and how they were resolved. All had been resolved satisfactorily within a reasonable time.

Targeted financial sanctions

497. The level of understanding of TF-related TFS obligations among reporting entities is uneven, as is their implementation. Banks and asset management companies are more effective in implementing TFS and use automated tools (World-Check, Fircosoft, SIRON AML, etc.) that make it possible to carry out ex-ante monitoring of both customers and transactions with respect to incoming and outgoing flows, and to conduct ex-post controls.

498. In contrast, other financial professions and DNFBPs (with the exception of casinos, which also have an automated system linked to World-Check) tend to apply manual measures (reading the official gazette, using the "search" function on the official gazette website, or browsing open source material).

499. To facilitate their task, in May 2021 the authorities introduced a national list of all natural and legal persons, entities, or organisations that are subject to freezing measures targeting funds

and economic resources in Monaco. This national list is maintained by the Department of Budget and Treasury, which updates it whenever entries are added, deleted or amended.

500. The DNFBPs met indicated that they were aware of the existence of this list and that they used it.

501. A fraction of the real estate agent sector systematically checks the lists of freezing measures and has formal procedures in place, but most reporting entities are less aware of their TFS obligations.

502. The remaining DNFBPs (jewellers, legal advisers, chartered accountants, CSPs) perform manual checks on sanctions lists, but this is not systematic (not all customers are checked) and often not formally documented if there are no positive hits.

Higher risk countries identified by the FATF

503. The above findings regarding the level of understanding of TF-related TFS obligations among FIs and DNFBPs also apply to the list of at-risk countries identified by the FATF.

504. The banks and asset management companies met that use automated tools (World-Check, Fircosoft, SIRON AML, etc.) are better able to detect transactions with at-risk countries because the screening tools used for international financial sanctions and embargoes (individuals, legal persons, ship names) are also used for country lists.

505. Other financial professions (bureaux de change, insurance agents and brokers) and DNFBPs (with the exception of casinos, which also have an automated system linked to World-Check) generally employ manual methods when checking country lists.

5.2.5. Reporting obligations and tipping-off

Type and quality of STRs

506. Overall, the effectiveness of the system appears to be low to moderate. While the number of STRs filed by banks can be said to be relatively satisfactory, the quality of the STRs leaves much to be desired and raises questions about the effectiveness of the reporting system in Monaco. Indeed, it transpired during the on-site visit that a significant number of STRs are in fact “covering” STRs, meaning STRs that are sent after negative reports appear in the media.

507. The number of STRs filed following refusals to enter into a business relationship continues to grow: from 129 in 2016, the figure rose to 221 in 2020. According to SICCFIN, this needs to be viewed alongside the sharp rise in STRs where one of the persons concerned has been the subject of negative press coverage. The latter account on average for more than 30% of STRs received over the period under review, and represented more than 38% over 2019 and 2020.

508. In addition, these “covering” STRs are based not on analysis performed by the reporting entities according to the relevant risks and alert criteria, but simply on customer vetting via the Internet. Some STRs, furthermore, are submitted long after the transaction is executed or the suspicion detected, with reporting entities citing cases of STRs being filed 100 days after the suspicion was reported.

Table 5.1: STRs received by SICCFIN

Reporting entity	2016			2017			2018			2019			2020			TOTAL STRs	
	TOTAL STRs	Breakdown of STRs		TOTAL STRs	Breakdown of STRs		TOTAL STRs	Breakdown of STRs		TOTAL STRs	Breakdown of STRs		TOTAL STRs	Breakdown of STRs			
		ML	TF														
Banks	502	NAV	NAV	562	553	9	431	427	4	580	577	3	519	515	4	2594	
Insurance sector	1	NAV	NAV	0	0	0	0	0	0	1	1	0	1	1	0	3	
Portfolio management companies	17	NAV	NAV	4	4	0	8	8	0	18	18	0	13	13	0	60	
Money transfer services providers*	123	NAV	NAV	43	43	0	64	64	0	0	0	0	0	0	0	230	
Currency exchange	0	NAV	NAV	1	1	0	1	1	0	0	0	0	6	6	0	8	
Pawnbroker, commission agents	2	NAV	NAV	0	0	0	0	0	0	0	0	0	5	5	0	7	
Total (financial institutions)	645	NAV	NAV	610	601	9	504	500	4	599	596	3	544	540	4	2902	
Casinos	23	NAV	NAV	42	42	0	23	22	1	16	16	0	33	33	0	137	
Real estate agents	4	NAV	NAV	3	3	0	2	2	0	7	7	0	6	6	0	22	
Jewellers	3	NAV	NAV	2	2	0	0	0	0	11	11	0	14	14	0	30	
Other dealers in high value items	4	NAV	NAV	4	4	0	2	2	0	2	2	0	2	2	0	14	
Lawyers	1	NAV	NAV	1	NAV	NAV	3	NAV	NAV	1	NA V	NAV	1	NA V	NAV	7	
Notaries	11	NAV	NAV	14	NAV	NAV	9	NAV	NAV	11	NA V	NAV	5	NA V	NAV	50	
Bailiffs	0	NAV	NAV	1	NAV	NAV	0	NAV	NAV	0	NA V	NAV	0	NA V	NAV	1	
Accountants & auditors	16	NAV	NAV	9	9	0	23	23	0	14	14	0	23	22	1	85	
CSPs	24	NAV	NAV	30	29	1	30	30	0	23	23	0	26	26	0	133	
Business, legal and tax consultancy	2	NAV	NAV	4	4	0	4	4	0	2	2	0	4	4	0	16	
Property dealers	0	NAV	NAV	1	1	0	0	0	0	0	0	0	1	1	0	2	
Total (DNFBPs)	88	NAV	NAV	111	94	1	96	83	1	87	75	0	115	108	1	497	
Other regulated professionals	1	NAV	NAV	1	1	0	1	1	0	1	1	0	2	2	0	6	

Other SICCFIN ¹⁰⁹	3	NAV	NAV	5	NAV	NAV	1	NAV	NAV	0	NA V	NAV	0	NA V	NAV	9
Total (Other)	4	0	0	6	1	0	2	1	0	1	1	0	2	2	0	15
OVERALL TOTAL	737	NAV	NAV	727	696	10	602	584	5	687	672	3	661	650	5	3414

509. A large number of STRs concern PEPs. These STRs, which are due to customer status, or negative information found in the media or databases, are in addition to "covering" STRs, further decreasing the share of reports concerning actual detected suspicious activity or behaviour. The number of reports involving PEPs was 106 over 2019/2020 (50 in 2019, or 7% of STRs received in 2019, and 56 in 2020, or 9% of STRs received in 2020). Since 2016, the number of STRs related to PEPs has been rising, which is consistent with the corruption risk identified in NRA 2. It is important to note here that PEPs, which are often multi-banked, are clients of other reporting entities, which tends to inflate the number of reports relating to one and the same PEP (notable examples being the yachting sector, real estate agents, CSPs, portfolio management). It is not uncommon, then, for a PEP to be mentioned in several STRs and so counted several times under multiple STRs emanating from different categories of reporting entities. As a result, a significant number of PEPs are already counted under suspicious behaviour or activities; the number of cases of suspicious behaviour detected is thus relatively small, confirmation that the effectiveness of the system is low to moderate.

510. Overall, over the period under review, the number of reports remained steady, underscoring the fact that the authorities' actions had little or no impact on reporting activity. Because of their very recent nature, the assessment team is unable to determine what impact the dissemination of NRA 2 and the latest guidelines dating from 2021 has had on the quantity and quality of the reports.

511. A small portion of the STRs (2.1%) concerned links with TFS (e.g. link with Iran, or countries on the FATF list), but none of the STRs revealed a genuine TFS-related "hit," including a partial match. These STRs provide the FIU with insights into transactions that have links to Iran and North Korea.

512. An analysis conducted on the business sectors of legal persons reported over the 2019-2020 period shows that the sectors which feature most commonly in STRs are real estate, management and finance, yachting, shipping/maritime, and trade in other goods, which are the main sectors identified as being at risk in NRA 2. The profile of the reports is in line with the findings of NRA 2, therefore.

513. TF-related STRs are not very common, with fewer than a dozen on average per year. This is consistent with the lack of awareness of TF risk prior to NRA 2 which was highlighted in interviews with the private sector. It should be noted that three STRs resulted in referrals to the Principal State Prosecutor. According to the authorities, most TF-related STRs either are sent on the basis of press clippings without any evidence to support the suspicion of TF, or concern persons who no longer have an account or funds in Monaco.

i) Banks, asset management companies and other financial professions

514. The main sources of STRs are banks and other FIs. This sector alone generates more than 75% of all reports received by SICCFIN each year. The preponderance of the banking sector has

¹⁰⁹ "Other SICCFIN" includes exchanges at national level which were counted as STRs until 2019.

increased further since 2018, when Monaco's only money remitter, which was a major contributor, ceased trading. The prominent role played by the banking sector is explained by the fact that it has the largest number of customers (for 2017, 2018, and 2019 respectively: 106 543, 105 296, 102 459 natural persons and 44 318, 44 046, 46 020 BOs).

515. All the FIs interviewed were aware of their reporting obligations and had appropriate procedural and organisational measures in place to prevent tipping-off, as well as one or more SICCFIN reporters. Banks generally appoint several SICCFIN correspondents to ensure that the reporting obligation is complied with no matter what the circumstances. While the possibility of filing an STR may sometimes be discussed in an ad hoc committee, the final decision as to whether or not a suspicion should be reported rests with a person high up in the bank's organisational structure, usually someone working in compliance, in order to avoid any involvement on the part of senior management or those in charge of sales and marketing.

516. In this regard, the obligation under Article 14 of the AML/CFT Law to conduct a special review prior to filing an STR in certain circumstances might not be conducive to compliance with the obligation to report promptly, as per FATF standards.

ii) DNFBPs

517. Over the period under review, the DNFBP sector accounted for more than 13% of reports received by SICCFIN. The main sources of these reports are, in descending order, the casino sector (4%), TCSPs (3.9%) and chartered accountants (2.5%). Other sectors, namely jewellers, real estate agents, legal advisers, other dealers in high-value items, property dealers and other reporting professionals, accounted for fewer than 1% each.

518. Reporting by some DNFBPs is inadequate. There is a very marked discrepancy between the number of customers recorded by casinos and jewellers (23 129 and 25 644 respectively in 2019), which account for 63% of the total clientele of DNFBPs and 19.6% of the total number of customers in Monaco, and these sectors' share in the total number of STRs filed (4% in the case of casinos and 1% in the case of jewellers). Casinos and jewellers, which handle cash more frequently than FIs and other DNFBPs, should have a greater number of STRs, in proportion to the number of transactions in question. Similarly, real estate agents file disproportionately few reports, although the ratio here is less incongruous.

519. In contrast, other DNFBPs report in proportions that are broadly in line with their respective number of customers. The interviews showed, moreover, that some DNFBPs have only a small number of customers or that most of their business is related to litigation (lawyers) or consulting (legal advisers, chartered accountants and auditors), which are by nature activities less likely to be subject to an STR. These less risky businesses are generally subject to standard due diligence by the DNFBPs concerned.

520. The professionals interviewed are aware of their reporting obligations and have appropriate measures in place in terms of procedures and organisational arrangements to prevent tipping-off. For example, most had a SICCFIN correspondent, with the exception of very small operations where it is often the manager who also acts as the reporting officer. Even some operations with relatively few human resources sometimes have a compliance manager who is also a reporting officer, however. In addition, the professionals in question have put in place procedures to keep reports confidential.

5.2.6. Internal controls and legal/regulatory requirements impeding implementation

i) Financial institutions

521. The measures implemented by banks and asset management companies are adequate. The FIs have all introduced an internal control system based on programmes and systems to ensure compliance with AML/CFT due diligence obligations. The banks have one or more AML/CFT managers, at least one of whom works in the compliance department. Compliance officers have a high level of authority and operational independence, which ensures that they are autonomous. In practice, however, internal control systems are not always updated.

522. The level of autonomy is more difficult to control in the smallest operations, a feature common to most small management companies that are not part of a group. The asset management companies interviewed, however, all had a stand-alone compliance function.

523. The vast majority of banks also have AML/CFT committees whose purpose is to validate the customer from the moment of entering into a business relationship so that the compliance department can advise on whether to proceed with the relationship. In the case of groups, establishing a relationship may be passed up to group level, where the final decision will be made.

524. All the banks and asset management companies met have an internal control system, consisting of three lines of defence:

- a first-level review devolved to the people carrying out operational activities;
- a second-level review carried out by staff working in risk management or compliance. They oversee and check the risk identification carried out at the first level, and ensure that procedures and limits are respected. They are independent of the departments they oversee;
- a third-level review which is generally assigned to internal audit, which is itself independent of the first- and second-level continuous monitoring functions.

525. In addition, all banks and asset management companies are subject to periodic oversight, usually by the group to which they belong based on a multi-year review plan.

526. The other small FIs, e.g. bureaux de change and insurance brokers/agents, also have organisational programmes and an internal control mechanism. The latter, however, is tailored to their small size, and the limited number of products they offer.

527. Training is an obligation that is adequately implemented by the majority of banks and asset management companies. Mandatory training is provided periodically, usually on an annual basis, with varying content and intensity depending on the staff involved. For example, basic AML/CFT training is provided to all employees and advanced training to customer-facing employees, with special training for branch managers and other persons exposed to specific risks and who have increased responsibilities. The major deficiencies observed in some areas of compliance (such as STR activity) raise questions about the effectiveness of this training, however.

528. Almost all compliance officers are members of the AMCO (Association Monégasque des Compliance Officers). This professional organisation regularly holds information meetings and has working groups dedicated to various categories of reporting entities (banks, asset management companies, CSPs, legal advisers, etc.). They meet at very regular intervals, approximately every two months, to discuss AML/CFT-related topics.

529. Some institutions interviewed pointed out that the certification requirement which is now mandatory for AML/CFT compliance officers under Article 27 of the AML/CFT Law and under the terms of a draft sovereign order includes an anteriority clause which, in their opinion, was too restrictive, namely the requirement to have served for at least five years in a compliance position to obtain certification, as opposed to only three years for certificates issued by professional self-regulatory bodies. In their view, this could be detrimental to the continuity of the compliance function.

530. In addition, managers, salespersons, financial analysts, and trading room operators are subject to a requirement to obtain professional certification, as set forth in a ministerial order. This training, which has been mandatory since 2014 and was initiated by the Monegasque Association for Financial Activities (AMAF), ensures that employees of Monegasque financial institutions possess a certain level of competence. Two sessions are held per year, with 15 to 30 participants per session. The training consists of 44 hours of tuition spread over 11 half-days organised by module.

531. By contrast, in the case of asset management companies, the training was in many cases insufficient.

532. The other FIs interviewed mentioned in-house or external training for all staff whenever regulatory changes were introduced, and/or for each new employee upon recruitment.

ii) DNFBPs

533. All the DNFBPs interviewed have a compliance function and an AML/CFT compliance officer, sometimes combining this with other duties, depending on the size of the organisation and the complexity of the entity concerned. Casinos have their own compliance department headed by a manager. In accountancy firms, compliance is usually handled by one of the partners, or by a dedicated staff member. In smaller organisations, it may be the job of the manager if there are not enough staff to have a compliance officer.

534. In the case of DNFBPs, the internal control function is more cursory and less structured, mainly for reasons of size and staffing. Nevertheless, in the majority of cases observed, a review is at least carried out by a person other than the one who conducted the transaction, to ensure oversight according to the four-eyes rule.

535. The DNFBPs interviewed mentioned in-house or external training, for all staff, to keep abreast of regulatory changes, or for each new employee, upon recruitment.

536. Shortcomings were nevertheless noted during the SICCFIN inspections, particularly in the case of real estate agents, jewellers, legal advisers, accountants and CSPs.

Overall conclusions on IO.4

537. There is still considerable room for improvement in FIs' understanding and analysis of risks, given Monaco's risk profile. In particular, efforts remain to be made to incorporate the recent NRA 2 findings in their internal risk analysis. In addition, the existence of regulatory loopholes relating to BOs and PEPs has created vulnerabilities that affect all sectors, financial and non-financial. The lack of sectoral guidance, particularly for private banking, also creates uncertainty about the proper and uniform implementation of due diligence obligations, with risk matrices and customer profiles being updated differently depending on the institution.

538. The assessment team considers, however, that the other relevant risk mitigation measures and due diligence are only moderately deficient. All the FIs interviewed already had

risk mapping, customer profiling, and customer classification based on the level of associated risk. They had also already identified some of the major risks of private banking (customers with significant assets or large incomes). In addition, some FIs and a few DNFBPs (international auction houses) can draw on their group's analysis tools and/or resources. Since 2021, the casino sector has had a sophisticated, automated monitoring system, with alerts sent to the compliance function. There is still room for improvement in the monitoring of high rollers, however. Legal and accounting professionals have begun to implement measures to mitigate their exposure to risk, but significant progress remains to be made. Ongoing due diligence remains to be improved in the real estate sector, where CDD is still based on case-by-case transactional analysis. The implementation of measures to freeze assets and economic resources also varies by sector, but the creation of a national list has recently helped to improve the situation in the DNFBP sector. Lastly, reporting in most sectors has improved in recent years, but some sectors (casinos and jewellers) could contribute more, and many reports are still being submitted late. **Monaco is rated as having a moderate level of effectiveness for IO.4.**

6. SUPERVISION

6.1. Key findings and recommended actions

Key findings

- a) Fit and proper checks performed on FIs and DNFBPs operating as sole traders or as companies¹¹⁰ owned by natural persons, are effective. However, the fit and proper checks on BO remain limited due to deficiencies in the BO definition. A major shortcoming is the absence of controls when changes of shareholders (potentially BOs) occur, for FIs and DNFBPs established as joint stock companies. With regard to credit institutions, the effectiveness of the checks carried out by the ACPR is limited as they do not cover BO who exert control otherwise than by owning capital and having voting rights.
- b) Some professionals are outside SICCFIN supervision due to very wide range of activity declared, which prevents them from being identified as falling under the scope of the AML/CFT Law. In addition, the definition of TCSPs is more restrictive than the FATF's definition (see c.28.2 and 28.3) and excluding persons and undertakings providing business address (such as business centres) from AML/CFT supervision.
- c) SICCFIN has a satisfactory understanding of sector ML/TF risks in relation to banks and asset management companies; this understanding is more limited in relation to casinos and services provided by CSPs and trustees. The understanding faced by each individual FI/DNFBP by supervisors is generally limited.
- d) A risk-based approach (RBA) determining the frequency of controls is in place for banks, management companies, estate agents and TCSPs since 2019. The RBA does not encompass to complexity of the controls. SICCFIN has difficulties in gathering and using the necessary data from the supervised entities, which impacts its ability to carry out a targeted risk-based supervision. There is no risk-based supervision for other FIs and DNFBPs. Since 2021, the obliged entities are informed a few weeks before the on-site inspections. SICCFIN's Supervision Unit suffers from a considerable lack of staff given the many types of FIs and DNFBPs to be monitored.
- e) The supervisors cannot sanction reporting entities directly and no sanctions are available for a one-off failure or following off-site checks. There is no follow-up of recommendations made by supervisors following an on-site inspection.
- f) Sanctions are imposed on FIs and DNFBPs following on-site inspections revealing serious, repeated or systematic AML/CFT breaches. FIs and DNFBPs under SICCFIN's supervision are sanctioned by the Prime Minister, who is not required to impose sanctions proposed by CERC and who can ultimately decide not to impose any. The sanction process is lengthy as sanctions are imposed two to five years after the date of the on-site inspection. Furthermore, they are not proportionate to the severity of the breach or size or revenue, and neither effective nor dissuasive. No sanctions have been imposed on professionals under the supervision of the GPO or the Chairperson of the

¹¹⁰ except joint-stock companies

Monaco Bar Association for AML/CFT breaches.

g) The awareness raising efforts put for the obliged entities under SICCFIN's supervision of their AML/CFT obligations is satisfactory. The knowledge of notaries, bailiffs and lawyers is low.

Recommendations

- a) Fitness and propriety checks must be extended (i) to all managers and persons in charge of key functions, including the non-residents which do not have a work permit (ii) to all BO as defined by the FATF (having first remedied the technical deficiency highlighted in c.10.10) and (iii) in the case of joint-stock companies, to non-shareholding representatives (managing director). Fitness and propriety checks must also be carried out following changes and on an ongoing basis. Requests for information to foreign supervisors should be made as part of these controls (see IO.2).
- b) Measures must be taken to ensure that all professionals covered by the AML/CFT Law are identified as such and supervised by SICCFIN. In addition, the definition of TCSP given in Monegasque law must be brought into line with the FATF's definition (see c.28.2 and 28.3) in order to make business centres, and other professionals offering such services, subject to the AML/CFT Law and supervision.
- c) The human resources of SICCFIN's Supervision Unit must be significantly increased and provided with efficient IT tools. Experienced AML/CFT supervision professionals must also be provided to the GPO and the Chairperson of the Monaco Bar Association.
- d) The understanding of risks associated with reporting entities must be increased for each supervisor (SICCFIN, GPO and Chairperson of the Monaco Bar Association) who must periodically obtain specific information from each regulated professional. The information gathered must be used and must contribute to risk-based AML/CFT supervision for all regulated professionals.
- e) The RBA in place for banks, management companies, estate agencies and TCSPs must be further enhanced. ML/TF risk-based supervision must be implemented for all other regulated professionals by all supervisors. Resource allocation and the frequency and intensity of controls must be based on results in the risk matrix which are updated regularly. Obliged entities should not be informed several weeks before the on-site inspections.
- f) Supervisors, particularly SICCFIN, must follow up – off-site and on site – the remedial actions taken by the reporting entities.
- g) Supervisors must have powers to impose and enforce penalties for breaches of AML/CFT obligations and make use of them.
- h) The sanctioning system should apply to simple breaches such as failure to send documents required by law and breaches identified during off-site checks.
- i) SICCFIN should be empowered to impose sanctions on FIs for AML/CFT breaches (in accordance with c.27.4). For FIs and DNFBPs, proportionate and dissuasive sanctions must be imposed shortly after identification of the breach(es). Use should be made of the full range of available sanctions, including suspension from functions, withdrawal

of authorisation and publication of the sanctions.

j) The efforts made since 2020 to raise awareness of ML/TF risks and AML/CFT obligations should continue. Specific guidelines should be prepared for other entities posing a high risk.

539. The relevant Immediate Outcome for this chapter is IO.3. The relevant recommendations for the assessment of effectiveness under this section are R.14, 15, 26-28, 34, 35 and parts of R.1 and 40.

6.2. Immediate Outcome 3 (Supervision)

6.2.1. *Measures preventing criminals and associates from holding or becoming beneficial owners of a significant or controlling interest in FIs or DNFBPs or holding managerial posts within them*

540. The AT weighted supervision more heavily for banks, management companies, estate agents and casinos, moderately for trusts and company service providers (TCSPs), auctions, jewellers, notaries and lawyers, and less heavily for money changers, chartered accountants and auditors, and other DNFBPs (bailiffs, tax advisers). Details of the weighting for each sector are given in section 1.2 of Chapter 1. Persons and undertakings that provide, on a commercial basis a registered office, business address or premises or an administrative or postal address to a legal person or legal arrangement, i.e. business centres and companies offering such services, are not subject to the AML/CFT Law and are therefore not supervised (see c.28.2 and 28.3). This impacts the effectiveness of IO.3 in relation to the subjects of sections 6.2.2. to 6.2.6.

General authorisation/declaration system (SGA): business undertaken on a freelance basis or through a commercial company (except a joint-stock company)

541. Persons who are not nationals of Monaco who wish to carry on a manufacture, commercial, industrial or professional business must obtain an authorisation from the Prime Minister. Nationals of Monaco need only declare their business, unless the planned business is subject to entry requirements laid down in a special law or they incorporate a joint-stock company. Nationals of Monaco must also apply for authorisation to run a business involving banking or credit activity, money changing, money transfers, legal, tax, financial or stock exchange advice or assistance or brokerage or portfolio management or asset management. This system also applies to FIs, VASPs and DNFBPs, regardless of whether the business is a sole tradership or a commercial company (except a joint-stock company). In addition, a new authorisation (or declaration) is required if changes occur during the lifetime of the company (managers and members).

542. The controls performed within the SGA are part of a well-established process, effectively managed by the DEE, the monitoring being carried out through a dedicated data management tool, named "*The workflow*". Concerning the businesses covered by the definition of FI, VASP or DNFBP (except lawyers, notaries and bailiffs – see the section concerning them below), applications for authorisation (or declarations) and the various documents, including applicants' criminal record certificates, are recorded in the IT tool.

543. The DEE seeks input from various authorities during the checks that are carried out.¹¹¹ The following are consulted in all cases: (i) the DSP, which investigates applicants' fitness and propriety (by looking at, *inter alia*, information held internally, available to the French National Police, or held in the OICP – Interpol database), (ii) the DSF, which checks tax compliance and carries out verifications based on open and closed sources, and (iii) for banking and financial activities, the DBT, which checks whether the activity is subject to special regulations or subject to financial sanctions lists. The DBT can also seek an opinion from the CCAF where the activity is subject to its prudential supervision.

544. SICCFIN is informed of the application for authorisation and ascertains, on the basis of the business object among other things, whether the applicant belongs to a profession which is subject to the AML/CFT Law. It carries out checks on the natural and legal persons mentioned in the application through World-Check and its internal database. SICCFIN does not send requests for information to foreign supervisors in relation to managers, members of boards of directors, members, shareholders or BOs of FIs, VASPs or DNFBPs, including those who have already obtained authorisation in another country. All opinions are reinforced by the DEE and applications are examined by the management and pre-approved by ministries before finally being submitted to the Council of Government for a decision.

545. Thorough checks are carried out by the DSP in order to issue the work permits necessary to undertake professional activity in Monaco (carried out separately from the SGA) and to ensure that managers and holders of key positions provide appropriate guarantees for their work in the Principality. However, it is possible that some bypass these checks if they are based abroad, e.g. in the country of the parent company.

546. The checks carried out within the framework of the SGA and as part of the process of issuing work permits are a strength in terms of verifications of workers and professionals working on a freelance basis, and for managers and members of commercial companies other than joint-stock companies who are natural persons. However, there is a constraint on the system that may impact the effectiveness of the measures taken to achieve the essential aims: the restrictive definition of BO in Monegasque law, which sets an absolute minimum threshold for ownership or control of 25% of capital or voting rights (see c.10.10).¹¹²

System of authorisation to incorporate joint-stock companies

547. Authorisation from the government is required to incorporate a joint-stock company. When an application for authorisation is considered, the fitness and propriety of the founders and first subscribers is checked. The limitation pointed out in the previous paragraph with regard to the definition of BO and hence the scope of the checks applies to joint-stock companies. Furthermore, except for SAMs¹¹³ acting as multi-family offices, fitness and propriety checks are not carried out if there is a change in the board of directors or shareholders and hence potentially BOs. Similar limitations exist with regard to the establishment of an agency, branch or administrative or representative office.

¹¹¹ Only the DSP, which systematically carries out fitness and propriety checks, is consulted for an opinion where a declaration is made by a national of Monaco.

¹¹² The definition of beneficial ownership given in Article 14 of SO No. 2.318 was amended during the on-site visit by Article 5 of SO No. 9.125 of 25 February 2022. The effectiveness assessment is based on the definition of beneficial ownership that existed before that date.

¹¹³ Monegasque joint-stock company

548. Joint-stock companies are used more for financial businesses. In this situation, additional checks are carried out by the ACPR and/or CCAF.

Checks carried out by ACPR

549. Under the banking agreements between France and Monaco, credit institutions, payment institutions and e-money institutions in Monaco are subject to French banking regulations, with the exception of AML/CFT provisions. Approvals for Monegasque credit institutions¹¹⁴ are issued by the French Prudential Supervisory and Resolution Authority (ACPR). In addition, for prudential reasons, a Monegasque credit institution must be established in the form of a SAM (joint-stock company) or operate through a branch of a credit institution located in a foreign country.

550. In addition to the checks carried out by the Monegasque authorities when considering applications for authorisation to start up a SAM/open a branch in Monaco, the ACPR carries out fit and proper checks on shareholders, both when the application for approval is made and when changes occur (reporting obligation for FIs). The ACPR also checks the beneficial ownership, but it does so on the basis of a definition which only refers to *direct or indirect shareholding above a certain threshold which varies between 10% and 25% of capital or voting rights and to "notable influence" linked to a capital holding transaction, but does not include control by means other than direct or indirect shareholding or voting rights. Although in practice, the ACPR has indicated that it goes beyond the legislative requirements, the variable scope of controls remains imprecise.*¹¹⁵

Checks carried out by Financial Activities Supervisory Commission (CCAF)

551. Approval of finance companies (portfolio management and order transmission services) is given by the (CCAF). In addition, for prudential reasons, a finance company must be incorporated in the form of a SAM or operate through a branch of a foreign credit institution located in a foreign country.

552. In addition to the checks carried out when applications for authorisation and those carried out by the ACPR, if the candidate finance company is also approved as a credit institution, the CCAF checks the fitness and propriety of the managers of SAMs and Monegasque branches of credit institutions located in a foreign country both when a request for approval is made and when changes occur (reporting obligation for FIs). It also ascertains the identity and capacity of all contributors of capital, whether direct or indirect, natural persons or legal persons, owning more than 10% and the value of their interest. The CCAF does not identify or verify the fitness and propriety of BOs. In the context of its checks, no approvals have been refused or withdrawn by the CCAF due to a lack of adequate fitness and propriety.

Table 6.1: Number of applications for authorisation and refusals for lack of fitness and propriety from 2016 to 2021

Sole traderships (SGA)		Companies (SGA)		SAMs	
Applications for authorisation	Refusals for not being fit and proper	Applications for authorisation	Refusals for lack of fitness and propriety	Applications for authorisation	Refusals for lack of fitness and propriety

¹¹⁴ Payment and e-money services are provided by Monegasque credit institutions. There were no independent payment or e-money institutions at the time of the on-site visit.

¹¹⁵ FATF, Extract from the Mutual Evaluation Report on France, 2022, Chapter 6, paragraph 470.

2016	FIs	311	0	298	0	38	0
	DNFBPs		0		8		0
2017	FIs	370	0	320	0	48	1
	DNFBPs		2		4		1
2018	FIs	297	0	327	0	60	0
	DNFBPs		3		5		0
2019	FIs	324	0	334	0	76	0
	DNFBPs		1		1		1
2020	FIs	239	0	239	0	47	0
	DNFBPs		0		1		0
2021	FIs	312	0	350	0	66	0
	DNFBPs		2		2		1

553. The AT believes that the number of refusals to grant approval on the grounds of lack of fitness and propriety appears reasonable. However, it is more surprising that there have been no withdrawals of approval due to loss of fitness and propriety during the course of practice, including by the ACPR. This may be due to the fact that fitness and propriety checks are only carried out upon appointment, and are not repeated subsequently.

554. In light of the foregoing, the AT believes that fitness and propriety checks in respect of FIs and DNFBPs operating as sole traderships or companies (except joint-stock companies) are effective. However, these checks are limited where they concern BOs, due to the restrictiveness of the definition in Monegasque law. The major shortcoming is the lack of checks when there is a change of shareholders (and hence beneficial ownership) for FIs and DNFBPs established as joint-stock companies, which limits the scope of efforts to prevent criminals and associates from being involved in the ownership of these FIs and DNFBPs.

555. With regard to credit institutions, the effectiveness of the checks carried out by the ACPR at the time of approval and subsequent changes is limited by the fact that they do not cover those BOs who may exert control otherwise than by owning capital and holding voting rights. Lastly, deficiencies are noted in relation to Monaco's checks on persons holding managerial positions from abroad. These latter deficiencies do not apply to finance companies approved by the CCAF.

Measures in place for lawyers, notaries and bailiffs

556. Lawyers and trainee lawyers are appointed by order of the DSJ. Defending lawyers (*avocats-défenseurs*) are appointed by sovereign order. They must not have been deprived of their civic rights and must be of good reputation. Notaries are appointed for life by the Prince. They must not have been deprived of their civic rights and must submit a certificate of good reputation and capacity. Bailiffs are appointed by sovereign order on the basis of a report from the DSJ. There is no provision concerning fitness and propriety checks when a person enters the profession of bailiff. Administrative investigations can be carried out by the DSP to check that candidates provide appropriate guarantees of good morality.

557. However, no investigations were carried out when a bailiff was appointed in 2020, which leaves room for doubt as to whether fitness and propriety checks are always carried out in practice. Furthermore, once these professionals have been appointed, there are no measures in place to ensure that they continue to meet fitness and propriety criteria.

Table 6.2: Number of appointments, investigations and negative opinions given

	2016	2017	2018	2019	2020	2021
Number of lawyers appointed	0	1	2	1	2	1
<i>Number of investigations carried out</i>	<i>N/A</i>	1	2	1	2	1
<i>Number of negative opinions given for morality issues</i>	0	0	0	0	0	0
Number of notaries appointed	0	0	0	0	0	0
<i>Number of investigations carried out</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>
<i>Number of negative opinions given for morality issues</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>
Number of bailiffs appointed	0	0	0	0	1	0
<i>Number of investigations carried out</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	0	<i>N/A</i>
<i>Number of negative opinions given for morality issues</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>

558. Legal professionals can also practise through a civil-law partnership. On January 2022, 11 lawyers were practising on this basis. Fitness and propriety checks similar to those carried out in relation to commercial companies (except joint-stock companies) are carried out in respect of managers and shareholders of civil-law partnerships undertaking professional activity. The measures in place are considered effective.

Illegal practice of regulated professions

FIs, VASPs and DNFBPs (other than legal professions)

559. Various measures are in place to detect illegal practice of the professions and activities referred to in the AML/CFT Law by both persons who lack authorisation and companies pursuing an activity beyond authorisation: due diligence conducted by Monegasque civil servants, monitoring by professional associations, competitive intelligence, checks carried out by the authorities during the lifetime of companies (checking compliance with obligations concerning changes and other legal and accounting obligations) and exchanges of information during meetings of the Co-ordinating Committee. The authorities gave the AT examples illustrating cases detected by these means. The measures taken in response to these detections appear to have been appropriate and to have put a stop to the behaviours concerned.

560. However, it cannot be ruled out that some professions and activities undertaken in the form of companies may escape supervision by SICCFIN due to very broad business activities which prevent them from being identified as subject to the AML/CFT Law at the time of the authorisation. This concerns a small number of DNFBPs which cannot be confirmed with statistics. While they do not escape fitness and propriety checks at authorisation, the AT considers that these companies could carry out regulated activities under a different label, to avoid supervision by SICCFIN.

Legal professions

561. The measures in place for lawyers¹¹⁶ are based on peer monitoring who provides the Chairperson of the Monaco Bar Association the details of persons presenting themselves as lawyers or offering legal services to clients. In case of serious doubts, the GPO is seized. In addition, at the beginning of 2021, at the request of the Chairperson of the Monaco Bar Association, the Prime Minister sent a letter to legal advisers regarding the proper use of titles

¹¹⁶ The term “lawyer” as used in this report refers to defending lawyers (*avocats-défenseurs*), lawyers and trainee lawyers.

reserved for lawyers. This peer monitoring led to the detection of a legal adviser's website written in English which implied that the professional in question was a lawyer. The sending of this letter put an end to the situation. It is to be noted, however, that no illegal practice of the profession of lawyer had been detected in practice.

562. With regard to notaries and bailiffs, the nature of their professions exposes them to a negligible risk of illegal practising.

6.2.2. Supervisors' understanding and identification of ML/FT risks

SICCFIN

563. SICCFIN, which supervises all FIs, VASP and DNFBPs (except lawyers, notaries and bailiffs), has a satisfactory understanding of general ML/TF risks in the financial and non-financial sectors. This is due in particular to the co-ordinating role it played in both NRAs and the experience and competence of the manager and five officers of its Supervision Unit.¹¹⁷

564. Consultations with regulated professionals during conferences and bilateral meetings also enable SICCFIN employees to develop their understanding of risks. Understanding of ML/TF risks associated with the majority of types of regulated professionals appears to be satisfactory, particularly in banking, asset management companies and estate agent, which are identified as facing the greatest risk. The ML/TF risk understanding concerning casinos, CSPs and trustees is less developed than the analysis in the NRA, which itself has certain limitations.

565. At the individual level, SICCFIN's understanding of ML/TF risks varies according to the sector. It appears to be most developed for banks, assets management companies, TCSPs and money changers. It varies in relation to estate agents and appears to be incomplete in relation to most life insurance agents and brokers and legal advisers.

566. SICCFIN agrees that it has only a general understanding of the risks associated with these professionals, due in particular to the large number of entities in these sectors. The AT finds that the lack of understanding of individual risks is also due in particular to the fact that a majority of regulated entities do not send periodic information and documents to SICCFIN, either spontaneously or on request, even though this is mandatory. This includes responses to SICCFIN's annual questionnaire, the annual AML/CFT report, the evaluation report drawn up by chartered accountants and AML/CFT procedures (hereinafter "periodic documents or information"). In addition, the limited number of staff within the Supervision Unit and the lack of staff for off-site checks, including the follow-up of recommendations made after an on-site inspection, also affect SICCFIN's understanding of the ML/TF risks.

Annual questionnaires

567. SICCFIN has created questionnaires for certain types of regulated professionals which enable it to gather information and fine-tune its knowledge of the risks to which they are exposed. There is a questionnaire for banks, life insurance brokers, money changers, the pawnbroker, asset management companies, estate agents, legal advisers, TCSPs and MFOs. These questionnaires must be sent by regulated professionals every year by 28 February, but the return rates vary widely from sector to sector.

¹¹⁷ External experts can assist the Supervision Unit on an ad hoc basis during on-site inspections requiring specialist knowledge (e.g. casinos, CSPs).

Table 6.3: Rate of return of annual questionnaires from 2018 to 2020

		2018			2019			2020		
		No. of regulated professionals	No. of returns	Rate	No. of regulated professionals	No. of returns	Rate	No. of regulated professionals	No. of returns	Rate
FIs	Banks	31	31	100 %	30	30	100 %	30	29	97 %
	Life insurance agents and brokers	74	29	39 %	78	7	9%	83	5	6%
	Bureaux de change	3	2	67 %	3	2	67 %	3	2	67 %
	Pawnbroker	1	1	100 %	1	1	100 %	1	0	0%
	Management companies	58	45	78 %	61	41	67 %	61	34	56 %
DNFB Ps	Estate agents	137	96	70 %	144	63	44 %	151	62	41 %
	Legal advisers	73	34	47 %	75	21	28 %	77	21	27 %
	TCSPs	41	35	85 %	40	34	85 %	37	30	81 %
	MFOs	13	2	15 %	19	1	5%	22	3	14 %

Source: SICCFIN

568. SICCFIN processes the responses manually using a spreadsheet. There is no automated or semi-automated processing. In addition, the failure by a number of regulated professionals to return annual questionnaires and the lack of an annual questionnaire for others (such as casinos, chartered accountants, dealers in precious stones and metals, trustees and auctioneers), lessens the understanding of risks in relation to these professionals.

AML/CFT activity reports

569. Each year, each the AML/CFT officer must submit to SICCFIN an activity report giving details of suspected attempts to commit offences, the adequacy of administrative organisation and internal controls, the main internal control actions undertaken, an action plan and changes made during controls, taking changes in activity and risks into account. A large proportion of regulated professionals fail to comply with this obligation.

Table 6.4: Levels of professionals' compliance in terms of sending AML/CFT activity reports to SICCFIN from 2019 to 2021

2019			2020			2021		
No. of	No.	Rate	No. of	No.	Rate	No. of	No.	Rate

		regulated professionals	received	e	regulated professionals	received	e	regulated professionals	received	e
FIs	Banks	30	24	80 %	30	28	93 %	29	25	86 %
	Life insurance agents and brokers	78	3	4%	83	4	5%	84	3	4%
	Bureaux de change	3	1	33 %	3	1	33 %	3	2	67 %
	Pawnbroker	1	1	100 %	1	0	0%	1	1	100 %
	Management companies	61	40	66 %	61	43	70 %	61	43	70 %
DNFBPs ¹¹⁸	Casinos	4	4	100 %	3	3	100 %	3	3	100 %
	Estate agents	144	64	44 %	151	70	46 %	153	86	56 %
	Legal advisers	75	18	24 %	77	25	32 %	76	26	34 %
	Chartered/approved accountants	47	7	15 %	47	9	19 %	47	13	28 %
	Jewellers, traders, dealers in PSM ¹¹⁹	135	30	22 %	144	33	23 %	139	58	42 %
	TCSPs	40	26	65 %	37	32	86 %	37	36	97 %
	Auctions	26	2	8%	26	7	27 %	24	5	21 %
	MFOs	19	3	16 %	22	8	36 %	21	10	48 %

Evaluation reports

570. These reports, which are drawn up and submitted by chartered accountants, are another source of information for SICCFIN on the ML/TF risks associated with regulated professionals because they conclude on the level the compliance and the implementation of mitigating measures by regulated professionals. However, only regulated professionals whose turnover exceeds EUR 400 000 and who have at least three employees, in the case of partnerships, or sole traderships are required to draw up such reports. These reports must include information such as checks on AML/CFT procedures appropriate to the professional's activity and their updates, the distribution of these procedures to employees, the proper implementation of procedures and verification based on a sample of files inspected, as well as details of continuous training for employees.

¹¹⁸ The available information concerning DNFBPs which are not concerned by FATF standards is not given in the table. They are motor vehicle dealers, sports agents, warehousekeepers and yachting professionals.

¹¹⁹ PMS = Precious metals and stones

571. Banks, asset management companies, casinos and chartered accountants themselves are not subject to this obligation, despite the high ML/TF risk assigned by the authorities, particularly to the banking and asset management company sectors. In addition, the low level of compliance by chartered accountants in terms of submitting AML/CFT activity reports to SICCFIN (see Table 6.3) raise concerns as to their diligence in producing evaluation reports for their clients.

572. SICCFIN states that the most valuable information concerns the implementation of AML/CFT procedures, for which chartered accountants provide observations on customer identification, due diligence and proper documentation. On average, four FIs and about 100 DNFBPs annually send these reports to SICCFIN, which makes it difficult to have a clear picture of the number of regulated professionals who meet the criteria for drawing up these reports and who should submit them.

Internal AML/CFT procedures

573. The legal provisions do not lay down any particular intervals at which AML/CFT procedures must be sent to SICCFIN, but the reporting entities must send a copy when the internal procedures change and, at the least, when the regulations change. There is no mechanism in place to ensure that regulated professionals observe this obligation.

Table 6.5: Number of internal AML/CFT procedures received by SICCFIN from 2019 to 2021

		No. of regulated professionals	Received 2019	No. of regulated professionals	Received 2020	No. of regulated professionals	Received 2021
FIs	Banks	30	16	30	10	29	14
	Life insurance agents and brokers	78	2	83	2	84	1
	Bureaux de change	3	0	3	1	3	1
	Pawnbroker	1	0	1	1	1	1
DNFBPs	Management companies	61	23	61	21	61	12
	Casinos	4	0	3	0	3	3
	Estate agents	144	30	151	28	153	29
	Legal advisers	75	16	77	8	76	7
FBBPs	Chartered/approved accountants	47	3	47	4	47	4
	Jewellers, traders, dealers in precious stones and metals	135	30	144	30	139	17
	TCSPs	40	16	37	17	37	3
	Auctions	26	1	26	5	24	3
	MFOs	19	4	22	7	21	5

GPO

574. The GPO's understanding of the ML/TF risks faced by notaries, bailiffs and defending lawyers (*avocats-défenseurs*), lawyers and trainee lawyers¹²⁰ is based mainly on the NRA and discussions with legal professionals during on-site inspections.

575. The understanding of the ML/TF risks faced by notaries and bailiffs is general, mostly due

¹²⁰ For defending lawyers (*avocats-défenseurs*), lawyers and trainee lawyers, supervision was carried out by the Principal State Prosecutor until 31 December 2020. Since that date, it has been the responsibility of the Chairperson of the Monaco Bar Association.

to their limited number, but lacks detail. The understanding of risks associated with lawyers' activities is still limited. This is due to the failure to gather and use information through periodic requests, failure by regulated professionals to send annual AML/CFT activity reports to the supervisor, lack of requests for or submissions or monitoring of AML/CFT procedures by the supervisor and the lack of formalised ML/TF sector risk analysis. In addition, despite having considerable experience as a member of the judiciary, the GPO has no experience of AML/CFT risk-based supervision within the meaning of the FATF Methodology and does not have any dedicated staff assigned, other than ad hoc support from two SICCFIN when performing on-site inspections.

576. Lastly, it should be noted that the post of General Prosecutor in Monaco changes hands regularly (the postholder in office during the on-site visit had taken up the post in 2018 and left it soon after the on-site visit). There was no handover of supervision expertise, and no history of supervision when the official took office, which raises concerns on the sustainability of AML/CFT checks and monitoring mechanism for the concerned professionals.

Chairperson of the Monaco Bar Association

577. Since 1 January 2021, the Chairperson of the Monaco Bar Association has been the AML/CFT supervisor for lawyers. AML/CFT supervision is carried out on 20 lawyers who declared to their supervisor in 2021 that they pursued one or more activities covered by the AML/CFT Law; 12 declared that they did not pursue such activities.

578. In 2021, the Chairperson drew up an ML/TF sector risk analysis (SRA) which serves as the operational version of the NRA within the profession. It aids a broader understanding and better assimilation of ML/TF risks by lawyers and the associated obligations. Although the exercise helped to strengthen the supervisor's understanding of ML/TF risks, the SRA is still general for the purposes of detailed understanding of ML/TF risks for the supervisor. It is more helpful to lawyers in understanding their exposure to ML risks and the appropriate steps to address threats and reduce vulnerabilities.

579. The Chairperson of the Monaco Bar Association ensures that every regulated member of the Bar Association sends an annual report on their activities and internal AML/CFT procedures in accordance with legal obligations. To this end, since the beginning of 2022, the Chairperson has asked all regulated members to send these documents to him. It was confirmed to the assessment team shortly after the on-site visit that documents had been received for all regulated professionals; these documents can be used by the supervisor to gain a greater understanding of ML/TF risks.

580. Although positive steps were recently taken by the Chairperson following the handover of responsibility for AML/CFT supervision at the beginning of 2021, deficiencies such as the failure to gather and use detailed information through periodic requests or questionnaires and to carry out desk-based checks on regulated professionals preclude a detailed understanding of risks at individual level. The high turnover of Chairpersons also raises a question as to the retention of knowledge in the absence of experienced staff in AML/CFT supervision.

581. It should be pointed out that the obligation for notaries, bailiffs and lawyers to send an annual AML/CFT activity report¹²¹ to the supervisor was abolished during the on-site visit. This obligation, clearly much ignored by the reporting entities, and little sanctioned by the

¹²¹ Article 33 of SO No. 2.318 was repealed by Article 7 of SO No. 9.125 of 25 February 2022.

supervisors, constituted a useful mean for the ML/TF risk understanding.

6.2.3. Risk-based supervision of compliance with the AML/CFT obligations

582. Until 2017 including, on-site inspections of FIs and DNFBPs under the supervision of SICCFIN were carried out on an ad hoc basis and targeted four types of entities among those most at risk according to NRA 1. Checks were carried out on banks and TCSPs every three years, on asset management companies every three to five years depending on their activities, and on estate agents every five years. This situation changed since 2018 when the Supervision Unit changed the approach relation to both off-site checks and on-site inspections. A risk matrix has been created for these four types of regulated professionals (hereinafter “risk matrix”) which now constitutes the basis of the programme of on-site inspections to be carried out.

583. The risk matrix for banks is influenced by a “control” risk level and an “inherent” risk level. The way in which the control risk is calculated takes account the time elapsed since the last on-site inspection, the risk level identified during that last inspection (expert opinion) and the degree of the regulated professional’s compliance in terms of sending periodic documents and information to SICCFIN. Inherent risk is calculated according to the data sent by the regulated professional in response to the annual questionnaire sent to SICCFIN. This calculation is the sum of a total of 17 ratings determined by individual criteria or comparison of the professional’s figures with the figures of a group of professionals. The risk matrix for TCSPs is similar with 12 ratings for the calculation of inherent risk.

584. For management companies and estate agents, the approach is similar, but the matrix is simplified and does not take account of the inherent risk. The information is updated manually when new information becomes available. This tool, which forms the basis of the risk-based approach, has yet to be completed (especially for asset management companies and real estate agents) and automated. The risk matrix and SICCFIN’s supervisory approach have not included the findings of NRA 2. The authorities explain that a modern and upgradable IT tool is currently being designed and implemented.

Table 6.6: Risk level for each type of regulated professional as of 30 April 2021

	<i>Low</i>	<i>Medium Low</i>	<i>Medium High</i>	<i>High</i>
Banks	8	5	6	10
Management companies	30	12	8	12
TCSPs	16	11	6	8
Estate agents	49	22	36	41

585. Aside from on-site inspections of these four types of regulated professionals, the control schedule is set on an ad hoc basis for other types of regulated professionals, including chartered accountants and professions with little representation. (money changers, pawnbroker, casinos).

586. Mention must also be made of the remark in section 6.2.1, in the sub-section entitled “Illegal practising of regulated professions”, according to which a small number of DNFBPs, the types of which are not clearly identified, pursue activities covered by the AML/CFT Law but are not supervised by SICCFIN.

Off-site monitoring

587. As stated in section 6.2.2., regulated professionals must send various periodic documents and pieces of information to SICCFIN, be they AML/CFT procedures, annual AML/CFT activity

reports or annual assessment reports drawn up by chartered accountants. The return rates show that a large proportion of reporting entities do not comply with their obligations to send periodic documents and information. The same applies to the sending of responses to the annual questionnaire used to complete the risk matrix.

588. As for checks on documents received, SICCFIN has no officers assigned for the off-site supervision which is performed by the five officers and head of the unit. An internal audit of SICCFIN carried out in 2018 highlighted that due to a lack of dedicated resources, a significant proportion of document-checks had not been carried out or formalised in the most recent financial years.

589. Changes occurred in 2019. Three officers were recruited, two were reassigned, and the unit's headcount expanded from four to five officers. Since 2020 a new procedure for documents verification together with an analysis grid used to facilitate the controls is used. These changes have increased effectiveness and made it possible to check all periodic documents received, for all types of regulated professionals.

590. Although these changes go in the right direction, the AT believes that the fact that periodic documents are not requested from the reporting entities, who in turn, do not send them to the supervisors sends a wrong signal to the private sector. Even if SICCFIN increases the risk level assigned to the entities failing to send periodic documents, this adversely affects the level of detail of the risk matrix. Failure to send documents within the given deadlines is not sufficient ground for sanctioning. In addition, SICCFIN has no powers to issue orders or impose penalties or sanctions.

591. Following checks on documents received in 2019 and 2020, recommendation letters listing the deficiencies identified were sent to reporting entities in 40% of cases. These letters ask addressees, where deficiencies are identified a) in annual AML/CFT activity reports, to remedy them during the next financial year, and b) in AML/CFT procedures, to correct them and submit an updated version to SICCFIN. On a positive note, these deficiencies were considered in the context of the risk ratings assigned for the four types of regulated professionals for whom supervision is risk-based.

592. Controls are performed on the amended AML/CFT procedures sent by the private sector as response to the recommendation letters. There is no reminder system in place for regulated professionals who fail to send updates. The rest of the recommendations, the verification of their implementation is done when the next periodic documents are sent. In this regard, no stricter or more in-depth checks are carried out to ensure that regulated professionals have remedied major shortcomings within a certain time. In addition, given the absence of sanctions for failure to send periodic documents, it is possible that some professionals may fail to remedy deficiencies and fail to send their periodic documents the following year.

593. The lack sanctioning power for simple breaches and the lack of adequate human resources dedicated to off-site work explain certain decisions made by SICCFIN and definitely limit the effectiveness of its supervision. The lack of specialised IT equipment for the purposes of managing the risks associated with regulated professionals, among other things, limits the capacity to carry out adequate and differentiated monitoring of the large number of regulated professionals under SICCFIN's supervision. The only tools available to SICCFIN are an Internet connection with email and basic word processing and spreadsheet programs. A database was created, organising the supervisory work done so far by SICCFIN, which includes the details of the AML/CFT contact persons.

On-site inspections

594. An on-site inspection guide was created in 2019 and reviewed in 2020 and 2021. In the course of an on-site control, all the AML/CFT obligations are reviewed, including: the organisation of the AML/CFT system, the AML/CFT internal procedures and risk mapping, internal organisation, the organisation of the databases, transaction monitoring systems, staff training, data storage, special groupwise obligations, the application of the TFS and the existence of a whistle-blowing procedure.

595. The policy on customer acceptance, knowledge of customers and beneficial owners, transactions and sampling of files is also checked, as is the submission of periodic documents. Responses to the annual questionnaire are examined in order to compare it with the on-site findings. Lastly, the obligation to send STRs to the FIU is checked. For banks, on-site inspections take about five weeks with two full time officers assigned. Experts from the ACPR or the Banque de France may occasionally come to work alongside SICCFIN's during on-site inspections of banking institutions. For other regulated professionals, the inspections take between one and five days. Checks cover all professional obligations; their intensity is not determined by the risk-based approach.

596. Regulated professionals are given one month's notice for the on-site inspections and there are no spontaneous inspections. Targeted or thematic on-site inspections are not carried out by SICCFIN, due to its limited understanding of risks and resources. For example, no ad hoc on-site inspections or on-site inspections in relation to matters such as the Panama Papers have been carried out, even though many companies in Panama and the British Virgin Islands hold accounts with Monegasque banks.

597. Since the pandemic, a secure "Safeshare" platform has supplemented the IT tools available to SICCFIN. It can be used, if regulated professionals agree, to share information during on-site inspections.

Table 6.7: Number of on-site inspections carried out by SICCFIN

	2016	2017	2018	2019	2020	2021	Total
Number of banks	33	31	31	30	30	29	
↳ Number of on-site inspections	6	3	4	8	6	3	30
Number of life insurance agents and brokers	68	71	74	78	83	84	
↳ Number of on-site inspections	0	0	0	0	2	0	2
Number of bureaux de change	2	2	2	2	2	2	
↳ Number of on-site inspections	1	1	0	0	0	0	2
Number of pawnbrokers	1	1	1	1	1	1	
↳ Number of on-site inspections	0	0	0	0	1	0	1
Number of management companies	54	59	58	61	61	61	
↳ Number of on-site inspections	7	2	7	8	2	3	29
Number of casinos	4	4	4	4	3	2	
↳ Number of on-site inspections	0	4	0	0	0	0	4
Number of estate agents	119	129	137	144	151	153	
↳ Number of on-site inspections	20	21	4	9	4	6	64
Number of legal advisers	70	73	73	75	77	76	
↳ Number of on-site inspections	8	4	0	0	0	1	13
Number of chartered accountants and approved accountants	28	31	32	32	31	31	

↳ Number of on-site inspections	5	11	1	2	0	0	19
Number of jewellers, traders and dealers in precious stones and metals	109	122	131	135	144	139	
↳ Number of on-site inspections	4	10	3	0	0	0	17
Number of TCSPs	42	44	41	40	37	37	
↳ Number of on-site inspections	1	3	5	12	5	3	29
Number of MFOs	10	11	13	19	22	24	
↳ Number of on-site inspections	0	0	1	1	1	1	4
Number of trustees¹²²	38	38	34	34	34	31	
↳ Number of on-site inspections	6	0	3	13	2	2	26
Number of auctioneers	22	24	24	26	26	24	
↳ Number of on-site inspections	0	0	1	2	0	0	3

598. The figures in the table show that a larger number of on-site inspections were carried out over the last six years on three types of obliged entities among those at highest risk, with a very high rate of coverage (average number of entities over the period) for banks, a high rate for TCSPs and a medium rate for asset management companies. The inspections of casinos (which are high risk) took place a long time ago and inspections of real estate agents are less numerous. As for other sectors, a majority of regulated professionals did not undergo any on-site inspections by SICCFIN over the review period.

599. The on-site inspections performed by SICCFIN have revealed a large number of problematic issues seeing the range examinations. Following the inspections, a recommendation letter and an inspection report is sent to the regulated professionals. The current target is to send on-site inspection reports to regulated professionals within 120 days after the end of the inspection, with a first draft sent 60 days after.

600. While these targets were more or less achieved in 2019 and 2020, they were rarely observed in the past, with reports being sent between 200 and 500 days after the inspection. As a rule, recommendation letters are sent a few days after the final report is sent. In these letters, SICCFIN encourages the reporting entities to voluntarily review the situation with the SICCFIN officers who carried out the inspection, in the months following the inspection report; the inspection report is also sent to the Audit Review Commission (CERC) to be examined as part of the sanction process (see section 6.2.4).

601. Although the on-site inspections carried out by SICCFIN officers appear adequate, once inspection reports have been sent to CERC, SICCFIN has no control over the the supervision process, i.e. in relation to remedial actions or sanctions.

602. The various changes made from 2018 onwards are to be welcomed, and the risk-based approach in place for four of the most at-risk types of regulated professionals appears to be hitting its stride, but for the reasons mentioned above, it lacks detail, does not take account the inherent risk associated with asset management companies and real estate agents and influences only the frequency of controls, and not their intensity. Furthermore, the many other types of FIs and DNFBPs are still being controlled in an ad hoc manner or not at all. There is an obvious lack of the human resources and high-performance IT tools that are necessary for Monaco to achieve the targets laid down in the FATF's standards.

¹²² Trustee activities are pursued by regulated professionals authorised as banks, legal advice offices and CSPs.

GPO

603. The supervision carried out by the GPO is not risk-based. No periodic information is collected. The obligation for regulated professionals to send an annual AML/CFT report has been observed by only one bailiff. No measures have been taken by the GPO to compel compliance. The checks carried out over the period under review consisted of five on-site inspections in relation to all AML/CFT obligations, which were carried out on two bailiffs and one lawyer in 2020 and one bailiff and one notary in 2021.

Table 6.8: Number of on-site inspections carried out by the Principal State Prosecutor's Office

	2016	2017	2018	2019	2020	2021	Total
Number of notaries	3	3	3	3	3	3	
↳ Number of on-site inspections	0	0	0	0	0	1	1
Number of bailiffs	3	3	3	3	3	3	
↳ Number of on-site inspections	0	0	0	0	2	1	3
Number of lawyers	33	35	33	33	32	N/A ¹²³	
↳ Number of on-site inspections	0	0	0	0	1	N/A	1

604. The on-site inspections gave rise to formalised reports and follow-up letters were sent to regulated professionals. The majority of the deficiencies identified related to: verification of customers' identities (lack of signatures), due diligence (socio-economic background) and the updates of TFS lists. A lack of internal procedures and breaches of AML/CFT training obligations, including in relation to the staff, were also identified. There was no special follow-up and no requirement to remedy the shortcomings within a certain timeframe.

605. The fact that the supervision measures taken by the GPO are few and not risk-based is largely due to the supervisor's lack of human resources. Charged with various other duties, it is also difficult for the GPO to dedicate time on AML/CFT supervision. Despite the transfer of responsibility for AML/CFT supervision for the lawyers to the Chairperson of the Monaco Bar Association in 2021 and the small number of regulated professionals, without dedicated and experienced human resources, effective supervision by the GPO of notaries and bailiffs will continue to be a challenge.

Chairperson of the Monaco Bar Association

606. Supervision of lawyers by the Chairperson of the Monaco Bar Association began in the second half of 2021 with an on-site inspection of a law firm of 15 people pursuing 30% of the activities covered by the AML/CFT Law. The firm was chosen on the basis of its relatively important advisory activity. AML/CFT supervision is not underpinned by an approach based on the individual ML/TF risks faced by law firms and the number of on-site inspections is very low. The supervisor does not collect detailed information, such as through a periodic questionnaire, which can be taken into account in risk-based supervision. Desk-based checks consist of collecting regulated professionals' AML/CFT procedures and the annual report, with no further analysis.

607. The on-site inspection of the law firm, which was carried out by three lawyers assisted by a secretary, lasted a day and focused on various aspects including checking the internal AML/CFT procedures, training and awareness-raising actions for staff, the procedure for accepting clients and their risks classification and knowledge and monitoring of clients, based on a sample-files.

¹²³ Not applicable because the Chairperson of the Monaco Bar Association has been the AML/CFT supervisor for lawyers since 2021.

The time spent on site seems very short. The inspection report is very general, as it specifies the documents on fund on the files and focuses mainly on verification of identification compliance, verification of clients' identities and the checks of the asset freezing list. It does not express a view on any failings in relation to, for example, identification and verification of the identities of beneficial owners of client companies.

608. In addition, the inspection report does not express a view on the firm's compliance with its obligation to report suspicious transactions. Lastly, despite the deficiencies identified and the recommendations made, the lawyer is not asked to take measures within a period of time set by the supervisor; instead, they are merely asked to send a list of all efforts made following the inspection or to include it in the next annual AML/CFT report.

6.2.4. Effectiveness, proportionality and dissuasiveness of corrective actions and/or sanctions

SICCFIN

609. After every on-site inspection, in addition to an inspection report detailing the deficiencies identified, SICCFIN sends a recommendation letter in which it draws the attention of the regulated professional or its managers to the importance of implementing various general corrective actions in order to remedy the breaches identified. However, this recommendation letter does not require the professional to give SICCFIN details, within a set period, of measures taken to remedy the identified deficiencies or to respond to the recommendations. SICCFIN maintain that in practice, some regulated professionals, including in the financial sector, do this through letters or meetings with the supervisor.

610. SICCFIN states that the reason why it does not require this of FIs or DNFBPs is that it does not have sufficient human resources to follow up, either through the submission by the regulated professional of documents confirming that the deficiencies have been remedied or by means of a follow-up on-site inspection.

611. With regard to the various periodic pieces of information and documents to be sent to SICCFIN, although providing them is compulsory, a majority of regulated professionals do not do so. In addition, in practice, simple breaches such as failing to send a document (e.g. annual AML/CFT activity reports, AML/CFT procedures or risk-based approach questionnaires) cannot be sanctioned even though it is compulsory according to the law or regulations, and neither can breaches identified during desk-based checks. Hence, besides the lack of human resources, SICCFIN's off-site checks are limited in practice by the lack of a reminder procedure and the fact that regulated professionals cannot be sanctioned in an effective and dissuasive manner.

612. SICCFIN does not have the power to impose sanctions on regulated professionals (which is contrary to c.27.4 for FIs) and only serious, repeated or systematic breaches of AML/CFT obligations trigger the sanction process in practice. The sanctioning process commences after an on-site inspection report is sent by SICCFIN to the Prime Minister, who asks CERC whether or not it proposes any sanctions. The on-site inspection report can also include criticisms concerning failure to send periodic documents to SICCFIN. Proposals for sanctions issued by CERC are sent to the Prime Minister, who ultimately decides to impose the sanction or not. Although the Prime Minister implements CERC's proposals in practice, he is not legally obliged to do so.

613. CERC was created in February 2019¹²⁴ pursuant to a 2018 law, for the purpose of proposing sanctions in relation to on-site inspections carried out by SICCFIN after 1 January 2017.

614. Starting March 2019, all on-site inspections reports (drafted after 1 January 2017) have been sent to CERC, namely 134 by 30 April 2021. CERC began proposing sanctions starting 2021 after being asked in 2019 to look into a large number of pending cases and after beginning to hold hearings in December 2020. For 53% of inspection reports (71 reports), CERC considered that no sanctions shall be imposed. For 14% of inspection reports, CERC proposed to the Prime Minister the sanctions set out below, who acted in line with CERC's opinion and imposed the sanctions. SICCFIN's other reports (33%, i.e. 44 reports) are still pending. It should be noted that all sanctions relating to on-site inspections carried out between 2017 and 2020 were ordered between 30 June 2021 and 22 February 2022, i.e. two to five years after the breaches had been identified by SICCFIN, and without a plan to follow up the remedial actions put in place.

615. In addition, the CERC analysis of inspection reports is not prioritised based on the ML/TF risks faced by the sectors covered by the NRA, or the risk level assigned by SICCFIN under the risk-based approach in place for the four types of regulated professionals among those most at risk.

Table 6.7: Sanctions imposed by the Prime Minister in 2021 (final sanctions and fines paid) in relation to control activities from 2017 to 2020

	Warning	Reprimand	Fine
Banks	1		
Estate agents			1 x EUR 4 000
	10	2	1 x EUR 5 000
			1 x EUR 10 000
			1 x EUR 12 000
Chartered accountants	2		
Legal advisers	1		
Jewellers	1		
TCSPs	3		
MFOs	1		

616. Furthermore, the reporting entities subject to the pecuniary sanctions below were notified the week before or during the on-site visit. Therefore, at the time of the on-site visit, these sanctions were still appealable to the Court of First Instance.¹²⁵

Table 6.8: (Appealable) sanctions imposed by the Prime Minister from 14 February 2022 in relation to control activities from 2017 to 2020

	Reprimand	Withdrawal of authorisation	Fine	Publication of sanction
Banks	4		1 x EUR 100 000 2 x EUR 150 000	
Estate agents	1		1 x EUR 5 000 1 x EUR 15 000	

¹²⁴ The authorities stated that CERC was established as a result of a remark made in the 2013 MER saying that the sanction procedure "is not described fully and in detail by the applicable legal and regulatory provisions". However, the establishment of CERC does not appear to resolve this issue, which was acknowledged by the authorities during the last round. Similarly, the withdrawn power to give the Director of SICCFIN a warning, which arose out of a remark in the 2013 MER, does not appear to have been replaced with another mechanism in the current sanction system.

¹²⁵ Sanctions can be appealed within two months after notice is given.

Chartered accountants	1			
TCSPs	2	1 ¹²⁶	1 x EUR 40 000 1 x EUR 50 000 1 x EUR 100 000	1
Management companies	1		1 x EUR 15 000	

617. At the time of the on-site visit, no sanctions had been imposed in relation to on-site inspections carried out in 2021.

618. In addition, the majority of sanctions imposed are not proportionate to the breaches identified by SICCFIN in their inspection reports and in sanctioning decisions signed by the Prime Minister. Where a sanction is imposed, it is usually a warning or a blame. Where a fine is imposed, the amount is small. Moreover, only one sanction has been made publicly known in the Official Gazette (in 2016, before CERC was established), but the name of the sanctioned entity was not revealed.

619. In addition to the gap between the dates of on-site inspections and the imposition of sanctions, the following boxes demonstrate the disproportion between the sanctions imposed and the severity of the breach.

Box 6.1: Examples of identified breaches

Important private bank

Dates of on-site inspection: from 8 July to 9 August 2019

Date of sanction: 17 February 2022

Type of sanction: warning and fine of EUR 100 000

Beaches:

- periodic review of monitoring system did not detect a deficiency in the existing tool;
- an STR was not filed upon a refusal to onboard a client;
- BO documentation was not always complete or supported by reliable documents;
- the bank had little understanding of the Monegasque regulations on the identification of customers, whose funds were consolidated in accounts held in the name of foreign banks;
- ongoing due diligence was inadequate;
- the bank did not implement its cash withdrawal procedures;
- the information recorded in the register of gold and precious metal transactions was inadequate;
- post hoc EDD was not always carried out in relation to STRs, STRs were filed late, and additional information was not sent to SICCFIN.

Assets management company

Dates of on-site inspection: 16-20 September 2020

Date of sanction: 14 February 2022

Type of sanction: warning and fine of EUR 15 000

Irregularities identified:

- incomplete AML/CFT procedure manual;

¹²⁶ Sanction imposed the week before the on-site visit but notice given after the on-site visit.

- database searches not formalised in Monaco;
- use of pseudonyms in client identification;
- risk assessment criteria not appropriate for clients;
- economic background not sufficiently corroborated with documents;
- automatic atypical payment detection system did not enable cumulative amounts to be reported;
- processing of alerts for transactions with values exceeding EUR 100 000 was not backed up by documents and an alert was not dealt with;
- no searches were carried out and no STR was filed in respect of an Iranian client.

Real estate agency (22 employees)

Dates of on-site inspection: 26-27 September 2017

Date of sanction: 13 January 2022

Type of sanction: warning without publication of sanction

Irregularities identified:

- AML/CFT procedures last updated in 2010;
- no formal risk-based approach;
- no information on the origin of the assets or socio-economic background for clients who are natural person;
- files concerning clients legal persons were incomplete and it was impossible to check the link between the legal person and the BO;
- the information in client files was rarely corroborated by reliable data or information sources;
- checks on named individuals were not carried out in the Official Gazette;
- some responses to the SICCFIN annual AML/CFT questionnaire were not consistent with the reality observed on site.

Chartered accountant and auditor

Dates of on-site inspection: 10-13 December 2019

Date of sanction: 14 February 2022

Type of sanction: warning

Irregularities identified:

- failure to send AML/CFT activity report and name of AML/CFT officer to SICCFIN;
- incomplete internal AML/CFT procedures;
- inadequate staff training;
- failure to systematically identify and verify clients and their economic background;
- identification and verification of BO were not systematically formalised;
- lack of formalisation of controls in relation to freezing procedures;
- failure to examine and submit and STR;
- information collected subsequent to an STR was not sent to SICCFIN by the firm in its capacity as an auditor.

620. Lastly, CERC has no risk-based prioritisation system to consider the AML/CFT associated with the country, sectors or entities, and no sanctions matrix to consider the severity of breaches identified, their frequency or the type of professional concerned.

Notaries, bailiffs and lawyers supervised by the GPO and the Chairperson of the Monaco Bar Association

621. No sanctions have been imposed since 2016 by the GPO or the Chairperson of the Monaco Bar Association despite the deficiencies identified during controls (see section 6.2.4). Remedial

actions are not followed up.

622. Like SICCFIN, the GPO and the Chairperson of the Monaco Bar Association are unable to impose sanctions themselves. In addition, it is not possible to sanction for failure to submit a document to the supervisor or for deficiencies identified during off-site checks.

6.2.5. Impact of supervisory authorities' actions on compliance by FIs, DNFBPs and VASPs

SICCFIN

623. In the absence of follow-up process based on on-site inspections, including the implementation of recommendations made by SICCFIN, makes it difficult to assess the impact of authorities' actions on compliance. In addition, seeing that most entities do not respect their obligations to submit periodic documents to SICCFIN, and the failure to use this information and carry out desk-based checks, makes it difficult for the AT to draw positive conclusions. The analysis, over different years within the period under review, of raw statistics on the receipt by SICCFIN of annual AML/CFT activity reports, AML/CFT procedures, responses to SICCFIN's annual questionnaire and, where applicable, assessment reports by the various types of regulated professionals does not indicate any positive impacts. The lack of measures to improve the relevance and timely filing of STRs by banks should also be noted (see section 5.2.5. concerning defensive reporting).

624. Certainly, there is a correlation between the receipt of activity reports for 2020 and the private sector entities who have already been inspected on site. SICCFIN mentions a similar finding with regard to the increase in the number of STRs filed by banks in the year following an on-site inspection. In addition, the recommendation letters sent in 2020 following checks on their AML/CFT procedures result, in one in two cases, in the sending of an amended version. Although these observations are encouraging, the correlation only applies to 2020 and does not allow any conclusions to be drawn as to the trend over the entire period under review.

625. According to officers in the Supervision Unit, it can at most be observed that some regulated professionals submit more documents required by law to SICCFIN following an on-site inspection, but they do not continue to do so in the medium term. Furthermore, these observations must be weighed against the limited number of periodic documents sent and the number of on-site inspections carried out. The same correlation exercise has not been carried out in relation to the rate of responses to the annual questionnaire.

GPO and Chairperson of the Monaco Bar Association

626. According to the GPO, the on-site inspections carried out on notaries and bailiffs have had a more positive impact on notaries. He reports that the number of STRs filed by a notary and the quality of STR in case of a second have improved. In addition, some notaries have recruited AML/CFT specialists in order to improve their compliance with their professional obligations, or have hired third parties to provide AML/CFT training to their staff. However, the statistics provided show that the submission of the periodic documents required by the AML/CFT Law, such as annual AML/CFT activity reports or AML/CFT procedures, is not increasing and is at a very low level despite the on-site inspections carried out.

627. The impact of supervisors' actions on lawyers' compliance cannot be demonstrated. Prior to 2021, the GPO carried out just one on-site inspection in 2019 and no other supervisory measures. The recent transfer of AML/CFT supervision to the Chairperson of the Monaco Bar Association and the on-site inspection of one firm at the end of 2021 do not enable the impact on

regulated professionals' compliance to be assessed. It should nonetheless be noted that according to the Chairperson, all regulated firms sent him their internal AML/CFT procedures and their annual AML/CFT activity reports for 2021 after being requested.

6.2.6. Promotion of good understanding by FIs, DNFBPs and VASPs of their AML/CFT obligations and ML/TF risks

628. Promotion of the understanding of AML/CFT obligations and ML/TF risks is carried out primarily by SICCFIN. The conduct and publication of the first NRA in 2017 and the second in 2021 are improving all regulated professionals' awareness of the country's ML/TF risks through the collection of data and dissemination of analysis. The Coordination Committee, which holds meetings once or twice a year and includes representatives of the competent authorities and every category of regulated professional, also disseminates high-level information to a certain extent, sometimes including typologies. Although very recent in several cases, some other initiatives are outlined below.

SICCFIN

629. SICCFIN's website provides important and useful information for regulated professionals about their AML/CFT obligations, including the legal and regulatory framework, SICCFIN news and various publications, including its annual report, which can include one or two typologies.

630. Efforts to publicise AML/CFT obligations were made with the publication in July 2021 of general informative guidelines¹²⁷ for Monegasque reporting entities. They cover, among other things, the implementation of the risk-based approach, obligations in relation to clients and transactions, internal procedures, data storage and obligations to co-operate with SICCFIN. They were produced by the supervision and analytical Units of SICCFIN. The Monegasque Association of Compliance Officers was also involved in this process.

631. In addition, a special practical guide¹²⁸ written in French and English was published in January 2022 for the real estate agents, to address the deficiencies identified in the NRA2 in relation to their understanding of their AML/CFT obligations. The sector was chosen also due to the high number of real estate agents operating in the Principality which makes it difficult for the SICCFIN to apply a more individualised approach, given its limited resources. This practical guide, which is basic but intended to be educational, illustrates the main AML/CFT obligations and ML/TF risks that these professionals must take into account.

632. Two other practical guides of the same type have also been published for regulated professionals to whom FATF standards do not apply but who pose very high risk levels according to the findings of NRA 2. Although recent, these publications are useful and of high quality.

633. In addition, the dialogue between SICCFIN, the reporting entities and their professional organisations constitutes a strong point. The attitude of SICCFIN officers enables regulated professionals to easily seek advice by telephone or by appointment, if they have any questions about the implementation of their AML/CFT obligations or after an on-site inspection and to get answers, usually together with explanations that are intended to be educational. Some 30 such meetings have taken place annually since 2019 in this context, mainly with banks or CSPs. In addition, in each of the years 2019 and 2020, there were about 10 meetings between SICCFIN and

¹²⁷ SICCFIN, [General Guidelines for Monegasque Professionals](#), 22 July 2021 (French only)

¹²⁸ SICCFIN, [Practical Guide for Estate Agents](#), January 2022 (French only)

professional organisations representing regulated professionals in the FI and DNFBP sectors for the purposes of NRA-related exercises and presentations concerning AML/CFT-related topics or issues.

GPO and Chairperson of the Monaco Bar Association

634. The main thing that is done to raise the Chairperson's awareness in relation to regulated professionals is the provision of on-site inspection reports including recommendations. The GPO does not have enough time to raise regulated professionals' awareness in the way that an AML/CFT supervisor would. However, he has already answered questions from regulated professionals about the implementation of CDD measures or the appropriateness of sending him STRs. The GPO deplores the lack of a professional association for bailiffs and notaries which could act as a contact point through which to relay information from the supervisor.

635. The website of the Monaco Bar Association¹²⁹ does not give any public information in relation to AML/CFT obligations or ML/TF risks. A space on the website which can only be accessed by lawyers provides practical AML/CFT due diligence tools and various documents essential for AML/CFT. The AT did not have access to this dedicated space. The Chairperson, who has supervised lawyers since 1 January 2021, drew up guidelines for members of the Monaco Bar Association (on the basis of those written by SICCFIN) and a sector risk analysis for the Monaco Bar Association and distributed them by email in October 2021. A SICCFIN officer intervened during the Association's General Meeting in September 2021 to inform about developments in relation to the AML/CFT Law. While these initiatives are welcomed, no special efforts to raise lawyers' awareness of their AML/CFT obligations and ML/TF risks were made prior to Q4 2021.

Overall conclusions IO3

636. Market entry controls are generally effective, although deficiencies remain in relation to BO checks. The lack of verifications in the event of a change (of directors/shareholders/BO) within FIs and DNFBPs operating in the form of joint-stock companies not subject to supervision by the ACPR or CCAF is a major deficiency. The three supervisors' understanding of risks associated with the majority of FIs and DNFBPs under their supervision is incomplete.

637. While the on-site inspections carried out by SICCFIN appear to be adequate, only recently (2019) have they been underpinned by a certain risk-based approach (RBA) which impacts the frequency of inspections for just for the four types of regulated professionals among those most at risk. The intensity of the inspections is not determined risk based and there is no follow-up process on the deficiencies identified. SICCFIN's Supervision Unit suffers from a significant lack of human resources and appropriate IT tools. Efforts to raise awareness on the ML/FT risks and AML/CFT obligations have been made over the past two years by SICCFIN, and more recently by the Chairperson of the Monaco Bar Association. Monaco's supervision policy has been more an awareness-raising exercise in relation to AML/CFT obligations than a supervision aligned to the international standards including the use of sanctions. This makes it difficult to demonstrate the positive impact of supervision on the level of reporting entities' compliance. Sanctions for failure to comply with the AML/CFT obligations are few, not proportionate to the deficiencies identified, not dissuasive, and imposed two to five years after the on-site inspections. **Monaco is rated as having a low level of effectiveness for IO.3.**

¹²⁹ Website of the [Monaco Bar Association](#) (viewed on 22 March 2022).

7. LEGAL PERSONS AND ARRANGEMENTS

7.1. Key findings and recommended actions

Key findings

- a) Detailed information on the ways of creating the various types of companies is publicly available in Monaco.
- b) The authorities have a fairly satisfactory understanding of ML/TF risks associated with the activities of the various types of legal persons, which is reflected in the NRA 2 (non-public version). However, this is based solely on data from the FIU. The risk understanding is more limited when it comes to the way in which legal persons are or may be misused for ML/TF and with regard to ML risks associated with associations and foundations.
- c) According to the assessment, the civil-law partnerships, particularly those operating in the real property sector, are at the greatest ML/TF risk, followed by limited liability companies operating in the yachting sector, those operating in the financial or real estate sectors, followed by the joint-stock companies.
- d) The risk mitigation measures applicable to civil-law partnerships, which represent 79% of the companies in Monaco, are basic and their supervision made difficult by the large number of entities. The authorities believe that a number of civil-law partnerships appear to be inactive.
- e) Given the limited supervision, the basic information kept in the Register of Civil-law Partnerships (RSC) appended to the Trade and Industry Registry (RCI) is not necessarily kept up to date. Timely access for the authorities to accurate and current basic information on civil-law partnerships is not always guaranteed. The same is true of associations. Only the business name and address of the registered office of civil-law partnerships are accessible to third parties after they have sent a letter and paid a fee to the DEE.
- f) Although there are certain limits on controls, various effective risk mitigation measures are in place for commercial companies (including the company authorisation system, the establishment of a registered office and the obligation to provide financial statements for some types of companies).
- g) The measures in place to ensure transparency of associations and foundations are not adequate.
- h) The combination of searches on the RCI and the Official Gazette websites gives the competent authorities timely access to accurate and current basic information on commercial companies. FIs, DNFBPs and the public can access this information free of charge, although manual searches, may be necessary for information which is to be found only on the website of the Official Gazette.
- i) A Register of Beneficial Ownership (RBO) and a Register of Trusts (RdT) have been created and are in the process of being completed. Although there have been

obligations to register since 2020, only 41% of legal persons (31% of civil-law partnerships and 78% of commercial companies) have declared their beneficial owner(s) in the RBO. A total of 66 trusts have been declared in the RdT. The efforts made to encourage companies to comply are not sufficiently effective and no sanctions have been imposed. Associations and foundations are not subject to the obligation to obtain or register their BOs in the RBO. With the exception of SICCFIN for the RBO, the competent authorities do not have digital access to information in the RBO and the RdT.

- j) The authorities make use of the BO information available to FIs and DNFBPs. To do this, they must firstly identify the FIs and DNFBPs in a business relationship with the legal person or trust concerned. The private sector, including FIs, displays moderate effectiveness in terms of identifying BO. It is possible that some FIs and DNFBPs may not have information about some beneficial owners of clients of theirs which are legal persons. Timely access for the authorities to accurate and current beneficial ownership information by this means is not guaranteed.
- k) The sanctions available for failure to comply with the registration requirements, including when changes occur, are not dissuasive, and are still denominated in francs in some cases, proving the little use made of them.

Recommendations

Monaco should:

- a) Enrich its analysis of ML/TF risks associated with legal persons and the authorities' understanding: (i) by looking at the vulnerabilities in terms of transparency of legal persons, (ii) incorporating certain additional vulnerabilities, including those related to the types of persons (natural/legal) and the geographical origin of members/shareholders and BO, (iii) incorporating an ML risk analysis for associations and foundations and (iv) diversifying the sources of information used, including data from LEAs and foreign counterparts.
- b) Strengthen the measures that mitigate the ML/TF risks associated with civil-law partnerships by obliging them, *inter alia*, to use the services of an FI, or a DNFBP in Monaco. Implement the controls and sanctions necessary to ensure compliance as well as the obligation to have a bank account in Monaco for commercial companies.
- c) Modernise IT tools and make more human resources available to the DEE in order to (i) implement procedures and strengthen the checks it carries out when updating the registries (RCI, RSC, RBO and RdT), and (ii) ensure that the DEE can carry out controls in the context of the mitigation measures as prescribed under recommendation b.
- d) Resolve the technical deficiencies concerning (i) the definition of BO (see c.10.10) and (ii) the lack of a legal provision requiring basic information on associations and foundations to be entered in a registry, and establish mechanisms to ensure that this information is accurate and updated in a timely manner as per c.24.3 and c.24.5. Make associations and foundations subject to BO obligations as per FATF requirements and ensure that this accurate and current information can be timely accessed by the competent authorities in order to ensure transparency.
- e) Make available to the public, FIs, DNFBPs and competent authorities a modern IT tool with appropriate search fields which can be used to access quickly all basic information

referred to in c.24.3 in relation to all forms of Monegasque legal persons. Make an exhaustive list of inactive companies, particularly civil-law partnerships, and make this information visible in the tool, then take the measures necessary to dissolve them.

- f) Give the various competent authorities direct digital access to the RCI, the RBO, the RdT and FICOBAM.
- g) Run awareness-raising campaigns aimed at FIs, DNFBPs and persons making declarations to the RBO/RdT, including in the form of presentation meetings and by publishing guidelines, in order to strengthen their understanding of the concept of beneficial ownership, including the identification of beneficial owners where legal structures are complex.
- h) Take measures, including by imposing sanctions, to complete the RBO and ensure that all legal persons respect their obligations to declare and up-date their BO information.
- i) Enable FIs and DNFBPs to access timely and effectively information in the RBO and the RdT and contribute to the accuracy of the RBO and the RdT by reporting to the DEE any discrepancies identified.
- j) Review the sanctions available for breaches of declaration obligations so that they are dissuasive, especially with regards to civil-law partnerships. Use the sanctions regimes to enhance compliance.

638. The relevant Immediate Outcome for this chapter is IO.5. The relevant recommendations for the assessment of effectiveness under this section are R.24-25¹³⁰ and parts of R.1, 10, 37 and 40.

7.2. Immediate Outcome 5 (Legal persons and arrangements)

639. The various types of legal persons that can be created in Monaco are specified in Chapter 1, section 1.4.5 *Legal persons and arrangements*. As mentioned there, the three main types of companies in Monaco in July were *sociétés civiles* or civil-law partnerships (15 764 partnerships, making up 79%), *sociétés à responsabilité limitée* or private limited companies (2 782 companies, making up 14%) and *sociétés anonymes monégasques* or Monegasque joint-stock companies (1 207 companies, making up 6%). The types of companies regarded by the authorities as being the most at risk are (i) civil-law partnerships, including those set up as property businesses, (ii) private limited companies operating in the yachting sector and finance or property companies; and (iii) Monegasque joint-stock companies. Trusts do not exist under Monegasque law, though the law does allow foreign-law trusts to be established in Monaco or transferred to it.

640. The definition of BO in Monegasque law is restrictive in that it sets an absolute minimum threshold for ownership or control of 25% of capital or voting rights (see c.10.10).¹³¹ Although

¹³⁰ The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the PECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the respective methodologies, objectives and scope of the standards of the FATF and the Global Forum.

¹³¹ The definition of beneficial ownership given in Article 14 of SO No. 2.318 was amended during the on-site visit by Article 5 of SO No. 9.125 of 25 February 2022. Effectiveness is assessed on the basis of the definition of beneficial ownership that existed prior to that date.

minor, this technical deficiency can, in some cases, affect the identification of beneficial owners (as defined by the FATF) of companies by both the authorities and the private sector.

7.2.1. Public availability of information on the creation and types of legal persons and arrangements

641. Details of the different types of legal persons and the transfer of foreign-law Trusts to Monaco are given in the various legislative provisions, which are all accessible on the Légimonaco public website.¹³²

642. In addition, the Businesses section of the government's website,¹³³ which is accessible to the public in French and English, includes a large amount of practical information and questions/answers about the creation and different types of commercial companies and civil-law partnerships in Monaco. Dedicated pages give details of the advantages, characteristics and main legal obligations of the different types of companies. A comparison of the different types of commercial companies is provided in order to give an overview of the main differences between types of companies. The various requirements, stages and formalities involved in the creation of the desired type of company and the authorisations necessary to conduct a business in Monaco and obtain a business address are also detailed. There are also contact details of the public-sector and private-sector contacts useful for running a business in Monaco, including the Monaco Welcome & Business Office. It should be noted that the website does not give any information about the establishment or transfer of foreign-law trusts in or to Monaco.

643. Information about how to establish an association or foundation is also accessible to the public on the government's website.¹³⁴ It gives details of the principles and requirements, the various obligations and the formalities involved in establishing an association or foundation.

7.2.2. Identification, assessment and understanding of vulnerabilities of legal entities

644. The analysis of the ML risks associated with Monegasque legal persons included in NRA2 (non-public version), focuses on the different types of Monegasque companies. This section, which was written at the request of SICCFIN, consists of (i) a description of the general preventive obligations applicable to all companies, (ii) a description of the characteristics of the various legal forms of companies so that the vulnerabilities of each type of company can be identified, and (iii) a study of around 100 legal persons mentioned in the STR received by SICCFIN between 2018 and 2020, their recurrence and sectors of activity, used to determine the threats. The analysis ends with a representation of the risk level assigned with each legal form of company according to the threats and vulnerabilities identified.

645. The analysis underlines that limited liability companies (SARL) are vulnerable to the risk of ML due of their recent introduction (this legal form was created in 2007) and very rapid development (they made up 14% of Monegasque companies in 2021, but 68% of Monegasque commercial companies), the capital requirements applicable and the limited external supervision. SARL, including those pursuing activities in the yachting, management, financial and property sectors, are categorised as high risk, the authorities noting that Monegasque joint-stock companies are not as likely to feature in ML typologies due to the greater transparency. However,

¹³² [Link to Légimonaco \(French only\)](#)

¹³³ [Public Service of the Princely Government of Monaco, Businesses space](#) (viewed on 7 March 2022).

¹³⁴ [Public Service of the Princely Government of Monaco, Individuals section](#) (viewed on 7 March 2022).

they are categorised as high risk by the authorities because they feature in STRs more frequently. SCAs, SNSs and SCSs are considered to pose a low risk and there are not many of them.

646. Civil-law partnerships, including those operating in the real estate sector, are the type of company that poses the highest ML risk. The authorities, consider that their main weakness lies in their high number and the difficulties encountered by the DEE in carrying out exhaustive checks. In addition, their accounting obligations are limited to cash-based accounts (expenditures and revenues) which must be kept for five years, with no obligation to submit them to the Register of Civil-law Partnerships (RSC).

647. The analysis conducted by the authorities has enabled them to identify and assess the ML vulnerability of the various types of companies and to highlight the business sectors at greatest risk. While the results of the analysis appear to be consistent, some vulnerabilities were not examined in this first analysis, which does not cover access to and transparency of BO information or the geographical origin of managers, members or shareholders or BOs, including those from high-risk countries. It also bases its assumptions on data taken from a limited number of STRs received by the FIU between 2018 and 2020 and does not include any data from investigative or law enforcement authorities or foreign counterparts, or any analysis of TF risks. On the latter, the authorities informed the AT that the weaknesses brought to light by the ML study can also be exploited for TF purposes. Lastly, no consequences or action plan have been drawn or formalised by the authorities.

648. Therefore, while the understanding of ML/TF risks associated with activities pursued by the different types of Monegasque companies appears to be fairly satisfactory, the AT still has reservations as to whether the authorities have a full understanding of the ML/TF risks associated with Monegasque companies. During the on-site interviews there was no mentioning of risks related to the transparency of legal persons. Complex ownership structures or chains of ownership, front companies or concealment of the identities of real beneficial owners were not mentioned as ML/TF risk factors, except the DSP, which proved to be aware of the risks linked to the possible presence of straw men. It must also be pointed out that no Monegasque legal entity has been convicted of ML (see IO.7).

649. In addition, the ML risks associated with associations and foundations was not examined in the analysis and the authorities' understanding remain general. An initial analysis of the risks of misuse of associations and foundations for TF purposes was formalised during the on-site visit: "Risks of non-profit organisations being exploited for terrorist financing purposes" during the on-site visit (see IO.10).

7.2.3. Measures to prevent the use of legal persons and arrangements for ML/TF purposes

650. Monaco implements various measures to prevent the use of legal persons and arrangements for ML/TF purposes. One of the key measures is the company authorisation system, i.e. the obligation to have authorisation to (i) carry on a business in the form of a company (except a joint-stock company) or (ii) form a joint-stock company (SAM or SCA). Other measures include obligations to register in various registries, update information every five years, file accounts and hold a bank account in Monaco, although deficiencies are noted in terms of controls.

These measures do not apply to civil-law partnerships,¹³⁵ which constitute 79% of companies formed in Monaco and which pose the highest level of risk. As for associations, the main measures are obligations to declare and publish their statute and various changes occurring in the course of their existence. Foundations are also subject to stricter obligations, such as having their accounts approved by an auditor. The supervisory authorities have not taken any special steps to prevent the use of legal persons and arrangements for ML/TF purposes.

Commercial companies

651. To carry on a manufacture, commercial, industrial or professional business in Monaco, the managers and members of commercial companies (SARLs, SNCs, SCSs, i.e. except joint-stock companies) must obtain an authorisation.¹³⁶ Authorisation is also required to incorporate a joint-stock company (SAM or SCA). The DEE is in charge with managing the authorisation process, and the information provided by applicants is saved in an IT tool called “The workflow”. This tool enables various authorities to be consulted electronically for an opinion, including the DSP, which checks fitness and propriety,¹³⁷ and the DSF, which makes sure that applicants have no history of failing to pay tax. Where applications for authorisation relate to banking or financial activities, other authorities are also consulted (see section 6.2.1.).

652. The DEE collects opinions, summarises them and submits them to various levels of authority for confirmation. The final decision on authorisation is taken by the Prime Minister. Applications for authorisation can be refused if there is a lack of economic purpose, if the activity has enough practitioners already or in the event of a lack of fitness and propriety.

Table 7.1: Number of incorporations and refusals from 2016 to 2021

	2016	2017	2018	2019	2020	2021
Total number of incorporations	348	382	398	421	293	454
Total number of refusals	19	18	11	11	11	48
<i>Including refusals for lack of fitness and propriety</i>	10	13	5	3	4	10

Source: DEE

653. This system ensures that there is strict and effective control of market entry for most commercial companies and their directors, members and managers. In addition, if changes occur during the lifetime of authorised companies (registered office, managers, members, etc.), a new application for authorisation must be submitted to the DEE, which commences a new control process. However, there is an exception for joint-stock companies (SAMs and SCAs) in that no checks are carried out in the event of a change in the members of the management, the company's board of directors, the shareholders and hence potentially also its BOs. This partly limits the scope of the efforts made to prevent criminals and their associates from being involved in the ownership and management of Monegasque companies. There are additional checks on Monegasque companies carrying out financial activities (or MFO) as they are approved by the ACPR and/or CCAF (see section IO.3).

654. Another measure consists of checks on the registered offices of commercial companies in order to identify fictitious businesses in Monaco. As part of the process of dealing with initial

¹³⁵ Except for the company authorisation system, which is applicable to members and managers of civil-law partnerships carrying on a professional business (which make up a minority of civil-law partnerships) and the formation of civil-law joint-stock companies (which are also few in number).

¹³⁷ The DSP also carries out a fitness and propriety check on applicants for Monegasque citizenship in the context of the declaration system.

applications for authorisation to form companies or when requests to change the address of a registered office are made, the DEE refers the matter to the Labour Inspectorate who visit the address and delivers a favourable opinion through the Technical Committee. Despite the existence of this measure, the discussions with the DEE revealed that about 1-2% of letters sent to Monegasque companies are returned by La Poste Monaco to the sender and marked "not known at this address". The explanation given is that some companies fail to make requests to change the address of their registered office. Measures to revoke authorisations for failure to have a registered office can be taken as a last resort.

655. Also, any legal person that is deemed to be a trader and pursuing its business activity in Monaco must be registered in the Trade and Industry Registry (RCI) within two months. The registration process consists in sending to the DEE the necessary documentation giving basic information on the company which, following registration, is publicly accessible on the RCI's website.

656. Although the registration process is not digitised and is carried out in paper form, registrations must be processed by DEE officers within 48 hours. Because the search criteria on the RCI's website are currently limited, FIs and DNFBPs carry out their searches through the website of the Official Gazette, which includes all official state publications in Monaco. However, these searches are more time-consuming than viewing a registry of companies giving direct access to a dedicated page of the researched company. They may also lead to errors, particularly if the search functions are not well understood and/or through failure to search certain publications. These failings, which were confirmed by FIs and DNFBPs during the on-site visit, are detrimental to transparency.

657. All commercial companies must renew their registration in the RCI every five years. This is an administrative formality which is used by the DEE as a form of additional control enabling to check whether the data in the RCI is up to date and whether the entity meets the statutory or regulatory requirements. Once again, all checks on the compliance with this obligation are carried out manually, as the IT tool available to the RCI does not allow automatic checks. Between 2016 and 2020, the DEE sent 4 208 letters by post 15 days before the five-year deadline. If a letter is not replied to, the DEE sends a reminder and, if necessary, suggests to the Court of First Instance that the company be removed from the register. The Court then takes a decision. Although this effective measure helps to keep the RCI up to date, the five-year timeframe seems lengthy in the absence of any other control measures to ensure that information in the RCI is kept up to date.

658. Commercial companies are obliged to draw up a balance sheet, a profit and loss account and a management report. These documents must be sent to the general meeting of members or shareholders that is due within six months after the end of the financial year. Accounting documents must be filed in the RCI. Joint-stock companies are also required to submit to the RCI a certificate drawn up and signed by an auditor and a report on the accounts by an auditor within three months after the general meeting of shareholders is held. This certificate mentions: i) the names and addresses of the directors or managers and the auditor, ii) whether the annual accounts were approved or rejected, iii) whether the company is compliant with its business object, iv) the auditor's opinion on the financial statements, and the confirmation of the holding of annual general assembly. Other commercial companies must submit a certificate signed by the manager (endorsed by a member of the Association of Chartered Accountants in the absence of an auditor) to the RCI within three months after the general meeting of shareholders is held. The DEE scrutinises compliance with certain statutory or regulatory requirements when accounting documents are received.

659. A new measure introduced in July 2020 obliges commercial companies to hold a deposit account with a credit institution established in Monaco, subject to authorisation withdrawal. Companies have been given 12 months to comply with this requirement. The aim of the measure is to ensure that the competent authorities have access to information held by banks which is gathered by virtue of their due diligence obligations on their clients and BOs. However, it was not possible to assess the effectiveness of this measure as the checks on compliance with this new obligation had not begun by the time of the on-site visit. It will also depend on the quality of the information available to FIs about their clients and BOs (see section 7.2.4.).

660. There is no measure in place that publishes changes in ownership for partnerships and companies, which do not have any obligation to declare them to the authorities.

661. Although there are a number of risk mitigation measures for commercial companies, the authorities have not put together an action plan or taken any special mitigation measures in relation to SARLs operating in the sectors of yachting, management, finances and property or SAMs, which are regarded as posing a high level of ML/TF risk according to NRA 2.

662. Monaco has established a Register of Beneficial Ownership (RBO) of legal persons which is in the process of being completed. 78% of commercial companies, 31% of civil-law partnerships and a total of 41% of companies had declared their beneficial owners. SICCFIN is the only authority with direct access to the information that was held in the RBO. Since a large proportion of Monegasque companies have not submitted beneficial ownership information in the RBO, the searches do not yield results in the great majority of cases. It must also be pointed out that the legal and practical constraints on access for FIs, DNFBPs and third parties to information available in the RBO do contribute to making information more transparent.

663. FIs and DNFBPs can access information in the RBO and obtain a certified copy, by sending to the DEE, by post, an application comprising the following: (i) prior notice for the legal person concerned of the intention to view information concerning it, (ii) an application form for a certified copy of the RBO, (iii) a copy of the ID, and (iv) payment of a fee of EUR 15. Once this application has been received, the DEE informs the legal person concerned that an FI or DNFBP is requesting a certified copy of the RBO. Due to these constraints, FIs and DNFBPs informed the AT that they will not make such requests to the DEE, but will instead turn to their clients to obtain confirmation that information has been entered in the RBO.

664. Third parties can access information held in the RBO by following a similar procedure but must also mention in the request sent to the DEE a reason for consultation which must be related to ML/TF or corruption, and pay a fee of EUR 500. After receiving the request from the third party concerned, the DEE contacts the legal person and the beneficial owner(s), informing them that the person has asked to access the information. Disclosure of information occurs not through a copy of an entry in the register, but through access to information held in the RBO on the premises of the DEE, in the presence of an official, after a period of two months has elapsed since the DEE gave notice of the request for information to both the legal person and the beneficial owner(s) concerned. Here again, the statutory mechanism creates obstacles to discourage third parties from requesting access to information held in the RBO.

665. As at the last day of the on-site visit, no FI or DNFBP had requested a copy of an entry in the RBO from the DEE and no third party had requested access to information held in the RBO.

Civil-law partnerships

666. The statute of civil-law partnership and any changes are recorded in a document which is

being registered at the DSF, within 10 days after being recorded by a notary and within one month if it has been signed by the parties. The same applies to any transfer of shares. After that, the civil-law partnership must be registered within two months in the Register of Civil-law Partnerships (RSC) which is appended to the RCI. All basic information, apart from proof of formation, must be sent with the registration application that to the DEE. Once registration has been carried out by DEE officers, information concerning the entity's form, business name and registered office can be disclosed to third parties upon request for a small fee. No other information can be given to third parties, including FIs and DNFBPs, and there is no website enabling the public to access basic information on Monegasque civil-law partnerships. There is no mechanism in place to ensure that information in the RSC remains up to date during the lifetime of civil-law partnerships. This is detrimental to the transparency of information.

667. Civil-law partnerships have the same obligations to declare their beneficial owner(s) to the RBO as commercial companies. The same constraints apply in relation to access to information for FIs, DNFBPs and third parties.

668. As stated at the beginning of this section, except in a minority of cases, civil-law partnerships are – unlike commercial companies – not subject to the company authorisation system. Furthermore, they are not obliged to have a bank account in Monaco or submit annual accounts to the RCI; instead, they are only required to keep cash-based accounts and retain them for five years.

669. The authorities did not develop an action plan or take any additional risk mitigation measures following the analysis of ML/TF risks associated with partnerships conducted as part of the NRA 2. This observation must be seen in light of the fact that the civil-law partnerships operating in the real estate sector are at the greatest risk.

670. Therefore, the measures designed to prevent the use of civil-law partnerships for ML/TF purposes are basic and unsuited to the high-risk level mentioned in NRA 2. The very large number of these partnerships (79% of businesses registered in Monaco) prevents the DEE, which has limited IT and human resources, from carrying out effective controls and their lack of transparency makes them highly vulnerable. In addition, the authorities note that it is not impossible that some of them pursue business activities despite their non-commercial nature. Lastly, the authorities recognise that a large number (estimated at 20%) of civil-law partnerships appear to be inactive as their managers/members are aged 80 or over. Nevertheless, the authorities were not able to fully ascertained the number of civil-law partnerships to which this applies.

Associations and foundations

671. Associations can be formed freely without authorisation or any prior declaration. Only associations which want to acquire legal personality and capacity must be declared to the Prime Minister and must publish the declaration in the Journal de Monaco. In the event of changes to their statute, a new declaration must be made and published in the following month.

672. This information is accessible in the “Management of Associations” register which is held by the Ministry of the Interior. However, there are no legal provisions governing this register, which was created in the 2000s by the Ministry of the Interior. Some information can also be accessed online free of charge on the dedicated page entitled “List of Associations in Monaco”¹³⁸

¹³⁸ [Link](#) (accessed on 7 March 2022).

on the government's official website or by written request to the Ministry of the Interior. The information, including accounts, must be kept at the association's registered office and provided whenever requested by the Prime Minister or judicial authorities.

673. Foundations must be authorised by sovereign order and decision of the Council of State. Their details must be published in the Official Gazette so that they can have legal personality and capacity. There is no register of basic information on foundations. Foundations must forward their annual accounts to the Foundation Supervisory Committee (CSF), including a valuation of assets held, and retain them for five years. Their accounts must be approved by an auditor, who must inform the CSF of any irregularities identified. Donations and legacies to foundations must be authorised by the CSF. The limited number of foundations enables the CSF to examine their accounts and activity reports annually.

674. Associations and foundations are not subject to any obligations to keep information on their BOs in the RBO. The measures put in place to ensure that associations and foundations are transparent are not sufficient.

Legal arrangements

675. Trusts cannot be settled in Monaco under Monegasque law. However, the country has ratified the Hague Convention on the Law Applicable to Trusts and on their Recognition. Monegasque law also allows foreign-law trusts to be settled in Monaco (32 trusts in July 2021) or transferred to it and allows foreign-law trusts to be used to dispose of property *inter vivos* or after they die.

676. For the settlement of foreign-law trusts or the transfer of such trusts, Monaco requires a deed to be executed before a notary. In addition, these trusts must be administered by a trustee who is registered on a list kept by the Court of Appeal. Like CSPs and trustees, notaries are subject to all of the preventive measures set out in the AML/CFT Law and are supervised for AML/CFT purposes. However, the weaknesses reported in chapters 5 and 6 reduce to a certain extent the ML/TF risk mitigation effect that notaries, CSPs and trustees have. The same applies to legal persons incorporated, administered or run by these regulated professionals.

677. In terms of accounting, trusts are required to draw up an annual balance sheet including the endowment fund, a profit and loss account and, where appropriate, a valuation of the portfolio of securities held. These documents must be submitted to the RCI within three months after the financial year ends.

678. Lastly, the Monegasque authorities have created a register of trusts (RdT). Trustees must disclose various pieces of basic information and information on the BO of the trust to the DEE so that it can be entered in the RdT. The RdT is in the process of being completed and the competent authorities did not yet have electronic access to it at the time of the on-site visit (see section 7.2.5.).

679. Given the low materiality of trusts settled in or transferred to Monaco, the measures preventing the use of trusts for ML/TF purposes that Monaco has implemented appear to be proportionate.

7.2.4. Timely access for the competent authorities to adequate, accurate and current basic and beneficial ownership information on all types of legal persons created in the country

Basic information on legal persons

Commercial companies

680. When commercial companies are registered in the RCI, DEE officers check that the application complies with current legislative and regulatory provisions and if the supporting documentation corroborates. The currency of information in the RCI is based on commercial companies observing their obligations to declare it (within one month following a change) combined with the company authorisation system, which usually involves obtaining authorisation from the Prime Minister when the registered office is moved or a manager or member is replaced. There is also an obligation for commercial companies to renew their registration in the RCI every five years. Manual checks are in place for the RCI and are carried out in order to verify that these confirmations have been received.

681. However, it should be noted that 1-2% of letters sent to companies by the DEE are returned to the sender marked "not known at this address". This suggests that some information – in this case the address of the registered office, but it could also be other information – is not necessarily up to date in the RCI. But this only appears to affect a limited number of commercial companies, and it is reasonable to believe that the information available in the RCI is accurate and current in most cases.

682. SICCFIN, the DBT and the DSF have direct and instant dedicated digital access to basic information in the RCI through various search fields.

683. Other competent authorities, including the DSP and the Principal State Prosecutor's Office, regret that they do not have such access. To access basic information, they:

a) carry out searches on public government websites:

- the website of the RCI,¹³⁹ which can be searched by entering the legal person's business name and RCI number. The authorities thus gain immediate access to some basic information, but they do not have access to, for example, the list of members of the management board or the board of directors;

- the website of the Official Gazette,¹⁴⁰ which can be searched by multiple criteria, but where the number of results can be high and they may require additional filtering/sorting or even the viewing of publications, which can be a time-consuming way of finding the desired information.

b) through requests for information made to the headquarters of the DEE in the form of requests sent by the Prosecutor's Office, investigating judges, the DSP or SICCFIN. In these cases, requests are dealt with by DEE officers during the day or within 48 hours, and in urgent situations, the requesting party can access the information by coming to the headquarters of the DEE.

Table 7.2: Number of requests to the RCI concerning basic information made by the Prosecutor's Office and the DSP, 2016-2021

	2016	2017	2018	2019	2020	2021
Number of requests from Prosecutor's Office	13	22	33	30	30	37
Number of requests from DSP	11	8	11	6	8	13

Source: DEE

c) if necessary, by request to FIs or DNFBPs and, depending on the level of urgency, by going to

¹³⁹ <https://www.rci.gouv.mc/rc/> (French only)

¹⁴⁰ <https://journaldemonaco.gouv.mc/en>

the registered office of the FI or DNFBP. When SICCFIN sends requests by post to FIs and DNFBPs, it usually gives them 15 days in which to reply. This period is reduced to five or even two days in particularly urgent situations. The DSP states that as a general rule, FIs and DNFBPs reply to its requests within an average time of 15 days, but in urgent situations, it can obtain a response on the same day.

684. As such, it is reasonable to conclude that all competent authorities have timely access to adequate, accurate and current basic information on all types of Monegasque commercial companies.

Civil-law partnerships

685. The Register of Civil-law Partnerships (RSC), which is appended to the RCI, contains basic information on civil-law partnerships except proof of formation. However, the information does not necessarily stay up to date during the lifetime of partnerships even though this type of legal person carries the highest risk level (see section 7.2.3.).

686. The table below indicates the number of requests sent by the authorities to the DEE with regard to basic information on civil-law partnerships. While the processing of requests by DEE officers is such that information can be provided to the authorities in a timely manner (see under "Commercial companies"), it cannot be established that the authorities obtain accurate and current information in all cases. It should be noted that SICCFIN has had dedicated digital access to the RSC since December 2020.

Table 7.3: Number of requests made by the authorities to the DEE with regard to basic information, 2016-2021

	2016	2017	2018	2019	2020	2021
Number of requests from Prosecutor's Office	12	23	33	31	32	38
Number of requests from DSP	11	9	12	7	8	13
Number of requests from SICCFIN		Not available		4	6	24

Source: DEE

687. However, the authorities confirmed that they obtain timely access to some accurate and current basic information by sending requests to the DSF, which registers the memorandum and articles of association of the partnership, subsequent amendments to them and share transfer documents. The assessment team was unable to assess this mechanism in the absence of any documents or statistics sent by the authorities.

688. The assessment team believes that timely access for the authorities to accurate and current basic information on civil-law partnerships is not guaranteed in all cases.

Associations and foundations

689. While there is no legal provision regarding entry of basic information on associations and foundations in an RCI-type register, associations' constitutions and amendments to them are kept in a register in the Ministry of the Interior and published in the Official Gazette as well as being kept in a register at the association's registered office. The authorities informed the assessment team that they access information by searching the website of the Official Gazette or by making requests to the Ministry of the Interior. Requests are responded to in 72 hours or less. Because the system is based on declarations and no checks are carried out subsequently to make sure that information stays up to date, it cannot be said that the information held by the Ministry of the Interior which is on the associations webpage is up to date. The authorities access basic

information concerning foundations (about 20 of them) through information which is held by the CSF and is adequate, current and obtainable in a timely manner (within 72 hours or less).

Information on beneficial ownership of legal persons

Commercial companies, civil-law partnerships and GIEs

690. As stated in section 7.2.3., the authorities of Monaco have created the RBO, which is managed by the DEE. During the on-site visit, the RBO was in the process of being completed and only SICCFIN had dedicated access to it. However, it is planned that the judicial authorities, the DSP, the DSF, the Chairperson of the Monaco Bar Association and the CCAF will have access to it. Companies had until 27 June 2020 to submit beneficial ownership information. As at 17 February 2022, beneficial ownership information was held in the RBO in respect of 78% of commercial companies, 31% of civil-law partnerships and a total of just 41% of legal persons. Other than the sending of about 100 reminder letters, nothing has been done to encourage companies directly to honour this obligation and send their beneficial ownership information to the DEE to be entered in the RBO. Given the country's status as an international centre, the authorities have favoured contact with CSPs which are in regular contact with their clients. However, the figures below show that more needs to be done to ensure that all Monegasque companies comply. The low level of compliance by civil-law partnerships is particularly worrying given the high ML/TF risk level attributed to them.

Table 7.4: Compliance in terms of entering beneficial ownership information in the RBO as at 17 February 2022 broken down by type of company

	Number of companies registered	Companies that have declared their beneficial owners	Compliance level (%)
GIE	5	0	0
SAM	1 207	860	71
SCA	2	2	100
SARL	2 782	2 283	82
SCS	75	35	47
SNC	12	5	42
Civil-law partnership	15 764	4 872	31
Civil-law Monegasque joint-stock company	105	65	62
Total	19 952	8 122	41

691. In order to have information registered in the RBO, commercial companies, civil-law partnerships and GIEs must disclose beneficial ownership information when they are registered. A dedicated page on the government's website explains how beneficial owners are declared and enables users to download the registration application form to be sent to the DEE (hereinafter "form"). All registration processes are effected by submission of paper documents by companies (or professional representatives who have express signing authority).

692. The declaring company must provide in the form, in addition to the beneficial ownership details, information about how control is exercised by the declared beneficial owner, either (a) direct/indirect ownership of more than 25% of capital,¹⁴¹ (b) exercise of control by any other

¹⁴¹ Mention must once again be made of the restrictiveness of the definition of beneficial ownership in Monegasque law, which sets an absolute minimum threshold for ownership or control of 25% of capital or voting rights (see c.10.10).

means.¹⁴² If neither (a) nor (b) applies, the company's statutory representative must be declared as the beneficial owner. In addition, supporting evidence confirming the accuracy of declarations must be provided together with the form. The DEE checks that the evidence submitted corroborates the information given in registration applications.

693. A change made to the law in April 2021 requires companies to send documents proving the accuracy of the beneficial ownership information in the RBO registration form. A minority of companies which had already sent an RBO registration application form to the DEE had to resubmit it together with adequate supporting documentation.

694. The fact that no FIs or DNFBPs had accessed information in the RBO as at the last day of the on-site visit makes cross-assessment of the accuracy of information in the RBO difficult. However, the assessment team believes that the checks carried out by the DEE since the change in the law of April 2021 are adequate. During these checks, DEE officers must wait before entering beneficial ownership information, including where supporting documentation is missing or does not confirm information in the form. In this event, requests for additional information are sent to declaring companies.

695. With regard to the updating of the RBO, Monaco relies on companies honouring their obligation to inform the DEE of changes within one month. The controls mentioned above are also applicable if a request to amend information in the RBO is made. Provision has also been made for a discrepancy reporting mechanism: FIs, DNFBPs and the authorities must report to the DEE any failure to have information recorded or any discrepancy that they find between the information in the RBO and the information available to them. The DEE then makes a remark in the RBO about the reported discrepancy and asks the company to comply.

696. If companies do not comply, the prime minister contacts the President of the Court of First Instance, who can make an order to comply or to strike the company off the register. In practice, no reports have yet been sent to the DEE, because at the time of the on-site visit, FIs and DNFBPs had not made any requests to the DEE for copies of entries in the RBO and the majority of the authorities did not yet have access to the RBO. It should be underlined that although this mechanism has not yet been tested, it could quickly suffer from limitations because of the legal and formal constraints on the process whereby FIs and DNFBPs obtain copies of entries in the RBO (see section 7.2.3) and, if no other arrangements are in place, lead to the retention of obsolete and unusable information in the RBO.

697. Lastly, it should be underlined that the DEE (which manages the RCI, the RSC, the RBO and the RdT) points out that the IT tool that is used is obsolete and does not meet current needs and that a study was launched more than five years ago with a view to developing a new tool.

698. Pending completion of the RBO and the provision of access to the competent authorities, the latter are relying on the beneficial ownership information that is available to FIs and DNFBPs and make requests in order to access it.

699. The entry into force of legislative and regulatory provisions at the end of 2021 facilitated the creation of a register called FICOBAM in January 2022. It is intended to give various authorities direct access to information about the identity of the holders of bank accounts and safes in Monaco. During the on-site visit, only the FIU had access to FICOBAM, which can help it to identify FIs that have business relationships with legal persons in relation to which SICCFIN

¹⁴² Exercise, by any other means, of control over capital or the board of management or board of directors of the company or over the general meeting of shareholders.

wishes to obtain information, including with regard to their beneficial ownership. The use of FICOBAM has not been taken into account due to its recent creation.

700. However, the interviews with the private sector revealed that the concept of beneficial ownership is poorly understood by a majority of FIs and DNFBPs (see section 5.2.3). In addition, the criticisms made in SICCFIN's on-site inspection reports repeatedly mention either failures to identify beneficial owners, or a lack of reliable sources corroborating beneficial ownership or chain of ownership information, or very incomplete documentation in the files of clients who are legal persons and/or impossibility of linking the legal person and the beneficial owner. For this reason, the assessment team has doubts about the accuracy of beneficial ownership information available to the private sector, even if some institutions have information on the beneficial owners of clients of theirs who are legal persons. According to the authorities, the average time taken by FIs and DNFBPs to respond to requests from SICCFIN and the DSP is 15 days. This can be reduced to two days or even less in urgent situations. Statistics on average response times are not kept by the authorities.

701. Therefore, because of the deficiencies identified in relation to the use of the RBO and those with regard to obtaining beneficial ownership information held by FIs and DNFBPs, the measures giving the competent authorities timely access to accurate and current beneficial ownership information are judged to be only partly effective, and this affects the ability of the authorities to co-operate with foreign counterparts (see section 8.2.5).

Associations and foundations

702. There is no obligation for associations and foundations to obtain beneficial ownership information or declare it in a registry of information.

703. The authorities access information about the beneficial ownership of associations, federations of associations and foundations through requests made to FIs and DNFBPs. The deficiencies mentioned above apply.

7.2.5. Timely access for the competent authorities to adequate, accurate and current basic and beneficial ownership information on all types of legal arrangements

704. The authorities of Monaco have created a register of trusts (RdT). Both foreign-law trusts settled in or transferred to Monaco (32 trusts in July 2021) and foreign-law trusts which acquire real property or establish a business relationship in Monaco must be registered.

705. Trustees must disclose various pieces of information to be entered in the RdT, including the identities of the settlor(s), trustee, protector(s), beneficial owner(s) or group of persons in whose primary interest the trust was settled or is effective, any other person exercising control over the assets in the trust and the trust's ownership and control structure. The declaration must be accompanied by supporting documents establishing that the information to be recorded in the RdT is accurate.

706. During the on-site visit, there was still no official webpage explaining how changes are recorded in and declared to the RdT. However, a registration application form was available and a letter had been sent directly to the 30 trustees, MFOs and TCSPs to inform them of their obligation to have trusts administered from Monaco registered in the RdT. Upon receipt of applications for registration in the RdT, DEE officers check that the information in the application is consistent with the information given in the accompanying supporting documents. This information is entered in the RdT.

707. Because the RdT was in the process of being completed, the authorities did not yet have access to the register kept by the DEE. It is planned that SICCFIN, the judicial authorities, the DSP, the DSF, the Chairperson of the Monaco Bar Association and the CCAF will have access. Trustees had until 27 June 2020 to submit information to the RdT. At the time of the on-site visit, 66 trusts had been registered and 10 were in the process of being registered. Monegasque banks had 640 legal arrangements as clients in 2019, bearing in mind that a trust can be a client of several banks at once.

708. The updating of information held in the RdT is based on trustees honouring their obligations to declare it (within one month following a change or winding-up of the trust). Provision has been made for a discrepancy reporting mechanism similar to the one for the RBO. It is subject to the same limitations (see section 7.2.4).

709. Pending completion of the RdT and the provision of access to the competent authorities, authorities which need to obtain beneficial ownership information on a foreign-law trust settled in or transferred to Monaco¹⁴³ rely on the information available to notaries who may have registered the deed creating the foreign trust and the trustees named in a special list drawn up and updated by the Court of Appeal. While the quality of accessible information appears to be adequate according to the authorities, the average time taken to respond to requests from SICCFIN and the DSP as indicated in section 7.2.4 (15 days on average, except in urgent situations) is not considered to be timely.

7.2.6. Effectiveness, proportionality and dissuasiveness of sanctions

710. Various sanctions can be imposed on commercial companies, GIEs and civil-law partnerships, including in the event of failure to complete mandatory formalities in relation to registration, changes and submission. However, most of them are not dissuasive given the small amounts of the fines (see c. 24.13), and this may explain why they have not been imposed. For commercial companies, the authorities favour (i) strike-off from the RCI by the registrar and (ii) revocation of their authorisation.

Commercial companies, GIEs and civil-law partnerships

711. The sanctions that can be imposed on commercial companies and GIEs are set out below.

- a fine of between EUR 2.44 and EUR 3.35 for failure to be registered in the RCI;
- a fine of between EUR 3.66 and EUR 15.24 for failure to declare changes in basic information or if they do not confirm the accuracy of this information to the RCI every five years;
- imprisonment for between six days and three months and a fine of between EUR 15.24 and EUR 152.45 or one of these sanctions, and correction of inaccurate or incomplete entries if inaccurate or incomplete information has been given in bad faith.

712. For civil-law partnerships, a fine of between EUR 152 and EUR 1 524 can be imposed for a breach of the law concerning civil-law partnerships or a false statement.

713. None of these sanctions was imposed.

¹⁴³ Access for the authorities to basic and beneficial ownership information in respect of foreign-law trusts which acquire real property or form a business relationship in Monaco is not dealt with in this paragraph. No such trusts have been settled in or transferred to Monaco.

714. With regard to the updating of information on joint-stock companies, holders of bearer shares who have failed to submit up-dates to the issuing company lose the rights attached to the non-submitted shares and cannot sell the respective shares. There is no sanction for failure by the company to keep the register of shares up to date.

715. Companies have been struck off the RCI and the RSC for breaches related to mandatory formalities concerning registration, changes and/or filing documents in the various registries.

Table 7.7: Strike-offs from the RCI and RSC, 2016-2021

	2016	2017	2018	2019	2020	2021
Strike-offs from the RCI by the registrar (commercial companies)	29	32	54	11	9	9
Strike-offs from the RSC by the registrar (civil-society partnerships)	67	33	9	25	20	1

716. Authorisations have been revoked for breaches related to mandatory formalities concerning registration, changes and/or filing documents.

Table 7.8: Company authorisations revoked between 2016 and 2021

	2016	2017	2018	2019	2020	2021
Commercial companies (except joint-stock companies)	39	22	20	41	30	37
Civil-law partnerships (for the practice of a profession)	0	0	0	0	0	0
Joint-stock companies	0	N/A	0	5	N/A	2

717. Lastly, fines for misdemeanours and suspended fines for misdemeanours were imposed between 2017 and 2019 for failure to file accounts. The amounts of these fines are relatively low and half of the fines imposed in 2018 and 2019 were not recovered.

Table 7.9: Fines imposed for misdemeanours of failure to file accounts, 2017-2019

	2016	2017	2018	2019
Number of fines imposed	0	14	8	10
Average amounts (EUR)	0	943	788	1 150
Number of fines not recovered	0	5	4	5
Number of appeals pending	0	0	1	0
Number of suspended fines imposed	0	11	1	10

718. Following a change in the law at the end of 2019, the offence of failing to file accounts became a petty offence.

Table 7.10: Fines imposed for petty offences of failing to file accounts, 2019-2022

	2019	2020	2021	2022
Number of fines imposed	5	15	10	16
Average amounts (EUR)	600	507	550	531
Number of fines not recovered	1	1	0	0
Number of appeals pending	0	0	0	0
Number of suspended fines imposed	0	0	1	1

Sanctions in relation to beneficial ownership imposed on commercial companies, civil-law partnerships and GIEs

719. Criminal penalties in the form of a fine of EUR 2 250 to EUR 9 000 can be imposed: (i) on commercial companies, civil-law partnerships and GIEs for: - failing to obtain and keep adequate, accurate and current beneficial ownership and beneficial interest information, or failing to provide FIs and DNFBPs with all adequate, accurate and current information that they hold on their beneficial owners, or deliberately providing inaccurate or incomplete information, or failing to provide the prime minister with beneficial ownership information so that it can be entered in the RBO; (ii) on beneficial owners, for failing to provide the necessary information to commercial companies, civil-law partnerships and GIEs.

720. In addition, a fine of between EUR 75 and EUR 200 can be imposed on commercial companies, civil-law partnerships and GIEs for failing to submit additional or amending declarations to the RBO.

721. The President of the Court of First Instance or the member of the judiciary designated to this end has authority to deal with requests for an order to register them, make the necessary additional or amending declarations or correct incomplete or inaccurate entries, or remove commercial companies, civil-law partnerships or GIEs off the RBO.

722. None of these sanctions was imposed.

Associations and foundations

723. For associations: sanctions can be imposed on natural persons, and in some cases the association, for: i) failing to honour obligations to keep a register at the association's office (fine of between EUR 75 and EUR 200), ii) failing to obtain authorisation to accept disposals *inter vivos* or by will, iii) failing to declare changes and have them published in the Official Gazette, iv) failing to present the register kept to the authorities, iv) accounting breaches (fine of between EUR 200 and EUR 600), v) relying on an unobtained or revoked approval (fine of between EUR 2 250 and EUR 9 000), vi) remaining within an association or federation of associations that has been dissolved (six months to three years' imprisonment and fine of between EUR 2 250 and EUR 9 000), or vii) administering or continuing to administer an association or federation of associations following dissolution (fine of between EUR 9 000 and EUR 18 000). A court can order dissolution of an association in some cases. For foundations: fines of between EUR 18 000 and EUR 90 000 can be imposed on the managers of foundations that cause obstruction or do not honour their obligations in relation to accounting or annual accounts.

724. None of these sanctions was imposed.

FIs and DNFBPs

725. A fine of between EUR 600 and EUR 1 000 can be imposed if FIs or DNFBPs do not report the fact that they have not been registered or any discrepancy that they identify between information in the RBO and information that they hold.

726. No sanctions were imposed.

727. In light of the foregoing, particularly the small amounts of some of the fines that can be imposed, the fact that pecuniary sanctions are not imposed in relation to the updating of information in the RCI, RSC, RBO and RdT or in relation to associations and foundations, the small amounts of the fines imposed for failure to submit annual accounts and the fact that fines are not recovered in some cases, even though strike-offs from the RCI or RSC and revocations of authorisations have occurred in some cases, the AT concludes that the sanctions are not used effectively, proportionately or dissuasively.

Conclusions on IO.5

728. The understanding of the ML/TF risks associated with companies is fairly satisfactory with regard to activities pursued through the various types of companies. However, it is limited with regard to the way in which legal persons are or may be misused for ML/TF purposes and in general in relation to the ML risks connected with associations and foundations. The ML/FT risk mitigation measures for legal persons mainly relate to commercial companies and are more limited the civil-law partnerships, which the authorities consider as being high-risk. In most cases, the authorities have timely access through the public registries to adequate and current basic information on commercial companies. The picture is more mixed in relation to civil-law partnerships and associations. As regards BO information, the authorities access the information held by FIs and DNFBPs by making requests pending access to the RBO or RdT, which are in the process of being completed. The private sector, including FIs, is moderately effective in terms of identifying the beneficial owners of legal persons, and timely access for the authorities to accurate and current information is not guaranteed in all cases. Account is also taken of the minor deficiency in relation to the limitations in the definition of beneficial ownership in Monegasque law. Most of the various sanctions relating to obligations to declare, including changes, are not dissuasive and are rarely imposed. **Monaco is rated as having a moderate level of effectiveness for IO.5.**

8. INTERNATIONAL CO-OPERATION

8.1. Key Findings and Recommended Actions

Key Findings

- a) The judicial authorities in Monaco receive MLA requests and perform the necessary search measures adequately. Nevertheless, the domestic legislation imposes major and unusual obstacles to returning the responses to the requesting countries, which in practice weakens the authorities' efforts to co-operate, and may seriously hinder investigations abroad.
- b) The lawyers of individuals concerned by MLA requests have access to the content of the requests. Apart from breaching the confidentiality of the procedures, the law enables them to lodge appeals and thereby considerably lengthen the time taken to execute MLA requests. The procedure may accordingly be obstructed for years, preventing the return of the MLA requests to the requesting authorities.
- c) The Principality can refuse MLA requests involving fiscal matters (cf. R.37). Until 2018, some MLA requests involving income tax evasion were only partly executed on the ground of lack of dual criminality. Its impact on effectiveness has been limited following the introduction in the CC of the reversal of the burden of the proof in ML cases¹⁴⁴, but it cannot be ignored, in particular given Monaco's status as an international financial place.
- d) As regards extradition, Monaco refused more than one in two requests during the assessment period. This is mainly due to the restrictive interpretation of the dual criminality requirement and excessive and unreasonable procedural requirements.
- e) The authorities execute requests for property seizures properly. However, the aforementioned difficulties impact the MLA requests for confiscation.
- f) Monaco generally seeks the co-operation of its counterparts for investigative measures, although not entirely in line with the risk and context of the jurisdiction. Few requests for the freezing or seizure of property abroad were sent, with a recent upward trend. No requests for confiscation have been made, although in case of two ML convictions the property had left Monaco.
- g) SICCFIN co-operates with its counterparts, but with unusually lengthy response times in the context of financial intelligence exchange. This is mainly the result of difficulties in accessing data held by the reporting entities. The number of SICCFIN's requests to foreign counterpart is not fully in line with the county's risk profile.
- h) In spite of the obstacles to obtaining relevant information (see IO.6), the DSP co-operates appropriately with its counterparts through the main police networks and through liaison officers.
- i) The SICCFIN supervisory team has signed agreements with its counterparts and carried

¹⁴⁴ Presumption of ML

out a joint inspection. The authorities do not have recourse to international co-operation when approving new regulated entities or in connection with checks on directors or shareholders of Monegasque companies resident abroad.

j) The deficiencies in information concerning BOs have an impact on international co-operation.

Recommendations

Monaco should:

- a) Streamline the appeals and time limits provided for the MLA requests, including regarding confiscation, and consider derogating from the document retention period for executed MLA requests to facilitate their immediate return to the requesting authorities.
- b) Ensure the confidentiality of MLA requests, as required by the relevant international standards.
- c) Not rely on the dual criminality requirement or excessive procedural requirements to restrict extradition.
- d) Systematically search for property liable to be seized and confiscated abroad whenever relevant and seek the necessary provisional measures through international judicial co-operation.
- e) Substantially improve SICCFIN's response time to international co-operation requests.
- f) Ensure that: i) the SICCFIN systematically seeks the assistance of foreign counterparts when links with foreign countries are identified and ii) share information spontaneously whenever relevant.
- g) Enhance the DSP's ties with counterparts in neighbouring countries other than France.
- h) Use international co-operation between supervisory authorities for fit-and-proper checks, particularly concerning managers, directors, shareholders or BOs whose fit-and-proper status has already been checked by a foreign competent authority.

729. The relevant Immediate Outcome for this chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are R.36–40 and elements of R.9, 15, 24, 25 and 32.

8.2. Immediate Outcome 2 (International Co-operation)

730. Given its status as an international financial place and the size of the country, international co-operation, both ingoing and outgoing, plays a vital role in AML/CFT in Monaco.

8.2.1. Providing constructive and timely MLA and extradition

731. Monaco has acceded to the main conventions governing international co-operation and has bilateral extradition agreements. Nevertheless, the introduction in 2018 of Article 204-1 of

the CCP¹⁴⁵ constitutes a major obstacle to providing MLA in criminal matters. This article provides access for the lawyers of persons concerned by MLA requests to all its documents, except when the cases are declared secret (which rarely happens in practice). It also requires the General Prosecutor's Office (GPO) to keep the MLA request documents in Monaco for two months, i.e. without returning them to the requesting authority, to enable the lawyers to lodge appeals. Paradoxically, this amendment to the CCP was introduced by Law No. 1.462 of 28 June 2018 establishing the presumption of ML in Monaco.

MLA

732. MLA requests are received by the DSJ, which is the central authority on the matter. The DSJ does not have a prioritising system; however, that has had no impact on effectiveness, as all requests are forwarded on the same day to the GPO, which is the competent authority for their execution. The GPO shares informally relevant information on a real-time basis and provides partial urgent responses, based on the Palermo Convention.

733. The GPO lacks investigative powers (see IO.7) which prevents it from acting on requests for coercive measures or measures affecting fundamental rights, for which an intervention by an investigating judge (IJ) is required. In such cases, the GPO has to submit applications to an investigating judge seeking the execution of the MLA requests. In practice, this has little impact on effectiveness because the GPO submits such applications immediately and the IJ usually execute them without delaying the procedure.

MLA requests involving fiscal matters

734. Although Monaco may refuse MLA requests involving fiscal matters (cf. R.37), the authorities indicated that in practice this had never been a ground for refusal. However, the assessment team came across one instance of a partial execution of an MLA request from 2017, which involved income and corporation tax evasion. The DSJ had forwarded the MLA request to the GPO without citing any grounds for refusal – either on account of the fiscal nature of the offence being prosecuted or of failure to meet the dual criminality requirement. The GPO then had the request enforced by the DSP, but the President of the Court of First Instance did not grant the seizure of several bank accounts, on the ground that the offence was of a fiscal nature. Furthermore, the Monaco tax authorities refused to pass on the relevant real-estate data. Until the reversal of the burden of proof was introduced in the CC in 2018, the authorities were unable to fully execute any of these MLA requests.

735. Nevertheless, the authorities state that the difficulty in executing such MLA requests did not stem from their fiscal nature but from the type of tax involved. Income tax evasion is not recognised as an offence in Monaco. Accordingly, until 2018, when the authorities received MLA requests involving income tax evasion, they took the view that such offences could be prosecuted as fraud or scamming in Monaco in order to be able to execute the respective requests. To achieve that, upon receipt of MLA requests, the DSJ sought clarification regarding the offences, in particular regarding the potential failure to submit tax declarations or submission of false declarations. As an example, the authorities presented an MLA request received at the end of 2019 concerning the reimbursement of unpaid tax, which the Monaco authorities executed and returned in eight months. The delay was due to the appeal lodged by the lawyer of the person

¹⁴⁵ Art. 204-1 CPC was repealed on the 30 November and the decision published on Journal de Monaco on 16th December 2022

concerned.

736. The reclassification of the offences by the authorities is the reason why MLA requests concerning income tax evasion do not appear in the statistics below. Nevertheless, for the period assessed, the authorities stated that they received an average of one or two MLA requests a year¹⁴⁶ concerning income tax evasion committed abroad.

737. Following the introduction of ML as a separate offence in the CC in 2018, the Monaco authorities no longer face any obstacles to the execution of these MLA requests, as, in principle, they are now classified as ML rather than tax evasion. In the case of MLA requests still classified as tax evasion, the authorities seek to execute them nonetheless: they presented one example of not applying the dual criminality requirement in executing such an MLA request received in 2020, which indicates a degree of willingness to provide constructive MLA in connection with tax evasion.

Other MLA requests

738. Over the period assessed, the trend was stable, with an average of 100 MLA requests received every year. Most incoming MLA requests involved ML (average of 41 over the period) and fraud (35); followed, far behind, by corruption (seven) and tax evasion (two). Monaco did not receive any TF MLA requests from its foreign counterparts.

Table 8.1: Number of incoming MLA requests received, refused and executed, plus response time¹⁴⁷

	2016	2017	2018	2019	2020	2021	Av.	Total
Total number of incoming MLA requests	103	109	103	106	81	125	105	627
<i>Of which, for:</i>								
ML	46	54	40	39	25	41	41	245
Corruption	7	8	6	7	4	1	6	33
Fraud	34	28	37	24	27	25	29	175
Tax offences*	2	4	2	4	3	0	3	15
Other	14	15	18	32	22	58	27	159
Number of refusals	0	0	0	4	0	0	1	4
Number of MLA requests executed	147	104	102	108	74	117	109	652
Average time for execution (days)	94	119	77	140	193	95	120	N/A

*VAT and profit tax evasion

739. Over the entire period, the necessary measures were timely taken, and the MLA was executed within reasonable delays. In cases where the persons concerned do not make an appeal, the authorities have demonstrated their ability to respond to MLA requests in a timely manner. Moreover, in a complex case involving investigations into the assets of several persons, the authorities were able to execute the MLA in less than six months (see box below).

Box 8.1 Execution of an MLA request by the Monaco authorities

On 27 April 2020, the Public Prosecution Department received an MLA request directly from country A outside diplomatic channels. It involved conducting investigations into the assets of three individuals suspected of having committed fraudulent bankruptcy. The Public

¹⁴⁶ One in 2016, two in 2017, two in 2018, one in 2019, two in 2020.

¹⁴⁷ The fact that not all MLA requests are executed in the year they are received explains the inconsistencies in the statistics.

Prosecution Department issued applications for execution a few days later, on 15 May. The investigating judge immediately issued an enforcement order to the DSP the same day.

The MLA request was executed in full by the police on 1 October 2020, and returned to the Public Prosecution Department by the investigating judge on 2 October 2020. The request was therefore executed in full in less than six months. The MLA execution documents were returned to the requesting authority on 10 December 2020, following the expiry of the two-month period provided for in the CCP.

740. The average time to execute an MLA request has, however, almost doubled in recent years, from 94 days in 2016 to 193 days in 2020. The authorities put this on the impact of the COVID crisis and the complexity of certain cases. Nevertheless, the AT would point out that the trend started in 2019, i.e. before the start of the sanitary crisis and only a few months after the introduction into the CCP of Article 204-1 which generates various obstacles to effective international co-operation.

741. The first obstacle is that, once an MLA request has been executed, usually within a few days, it cannot be returned to the requesting country immediately. The GPO must wait two months after executing MLA requests before returning them to the requesting authority. During that period, the documents are retained by the GPO pending any appeals by the persons concerned.

742. This approach itself is a major obstacle to international co-operation because it enables individuals concerned by MLA requests to lodge appeals not only in the requesting authorities' country, where they are being prosecuted, but also in Monaco as the requested country. The courts in Monaco therefore rule on the validity of execution measures in cases where they have no knowledge of the merits. If, in spite of the lawyers' objections, they decide to authorise the execution of the measures sought in the MLA requests, the lawyers can appeal against such decisions. Therefore, the executed MLA request remains pending for years, without being returned to the requesting authority. Since 2018, where appeals had been lodged, no MLA request had been returned to the requesting country. This seriously undermines the effectiveness of international co-operation and, consequently, of national investigations in requesting countries, whose authorities sometimes end up having to drop the charges for lack of evidence.

Box 8.2: Case H.

In early 2018, Monaco received an MLA request from country A concerning an international corruption case involving the award to a leading company in a key sector of drilling rights in a third country. Mr H, a director and chief executive of a company that received large sums of money, is resident in Monaco.

The prosecution service in country A requested the seizure of banking documents and computer data by MLA request on 26 February and 26 April 2018. A few days later, on the order of the investigating judge, the DSP executed the MLA requests. In accordance with Article 204-1 of the CCP, the documentation was only sent to the requesting country once two months had elapsed. During that period, the lawyers lodged an application for annulment, on the ground that the documentation seized went beyond that requested by the prosecution service in country A. On 26 September 2018, a hearing was held before the Council Chamber of the Court of Appeal (CCCA).

On 6 June 2019, the CCCA ruled that the requested authorities had exceeded the MLA request, on the ground that they had seized all of the accused's documents and computer data, whereas country A had sent Monaco a list of keywords defining the scope of the measures to be carried out. The CCCA annulled the search and all the seizures.

On appeal by the GPO, the Court of Review ruled on 7 November 2019 that only the seizure of the documents not covered in the MLA request could be annulled, not the entire procedure.

On 5 February 2021, the Court of Review held that the investigating judge should authorise the removal of the seals and hand over a copy of all the computer data to Mr H's lawyers to enable them to choose what they believed could be included in the MLA and which data should not be passed on to the prosecution service in country A.

From March 2021 up to the date of drafting of this report, various procedural incidents have occurred regarding how to choose the documents to be handed over, and what can or cannot be included in the case pursued in country A. To date, the MLA and all the documentation seized have still not left Monaco; more than four years after the initial request, it has not been possible to return the executed MLA request even in part, with the risk that the ongoing investigations in the requesting country will be statute-barred.

743. It should be mentioned that the AT noted a significant difference between cases where the person concerned was not in Monaco (or was not represented in the case) and those who used the possibilities offered by the procedure for their defence. In the latter case, the provisions of the CCP make it possible for the person concerned to obstruct international co-operation by greatly delaying the return of the MLA request to the requesting authority, thereby rendering it ineffective.

744. While the DSJ and the GPO do execute most MLA requests in a timely manner, in some cases the persons concerned have recourse to Article 204-1 of the CCP to block the return of the requests for months, or even years (see box above). While the number of appeals for MLA requests has been generally low, is systematically used in the high-profile cases.

745. In the cases presented by the authorities, the return of MLA requests takes eight months where no appeals are lodged, and up to over four years where the person concerned exhausts all the possibilities offered by the CCP. This does not happen in the more ordinary cases, which are the most numerous, which explains the lower impact in statistical terms. Nevertheless, (i) in view of Monaco's status as an international financial place, and (ii) in terms of the materiality and hence the overall effectiveness of the co-operation, this situation has a substantial impact given the significance of these cases. This demands major improvements to the system.

746. The second problematic issue posed by Article 204-1 of the CCP is the lack of confidentiality of MLA requests. The article provides that "*the lawyers of persons subject to measures executed pursuant to letters rogatory provided for in Article 204 may inspect the appended execution documents*" during the two-month period for which the MLA request must be retained. Although there is a provision for the authorities to declare MLA requests secret, the requesting authorities must provide the necessary evidence to justify such decisions, as they are open to appeal. Monaco has not thought of drafting or providing its foreign counterparts with information concerning these unique procedural requirements regarding MLA. This provision has significant consequences for international co-operation because (i) requesting countries do not usually request secrecy, as they generally take it for granted that the procedure will be confidential, and because (ii) it enables the lawyer of the person concerned to discuss the content of the MLA request with their clients, without anyone else know about it.

747. The number of refusals to execute MLA requests remained marginal, demonstrating the willingness of the Monaco authorities to co-operate. The procedural measures needed are carried out satisfactorily, both by the DSJ and by the GPO. Three of the four refusals involved failure to comply with the procedural requirements for MLA requests. However, the authorities did not

provide their counterparts with any information regarding those procedural requirements needed in Monaco to successfully provide MLA.

748. The fourth MLA request refused involved the investigating judge's refusal to recognise a foreign prosecution service as a counterpart authority. Until 16 May 2019, when the Court of Appeal issued a decision interpreting the legislation, investigating judges in Monaco only accepted jurisdiction in the case of MLA requests issued by foreign investigating judges. In contrast, they did not accept requests issued by prosecutors during preliminary investigations, on the ground that they did not recognise foreign prosecution services as counterpart authorities of investigating judges, as investigations conducted by the latter were not judicial procedures. This situation had a significant negative impact in practice because it delayed the execution of an MLA request and undermined the confidentiality of preliminary investigations. Nevertheless, the GPO showed commendable proactivity in (i) finding an alternative solution to facilitate the execution of the MLA and (ii) referring the case to the Court of Appeal, thereby enabling the interpretation of the law to be confirmed. As of 2019, this obstacle has no longer existed.

749. Feedback from the global network on MLA in criminal matters is mixed. Some jurisdictions refer to their requests being refused and to occasional inadequacy of the information received, in particular regarding data relating to bank accounts and BOs. Excessive formalism in communications and lack of follow-up or even lack of responses to MLA requests were also mentioned.

Extradition

750. Monaco receives an average of eight extradition requests a year, four of which were for ML and one originally qualified as TF then re-qualified as related to organised crime (see IO.9). Ultimately, the latter case turned out to be ML (see IO.9).

Table 8.2 : Incoming extradition requests

	2016	2017	2018	2019	2020	2021	Av.	Total
Number of requests received	10	10	11	7	5	11	9	54
<i>Of which, for: ML</i>	2	0	0	1	1	0	1	4
<i>TF</i>	0	0	1*	0	0	0	N/A	1*
Number of refusals	4	8	8	4	1	4	5	29
<i>Of which, refusals for ML</i>	1	0	1	1	0	0	1	3
Number of requests executed	6	2	3	3	1	3	3	18
<i>Of which, for ML</i>	1	0	0	0	0	0	0	1
Number of requests pending	0	0	0	0	3	0	1	3
<i>Of which, for ML</i>	0	0	0	0	1	0	0	1
Average time for execution (days)	98	96	200	65	32.5	159	108	N/A

**The request actually concerned organised crime.*

751. The statistics in the above table show an unusually high level of rejection of extradition requests of almost 55% (more than one out of two). Although Monaco does not extradite its citizens (see R.39), in practice, that has not been the subject of any refusal. The on-site interviews revealed that the high level of refusals was put down to three factors: (i) the dual criminality requirement and restrictive interpretation by the courts, (ii) refusal to extradite on the grounds of prison conditions in the requesting state and (iii) restrictive interpretation of the time limit for the requesting state to submit the original documents for the extradition request.

752. As far as (i) is concerned, in the case of extradition, the authorities in Monaco interpret the principle of dual criminality restrictively, requiring the offence to have the same name ("nomen juris") in both states (see R.39.3).

Box 8.3: Refusal of extradition to the United States

Extradition to the US is based on a bilateral agreement dated 15 February 1939. In 2018, the US sought the extradition of an individual for conspiring to commit several types of fraud, including wire fraud, and insider trading. Although the GPO held that this involved an offence of fraud and banking and financial fraud, (covered by the bilateral agreement), because it was obvious that in 1939 no existed on wire fraud, the interpretation of the courts was that the dual criminality requirement did not apply, as it was not the same offence. The extradition was refused.

753. As regards (ii), the authorities refused the extradition on the ground that the European Court of Human Rights had found that the conditions in the requesting country's detention facilities were unacceptable. Even though this exception to extradition is provided for in relevant international standards, the Strasbourg Court has pointed out that "*although the historical position is of interest in so far as it may shed light on the current situation and its likely evolution, it is the present conditions which are decisive*" in order to assess the risks in the case of an extradition that has not yet taken place.¹⁴⁸

754. Lastly, as regards (iii), in some cases (for instance, judgment of 27 May 2021), the Court of Appeal held that if the 40-day time limit for submitting extradition requests had passed without Monaco receiving the full documentation duly translated into French, requests were inadmissible and hence extradition was refused. Article 4 of the bilateral agreement with the US provides for the release of the accused if the extradition request is not formalised within 40 days of the receipt in Monaco of the original documents duly translated into French. The Court of Appeal does not interpret Article 4 as a limitation of the provisional arrest but as entailing inadmissibility of the request. In practice, this results in Monaco rejecting the case concerned and thereby seriously hinders co-operation in terms of extradition, as illustrated below.

Box 8.4: Rejection of a request for extradition to the US

On 3 September 2018, an individual was placed in pretrial detention for the purpose of extradition at the request of the US, which sent the extradition documents on 2 October 2018, in English. On 30 October 2018, i.e. after the time limit provided for in Article 4 of the bilateral agreement, the Monaco authority determined that the formal request (translated and authenticated) had not been submitted within the dead-line and therefore ordered the immediate release of the individual concerned.

On 28 November 2018, the US Ambassador submitted a new *note verbale* to Monaco, with the amendments indicated in the decision of 30 October 2018, in particular the French translation of the documents already submitted with the note verbale of 2 October 2018.

However, the Monaco authorities regarded this note verbale as a new extradition request, separate from the one covered by the proceedings between the detention of the individual concerned and 30 October 2018, and rejected it on the ground that the procedure had been

¹⁴⁸ *Shamayev and Others v. Georgia and Russia*, judgment of 12 April 2005, § 360. <https://hudoc.echr.coe.int/eng?i=001-68790>

served to the individual's lawyer, not the individual themselves, even though it was a fresh extradition request (separate from the one served on them in person before 30 October 2018).

755. Feedback from the global network refers to occasional problems in terms of Monaco's execution of extradition requests, in particular delays.

Identification, freezing, seizure and confiscation of assets

756. The number of incoming MLA requests to freeze, seize and confiscate assets received by Monaco was relatively stable over the assessment period, with an annual average of seven MLA requests concerning ML and seven concerning other offences. No requests concerning TF were received during the period concerned.

Table 8.3: Incoming requests for asset freezing, seizure and confiscation

Year	Total			Breakdown of incoming requests executed				Amount (€)
	Received	Executed	Pending	Freezing	Seizure	Confiscation	Average time for execution* (days)	
2016								
ML	7	7			6	1	64	16 209 399
Other	5	5			4		111	19 819 508
2017								
ML	11	10	1		7	1	55	8 750 340
Other	10	10			5		263	3 024 333
2018								
ML	3	3			3		23	4 338 037
Other	4	4			4		15	214
2019								
ML	6	5	1				353	27 179 337
Other	5	5			4		151	127 279
2020								
ML	8	6	2		3		60	8 486 765
Other	9	6			3		44	120 295
Average								
ML	7	6	1	0	4	0	100	12 138 274
Other	7	6	0	0	4	0	102	13 131 014
Total								
ML	39	35	4	0	23	2	N/A	72 829 641
Other	39	36	0	0	26	0	N/A	78 786 086

**The time for execution concerns requests for seizure only*

757. In general, Monaco executes incoming seizure requests properly. One request was refused in the assessed period, on the ground that it did not involve confiscation of specific property but the enforcement of a fine imposed by a foreign court. The time between seizure and confiscation

noted in the table above, is largely due to the time which the foreign authorities take to send confiscation requests; nevertheless, the delays for the proceedings in Monaco ranges from one to four years. The authorities explained that the situation is due to various factors: (i) possible appeals, (ii) requests for adjournments to respect the rights of the defence and (iii) time taken for serving writs (in particular for individuals living abroad), arranging hearings and for deliberations. The assessment team does not believe that these factors are such as to justify the length of the procedures. They have an impact because Monaco does not have a mechanism for managing frozen or seized property (see R.4), which may result in reduction in the value of the property concerned.

8.2.2. Seeking timely legal assistance to pursue domestic ML, associated predicates and TF cases with transnational elements

Mutual legal assistance

758. The authorities in Monaco regularly seek mutual legal assistance from their foreign counterparts in cases involving ML and associated predicate offences. Over the assessment period, although there was a slight fall in overall outgoing MLA requests, the trend for ML was upward, as the number of requests more than doubled between 2016 and 2020. Nevertheless, the assessment team believes that the extent to which Monaco seeks assistance from its counterparts is still not proportionate to the risk or the context of the jurisdiction.

Table 8.4: Number of outgoing MLA requests made, refused and executed

	2016	2017	2018	2019	2020	2021	Av.	Total
Total number of outgoing MLA requests	122	119	105	98	93	175	119	712
<i>Of which, for:</i> ML	12	22	12	11	28	31	19	116
Corruption	7	6	4	1	0	0	3	18
Fraud	52	42	48	48	38	62	48	290
Tax offences*	0	0	0	0	0	0	0	0
Other	51	49	41	38	27	82	48	288
Number of refusals	0	0	0	0	0	0	0	0
Number of MLA requests executed	75	72	52	49	25	78	59	351
Time taken for execution (days)	207	229	242	189	162	161	198	1190

*VAT and profit tax evasion

759. Most outgoing MLA requests involve fraud, followed, in much smaller proportions, by ML and corruption. That is only partly in line with Monaco's risk profile. The authorities did not issue any MLA requests concerning tax offences during the assessment period. Moreover, in terms of ML, in spite of a large number of MLA requests received, the trend in domestic investigations is not the same. That seems to suggest that foreign authorities detect many more cases of ML involving Monaco than the authorities in Monaco identify on their territory (ML with transnational elements (see I.O.7)). This raises questions about the country's ability to use MLA to pursue domestic cases.

760. This situation may stem from the fact that when cases involve different jurisdictions (which occurs frequently), the courts in Monaco sometimes simply relinquish jurisdiction to the foreign courts. The authorities explain this by the fact that the accused are very often Monegasque residents who are not physically present in the country. Therefore, when the accused are also under investigation for ML in the relevant foreign jurisdiction, the GPO stated that, following case-

by-case analysis, in the context of exchanges with foreign counterparts, they relinquish the cases to their foreign counterparts so as to facilitate prosecution, while at the same time providing co-operation through incoming MLA requests from the jurisdictions concerned, or the spontaneous sharing of information. Although this practice usually leads to foreign prosecutions against the accused and does demonstrate ability to co-operate on the authorities' part, it runs counter to the pursuit of domestic cases with transnational elements – which the seeking of MLA should facilitate.

761. The authorities also referred to difficulties in obtaining MLA in criminal matters from certain jurisdictions which are nevertheless identified (especially through the NRA) as crucial in terms of AML/CFT. This explains why Monaco makes fewer requests to them. The authorities say that they are making increasing efforts to remedy this issue, in particular by initiating partnerships with certain jurisdictions classified as non-co-operative. While these initiatives are welcomed, they are too recent to have an impact over the assessment period.

762. Nevertheless, the assessment team note that the GPO's efforts in certain more complex cases are proving successful. For instance, in 2020, a joint investigation team was set up with France for the first time, in a case involving aggravated pimping and drug trafficking. More recently, the authorities issued an MLA request to their French counterparts to conduct a search, which led to a conviction in November 2021 (see Box 3.5, I0.7).

Extradition

763. The number of extradition requests varied over the period, with a total of 55, including 15 in 2018 and 14 in 2020. They mainly involved breach of trust, theft and attempted theft, fraud and fraudulent bankruptcy, which is only partly in line with Monaco's risk profile. Monaco made five extradition requests for ML to their foreign counterparts, two of which were refused because the accused had been released by the respective authorities. Monaco did not make any extradition requests involving TF.

Table 8.5: Extradition requests issued by Monaco

	2016	2017	2018	2019	2020	2021	Total
Number of requests issued	3	8	15	7	14	8	55
<i>Of which, for ML</i>	0	0	3	0	2	0	5
Number of refusals	1	1	5	2	2	2	13
<i>Of which, for ML</i>	0	0	2	0	0	0	2
Number of requests executed	2	7	10	4	2	4	29
<i>Of which, for ML</i>	0	0	1	0	0	0	1
Number of requests pending	0	0	0	1	10	1	12
<i>Of which, for ML</i>	0	0	0	0	2	0	2
Average time for execution (days)	80	107	233.5	255	133	90	N/A

Identification, freezing, seizure and confiscation of assets

764. According to the authorities, three MLA requests for seizures were issued between 2016 and 2020 (two for ML and one for fraud), and three in 2021. Thus, even in cases where MLA requests are issued and where co-operation is smooth and satisfactory, provisional measures requests are rarely made. The authorities maintained that this was down to a desire to facilitate the task of their foreign counterparts.

765. The examples provided in terms of seizure of assets concerned the laundered property

which has been transferred abroad, but not seizure of assets of corresponding value. The authorities stated that the practice of seeking value-based seizures through letters rogatory will expand in future. The assessment team welcomes the clear upward trend emerging in 2021 with three outgoing requests issued (i.e. the same number as over the previous five years).

766. Monaco did not issue any MLA requests for confiscation. Of the four sentences for ML pronounced, Monaco achieved only two confiscations (see IO.8). The authorities maintained that no confiscations took place in the other two cases because no property had been identified in the country. Nevertheless, they did not issue confiscation or assets identification requests to their foreign counterparts in those particular cases. This lack of proactivity is unfortunate and means that criminals are not effectively deprived of the proceeds or instrumentalities of their crimes.

8.2.3. Seeking other forms of international co-operation for AML/CFT purposes

SICCFIN (FIU)

767. SICCFIN has been a member of the Egmont Group since 1995 and regularly shares information with its counterparts. It also co-operates with authorities that are not its counterparts. Although SICCFIN does not need memorandums of understanding to co-operate with other FIUs, it has signed 61 such agreements to facilitate co-operation with countries which so require.

768. The number of inquiries sent by SICCFIN to its foreign counterparts was stable over the first three years of the assessment period (approximately 38 a year), and then rose sharply in 2019 (+280%). According to the authorities, this increase was linked to several factors, including the implementation of the 4th EU Anti-Money Laundering Directive and the expansion in SICCFIN's human resources. The requests sent by SICCFIN to its partners mainly went to Italy, France and Switzerland, which is in line with the jurisdiction's risk profile. The authorities did not give details of the content of the inquiries.

Table 8.6: Requests by SICCFIN to its foreign counterparts

	2016	2017	2018	2019	2020	2021	Total	Av.
Outgoing requests	43	32	39	109	84	51	358	60
Spontaneous sharing of information	17	14	20	29	5	5	90	15

769. SICCFIN seems to issue few requests to its foreign counterparts given (i) Monaco's status as an international financial place and (ii) the large number of predicate offences not identified, which the authorities explained as offences committed abroad. This lack of proactivity is mainly the result of SICCFIN's lack of resources, both human and technical, and obstacles to gaining access to the relevant information, which makes identifying or detecting ML/TF offences more difficult (see IO.6). It should nevertheless be noted that the number of requests increased over the assessed period, owing to the increase in the FIU's staff and the improvement in the quality of the STRs. This also reflects SICCFIN's willingness to seek the assistance of its international counterparts more actively.

770. SICCFIN only rarely shares information spontaneously with its foreign partners, *i.e.* on average 15 times a year over the period. According to the authorities, the information shared mainly concerned the outcomes of investigations which, for lack of evidence, had not led to reports being submitted to the GPO, but which were likely to be of interest to foreign authorities for investigations in their countries. No further details were provided on this topic.

SICCFIN (supervisory authority)

771. In terms of supervision, SICCFIN has a longstanding agreement (2003) with the French supervisory authority (ACPR) and recently signed co-operation agreements with the Swiss (FINMA, 2019) and the Luxembourg (CSSF, 2021) supervisory authorities. These agreements cover 27 of the 29 credit institutions in Monaco. The French supervisory authority has stressed the regular co-operation with SICCFIN.

772. Nevertheless, the only joint inspection was conducted in 2021, on the basis of a co-operation request from the Swiss supervisory authority dating from 2017 (the assessment team were advised that the delay was due to the sanitary crisis). The authorities underlined the usefulness of the joint inspection for both countries. No other instances of SICCFIN co-operating with its counterpart supervisory authorities were reported.

773. The authorities do not co-operate spontaneously with their foreign counterparts in connection with market-entry checks for FIs and DNFBPs, or when approving new regulated entities or when a director, a shareholder or a BO resident abroad (except France¹⁴⁹) has already been subject to checks by the counterpart authorities.

DSP

774. The DSP co-operates with its foreign counterparts through various secure channels, i.e. Europol, Interpol, CARIN, police networks and liaison officers (CHEOPS) (as regards France).

775. The judicial authorities state that they regularly turn to the DSP to obtain information through international police co-operation, which they maintain is prompt and effective. Outgoing requests mainly involve obtaining information for ongoing investigations, in particular the identification of BOs and bank accounts. This information also enables the GPO and investigating judges to decide on the appropriateness of issuing MLA requests in the cases in question.

776. From 2015 to 2016, the number of requests by the DSP to its counterparts almost halved. However, over the assessment period, it increased steadily, which seems to show an increasing commitment by the authorities to seek assistance from their foreign counterparts.

Table 8.7: Information requests from the DSP to foreign counterparts

Year	2015	2016	2017	2018	2019	2020	2021
Interpol	643	336	432	494	503	352	440
CHEOPS	N/A	N/A	2 659	3 128	4 260	3 293	3 587

777. The statistics concerning CHEOPS show a growing co-operation between France and Monaco. The close links between the DSP and its French counterparts in terms of geographical proximity, training and, indeed, nationality of senior DSP staff have been conducive to the police authorities from both sides meeting physically at least weekly and even immediately if necessary. This practice, which greatly facilitates informal co-operation, is not applied with other neighbouring countries, in spite of a considerable number of cases involving them.

8.2.4. Providing other forms of international co-operation for AML/CFT purposes

SICCFIN (FIU)

778. The number of requests received by SICCFIN from its foreign counterparts rose slightly

¹⁴⁹ The authorities in Monaco have access to the French police file.

until 2019, with an average of 114 requests received annually. They mainly involved identified banking transactions or natural or legal persons with business activity in Monaco. SICCFIN has never refused requests from foreign FIUs. In turn, spontaneous information sharing by foreign FIUs grew steadily until 2019 (+300%), mostly involving France, Italy and Russia.

Table 8.8: Requests received by SICCFIN from foreign counterparts

	2016	2017	2018	2019	2020	2021	Total	Av.
Number of requests	107	124	124	114	100	100	669	112
Spontaneous sharing of information	23	38	65	70	57	61	314	52
Response time	0 to 30 days	53%	62%	59%	69%	62%	45%	N/A
	31 to 60 days	19%	18%	15%	12%	17%	18%	N/A
	More than 60 days	28%	20%	26%	17%	21%	37%	N/A
								25%

779. However, the response time is unusually lengthy in the context of FIU work. For over 20% of requests, responses take more than two months. SICCFIN explained this by the delays needed to access information (banking and other) held by the private sector entities, which is not always timely obtained (see IO.6). Furthermore, authorities reported that they generally proceed in two stages and send an initial response within the first few days upon receiving the request from a foreign FIU, although there were no statistics provided to illustrate this. In any case, in general, these delays have major consequences for international co-operation and demand major improvements to the system.

780. Feedback from the global network regarding their co-operation with SICCFIN is mixed, with delays, sometimes reminders needed to be sent, and even failure to get a response in certain cases.

781. Nevertheless, SICCFIN was able to demonstrate examples of successful co-operation with its counterparts (see box below).

Box 8.6: Co-operation between FIUs with postponement powers

On 12 November 2018, the FIU in Monaco received an urgent request for information from a counterpart in country A.

The request stated that a call for tenders concerning public procurement in the medical sector had been held in country A. Several companies had submitted bids and the contract had been awarded to firms X and Y, of which Ms V was director. However, the call for tenders had seemed suspicious on several fronts.

The foreign FIU stated that the State Prosecutor in country A had initiated proceedings in respect of suspected abuse of an official position, breach of public procurement procedures, money laundering and other offences. It also stated that, in October 2018, funds had been transferred from offshore company C from an account abroad to an account in Monaco of offshore company D. The transfer was justified as sale of shares in company B to company C.

The FIU sought “the refusal or postponement” of the transaction totalling several million euros in an account in Monaco.

Investigations at the financial institution in Monaco revealed that the sum had since been transferred to an account held in the same bank in Monaco by company E, of which Ms V was also the BO. The foreign FIU was immediately notified of this transfer and altered its request to seek “the refusal or postponement” of the funds in company E’s account.

In the light of the above, the SICCFIN blocked the funds and notified the Monaco judicial

authorities.

Further to recent information, the SICCFIN has learned that the judicial authorities in the requesting country brought charges in April 2021 against Ms V for abuse of authority and money laundering.

SICCFIN (supervisory authority)

782. The SICCIN supervisory team did not receive any requests for co-operation until 2017. It co-operates with its counterparts in France (ACPR), Switzerland (FINMA) and Luxembourg (CSSF), with which it has signed agreements. SICCFIN holds regular meetings to exchange information about the private institutions concerned with its counterparts, on its initiative or at their request.

DSP

783. The DSP systematically receives requests from foreign counterparts, mostly through Interpol, and to a much lesser degree through SIENA and CARIN (Europol). The response times (maximum of three days) are appropriate. The DSP uses information received from counterparts, cross-checks it with its own databases and, when evidence suffice, starts investigations on the basis of the information received. In some cases, this has led to criminal prosecutions (see IO.6 and 7).

784. Moreover, the DSP is receiving an increasing number of requests from its French counterparts, through the liaison officer. To date, only one request has been received through AMON (Europol), from Spain.

Table 8.9: Requests received by the DSP from foreign counterparts, and responses

Year	2016	2017	2018	2019	2020	2021
Interpol	88 392	99 337	84 146	97 543	83 960	92 208
Responses	N/A	N/A	180	457	258	553
CHEOPS	N/A	N/A	N/A	N/A	N/A	N/A
Responses	N/A	3 272	3 703	4 810	5 772	4 238
CARIN	3	6	5	3	8	14
AMON	0	0	0	1	0	0
SIENA (exchanges)	10	17	23	23	11	9

785. The DSP does not have direct access to banking data (see IO.6). As a rule, in ordinary proceedings, reporting entities respond to its requests within around a fortnight. As regards international co-operation, the DSP can make urgent requests, in which case it receives the data the same day. In general, the quality of the co-operation by the police with their foreign counterparts is satisfactory. Feedback from the global network shows that co-operation with the DSP is good and timely.

8.2.5. International exchange of basic and beneficial ownership information of legal persons and arrangements

786. The competent authorities (judicial authorities, the DSP and SICCFIN) have mechanisms for exchanging basic and BO information of legal persons. However, international co-operation here remains limited and inadequate, as: (i) the RBO was still incomplete and unreliable at the date of the on-site visit (see IO.5) and (ii) access by the competent authorities is restricted in that neither the judicial authorities nor the DSP have direct access (see IO.6).

787. Therefore, to obtain BO information, the DSP has to approach the private sector entities. If the requests from foreign counterparts are not urgent, the DSP does not stipulate any deadlines in its official requests. When the requests involve several entities, the information is usually received within two months, with much shorter delays when the request is made to a single entity. Moreover, if the DSP stipulates deadlines or stamps the request as "urgent", the information is usually received the same day. Although the authorities state that they are satisfied with the quality of the information received, deficiencies in the identification of the BOs by the private sector (see IO.4) have an impact in practice.

Overall conclusions on IO.2

788. Although the prosecution authorities seek to execute MLA requests satisfactorily, major and systemic legislative obstacles, particularly uncommon, hinder the provision of MLA by Monaco. In practice, this is reflected in unusually lengthy response times or even refusals to provide assistance in complex cases. As far as extradition is concerned, owing to the restrictive interpretation of the relevant legal requirements by the courts, more than one in two requests are refused.

789. The competent authorities seek assistance from their foreign counterparts to a certain extent, although limited if considering to the risk and the context of the jurisdiction. Only two requests to freeze or seize assets were made during the assessment period, and none for confiscation.

790. The delays in which the SICCFIN responds to its counterparts are inadequate. This is mainly due to difficulties in accessing information from the private sector. Police co-operation is adequate, but the deficiencies in the BO identification have an impact on effectiveness. The co-operation between supervisors is still limited. **Monaco is rated as having a moderate level of effectiveness for IO.2.**

TECHNICAL COMPLIANCE ANNEX

791. This annex provides detailed analysis of Monaco's level of compliance with the Financial Action Task Force (FATF) 40 Recommendations. 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 (MER).

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 dated 19 September 2013. That report is available (in French) at: <https://www.coe.int/en/web/moneyval/jurisdictions/monaco>.

Recommendation 1 – Assessing risks and applying a risk-based approach

Criterion 1.1

792. Monaco conducted its first ML/TF National Risk Assessment (NRA) between December 2015 and March 2017 using the World Bank (WB) methodology. The first NRA was published in June 2017. The second NRA (also based on the WB tool) was conducted using data from the 2017-2019 financial years (including for the sector vulnerability analysis) and was extended to data for 2020 or even 2021 where available, usable and relevant (essentially to take account of changes in the law and the latest practices). Three SICCFIN working groups worked on the NRA: one which analysed the ML/TF threat, another which focused on national vulnerabilities and a third which looked at the sectoral approach. Developments in relation to financial inclusion and crypto-asset risk also form part of this analysis.

793. Two public meetings (interim briefings) were held in relation to NRA 2 on 12 November 2020 and 15 April 2021 and were attended by numerous representatives of the public and private sectors. The results of NRA 2 were presented in July 2021 and the public version of it was released in November 2021.

Criterion 1.2

794. SICCFIN is the national authority tasked by the government with conducting a process of national assessment of ML/TF risks which aims to identify, assess, understand and mitigate the risks of ML/TF and proliferation of weapons of mass destruction to which Monaco is exposed, as provided by a sovereign order (Article 48 of the AML/CFT Law).

Criterion 1.3

795. SICCFIN is responsible for keeping the NRA up to date (Article 48 of the AML/CFT Law).

Criterion 1.4

796. SICCFIN is responsible for giving professionals information that is helpful for their own risk assessments (Article 48 of the AML/CFT Law). A meeting to present the results of the first National Risk Assessment to the private sector and the relevant authorities was held on 13 and 14 June 2017, and the public report was then published on SICCFIN's website. A public meeting to present the results of the second National Risk Assessment, which was completed at the end of June 2021, was held on 22 July 2021. The public version was released in November 2021.

Criterion 1.5

797. SICCFIN proposes – to the government where appropriate – an action plan designed to

reduce the risk level revealed by risk assessment results (Article 36-1 of the AML/CFT Law). Additional resources were allocated following the first NRA and for the purposes of the actions set out in the action plan that was adopted subsequently to it.

798. The national AML/CFT/CPF strategy was adopted by the government on 26 January 2022. However, because it had been adopted only recently, risk-based reallocation of resources had not been implemented at the time of the on-site visit. Although the action plan arising out of NRA 1 has been implemented to a large extent, no action plan giving details of specific, quantified and prioritised measures has been adopted to date since NRA 2 was adopted.

Criterion 1.6

799. There are no exceptions to the application of the FATF Recommendations.

Criterion 1.7

800. (a) Where the ML, TF or corruption risk appears to them to be high based on a risk analysis, regulated entities must take enhanced due diligence measures (Article 12-2 of the AML/CFT Law). However, this is not equivalent to taking enhanced due diligence measures on the basis of risks identified by the country.

801. (b) Regulated entities must take appropriate due diligence measures having regard to the NRA among other things (Article 3 of the AML/CFT Law). However, the legislation does not oblige FIs and DNFPBs to ensure that information concerning the most significant ML/TF risks is included in their risk assessments.

Criterion 1.8

802. FIs can implement simplified measures, but only after analysing ML/TF and corruption risks (Article 11 of the AML/CFT Law). This risk analysis must take account of the national risk assessment.

Criterion 1.9

803. The authorities empowered to monitor compliance with AML/CFT obligations by regulated professionals are: SICCFIN for all regulated professionals, the GPO for notaries (*notaires*) and bailiffs, and the Chairperson of the Monaco Bar Association for defending lawyers (*avocats-défenseurs*), lawyers and trainee lawyers. These supervisory authorities must ensure that the provisions of the AML/CFT Law are applied and that Recommendation 1 is followed by FIs and DNFPBs (Articles 54 and 57 of the AML/CFT Law). However, the deficiencies identified in Recommendations 26 and 28 apply.¹⁵⁰

Criterion 1.10

804. FIs and DNFPBs must define and put in place steps to identify and assess the ML, TF or corruption risks to which they are exposed and a policy tailored to these risks (Article 3 of the AML/CFT Law).

805. With regard to the identification and assessment of ML, TF and corruption risks, regulated entities must take account of factors inherent in their clients, products, services, delivery channels, development of new products and new business practices, including new delivery mechanisms and the use of new or developing technologies in connection with new products or

¹⁵⁰ Recommendations 26 and 28 are rated PC.

pre-existing products.

806. In particular, regulated entities must establish a risk classification based on the nature of the products or services offered, the transaction terms offered, the delivery channels used, the characteristics of the clients, countries or geographical areas and the country or territory of origin or destination of the funds.

807. (a) FIs and DNFBPs must document their risk assessment, keep it up to date and keep it available to SICCFIN, the GPO or the Chairperson of the Monaco Bar Association, as applicable (Article 3, paragraph 5, of the AML/CFT Law).

808. (b) FIs and DNFBPs are required to consider relevant risk factors before determining the level of overall risk and the level and type of the appropriate mitigation measures (Article 3, paragraph 4 of the AML/CFT Law).

809. (c) FIs and DNFBPs are required to document their risk assessment, keep it up to date and keep it available to the supervisory authorities (Article 3, paragraph 5, of the AML/CFT Law).

810. (d) The risk assessment must be made available to SICCFIN, the GPO or the Chairperson of the Monaco Bar Association, as applicable (Article 3, paragraph 5, of the AML/CFT Law).

Criterion 1.11

811. (a) FIs and DNFBPs are required to develop and put in place internal arrangements and procedures commensurate with their nature and scale to tackle ML, TF and corruption, having regard to the risk assessment. The internal arrangements and procedures must be approved by a member of a senior level of the organisation (Article 27 of the AML/CFT Law). A “senior member of the organisation” is a member of the senior management, a manager or an employee who holds a position senior enough to enable them to take decisions with an impact on their institution’s ML/TF risk exposure (Article 1, paragraph 19, of SO No. 2.318).

812. (b) Under the supervision of the board of directors, the supervising board or any other body exercising supervisory powers, managers of regulated entities must take the corrective measures necessary to remedy identified incidents immediately and identified shortcomings within a reasonable time (Article 30-2 of SO No. 2.318). In addition, the supervisory board, board of directors or any other body exercising supervisory powers must approve a report drawn up annually pursuant to Article 33 of the AML/CFT Law with regard to the internal control arrangements and incidents, shortcomings and corrective measures taken (Article 30-3 of SO No. 2.318). Lastly, the internal control system must, as a minimum, comprise procedures setting out the internal control activities that regulated entities shall undertake in order to ensure that they honour their AML/CFT obligations (Article 30-4 of SO No. 2.318).

813. (c) Where the ML, TF or corruption risk appears to them to be high based on a risk analysis, regulated entities must take enhanced due diligence measures (Article 12 of the AML/CFT Law).

Criterion 1.12

814. Simplified due diligence measures can be taken where, following risk analysis, the business relationship or transaction appears to pose a low ML/TF or corruption risk, provided that there is no suspicion of ML/TF or corruption (Article 11 of the AML/CFT Law) (see the analysis of criterion c.1.8).

Weighting and conclusion

815. In essence, the identified deficiencies relate to the inadequacy of the steps taken thus far to take account of the results and conclusions of NRA 2. **Principality of Monaco is rated Largely Compliant with R.1.**

Recommendation 2 – National co-operation and co-ordination

Criterion 2.1

816. On the basis of the NRA, SICCFIN proposes an action plan designed to reduce the highlighted risk level (Article 36-1 of SO No. 2.318). Monaco has developed and widely implemented an action plan following on from the 2017 NRA, which effectively targeted the main risks identified. It should be noted that since this NRA does not mention TF risk, the action plan does not include any measures relating to it.

817. Following on from NRA 2, a national AML/CFT/CPF strategy was adopted by the government on 26 January 2022. Although it takes account of the national vulnerabilities identified by the NRA, it does not target the identified risks as such. The action plan is currently being developed and will be rolled out gradually according to priorities.

Criterion 2.2

818. SICCFIN acts as the secretariat of the Co-ordination and Follow-up Committee for the National Strategy for Tackling ML/TF, Proliferation of Weapons of Mass Destruction and Corruption. The Committee's members represent all government departments and its role is to co-ordinate the national strategy for tackling ML/TF, the proliferation of weapons of mass destruction and corruption, ensure that the strategy is implemented, put forward proposals to make it more effective and address any matters of mutual interest in relation to the co-ordination and implementation of the national strategy.

Criterion 2.3

819. The AML/CFT and Corruption Liaison Committee has been established and is accountable to the Prime Minister. Its purpose is to ensure that all government departments concerned by these issues co-operate and share information. It includes a senior representative of every government institution and representatives of every category of regulated entities, and meets at least twice a year (Article 49 of SO No. 2.318).

820. The purpose of the AML/CFT and Corruption Contact Group, which is accountable to the Head of the DSJ, is to make the co-operation and co-ordination mechanisms established at operational level more effective (Article 51 of SO No. 2.318).

821. The purpose of the Co-ordinating Committee for Government Departments with Financial Activity Supervisory Responsibilities, which is subordinate to the Ministry of Finance and the Economy, is to facilitate information-sharing and co-ordination between the departments responsible for supervising FIs and DNFBPs (Article 1 of SO No. 15.530) and it meets at least four times a year (Article 3 of SO No. 15.530).

822. In terms of co-operation between these three entities, this exists insofar as they have members in common (including SICCFIN, which is a member of all three, and the DSJ, which participates in the Contact Group and the Liaison Committee, or the Department of Finance and the Economy, which presides over the Co-ordination Committee and, by delegation from the Prime Minister, the Liaison Committee).

Criterion 2.4

823. On 25 February 2022, Monaco established an AML/CFT, Proliferation of Weapons of Mass Destruction and Corruption Contact Group. The purpose of this group, which is subordinate to the Head of the DSJ, is to ensure that the departments concerned by AML/CFT/CPF and corruption share information with each other and to address any matters of mutual interest at operational level.

824. In addition, on 6 December 2021, Monaco established a Co-ordination and Follow-up Committee for the National Strategy to Tackle Money Laundering, Financing of Terrorism, the Proliferation of Weapons of Mass Destruction and Corruption (Article of SO No. 8.964).

Criterion 2.5

825. SICCFIN and CCIN have been working together for several years to ensure that AML/CFT requirements are compatible with data protection and privacy measures. CCIN was consulted by the government on the texts of the draft laws and was able to make comments and suggest amendments, many of which were adopted.

826. Furthermore, where, in the course of its duties, SICCFIN wishes to know about the scope of Law No. 1.165 on data protection or where CCIN officers want details about the application of the AML/CFT Law in practice, telephone discussions are arranged so that these questions can be answered.

Weighting and conclusion

827. National co-ordination and co-operation in relation to AML/CFT/CPF are carried out through numerous mechanisms. However, the AML/CFT/CPF strategy does not take account of the risks identified by the NRA as such and the action plan is not being updated. **Principality of Monaco is rated Largely Compliant with R.2.**

Recommendation 3 - Money laundering offence

828. In the 4th Round MER, Recommendations 1 and 2 were rated Largely Compliant (LC) with no deficiencies in terms of technical compliance.

Criterion 3.1

829. Monaco is a party to the Vienna Convention (ratified in 1991) and the Palermo Convention (ratified in 2003).

830. Money laundering (ML) is criminalised under Article 218 of the CC. The *actus reus* consists of (a) acquisition of property through direct or indirect use of property or money of illicit origin; (b) possession or use of such property; (c) taking action in any process of transfer, placement, concealment or conversion of property or money of illicit origin, without prejudice to provisions concerning receipt of stolen property. *Mens rea* is required for the ML offence because the person must have acted “knowingly” (see 4th Round MER, paragraphs 132-133). The provisions of this article are compliant with the Palermo Convention (Article 6(1)) and the Vienna Convention (Article 3(1)(b)&(c)). The offence of laundering by negligence has been added to the CC in Article 218-2 as required by the Vienna Convention (see 4th Round MER, paragraph 134).

831. In addition to Article 218 of the CC, special provisions concerning the ML offence for proceeds from the sale of narcotic drugs which are compliant with certain elements of the Vienna Convention are set out in Law No. 890 of 1 July 1970 on narcotic drugs. For proceeds of offences that are transnational in nature and involve an organised criminal group, the provisions of implementing SO No. 605 of 1 August 2006 are compliant with certain elements of the Palermo

Convention (see the 4th Round MER, paragraphs 129-135 and 142).

Criterion 3.2

832. The predicate offences for ML include the vast majority of categories of serious offences, as required by the FATF Standards (see the 4th Round MER, paragraph 141). More specifically, all offences carrying a term of imprisonment exceeding one year (Article 218-3 of the CC) are regarded as predicate offences in Monaco.

833. Owing to the specific nature of its national taxation system, only a limited range of tax offences is provided for (VAT fraud and profit tax fraud, Article 114 of the Turnover Tax Code making reference to Articles 1-5 of SO No. 653 of 25 August 2006 on the taxation of profits and VAT). In practice, other tax offences are re-categorised as fraud or forgery offences, on condition of having documentary proof. Accordingly, there is a deficiency in cases where the *actus reus* of the offence entails false disclosure made verbally, for which no re-categorisation is possible in Monaco.

Criterion 3.3

834. Monaco has adopted an approach that combines the threshold method with a list of offences. Article 218-3 of the CC (as amended by Law No. 1.462 of 28 June 2018) describes proceeds of offences carrying a prison term exceeding one year as “property, money and revenue of illicit origin”. This represents an improvement by comparison with the previous evaluation, which noted that the minimum sentence required for a predicate offence was three years (see paragraph 142 of the previous MER). In addition to this threshold requirement, there is also an exhaustive list of specific offences in the second paragraph which has also been amended, *inter alia* in order to insert new provisions in relation to the Environment Code.

Criterion 3.4

835. According to Article 218 of the CC, the laundering offence applies to all types of property, money or revenue of illicit origin, regardless of value. Article 218-3 criminalises all “proceeds” of offences punishable under Monegasque law which carry a prison term exceeding one year, as well as the aforementioned specific offences (see c.3.3). Direct and indirect proceeds are covered by the phrase “*illicit origin*”. This has also been confirmed by the Monegasque case law that was mentioned in the 4th Round MER (see paragraph 136) and there have been no changes since then.

836. Under Monegasque law, the concept of “property” is comparable with “funds”, which broadly encompasses all assets, whether pecuniary or non-pecuniary, tangible or intangible (Article 1 of SO No. 2.318, which implements the AML/CFT Law). Pursuant to an amendment of 25 February 2022, the concept of funds now also includes virtual financial assets (within the meaning of Article 1 of Law No. 1383 of 2 August 2011). This only concerns virtual assets that are identified (by a legal instrument or documents evidencing title to such assets or associated rights). The ML offence therefore extends to property of all kinds, regardless of value, which is of illicit origin.

Criterion 3.5

837. Article 218 of the CC requires property, money or revenue to be of “*illicit origin*” for it to be demonstrable that property constitutes proceeds of crime. As such, a prior or simultaneous conviction for the predicate offence is not required. In addition, a presumption has been established by Law No. 1.462 of 28 June 2018 to make it easier to prove that property is of illicit origin. The presumption applies where it is obvious that the only possible reason for “*the factual*,

legal or financial circumstances in which the transactions took place" was to conceal the origin or beneficial owner of the property, money or revenue for the purposes of money laundering or financing of terrorism (Article 218-4 of the CC). Indeed, persons have been convicted of money laundering in Monaco without having been convicted of the predicate offence.¹⁵¹

Criterion 3.6

838. The predicate offences for ML include acts committed in another country where they are offences and would have been predicate offences had they been committed in Monaco (Article 218-1 of the CC).

Criterion 3.7

839. Article 218 of the CC, which criminalises the ML offence, is also applicable to persons who have committed the predicate offence. This has also been confirmed by Monegasque case law.

Criterion 3.8

840. The intent required for the ML offence can be inferred from objective factual circumstances (Article 218, 1°, last paragraph, of the CC). This includes the knowledge that is required to prove the ML offence because this article stipulates that the person must have known of or suspected the illicit origin of the property, money or revenue (the concept of suspicion was introduced by a legislative amendment of 11 February 2022). This is highlighted by the Monegasque case law mentioned in the 4th Round MER (see paragraph 157) and confirmed by some more recent decisions.

Criterion 3.9

841. In terms of sentencing for natural persons who commit ML offences, Monaco's legislative framework provides for a prison term of between five and 10 years and a fine of between EUR 18 000 and EUR 90 000 (Article 218, 1°, of the CC); the maximum amount can be multiplied by ten to make EUR 900 000 (Article 26, paragraph 4, of the CC).

842. If aggravating circumstances are present, the prison term is 10 to 20 years (Article 218, 2°, of the CC), and the amount at the top end of this range can be multiplied by 20. The list of aggravating circumstances is as follows: the fact that the perpetrator acted as a member of a criminal organisation, was involved in other international organised criminal activities, held public office, was involved in other illegal activities that were facilitated by the offence, involved minors in it or has been convicted by a foreign court of ML in certain situations. When it was last amended (on 11 February 2022), a new aggravating circumstance was added: the fact that the offence was committed by a natural person subject to the AML/CFT Law (Articles 1 or 2 of the AML/CFT Law) or was committed by a natural person within an organisation or legal person subject to the AML/CFT Law while the natural person was discharging their duties.

843. There are also additional sentences for the ML offence, such as disqualification from acting as a company director or manager for organisations or persons subject to the AML/CFT Law (Article 218-5 of the CC). However, this disqualification cannot last longer than 10 years except in the case of a repeat offence, in which case it can be permanent.

844. The criminal sanctions for natural persons convicted of ML are equal to or greater than the criminal sanctions for natural persons convicted of other serious offences (such as illegal acquisition of interests – five years, bribery – five to 10 years or trafficking in influence – five to

¹⁵¹ Criminal Court of Appeal, 22 November 2021 (first application of the mechanism under Article 218-4 of the CC).

10 years). The sanctions for natural persons convicted of ML therefore appear to be proportionate and dissuasive.

Criterion 3.10

845. Under Monegasque law, all legal persons (except the State, district councils and public institutions) bear criminal liability as perpetrators or accomplices to any crime, misdemeanour or petty offence where it was committed on their behalf by one of their governing bodies or representatives (Article 4-4 of the CC). Legal persons can also bear criminal liability where a failure to perform oversight or supervision by a natural person acting as a governing body or representative made it possible for an ML offence to be committed on the legal person's behalf by a natural person subject to his/her authority (under the new Article 218-1-1 of the CC, which was established by Law No. 1521 of 11 February 2022). It is also provided that where a legal person bears criminal liability, this does not prevent natural persons representing it at the time of the events who are co-perpetrators or accomplices from bearing criminal liability (Article 4-4, paragraph 3, and Article 218-1-1 of the CC).

846. The primary sentences for legal persons bearing criminal liability for the ML offence are fines (Article 29-2 of the CC). In terms of amounts, the fines for legal persons are five times greater than the penalties for natural persons, i.e. EUR 4 500 000 or, for aggravated laundering, EUR 9 000 000. Legal persons can also be dissolved (Article 29-3 of the CC).

847. Other additional sentences are also provided for and are applicable either permanently or for a minimum period of five years (Article 29-4 of the CC), including a ban on undertaking certain activities, placement under judicial supervision, closure of a company's places of business, exclusion from public tender procedures, a ban on making public offerings of shares, a ban on writing cheques or using payment cards, confiscation, and public display or release of the decision for three months. By way of exception, the sentences specified in the aforementioned articles are not applicable to non-profit-making associations, political groups, professional associations and trade unions or medical risk prevention organisations, except the sentences of confiscation of property and public display of a conviction (Article 29-5 of the CC).

848. Where mitigating circumstances exist, fines can be reduced, although in criminal cases, they cannot be less than EUR 1 000 (Article 392-1 of the CC).

849. Where legal persons are convicted of ML, this does not prevent parallel civil or administrative proceedings from being instituted. For ML, legal persons are liable to both administrative and criminal sanctions (see R.35).

850. The criminal and administrative sanctions incurred by legal persons for ML are equal to or greater than the criminal sanctions applicable to legal persons convicted of other serious offences. These sanctions therefore appear to be proportionate and dissuasive.

Criterion 3.11

851. Monaco has ancillary offences which can apply to the ML offence: attempt, conspiracy, association and aiding and abetting by providing assistance, help or advice (Article 218 of the CC). Other forms of complicity are also criminalised, including those involving gifts, promises, threats, abuse of authority or power, procurement of weapons or any other means of committing the offence, or helping or assisting with the planning, facilitation or completion of the offence (Article 42 of the CC). The sentences for accomplices to a crime or misdemeanour are identical to those for perpetrators (Article 41 of the CC), except where the law provides otherwise.

Weighting and conclusion

852. With the exception of a minor deficiency in the area of tax offences committed through false disclosure made verbally (c.3.2), all of the criteria are met. **Principality of Monaco is rated Largely Compliant with R.3.**

Recommendation 4 – Confiscation and provisional measures

853. In the 4th Round MER, the former Recommendation 3 was rated LC. Two technical deficiencies were identified: Monaco's laws did not explicitly cover all aspects of the definition of "property", and confiscation of property of corresponding value was only possible in connection with ML.

Criterion 4.1

854. Under the law of Monaco, a confiscation measure can only be imposed as an additional sentence, and only after prior conviction. Confiscation of property can be ordered on a general basis (Article 12 of the CC) and on specific bases in connection with ML (Article 219 of the CC), illegal acquisition of interests, corruption, trafficking in influence (Article 122-2 of the CC) and drug trafficking (Article 6 of Law No. 890 of 1 July 1970).

855. The specific bases allow property to be confiscated whether it is held by criminal defendants or by third parties. However, with regard to the general basis applicable to offences other than ML, confiscation of property used to commit an offence which is held by a third party is not explicitly provided for in Article 12. More specifically, this article allows confiscation of "things which are proceeds of or were procured through the offence or which were used or intended for the purpose of committing it", without specifying whether this property must be held by the criminal defendant.

856. In addition, given the lack of relevant case law, doubts remain as to the extent to which confiscation of property held by third parties can be ordered in cases concerning predicate offences, by contrast with the certainty of the aforementioned specific bases in connection with ML. Furthermore, some specific provisions in relation to ML (Article 219 of the CC) are applicable to property held by criminal defendants or by third parties who knew, or ought to have known, that it was of illegal origin. In relation to illegal acquisition of interests, corruption and trafficking in influence, there are specific provisions that explicitly allow confiscation of property, including where it is held by third parties (Article 122-2 of the CC). The same is true of drug trafficking under Article 6 of Law No. 890 of 1 July 1970. However, there are no similar provisions for other predicate offences.

857. Although the authorities of Monaco consider that the general basis (Article 12 of the CC) allows confiscation of a *corpus delicti* held by a third party for other offences, this remains uncertain in the light of the factors listed below.

858. (a) *Property laundered* – Confiscation of property laundered can be ordered under Articles 12 and 219 of the CC. The scope of this measure under Article 12 appears to cover all personal and real property ("corpus delicti", "things which are proceeds of or which were procured", "things which were used or intended" for the purpose of committing the offence). Under Article 219 of the CC, confiscation of property laundered applies to "property and money of illegal origin". The concept of "property" is comparable to that of "funds", which was recently extended to include tangible or intangible property, including virtual assets, provided that the latter are identified (Article 1 of SO No. 2.318 as amended).

859. (b) *Proceeds of (including income or other benefits derived from such proceeds), or instrumentalities used or intended for use in, ML or predicate offences* – The aforementioned Articles 12 and 219 of the CC have the effect of allowing confiscation of proceeds of ML and predicate offences. Article 12 applies to things used or intended for use in the commission of an offence. This means that confiscation of instrumentalities is permitted.

860. (c) *Property that is the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organisations* – Confiscation of funds used or intended to be used to commit offences connected with TF (including TF, terrorist acts and terrorist organisations – see R.5) and proceeds of these offences is provided for (Article 10 of SO No. 15.320 of 8 April 2002 on the suppression of the financing of terrorism). The definition of funds corresponds very closely to that of property as defined by the FATF. In addition, confiscation of funds used or intended to be used to commit terrorist offences is possible under Article 12 of the CC, as it refers to “[things] which were used or intended” for the purpose of committing a terrorist offence, or Article 391-10 of the CC, which more generally provides that “natural or legal persons found guilty of terrorist acts shall be subject to the additional sentence of confiscation of all or part of their property of any kind, personal or real, divided or undivided”.

861. (d) *Property of corresponding value* – For ML, confiscation of property and money to a value corresponding to that of the property and money of illegal origin is provided for under Article 219 of the CC. This measure can also be ordered for the offences of illegal acquisition of interests, corruption and trafficking in influence (Article 122-2, paragraph 5, of the CC) and criminal association (Article 210 of the CC). Confiscation of property of corresponding value is also applicable to persons found guilty of terrorist acts (Article 391-10 of the CC). However, aside from the aforementioned offences, confiscation of property and money of corresponding value is not possible for other predicate offences. This is a moderate deficiency.

Criterion 4.2

862. Monaco has the following measures which enable the authorities to:

863. (a) *Identify, trace and evaluate property that is subject to confiscation* – The law enforcement authorities have all of the usual means of identifying, tracing and evaluating property that is subject to confiscation: investigation (surveillance, analysis of bank accounts, lists of telephone calls and digital messages, etc.), general powers of investigating judges including, in particular, searches and seizure of documents, computer data, papers or other items that may help to establish the truth (Article 100 of the CCP), and telegrams, letters and other things sent by or to the defendant (Article 102 of the CCP), plus expert analysis (Articles 107 to 124 of the CCP) and examination of witnesses (Articles 125 to 147-6 of the CCP).

864. (b) *Carry out provisional measures, such as freezing or seizing, to prevent any dealing, transfer or disposal of property subject to confiscation* – Under Article 100 of the CCP, an investigating judge can make an ordinary seizure (i.e. without an order and without both parties being present) of any items that may help to establish the truth at the request of DSP officers in order to meet a particularly pressing need. However, this article only applies to instrumentalities required for evidentiary purposes. In addition, Article 596-1 of the CCP allows seizure by reasoned decision of an investigating judge with approval from the GPO Office. So a decision based on the aforementioned article guarantees that a seizure can be ordered with both parties being immediately present, pending a decision by the trial court. The seizure can include any tangible or intangible property, including virtual assets if they can be identified.

865. However, this article only applies to money laundering, corruption and trafficking in

influence. Therefore, the scope of these measures does not encompass other predicate offences, which is a deficiency. Furthermore, it is unclear whether the procedures provided for in Article 100 and Article 596-1 are applicable to property held by a third party or property of corresponding value. In addition, seizure of assets is possible by order of the President of the Court of First Instance at the request of the GPO, which is informed by SICCFIN, in connection with a suspicious transaction to which the latter authority raises an objection, which is valid for five days (Article 38 of the AML/CFT Law). The presidential order extends the effects of the objection raised by SICCFIN by ordering preventive seizure of the assets concerned.

866. The procedure under Articles 37 and 38 of the AML/CFT Law is a “safeguard measure” (Court of Appeal, 26 September 2019). The objection procedure, which can in due course be confirmed by the President of the Court of First Instance, is a safeguard measure intended to prevent a suspicious transaction from taking place. At this stage, no attempt is made to establish whether the funds belong to the person who wishes to carry out the transaction and who is implicated or to a third party. It is implemented as a matter of urgency, for preventive purposes. If ownership of the funds is then disputed or claimed by a third party, these difficulties will be considered when a request to end the seizure is made by the person concerned.

867. *(c) Take steps that will prevent or void actions that prejudice the country's ability to freeze or seize or recover property that is subject to confiscation* – As explained above, for ML and some other offences, property and money of illegal origin held by a third party can be confiscated where it is established that the third party knew, or ought to have known, of their illegal origin. However, as explained above, there are still doubts as to whether applies to all predicate offences. Lastly, fraudulent insolvency is an offence under Articles 368-1 to 368-3 of the CC. Aside from this offence, Article 324 of the CC stipulates a sentence of six months' to three years' imprisonment and the fine referred to in section 3 of Article 26 for a person who destroys, misappropriates or attempts to destroy or misappropriate things seized by the courts with jurisdiction. However, this provision concerns property seized or pledged and not confiscation.

868. *(d) Take any appropriate investigative measures* – The law enforcement authorities have all necessary powers of investigation under the CCP (see c.4.2 (a), R.30 and R.31).

Criterion 4.3

869. Confiscation can be ordered without prejudice to the rights of third parties in relation to ML (Article 219 of the CC) and in relation to illegal acquisition of interests, corruption and trafficking in influence (Article 122-2 of the CC).

870. By virtue of the amendment made by Law No. 1521 of 11 February 2022, protection of the rights of *bona fide* third parties is now provided by the third paragraph of Article 12 of the CC. More specifically, where a planned confiscation measure relates to property which does not belong to a criminal defendant, it cannot be ordered before the third party who is known to be the owner or who has claimed ownership in the proceedings has an opportunity to assert the claimed right and their good faith.

871. However, it is unclear whether the rights of *bona fide* third parties are protected in the case of provisional measures. Article 596-1 of the CCP concerning seizure of property, which is ordered, once approved by the GPO, by reasoned decision of the investigating judge or court provides that any party may appeal within 20 hours after notice of the decision is given so that they may assert their rights. However, this timeframe seems very tight.

872. In addition, Article 7 of SO No. 15.457 of 9 August 2002 on international co-operation in

relation to seizure and confiscation for the purposes of tackling money laundering provides that authorisation to implement a confiscation measure ordered by a foreign authority cannot interfere with lawfully created third-party rights.

Criterion 4.4

873. For the purposes of giving effect to orders and judgments, the GPO is responsible for managing and, where appropriate, disposing of frozen, seized or confiscated property (under Article 29 of Law No. 1.398 of 24 June 2013 on the administration and organisation of justice). Preventive measures can also be ordered, where appropriate, by the investigating judge, who can order "*any helpful administration measures*" under Article 596-1 of the CCP, either in domestic proceedings or at the request of foreign judicial authorities. However, despite the existence of legal mechanisms to record and communicate seizures and the fact that permission to manage seized real property is given to its owner by investigating judges in practice, there are no other mechanisms, practices or policies for the storage or maintenance of personal property, for property requiring active management (such as a business) or for the sale or other disposal of personal or real property.

Weighting and conclusion

874. Monaco has put in place a range of measures to enable property to be confiscated and provisional measures to be used. However, moderate deficiencies remain. More specifically, for a number of offences, including ML, most of the criteria are met but the scope is still very narrow. In addition, there are still uncertainties in relation to (i) whether there are measures to confiscate property of corresponding value and property held by a third party (c.4.1) and (ii) the implementation of provisional measures to block a transaction or transfer or disposal of property subject to confiscation (c.4.2). In addition, a lack of clarity is noted as to the extent of the protection of *bona fide* third parties' rights in connection with provisional measures (c.4.3) and the lack of a mechanism to manage and dispose of frozen, seized or confiscated property (c.4.4).

Principality of Monaco is rated Partially Compliant with R.4.

Recommendation 5 – Terrorist financing offence

875. Monaco was rated Compliant with Recommendation 5 (formerly SR.II) in the previous Mutual Evaluation Report, with no deficiencies to report. There have been no legislative amendments since then.

Criterion 5.1

876. Monaco ratified the 1999 International Convention for the Suppression of the Financing of Terrorism in 2001, and the definition of acts of terrorism covers all acts constituting offences within the meaning of the treaties listed in the annex to that Convention (Article 1 of SO No. 15.320). Monegasque law gives an adequate definition of the terrorist financing offence as worded in Article 2 of this Convention, as follows: "The act of providing, collecting or managing funds by any means, directly or indirectly, unlawfully and wilfully, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, either i) by a terrorist; ii) by a terrorist organisation; iii) in order to carry out one or more acts of terrorism is classed as "financing of terrorism" within the meaning of this order and shall be punished as such" (Article 2 of SO No. 15.320).

Criterion 5.2

877. Monegasque law provides that the TF offence is committed by any person who by any

means, directly or indirectly, unlawfully and wilfully, provides, collects or manages funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, by a terrorist or terrorist organisation or in order to carry out one or more acts of terrorism (Art. 2 of SO No. 15.320). The TF offence is constituted even if the funds are not actually used to commit or attempt to commit one or more acts of terrorism. Nor do the funds have to be connected to specific acts of terrorism (Art. 3 of SO No. 15.320).

Criterion 5.2 bis

878. Monegasque law does not explicitly mention financing of journeys made by persons who travel to a third country in order to commit, arrange or prepare for an act of terrorism or to participate in one or provide or receive training for terrorism. However, these acts can be prosecuted under Article 2 of SO No. 15.320 if the goal of this training is to commit an act of terrorism. The evaluation team also notes the links between French and Monegasque legal systems in this regard.

Criterion 5.3

879. The term "funds" has the meaning given to it by Article 1 of the International Convention for the Suppression of the Financing of Terrorism (Art. 2 of SO No. 15.320), i.e. "assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital", which covers funds of both lawful and illicit origin. However, this definition does not cover the "other assets" as defined by the FATF Standards.

Criterion 5.4

880. The offence applies even where funds have not actually been used, or even where they are not connected with specific acts of terrorism (Art. 3 of SO No. 15.320).

Criterion 5.5

881. According to the general principles of Monegasque criminal law, deciding whether intent existed is a matter for the trial judge, who is not bound by rules setting any particular criteria. This means that a judge can rely on objective factual circumstances and any other factor from which the perpetrator's intent can reasonably be inferred.

Criterion 5.6

882. The sentence for financing of terrorism is between five and 10 years' imprisonment and a fine of between EUR 18 000 and EUR 450 000 (Article 26-4 of SO No. 15.320) with confiscation of all or part of the person's property of any kind (Articles 391-7 and 391-10 of the CC). The sanction is dissuasive and proportionate to the gravity of the offence.

Criterion 5.7

883. Legal persons can bear criminal liability, without prejudice to the criminal liability of natural persons. Legal persons whose liability is established are subject to the fine provided for in Article 26-4 of the CC, of between EUR 18 000 and 90 000. They may additionally incur fines of up to the amount of the funds actually provided or collected, confiscation of part or all of their property and limitation of their activity which can include winding them up. An administrative penalty of revocation of permits previously granted can be imposed as an initial step (Art. 9 of SO No. 15.320). Furthermore, the CC stipulates that the penalty incurred by the legal person for such an offence shall be the fine to be imposed on natural persons multiplied by five (Art. 391-9 of the

CC). These sanctions are considered to be sufficiently dissuasive and proportionate.

Criterion 5.8

884. The TF offence includes attempt and aiding and abetting (Art. 5 of SO No. 15.320). It also includes arranging the commission of such an act, giving instructions to commit the offence or contributing to the committing of an offence or attempted offence of financing of terrorism.

Criterion 5.9

885. The TF offence is a predicate offence for ML because of the sentence of five to 10 years' imprisonment (Arts. 4 to 8 of SO No. 15.320), given that the term of imprisonment provided for predicate offences exceeds one year.

Criterion 5.10

886. The TF offence is applicable where the acts of financing themselves occur on Monaco's territory or on a ship registered in Monaco, or if they are committed by a Monegasque national or a stateless person residing in Monaco. (Arts. 5, 6 and 7 of SO No. 15.320). Accordingly TF may be punished in Monaco regardless of the country where the terrorists or terrorist organisation for which the financing is intended are located, and regardless of the country where the acts of terrorism were or were to be perpetrated.

Weighting and conclusion

887. Monegasque legislation does not cover "other goods" as defined by the FATF Standards. Furthermore, the criminalization of TF should explicitly include the financing of travel for terrorist purposes. **Principality of Monaco is rated Largely Compliant with R.5.**

Recommendation 6 – Targeted financial sanctions related to terrorism and terrorist financing

888. In the 4th Round MER, Monaco was rated Partially Compliant with the former recommendation SR.III, primarily because (i) the freezing procedure was not implemented without delay; (ii) the legal framework did not cover all types of property and did not make it possible effectively to examine requests from other countries, and (iii) there was a lack of guidelines and instructions for the public about listing/de-listing and freezing/unfreezing procedures (see 4th Round MER, p. 372).

889. Since then, Monaco has altered its targeted financial sanctions (TFS) implementation system through SO No. 8.664 of 26 May 2021,¹⁵² which was amended on 11 February 2022, and Prime Ministerial Decision no. 2021-1 of 4 June 2021 (DME 2021-1) on the implementation of all international sanctions currently in force¹⁵³ in Monaco. This SO has also created a national list of persons/entities subject to TFS in Monaco which is kept by the Budget and Treasury Department

¹⁵² On procedures for the freezing of funds and economic resources pursuant to international economic sanctions

¹⁵³ A list of them may be found in Article 1 of the DME: <https://en.service-public-entreprises.gouv.mc/Conducting-business/Legal-and-accounting-obligations/Asset-freezing-measures/Ministerial-Decisions>

(DBT)¹⁵⁴ and published for information purposes.¹⁵⁵

Identifying and designating

Criterion 6.1

890. In relation to designations pursuant to United Nations Security Council sanctions regimes 1267/1989 and 1267/1988;

891. a) Since 11 February 2022,¹⁵⁶ the Prime Minister has been the authority responsible for proposing designation of persons or entities to the 1267/1989 and 1988 Committees through Monaco's Permanent Mission to the United Nations.

892. b) Since 11 February 2022,¹⁵⁷ Monaco has had a target identification mechanism consisting of a Fund Freezing Advisory Committee which is responsible for, *inter alia*, proposing that the Prime Minister takes a decision to propose designation to the competent UNSC committees. This Committee is presided over by the Minister for Finance and the Economy and its members are the DSP, DREC, SICCFIN and the DBT. In practice, if a member of the Advisory Committee identifies a person or entity who may meet the designation criteria, the Committee meets to decide whether a proposal should be made to the Prime Minister to take a decision to propose designation to the UNSC committees. However, the process that leads to this identification of targets to be considered by the Committee is not clearly set out in the existing laws.

893. c) The Prime Minister can decide to make a proposal to the competent UNSC committees for designation of persons and entities meeting the designation criteria under resolutions 1267/1989 if he/she believes there is sufficient evidence to consider that they meet one of the designation criteria under UNSCRs 1267/1989 or 1988, without this identification necessarily being conditional on the existence of a criminal proceeding (Article 7-1, d), of SO No. 8.664). However, the legal framework does not provide for this evidence falling short of the standard of proof required for a criminal conviction.

894. d) Because Monaco has not made any proposals for designation to date, it has not had to follow the procedures or standard forms for listing as adopted by the 1267/1989 or 1988 Committees in practice. If the Fund Freezing Advisory Committee were to send a proposal for designation to the Prime Minister, the latter would decide whether or not to act on it. If action were to be taken, this proposal for designation to the competent UNSC committees would be made using the standard form for listing available online on the UN website. However, there is no basis in terms of legislation or implementation in practice demonstrating that Monaco follows these procedures and standard forms for listing.

895. e) According to Article 7-2, where the Advisory Committee submits a proposal for designation to the Prime Minister, it provides the things that may then be sent by Monaco to the aforementioned UN committees, namely:

¹⁵⁴ Pursuant to Article 5 of SO No. 8.664.

¹⁵⁵ Only the ministerial decisions and the appendices to them are authoritative (see IO.10).

¹⁵⁶ Article 7-1 of SO No. 8.664.

¹⁵⁷ Article 7-2 of SO No. 8.664.

- as much relevant information as possible on the proposed name and, in particular, sufficient identifying information to allow for the accurate and positive identification of individuals, groups, undertakings and entities, and to the extent possible, the information required by Interpol to issue a Special Notice;
- a statement of case which contains as much detail as possible on the basis for the listing, including specific information supporting a determination that the person or entity meets the relevant criteria for designation; the nature of the information; supporting information and documents that can be provided; and details of any connection between the proposed designee and any currently designated person or entity.

896. In addition, it has not been specified whether Monaco can make its status as a designating state known.

Criterion 6.2

897. With regard to designations in relation to UNSCR 1373:

898. a) The Prime Minister has authority to propose designation of persons or entities meeting the specific designation criteria as set forth in UNSCR 1373 of Monaco's own motion or after examining a request from another country and, where appropriate, giving effect to it (Article 7 of SO No. 8.664). Since February 2022, the requirements of this article have covered all of the specific designation criteria as set forth in UNSCR 1373. The aforementioned Advisory Committee can make a proposal for designation to the Prime Minister under the aforementioned Article 7.

899. b) The approach described above in relation to criterion 6.1(b) also applies to designations in relation to Resolution 1373.

900. c) The Advisory Committee on the Freezing of Funds and Economic Resources is responsible *"for promptly expressing an opinion on a request from another country for designation, by decision of the Prime Minister taken as provided in Article 2, of persons or entities meeting one of the criteria set out in letters a) to c) of Article 7"*. In practice, Monaco is kept informed of all freezing measures taken by France so that it can take equivalent measures, due to its international commitments, to apply the same fund freezing measures that are ordered by France and the EU.¹⁵⁸ With regard to Monaco's application of the French and European lists, transfers between France and Monaco are treated as domestic transfers following the signing of an agreement between these two countries after derogation¹⁵⁹ was obtained from the European Commission, which is conditional upon, *inter alia*, the publication of EU fund freezing lists. The agreement by exchange of letters of 3 and 12 December 2018 between France and Monaco thus enables transfers of funds between these two countries to be regarded as domestic transfers within the meaning of Regulations Nos 1781/2006 and 2015/847. In their recitals, these Regulations state that they apply without prejudice to European fund freezing rules.

901. d) The Prime Minister can designate, by ministerial decision, a person or entity, of his/her own motion or on the basis of a proposal from another country, where he/she has assurance that

¹⁵⁸ The national list is published at <https://en.service-public-entreprises.gouv.mc/Conducting-business/Legal-and-accounting-obligations/Asset-freezing-measures/National-asset-freezing-and-economic-resources-list>

¹⁵⁹ Decision of 4 May 2010 – Derogation allowed by Article 17 of Regulation 1781/2006.

the intended designation is supported by reasonable grounds to suspect that the person or entity concerned meets one of the designation criteria (Article 7 of SO No. 8.664). SO No. 8.664 does not provide that designations of persons or entities are subject to the existence of a criminal proceeding. However, the legal framework does not specifically define “reasonable grounds to suspect or believe” as being less than the standard of proof required for a criminal conviction.

902. e) The Prime Minister can decide to ask another state to give effect to a national freezing measure taken in accordance with Article 7 (Article 7-1, section 2, of SO No. 8.664). To this end, the Advisory Committee can submit to the Prime Minister a proposal for a request to another state to give effect to a national freezing measure pursuant to Article 7-1, section 2°. Within this framework, to facilitate disclosure of the aforementioned to the foreign state, it is stipulated that the Advisory Committee must provide the relevant information about the proposed name and, in particular, sufficient identifying information to enable the persons and entities to be identified precisely and specific information supporting the decision that the person or entity meets the relevant designation criteria.

Criterion 6.3

903. The competent authorities have powers¹⁶⁰ to identify persons or entities that may meet designation criteria, use relevant databases and have agreements with foreign competent authorities enabling them to obtain information for identification purposes.

904. The authorities stated that designations are made *ex parte*. There is no statutory or judicial obligation to inform the person or entity in respect of whom/which a designation is being considered.

Criterion 6.4

905. With regard to UNSCRs 1267/1989 and 1988, Monaco had, until May 2021, a national mechanism for transposal through the adoption of ministerial orders which were applicable as soon as they were published in the Monaco Gazette. Since the end of May 2021, the new national mechanism has established the principle of automatic application of UN sanctions lists which are immediately applicable to Monaco as soon as they are published on the UNSC website, which gives rise to an implicit freezing decision applicable for up to 10 working days. This implicit decision must be confirmed by the publication of a ministerial asset-freezing decision which enters into force when published in a dedicated space accessible from the website of the Government of Monaco¹⁶¹ (Articles 2 and 6 of SO No. 8.664). The first stage of provisional implementation of TFS happens without delay. However, there is no statutory provision or any other binding means of guaranteeing that the ministerial decision will be taken before the end of this 10-day period. More specifically, Article 1 of SO No. 8.664 provides that the Prime Minister “may” take freezing measures concerning the application of economic sanctions decreed by the UN, which is not mandatory, as the application of these measures in Monaco is at the Prime Minister’s discretion.

906. With regard to UNSCR 1373, TFS are implemented from the time of publication of the ministerial decision taken as specified in Article 2 of the same order. Although the ministerial

¹⁶⁰ Including the powers given to SICCFIN under Section II of the amended Law¹³⁶² enabling it to collect or solicit any information it needs to accomplish its tasks and the obligation for professionals to provide the DBT with all information necessary to ensure compliance with SO No. 8.664 (Article 8 of the aforementioned SO).

¹⁶¹ <https://en.service-public-entreprises.gouv.mc/Conducting-business/Legal-and-accounting-obligations/Asset-freezing-measures/Ministerial-Decisions>

decision enters into force as soon as it is published, there is no obligation guaranteeing that this publication will occur without delay where a designation has been made at national level.

Criterion 6.5

907. a) With regard to UNSCRs 1267/1989 and 1988, all natural and legal persons in the country are required to freeze, without delay or prior notice, funds and economic resources of designated persons and entities (Articles 3 and 6¹⁶² of SO No. 8.664) for a period of 10 days. However, the application of this measure is provisional and must be confirmed by the publication of a ministerial decision which enters into force as soon as it is published (see the deficiencies identified under c.6.4). With regard to UNSCR 1373, the freezing obligation applies without delay and without prior notice, as the ministerial decision is published without delay (see the deficiencies identified under c.6.4). In addition, a procedure updated on 18 February 2022 has been put in place to allow for a process of immediate adoption and publication (during the course of the day or within 24 hours at most). However, this is an internal procedure which is not binding.

908. b) To address the deficiencies identified in the 4th Round MER, the freezing obligation has been extended under Article 3 of SO No. 8.664 to all funds or other property required by R.6, namely funds¹⁶³ belonging to or owned, held or controlled, wholly or jointly, directly or indirectly by designated persons and entities, and also funds and economic resources originating or generated from the aforementioned funds and funds and economic resources controlled by persons acting on their behalf or on their instructions. The provisions of SO No. 8.664 as amended on 11 February 2022 cover all types of funds and property required by c.6.5 b) i) to iv), including virtual assets (Article 14 of the aforementioned SO).

909. c) Article 4 of SO No. 8.664 prohibits all natural and legal persons from making funds or economic resources available, directly or indirectly, wholly or jointly, in any way whatsoever, to one or more designated persons or entities, entities owned or controlled directly or indirectly by such persons or entities or any person acting on their behalf or at their direction, or from using them for their benefit. In addition, these persons and entities cannot knowingly carry out or participate in transactions for the purpose or with the effect of directly or indirectly circumventing these provisions. The ban on providing or continuing to provide financial or other related services applies to credit institutions, other financial institutions, insurance companies and any organisation, entity or person. Furthermore, authorisation to unfreeze or use frozen funds can be given under Article 9 of SO No. 8.664 by decision of the Prime Minister as decreed by the UN, EU or France.

910. d) Designations are published on the website of the Government of Monaco (see c.6.4). However, there are no warning or feedback mechanisms in relation to the implementation of freezing measures. The government's website is being changed to enable professionals to subscribe so that they can receive automatic notifications when a freezing, withdrawal or unfreezing measure is published, but this work had not been completed by the time of the on-site visit. In July 2021, SICCIFN published general guidelines which include a section concerning obligations in relation to freezing measures. The Chairperson of the Monaco Bar Association also drew up guidelines covering this issue in October 2021. In addition, the DBT sent emails to the main professional associations in the sector with regard to the new freezing obligations so that

¹⁶² Implicit freeze, see c.6.4.

¹⁶³ According to the authorities of Monaco, the freezing obligation applies irrespective of any connection with a particular terrorist act, plot or threat.

they could be passed on to their respective memberships. However, the efforts to raise awareness are fragmented and do not appear to cover all categories of regulated persons (such as notaries (*notaires*), bailiffs or regulated persons who are not members of these associations) or target those who have the most difficulty in understanding their obligations in relation to freezing measures (such as DNFBPs).¹⁶⁴

911. e) Under Article 8 of SO No. 8.664, credit institutions, other financial institutions, insurance companies and other organisations, entities or persons are required to provide the Head of the Budget and Treasury Department with all information necessary to ensure compliance with SO No. 8.664. This obligation supplements the provisions of Article 42 of the AML/CFT Law, which requires regulated persons (including notaries (*notaires*), bailiffs and lawyers) to report transactions and facts, including attempted transactions (Article 36 of the AML/CFT Law), concerning natural or legal persons targeted by fund-freezing measures for the purposes of tackling terrorism or implementing economic sanctions published by ministerial decision.

912. f) The rights of *bona fide* third parties are protected (Article 11 of SO No. 8.664).

De-listing, unfreezing and providing access to frozen funds and other property

Criterion 6.6

913. a) There are no publicly known procedures for submitting de-listing requests to the competent UNSC in the case of persons and entities that, in Monaco's view, do not or no longer meet the criteria for designation.¹⁶⁵

914. b) The Advisory Committee on the Freezing of Funds can submit to the Prime Minister a proposal to revoke a ministerial decision to freeze funds or, at the Prime Minister's request, can give an opinion on a request to revoke a ministerial decision to freeze funds in relation to persons and entities no longer meeting the designation criteria (Article 7-2, section 6°, of SO No. 8.664). After the Advisory Committee has submitted a proposal for revocation or given an opinion on a request for revocation, the Prime Minister can, by ministerial decision entering into force when published on the government's website, remove persons and entities from the appendix to Ministerial Decision No. 2021-1 of 4 June 2021.

915. c) Decisions of the Prime Minister, including those made under UNSCR 1373, can be appealed against by administrative action to the Court of First Instance, within two months after they are published on the government's website (Article 13 of SO No. 8.664). Implicit freezing decisions taken by the Prime Minister (Article 6) can be appealed against by administrative action to the Court of First Instance within two months after being taken.

916. d) and (e) The procedure published on the government's website¹⁶⁶ informs the public

¹⁶⁴ It was stated in NRA 2 that the freezing obligations are not known to all regulated entities, including in non-financial sectors.

¹⁶⁵ According to the procedures of the 1267/1989 Committee as set out in UNSCRs 1730, 1735, 1822, 1904, 1989 and 2083 and all successor resolutions or the procedures of the 1988 Committee as set out in UNSCRs 1730, 1735, 1822, 1904, 1988 and 2082 and all successor resolutions, as appropriate.

¹⁶⁶ <https://en.service-public-entreprises.gouv.mc/Conducting-business/Legal-and-accounting-obligations/Asset-freezing-measures/How-to-appeal-against-a-freeze-on-funds-and-economic-resources>

that “natural or legal persons on the national list¹⁶⁷ pursuant to UNSC resolution 1267 (1999) (and successor resolutions) may make a de-listing request to the Office of the Ombudsperson to the sanctions committee created by UNSC resolution 1904 (2009). Nationals and residents of Monaco who have been placed on the national list pursuant to another UNSCR may make their de-listing request either directly to the focal point or through the Government of Monaco as per the procedure set forth in UNSC resolution 1730 (2006)”. This procedure also forms part of the DBT’s internal procedures of 18 February 2022.

917. f) A person or entity with a name identical or similar to that of designated persons or entities who is inadvertently affected by a freezing mechanism can make a written request to the Prime Minister. This request will trigger verification by the competent department and, if a mistake has been made, permission to unfreeze would be given by ministerial decision. In this connection, there is an internal procedure dated 18 February 2022 and a publication on the government’s website.¹⁶⁸

918. g) Decisions to de-list from the appendix to DME 2021-1 and to unfreeze funds take the form of a ministerial decision which is published on the government’s website. However, the existing system does not appear to include a mechanism for or give details of the implementation of unfreezing or any guidelines for all regulated persons in this regard. Furthermore, the work to change the government’s website in relation to fund-freezing measures involving the addition of a mechanism to notify or alert subscribed professionals to the publication of a de-listing or unfreezing measure had not been completed by the date of the on-site visit.

Criterion 6.7

919. Procedures are in place to authorise access to frozen funds or other property which have been determined to be necessary for basic expenses, the payment of certain types of expenses, or for extraordinary expenses¹⁶⁹ as per the sanctions regimes listed in Article 1 of DME 2021-1, including resolutions 1267/1989 and 1373 and successor resolutions.

Weighting and conclusion

920. The latest amendments to the law (May 2021 and February 2022) have made improvements to the TFS regime. However, these measures are inadequate to guarantee implementation of TFS without delay, particularly under UNSCR 1373. The deficiencies identified in relation to c.6.4 and c.6.5(a) are especially significant,¹⁷⁰ particularly in view of the lack of provisions to guarantee publication of ministerial decisions, which have a considerable impact on entry into force (UNSCR 1373) and/or maintenance of freezing measures (UNSCR 1267/1989).

¹⁶⁷ The “national list” as defined in Article 5 of SO No. 8.664 is a consolidated list of all “natural or legal persons or organisations subject to a fund and economic resource freezing measure pursuant to” SO No. 8.664. So the “national list” includes both designations made of Monaco’s own motion or at the request of another state and also designations made by the UNSC or its competent committee, the European Union and France.

¹⁶⁸ <https://en.service-public-entreprises.gouv.mc/Conducting-business/Legal-and-accounting-obligations/Asset-freezing-measures/Procedures-for-unlocking-or-using-frozen-funds-and-economic-resources>

¹⁶⁹ Articles 9 and 10 of SO No. 8.664 and Articles 4 and 5 of DME 2021-1.

¹⁷⁰ In view of the TF risk, which has been identified in Monaco as “moderately low” and “growing”, NRA 2, p. 700.

Principality of Monaco is rated Partially Compliant with R.6.

Recommendation 7 – Targeted financial sanctions related to proliferation

921. The obligations relating to R.7 were introduced when the FATF recommendations were revised in 2012, and Monaco was last evaluated prior to that date.

922. The system applicable to Monaco in terms of TFS related to proliferation financing (PF) is the same as the one described for TF in R.6.

Criterion 7.1

923. TFS related to PF are implemented in Monaco under SO 8.664 and DME 2021-1 (see R.6). Article 1 of DME 2021-1 provides that measures to freeze funds and economic resources can be taken in Monaco under UNSCR 1718 (2006) and UNSCR 1737¹⁷¹ (2006) and subsequent resolutions. In addition, the appendix to this ministerial decision designates the persons and entities listed in this context by the UNSC or its competent committee. Like UNSCRs 1267/1989 and 1988, Article 6 of SO 8.664 establishes the principle of automatic adoption of UNSC sanctions lists and implicit (temporary) freezing pending publication of the ministerial decision. This implies implementation of freezing measures. The initial phase of temporary implementation must be launched without delay. However, there is no legal provision or any other enforceable means guaranteeing that the ministerial decision is issued before the end of that ten-day period (see criterion 6.4). More specifically, Article 1 of SO 8.664 states that the Prime Minister “may” take freeze measures with regard to the application of economic sanctions decreed by the UN, which means that the application of these measures in Monaco is not mandatory but at the Prime Minister's discretion.

Criterion 7.2

924. a) All natural and legal persons in the country are under an obligation to freeze funds and economic resources of the designated persons and entities without delay and without prior notice (Arts. 3 and 6 of SO 8.664¹⁷²) for a period of ten days. However, the application of this measure is temporary and must be confirmed by the publication of a ministerial decision, which enters into force on the date of publication (see the deficiencies identified for criterion 7.1).

925. b), (c), (d), (e) and (f): The same measures and deficiencies identified above for criteria 6.5(b), 6.5(c), 6.5(d), 6.5(e) and 6.5(f) apply respectively for criteria 7.2(b), 7.2(c), 7.2(d), 7.2(e) and 7.2(f) to UNSCRs 1718 and 1737 (and subsequent resolutions).

Criterion 7.3

926. As mentioned under criteria 6.5(e)/7.2(e), Article 8 of SO 8.664 obliges credit institutions, other financial institutions, insurance companies and other organisations, entities or persons to promptly inform the Director of the Budget and the Treasury that freezing measures have been implemented and to give them, to this end, details of the funds and economic resources subject to a freeze. In addition, regulated persons are required to report transactions and facts concerning natural or legal persons subject to freezes on funds and economic resources necessary to

¹⁷¹ Article 1 of DME 2021-1 does not make explicit reference to UNSCR 2231 (2015), which repealed all of the provisions of the UNSCR relating to Iran and proliferation financing, including UNSCRs 1737(2006), 1747(2006), 1803(2008) and 1929(2010), and imposed special restrictions which included TFS. However, in practice, the appendix to the aforementioned DME includes persons listed under the aforementioned resolution.

¹⁷² Implicit freezing, see 6.4

implement economic sanctions decreed by the UN, the EU or France, as applicable, SICCFIN, the GPO or the Chairperson of the Monaco Bar Association (Article 42 of the AML/CFT Law). Since February 2022, Article 7-3 of the SO No. 8.664 has provided that the implementation of its provisions by the financial institutions and DNFBPs referred to in Articles 1 and 2 of the AML/CFT Law shall be overseen by SICCFIN, the GPO or the Chairperson of the Monaco Bar Association, as applicable, as provided by the aforementioned law, including oversight of the reporting obligation under Article 42 of the AML/CFT Law. SICCFIN and the DBT are members of the Advisory Committee, one of whose duties is “to ensure a two-way flow of information between the government departments involved in the freezing of funds and economic resources, and to consider matters of common interest with a view to improving the effectiveness of the arrangements in place.”¹⁷³

927. With regard to the sanctions applicable for breaches, Article 12 of SO 8.664 provides that any failure to comply with the provisions of SO 8.664 shall be punishable by the sentences specified in paragraph 4 of Article 26 of the CC (a fine of between EUR 18 000 and EUR 90 000).¹⁷⁴ Breaches of Article 42 of the AML/CFT Law carry the same penalty (Article 71-2). It should be pointed out that under the aforementioned Article 7-3, where investigations conducted by SICCFIN or the Chairperson of the Monaco Bar Association yield strong evidence that the offence referred to in Article 12 has been committed, they must notify the GPO.

Criterion 7.4

928. a) Persons and entities on the list drawn up pursuant to UNSCR 1718 (2006) and UNSCR 1737 (2006) can submit a de-listing request to the focal point established by UNSCR 1730 (2006). This possibility is mentioned on the government’s website.¹⁷⁵

929. b) A person or entity with a name identical or similar to that of designated persons or entities who is inadvertently affected by a freezing mechanism can make a written request to the Prime Minister. This request will trigger verification by the competent department and, if a mistake has been made, permission to unfreeze would be given by ministerial decision. In this connection, there is an internal procedure dated 18 February 2022 and a publication on the government’s website.¹⁷⁶

930. c) Permission to release or use frozen funds can be given by decision of the Prime Minister in accordance with the UNSCRs¹⁷⁷ under Article 9 of SO 8.664 and Article 4 of the DME.

931. d) Decisions to de-list from the appendix to DME 2021-1 and to unfreeze funds take the form of a ministerial decision which is published on the government’s website. However, the existing system does not appear to include a mechanism for giving details of the implementation of unfreezing or any guidelines for all regulated persons in this regard. Furthermore, the work to

¹⁷³ Article 7-2 7°) of Sovereign Order 8.664 as amended

¹⁷⁴ Article 71-2 of Law 1.362 applies the same penalty for regulated persons who have not made the declaration referred to in Article 42 of the same Law.

¹⁷⁵ <https://service-public-entreprises.gouv.mc/En-cours-d-activite/Obligations-legales-et-comptables/Mesures-de-gel-de-fonds/Recours-a-l-encontre-d-une-mesure-de-gel-des-fonds-et-des-ressources-economiques>

¹⁷⁶ <https://service-public-entreprises.gouv.mc/En-cours-d-actite/Obligations-legales-et-comptables/Mesures-de-gel-de-fonds/Procedures-de-deblocage-ou-d-utilisation-des-fonds-et-des-ressources-economiques-geles>

¹⁷⁷ As previously mentioned, the DME does not explicitly make reference to UNSCR 2231 (see c.7.1).

change the government's website in relation to fund-freezing measures involving the addition of a mechanism to notify or alert subscribed professionals to the publication of a de-listing or unfreezing measure had not been completed by the date of the on-site visit.

Criterion 7.5

932. a) Subject to compliance with the requirements of economic sanctions decreed by the UN, the EU or France, interest, other remuneration and payments can be paid to frozen accounts and frozen accounts can be credited, provided that any additional sums credited to such accounts are frozen (Art. 10 of SO 8.664).

933. b) Article 9 of SO 8.664 provides that permission to release or use funds shall be given by ministerial decision, subject to compliance with the requirements of UNSCRs (a list of which shall be drawn up by the DME).

Weighting and conclusion

934. The main deficiencies identified under criteria 7.1 and 7.2(a) are of moderate significance and relate *inter alia* to the lack of provisions guaranteeing the publication of ministerial decisions, which has ramifications for the maintaining of freezing measures linked to proliferation. **Principality of Monaco is rated Partially Compliant with R.7.**

Recommendation 8 – Non-profit organisations

935. In the 4th Round MER, Monaco was rated Partially Compliant with the former special recommendation SR.VIII. The main deficiencies identified were: (i) the lack of review of the adequacy of the legal and regulatory framework in relation to NPOs and regular review of any vulnerabilities in the sector that might be conducive to terrorist activities, (ii) the failure to raise awareness within the NPO sector of risks of misuse for terrorist purposes and information concerning available protection measures, (iii) an incomplete and non-dissuasive system of penalties applicable to non-profit-making associations; (iv) the lack of an obligation for NPOs to keep records of their national and international transactions for a period of at least five years. However, this evaluation predates the adoption of the amendments made to R.8 and its interpretive note (in 2016), which are now more focused on the identification and application of measures to the subset of NPOs that are at risk and may be misused for TF purposes.

936. In the Principality, Monegasque NPOs are not subject to the AML/CFT Law.

Criterion 8.1

937. The Department of the Interior of Monaco is responsible for checking and following up applications in relation to foundations (20) and non-profit-making associations (nearly 900 of which are active in Monaco, including approximately 60 federations).¹⁷⁸ ¹⁷⁹

938. a) NRA 2, which was completed in July 2021, highlighted a deficiency in the description of NPOs as compared with the FATF definition. The first evaluation of the non-profit sector was formalised on 25 February 2022 during the country visit. Monaco identified the subset of NPOs that fall under the FATF's functional definition, i.e. 262 NPOs out of the 1 035 declared non-profit-making associations and federations in Monaco. The Monegasque authorities sent a questionnaire drawn up by SICCFIN in consultation with the Department of Interior as per criteria

¹⁷⁸ Unlike a non-profit-making association, a federation cannot consist solely of natural persons

¹⁷⁹ Source: NRA 2

laid down in the World Bank's methodology. The questionnaire was sent to all NPOs in Monaco in June 2021,¹⁸⁰ in order to gain more knowledge of this sector and identify NPOs at risk of misuse for TF purposes due to their activity or characteristics. However, with a recorded response rate of only 42% (421 responses), the extent to which the subset of NPOs at risk of TF has been identified is limited. The other sources used were information collected during audits of accounts, NPOs' annual reports and information collected from the local financial sector (see IO.10).

939. b) According to NRA 2,¹⁸¹ the NPO risk assessment is still at an initial stage and transactions performed by NPOs generally lack visibility. In addition, in its first risk assessment of the sector, Monaco only partially identified (see c.8.1(a)) the nature of the threats posed by terrorist entities to NPOs and how terrorist actors could exploit them (see also IO.10).

940. c) The changes made to the legislative and regulatory framework applicable to non-profit-making associations, federations of non-profit-making associations and foundations¹⁸² increase the financial transparency of the non-profit sector, including by means of new detailed accounting obligations (Article 20-1 of Law No. 1.355) and obligations to identify and carry out checks on recipients of donations/grants and/or what they are ultimately used for (Article 20-3 of Law No. 1.355) and a cap of EUR 1 000 for cash donations (Article 9 of Law No. 1.355 and Article 21 of Law No. 56). Although they address some of the deficiencies mentioned in the 4th Round, these changes were made in 2018, well before the end of an assessment of the risks faced by NPOs, so they are not based on the sectoral risk assessment.

941. d) Although this initial assessment of the NPO sector is incomplete (see criteria 8.1(a) and (b)), the Monegasque authorities intend to reassess this sector and its risks periodically within the framework of the national risk assessment process which shall be kept up to date by SICCFIN (Article 48 of the AML/CFT Law. In practice, the gap between reassessments will be the same as the gap between NRAs as a whole, i.e. three years.

Criterion 8.2

942. a) Monaco has introduced several measures to foster accountability and integrity among NPOs with a view to increasing public confidence in their running and operation, including through obligations to (i) keep detailed accounts (Art. 20-A of Law 1.355), (ii) identify and carry out checks on the beneficiaries of donations/grants and/or their end use (Art. 20-3 of Law 1.355), (iii) limit cash donations to a maximum of 1 000 EUR (Art. 9 of Law 1.355 and Art. 21 of Law 56).

943. There are a number of obligations for NPOs, including declaration/approval systems (for non-profit-making associations as applicable) or authorisations (for foundations). NPOs (non-profit-making associations and foundations) have obligations to keep accounts, keep accounting records for five years, know the identities of their donors and monitor the proper use of grants. From the time when they are established, non-profit-making associations must keep a register containing full details of the civil status of their managers and their addresses. It must be presented whenever requested by the Prime Minister or judicial authorities (Article 12 of Law No. 1.355 as amended).

¹⁸⁰ Source: NRA 2

¹⁸¹ FT risks were not assessed in the first NRA of Monaco which was completed in 2017.

¹⁸² In Law No. 1.355 of 23 December 2008 on non-profit-making associations and federations of non-profit-making associations and Law No. 56 of 29 January 1922 on foundations (by Law No. 1.462 of 28 June 2018).

944. Although they can be formed freely, non-profit-making associations which wish to acquire legal personality and legal capacity must be declared and their names made public. Only approved non-profit-making associations can receive public funds (Article 16 of Law No. 1.355). In exceptional circumstances, however, a one-off grant of assistance not renewable over a three-year period can be given on the same basis to a non-approved non-profit-making association.

945. Certain basic information about NPOs is publicly available on request to the Prime Minister or via consultation of the *Journal de Monaco* [Official Gazette of Monaco] or the official website of non-profit-making associations¹⁸³ (Art 13 of Law 1.355 and Arts. 11 and 22 of Law 56).

946. b) The "*Guide de bonne conduite des associations eu égard au risque de financement du terrorisme*" [Good Conduct Guide for Non-profit-making Associations for the Risk of Terrorist Financing] was posted in September 2016 by SICCFIN on its website¹⁸⁴ and a paper version was sent by the Department of the Interior to a subset of non-profit-making associations.¹⁸⁵ Although it covers certain aspects of the vulnerabilities and threats affecting non-profit-making associations in terms of TF as a whole, the guide needs to be updated in order to take account of the sectoral risk assessment and the changes to the associated legislative framework (the new provisions of the AML/CFT Law and those concerning asset freezes). In addition, a good conduct guide drawn up by the Department of the Interior and the departments subordinate to it jointly with the Department of Legal Affairs was sent to the directors of non-profit-making associations in July 2021. This guide contains some information about the risks of misuse of NPOs for TF purposes and recommendations for preventive measures to be adopted. However, efforts to raise awareness within the sector appear to be intermittent and do not cover some categories of NPOs that may be at risk (foundations/federations of non-profit-making associations). Furthermore, the donor community has not yet been specifically targeted by any awareness-raising campaigns.

947. c) Other than the guides mentioned under criterion 8.2(b), which were drawn up without the co-operation of the NPO sector, the Monegasque authorities have not drawn up or refined any best practice in order to address TF risks or vulnerabilities or protect NPOs from being exploited for TF purposes.

948. d) The legal provisions governing NPOs set a limit of EUR 1 000 for cash donations and grants (Article 9 of Law No. 1.355 and Article 21 of Law No. 56). The *Guide de la vie associative* [Voluntary Sector Guide] advocates the use of traditional financial channels. According to information held by SICCFIN which originates from banks, including responses to annual questionnaires, approximately 872 accounts are held by non-profit-making associations in Monaco, which is very close to the number of non-profit-making associations (978) known to exist at the time when the list was drawn up.

Criterion 8.3

949. In Monaco, the general measures applicable to all NPOs regarding oversight or supervision are described in c.8.2(a). However, these measures are neither targeted nor based on the sectoral risk assessment. (see c.8.1).

950. Furthermore, in principle, only approved non-profit-making associations may receive

¹⁸³[¹⁸⁴ <https://www.siccfin.mc/Publications-LCB-FT-C/Guide-a-destination-des-associations>](https://service-public-particuliers.gouv.mc/Temps-libre/Groupements-associatifs/Listes-et-informations>Liste-des-groupements-associatifs-de-Monaco</p></div><div data-bbox=)

¹⁸⁵ 200 non-profit-making associations operating in the sector of humanitarian activities, personal care, etc.

public funding (Art. 16 of Law No. 1.355). In exceptional circumstances, however, a one-off grant of assistance not renewable over a three-year period can be given on the same basis to a non-approved non-profit-making association provided that it pursues an aim in the public interest or an activity that contributes to a public service function or the reputation of Monaco. No grant can be given in whole or in part by the government to an NPO before a reasoned opinion has been given by the Auditor-General, having regard to the balance sheet and the annual accounts of the organisation concerned, from which the Auditor-General may request any necessary explanation or evidence (Article 1 of Law No. 885 of 29 May 1970 on financial auditing of private-law corporations in receipt of government grants). Any organisation, whether or not approved, that receives a government grant is subject to auditing and checks by the Auditor-General. The latter has the necessary powers of investigation to carry out documentary and other on-the-spot checks on documents, balance sheets and accounts, as well as supporting evidence, relevant to the use of the public funding or to the management and use of the grant to ensure that it is consistent with the purpose for which the grant was given (Article 2 of Law No. 885). It should be noted that these measures are taken solely in respect of non-profit-making associations receiving public funding and are intended to act as a check on any embezzlement and not on exploitation for TF purposes.

Criterion 8.4

951. a) Supervision of NPOs is carried out solely for non-profit-making associations in receipt of public grants. In addition, foundations are audited by the Foundation Monitoring Commission. As mentioned above (see c.8.1 and c.8.3), NPOs' compliance with the requirements of R.8 is not risk-based.

952. b) Failure to comply with obligations within the general framework of accountability, integrity and transparency of NPOs is punishable: fines, dissolution, withdrawal of grants. Since the changes made in June 2018 by Law No. 1.462, the amounts of some fines have been increased, namely those for failure to keep the register referred to in Article 12 (from EUR 75 to 200) and failure to submit it to the Prime Minister or the judicial authorities (from EUR 200 to 600). New fines have been added, namely a fine (of between EUR 200 and 600) for failure to perform obligations associated with civil-law transactions (Article 9, paragraphs 1, 2), declare changes in relation to the association (Article 10), publish changes in the *Journal de Monaco* [Official Gazette of Monaco] (Article 11) or keep accounts (Articles 20-1 to 20-5). Since June 2018, the penalties have also applied to federations of non-profit-making associations.

953. Objecting to audits and checks by the Auditor-General or refusing to provide documents needed to carry them out results in withdrawal of the grant by the Prime Minister, without prejudice to any full or partial repayment that the Auditor-General may order,¹⁸⁶ including non-approved associations receiving public grants on an exceptional basis.

954. With regard to foundations, in addition to the sanctions referred to in the 4th Round MER (paragraph 1314), a new fine (of between EUR 18 000 and 90 000) has been added¹⁸⁷ for failure to perform accounting and retention obligations (Articles 17 to 17-2 of Law No. 60).

955. However, it has not been established that the sanctions applicable to breaches committed by NPOs or by persons acting on their behalf are effective, dissuasive and proportionate in most cases (see R.35).

¹⁸⁶ Article 3 of Law No. 885 of 29 May 1970

¹⁸⁷ Art. 29 of Law No. 60 amended by Law No. 1.462 of 28 June 2018

Criterion 8.5

956. a) Co-operation, co-ordination and sharing of information between the competent authorities have not developed since the last evaluation, as was underlined in the second NRA.¹⁸⁸ A national co-ordination and information-sharing mechanism was established in December 2012 with the creation of the Contact Group (see paragraph 1326 of the 4th Round MER). However, the effectiveness of this mechanism cannot be evaluated at this stage as no TF cases have been dealt with by this group to date.¹⁸⁹ It appears that improvements are being made in terms of co-operation.¹⁹⁰

957. b) For NPOs suspected of being exploited for TF purposes or by terrorist organisations, or of actively supporting terrorist activities or organisations, the GPO could use their general powers to investigate or ask the investigating judge to commence a judicial investigation for the purposes of ordering any step helpful in establishing the truth. Moreover, SICCFIN can carry out analyses at its own initiative upon receipt of an STR or at the request of a foreign counterpart in respect of any entity of this type.

958. c) The register kept pursuant to Article 12 of Law No. 1.355 must be presented whenever requested by the Prime Minister or the judicial authorities. Article 20-3 of Law No. 1.355 provides that information given in documents and statements of the association's expenditures must be sufficiently detailed and must make it possible to verify that the funds spent have been used in accordance with its corporate objective. Lastly, Article 20-5 provides that an association's accounts and all statements and supporting evidence in relation to its revenues and expenditures must be kept for a period of five years at the association's headquarters or by any person explicitly designated to this end, who must reside in Monaco, and that all such documents must be kept available to the authorities, which can, if they wish, take copies of them at their own expense.

959. As regards foundations, under Article 17 of Law No. 56, the Monitoring Commission¹⁹¹ is entitled to receive, at any time, originals and copies, without any requirement to travel, at the foundation's headquarters, of all documents and decisions relating to the foundation's administration and accounts.

960. Pursuant to Article 13 of the aforementioned Law, every year, this Committee sends the Prime Minister a report on the non-financial and financial situation of all foundations. If the information provided annually by a foundation turns out to be non-compliant, formal written notice of the irregularities must then be given.¹⁹² In practice, no procedural irregularities concerning a foundation in Monaco have been reported to the Prime Minister.

961. d) The purpose of the Contact Group (see criterion 8.5(a)) is to ensure swift sharing of information between the criminal prosecution authorities and the government departments

¹⁸⁸ "With regard to NPOs, it should also be pointed out that there is no formal co-ordination between the departments and directorates involved in the authorisation or oversight of NPOs", p. 747

¹⁸⁹ Source: NRA 2

¹⁹⁰ The Monegasque authorities have stated that co-operation between SICCFIN and the Department of the Interior will increase knowledge of the NPO sector and aid the sharing of information concerning NPOs. This co-operation will be extended to the Department of Finances and the Economy, which allocates grants to approved NPOs, the Auditor-General, who checks the accounts of NPOs which receive grants, and the Department of International Co-operation, which promotes the international humanitarian activity of Monegasque NPOs overseas

¹⁹¹ Referred to in Article 13 of the amended Law No. 56

¹⁹² Art. 61 of the CCP

responsible for AML/CFT in order to take preventive measures or in order to investigate where it is suspected or where there are plausible reasons to suspect that an NPO is being exploited or misused for TF purposes.¹⁹³ However, it should be pointed out that this Group has met on only seven occasions since 2016 (twice a year on average). It has not dealt with any TF cases to date.¹⁹⁴ In addition, SICCFIN can review and deal with STRs in relation to NPOs and, if sufficient signs of TF emerge, it can refer the matter to the GPO, which can swiftly commence an investigation. SICCFIN has also put in place an emergency procedure for TF cases ("PCR flash").¹⁹⁵ No such referrals have been made to date.¹⁹⁶

Criterion 8.6

962. For foreign requests, SICCFIN acts as a gateway (at least for other FIUs) because it can carry out investigations at its own initiative, upon request by a foreign counterpart, in relation to any NPO. For judicial co-operation, the Department of Justice acts as a gateway, and for police co-operation, this role is performed by the Financial Investigations Unit of the Police Department. No details of the procedures implemented have been provided.

Weighting and conclusion

963. Monaco has partially and belatedly completed its assessment of the NPO sector-related risks. Because measures demanded by R.8 must be based on a deep understanding of the sector and the TF risks it presents, and the measures or arrangements implemented predate the adoption of a formal framework for assessing the sector, they are not tailored to NPOs posing a higher level of risk. Furthermore, the supervisory measures are not risk-targeted. The deficiencies identified are therefore of moderate significance. **Principality of Monaco is rated Partially Compliant with Recommendation 8.**

Recommendation 9 – Financial institution secrecy laws

964. During the previous 4th Round evaluation, the previous Recommendation 4 was rated LC due to uncertainties as to whether the application of the FATF Recommendations was fully effective because of differing interpretations of statutory and regulatory AML/CFT provisions by different Monegasque authorities, in addition to apparent conflicts with personal data protection laws, which necessitated amendments to the existing legal provisions.

965. The FATF's requirements have not changed since the last round. However, matters of effectiveness are no longer addressed in the context of technical compliance.

Criterion 9.1

a) Access to information by competent authorities

966. According to Article 50 of the AML/CFT Law, SICCFIN shall receive from regulated organisations or persons all information or documents in their possession which are necessary for the performance of its tasks at the initiative of regulated organisations or persons, or shall ask for them to be provided to it, as soon as possible, even in the absence of the stipulated declaration.

¹⁹³ NRA 2

¹⁹⁴ NRA 2

¹⁹⁵ This is a communication from the GPO which is, in reality, merely a copy of the information sent by the institution or a counterpart without naming them (source: NRA 2)

¹⁹⁶ NRA 2

b) Sharing of information between competent authorities, at national or international level

967. Article 50 also provides that SICCFIN shall receive any information or any document necessary to perform its task from the Police Department, including judicial information; from other government and district authorities, legal persons performing a public service role or acting in the public interest, and public institutions; from the Principal State Prosecutor or other members of the judiciary; from national organisations performing supervisory roles; from professional bodies listed in a ministerial order, except those representing the professionals mentioned in Article 2, and from the Chairperson of the Monaco Bar Association.

968. SICCFIN may, in turn, also send to the authorities, organisations and departments mentioned in Article 50 any information or document in relation to this law which is useful for the performance of their respective tasks. Such information is confidential.

969. The authorities state that the differences over the interpretation of AML/CFT provisions between SICCFIN and the *Commission de contrôle des informations nominatives* (CCIN) [Personal Data Regulatory Commission], which regulates personal data protection, identified by the MONEYVAL evaluators during the 4th Round evaluation have since been resolved. However, although the authorities mention regular discussions with CCIN, in particular when legal provisions are drawn up, they have not provided any new CCIN decisions which invalidate or confirm the interpretations that were deemed excessively restrictive during the last evaluation, particularly in relation to the sending of customer data by a financial institution to its foreign parent company under the group's AML/CFT policy, which may require prior individual authorisation from CCIN.

c) Sharing of information between financial institutions where required by Recommendations 13, 16 or 17.

970. According to the *specialia generalibus derogant* principle, i.e. special laws derogate from general laws, the provisions of Articles 28 and 29 of the AML/CFT Law, which allow information to be shared within a group, apply with no need to expressly state that an exception is being made to rules deemed contrary to Monegasque law. This means that professional secrecy does not stop Monegasque subsidiary companies or branches of foreign parent companies, and companies within the same group, from providing information necessary to organise AML/CFT activity. The aforementioned provisions also include the management companies referred to in Article 1, 3°), of the AML/CFT Law.

Weighting and conclusion

971. Criterion 9.1 is mostly met. The only deficiency is the lack of formal expression of CCIN positions which would invalidate this body's previous decisions. Therefore, in the absence of a decision by the competent data protection authority, it cannot be concluded that the legal uncertainties surrounding the conflicts between data protection rules and the sharing necessary for AML/CFT purposes have been fully resolved. However, this deficiency carries little weight as no provision of Monegasque law prevents the sharing of information. **Principality of Monaco is rated Largely Compliant with Recommendation 9.**

Recommendation 10 – Customer due diligence

972. In the 4th Round evaluation, the previous Recommendation 5 was rated LC. Inter alia, the deficiencies related to (i.e.) the obligation to identify the beneficial owners of occasional customers, which was merely implicit; an ambiguity concerning the identification of beneficial

owners of legal persons; and an exemption from due diligence obligations which could not be regarded as a reduction in the intensity of these obligations in accordance with Recommendation 5.

Criterion 10.1

973. Article 18 of the AML/CFT Law provides that regulated entities “cannot keep anonymous accounts, anonymous passbooks or anonymous safes”. In addition, Article 19 of the aforementioned law prohibits anonymous transactions involving fixed-deposit receipts or Treasury bills. Furthermore, the use of numbered accounts is governed by Article 3 of SO No. 2.318, which explicitly allows the use of numbered accounts or accounts with a name of convenience in order to protect client confidentiality.

974. In this regard, anonymity of accounts does not exist in the strict sense, because the aforementioned Article 3 provides that *“The use of numbered accounts or accounts with names of convenience is permitted only in internal communications and operations, provided that the identities of the customer and the beneficial owner are precisely known to the officer responsible for tackling money laundering and financing of terrorism and any other appropriate person within the institution, and can be communicated upon request to SICCFIN officers”*.

975. There is no provision that prevents regulated institutions from keeping accounts in obviously fictitious names. However, the obligations to identify customers, verify their identities and know customers and the obligation to update CDD data over the course of the business relationship militate against the keeping of accounts in obviously fictitious names in practice.

Criterion 10.2

976. Under Articles 4 and 4.1 of the AML/CFT Law, FIs are required to undertake CDD measures: a) when establishing business relationships; b) when carrying out an occasional transaction involving an amount equal to or greater than EUR 15 000, regardless of whether it is carried out in a single operation or in several operations that appear to be linked; c) when carrying out an occasional wire transfer; d) where there is a suspicion of ML/TF or corruption, regardless of any applicable threshold, exemptions or exceptions; e) where there are doubts about the veracity or accuracy of the identification data of a customer with whom they already have a business relationship.

Criterion 10.3

977. Article 4-1 of the AML/CFT Law provides that FIs shall identify their customers, without explicitly stating whether they are permanent or occasional, and that FIs shall verify their identities using conclusive documentary evidence bearing a photograph of them. Identifying and verifying a customer’s identity includes establishing their surname, first name and address in the case of physical persons.

978. Customers’ identities shall be established and verified by means of documents, data and information from reliable and independent sources so as to gain an understanding of the customer’s ownership and control structure.

979. The documents needed to establish and verify identity are specified in Article 5 of SO No. 2.318 for physical and legal persons and in Article 8 of the aforementioned Order for legal arrangements. The documents required for identification meet the reliability and independence criteria under c.10.3. Furthermore, where the customer is a legal person or legal arrangement, the documents collected must provide an understanding of the nature of its business and its

ownership and control structure. Remote establishment of business relationships is subject to an electronic procedure approved by ministerial order.

980. However, the way in which occasional customers must be identified is not explicitly specified in Article 4-1, although FIs are required to identify all of their customers, whoever they are.

Criterion 10.4

981. Article 4-1 of the AML/CFT Law provides that FIs shall identify agents as well as customers. An agent is a person who acts for and on behalf of another physical or legal person who is the customer. In the case of legal persons, managers are also referred to as company officers. Article 5 of SO No. 2.318 states that FIs are required to verify the identity and powers of persons acting on the customer's behalf. These provisions are supplemented by those of Article 13, which state that FIs shall ascertain the powers of representation of the person acting on the customer's behalf and shall verify them by means of conclusive documents, including in relation to persons authorised to act on behalf of customers under a general or special power of attorney and persons authorised to represent customers who are legal persons, legal arrangements or trusts.

982. The documents that are used to verify the identity of a customer or his/her agent are specified, for physical and legal persons, in sections 1°) and 2°) of Article 5 of SO No. 2.318, which provide that FIs shall verify the powers of persons acting on the customer's behalf, and, for trusts, in Article 8, which provides that identification also includes ascertaining and verifying the list of persons empowered to manage or represent the trust or legal arrangement concerned.

Criterion 10.5

983. Article 21 of the AML/CFT Law defines a beneficial owner as "*the physical person or persons who ultimately own or control the customer or for whom a transaction is carried out or an activity is undertaken*". This definition is supplemented in section 2°) of Article 1 of SO No. 2.318 with the following words: "*the physical person or persons who ultimately own or control the customer and/or the physical person for whom a transaction is carried out. This also includes physical persons who ultimately exercise effective control over a legal person or legal arrangement*." The concept of beneficial owner for legal persons is explained in Article 14 of SO No. 2.318 (see c.10.10).

984. The obligations to establish and verify the identities of beneficial owners are explained in Article 13 of SO No. 2.318, which includes a requirement to identify the beneficial owner in the business relationship and to verify "*the evidence of identity collected in relation to the latter by collecting any appropriate document or supporting evidence originating from a reliable source, having regard to the risks of money laundering and financing of terrorism posed by the business relationship*". Identity is verified by means of conclusive documentary evidence bearing a photograph. In addition, there is no obligation to identify the beneficial owners of NPOs or the list of managerial functions within NPOs as per SO No. 2.318.

Criterion 10.6

985. Article 4-3 of the AML/CFT Law provides that FIs shall collect proportionate information in relation to the intended purpose and nature of the business relationship. The information to be collected is specified in Article 10 of SO No. 2.318, which contains a requirement to record the types of transactions the customer requests, as well as any information that may help to determine the purpose of the relationship, in addition to information concerning the origin of the

customer's assets and their financial background, which must be supported by documents, data or reliable sources of information. However, the requirement to understand the purpose and nature of the business relationship is not explicit, and is instead inferable from the obligation to have any information that may help to determine the purpose of the business relationship.

Criterion 10.7

986. Article 5 of the AML/CFT Law requires ongoing due diligence on the business relationship not only for new customers, but also for existing customers, using a risk-based approach for the latter. Article 5 also provides that ongoing due diligence entails careful scrutiny of transactions in the light of up-to-date knowledge of the customer and the customer's risk profile, which, together with the provisions of the SO (see below), satisfies sub-criterion a).

987. These provisions are supplemented by Article 26 of SO No. 2.318, which specifies the documents to be collected in order to update knowledge of a customer according to the customer's risk profile, and this satisfies sub-criterion a). In addition, Article 25-3 of SO No. 2.318 requires FIs to update and analyse information making it possible to continue to have appropriate and up-to-date knowledge of the business relationship. The same article also states that the nature and extent of the information collected and the intervals at which information is updated shall be tailored to the ML/TF risk posed by the business relationship concerned, and this satisfies sub-criterion b).

Criterion 10.8

988. There is a requirement to understand the nature of the business and the ownership and control structure of legal persons and legal arrangements under Article 4-1, paragraph 5, of the AML/CFT Law. Article 5 of SO No. 2.318 provides that for legal persons, regulated institutions must also understand the nature of the legal person's business and its ownership and control structure. For legal arrangements and trusts, the SO contains a requirement to understand the ownership and control structure of the legal arrangement or trust and to become aware of the existence, nature, purposes and management and representation arrangements of the legal arrangement or trust concerned.

Criterion 10.9

989. Article 4-1 of the AML/CFT Law provides that for legal persons, legal arrangements and trusts, the information to be collected by FIs includes the corporate name, registered office, list and identities of the managers and the powers that regulate and bind the legal person, legal arrangement or trust. This meets the requirements of sub-criteria a) and b), except proof of existence for a).

990. Article 5 of SO No. 2.318 adds to these obligations in relation to the powers that regulate the legal person or legal arrangement, the address of the registered office and the address of a principal place of business if different from the address of the registered office, which satisfies criterion c) but likewise does not require collection of proof of existence certifying that the trust has been registered. Under Article 2 of Law No. 214 of 27/02/1936, trusts created in Monaco are required to submit proof of compliance with the substantive requirements of the foreign law to which they are subject, without which they are null and void, and this constitutes proof of their existence. However, there is no assurance that the aforementioned foreign law governing the trust will meet FATF standards.

Criterion 10.10

991. There is a requirement to understand the ownership and control structure of legal persons and legal arrangements under Article 4-1, paragraph 5, of the AML/CFT Law, which requires FIs to take steps to gain an understanding of the customer's ownership and control structure. This article is supplemented by the provisions of Article 8 of SO No. 2.318 in relation to trusts (see c.10.11) and by Article 14 of the aforementioned SO for legal persons.

992. Article 14 of SO No. 2.318 states that where the customer is a legal person, "beneficial owner" means:

- natural persons who ultimately own or control, directly or indirectly, at least 25% of the capital or voting rights of the legal person, which only partly meets the requirements of sub-criterion a) (see § below),
- or, if there are doubts as to whether the person(s) holding a controlling interest are the beneficial owner(s), or where no natural person exercises control through an interest, the natural persons who actually exercise control by any other means over the capital or management, governing or executive bodies of the company or general meeting of its shareholders, which meets sub-criterion b).
- where it has not been possible to identify any natural person according to the criteria referred to in the two previous paragraphs, and where there is no suspicion of ML, TF or corruption, the beneficial owner is the natural person(s) who represent(s) the company in the eyes of the law, or, if the company is not registered in Monaco, the equivalent in foreign law, which meets sub-criterion c).

993. With regard to sub-criterion a), the concept of beneficial owner under Article 14 is not fully in line with the concept as understood by the FATF. Article 14 is not sufficiently explicit in relation to seeking persons who do not own more than 25% of the capital or voting rights but hold a significant or sufficiently large proportion of the voting rights or capital enabling them to exercise control over the company or its governing bodies or the shareholders' meeting. In this regard, the FATF's footnote 37 states that a controlling interest depends on the ownership structure of a company. It may be based on a threshold, e.g. any person owning more than a certain percentage of the company (such as 25%). Article 14 makes the 25% threshold absolute by referring to ownership or control of "*at least 25% of capital or voting rights*".

994. In addition, there is no provision concerning legal persons which are not created in the form of companies, such as associations and foundations (NPOs).

Criterion 10.11

995. Article 8 of SO No. 2.318 provides that when trusts or legal arrangements are identified, this identification shall also include taking note of and verifying the list of persons authorised to manage or represent these customers, without making explicit reference to the trustee(s) or beneficiaries or any other physical person ultimately exercising effective control over the trust, including through a chain of control. Furthermore, "where the customer is a legal arrangement or trust, the obligations to establish and verify identity under Article 4 of the AML/CFT Law shall relate to the identity of the creator(s) of the legal arrangement or trust and, where applicable, the protector(s) of the legal arrangement or trust".

996. Lastly, FIs are required to identify all of their customers and beneficial owners as referred to in Article 15 of SO No. 2.318, which includes the trustee(s) and beneficial owner(s) and any other physical person who ultimately controls the legal arrangement or trust through direct or indirect ownership or by other means. Cumulative application of these various provisions

satisfies requirements a) and b) of the criterion.

Criterion 10.12

997. Article 9 of SO No. 2.318 requires FIs to establish and verify the identity of the beneficiaries of life insurance policies. In addition, Article 16 of the aforementioned order requires that “where beneficiaries of policies are specifically named persons or legal arrangements, the surname, first name or corporate name must be taken”, which satisfies sub-criterion a).

998. Article 16 also states that in the case of beneficiaries who are designated by characteristics, by class or by other means, the professionals referred to in the previous paragraph shall obtain sufficient information concerning these beneficiaries to be able to establish the identity of the beneficiary at the time of the payout, which satisfies sub-criterion b). The beneficiary's identity must be verified no later than the time of the payout to the beneficiary upon submission of any conclusive written document, which satisfies sub-criterion c).

Criterion 10.13

999. There is limited provision for applying enhanced CDD measures and hence including a beneficiary as a risk factor for beneficiaries who have politically exposed person status, except in other enhanced due diligence situations. Article 17-1 of the AML/CFT Law provides that credit, payment and electronic money institutions and insurance companies shall take reasonable steps to determine whether the beneficiaries of a life insurance policy or other investment-related insurance policy and, where applicable, the beneficial owner of the insurance policy are politically exposed persons.

Criterion 10.14

1000. As a rule, identification is carried out before establishing a business relationship or when carrying out or preparing for a transaction. As an exception to this, where the ML/TF or corruption risk is low, the identity of the customer, agent or, where applicable, beneficial owner can be verified during the course of establishing the business relationship, if this is essential in order not to interrupt the normal conduct of FIs' activities. In this case, verification must be carried out as soon as possible after first contact, which corresponds to “as soon as reasonably practical” under sub-criteria (a) and (b) in c.10.14. The ML/TF risk must be “low”, which is more restrictive than the requirement of sub-criterion (c) in c.10.14, which states that risks must be managed effectively regardless of whether they are low.

1001. Professionals must be able to justify to SICCFIN their decision not to verify the identity of their customer before establishing a business relationship.

Criterion 10.15

1002. There is a general obligation for FIs to develop and put in place internal procedures commensurate with their nature and scale to tackle ML/TF, taking account of the national risk assessment, including in relation to customer risk management. In addition, Article 11 of the AML/CFT Law only allows relationships to be established or transactions to be prepared for or carried out prior to identification in low-risk situations, which is more restrictive than the requirements of sub-criterion 10.14. The fact that c.10.15 is complied with may be inferred from a combination of the provisions of Articles 11 and 27 of the AML/CFT Law. However, by way of exception, when an account is opened, verification can take place no later than the time when the first transaction takes place without a risk analysis of the business relationship being carried out.

Criterion 10.16

1003. Article 5 of the AML/CFT Law provides that ongoing due diligence must be conducted on business relationships with not only all new customers but also, where appropriate, existing customers based on the risk assessment, where the relevant aspects of a customer's situation change or where there is a requirement, during the calendar year concerned, by virtue of a statutory or regulatory obligation, to contact the customer in order to re-examine any relevant information in relation to the beneficial owner(s).

1004. In addition, Article 26 of SO No. 2.318 provides that the obligation to perform ongoing due diligence includes an obligation to collect, analyse and update, within a period appropriate to the risk, identification data and other information with which appropriate knowledge of customers can be maintained. FIs are therefore required to use up-to-date knowledge of customers based on the risk.

Criterion 10.17

1005. Article 12.2 of the AML/CFT Law provides that where the ML/TF risk posed by a business relationship, product or transaction appears to them to be high on the basis of a risk analysis, regulated entities shall perform due diligence obligations by taking enhanced due diligence measures.

Criterion 10.18

1006. Article 11 of the AML/CFT Law provides that where, following a risk analysis, a business relationship or transaction appears to present a low risk of ML/TF or corruption, provided that there is no suspicion of ML/TF or corruption, FIs can perform due diligence obligations by taking simplified due diligence measures. There is no obligation for the risk analysis to be satisfactory.

Criterion 10.19

1007. Article 7 of the AML/CFT Law provides that where FIs are unable to perform due diligence obligations, they cannot establish or maintain a business relationship or carry out any transactions, including occasional ones. This meets sub-criterion a). If a business relationship has already been established, they must terminate it. FIs must assess whether it is necessary to notify SICCFIN, the Principal State Prosecutor or the Chairperson of the Monaco Bar Association, though there is no explicit requirement to submit an STR, whereas sub-criterion 10.19 b) requires FIs to consider submitting one.

Criterion 10.20

1008. Article 7-1 of the AML/CFT Law provides that where FIs suspect that a transaction is connected with ML/TF or corruption and have reasonable grounds to believe that they would tip off the customer by performing their due diligence obligation, they can choose not to apply the stipulated due diligence measures and must then send an STR to SICCFIN without delay.

Weighting and conclusion

1009. Monaco's arrangements in relation to the performance of CDD obligations by FIs are largely compliant. In particular, having regard to the fact that Monaco is a financial centre, the obligations applicable to legal persons, trusts and other legal arrangements are sufficiently exhaustive and detailed. Criterion 10.11 is therefore met. In addition, Monaco has a register of trusts, and trustees that are subject to due diligence obligations in their own right. However, there are still deficiencies in relation to the concept of beneficial owners of foundations and

associations, and certain requirements are not explicit, including the requirement to ensure that documents obtained during due diligence remain up to date and relevant to customer risk, even though there is also a general obligation to update CDD data. Furthermore, the application of enhanced due diligence measures and hence the treatment of life insurance beneficiaries as a risk factor are limited to beneficiaries who have politically exposed person status. However, these deficiencies carry only minor weight in the overall assessment of this recommendation. **Principality of Monaco is rated Largely Compliant with Recommendation 10.**

Recommendation 11 – Record keeping

1010. The previous Recommendation 10 was rated LC during the 4th Round evaluation because of reservations about effectiveness in relation to the storage of identifying data, due to differing interpretations of statutory and regulatory AML/CFT provisions by different Monegasque authorities stemming from apparent conflicts with personal data protection laws. This point, which was a matter of effectiveness in the previous round, does not fall within the scope of the current review of technical compliance.

Criterion 11.1

1011. Under Article 23 of the AML/CFT Law, FIs are required to keep documents and information, on any medium, relating to transactions conducted by their regular or occasional clients for five years after such transactions take place.

Criterion 11.2

1012. FIs are required to keep, for five years following the termination of relationships with regular or occasional clients, copies of all documents and information, on any medium, obtained through CDD measures, including those used to identify and verify the identity of their clients and copies of records, account files and business correspondence permitting precise reconstruction of transactions, and any documents in their possession submitted by persons with whom a business relationship could not be formed for any reason, and any information relating to them. There is no obligation to keep the results of any analysis undertaken by FIs in relation to their clients.

Criterion 11.3

1013. FIs are required to keep information relating to transactions conducted so that they can respond within the prescribed time limits when SICCFIN exercises rights to require handover under Article 50 of the AML/CFT Law, which provides that SICCFIN can order that any documents or information necessary to perform its task be handed over to it, even in the absence of STRs or requests from the Principal State Prosecutor. The five-year retention period can be extended by up to a further five years at the request of SICCFIN or the Principal State Prosecutor.

Criterion 11.4

1014. Under Article 24 of the AML/CFT Law, FIs have systems enabling them to respond swiftly to requests for information from SICCFIN, the Principal State Prosecutor or the Chairperson of the Monaco Bar Association through secure channels which protect the confidentiality of communications.

Weighting and conclusion

1015. FIs are required to keep all documents and make them available to the competent authorities, so the lack of an obligation to keep the results of any analysis undertaken by FIs in

relation to their clients is a minor deficiency. **Principality of Monaco is rated Largely Compliant with Recommendation 11.**

Recommendation 12 – Personnes politiquement exposées

1016. The previous Recommendation 6, which was not re-evaluated¹⁹⁷ during the 4th Round, continued to be rated LC. Since then, the requirements of FATF Recommendation 12 have been strengthened and extended to domestic PEPs.

Criterion 12.1

1017. Article 17 of the AML/CFT Law makes no distinction between foreign and national PEPs, which means the same due diligence measures provided for in 12.1 a) to d) apply to all PEPs. Consequently, the measures applicable to domestic PEPs go beyond the standard required.

1018. In addition, Article 17-2 of the AML/CFT Law provides that where PEPs stopped performing their duties, the organisations and persons referred to in Articles 1 and 2 must take into account, for at least 12 months, the risk that this person continues to pose, and take appropriate steps, based on an assessment of this risk, until it is considered that it no longer exists. After this period has ended, enhanced due diligence applicable for PEPs is mandatory to FIs on the basis of their risk analysis, which is not in line with the FATF standards.

1019. The provisions of Article 17 of the AML/CFT Law embody the requirements of the sub-criteria 12-1, i.e. a) have a risk management system to determine whether the customer or the beneficial owner is a PEP; b) obtain the approval of senior management or any person empowered to this end by the executive body to establish or continue with a business relationship with this customer; c) take measures to establish the source of wealth and funds involved in the business relationship or transaction; and (d) conduct enhanced scrutiny of the business relationship. The concept of members of senior management is explained in Article 1, paragraph 19°), of SO 2.318.

Criterion 12.2

1020. FIs are required to take the same measures as those described in the previous sub-criterion for domestic PEPs and persons performing prominent functions within or for an international organisation. The time limit for applying enhanced measures to PEPs who have stopped performing their duties for more than one year, identified in relation to criterion 12.1, also applies to criterion 12.2. In addition, Article 24 of SO 2.318 provides that the list of PEPs shall be set out in a ministerial order concerning the list of the prominent public functions that exist in the Principality and the prominent public functions within every accredited international organisation.

1021. This list must also include any prominent function that may be entrusted to representatives of third countries and international bodies accredited by the government.

1022. However, in the absence of more detailed information about this list, there is no assurance that domestic and international PEPs are consistent with the FATF's definition of PEPs. Furthermore, Monegasque regulations do not include a definition of international organisations as defined by the FATF.

¹⁹⁷ As per the MONEYVAL Rules of Procedure: <https://rm.coe.int/rules-of-procedure-for-the-4th-round-of-mutual-evaluations-and-for-fol/1680760775>

Criterion 12.3

1023. Article 17 of the AML/CFT Law extends the obligations that apply to PEPs, to their family members and close associates. Family members and close associates are sufficiently broadly defined in Article 24 of SO 2.138. However, the limitations described in the previous criteria, the maximum period of one year after termination of functions, and the lack of a definition of international organisations in Monegasque law, as described under criteria 12.1 and 12.2, apply to family members and close associates of PEPs.

Criterion 12.4

1024. Article 17-1 of the AML/CFT Law provides for reasonable measures to determine whether beneficiaries and/or a beneficial owner is/are PEP, no later than the time of the payout and, where there are higher risks, to inform senior management, conduct enhanced scrutiny and, where appropriate, make an STR.

Pondération et conclusion

1025. The time limit applicable to PEPs who have stopped performing their duties for more than one year (criteria 12.1 and 12.2) does not meet the standard for Recommendation 12. Furthermore, the order that will establish the functions of PEPs has not yet been passed into law and the concept of international organisation is not defined. In view of Monaco's exposure to the risk of corruption, the deficiencies identified are of moderate significance. **The Principality of Monaco is rated Partially Compliant with Recommendation 12.**

Recommendation 13 – Correspondent banking

1026. The former Recommendation 7 was rated LC during the 4th Round because the obligations relating to correspondent banking (including those involving the maintenance of payable-through accounts) did not apply to relationships with credit institutions or financial institutions established in a country whose legislation contained provisions considered equivalent to those of Monegasque law and the concept of "appropriate management level" had not been formally explained to financial institutions in order to ensure that it would be interpreted as covering "senior management". The FATF's requirements in relation to Recommendation 13 have not changed as far as correspondent banking and other similar relationships are concerned.

Criterion 13.1

1027. Correspondent relationships are governed by Article 15 of the AML/CFT Law, which applies to FIs when they form a cross-border correspondent relationship involving the making of payments with a customer institution located in a country which does not impose obligations equivalent to Monegasque law; no such approach is required by criterion 13.1, which makes no distinction between the countries concerned by correspondent relationships.

1028. a, b, c) Article 15 of the AML/CFT Law provides that obligated institutions must collect sufficient information to understand fully the nature of the customer institution's activities and to assess, using publicly accessible information, its reputation and the quality of supervision. FIs must obtain permission from a member of senior management before forming new correspondent relationships. The Law lays down a requirement to establish whether the correspondent bank has been subject to ML/TF investigation or regulatory action.

1029. d) FIs must also set out in writing the respective responsibilities of each correspondent

banking institution. However, the law does not expressly refer to the understanding of responsibilities by FIs or whether they are AML/CFT responsibilities.

Criterion 13.2

1030. Article 15 of the AML/CFT Law provides that FIs must ensure, in relation to payable-through accounts, that the customer institution has verified the identities of customers with direct access to the correspondent institution's accounts, has conducted ongoing due diligence in relation to them and can provide relevant details of such due diligence measures at the correspondent institution's request.

1031. However, the measures referred to in Article 15 are not applicable to financial institutions established in a country whose legislation contains provisions deemed equivalent or more exacting than those of Monegasque law, whereas criterion 13.2 does not allow for such an exception.

Criterion 13.3

1032. Article 16 of the AML/CFT Law prohibits the formation or continuation of a correspondent banking relationship with a credit institution, a financial institution or an institution pursuing equivalent activities in a country where it has no meaningful physical presence through which effective directorship or management is exercised, if it is unaffiliated with a regulated institution or group, which corresponds to the term "shell bank" as defined in the FATF Glossary.

1033. The same article provides that obligated institutions shall take appropriate steps to ensure that they do not form or continue any correspondent relationship with a person who in turn has correspondent banking relationships enabling an institution pursuing activities in a country where it has no meaningful physical presence to use its accounts.

Weighting and conclusion

1034. Criteria 13.1 and 13.2 are partly met because of the presumption of equivalence with Monegasque law of certain correspondent banking relationships to which the FATF's requirements are not applicable a. However, it has not been established that correspondent banking relationships exist in Monaco. Because of this lack of materiality, the deficiencies are of minor significance. **Principality of Monaco is rated Largely Compliant with Recommendation 13.**

Recommendation 14 – Money or value transfer services

1035. The former Special Recommendation VI (SR.VI), which was not re-examined during the 4th Round,¹⁹⁸ had been rated LC since the 3rd Round because other than the generally applicable statutory provisions concerning the pursuit of economic or commercial activities in the Principality, there were no specific provisions of Monegasque law that laid down requirements for the activity of money transfer service providers. The remarks made in the former Recommendation 17 in relation to the imposition of sanctions were also taken into account. Since the 3rd Round, money or value transfer services have been covered by Payment Services

¹⁹⁸ Conformément aux règles de procédure MONEYVAL <http://rm.coe.int/regles-de-procedure-pour-le-4eme-cycle-d-evaluations-mutuelles-et-pour/168075ff7d>

Directives (PSDs) 1 and 2. These directives, which were transposed into French law by orders of 15 July 2009 and 9 August 2017 respectively, introduced into French law the concept of payment services, which now corresponds to money or value transfers.

Criterion 14.1

1036. The Franco-Monegasque banking agreements, and in particular the first article of SO No. 3.021 making the exchange of letters of 20 October 2010 between the Principality of Monaco and the French Republic enforceable, make the legislation in force in France and the general implementing regulations concerning credit institutions, payment institutions and electronic money institutions applicable in Monaco.

1037. Since the entry into force of the EU Payment Services Directive, which has been transposed into and codified in the Monetary and Financial Code, other than credit institutions, payment institutions and electronic money institutions have been the only categories of institutions that can provide money or value transfer services, which – according to Article L. 314-1 of the French Monetary and Financial Code – are payment services that can only be provided by duly approved institutions. In addition, Article 2 of Decree 2010-599 of 20 December 2010 provides that the ACPR shall approve and keep up to date the list of Monegasque institutions that are authorised to provide money transfer services, among other things.

1038. In Monaco, money transfer services can only be provided by the above-listed institutions, which, as well as being required to obtain approval from the ACPR, must establish a *société anonyme monégasque* (SAM) [Monegasque limited company], which is subject to authorisation from the Prime Minister pursuant to the Sovereign Order of 5 March 1895 on *sociétés anonymes* [limited companies] and *sociétés en commandite par actions* [limited partnerships with shares]. This activity may also be pursued in Monaco by a branch of a payment institution that has been approved in France by the ACPR and with authorisation from the Prime Minister.

1039. It should be noted in this regard that the system of approval of Monegasque institutions that is implemented by the ACPR takes account of the fact that the Principality of Monaco is not a member of the European Union or a party to the Agreement on the European Economic Area (EEA). This means that a branch cannot be established in Monaco under the freedom of establishment system by a payment institution that is subject to the law of an EEA country other than France; instead, as in cases where a subsidiary is incorporated under Monegasque law, special approval must be obtained from the ACPR.

Criterion 14.2

1040. Under the latest agreement by exchange of letters signed by France and Monaco in 2010, French banking and finance rules are generally applicable in Monaco. However, there are exceptions and restrictions. According to Article 4 of the previous agreement of 1987, the provisions of French banking law – like statutory and regulatory AML/CFT provisions in force in France – are not applicable in Monaco where they do not concern prudential regulations or the organisation of credit institutions (e.g. provisions concerning the right to a bank account, unsolicited direct marketing or borrowers' rights). However, some articles of the Monetary and Financial Code which make reference to provisions of criminal law or company law are applicable in Monaco subject to this country's own provisions governing these fields.

1041. In this regard, without prejudice to the sanctions for illegal pursuit of regulated activities that exist under French banking and finance law, the pursuit of business activity in Monaco is subject either to a declaration system or an authorisation system if the business is carried on

through a SAM, non-compliance with which is criminally punishable by a fine under Article 12 of Law No. 1.144 of 26 July 1991. At the sole discretion of the courts with jurisdiction, this sanction could also apply to a case of illegal pursuit.

Criterion 14.3

1042. Article 1, point 9°) of the AML/CFT Law makes money transfer service providers subject to AML/CFT obligations, which are subject to monitoring by SICCFIN; the latter can carry out documentary and on-site inspections of their activities (Article 49).

Criteria 14.4 and 14.5

1043. The only institution in Monaco that offers money transfer services is La Banque Postale de Monaco, and it stopped offering Western Union transfer services in September 2018. It still offers international money transfer services in that international money orders can be sent, but they cannot be received. La Banque Postale de Monaco does not use payment service agents.

1044. However, if it did so, a payment service provider availing itself of the services of one or more agents would have to ensure that its agents complied at all times with the statutory and regulatory provisions applicable to them (Article L. 523-3 of the aforementioned Monetary and Financial Code).

1045. In addition, since Monaco is not a member of the EU or the EEA, payment institutions in the EU cannot passport into it under the freedom of establishment system by opening a branch or using an agent to provide payment services, just as electronic money distributors cannot do so under the European passporting procedure.

Weighting and conclusion

1046. The criteria under Recommendation 14 are met. The low materiality of the money transfer sector in Monaco, where there is only one operator, should also be noted. **Principality of Monaco is rated Compliant with Recommendation 14.**

Recommendation 15 – New technologies

1047. In the 3rd Round, the former Recommendation 8, which was not re-examined in the 4th Round, was rated LC because the existing measures did not include an obligation for FIs to adopt policies or measures necessary to prevent misuse of new technologies for ML or TF (although the French regulations, which were also applicable, appeared to limit the risks of it). Since then, this recommendation has been amended, including by adding measures in relation to virtual asset service providers (VASPs).

Criterion 15.1

1048. Apart from the general obligation under Article 48 of the AML/CFT Law to assess ML/TF risks to which Monaco is exposed, there is no explicit obligation for Monaco to identify and assess ML/TF risks related to the development of new products and new business practices or the use of new or developing technologies specifically. However, NRA 2, which was initiated in 2020, does address (albeit with a shallow analysis) risks associated with new technologies (including virtual assets), which shows that the authorities interpret Article 48 as being relevant for some of the requirements of c.15.1.

1049. With regard to FIs, Article 3 of the AML/CFT Law explicitly provides that in order to identify ML/TF risks to which they are exposed, FIs shall take account of factors inherent in, *inter*

alia, the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies in association with new or pre-existing products.

Criterion 15.2

1050. Under Article 3 of the AML/CFT Law, FIs are required to define and implement systems to identify and assess ML/TF risks and develop a risk classification, having regard in particular to factors inherent in, *inter alia*, the development of new products and new business practices, including new delivery mechanisms, and the use of new or developing technologies in association with new or pre-existing products. In addition, Article 3 of the aforementioned law requires FIs to take “appropriate due diligence measures (...) according to the assessment of the risks posed by their activities”.

1051. These general provisions in relation to risk-based ongoing due diligence include risks connected with new technologies, without referring to them explicitly.

1052. However, aside from general ongoing due diligence measures, the law does not oblige FIs to take appropriate measures to manage and mitigate these particular risks.

Criterion 15.3

1053. NRA 2, which was initiated in 2020, includes a brief analysis of VASPs based on the number of them and STRs directly related to crypto-assets. On the basis of these factors, it was considered that the ML threat in this sector of activity is “moderate” and “growing”. This analysis is too fleeting to enable it to be concluded that sub-criterion 15.3 b) is met, because the provisions of Article 3 of the AML/CFT Law are general and not based on specific analysis of each type of product or service offered by VASPs. In addition, the requirement for VASPs to identify, assess, manage and mitigate their risks as per c.1.10 and 1.11 is missing.

Criterion 15.4

1054. Monaco has not put in place a special licensing system for VASPs because the general-law regime for commercial companies applies to them, i.e. the requirements for the incorporation of a company in Monaco as set out in Law No. 1.144 of 26 July 1991 and the SO of 5 March 1895 on public limited companies and limited partnerships with shares. This system also applies to registrations of natural persons carrying on a business where they are established in Monaco.

1055. The incorporation of a *société anonyme monégasque* (SAM) (Monegasque Joint Stock Company) is subject to authorisation from the Prime Minister under the SO of 5 March 1895 on public limited companies and limited partnerships with shares, as amended. Within this framework, the authority checks, *inter alia*, the identity and integrity of the managers and founding members.¹⁹⁹ Administrative investigations are carried out in respect of the persons concerned before authorisations are issued²⁰⁰ in order to check that they offer appropriate guarantees.

¹⁹⁹ Ministerial Order No. 2014-264 of 21 May 2014 establishing the list of documents to be provided in support of declarations and requests for authorisation to operate submitted under Law No. 1.144 of 26 July 1991 concerning the pursuit of certain economic and legal activities, as amended, and requests for authorisation to incorporate public limited companies and limited partnerships with shares.

²⁰⁰ Law No. 1.430 of 13 July 2016 on miscellaneous measures to protect national security.

1056. With regard to security token offerings, according to Article 5 of Law No. 1.491 of 23 June 2020 on security token offerings, these can only be made through a digital platform that is duly authorised in Monaco. The law provides that “the making of a security token offering is subject to prior administrative authorisation in the form of a label (Article 2)”, that “only a legal person registered in Monaco can make a security token offering (Article 3)” and that “where security tokens have the characteristics of financial instruments, the offering can only be made by a public limited company” (Article 3).

1057. This means that a fit and proper procedure applies to the directors and founding members of SAMs, as well as natural persons working on a freelance basis and directors and constitutional members of other types of companies under the declaration or authorisation system for business activities in Monaco or under a label for security token offerings. However, administrative investigations are carried out solely in relation to requests for permission. The declaration system appears to be based solely on examination of the documents submitted in support of the request with no other measures to assess the good character or competence of the persons concerned being taken systematically. The authorisation system is, in general, based on consideration of a limited number of objective criteria related to good character and the required competences.

1058. In relation to legal persons other than SAMs, the analysis of Recommendation 24.8 (b) applies, including the deficiencies identified therein.

Criterion 15.5

1059. Law No. 1.144 of 26 July 1991 on commercial companies provides for a sanctions regime for non-compliance. Checks on compliance with the provisions are carried out by appointed empowered officers of the DEE who can conduct investigations and seize documents, but they do not include specific measures to identify VASPs operating illegally.

1060. DEE officers who are responsible for checks can “*carry out documentary or on-site checks that they deem necessary (...)*”. They are thus empowered to identify digital asset service providers who are operating illegally.

1061. In addition, Article 5 of Law No. 1.144, which concerns all foreign nationals who are required to obtain prior permission to carry on a business individually or in a partnership, Article 8 of Law No. 1.144, which makes authorisation mandatory for nationals of Monaco, can apply to activities of digital asset service providers which involve “*money transfers, advice or assistance in the financial (...)* fields”.

1062. As such, unauthorised digital asset service providers may incur the criminal penalties specified in Article 12 of Law No. 1.144.

1063. Article 17 of Law No. 1491 of 23 June 2020 on security token offerings sets out specific criminal penalties which include imprisonment if the provisions concerning security token offerings are not complied with. In addition, given that some digital assets, including security tokens, can also be financial instruments, digital asset service providers who pursue the financial activities referred to in Law No. 1.338 without authorisation are liable to the criminal penalties set out in Article 43.

1064. Although there is a sanctions regime for security token offerings, Monaco has not adopted any specific measures other than those that already exist in relation to commercial companies in order to contribute actively to identifying natural or legal persons pursuing VASP activities without being approved or registered.

Criterion 15.6

1065. VASPs are fully subject to all AML/TF obligations under the AML/CFT Law:

- legal persons with permission to make a security token offering under Article 2 of Law No. 1.491 of 23 June 2020 on security token offerings,
- any person who, as their ordinary profession, acts as either a counterparty or an intermediary with a view to the purchasing or selling of virtual financial assets which may be kept or transferred in order to purchase a good or service, but do not constitute a claim on the issuer,
- providers of third-party custody services in relation to digital assets or access to digital assets, in the form of private keys where applicable, with a view to the holding, storage and transfer of digital assets;

1066. SICCFIN is the authority that oversees compliance with due diligence obligations by VASPs and security token issuers. However, this oversight does not appear to be based on virtual asset risk-based supervision. As part of its monitoring role, SICCFIN has powers to carry out documentary and on-site inspections giving rise to inspection reports which can be followed by sanctions imposed by the minister on the basis of the reports drawn up.

1067. However, the digital asset activities concerned by the AML/TF obligations do not appear explicitly to cover all of the virtual asset activities referred to in the FATF's R.15, in particular: purchase or sale services in respect of digital assets that are legal tender money, or the service of exchanging digital assets for other digital assets. As for the operation of a digital asset trading platform, this latter activity appears to be covered by authorisation to make a security token offering, which can only be exercised through a digital platform requiring authorisation. These deficiencies in relation to virtual asset activities covered by the AML/TF obligations limit the scope of the measures applicable under c.15.6.

Criterion 15.7

1068. Given that virtual asset activities are still at an embryonic stage, the authorities of Monaco have not deemed it necessary to establish or begin to outline any guidelines in relation to VASPs.

Criterion 15.8

1069. Like other legal persons, VASPs can be sanctioned by the minister, who can apply a range of sanctions set out in Article 67 of the AML/CFT Law (warning, reprimand, order to the natural or legal person to stop the behaviour in question which forbids repetition, ban on carrying out certain transactions, temporary suspension or withdrawal of authorisation/permission to operate/work, pecuniary sanctions (Articles 67 and 67-3), and against directors, temporary suspension from performing managerial duties within such entities for a period not exceeding 10 years, or automatic dismissal, with or without appointment of a temporary administrator (Article 67-1)).

1070. Administrative sanctions (Article 65 of the AML/CFT Law) can also be imposed by the Prime Minister on the directors of the legal entities prosecuted and other natural persons who are employees, persons acting under the direction of another or persons acting on behalf of such persons due to their personal involvement.

Criterion 15.9

1071. With regard to Recommendation 10, the threshold for occasional transactions above which VASPs are obliged to take due diligence measures under Article 4 of the AML/CFT Law is EUR 15 000 under Article 64 of SO No. 2.318, except where there is a suspicion of ML, TF or

corruption. Unless all virtual asset transactions carry ML/TF risks, this excludes most transactions under the set threshold from due diligence; in any case, the threshold of EUR 15 000 exceeds the threshold of EUR 1 000 under sub-criterion 15.9 a).

1072. With regard to Recommendation 16 concerning transfers, SO No. 8.634 of 29 April 2021 amending SO No. 2.318 of 3 August 2009 establishing the basis for the implementation of the AML/CFT Law and concerning due diligence measures accompanying originator and beneficiary information for transfers has not extended the obligations concerning PSP transfers to transfers of virtual assets in relation to obtaining and retaining the originator and beneficiary information required by R.16 or immediate provision of this information to the beneficiary's VASP or FI, nor is the beneficiary VASP required to keep the information, nor is there any assurance that this information will be retained throughout the payment chain or that it will be provided to the competent authorities upon request. However, VASPs are required to apply, without delay, the freezing measures and bans on making available or using funds for or from a person subject to a freezing measure referred to in Recommendations 6 and 7 pursuant to Article 42 of the AML/CFT Law and Articles 3 and 14 of SO No. 8.664 of 26 May 2021.

1073. FIs are subject to the same obligations as VASPs for all transactions conducted on behalf of a customer, including transfers of virtual assets. For that reason, the aforementioned deficiencies are also valid in relation to them.

Criterion 15.10

1074. With regard to criteria 6.5 d), 6.6 g), 7.2 d) and 7.4 d), mechanisms for communicating designations, listings and de-listings are subject to ministerial decisions which are accessible to anyone, including VASPs, on the government's website.

1075. With regard to criteria 6.5 e) and 7.2 e), Article 8 of SO No. 8.664 of 26 May 2021 requires credit institutions, other FIs, insurance companies and other organisations, entities or persons – hence including VASPs – to inform the DBT where they identify one of their customers in connection with these fund and economic resource freezing measures.

1076. With regard to sub-criterion 7.3, SO No. 8.664 provides that monitoring of implementation by the FIs, undertakings and DNFBPs referred to in Articles 1 and 2 of the AML/CFT Law is carried out, as appropriate, by SICCFIN, the Principal State Prosecutor or the Chairperson of the Monaco Bar Association. Article 12 of this SO provides that "*any breach of the provisions of this order shall incur the sentences specified in Article 26, section 4, of the CC*". Criminal sanctions (a fine of between EUR 18 000 and 90 000) are therefore applicable. Monitoring of compliance by VASPs and security token issuers with the due diligence provisions in relation to asset freezes and TFS is also carried out by SICCFIN as required by c.15.6.

Criterion 15.11

1077. In relation to international co-operation in relation to VASPs or virtual assets, the general-law measures are applicable, as detailed in Recommendations 37 to 40.

Weighting and conclusion

1078. Moderate deficiencies have been identified in relation to Recommendation 15: the lack of an explicit obligation for the country to identify and assess risks associated with the use of new technologies, the lack of an obligation for FIs to take appropriate steps to manage and mitigate these risks and the fact that VASPs are not required to identify, assess, manage and mitigate their risks in accordance with criteria 1.10 and 1.11, while the good character checking mechanism

does not apply in all cases. Lastly, no specific regime for sanctions or risk mitigation in relation to VASPs has been put in place, nor have any guidelines. Due to the low materiality of the VASP sector in Monaco and the associated risk level, the deficiencies have a moderate impact. **Principality of Monaco is rated Partially Compliant with Recommendation 15.**

Recommendation 16 – Wire transfers

1079. In the previous round, the former Special Recommendation VII (SR.VII) was rated LC because the relaxation of obligations to send originator information for recurring wire transfers of wages and pensions was not in accordance with Special Recommendation VII. It should be noted that since then, an Agreement in the form of an exchange of letters between the Government of the French Republic and the Government of the Principality of Monaco of 3 and 12 December 2018 has confirmed the principle that wire transfers between France and Monaco are treated as wire transfers within France, and hence as domestic transfers. When it gave permission for this Agreement to be entered into, the European Commission considered that Monaco required payment service providers under its jurisdiction to apply rules identical to those established by Regulation (EU) No 2015/847. For the purposes of this Recommendation, therefore, “cross-border transfers” are any transfer whereby the payment chain includes a wire transfer service provider who is not established in the EEA, and as such, transfers between Monaco and EEA countries must be regarded as “domestic transfers”. The FATF recognises the validity of supranational approaches such as this in Recommendation 16.

Criterion 16.1

1080. According to Article 9 of the AML/CFT Law and Article 40 of SO No. 2318 as amended, FIs must ensure that all cross-border wire transfers of EUR 1 000 or more are always accompanied by required and accurate originator information and required beneficiary information.

Criterion 16.2

1081. According to Article 42 of SO No. 2.318, where several cross-border wire transfers from a single originator are bundled in a batch file for transmission to beneficiaries, the batch file must give originator and beneficiary information, including the originator’s account number or the unique transaction identifier.

Criterion 16.3

1082. According to Article 42 of SO No. 2.318, cross-border transfers of amounts less than EUR 1 000 must be accompanied by the names and account numbers of the originator and the beneficiary or the unique transaction reference number.

Criterion 16.4

1083. The originator’s payment service provider is not required to verify originator information unless it has reasonable grounds to suspect ML/TF (third paragraph of Article 42 of SO No. 2.318).

1084. For transfers of funds not exceeding EUR 1 000, the beneficiary’s payment service provider is not required to verify beneficiary information unless it has reasonable grounds to suspect ML/TF (fourth paragraph of Article 43 of SO No. 2.318).

Criterion 16.5

1085. Domestic transfers must include originator and beneficiary information unless this information can be provided to the beneficiary’s payment service provider and SICCFIN by other

means (first paragraph of Article 41 of SO No. 2.318).

Criterion 16.6

1086. In the situation referred to in point 16.5, where information can be provided to the beneficiary's payment service provider and SICCFIN, transfers must be accompanied solely by the account number or a unique identification number of the originator and the beneficiary (first paragraph of Article 41 of SO No. 2.318).

1087. The time taken to provide originator and beneficiary information to the beneficiary's payment service provider and SICCFIN must not exceed three working days following receipt of the request (first paragraph of Article 41 of SO No. 2.318).

Criterion 16.7

1088. The originator's payment service provider is required to retain originator and beneficiary information for five years (fifth paragraph of Article 40 of SO No. 2.318 and Article 23 of the AML/CFT Law).

Criterion 16.8

1089. The originator's payment service provider cannot transfer any funds until it has ensured that the transfer is accompanied by originator and beneficiary information (seventh paragraph of Article 40 of SO No. 2.318).

Criterion 16.9

1090. Intermediary payment service providers must ensure that all originator and beneficiary information accompanying a wire transfer is kept with the transfer (Article 45 of SO No. 2.318).

Criterion 16.10

1091. Payment service providers must retain originator and beneficiary information as stipulated by Article 23 of the AML/CFT Law, i.e. for five years after the transfer is executed (Article 46 of SO No. 2.318).

Criterion 16.11

1092. Intermediary payment service providers must implement effective procedures to detect any lack of originator or beneficiary information (third paragraph of Article 45 of SO No. 2.318).

Criterion 16.12

1093. Intermediary payment service providers must put in place effective risk-based procedures to determine whether a wire transfer lacking required originator or beneficiary information should be executed, rejected or suspended (fourth paragraph of Article 45 of SO No. 2.318)..

Criterion 16.13

1094. The beneficiary's payment service provider must implement effective procedures, including, where appropriate, post-event or real-time monitoring, to identify any lack of required originator or beneficiary information (second paragraph of Article 43 of SO No. 2.318).

Criterion 16.14

1095. For transfers exceeding EUR 1 000, the beneficiary's payment service provider shall check the accuracy of the beneficiary information before crediting the beneficiary's payment account or

making funds available to it (third paragraph of Article 43 of SO No. 2.318).

1096. In addition, this information must be retained for five years (Article 23 of the AML/CFT Law of 3 August 2009 as amended and Article 46 of SO No. 2.318).

Criterion 16.15

1097. The beneficiary's payment service provider must implement effective risk-based procedures to determine whether a wire transfer lacking complete originator or beneficiary information should be executed, rejected or suspended and to take the necessary follow-up action (Article 44 of SO No. 2.318).

Criterion 16.16

1098. To the extent that wire transfer services are regarded as payment services by Article L 314-1-II-6° of the French Monetary and Financial Code which was made applicable to Monaco under the Franco-Monegasque banking agreements, wire transfer service providers and their agents are payment service providers to whom Chapter XIII of SO No. 2.318 applies. In addition, a payment service provider who uses the services of one or more agents must ensure that its agents comply at all times with the statutory and regulatory provisions applicable to them (Article L. 523-3 of the aforementioned Monetary and Financial Code).

Criterion 16.17

1099. The payment service provider must take account of missing or incomplete originator or beneficiary information as a factor in assessing whether the wire transfer is suspicious and, as such, should be reported to SICCFIN (last paragraph of Article 44 of SO No. 2.318).

1100. An MVTS provider who controls both the ordering and the beneficiary side of a wire transfer must file an STR (Article 36 of the AML/CFT Law).

1101. It is not stated whether the PSP must also make a report to a foreign FIU where another country is affected. However, under Article 45 of the AML/CFT Law the fact that an STR exists and its contents may be shared (see criterion 18.2).

Criterion 16.18

1102. Article 3 of SO No. 8.664 of 26 May 2021 on procedures for freezing funds and economic resources pursuant to international economic sanctions provides that credit institutions and other FIs must freeze funds and economic resources belonging to or possessed or held by physical or legal persons, entities or organisations designated by decision of the Prime Minister taken as provided in Article 2 of the SO.

1103. Article 1 of Decision of the Prime Minister No. 2021-1 of 4 June 2021 taken pursuant to SO No. 8.664 of 26 May 2021 provides that Monaco must apply international economic sanctions imposed, *inter alia*, under United Nations Security Council Resolutions 1267 and 1373 and successor resolutions.

1104. Letter c of Article 14 of SO No. 8.664 of 26 May 2021 provides that freezing funds means taking any action to prevent a movement or transfer of funds.

1105. Lastly, Article 4 of SO No. 8.664 of 26 May 2021 forbids credit institutions and other financial institutions to make funds available or to provide or continue to provide services to persons concerned by a ministerial decision to freeze funds. They are also forbidden to execute or participate knowingly and deliberately in transactions with the aim or effect of circumventing fund-freezing measures.

Weighting and conclusion

1106. PSPs are not required to send an STR to a foreign FIU if the latter is concerned by a cross-border wire transfer. This deficiency is minor. **Principality of Monaco is rated Largely Compliant with Recommendation 16.**

Recommendation 17 – Reliance on third parties

1107. The former Recommendation 7 was rated LC in the previous round because no instructions or recommendations had been given by the competent authorities other than the instructions given in Article 19 of SO No. 2.318 with regard to assessing the equivalence of AML/CFT legislation and controls in the country where the third party is established in order to help professionals to implement these provisions.

Criterion 17.1

1108. FIs are permitted under Article 8 of the AML/CFT Law to rely on third parties to conduct the CDD measures referred to in sub-criterion 17.1 a) in relation to elements a) to c) of the CDD measures set out in Recommendation 10.²⁰¹ Ultimate responsibility for fulfilling CDD obligations still rests with organisations and persons who place reliance on third parties.

1109. The second and third paragraphs of Article 16-5 of SO No. 2.318 require a third party who performs CDD obligations to immediately provide professionals with details of the identity of the customer and, where applicable, the beneficial owner and the purpose and nature of the business relationship.

1110. The third party must send, at first request, copies of documents identifying the customer and, where applicable, the beneficial owner and any documents relevant to this due diligence, including adequate copies of identification and verification data obtained by remote identification methods. In addition, FIs which place reliance on a third party must have access to the information and copies of identification data and other documentation relating to CDD measures that are obtained by the third party.

1111. These third parties must belong to certain categories of FIs or be an accounting/audit or legal professional who is established or practising in Monaco, or a country whose laws include provisions equivalent to those of the AML/CFT Law, and subject to compliance monitoring.

1112. FIs which place reliance on third-party introducers are also required to draw up a written document formalising the arrangements for sending information and documents obtained by third parties and for overseeing the CDD measures taken by the latter. However, the document formalising the oversight of measures to ensure that the CDD and record-keeping obligations referred to in Recommendations 10 and 11 are performed is based solely on contractual clauses between FIs and third-party introducers, which are thus entirely dependent on the will of the parties without any measures to govern these requirements.

Criterion 17.2

1113. Article 18 of SO No. 2.318 provides that when seeking to ascertain whether the country or third-party introducer is subject to laws that may be regarded as imposing equivalent obligations, FIs must take account of available information concerning the country in question as

²⁰¹ Identifying the customer, identifying the beneficial owner and understanding the nature of the business relationship.

per a set of criteria relating to supervision and reports from public authorities including the FATF, without making explicit reference to the AML/CFT threats and vulnerabilities that constitute the risk itself.

Criterion 17.3

1114. Articles 8-1 and 29 of the AML/CFT Law allow reliance upon a third party who is a member of the same financial group where certain requirements are met. These requirements are largely compliant with the requirements of criterion 17.3.

1115. However, there is nothing to indicate that the specific mitigating measures referred to in part c) follow a risk-based approach and can mitigate the highest ML/TF risks. Articles 48-1 to 48-8 of SO No. 2.318 establish a set of additional measures to deal effectively with the risk of ML/TF where the law of a non-EU country poses high ML/TF risks. Criterion 17.3 contains no presumption that the laws of EU countries concerning AML/CFT obligations are equivalent. The concept of "competent authority" referred to in part b) is not explained and there is nothing to indicate that these authorities perform supervision which is equivalent to that conducted by the authorities of Monaco.

Weighting and conclusion

1116. All of the criteria are largely met. However, oversight of measures to ensure that the CDD and record-keeping obligations referred to in Recommendations 10 and 11 are performed is based solely on contractual clauses between FIs, and there is no explicit obligation to assess the ML/TF risk associated with third countries. The impact of these shortcomings is nonetheless minor. **Principality of Monaco is rated Largely Compliant with Recommendation 17.**

Recommendation 18 - Internal controls and foreign branches and subsidiaries

1117. The former Recommendations 15 and 22 were rated LC in the previous round because, on the one hand, FIs were not required to establish appropriate procedures to ensure high standards when hiring employees, and on the other hand, the system in Monaco did not require FIs to conduct enhanced due diligence in relation to their subsidiaries and branches established in all countries which did not implement, or which inadequately implemented, the FATF Recommendations in order to ensure that these subsidiaries and branches complied with the AML/CFT measures required by the Monegasque system. However, the number of foreign subsidiaries and branches was very limited, and they were all located in other European countries. The requirements of Recommendations 15 and 22 are now grouped together in Recommendation 18.

Criterion 18.1

1118. Article 27 of the AML/CFT Law provides that FIs must implement an AML/CFT programme encompassing organisational arrangements and internal procedures with sufficient human resources and that, to this end and having regard to their size and the nature of their business, one or more senior officers with sufficient knowledge of the subject must be put in charge of implementing the programme against money laundering, financing of terrorism and corruption.

1119. In their recruitment policy, FIs must take account of the ML/TF risks posed by individuals. In addition, Article 27, paragraph 2, of the Law provides that persons responsible for implementing and monitoring AML/CFT arrangements in respect of entities subject to the Law

must meet *qualification or professional skill requirements*. For the discharging of their duties, they are under obligation, as are those placed under their authority, to obtain a certified vocational qualification following a training course, issued in the conditions laid down by a sovereign order.

1120. In their recruitment policy, FIs must take into account the risks that people present with regard to AML/CFT. In addition, article 27 paragraph 2 of the law provides that the people responsible for implementing and monitoring AML / CFT in relation to obliged entities must justify having a diploma, or professional competencies.

1121. Article 30 provides that ongoing training and regular information must be provided in order to make employees aware of transactions and acts which may be related to ML/TF and train them on how to deal with such situations.

1122. Article L. 511-55 of the French Monetary and Financial Code, which FIs located in Monaco must apply, provides that staff performing control functions must be independent of the business units that they control and must have the means necessary to carry out their duties.

Criterion 18.2

1123. Article 47 of SO No. 2.318 provides that FIs which are part of a group shall put in place group-wide organisational arrangements and procedures which take account of the risks identified by the risk classification that they have established, having regard to the nature of the products or services offered, the manner of conducting the proposed transactions, the distribution channels used, the characteristics of customers, and the country or territory from or to which funds will be sent.

1124. Article 47 states that procedures established at group-wide level shall make provision for the "*sharing of information*" within the group, including information necessary for AML/CFT organisation, personal data protection and internal control measures. The information that can be provided by the professionals concerned can relate to ML/TF risk assessment or a customer or identified transaction which is necessary for due diligence purposes within the group. It can also relate to assessments of or changes in the customer's risk profile and monitoring of the customer's transactions.

1125. Furthermore, under Article 45 of the AML/CFT Law, FIs belonging to the same group can inform each other of the existence and contents of an STR. Such communications are subject to the existence in the countries where the companies are established of AML/CFT legislation which is recognised as adequate and practices which are recognised as not impeding AML/CFT, the existence of measures equivalent to those applied in Monaco in relation to professional confidentiality, and the use of information solely for AML/CFT purposes and in accordance with legal provisions concerning data protection. To safeguard the confidentiality of shared information, the final paragraph of Article 47 of the SO provides that individuals who, within groups, receive information necessary for AML/CFT organisation have a duty of professional confidentiality in respect of all information or documents that they receive.

1126. In addition, Article 29-1 of the AML/CFT Law embodies all of the requirements of criterion 18.1, which include the following policies, procedures and internal controls: compliance management arrangements including the appointment of a compliance officer at management level (sub-criterion 18.1 a), screening procedures to ensure high standards when hiring employees (sub-criterion 18.1 b), further training (sub-criterion 18.1 c) and an independent audit function to test the system (sub-criterion 18.1 d).

Criterion 18.3

1127. Articles 48-1 to 48-8 of SO No. 2.318 lay down a set of additional measures to deal effectively with the ML/TF risk where the legislation of a non-EU country does not allow policies and procedures to be implemented at group-wide level, including within branches or subsidiaries which are majority-owned by the group. This provision reflects the presumption that all EU or EEA member States apply harmonised AML/CFT provisions.

1128. If the host country does not allow appropriate implementation of AML/CFT measures which conform with those of the country of origin, groups shall apply appropriate additional measures as established at European level by [Commission Delegated Regulation \(EU\) 2019/758 of 31 January 2019](#).

Weighting and conclusion

1129. Monegasque law contains provisions which reflect the presumption that all EU or EEA member States apply harmonised AML/CFT provisions not envisaged by the FATF. However, there are no financial groups in Monaco, so the deficiencies identified have a minor impact. **Monaco is rated Largely Compliant for R.18.**

Recommendation 19 – Higher risk countries

1130. The former Recommendation 21 was rated LC due to major reservations about the effectiveness and permanence of the mechanism enabling the authorities to ensure that FIs take due account of regular updates of the results of analyses carried out by the FATF at each of its plenary meetings, and the fact that the enhanced due diligence obligation had been put in place too recently for its effectiveness to be assessed. Matters of effectiveness are no longer considered as part of technical compliance analysis.

Criterion 19.1

1131. Article 14-2 of the AML/CFT Law provides that where FIs have a business relationship or carry out a transaction involving high-risk states or territories, they shall conduct due diligence in the form of enhanced due diligence measures. Article 25 of SO No. 2.318 also provides that the acceptance of customers who present particular levels of risk is subject to special consideration and that a decision shall be taken at an appropriate hierarchical level. These customers include those who are resident or domiciled in a country or territory classed as a non-co-operative country or territory by international consultation and co-ordinating bodies specialising in tackling ML, TF or corruption.

1132. The list of high-risk states or territories as defined by the FATF is covered by way of a Ministerial Order which is updated as necessary.

Criterion 19.2

1133. A ministerial order establishes the state(s) or territories concerned by a call for countermeasures involving a counterparty with links to a state or territory whose legislation is recognised as inadequate or whose practices are regarded as impeding efforts to tackle ML, TF or corruption by the FATF.

1134. However, the laws of Monaco do not appear to contain any specific provisions enabling the country itself to list countries against which countermeasures should be applied by FIs independently of any call by the FATF (or the European Commission) to do so. But according to the authorities of Monaco, there is nothing to prevent the Prime Minister from designating, by ministerial order, a state or territory as high risk under Article 14-2 of the AML/CFT Law. In

addition, pursuant to Article 25-2 of SO No. 2.318, Monaco can adopt, under a sovereign order, specific measures in respect of high-risk states or territories as referred to in Article 14-1 of the AML/CFT Law.

Criterion 19.3

1135. Article 53 of the AML/CFT Law provides that SICCFIN can, for a renewable period of up to six months, designate the following for the organisations and persons referred to in the first and second articles of the aforementioned law for the purposes of performing their due diligence obligations: transactions which, in view of their particular nature or the particular geographical areas from, to or in relation to which they are carried out, pose a high risk of ML/TF; and persons who pose a high risk of ML/TF.

1136. SICCFIN also uses regular meetings of the Liaison Committee referred to in Articles 49 and 50 of SO No. 2.318 as an opportunity to give reminders of which countries are identified by the FATF as having weaknesses in their AML/CFT systems.

1137. The FATF's statements can be accessed on the SICCFIN website through the following link: <https://www.siccfin.mc/en/International-bodies/FATF>.

Weighting and conclusion

1138. The laws of Monaco do not contain any specific provisions allowing Monaco to designate countries against which countermeasures should be applied independently of the FATF or EU lists. Only the Prime Minister can adopt such measures by way of regulations. The fact that the legal basis is regulatory and not statutory has a minor impact in view of Monaco's status as an international centre. **Principality of Monaco is rated Largely Compliant with Recommendation 19.**

Recommendation 20 – Reporting of suspicious transactions

Criterion 20.1

1139. Entities subject to SICCFIN, which include all FIs in Monaco, are required to report to it all sums and funds in their books and all transactions or attempted transactions involving sums or funds which they know or suspect come from an ML, TF or corruption offence (Article 36 of the AML/CFT Law).

1140. If a report cannot be made because the transaction cannot be delayed, or if such a delay would frustrate efforts to prosecute the beneficiaries of alleged offences, regulated entities must make the report "without delay" after carrying out the transaction and must indicate why the report could not be made before the transaction was carried out, as provided by Article 36 (Article 39 of the AML/CFT Law).

Criterion 20.2

1141. Like transactions which are refused due to a legitimate suspicion, attempted transactions must be reported (Article 36 of the AML/CFT Law). The law does not specify any minimum threshold for reporting a transaction, attempted transaction or refused transaction.

Weighting and conclusion

1142. **Principality of Monaco is rated Compliant with Recommendation 20.**

Recommendation 21 – Tipping-off and confidentiality

1143. The former R.14 was rated C in the previous round.

Criterion 21.1

1144. According to Article 44 of the AML/CFT Law, where an STR is filed in good faith, the person who filed it cannot be prosecuted for a malicious accusation or a breach of professional confidentiality. No civil action can be brought, nor any professional sanction or detrimental or discriminatory employment measure taken, against a professional subject to the Law, their managers or authorised persons working under their authority who have filed such a report in good faith.

1145. This exemption from liability applies even where the person who filed the report did not know precisely what the activity underlying the report was, where the activity or transaction to which the STR relates did not actually occur, where evidence that the acts giving rise to the report were criminal is not provided or where a decision to terminate proceedings, discharge or acquit has been taken in relation to these acts.

Criterion 21.2

1146. Article 73 of the AML/CFT Law provides that a fine of between EUR 18 000 and 90 000 shall be imposed on any person who discloses the existence of an STR in relation to a transaction or an attempted transaction involving sums or funds (Article 36 of the Law) or transactions and acts relating to physical or legal persons resident, registered or established in a State or territory whose legislation is recognised as inadequate or whose practices are regarded as impeding efforts to tackle money laundering, financing of terrorism or corruption (Article 41 of the Law), regardless of whether the reports are made to SICCFIN, the GPO or the Chairperson of the Monaco Bar Association.

1147. The ban on disclosing the existence of an STR and its contents does not inhibit intra-group information sharing for the purposes of Recommendation 18. Article 45 of the Law allows for exceptions in this regard where the disclosure is made within a group of companies or where several professionals act for a single customer and in a single transaction. Such communications are subject to the existence in the countries where the companies are established of AML/CFT legislation which is recognised as adequate and practices which are recognised as not impeding AML/CFT, the existence of measures equivalent to those applied in Monaco in relation to professional confidentiality, and the use of information solely for AML/CFT purposes and in accordance with legal provisions concerning data protection.

Weighting and conclusion

1148. **Principality of Monaco is rated Compliant with Recommendation 21.**

Recommendation 22 – DNFBPs: Customer due diligence

1149. The former Recommendation 12 was rated PC in the previous round due to the following deficiencies:

- A formal *ratione personae* scope of application in relation to lawyers which did not cover situations in which they worked to prepare or carry out, for a customer, transactions relating to the management of money, securities or other assets belonging to this customer, or the management of their bank accounts, savings accounts or securities accounts.
- the cascade effect of the former Recommendation 5 (Customer due diligence), 10 (Record

keeping) and 11 (Unusual transactions),

- issues in relation to the ineffectiveness of system implementation by DNFBPs; this latter point is no longer considered when technical compliance is assessed.

Criterion 22.1

1150. Monaco's AML/CFT Law includes the DNFBPs mentioned in points a-e of Recommendation 22.1, namely: casinos,²⁰² estate agents,²⁰³ dealers in precious metals and precious stones,²⁰⁴ lawyers, notaries (*notaires*) and other legal professionals,²⁰⁵ accountants and similar professionals,²⁰⁶ and trust and company service providers.²⁰⁷

1151. Therefore, the aforementioned DNFBPs are required to perform due diligence obligations in respect of customers in accordance with the AML/CFT Law as per Recommendation 10 and as required by in c.22.1.

Criterion 22.2

1152. DNFBPs apply the same record-keeping obligations as FIs. The fact that there are no deficiencies in the record-keeping obligations identified in the analysis of Recommendation 11 means that there are none in relation to DNFBPs.

Criterion 22.3

1153. The deficiencies in relation to due diligence for PEPs identified for FIs in the analysis of Recommendation 12 have the same effects on DNFBPs. Recommendation 12 is rated PC.

Criterion 22.4

1154. DNFBPs are subject to the same obligations in relation to new technologies as FIs. The deficiencies identified in the analysis of Recommendation 15 also apply to DNFBPs (see Recommendation 15). However, c.15.1 and c.15.2 are mostly met. Like FIs, DNFBPs are required to assess ML/TF risks that may emerge out of the development of new products and new business practices and the use of new or developing technologies and to assess, manage or mitigate risks before launching or using new products. However, like FIs, there is no explicit obligation to take mitigating measures in relation to such risks.

Criterion 22.5

1155. DNFBPs are subject to the same obligations as FIs relying on third parties. Recommendation 17 is rated LC.

Weighting and conclusion

1156. The same deficiencies concerning limited duration and due diligence that exist in relation to PEPs are applicable to DNFBPs, as are the deficiencies in relation to Recommendation 10. In view of the materiality of the non-financial sector in Monaco, which is lower than that of the

²⁰² 7°) of Article 1 of the AML/CFT Law, which concerns “gaming houses and all providers of services in relation to gambling and games of chance.”

²⁰³ 10°) of Article 1 of the AML/CFT Law, which concerns “the professions covered by Law No. 1.252 of 12 July 2002”

²⁰⁴ 15°) of Article 1 of the AML/CFT Law.

²⁰⁵ Article 2 of the AML/CFT.

²⁰⁶ 20°) of Article 2 of the AML/CFT Law.

²⁰⁷ 6°) of Article 1 of the AML/CFT Law.

dominant banking sector, and the associated risk level, the deficiencies carry minor weight. **Principality of Monaco is Largely Compliant with Recommendation 22.**

Recommendation 23 – DNFBPs: Other measures

1157. The former Recommendation 16 was rated PC in the previous round. The criticisms concerned the cascade effect of the former Recommendations 13 (Suspicious transaction reports), 15 (Internal control) and 21 (Higher-risk countries) on DNFBPs, and focused in particular on the efforts needed to analyse the limited implementation of the obligation to report suspicions, the implementation of appropriate procedures for hiring staff, including checking good character, and finally, in relation to countries which do not sufficiently apply the FATF's Recommendations, the consideration of regular updates of the FATF's country lists.

Criterion 23.1

1158. DNFBPs (lawyers and legal professionals, accountants and related professionals, dealers in precious metals and precious stones, trust service providers) are subject to the same obligations to report suspicious transactions as FIs as described in c.22.1, with the exception of lawyers, defending lawyers (*avocats défenseurs*) and trainee lawyers, who must report them to the Chairperson of the Monaco Bar Association, and notaries (*notaires*) and bailiffs, who must inform the Principal State Prosecutor of them. The Chairperson of the Monaco Bar Association and the Principal State Prosecutor must then inform SICCFIN. The law was amended on 11 February 2022 and now provides that the Principal State Prosecutor or the Chairperson of the Monaco Bar Association, as applicable, shall pass on STRs to SICCFIN as soon as possible (Article 40 of the AML/CFT Law). However, the Principal State Prosecutor is not a self-regulatory body as defined by the FATF. In addition, the mechanisms for co-operation between the Principal State Prosecutor and the Chairperson of the Monaco Bar Association and SICCFIN are not satisfactory (see IO.6).

Criterion 23.2

1159. Under Article 27 of the AML/CFT Law, DNFBPs are subject to the same obligations in relation to internal controls and foreign branches and subsidiaries as FIs as outlined in c.22.1, with the exception of the legal professions (lawyers, defending lawyers (*avocats défenseurs*), trainee lawyers, notaries (*notaires*) and bailiffs) referred to in Article 2, to whom the group procedures referred to in Articles 28 and 29 are not applicable. In addition, the minor deficiency identified in the analysis of Recommendation 18 are applicable to DNFBPs to the same extent.

Criterion 23.3

1160. DNFBPs must apply enhanced due diligence measures proportionate to risks when they carry out a transaction with natural or legal persons from countries for which the FATF calls for them (Article 14.2 of the AML/CFT Law). However, Monaco does not have a specific mechanism allowing countermeasures to be imposed independently of any call from the FATF or the European Commission to the extent to which only the Prime Minister has the statutory powers to adopt such measures (see Recommendation 19).

Criterion 23.4

1161. DNFBPs are subject to the same obligations in relation to tipping off and confidentiality as FIs. Recommendation 21 is rated C.

Weighting and conclusion

1162. Some DNFBPs submit their STRs to the Principal State Prosecutor, who is not a self-regulatory body as defined by the FATF. In addition, the mechanisms for co-operation between the Principal State Prosecutor, the Chairperson of the Monaco Bar Association and SICCFIN in relation to STRs are not entirely satisfactory. The obligations in relation to internal controls for groups are not applicable to legal professionals. However, due to their legal status, the latter cannot practise in the form of groups and do not have foreign branches or subsidiaries. The deficiencies identified in Recommendations 18 and 19 apply. **Principality of Monaco is rated Partially Compliant with Recommendation 23.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

1163. Monaco was rated Largely Compliant in the 4th Round report. Identification of beneficial owners and control of legal persons needed to be improved. There are five types of legal persons in Monaco: commercial companies (*sociétés commerciales*) (SARLs, SCSs, SNCs and joint-stock companies: SAMs and SCAs), civil-law partnerships (*sociétés civiles*) (SCIs, SCPs and SAMs à objet civil), economic interest groups (*groupements d'intérêt économique*, GIEs), foundations (*fondations*) and associations (*associations*) (which can come together to form federations of associations).²⁰⁸

Criterion 24.1

1164. Monaco has mechanisms in place that identify and describe the different types, forms and basic features of legal persons. *Sociétés anonymes monégasques* or SAMs (Monegasque Joint Stock Companies) and *sociétés en commandite par actions* or SCAs (limited partnerships with shares) are primarily governed by the SO of 5 March 1895 on public limited companies and limited partnerships with shares. Title IV of the Code of Commerce governs *sociétés en commandite simple* or SCSs (limited partnerships) under Article 30, *sociétés en nom collectif* or SNCs (commercial partnerships) under Article 27 et seq. and *sociétés à responsabilité limitée* or SARLs (private limited companies) under Article 35-1 et seq. *Sociétés civiles* (civil-law partnerships) are governed by Law No. 797 of 18 February 1966 and Articles 1670 to 1711 of the Civil Code. *Groupements d'intérêt économiques* (economic interest groups) are governed by Law No. 879 of 26 February 1970, foundations are governed by Law No. 56 of 29 January 1922 and associations and federations of associations are governed by Law No. 1.355 of 23 December 2008.

1165. Details of the features of and process of creating the main types of legal persons can be accessed online on the official portal of the Government of Monaco (Portal) at <https://en.gouv.mc/Portail-du-Gouvernement>. Links to legislation and regulations are given in the Portal and are available online on the Légimonaco website. However, the Portal does not give such information in relation to GIEs and SCAs.

1166. With regard to methods of obtaining and keeping basic information, the Portal informs the public: a) for commercial companies, of the ways of obtaining, in person or by post and for a fee, a copy of an entry in the Trade and Industry Registry (RCI); it should be noted that some basic information can be accessed free of charge online on the RCI's website at www.rci.gouv.mc (French only); b) for civil-law partnerships, of the fact that any interested person can request, for a fee, a certificate of registration stating the legal form, registered office and corporate name at

²⁰⁸ The term “non-profit organisations” or “NPOs” is used to mean associations, federations of associations and foundations.

the office of the *Répertoire spécial des sociétés civiles* or RSC (Special Registry of Civil-law Partnerships). There is no public information about how to obtain basic information concerning GIEs. With regard to associations and federations of associations, a register must be kept at the association's registered office. The public can view and obtain copies of constitutions and amendments at the Prime Minister's office (Articles 12, paragraph 2, and 13 of Law 1.355). Foundations are created by notarised deed and amendments must be authorised by sovereign order published in the Monaco Gazette (Articles 2, 11 and 22 of Law 56). Some basic information about associations and foundations is available on the official website for voluntary sector groups.²⁰⁹ Associations and foundations are not in an RCI- or RSC-style register kept by the DEE.

1167. Beneficial owners are listed in a Register of Beneficial Ownership (RBO) appended to the RCI. The Portal gives details of the process of mandatory declaration to the DEE of beneficial owners of all commercial companies, civil-law partnerships and GIEs and of how information in the RBO can be viewed by third parties. Third parties can view information on the premises of the DEE after paying a fee of EUR 500 and meeting certain requirements, including the fact that a period of two months must have passed since the legal person and the beneficial owners concerned were informed of the third party's desire to view the information (Articles 22-7 and 22-8, Law 1.362 and Articles 63-1 to 63-3 of SO 2.318).

Criterion 24.2

1168. The authorities of Monaco have assessed ML/TF risks associated with legal persons in the country. This assessment was formalised at the end of the non-public version of the 2021 NRA. A section sets out the general prevention obligations applicable to all legal persons created in Monaco, such as prior authorisation to operate, the establishment of a registered office and the obligation to have a bank account in Monaco. There then follows a description of the specific features of the different legal forms of legal persons in Monaco, in which there are some identified inherent weaknesses and compensatory checks in place. Then there are the threats according to the legal form and sector of activity of about a hundred legal persons which appear annually in STRs received by SICCFIN from 2018 to 2020. At the end, there is a description of the risk level associated with legal persons based on the threats and weaknesses identified. Monaco has not assessed the ML risks associated with associations and foundations.

Criterion 24.3

1169. Any legal person which is regarded as a trader and trades in Monaco is required to be registered in the RCI (Article 1 of Law 721). They must be registered in the RCI within two months after they begin to operate (Article 2 of Law 721). The registration application must give the information concerned by this criterion (Article 1 of Order 2.853). The information can be communicated, for a fee, to any person who makes a written and precise request for it (Article 7 of Order 2.853); some information is available free of charge on the RCI's website at www.rci.gouv.mc (French only).

1170. Civil-law partnerships must likewise be registered in the *Répertoire spécial des sociétés civiles* or RSC (Special Registry of Civil-law Partnerships) within two months after they are formed (Article 5 of Law 797). The registration application must give the information concerned by this criterion (Article 5 of Law 797) except proof of the incorporation and status of the partnership. Only information with regard to the form, corporate name and registered office of the partnership

²⁰⁹ <https://cloud.gouv.mc/Dataweb/AssocMc.nsf> (French only)

can be communicated, upon request and for a fee, to interested third parties (Article 7 of Law 797).

1171. There is no similar provision regarding registration in a registry for associations and foundations, but some basic information can be accessed by the public upon request to the Department of the Interior, by viewing the Monaco Gazette or by accessing the "*Liste des groupements associatifs de Monaco*" (List of voluntary-sector groups in Monaco) webpage on the government's official website (Article 13 of Law 1.355 and Articles 11 and 22 of Law 56).

Criterion 24.4

1172. There is no obligation for companies to maintain the information set out in c.24.3. Associations must maintain a register containing basic information at their registered office (Article 12 of Law 1.355). This obligation does not exist for foundations.

1173. For joint-stock companies, ownership of shares must be established by issuing a registered security which is registered in the company's register of transfers. When transfers take place, a transfer slip must be transcribed in the register of transfers within one month, and must mention the surnames, first names and addresses of the transferor(s) and transferee(s). There is no obligation to record the number and category of shares or the nature of the attached voting rights in the register of transfers. The register of transfers and transfer slips must be kept at the company's registered office (Articles 42 and 43 of the Code of Commerce). There is no obligation in relation to a register of members and transfers for other types of companies and GIEs in Monaco.

1174. For associations and federations of associations, there is no obligation to maintain a list of members. Foundations do not have members.

Criterion 24.5

1175. With regard to c.24.3, commercial companies and GIEs must submit an amending declaration in the month after changes in them occur so that these changes can be entered in the RCI. In addition, confirmation of the accuracy of the information in the RCI must be sent to the RCI every five years. A fine of between EUR 3.66 and EUR 15.24 can be imposed if these obligations are not fulfilled within two or three months respectively. In addition, an order to update the information or strike the company off can be given. If inaccurate or incomplete information is given in bad faith, a) a sentence of six days' to three months' imprisonment and a fine of EUR 15.24 to EUR 152.45 or just one of these two sentences can be imposed, and b) the inaccurate or incomplete entries can be corrected. It should be noted that the amounts of fines, which are still in French francs and have been converted into euros in this report, cast doubt on whether they are charged in practice. This latter remark also applies to certain fines mentioned in c.24.13.

1176. Civil-law partnerships must submit an amending declaration within two months after changes in them occur so that these changes can be entered in the RSC. An order to update information or strike the partnership off can be given. In addition, a fine of between EUR 152.45 and EUR 1 524 can be imposed independently of any administrative sanctions for an infringement or a false declaration. Sanctions are imposed by the President of the Court of First Instance or a delegated judge (Articles 4, 7, 17 and 24-26 of Law 721 and Articles 6, 8-1, 8-2 and 10 of Law 797). The fact that there are no provisions requiring entry in a register of basic information for associations and foundations is taken into account in the assessment of this criterion.

1177. With regard to c.24.4, transfers of shares in joint-stock companies must be entered in the company transfers register within one month (Article 43 of the Code of Commerce). The accuracy of the information entered in it is checked by on-site inspections carried out by the DEE in relation to the existence of the register, the date of the information recorded and whether this information tallies with certain supporting documents. While one month is regarded as timely for the purposes of updates, two months is considered to be too long a period.

Criterion 24.6

1178. Monaco uses the three mechanisms referred to in c.24.6 to ensure that information on beneficial ownership of commercial companies, civil-law partnerships and GIEs is obtained by them and available at a specified location in Monaco, or can be otherwise determined in a timely manner by a competent authority. There is no obligation in relation to information on beneficial ownership of associations and foundations, and this affects criteria 24.7 to 24.9. The deficiencies concerning the definition of beneficial owners that are addressed in c.10.10 apply.

1179. a) When they are registered, commercial companies, civil-law partnerships and GIEs must provide information on their beneficial owners (including surname, first name, date and place of birth, nationality, personal address, means of exercising control over the legal person, date on which they became a beneficial owner) along with all supporting documents necessary to verify the accuracy of declarations for the purposes of registration in the RBO (Articles 22 and 22-1 of Law 1.362 and Article 61 of SO No. 2.318). It should be noted that the RBO was still in the process of being completed, despite a deadline of June 2020 for entering information in it, and was not yet in use by the time of the on-site visit.

1180. b) Commercial companies, civil-law partnerships and GIEs must obtain and keep adequate, accurate and up-to-date information on their beneficial ownership. Beneficial owners are required to provide, within 30 working days after being asked to do so, all information needed by commercial companies, civil-law partnerships and GIEs to enable them to obtain information on their beneficial ownership (Article 21, paragraph 7, of Law 1.362 and Article 59-1 of SO No. 2.318).

1181. c) SICCFIN can use existing information, including (i) information obtained by FIs and/or DNFBPs, in accordance with Recommendations 10 and 22 (Article 50 of Law 1.362) and (ii) information held by other competent authorities on the beneficial and legal ownership of companies (Articles 22-5 and 50 of Law 1.362). There is no legal provision allowing SICCFIN to require a company to provide information that it holds on its beneficial ownership.

Criterion 24.7

1182. Beneficial owners are required to provide, within 30 working days after being asked to do so, all information needed by commercial companies, civil-law partnerships and GIEs to enable them to obtain information on their beneficial ownership (Article 21, paragraph 7, of Law 1.362 and Article 59-1 of SO No. 2.318). Commercial companies, civil-law partnerships and GIEs must provide, within one month following any event or act making it necessary to correct or add to declared information, information about their beneficial ownership to the RCI office so that changes can be made in the RBO. In addition, the RCI office can delay entry of or amend information if it is not consistent with the evidence sent or if the evidence is incomplete (Article 22-1 of Law 1.362).

1183. FIs and DNFBPs, SICCFIN, the judicial authorities and judicial police officers, empowered officers of the DSF and the Chairperson of the Monaco Bar Association must report to the RCI

office any failure to register information or any discrepancy that they find between information in the RBO and the information they hold (Article 22-2 of Law 1.362). See also c.10.7, where FIs are required to conduct ongoing due diligence and keep customer information up to date.

1184. The fact that there is no obligation concerning information on beneficial ownership of associations and foundations is taken into account in the rating for this criterion.

Criterion 24.8

1185. Monaco does not require that a) one or more natural persons resident in the country is/are authorised by the company, and accountable to competent authorities, for providing all basic information and available beneficial ownership information, and giving further assistance to the competent authorities, or b) a DNFBP in the country is authorised by the company, and accountable to the authorities, for providing all basic information and available beneficial ownership information and for giving further assistance to the authorities. SICCFIN can request co-operation from FIs and/or DNFBPs in order to obtain information on beneficial ownership of their customers (Article 50 of Law 1.362). It should also be pointed out that there is no obligation in relation to information on beneficial ownership of associations and foundations.

Criterion 24.9

1186. Directors or liquidators of commercial companies, civil-law partnerships and GIEs are required to maintain information and records concerning their beneficial ownership for at least five years after the date of their dissolution or liquidation (Article 21, paragraph 5, of Law 1.362). However, the place where this information must be kept is not specified. Commercial companies, civil-law partnerships and GIEs are required to keep this information and these documents for at least five years after the date on which they cease to be customers of FIs and DNFBPs (Article 21, paragraph 4, of Law 1.362).

1187. FIs and DNFBPs must keep, for a period of five years after terminating their relationships with regular or occasional customers, copies of all documents and information, on any medium, obtained during the course of CDD (Article 23 of Law 1.362). However, there is no obligation for RCI offices to keep information and records on beneficial ownership appearing in the RBO for commercial companies, civil-law partnerships and GIEs for five years after the date of their dissolution or liquidation.

1188. The fact that there is no obligation concerning information on beneficial ownership of associations and foundations is taken into account in the rating for this criterion.

Criterion 24.10

1189. Competent authorities, and in particular law enforcement authorities, have some powers necessary to obtain timely access to the basic and beneficial ownership information held by the relevant parties. SICCFIN has direct electronic access to the RCI and the RSC, which contain basic information on commercial companies, civil-law partnerships and GIEs. The Office of the Principal State Prosecutor, investigating judges and the DSP do not have electronic access to the RCI or RSC. The authorities can obtain timely access to basic information on associations by viewing the online list of voluntary-sector groups in Monaco or making a written request to the Department of the Interior.

1190. The RBO, for which provision is made in the law, is in the process of being completed and only SICCFIN has access to the register. Unrestricted access to it is also available to judicial police officers acting on the basis of a written request from the Principal State Prosecutor or by

delegation of an investigating judge, empowered officers of the DSF, the Chairperson of the Monaco Bar Association and empowered officers of the CCAF (Article 22-5 of the AML/CFT Law).

1191. Competent authorities have other powers to access basic information, though this cannot be described as timely access: an investigating judge or duly appointed judicial police officer can seek and view any documents or computer data and an investigating judge can seize, or cause to be seized, information useful to establish the truth (Article 100 of the CCP). SICCFIN can request any information or document in the possession of FIs, some DNFBPs and various departments of the civil service of Monaco (Article 50 of Law 1.362). In practice, SICCFIN gives regulated persons 15 days in which to answer its requests. There is no legal provision enabling SICCFIN to demand basic information and beneficial ownership information held by legal persons themselves. The fact that there is no obligation to maintain beneficial ownership information concerning associations and foundations means that the authorities cannot access this information in a timely fashion.

Criterion 24.11

1192. Bearer shares were prohibited by the Law of 7 June 2004 for joint-stock companies (SAMs and SCAs), with an exception for companies whose securities are admitted to trading on a regulated market. Pre-existing bearer shares had to be converted before 12 June 2009, on which date bearer shares had to be sold and converted by law. The Law of 15 December 2011 required conversion of bearer shares of companies whose securities were admitted to trading on a regulated market within a transition period until the end of 2014 so that pre-existing bearer shares could be converted (Law 1.282 and Article 4 of Law 1.385). Shares must be registered for all companies (Article 42 of the Code of Commerce).

Criterion 24.12

1193. The law of Monaco does not recognise the concept of nominee shareholders or nominee directors. However, in practice, companies in Monaco can issue shares registered in the name of nominees or have directors acting on another person's behalf.

Holding of shares on another person's behalf

1194. With regard to joint-stock companies (including those subject to civil law), ownership of shares must be established through the issuing of a registered security registered in the company's register of transfers. For all transfers, a transfer slip must be transcribed in the register within one month. The transfer slip must mention the surnames, first names and address of the transferor(s) and transferee(s) and shall give rise to the issuing of a new personal share certificate (Article 43 of the Code of Commerce). Persons holding shares on another person's behalf must submit convincing supporting documents which identify this situation to the DEE (when incorporating the company or registering it in the RBO). However, there is no measure making it mandatory to disclose the identity of a person who has nominated a shareholder to act on their behalf in the event of transfers of shares during the company's lifetime. With regard to other companies, shareholders must be authorised by decision of the Prime Minister and this authorisation is personal and non-transferable (Articles 2, 4, 5 and 7 of Law 1.144). These provisions do not allow shares to be held on another person's behalf.

Directors/managers acting on another person's behalf

1195. For SAMs, directors are chosen from among the shareholders. The deficiency that has been identified in relation to the lack of a measure making it mandatory to disclose the identity of a person who has nominated a shareholder to act on their behalf in the event of transfers of

shares during the company's lifetime applies here, too. Shareholders can also nominate a non-shareholding agent to represent them (managing director).

1196. With regard to SARLs and civil-law partnerships undertaking professional activity, managers must be authorised by decision of the Prime Minister and this authorisation is personal and non-transferable (Articles 2, 4, 5 and 7 of Law 1.144). For civil-law partnerships, the law requires the document establishing the civil-law partnership and any amendments to it and transfers of shares to be registered with the DSF, failing which they shall not bind shareholders or third parties (Articles 2-6 and 9 of Law 797).

Criterion 24.13

1197. Failure to register commercial companies and GIEs in the RCI is punishable by a fine of EUR 2.44 to EUR 3.35. A fine of EUR 3.66 to EUR 15.24 can be imposed if they do not declare changes in basic information to the RCI or if they do not confirm that it is accurate every five years. In addition, an order against the constitutional representative or for strike-off of the company can be given. If inaccurate or incomplete information is provided in bad faith, a) a sentence of six days' to three months' imprisonment and a fine of EUR 15.24 to EUR 152.45 or just one of these sentences can be imposed, and b) the inaccurate or incomplete entries can be corrected (Articles 4, 7, 17, 22 and 24-26 of Law 721). There is no sanction with regard to the updating of information in the register of transfers of joint-stock companies.

1198. For civil-law partnerships: only an order against the constitutional representative or for strike-off of the company can be given. In addition, a fine in the amount of EUR 152.45 to EUR 1 524 can be imposed independently of any administrative sanctions for an infringement or a false declaration (Articles 6, 8-1, 8-2 and 10 of Law 797). Sanctions are imposed by the President of the Court of First Instance or a delegated judge. Except in cases of false declarations, in light of the amounts of the fines, these sanctions are not regarded as proportionate and dissuasive.

1199. For associations: sanctions are applicable to natural persons and, in some cases, the association for non-fulfilment of obligations to keep a register at the association's registered office (fine of EUR 75 to EUR 200), lack of authorisation to accept donations *inter vivos* or by will, failure to declare changes to the Prime Minister and publish them in the Monaco Gazette, failure to present the register kept at the association's registered office to the Prime Minister or judicial authorities, accounting irregularities (fine of EUR 200 to EUR 600), reliance on unobtained or withdrawn approval (fine of EUR 2 250 to EUR 9 000), remaining within an association or federation of associations that has been dissolved (imprisonment of between six months and three years and a fine of EUR 2 250 to EUR 9 000), administering or continuing to administer an association or federation of associations after it has been dissolved (fine of EUR 9 000 and EUR 18 000) (Articles 32 to 34 of Law 1.355). For foundations: fines of between EUR 18 000 and EUR 90 000 are applicable to administrators of foundations who cause obstruction or do not fulfil obligations in relation to accounting or annual accounts (Article 29 of Law 56). These sanctions are mostly non-dissuasive in light of the low maximum amounts that can be imposed, particularly EUR 200 and EUR 600.

1200. Criminal sanctions taking the form of a fine of between EUR 2 250 and EUR 9 000 can also be imposed: i) on commercial companies, civil-law partnerships and GIEs for the offence: - of not obtaining and keeping adequate, accurate and up-to-date information on their beneficial ownership and actual interests held, or - of not providing FIs and DNFBPs with all adequate, accurate and up-to-date information that they hold on their beneficial ownership, or of knowingly giving inaccurate or incomplete information, or - of not providing the Prime Minister with

information on their beneficial ownership for the purposes of registration in the RBO; ii) in relation to beneficial owners, for failing to provide necessary information to commercial companies, civil-law partnerships or GIEs (Article 26, section 2, of the CC and Article 71-1, points 4°, 5°, 6° and 7°, of Law 1.362). These sanctions are regarded as proportionate and dissuasive.

1201. In addition, a fine of EUR 75 to EUR 200 can be imposed on commercial companies, civil-law partnerships and GIEs for failure to submit additional or amending declarations to the RBO. A fine of between EUR 600 and EUR 1 000 can be imposed on FIs and DNFBPs for failure to report non-registration or any discrepancy identified between information in the RBO and information that they have (Article 29, sections 2 and 4, of the CC and Article 71 of Law 1.362). The sizes of these two fines do not make them dissuasive.

1202. The President of the Court of First Instance or the judge delegated to this end can also give an order or cause commercial companies, civil-law partnerships and GIEs to be struck off of their own motion if these entities fail to register, submit necessary additional or amending declarations or correct incomplete or inaccurate entries in the RBO (Article 22-3 of Law 1.362).

Criterion 24.14

1203. To a certain extent, Monaco provides international co-operation swiftly in relation to basic information and beneficial ownership of legal persons in Monaco:

1204. a) by allowing direct and free access to some basic information on commercial companies which is accessible on the RCI's website and on associations and foundations on the official website of voluntary-sector groups. However, neither basic information on civil-law partnerships and GIEs nor information on beneficial ownership of all companies are publicly accessible online;

1205. b) via SICCFIN, which rapidly provides foreign FIUs exercising similar powers, subject to reciprocity, with basic information on shareholders or beneficial ownership, provided: - that the request relates to AML/CFT, - that the request states the relevant facts, their context, the reasons and the use that will be made of the requested information, - that provision is not detrimental to Monaco's fundamental interests, - that the foreign FIUs are subject to equivalent obligations of professional secrecy, and that they offer an adequate level of protection in relation to the processing of the information provided. SICCFIN must also give foreign FIUs prior consent to pass on information communicated to other competent authorities in their country (Article 51-1 of Law 1.362);

1206. c) via judicial authorities which can obtain, on behalf of certain foreign counterparts, basic information and beneficial ownership information and send it to requesting authorities which have issued an international request for judicial assistance or in connection with a request for international assistance in criminal matters (see R.37 and R.40). In this latter case, it has not been demonstrated that there is a legal provision which obliges the judicial authorities to act promptly.

Criterion 24.15

1207. The Monegasque authorities control the quality of the assistance they receive from other countries concerning basic or on BO information. The assessment of the quality of the return is made by the requesting magistrate himself or by SICCFIN, which would request additional information if the return from the foreign authorities is not satisfactory.

Weighting and conclusion

1208. The majority of the criteria are only partly met and some are not met. There is no obligation to record basic information on associations and foundations in a register and no obligation in relation to their beneficial ownership. Some basic information concerning companies is not in the RCI or RSC and the certificates of registration in the RSC of civil-law partnerships that the public can request contain little information. The amounts of the fines for failure to register or to declare changes to the RCI, RSC and Prime Minister are small and not dissuasive. There is no obligation for companies to keep basic information and no obligation to keep a register of members for most company types. The provisions that encourage maximum co-operation by companies with competent authorities for the purposes of identifying beneficial owners are not adequate. Although the competent authorities, especially the law enforcement agencies, have means of requesting basic information and information concerning beneficial ownership of companies from the various parties concerned, they do not have any means of gaining access to this information swiftly. International co-operation in relation to swift access to basic information and beneficial ownership information pertaining to legal persons in Monaco is limited, and other than for public information on the RCI's website, it is not facilitated by the keeping of information which is rapidly publicly accessible. **Principality of Monaco is rated Partially Compliant with Recommendation 24.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

1209. Monaco was rated Partially Compliant in the 4th Round report. It was pointed out that there was no statutory or regulatory basis permanently guaranteeing that documentation concerning trusts, including beneficial ownership information, held by the Court of Appeal was complete, accurate and up to date. In addition, a recent change in the concept of beneficial ownership left doubts as to whether adequate and complete information would be provided to the authorities by regulated professionals in due time.

Criterion 25.1

1210. Trusts subject to the law of Monaco cannot be created in Monaco. The country has ratified the Hague Convention on the Law Applicable to Trusts and on their Recognition. In addition, the law of Monaco allows foreign-law trusts to be created in or transferred to Monaco and allows the use of foreign-law trusts to deal with people's property, *inter vivos* or after their death (Articles 1, 2 and 4 of Law 214). It sets out the following obligations in relation to trustees:

1211. a) The trustee must obtain and hold adequate, accurate and current information on the identity of the settlor(s), the trustee(s), the protector(s) (if any), the beneficiaries or class of beneficiaries, or, where the beneficiary/beneficiaries have not yet been designated, the group of persons in whose main interest the trust was settled or became effective, any natural person exercising effective control over the trust, the trust's ownership and control structure, and the holding by the trust of a controlling interest in a company or other legal entity (Article 6-1, paragraph 1, and Article 13-3, paragraphs 2 and 3, of Law 214 and Article 2 of SO No. 8.635). A trustee who administers a trust created in or transferred to Monaco must provide this information to the Prime Minister so that it can be entered and kept in the Register of Trusts (RdT) as provided by sovereign order (Article 11 of Law 214 and Article 2 of SO No. 8.635).

1212. b) There is no obligation for a trustee to hold basic information on other regulated agents or trust service providers, but this deficiency is partly compensated for by the obligation for the trustee to keep supporting accounting documents which relate to billing for services for a period of at least five years (Article 10 of Law 214);

1213. c) Professional trustees are among the professionals who are subject to AML/CFT Law 1.362 (Article 1, points 5 and 6, and Article 2 of Law 1.362 and Article 3 of Law 214). They must maintain information obtained during the course of CDD measures, including information used to identify and verify their customers, for five years after their relationships with their customers end (Article 23 of Law 1.362).

Criterion 25.2

1214. Basic information and beneficial ownership information obtained and held by a trustee must be adequate, accurate and current. It must be provided to the Prime Minister so that it can be entered in the RdT by the trustee, who must, in the month following any changes in information, submit a supplementary or amending declaration to the Prime Minister. DEE officers who are responsible for keeping the RdT check information to be entered in the RdT on the basis of convincing supporting documents provided by the trustee in the application for registration. A trust which does not fulfil its obligations to provide information to the Prime Minister is liable to a fine of between EUR 9 000 and EUR 18 000. A trustee who provides inaccurate or incomplete information in bad faith is liable to a fine of between EUR 18 000 and EUR 90 000. FIs and DNFBPs and empowered officers of the DSF and the Chairperson of the Monaco Bar Association report to the Prime Minister any discrepancies that they find between information held in the RdT and information concerning beneficial ownership of trusts that they hold (Article 6-1, paragraphs 1.11 to 13, 13-1, 14 and 15 of Law 214). There is no obligation for a trustee to hold basic information on other regulated agents or trust service providers, and hence there is no obligation to update this information.

Criterion 25.3

1215. Trustees and any persons holding an equivalent position in legal arrangements similar to trusts must disclose their status when forming a business relationship or carrying out an occasional transaction in an amount equal to or greater than EUR 15 000 (Article 6-2 of Law 214).

Criterion 25.4

1216. There is no legal provision or other enforceable means preventing trustees from providing competent authorities with any information relating to the trust or from providing FIs and DNFBPs, upon request, with information about beneficial ownership and trust assets held or managed in the context of the business relationship.

1217. In addition, as indicated in c.25.1 c), professional trustees are among the professionals who are subject to AML/CFT Law 1.362 and SICCFIN can obtain any information or documents in the possession of trustees and share them with foreign FIUs (Articles 50, 51-1 and 54 of Law 1.362). In addition, trustees must provide beneficial ownership information to FIs and DNFBPs (Article 6-1 of Law 214).

1218. Also, as indicated in c.25.1 a), trustees must provide the Prime Minister, for the purposes of entering it in the RdT, with basic information and beneficial ownership information in relation to the trusts that they administer. There are legal provisions in relation to access for different competent authorities, FIs and DNFBPs, to information in the RdT: i) SICCFIN, without restriction and without notice to the person concerned (Article 13-3, paragraph 1, of Law 214); ii) on the same basis and solely in relation to ML/TF, the judicial authorities, judicial police officers of the DSP acting on a written request and by delegation of the Principal State Prosecutor or by delegation of an investigating judge, empowered officers of the DSF, the Chairperson of the

Monaco Bar Association and empowered officers of the CCAF (Article 13-3, paragraphs 2 and 3, of Law 214); iii) FIs and DNFBPs, during the course of CDD measures, after informing the trustee or person holding an equivalent position in a similar legal arrangement (Article 13-4 of Law 214).

Criterion 25.5

1219. SICCFIN can obtain timely access to information held by trustees and by FIs and some DNFBPs on (a) beneficial ownership, (b) the residence of the trustee, and (c) any assets held or managed by an FI or DNFBP in relation to any trustee with whom they have a business relationship, or for whom they undertake an occasional transaction on the basis of the control powers conferred upon SICCFIN by the AML/CFT Law 1.362 (Article 50 of Law 1.362). The investigating judge or duly appointed judicial police officer can seek and view any documents or computer data and an investigating judge can seize, or cause to be seized, information useful to establish the truth (Article 100 of the CCP). However, there is no provision allowing an investigating judge or judicial police officer to obtain timely access to information.

1220. The RdT, for which current legislation makes provision, is not yet operational. It is in the process of being completed and the authorities do not have access to the register. The RdT will give access to information on beneficial ownership of trusts to competent authorities including SICCFIN, judicial authorities, judicial police officers of the DSP acting on written request and by delegation of the Principal State Prosecutor or by delegation of an investigating judge, empowered officers of the DSF and the Chairman of the Monaco Bar Association, and empowered officers of the CCAF have access to the information referred to in c.25.1 a) (Articles 6-1, 11, 12 and 13-3 of Law 214 and Article 6 of SO No. 8.635). The RdT will contain, and access to it will make it possible to obtain, information concerning (a) beneficial ownership, and (b) the residence of the trustee. The RdT will also indicate the nature and extent of the beneficial interests held by the beneficial owner(s) (real property, personal property, shares, liquid assets) and interests held by the trust in a company or other legal entity. The legislation does not make provision for (c) any indication of the FIs or DNFBPs where any asset is held or managed in respect of any trustee with whom they have a business relationship or for whom they undertake an occasional transaction.

Criterion 25.6

1221. Monaco can, to a limited extent, rapidly provide international co-operation in relation to information concerning trusts, including information on beneficial ownership:

1222. a) there is no provision intended to facilitate access by foreign competent authorities to basic information held in the RdT;

1223. b) SICCFIN rapidly provides nationally available information concerning trusts to foreign FIUs exercising similar powers, subject to reciprocity, provided: - that the request relates to AML/CFT, - that the request states the relevant facts, their context, the reasons and the use that will be made of the requested information, - that provision is not detrimental to Monaco's fundamental interests, - that the foreign FIUs are subject to equivalent obligations of professional secrecy, and that they offer an adequate level of protection in relation to the processing of the information provided. SICCFIN must also give its prior consent to foreign FIUs in order for them to pass on information communicated to other competent authorities in their country (Article 51-1 of Law 1.362).

1224. c) the judicial authorities can obtain, for some foreign counterparts, information about trusts and their beneficial ownership and send it to requesting authorities which have issued an international request for judicial assistance or in connection with a request for international

assistance in criminal matters (see R.37 and R.40). In the latter case, it has not been demonstrated that there is a legal provision which obliges the judicial authorities to act promptly.

Criterion 25.7

1225. Trustees who do not have or do not maintain basic information and information on beneficial ownership of a trust that they are administering, or who do not provide this information to FIs and DNFBPs in the course of their professional duties, are liable to a fine of between EUR 9 000 and EUR 18 000. The same fine is applicable if trustees do not fulfil their obligation to have information entered into or amended in the RdT (Articles 6-1 and 14 of Law 214 and Article 26, point 3, of the CC). However, the maximum amount of the sanction is not considered dissuasive for trustees. The authorities have not used this power of sanction.

Criterion 25.8

1226. Trustees who do not fulfil their obligations to provide to the RdT, when registering or submitting an amendment, information on the trusts that they are administering are liable to a fine of between EUR 9 000 and EUR 18 000. If inaccurate or incomplete information is provided in bad faith, trustees are liable to a fine of between EUR 18 000 and EUR 90 000 (Article 14 of Law 214 and Article 26, sections 3 and 4, of the CC). However, except in cases of fraud, the maximum amount of the fine is not considered dissuasive for trustees. The authorities have not used this power of sanction.

1227. SICCFIN can obtain information on trusts as referred to in c.25.1. In the event of prevention or attempted prevention of SICCFIN checks and hence failure to provide this information, trustees are liable to criminal penalties, i.e. one to six months' imprisonment and a fine of between EUR 18 000 to EUR 90 000 or just one of these sentences (Articles 49, 54 4°) and 70 of Law 1.362 and Article 26, section 4, of the CC). However, there is no obligation to send this information in a timely fashion. These sanctions are considered proportionate and dissuasive. The authorities have not used this power of sanction.

Weighting and conclusion

1228. Monaco meets or mostly meets some criteria in relation to the holding by trustees of information on trusts that they manage or administer and the holding and updating of information. Trustees must disclose their status to FIs and DNFBPs and there is nothing to prevent trustees from providing competent authorities with all information on the trust or providing FIs and DNFBPs with information on beneficial ownership and trust assets held or managed in the context of the business relationship. There is no explicit obligation for the trustee to hold basic information on other regulated agents or trust service providers and hence no obligation to update this information. In addition, the legislation does not provide that competent authorities, and law enforcement authorities in particular, shall have timely access to information held by trustees and other parties. For this reason in particular, the competent authorities are unable to provide international co-operation rapidly, and access for foreign competent authorities to basic information held in the RdT or held by other national authorities is not facilitated. In addition, the sanctions applicable to trustees if they fail to perform their obligations, including their obligations to provide competent authorities with information on trusts as referred to in c.25.1 in a timely fashion, are not considered proportionate or dissuasive and have never been imposed. **Principality of Monaco is rated Partially Compliant with Recommendation 25.**

Recommendation 26 – Regulation and supervision of financial institutions

1229. Monaco was rated Largely Compliant in the 4th Round report. It was pointed out that there were deficiencies in the legislation and regulations governing the monitoring of shareholder profiles and managerial integrity in the non-bank financial sector. There were an insufficient number of on-site inspections of insurance intermediaries and there were no written procedures for documentary checking or on-site inspections to ensure continuity of supervision in all circumstances.

Criterion 26.1

1230. SICCFIN is responsible for supervising AML/CFT in relation to credit institutions, finance companies, payment and e-money institutions, non-bank financial institutions (such as security portfolio managers, mutual funds or other pooled investment vehicles), multi-family offices, insurance companies, insurance intermediaries, agents and brokers in relation to life or investment-related insurance, currency exchange service providers, money transfer service providers and pawnbrokers and their agents (Article 1, points 1 to 4, 8, 9, 18 and 19 and Article 54 of Law 1.362).

Criterion 26.2

1231. All Core Principles FIs (credit institutions, payment institutions and e-money institutions) must be authorised by the Prudential Supervisory and Resolution Authority of France (ACPR), which draws up and updates the relevant lists (Articles L511-10, L522-6 and L522-7 of the Monetary and Financial Code). This arrangement, which was made in the exchange of letters between France and Monaco of 20 October 2010, was made compulsory by way of SO No. 3.021. It meets the requirements of the criterion concerning these types of FIs. In addition, in view of the prudential requirements to be met by these institutions so that they can gain approval from the ACPR, choosing the legal form of a *société anonyme monégasque* or SAM (Monegasque Joint Stock Company) is necessary so additional authorisation is needed from the government, which is granted by order of the Prime Minister for the creation of the SAM (Articles 1 and 2 of the Order of 5 March 1895).

1232. Money transfer services are services which can only be provided by credit institutions, payment institutions and e-money institutions (Article L314-1 of the Monetary and Financial Code of France or CMF) which can also be provided by a branch of a payment institution approved in France by the ACPR after permission has been given by the Prime Minister (Articles 1 and 8 of Law 1.144).

1233. Non-bank financial companies, including credit institutions undertaking the activities of these companies, mutual funds and investment funds, and where necessary, multi-family offices need approval from the Financial Activities Supervisory Commission (CCAF) (Article 2 of Law 1.338 and Articles 2 and 34 of Law 1.339).

1234. There are no Monegasque insurance companies. Insurance companies based in France or insurance companies in the EU which are authorised to operate in France can extend their activities to Monaco. They must obtain approval from the Prime Minister (Franco-Monegasque Convention on the Regulation of Insurance, signed in Paris on 18 May 1963, made enforceable by SO No. 3.041 and Articles 3 and 4 of SO No. 4.178).

1235. An administrative authorisation system for the pursuit of craft, commercial, industrial and professional activities, except activities and professions to which access is already subject to other authorisation, requires professionals acting in a personal capacity, partners in a civil-law partnership, partners in an SNC or SCS and members and managers of an SARL to obtain

administrative authorisation from the Prime Minister so that they can pursue financial sector activities (hereinafter “general authorisation system”). The opening or running of an agency, branch or administrative or representative office of an undertaking or company headquartered abroad is also subject to the general authorisation system (Articles 1, 4, 5, 7 and 8 of Law 1.144). With regard to activities undertaken by joint-stock companies, their incorporation is subject to authorisation from the government given by order of the Prime Minister (Articles 1, 2 and 24 of the Order of 5 March 1895). Finance companies, currency exchange service providers, pawnbrokers and their agents and insurance agents and brokers are therefore required to obtain authorisation under these systems.

1236. The laws of Monaco combined with the Franco-Monegasque banking conventions do not allow shell banks to be established or operate.

Criterion 26.3

1237. Monaco takes legislative or regulatory measures to prevent criminals or their associates from holding or becoming the beneficial owners of a significant or controlling interest, or holding a management function, in a financial institution. They are taken for all regulated professionals in the general authorisation system or when considering an application to incorporate a joint-stock company. Additional measures taken by the ACPR apply for credit institutions, payment institutions and e-money institutions, and additional measures taken by the CCAF apply to non-bank financial companies when requests for approvals for these types of FIs which will operate in the form of a joint-stock company (SAM) are considered. Measures taken by the ACPR and the CCAF will apply to FIs pursuing activities regulated by both supervisors.

The measures consist of:

Under the general authorisation system

1238. The measures taken under the general authorisation system are as follows:

- assessing the integrity of freelance professionals and managers or members of a company (other than a joint-stock company) who are subject to declaration or authorisation to practise (Articles 1, 2, 4, 5, 7 and 8 of Law 1.144). The declaration or authorisation must be renewed if there is a change in relation to the holder (freelance professional, manager or member) and can be suspended, nullified or revoked if the person no longer provides all guarantees of integrity (Articles 5 and 9, point 5, of Law 1.144). In addition, criminal penalties can be imposed on persons where they undertake an activity without having submitted a declaration or without holding authorisation and if a nominee is used (Articles 12 and 15 of Law 1.144). However, where the professional wishes to establish themselves in the form of a company, there are no provisions that explicitly concern checks on the professional integrity of the company's beneficial owner. In addition, where a member is a legal person, checks are limited to the legal person's statutory representative, who alone is obliged to submit an information notice and a criminal record certificate issued within the last three months. In this event, the identity of the beneficial owner of the legal entity member must also be communicated, without any other documents that can be used to check their integrity (Article 3 of Ministerial Order No. 2014-264);

- checking the professional integrity of the statutory representative of a company headquartered abroad who wants to establish in Monaco an agency, branch or administrative or representative office and disclosing the identity of the company's beneficial owner, without providing any other documents that can be used to check this person's integrity (Article 4 of Ministerial Order No. 2014-264 and Article 5 of Law 1.144). These checks only partly meet the requirements of the

criterion;

When a joint-stock company is incorporated

- checking the professional integrity of the founders and first subscribers (who are also directors) of a joint-stock company (for which the legal form of the SAM has become necessary for credit institutions, payment institutions, e-money institutions and non-bank financial companies). However, there is no provision which explicitly refers to checks on the professional integrity of the beneficial owner or any agent who is not a shareholder (managing director) of the company. In addition, where a founder or first subscriber is a legal person, checks are limited to the statutory representative of the legal person, who alone is obliged to submit an information notice and a criminal record certificate issued within the last three months. In this event, the identity of the beneficial owner of the legal person member must also be disclosed, without any other documents that can be used to check this person's integrity (Articles 1, 2 and 24 of the Order of 5 March 1895 and Articles 6 and 7 of Ministerial Order No. 2014-264). Lastly, there are no measures to check the integrity of persons in the event of a change in the members of the management, the body responsible for the running of the company, the shareholders or the beneficial owner of joint-stock companies.

1239. Administrative investigations can be carried out by the DSP in relation to the persons concerned in order to check that they offer appropriate guarantees prior to any issuing of the various authorisations referred to above (Article 2 of Law 629/1957 regulating recruitment and dismissal in the Principality, Article 2 of Order 16.675/2005, Article 3 of Law 1.430 of 13/07/2016 on various measures to preserve national security and Article 1 of Ministerial Order 2016-622).

When obtaining approval as a credit institution, payment institution or e-money institution

1240. The ACPR takes additional measures when considering requests for approvals for these types of FIs which operate in the form of SAMs or as branches in Monaco of a credit institution located in a foreign country. They make up for some of the deficiencies in the system for authorising the incorporation of a joint-stock company but do not meet all of the requirements of this criterion:

- a conviction for a wide range of crimes, including an equivalent foreign conviction, is incompatible with direct or indirect exercise, in a personal capacity or on another person's behalf, of managerial or director's functions, belonging to a collective controlling body and pursuing financial professions or activities (Article L-500-1 of the Monetary and Financial Code);

- as well as checking the incompatibility of managers with the general prohibitions referred to above, the ACPR checks the good character of managing persons and the members of the body responsible for running a credit institution (Articles L511-51 and R511-16-3 of the Monetary and Financial Code). Credit institutions must notify the ACPR of any change in relation to these posts within 15 days following appointment or renewal of a term of office. The ACPR can object to appointments of managers and renewals of their terms of office where they do not meet the integrity and probity requirements (Article L612-23-1, I and III of the Monetary and Financial Code) or suspend them where this is urgently necessary (Article L612-33, III of the Monetary and Financial Code). For payment institutions and e-money institutions, checks on good character and integrity are limited to *de facto* managers and do not extend to members of the administrative body in charge of the institution (Articles L522-6, L526-8 and L526-12 of the Monetary and Financial Code). Changes in the management of payment institutions and e-money institutions must be declared to the ACPR within five days following appointment (Article 9 of the Order of

29 October 2009 and Article 9 of the Order of 2 May 2013);

- the ACPR checks the good character and integrity of natural persons who directly or indirectly own certain minimum levels, ranging from 10% to 25% depending on the FI, of the capital or voting rights (Articles 2, 7 and 8 of the Order of 4 December 2017, Article 7 of the Order of 29 October 2009 and Article 7 of the Order of 2 May 2013). These checks are also carried out prior to any change. However, they only concern persons who have control or "significant influence" through their shareholdings or voting rights and do not include other forms of checks, other than checks on capital and voting rights, which can be carried out on the FI within the meaning of "beneficial owner" as defined by the FATF.

When obtaining approval as a non-bank financial company

1241. The CCAF takes additional measures when considering requests for approvals for this type of FI which operates in the form of a SAM or as a branch in Monaco of a credit institution located in a foreign country. They consist of checking the professional integrity of the managers, i.e. at least two persons who actually steer and manage the company, and ascertaining the identity and capacities of each direct or indirect contributor of capital, whether natural or legal persons, and the amount of their contribution (Article 5, point 2, of Law 1.338 and Article 3, points 1 and 4, of SO 1.284).

1242. Changes in the managers or contributors of capital which occur after the approval is issued must be reported without delay to the CCAF, which may order the company to request a new approval or to take any measures made necessary by these changes within a timeframe of its choosing (Article 8 of Law 1.338).

1243. There are no measures to identify beneficial owners and check their professional integrity.

Summary

1244. The main shortcomings in the legislative or regulatory measures intended to prevent criminals or their associates from holding or becoming the beneficial owners of a significant or controlling interest in an FI are the lack of checks on professional integrity, or even identification, of beneficial owners as defined by the FATF (including in the event of a change) under the general authorisation system for companies with members that are legal persons and for branches in Monaco of companies headquartered abroad and under the system of authorisation for joint-stock companies, including where an approval is issued by the CCAF. In relation to joint-stock companies approved by the ACPR, the deficiencies solely concern the lack of identification and checks on the professional integrity of beneficial owners who have forms of control other than control of capital and voting rights.

1245. As for measures to prevent criminals or their associates from accessing a managerial position, the checks carried out by the DSP when it issues work permits necessary to pursue professional activity in Monaco (independently of the general authorisation system) also ensure that managers and persons responsible for key functions offer appropriate guarantees for the purposes of working in Monaco. However, it is not impossible that some persons may escape the checks carried out in Monaco where they are based abroad, e.g. in the parent company's country.

1246. Finally, once authorised, there are no control measures to ensure that BO or managers and key employees continue to enjoy of good reputation.

Criterion 26.4

1247. (a) Core Principles FIs are supervised by SICCFIN (Article 54 of Law 1.362). However, it has not been demonstrated that this supervision must be carried out in line with the Core Principles.

1248. (b) Other FIs, including those providing money or value transfer services or exchange services, are subject to the professional obligations set out in the AML/CFT Law and ML/TF risk-based supervision by SICCFIN (Articles 54 and 58-1 of Law 1.362).

Criterion 26.5

1249. The law provides that SICCFIN must take a risk-based AML/CFT supervision approach (Article 58-1, paragraph 1, of Law 1.362). The risk-based supervision that is in place only concerns banks and management companies, not other FIs. In addition, while the system makes it possible to determine the frequency of the controls to be carried out, it does not make it possible to decide their intensity. Frequency is determined on the basis of:

- ML/TF risks identified when assessing risk profiles (Article 54-1, paragraph 2, of Law 1.362). SICCFIN assesses risks in relation to banks and management companies;
- ML/TF risks in the country (Article 54-1 of Law 1.362). SICCFIN uses the results of the NRA to prioritise sectors to be monitored;
- the characteristics, diversity and number of FIs (Article 58-1 of Law 1.362) but not the degree of discretion allowed to them under the risk-based approach.

Criterion 26.6

1250. SICCFIN reviews the assessment of the risk profile of these FIs or financial groups, including the risk of non-compliance, periodically and when there are major events or developments in the management and operations of the groups and institutions (Article 54-1 of Law 1.362).

Weighting and conclusion

1251. There are deficiencies in relation to measures to prevent criminals or their associates from holding or becoming the beneficial owners of a significant or controlling interest in a FI or from holding a managerial position in one. It has not been demonstrated that Core Principles FIs are subject to regulation and supervision in line with Core Principles, where relevant for AML/CFT, including the application of risk-based consolidated group supervision for AML/CFT purposes. There are deficiencies in relation to risk-based supervision, particularly the elements on which the frequency and extent of documentary checking and on-site inspections are based. In view of these moderate deficiencies, **Principality of Monaco is rated Partially Compliant with Recommendation 26.**

Recommendation 27 – Powers of supervisors

1252. Monaco was rated Largely Compliant in the 4th Round report. It was found that there were no sanctions for the managers of FIs.

Criterion 27.1

1253. SICCFIN is empowered to monitor FIs' compliance with their AML/CFT obligations (Article 54, paragraph 1, of Law 1.362). SICCFIN officers are specially commissioned and sworn to this end.

Criterion 27.2

1254. SICCFIN has the power to carry out documentary checks and on-site inspections without professional secrecy being a valid ground for objecting to them (Article 54, paragraph 2, of Law 1.362). However, SICCFIN has been unable to carry out unannounced on-site inspections since the second half of 2021 following an agreement between SICCFIN and the Monaco Association for Financial Activities (AMAF) that banks and management companies should be notified one month before an on-site inspection takes place. For other regulated professionals, one to two weeks' notice of on-site inspections is normal.

Criterion 27.3

1255. SICCFIN can compel production of any documents, on any medium, which it deems relevant to its task and can take copies of them by any means without needing a prior court decision (Article 54, paragraph 2, point 4, of Law 1.362). Criminal sanctions can be imposed for obstruction or attempted obstruction of checks (Article 70 of Law 1.362).

Criterion 27.4

1256. SICCFIN can put regulated professionals on formal notice to take, within a set timeframe, any measure to put their situation in order in the event of a failure to perform AML/CFT obligations. Where a regulated professional does not remedy deficiencies which have given rise to formal notice or if SICCFIN notes in an on-site inspection report a serious, repeated or systematic breach of all or some of his/her AML/CFT obligations, a range of administrative sanctions can be imposed on the regulated professional, his/her managers or employees or persons acting under his/her direction by the Prime Minister as proposed by the Audit Review Commission (CERC) (Articles 54, 58-2, 65 and 65-1 of Law 1.362). See R.35.

1257. This criterion is not met because the supervisory authority has not been given the power to impose sanctions on FIs. In addition, the sanctioning process does not permit the application of sanctions to one-off breaches identified during documentary checks or simple breaches such as failure to send a document (such as annual AML/CFT activity reports, AML/CFT procedures or risk-based approach questionnaires, etc.) even though sending it is compulsory according to the law or regulations. This limits the dissuasiveness of the sanctions that can be imposed.

Weighting and conclusion

1258. In the sanctioning mechanism, the FI supervisory authority does not have the power to impose sanctions for failure to comply with AML/CFT requirements. In addition, the sanctioning process does not make it possible to sanction one-off breaches identified during documentary checks or simple breaches of requirements. These are significant deficiencies. Lastly, a minor deficiency is noted in relation to the fact that SICCFIN must inform certain regulated professionals in advance of a forthcoming on-site inspection. **Principality of Monaco is rated Partially Compliant with Recommendation 27.**

Recommendation 28 – Regulation and supervision of DNFBPs

1259. Monaco was rated Partially Compliant in the 4th Round report. There were reservations over effective monitoring of most legal advisers, accountants and chartered accountants, the fact that lawyers and bailiffs could not be regarded as being subject to effective monitoring of their obligations, the fact that the administrative sanctions stipulated by law could not be imposed on managers of DNFBPs, the fact that the criminal sanctions provided for by law which could be

imposed against the managers of some DNFBPs did not cover all breaches of their obligations in relation to the prevention of ML/TF and the fact that the complexity of the criminal provisions of the law in terms of their *ratione personae* scope of application and the difficulty of grasping the intrinsic logic of this system undermines its dissuasiveness.

Criterion 28.1

Casinos

1260. Casinos are subject to AML/CFT regulations and checks in Monaco.

1261. a) Casinos must obtain prior authorisation from the government (Article 350 of the CC and Article 1 of Law 1.103).

1262. b) A monopoly over gambling has been granted since 1863 by the Government of Monaco to *Société des Bains de Mer et du Cercle des Etrangers* (SBM), which was operating two casinos on the date of the on-site visit. The SBM currently has this monopoly until 31 March 2027 and approval for any other entity cannot be sought. SBM is an SAM which is listed on the Paris stock exchange (Euronext Paris). Its main shareholder is the Government of Monaco, which holds a stake of more than 64%. Three significant shareholders each hold a stake of approximately 5%. The remainder of the shares (free float) and the liquidity of the securities do not allow an outsider to acquire a significant proportion of the capital or control of SBM. The directors and employees, including managers, of the company that is authorised to establish or run a gambling establishment must have administrative approval. Checks on professional integrity are carried out by the DSP when it considers requests for approval in order to prevent criminals from accessing these roles (Articles 4 and 6 of Law 1.103, Article 3 of Law 1.430/2016 and Article 1 of Ministerial Order 2016-622). However, there are no control measures to ensure that they are in good standing at all times.

1263. c) Casinos are subject to monitoring by SICCFIN of their compliance with their professional AML/CFT obligations (Article 1, section 7, and Article 54 of Law 1.362).

DNFBPs other than casinos

Criteria 28.2 and 28.3

1264. DNFBPs other than casinos are subject to monitoring of their compliance with their professional AML/CFT obligations. Notaries and bailiffs are monitored by the Principal State Prosecutor, who can obtain assistance from SICCFIN officers (Article 2, points 1 and 2, and Article 57 of the AML/CFT Law). Lawyers are monitored by the Chairperson of the Monaco Bar Association (Article 2, point 3, and Article 57-1 of the AML/CFT Law). Other DNFBPs are monitored by SICCFIN (Article 54 of the AML/CFT Law), i.e. estate agents (Article 1, point 10, of the AML/CFT Law), dealers in precious stones and metals (Article 1, point 15, of the AML/CFT Law), legal advisers (Article 1, point 13, of the AML/CFT Law), tax advisers (Article 1, point 12, of the AML/CFT Law), multi-family offices (Article 1, point 19, of the AML/CFT Law), accountants and chartered accountants (Article 1, point 20, of the AML/CFT Law) and trustees, and in some cases, trust and company service providers (TCSPs, Article 1, points 5 and 6, of the AML/CFT Law). A deficiency is found in the legal provision concerning the regulation of TCSPs in Monaco in that the definition of TCSPs is narrower than the FATF's definition. This is because Article 1, point 6, of the AML/CFT Law only concerns services habitually provided by persons during the processes of establishing, managing and administering legal persons. This excludes persons and undertakings providing third parties, with a registered office, a business address or premises or an administrative or postal address to a legal person or legal arrangement, (i.e. business centres).

Criterion 28.4

1265. (a) SICCFIN has a wide range of supervisory powers to perform its functions (Articles 54 and 58-2, paragraph 1, of the AML/CFT Law). The powers available to the Chairperson of the Monaco Bar Association are limited to carrying out documentary checks and on-site inspections and compelling production of documents (Article 57-1 of the AML/CFT Law). The powers available to the Principal State Prosecutor, including compliance monitoring powers, are not defined (Article 57 of the AML/CFT Law).

1266. (b) The authorities of Monaco take measures to prevent criminals or their associates from obtaining the status of approved professionals and from holding a significant or controlling interest, becoming beneficial owners of such an interest or holding a managerial post in a DNFBP. They consist of:

Where the business is carried on in a personal capacity or through a company (except a joint-stock company)

- checking the professional integrity of professionals acting in a personal capacity and managers or members of a company subject to declaration or authorisation to operate (Articles 1, 2, 4, 5, 7 and 8 of Law 1.144/1991). The declaration or authorisation must be renewed if there is a change in the holder (freelance professional, manager or member) and can be suspended, nullified or revoked if the person no longer provides all guarantees of integrity (Article 5 and Article 9, point 5, of Law 1.144/1991). In addition, criminal sanctions can be imposed on persons who carry on a business without having made a declaration or without holding authorisation and if a nominee is used (Articles 12 and 15 of Law 1.144/1991). However, where the professional wishes to establish themselves in the form of a company, there is no provision that explicitly concerns checks on the professional integrity of the company's beneficial owner. Furthermore, where a member is a legal person, checks are limited to the legal person's statutory representative, who alone is required to submit an information notice and a criminal record certificate issued within the last three months. The identity of the beneficial owner of the legal person member must also be disclosed, without any other documents that can be used to check its good character (Article 3 of Ministerial Order No. 2014-264);

For an office, branch or administrative or representative office

- checking the professional integrity of the statutory representative of a company headquartered abroad which wants to establish an office, branch or administrative or representative office in Monaco and disclosing the identity of the company's beneficial owner, without providing any other documents that can be used to check their integrity (Article 4 of Ministerial Order No. 2014-264 and Article 5 of Law 1.144/1991). These checks only partly meet the requirements of the criterion;

Where the business is carried on in the form of a joint-stock company

- checking the professional integrity of the founders and first subscribers (who are also directors) of a joint-stock company. However, there is no provision that explicitly concerns checks on the professional integrity of the beneficial owner and any non-shareholding agent (managing director). In addition, where a founder or first subscriber is a legal person, checks are limited to the legal person's statutory representative, who alone is required to submit an information notice and a criminal record certificate issued within the last three months. The identity of the beneficial owner of a legal person member must also be disclosed, without any other documents that can be used to check their good character (Articles 1, 2 and 24 of the Order of 5 March 1895 and

Articles 6 and 7 of Ministerial Order No. 2014-264). Lastly, there are no measures to check the integrity of persons in the event of a change in the members of the management, the administrative body in charge of the company, the shareholders or the beneficial owner of joint-stock companies.

1267. Administrative investigations can be carried out by the DSP in respect of the persons concerned in order to check that they provide appropriate guarantees before the various authorisations in the three previous indents are issued (Article 2 of Law 629/1957, Article 2 of Order 16.675/2005, Article 3 of Law 1.430/2016 and Article 1 of Ministerial Order 2016-622).

Lawyers, notaries and bailiffs

1268. Lawyers are appointed by order of the DSJ. To be able to practise as lawyers, they must have civic rights and be of good character (Articles 1 and 6 of Law 1.047 of 28/07/1982 on the practice of the professions of defending lawyer (*avocat défenseur*) and lawyer). Notaries are appointed for life by the Prince. In order to be appointed, notaries must have civic rights and submit a certificate of good character and capacity (Articles 2, 49 and 50 of the Order of 03/04/1886). Bailiffs are appointed by sovereign order on the basis of a DSJ report (Article 72 of Law 1.398/2013). While there are no provisions concerning checks on good character when a person becomes a bailiff, administrative investigations can be carried out by the DSP in relation to the persons concerned in order to check that they provide appropriate guarantees before the various authorisations referred to under c.28.4 b) are issued (Article 3 of Law 1.430/2016 and Article 1 of Ministerial Order 2016-622). Lastly, checks identical to those mentioned in the first indent of c.28.4 b) apply to companies established for the purposes of undertaking law firm activities.

1269. However, there is no control measure to ensure that persons authorised under criterion 28.4 b) are at all times of good repute.

1270. (c) SICCFIN can give formal notice to DNFBPs under its supervision that they must take, within a set timeframe, any measure to put their situation in order in the event of a failure to perform AML/CFT obligations. Where a DNFBP does not remedy deficiencies which have given rise to formal notice or if SICCFIN notes in an on-site inspection report a serious, repeated or systematic breach of all or some of its AML/CFT obligations, a range of administrative sanctions can be imposed on the DNFBP, its managers, employees or persons acting under its direction by the Prime Minister as proposed by the Audit Review Commission (CERC). However, the Prime Minister is not required to implement sanction proposals made by the CERC and can ultimately decide not to impose a sanction at all. See also R.35 (Articles 54, 58-2, 65 and 65-1 of the AML/CFT Law). This deficiency makes the sanction process uncertain.

1271. A range of sanctions can also be imposed on notaries by the Court of First Instance and if a suspension decision is taken, it must be approved by the Prince (Article 65, paragraph 3, Article 67, paragraph 1, points 3 and 4, and paragraph 2, of the AML/CFT Law and Articles 63, 64 and 70 of the Order of 4 March 1886 on notaries), on bailiffs where the sanction is imposed by the Court of Appeal (Article 65, paragraph 3, Article 67, paragraph 1, points 3 and 4, and paragraph 2, of Law 1.362 and Articles 90 to 94 of Law 1.398/2013) and on defending lawyers (*avocats-défenseurs*) and lawyers where the sanction is imposed, as applicable, by the *Conseil de l'Ordre* (Bar Council), by the court seized of the matter, or in judge's chambers at the Court of Appeal, and if a suspension or strike-off decision is taken, it must be ordered by the Prince on the basis of a report from the Head of the DSJ (Article 65, paragraph 3, Article 67, paragraph 1, points 3 and 4, and paragraph 2, of Law 1.362 and Articles 30 and 37 of Law 1.047/1982).

1272. DNFBPs cannot be sanctioned for one-off infringements identified during documentary checks or simple breaches such as failure to send a document (such as annual AML/CFT activity reports, AML/CFT procedures, etc.) even though sending it is compulsory according to the law or regulations. This limits the dissuasiveness of the sanctions that can be imposed.

Criterion 28.5

1273. The law provides that SICCFIN and the Principal State Prosecutor shall take a risk-based supervision approach. There is no such obligation for the Chairperson of the Monaco Bar Association, who is responsible for the supervision of lawyers (Article 58-1 of the AML/CFT Law).

1274. (a) SICCFIN and the Principal State Prosecutor determine the frequency and intensity of their documentary checks and on-site inspections according to the risk profile of the professionals under their supervision and ML/TF risks and ensure that they are well understood. The risk-based supervision approach takes account of the characteristics, diversity and number of professionals, *inter alia* (Article 58-1 of the AML/CFT Law).

1275. (b) SICCFIN and the Principal State Prosecutor must take account of the ML/TF risk profile of DNFBPs and consider the risk assessment, adequacy and implementation of policies, controls and internal procedures of DNFBPs over which they have authority. However, there is no obligation for supervisors to take account of the degree of discretion allowed to DNFBPs under the risk-based approach when assessing the relevance of these policies, controls and procedures (Article 58-1 of the AML/CFT Law).

Weighting and conclusion

1276. There are deficiencies in relation to measures to prevent criminals or their associates from holding or becoming the beneficial owners of a significant or controlling interest in a DNFBP or from holding a managerial position in one. With regard to sanctions against DNFBPs under the supervision of SICCFIN, the Prime Minister is not required to implement sanction proposals made by the CERC and can ultimately decide not to impose a sanction at all. Furthermore, the sanction process does not make it possible to sanction one-off breaches by DNFBPs which have committed breaches that are simple or identified during documentary checks. These are significant deficiencies. The oversight powers available to the Chairperson of the Monaco Bar Association are limited and those available to the Principal State Prosecutor are not defined. The law does not make provision for the implementation of a risk-based supervision approach by the Chairperson of the Monaco Bar Association. There is no obligation for SICCFIN and the Principal State Prosecutor to take account of the degree of discretion allowed to DNFBPs under the risk-based approach when assessing the relevance of their policies, controls and procedures. The narrow definition of TCSPs exempts some professionals from the AML/CFT Law. In view of the importance of the deficiencies identified under criterion 28.4 combined with the ML/FT risks associated with certain types of DNFBPs (see Chapter 1) and the weighting of minor deficiencies under c.28.2, c.28.3 and c.28.5, **Principality of Monaco is rated Partially Compliant with Recommendation 28.**

Recommendation 29 – Financial intelligence units

Criterion 29.1

1277. SICCFIN is the FIU with responsibility for acting as a national centre for receipt and analysis of STRs and all information relevant to ML, predicate offences, TF, corruption and proliferation of weapons of mass destruction. Where investigations carried out by SICCFIN reveal

a strong indication of ML/TF or corruption, it writes a report which it sends to the Principal State Prosecutor (Articles 46 and 49 of the AML/CFT Law).

Criterion 29.2

1278. (a) SICCFIN is responsible for receiving STRs filed by most reporting entities except notaries, bailiffs and lawyers (Article 36 of the AML/CFT Law). Notaries and bailiffs submit STRs to the Principal State Prosecutor. This was generally also true, until 2020, for defending lawyers (*avocats-défenseurs*), lawyers and trainee lawyers, until the change in the law which now requires them to submit STRs to the Chairperson of the Monaco Bar Association. Regulated entities are not required to inform the Principal State Prosecutor or the Chairperson of the Monaco Bar Association if the information concerning these matters was obtained when legal advice was being given or when acting as a defence counsel. The Principal State Prosecutor or the Chairperson of the Monaco Bar Association sends these reports to SICCFIN as soon as possible (Article 40 of the AML/CFT Law). SICCFIN does not act as a central office receiving disclosures from reporting entities because their disclosures are sent to the Principal State Prosecutor, who is not a self-regulatory body (see R.23).

1279. (b) The laws of Monaco do not require reporting entities to inform the FIU of cash transactions, wire transfers or threshold-based disclosures.

Criterion 29.3

1280. (a) During the course of its duties, SICCFIN can request that documents, information or data that they keep be disclosed to it (Article 49 of the AML/CFT Law).

1281. In addition, for the purposes of enforcing this law, SICCFIN either receives from regulated entities at their initiative, or compels production of, as soon as possible, even in the absence of the stipulated declaration, any information or document in their possession which it requires for its task in relation to reporting entities (Articles 36 and 40 of the AML/CFT Law).

1282. (b) SICCFIN receives at their initiative, or compels production of at its own request, any information or document in their possession which it requires for its task, from: (i) any organisation or person referred to in the first article; (ii) the DSP, including in relation to judicial information; (iii) other departments of the government and the Municipality of Monaco, legal persons with a public service or general interest role, and public institutions; (iv) the Principal State Prosecutor or other members of the judiciary; (v) national organisations performing supervisory roles; (vi) professional organisations listed by ministerial order, except the professionals mentioned in Article 2; and (vii) the Chairperson of the Monaco Bar Association (Article 50 of the AML/CFT Law).

1283. In addition to the foregoing, SICCFIN has direct access to numerous databases (RCI, RBE, FICOBAM, private databases, etc.)

Criterion 29.4

1284. (a) As part of its role, SICCFIN conducts operational analysis which uses available and obtainable information to identify specific targets, i.e. including persons, property or criminal networks or associations, to follow the trail of particular activities or transactions and to determine links between these targets and possible proceeds of crime, ML, predicate offences and TF (Article 47 of the AML/CFT Law).

1285. (b) SICCFIN also conducts strategic analysis which uses available and obtainable information, including data provided by other competent authorities, to identify ML/TF trends

and patterns (Article 47 of the AML/CFT Law). Annual typological reports are produced in practice.

Criterion 29.5

1286. Where investigations carried out by SICCFIN reveal a strong indication of ML, TF or corruption, it writes a report which it sends to the Principal State Prosecutor. SICCFIN can forward additional information or documents to the Principal State Prosecutor at any time (Article 49 of the AML/CFT Law). SICCFIN can also send any relevant information or document mentioned in this law to the DSP and the Principal State Prosecutor for the purposes of their tasks (Article 50-2 of the AML/CFT Law). The judicial authority can request STRs from SICCFIN (Article 49-1 of the AML/CFT Law). However, the law does not make reference to any requirements to use dedicated, secure and protected channels for the dissemination.

Criterion 29.6

1287. (a) SICCFIN officers cannot use or disclose information collected during the course of their duties for purposes other than those laid down by the AML/CFT Law (Article 46 of the AML/CFT Law). Information gathered by SICCFIN is incorporated into a secure database, MONADES, to which only the body's officers have access through a dedicated workstation. However, other than record-keeping standards which were published at the time of the on-site visit, SICCFIN does not have any specific rules on the security or confidentiality of information, including procedures for processing, storing, disseminating and viewing it.

1288. (b) SICCFIN is made up of specially commissioned and sworn officers. They cannot use or disclose information gathered in the course of their duties for any purposes other than those laid down in the AML/CFT Law (Article 46 of the AML/CFT Law).

1289. In addition, independently of the rules laid down by the CC in relation to professional confidentiality, all officials are bound by a duty of professional discretion in relation to facts and information that come to their knowledge in the course of their duties; misappropriation and disclosure of documents or official documents to third parties contrary to the rules are formally prohibited (Article 10 of Law No. 975).

1290. Since SICCFIN was classed as an OIV (operator of vital importance) in 2018, its officers also underwent an authorisation process conducted by the Department of the Interior of Monaco. All recruitments of officers are subject to the requirement that this authorisation is obtained. Administrative investigations are conducted under Article 3 of Law 1.430 of 13/07/2016 on various measures to protect national security.

1291. (c) The information in SICCFIN's database, MONADES, is archived on secure premises (badge-based access, video surveillance, alarm).

Criterion 29.7

1292. SICCFIN is a civil service department within the Department of Finance and the Economy; as such, it obeys the civil service rules applicable to government departments.

1293. (a) In the course of its duties, SICCFIN acts independently and does not receive instructions from any authority (Article 46 of the AML/CFT Law).

1294. (b) SICCFIN is empowered to decide on the arrangements for its co-operation with its counterparts abroad and within Monaco. At the time of the on-site visit, SICCFIN had signed protocols of co-operation with 61 FIUs. In addition, on 12 November 2012, it signed a co-

operation agreement with the CCAF to help both parties perform their tasks. A framework agreement was also signed on 8 April 2021 between SICCFIN and the DSP in order to boost co-operation, which has increased continuously in recent years, strictly in relation to the tasks assigned to SICCFIN.

1295. (c) SICCFIN is an administrative unit within the Department of Finance and the Economy. Its core functions are defined in Article 27 of the AML/CFT Law and are distinct from the functions of the Department of Finance and the Economy.

1296. (d) SICCFIN is an administrative unit linked to the Department of Finance and the Economy; as such, it has a budget heading of its own and obeys the administrative rules applicable to government departments.

Criterion 29.8

1297. SICCFIN has been a member of the Egmont Group since 1997 and is connected to the ESW (Egmont Secure Web).

Weighting and conclusion

1298. SICCFIN's use of dedicated, secure and protected channels to disseminate information to competent authorities is not governed by the law. In addition, SICCFIN does not have any specific procedures governing the processing, storage, dissemination, protection and viewing of information. Lastly, SICCFIN does not act as a central office receiving communications from reporting entities. **Principality of Monaco is rated Largely Compliant with Recommendation 29.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

1299. In the 4th Round MER, R.27 was rated PC. No technical deficiencies were identified. Since then, the FATF Standards have been revised to include more detailed requirements, including a requirement to designate the competent authorities responsible for identifying, freezing and seizing property subject to confiscation.

Criterion 30.1

1300. The GPO (acting through the Principal State Prosecutor) conducts public prosecutions and is responsible for investigating and prosecuting crimes and misdemeanours. It supervises the judicial police, receives reports/complaints and all reports, records and information that are sent to it by DSP officers, or through any other channel, with regard to offences and decides what action will be taken on them (Article 34 of the CPC). The Head of the DSJ can order the Principal State Prosecutor to issue proceedings by way of reasoned written instructions which are placed on the case file. Although the Principal State Prosecutor is not specifically empowered (e.g. by an instruction or warrant) to conduct investigations into ML, they have general authority which encompasses ML, predicate offences and TF. In a "preliminary investigation", there is no legal provision that gives coercive powers to the Principal State Prosecutor, who must ask the investigating judge to initiate a judicial investigation. However, the Principal State Prosecutor's use of investigations in the aforementioned context was recognised by a decision taken by the Court of Appeal in 2019,²¹⁰ although it has not yet been confirmed by the Court of Review (see also IO.7). The Principal State Prosecutor's responsibility for investigations relating to ML,

²¹⁰ Order no. R 5429 of the Court of Appeal of 17 June 2019 stating the Principal State Prosecutor's powers.

predicate offences and TF is also confirmed by the fact that there are two prosecutors who specialise in economic and financial crime.

1301. Investigating judges also have authority to investigate when a judicial investigation is opened. In an investigation (or judicial investigation), a judge investigates whether offences were committed, ascertains the circumstances in which they were committed and identifies the alleged perpetrators. This authority applies in a general manner to the initiation of a judicial investigation which may relate to any category of offence, including ML, predicate offences and TF. There is no specific measure requiring the competent authorities to ensure that satisfactory investigations into these offences are carried out. However, more generally, there are measures in place to assess the way in which the authorities responsible for investigations carry out their duties, such as the obligation for investigating judges to submit a detailed statement of current proceedings every three months (Article 249-2 of the CPC) or the monitoring carried out by the First President of the Court of Appeal, who is responsible for ensuring that investigating judges' chambers operate in the proper manner (Article 249-1 of the CPC).

Criterion 30.2

1302. Articles 32, 34 and 48 of the CPC define the relationship between the Principal State Prosecutor and investigators working for prosecuting authorities (the judicial police, Carabiniers, DSP officers and officials designated by special laws). Once they have informed the Principal State Prosecutor – who supervises them – of predicate offences, there is nothing to stop investigators who are investigating these offences from going on to investigate any offence relating to ML/TF in a parallel financial investigation. On the contrary, once informed, the Principal State Prosecutor can make requests that they do so.

1303. However, in a judicial investigation, if new facts (not mentioned in the GPO's request to the investigating judge to open an investigation or in a complaint made by a party claiming damages) come to light, the investigating judge must inform the GPO without delay (Article 90 of the CPC). The GPO can decide to initiate a prosecution where appropriate, e.g. by requesting an extension of an investigation on the grounds of new facts. In this event, the investigators can continue with the investigations they initially conducted in relation to the predicate offence and extend them to the ML or TF offence. The GPO may also decide to initiate a preliminary police investigation into the aforementioned facts instead of requesting an extension of an investigation on the grounds of new facts or initiating a judicial investigation.

Criterion 30.3

1304. Investigating judges have powers, as part of their general responsibilities, to identify and trace property which is or may become subject to confiscation or which is suspected to be proceeds of crime and to initiate the process of freezing or seizing it.

Criterion 30.4

1305. Monaco has no authority which is responsible for conducting financial investigations into predicate offences other than the criminal prosecution authorities (the GPO and investigating judges). This criterion is therefore not applicable.

Criterion 30.5

1306. It is the judicial and police authorities (acting under the authority of the GPO or the investigating judge) who investigate ML and TF offences which arise out of or in connection with corruption offences.

Weighting and conclusion

1307. **Principality of Monaco is rated Compliant with Recommendation 30.**

Recommendation 31 – Powers of law enforcement and investigative authorities

1308. Monaco was not rated on its compliance with the former Recommendation 28 in the 4th Round evaluation, and its compliance was rated as compliant in the 3rd Round. The requirements of R.31 have changed since then.

Criterion 31.1

1309. DSP officers, under the oversight of the GPO or an investigating judge, have powers which can in many respects be considered adequate to take all steps necessary for an investigation. They have powers to take the following coercive measures *inter alia*:

1310. *(a) the production of records held by financial institutions, DNFBPs and other natural or legal persons* – There is no obligation for FIs, DNFBPs or other natural or legal persons to provide records (except during a search, see c.31.1(b)).

1311. *(b) the search of persons and premises* is provided for under the provisions of the CCP that govern police custody (Title IV *bis* of Book I of the CCP). Under Article 60-4 of the CCP, it is possible to carry out a full search on a person in custody where this is essential as a security measure or for the purposes of the investigation. Searches of premises are only possible in the context of a judicial investigation, where the investigating judge deems them useful (Articles 92 et seq. of the CCP). During an investigation of an offence discovered during its commission, the GPO and, under his/her oversight, the DSP have extended powers to carry out searches (see Articles 250 et seq. and in particular Article 255 of the CCP).

1312. *(c) taking witness statements* – Under the system for investigating offences discovered during their commission, the GPO and the DSP have extended powers, including the power to examine and to compare conflicting versions of events given face to face (see in particular Article 259 of the CCP). In a judicial investigation, the investigating judge can hear persons whose testimony appears to him/her to be useful (Articles 125 to 147-6 of the CCP), with the exception of certain categories of persons (Articles 133 to 135 of the CCP). In addition, the investigating judge can examine a witness whose identity remains secret in relation to an ML, TF or corruption matter, in situations that are listed exhaustively (Article 147-1 of the CCP).

1313. *(d) seizing and obtaining evidence* – evidence can only be seized during a judicial investigation. Within this context, the investigating judge can seize or order seizure of any documents, computer data or other items that may help to establish the truth, to the extent necessary for the investigation, as well as telegrams, letters and other things sent (Articles 100 and 102 of the CCP). However, the investigating judge must take all measures necessary to ensure that legal professional privilege and defence rights are respected. Where a judicial investigation is opened, the investigating judge has particularly wide-ranging powers in relation to crime scene visits, search and seizure and interception, recording and transcription of correspondence sent by electronic means of communication (Articles 92 to 106-11 of the CCP). Where the offence is transnational or committed by an organised group, the investigating judge can also arrange audio surveillance and recording of images of certain places or vehicles (Articles 106-12 to 106-16 of the CCP) and covert investigations (Articles 106-17 to 106-23 of the CCP). Under Articles 107 et seq. of the CCP, if a technical issue arises, the investigating judge can also order one or more experts to carry out necessary processes with the nature and for the purpose specified in the

order.

1314. In addition, solely in the case of offences discovered during commission, the GPO, and under his/her oversight, the DSP have wide-ranging powers where the criteria for an offence discovered during commission are met, including in relation to crime scene visits, searches, seizure of any item, including computer data, in the possession of persons who are suspected of involvement in the alleged offences or who may have documents, information or objects related to them, examination, comparisons of conflicting versions of events given face to face or expert opinions (Articles 250 et seq., particularly 253 et seq. of the CCP).

Criterion 31.2

1315. DSP officers can, under the oversight of the GPO or an investigating judge, use investigation methods that are appropriate to ML investigations, predicate offences and TF, including:

1316. *(a) undercover operations* – under Article 106-17 of the CCP, where the investigation or judicial investigation concerns ML associated with organised crime or ML associated with drug-related offences. However, undercover operations are not authorised where the investigation or judicial investigation relates to ML outside these categories, the predicate offence or TF.

1317. *(b) intercepting communications* – an investigating judge can order interception, recording and transcription of correspondence sent by telecommunications or electronic communications technology for an offence carrying a sentence of one year or more (Article 106-1 of the CCP). Therefore, interception of communications can be ordered by the investigating judge where the investigation relates to ML, associated predicate offences or TF.

1318. *(c) accessing computer systems* – this is permitted, in the context of a judicial investigation, under Article 100 of the CCP and is also among the wide-ranging powers of the GPO and, under his/her oversight, the DSP where the criteria for an offence discovered during commission are met (see c.31.1 (d)).

1319. *(d) controlled delivery* – this is provided for as part of undercover operations, also known as infiltration (Article 106-18 of the CCP). However, the scope of this article is limited to the offence of ML in relation to organised crime and drug trafficking (see c.31.2 (a)).

Criterion 31.3

1320. With regard to the existence of mechanisms to identify, in a timely manner, whether natural or legal persons hold or control accounts, and mechanisms to identify assets without prior notification to the owner:

1321. *(a) mechanisms to identify, in a timely manner, whether natural or legal persons hold or control accounts* – The laws of Monaco allow judicial authorities to seize bank, financial, accounting and commercial documents from undertakings, regulated professionals or banking institutions during a preliminary or judicial investigation (see c.31.1 (d)). Since there are no time restrictions on the use of these powers, they can be exercised in a timely manner.

1322. Access to relevant financial information has been increased by the recent introduction of a register of payment accounts, bank accounts and safes (FICOBAM) by way of an amendment made to the AML/CFT Law on 31 August 2021. This register is kept by SICCFIN and contains declarations from regulated entities which must include information making it possible to identify any natural or legal person who holds or controls a payment account, a bank account identified by an IBAN number or a safe rental contract (Article 64-3 of the AML/CFT Law). These

declarations must be made in the month following the opening, closure or amendment of accounts or safe rental agreements (Article 64-1, paragraph 2, of the aforementioned law). For information contained in this register, and solely for the purposes of tackling ML, TF and corruption, access is available to the competent authorities, including for DSP officers acting at the written request of the GPO or by delegation of an investigating judge (Article 64-2 of the AML/CFT Law). The register has been operational since January 2022. However, as at the date of the on-site visit, access to this register had not yet been granted to any other authorities.

1323. (b) *mechanisms to ensure that competent authorities have a process to identify assets without prior notification to the owner* – The professional confidentiality to which the Registrar of Mortgages (DSF) is subject forbids prior notification to an owner of a request for information made by the GPO or an investigating judge. However, there is no mechanism to identify assets without prior notification to the owner, nor are there any other measures in place to prevent regulated professionals (or other private-sector entities) from giving prior notification to an owner of a request for information made by competent authorities.

Criterion 31.4

1324. SICCFIN can send to the GPO, the DSP or other members of the judiciary (including investigating judges) any information relevant to the performance of their respective duties (Article 50-2 of the AML/CFT Law).

Weighting and conclusion

1325. The competent authorities have a number of investigation and prosecution powers. However, except in the context of searches, the authorities cannot take coercive measures to compel the production of documents. In addition, there are moderate deficiencies in relation to the limited use of certain investigative techniques, particularly undercover operations and controlled delivery (c.31.2). Moreover, there is no mechanism in place to identify assets without prior notification to the owner. **Principality of Monaco is rated Partially Compliant with Recommendation 31.**

Recommendation 32 – Cash Couriers

1326. In the previous MER, Monaco was rated partially compliant with Recommendation 32 (formerly SR.IX). It was pointed out that the definition of “property” was limited and that co-ordination between authorities and international police co-operation were inadequate. No training was given to officers. No information was given to persons entering Monaco with regard to the obligation to declare cash or the existing laws in this regard. It was also pointed out that checks at the Heliport were carried out by a private company and that no checks were carried out by the police authorities at this point of access to the Principality. Checks are now carried out systematically on persons entering Monaco by sea or air by the Maritime and Airport Police Division of the DSP, whose officers are responsible for collecting cash declarations and checking them on the spot (Article 62 of the AML/CFT Law).

1327. Because the AML/CFT Law and SO No. 2.318 were replaced by Law No. 1.503 and SO No. 8.634, which entered into force on 31 December 2021, the analysis is based on these new provisions and not on the legislation that was in force on the date of the questionnaire. By virtue of its customs convention with France, Monaco is part of the Schengen Area, which means that it lies within EU customs territory. The French customs authorities are responsible for controlling land access to Monaco. Border control is carried out at supranational level with the exception of

the port of Monaco. The new law makes a significant change to AML/CFT activity in that it includes stored-value cards and commodities used as highly liquid stores of value in the definition of cash. At the time of the last evaluation report, the obligation to declare was limited to cash and bearer negotiable instruments.

Criterion 32.1

1328. The obligation to declare cash, bearer negotiable instruments, commodities used as highly liquid stores of value and unregistered stored-value cards with a value exceeding €10 000 applies to all physical persons entering or leaving Monaco. Where cash is sent without involvement of a carrier, this obligation rests with the sender or recipient of the “unaccompanied” cash (Article 60 of the AML/CFT Law). Where cash is “unaccompanied”, the law imposes the obligation not on a physical person but “on its sender or recipient or their representative” (Article 60-1), which brings legal persons within the scope of these provisions. The obligation to declare the sending of postal packets without involvement of a carrier and the possibility of such postal packets being inspected by DSP officers were introduced by the legislative amendment that entered into force on 31 December 2021.

Criterion 32.2

1329. (a)(b)(c) Above the threshold of €10 000, the cash declaration must be made in writing, either by sending it electronically or by post prior to transportation or by giving the form to an officer upon arrival in Monaco (Article 60 of the AML/CFT Law).

Criterion 32.3

1330. Because Monaco implements a declaration system, this criterion is not applicable.

Criterion 32.4

1331. To check whether the obligation to declare has been fulfilled, DSP officers can require the carrier to present ID and can carry out inspections of luggage, vehicles and postal packets that may contain cash (Article 62 of the AML/CFT Law). If an offence is detected, a record is drawn up by agreement with the GPO and sent to the competent judicial authorities, who may conduct an investigation in order to find out the origin and destination of the cash (Article 63 of the AML/CFT Law). However, that is not equivalent to empowering the designated competent authorities to demand and obtain from the carrier additional information concerning the origin and destination of the cash or BNI(s).

Criterion 32.5

1332. Criminal fines can be imposed for breaches of the obligation to declare, in a maximum amount of half of the sum in respect of which the offence was committed. The intercepted sum can also be seized and confiscated (Article 72 of the AML/CFT Law). In the absence of legal provisions governing the minimum amounts and of information on the average amounts (see RI.8), it is difficult to determine whether the sanctions are proportionate and dissuasive.

Criterion 32.6

1333. All declarations made to the monitoring authority (DSP) are sent to SICCFIN, which incorporates them into its databases (Article 61 of the AML/CFT Law).

Criterion 32.7

1334. By virtue of the customs union between Monaco and France, any sum exceeding €10 000 which enters Monaco from France or vice versa must be declared to the DSP (see c.32.2(b)) and

the French customs authority through the DALIA application. The national authorities have regular contact with SICCFIN and the Head of the French Customs Office as part of the national risk assessment procedures, but do not have access to data in the aforementioned application. Furthermore, this contact is proving to be inadequate because its purpose is not to discuss specific cases or assess system effectiveness. Monaco has no mechanisms for operational co-operation and does not carry out any strategic planning in relation to cross-border transportation of cash and BNIs.

Criterion 32.8

1335. If there is a suspicion of ML/TF, predicate offences, a false declaration or provision of false information, the sums found can be retained for a period of 15 days, which can be extended to up to 60 days with permission from the GPO (Article 63 of the AML/CFT Law).

Criterion 32.9

1336. (a), (b), (c) All declarations are kept for a maximum period of five years, which can be extended once for up to three years (Article 64 of the AML/CFT Law). Provided that co-operation and reciprocity agreements are in force, the DSP can send collected declarations, including declarations not related to a suspicion of ML/TF, to its counterparts. As a member of the Egmont Group, SICCFIN, which receives declarations and records of cross-border transportation of cash, can disclose their contents to its foreign counterparts subject to reciprocity (Article 51 of the AML/CFT Law).

Criterion 32.10

1337. Data in declarations of cross-border transportation of cash and BNIs is processed by the police authorities and SICCFIN, which co-operates solely in relation to AML/CFT. In Monaco, data protection is governed by Law No. 1.165 on the protection of personal information and SO No. 2.230. In addition, the declaration threshold does not restrict the freedom of capital movements or ordinary payments between countries.

Criterion 32.11

1338. (a) Any person involved in laundering the proceeds of an offence is liable to imprisonment for between five and 20 years and a fine of between €18 000 and 90 000; the maximum can be multiplied by up to 20 if there are aggravating circumstances (Article 218 of the Criminal Code). Monitoring international movements of cash and BNIs also makes it possible to punish predicate offences. The sentence for TF is between five and 10 years' imprisonment and a fine of up to five times the value and confiscation of all or part of their property of any kind (Articles 391-7 and 391-10 of the Criminal Code). These sanctions are regarded as sufficiently proportionate and dissuasive (see c.3.9 and c.5.6).

1339. (b) The law provides for measures enabling confiscation of such cash or BNIs which are compliant with Recommendation 4 (see c.4(a), (b) and (c)).

Weighting and conclusion

1340. Monaco has no mechanism for co-operation regarding cross-border transportation of cash and BNIs in operational or strategic terms, nor any legislative provisions enabling DSP officers to request information about the origin and destination of funds. Furthermore, the criminal fines for failure to fulfil the obligation to declare are not regarded as sufficiently proportionate and dissuasive. **Principality of Monaco is rated Largely Compliant with Recommendation 32.**

Recommendation 33 - Statistics

1341. Monaco was rated Partially Compliant with the former R.32 in the 4th Round evaluation. The deficiencies that were noted included statistics on confiscation and judicial co-operation and the lack of an effective and regular mechanism to measure the overall efficiency of its AML/CFT system.

Criterion 33.1

1342. a) Monaco keeps complete statistics on STRs received and disseminated, including detailed statistics for each regulated profession. More specifically, SICCFIN keeps detailed statistics²¹¹ on STRs received and the action taken on them by the authorities. Every year, it publishes an activity report²¹² including statistics on STRs received and disseminated to the GPO in the event of strong indications of ML, TF or corruption (Article 49 of the AML/CFT Law). In addition, the Office of the GPO keeps a detailed spreadsheet of STRs received from notaries and bailiffs. The Chairperson of the Bar Association of Monaco²¹³ keeps complete statistics on STRs received and those disseminated to SICCFIN. However, there are no legal provisions or mechanisms to consolidate/pull together statistics on STRs (multiple recipients). SICCFIN keeps detailed statistics²¹⁴ on STRs received and the action taken on them by the authorities. Every year, it publishes an activity report²¹⁵ including statistics on STRs received and disseminated to the GPO in the event of strong indications of ML, TF or corruption (Article 49 of the AML/CFT Law). In addition, the Office of the GPO keeps a detailed spreadsheet of STRs received from notaries and bailiffs. The Chairperson of the Monaco Bar Association²¹⁶ keeps complete statistics on STRs received and those disseminated to SICCFIN. However, there are no legal provisions or mechanisms to consolidate/pull together statistics on STRs (multiple recipients).

1343. b) The GPO keeps a detailed spreadsheet of opened ML/TF cases which includes investigations (number of cases, natural persons and legal persons) in relation to ML and TF, prosecutions (number of cases, natural persons and legal persons) and convictions (including the number of convictions at first instance and final convictions) in relation to ML and TF. This spreadsheet is populated manually on a continuous basis as per the World Bank's Module 1B. This spreadsheet began to be revised at the beginning of 2022 in order to create a data collection tool that is easier to handle and more complete. In addition, the DSP keeps complete statistics on ML and TF investigations that it is asked to undertake by the judicial authorities. The statistics provided show that, overall, the competent authorities are able to keep complete annual statistics on investigations, prosecutions and convictions. However, the tools that are used are heavily

²¹¹ On the basis of the data published in activity reports and the information contained in NRA 2, in addition to the data provided to the assessment team.

²¹² SICCFIN publishes an annual report on its activities and keeps detailed statistics to this end in accordance with Article 46 of Law 1.362 as amended.

²¹³ The Chairperson of the Monaco Bar Association publishes an annual report containing information concerning, *inter alia*, the number of STRs received and the number of STRs sent to SICCFIN (Article 53-2).

²¹⁴ On the basis of the data published in activity reports and the information contained in NRA 2, in addition to the data provided to the assessment team.

²¹⁵ SICCFIN publishes an annual report on its activities and keeps detailed statistics to this end in accordance with Article 46 of Law 1.362 as amended.

²¹⁶ The Chairperson of the Monaco Bar Association publishes an annual report containing information concerning, *inter alia*, the number of STRs received and the number of STRs sent to SICCFIN (Article 53-2).

dependent on manual queries and entry, which can make handling, extraction and updating more difficult.

1344. c) The GPO keeps a detailed spreadsheet of opened ML/TF cases which includes property frozen, seized or confiscated, which is populated manually on the basis of the World Bank's Module 1B. The data provided to the assessment team shows that these statistics are complete and detailed. In addition, the Office of the GPO keeps a spreadsheet summarising criminal proceedings in relation to cross-border transportation of cash which mentions the nature of the coercive measure (retention, seizure, confiscation) *inter alia*. However, it is not clear which authority is responsible for keeping statistics on property frozen as a result of financial sanctions and for keeping/updating these statistics, as applicable.

1345. d) The GPO keeps statistical spreadsheets broken down by year for incoming and outgoing MLA requests in relation to AML/CFT and response times on the basis of the World Bank's Module 1C and internal spreadsheets. However, there does not appear to be any information about urgency and sensitivity, nor do there appear to be any other criteria for prioritisation. The Office of the GPO also keeps an internal spreadsheet of incoming and outgoing extradition requests and official reports.

Weighting and conclusion

1346. According to the data provided to the assessment team, Monaco appears, on the whole, to keep statistics on the effectiveness of its AML/CFT system. However, the tools that are used are heavily dependent on manual queries and entry, which can make handling, extraction and updating difficult. In addition, there is no mechanism to pull STR data together. **Principality of Monaco is rated Largely Compliant with Recommendation 33.**

Recommendation 34 - Guidance and feedback

1347. Monaco was rated Partially Compliant with these requirements in the 4th Round evaluation, in particular due to the lack of guidance for bailiffs, notaries and lawyers and the guidance given by SICCFIN, which was deemed inadequate, as well as the reservations expressed with regard to the lack of information about ML methods and techniques and the growth of the phenomenon identified in SICCFIN's annual reports.

Criterion 34.1

Guidelines

1348. SICCFIN has legal authority to establish guidelines for professionals subject to the AML/CFT Law (except defending lawyers (*avocats-défenseurs*), lawyers and trainee lawyers) in order to provide feedback and assist the relevant persons in implementing the law, particularly in relation to detecting and reporting suspicious transactions (Article 48-1 of the same law). The Chairperson of the Monaco Bar Association is responsible for doing likewise for defending lawyers, lawyers and trainee lawyers (Article 53-1 of the aforementioned law).

1349. Where SICCFIN sends a report to the GPO, it informs the FI or DNFBP that filed the report and also informs it of the commencement of judicial proceedings or discontinuance of proceedings and decisions taken by a criminal court²¹⁷ (Article 49 of the AML/CFT Law).

1350. In addition, sector guidelines were published by SICCFIN in January 2022 for three

²¹⁷ Subject to Article 37 of Law 1.362

sectors: estate agents and two categories not covered by the FATF Standards (yachting/chartering and sports agents).²¹⁸ Guidelines for lawyers have been drawn up and were distributed by the Chairperson of the Monaco Bar Association on 18 October 2021.

1351. However, there are no sector guidelines for regulated professionals supervised by the Office of the GPO (bailiffs and notaries) or for other regulated professionals under SICCFIN's supervision (e.g. dealers in precious metals and precious stones, casinos, etc.).

1352. In addition, there are no specific/thematic guidelines (identification of PEPs, abuse of certain professions, exploitation of NPOs for the purposes of TF, TFS related to TF and PF, etc.) to help all regulated professionals to strengthen their systems and better detect and report suspicious transactions.

Distribution and feedback

1234. To improve professionals' ability to detect and declare suspicious transactions, SICCFIN provides typologies to regulated professionals and their representatives every year. They are presented orally during meetings of the Liaison Committee as provided by Articles 49 and 50 of SO No. 2.318 and then set out in SICCFIN's annual activity reports, which are distributed in paper form and posted online on SICCFIN's website. SICCFIN also published general guidelines for professionals under its supervision on 22/07/2021.

Weighting and conclusion

1353. The existing general and sector guidelines and feedback intended to assist regulated professionals in applying national AML/CFT measures generally cover the main areas of interest (risk assessment, CDD, STRs, etc.). Significant improvements have been made since the last round, but moderate deficiencies remain, particularly with regard to the lack of sector guidelines for several categories of regulated professionals (such as bailiffs and notaries) and the sporadic or informal nature of awareness-raising efforts. In addition, there are no thematic guidelines (see above). **Principality of Monaco is rated Partially Compliant with Recommendation 34.**

Recommendation 35 – Sanctions

1354. Monaco was rated Partially Compliant in the 4th Round evaluation report. It was found that the procedure for imposing sanctions had not been described clearly and in detail by the legislation and regulations and could lead to legal challenges to sanctions, that the Prime Minister's power to impose sanctions could be interpreted as a strictly discretionary power which could make administrative penalties less effective, that the administrative penalties provided for in the law could not be imposed on the managers of FIs, that the criminal penalties prescribed by the legislation that could be ordered against the managers of FIs did not cover all breaches of their AML/CFT obligations, and that the complexity of the criminal provisions of the law in terms of their *ratione personae* scope of application and the lack of clarity in their intrinsic logic had a detrimental impact on their deterrent effect.

Criterion 35.1

1355. (a) TFS (R.6): failure by FIs and any organisation, entity or person to comply with the obligations set out in SO 8.664 in relation to procedures for freezing assets and economic resources pursuant to international economic sanctions is punishable by a fine of between

²¹⁸ <https://www.siccfin.mc/Actualites/Practical-Guides>

EUR 18 000 and EUR 90 000 (Article 12 of SO 8.664 and Article 26, section 4, of the CC). The amount of the fine is not dissuasive, particularly for persons or undertakings with a high level of income/revenue.

1356. (b) NPOs (R.8): with regard to associations, sanctions are applicable to natural persons and, in some cases, the association in the event of failure to comply with obligations to keep a register at the association's registered office (fine of between EUR 75 and EUR 200), lack of authorisation to accept donations *inter vivos* or by will, failure to declare changes to the Prime Minister and publish them in the Official Gazette, failure to present the register kept at the association's registered office to the Prime Minister or judicial authorities, accounting irregularities (fine of between EUR 200 and EUR 600), reliance on unobtained or withdrawn approval (fine of between EUR 2 250 and EUR 9 000), remaining within a dissolved association or federation of associations (six months' to three years' imprisonment and a fine of between EUR 2 250 and EUR 9 000) or administering or continuing to administer an association or federation of associations following dissolution (fine of between EUR 9 000 and EUR 18 000 (Articles 32 to 34 of Law 1.355). With regard to foundations, fines of between EUR 18 000 and EUR 90 000 are applicable to administrators of foundations who cause obstruction or do not fulfil obligations in relation to accounting or annual accounts (Article 29 of Law 56). These sanctions are, for the most part, not dissuasive in the light of the low maximum amounts, including EUR 200 or EUR 600, that can be imposed.

1357. (c) Preventive measures (R. 9-23): administrative and criminal penalties can be imposed on natural and legal persons that do not comply with AML/CFT obligations.

Administrative sanctions for FIs and DNFBPs (except notaries, bailiffs and lawyers)

1358. There are a range of administrative sanctions: warning, reprimand, order to stop the behaviour in question which forbids repetition, ban on carrying out certain transactions, temporary suspension or withdrawal of authorisation/permission to operate/work, a pecuniary sanction of up to EUR 1 000 000 or double the amount of the gain made from the infringement where it can be determined (Article 65, paragraph 1, and Article 67 of Law 1.362). For credit, payment, e-money and insurance institutions, the pecuniary sanction can be increased to a maximum of EUR 5 000 000 or 10% of the undertaking's total annual revenue or the revenue according to the parent company's consolidated accounts where the undertaking is a subsidiary (Article 67-3 of Law 1.362). The sanction can be announced publicly (Article 69 of Law 1.362). These sanctions are considered proportionate and dissuasive.

1359. The mechanism entails the sending by SICCFIN to the Prime Minister of the on-site inspection report following discussions with the professional concerned and the acts that may constitute serious, repeated or systematic breaches of all or some AML/CFT obligations. The case is investigated by the Audit Review Commission (CERC), which sends an opinion as to whether or not a sanction should be imposed to the Prime Minister. However, the Prime Minister is not bound by the opinion of the CERC and may ultimately decide not to impose any sanction (Articles 65-1 to 67 of Law 1.362). This deficiency makes the sanction process uncertain.

1360. Another deficiency is the fact that the sanction process does not make it possible to sanction one-off deficiencies identified during documentary checks or simple breaches such as failure to send a document (such as annual AML/CFT activity reports, AML/CFT procedures or risk-based approach questionnaires, etc.) even though sending it is compulsory according to the law or regulations. This limits the dissuasiveness of the sanctions that can be imposed.

Disciplinary sanctions against notaries, bailiffs and lawyers

1361. There is a comparable range of sanctions for notaries, sanctions against whom are imposed by the Court of First Instance, and suspension decisions must be approved by the Prince (Article 65, paragraph 3, Article 67, paragraph 1, points 3 and 4, and paragraph 2, of Law 1.362 and Articles 63, 64 and 70 of the Order of 4 March 1886 on notaries). Sanctions against bailiffs are imposed by the Court of Appeal (Article 65, paragraph 3, Article 67, paragraph 1, points 3 and 4, and paragraph 2, of Law 1.362 and Articles 90 to 94 of Law 1.398/2013) and sanctions against lawyers are imposed, as applicable, by the Bar Council, by the court seized of the matter, or in judge's chambers at the Court of Appeal. If a suspension or strike-off decision is taken, it must be ordered by the Prince on the basis of a report from the Head of the DSJ (Article 65, paragraph 3, Article 67, paragraph 1, points 3 and 4, and paragraph 2, of Law 1.362 and Articles 30 and 37 of Law 1.047/1982).

1362. Here, too, there is a deficiency in that the sanction process does not make it possible to sanction one-off deficiencies identified during documentary checks or simple breaches (see the examples above). This limits the dissuasiveness of the sanctions that can be imposed.

Criminal sanctions

1363. There are criminal sanctions for certain breaches, such as failure to file an STR or disclosure of the fact that an STR has been filed (fine of between EUR 18 000 and EUR 90 000), maintaining a correspondent banking relationship with an institution in a country where there is no actual physical presence or failure to keep documents (fine of between EUR 2 250 and EUR 9 000). In the great majority of cases, these sanctions cannot be considered proportionate and dissuasive (Articles 71-1, 71-2, 73, 74, 75, 76 and 80 of Law 1.362 and Articles 26 and 29 of the CC).

Criterion 35.2

1364. The following administrative sanctions can be imposed on managers and other natural persons who are employees, persons acting under another person's direction or persons acting on behalf of a legal person which is an FI or DNFBP (excluding notaries, bailiffs, defending lawyers (*avocats-défenseurs*) and lawyers) due to personal involvement resulting in a breach of professional AML/CFT obligations: warning, reprimand, order to stop the behaviour in question which forbids repetition, ban on carrying out certain transactions, temporary suspension or withdrawal of authorisation/permission to operate/work, or a pecuniary sanction of up to EUR 1 000 000 or double the amount of the gain made from the infringement where it can be determined. Where managers or directors are found to have been directly and personally responsible for breaches, the Prime Minister can also take a decision to suspend them temporarily from performing management functions within the aforementioned entities for a period not exceeding 10 years or to dismiss them automatically, with or without appointment of a temporary director (Article 65, paragraphs 2 and 4, and Articles 67 and 67-1 of Law 1.362).

1365. However, the deficiencies identified under c.35.1 also apply to the mechanism for sanctioning members of the board of directors and the senior management of FIs, VASPs and DNFBPs under the supervision of SICCFIN, namely: - the Prime Minister is not required to impose sanctions proposed by the CERC and can ultimately decide not to impose any sanction. This deficiency makes the sanction process uncertain; - the sanction process does not make it possible to sanction one-off deficiencies identified during documentary checks or simple breaches (see the examples above) (Articles 65 and 65-1 to 65-4 of Law 1.362). This limits the dissuasiveness of the sanctions that can be imposed.

1366. In addition, there are no sanctions for managers or members of the board of directors of

a legal person established by a lawyer for the purposes of practising. Notaries and bailiffs do not practise in the form of companies.

1367. Criminal penalties can be imposed on members of the board of directors and the senior management in some cases (Articles 71-1, 71-2, 73, 74, 75, 76 and 80 of Law 1.362 and Articles 26 and 29 of the CC).

Weighting and conclusion

1368. There are moderate deficiencies in relation to both criteria. The amount of the fine for failure to comply with TFS obligations is not dissuasive for persons or undertakings with high income/revenue in particular. The sanctions for NPOs and the natural persons concerned are not dissuasive for the most part. The administrative sanctions for failure to comply with professional AML/CFT obligations are regarded as proportionate and dissuasive. However, for FIs, VASPs and DNFBPs under the supervision of SICCFIN and, where applicable, for members of their governing bodies and senior management, the Prime Minister is not required to implement sanctions proposed by the CERC and can ultimately decide not to impose any sanction. In addition, for all FIs, VASPs and DNFBPs, the sanction process does not allow sanctions to be imposed for one-off deficiencies identified during documentary checks or simple breaches. The criminal penalties for failure to comply with AML/CFT obligations are not regarded as proportionate and dissuasive. No sanctions are applicable to the members of the governing bodies and senior management of companies created by lawyers for the purpose of pursuing their activities. **Principality of Monaco is rated Partially Compliant with Recommendation 35.**

Recommendation 36 - International instruments

1369. In the 4th Round MER, the former Recommendation 35 and Special Recommendation I (SR.I) were rated LC. Technical deficiencies were identified with regard to the failure to implement certain provisions of the Vienna Convention and the Palermo Convention. In relation to SR.I, there were shortcomings in the implementation of certain provisions of the Terrorist Financing Convention (in relation to checks carried out on cross-border transportation of cash) and the implementation of UNSCRs 1267 and 1373. In addition, the revised FATF Standards now require countries, *inter alia*, also to become parties to the Mérida Convention.

Criterion 36.1

1370. Monaco has become a party to the following conventions:

- The *Vienna Convention* was signed on 24 February 1989, ratified on 23 April 1991 and made binding by SO No. 10.201 of 3 July 1991.
- The *Palermo Convention* was signed by Monaco on 13 December 2000 and ratified on 5 June 2001 without reservations. It was made binding by SO No. 16.025 of 3 November 2003 and implemented by SO No. 605 of 1 August 2006.
- The *International Convention for the Suppression of the Financing of Terrorism* was signed on 10 November 2001, ratified on the same day and made binding by SO No. 15.319 of 8 April 2002.

1371. However, Monaco has neither ratified nor signed the Mérida Convention.

Criterion 36.2

1372. Most of the relevant articles of the Vienna Convention, the Palermo Convention, the International Convention for the Suppression of the Financing of Terrorism and the Mérida Convention have been implemented. However, some minor deficiencies remain, such as the limits

on the confiscation of property of equivalent value.

Weighting and conclusion

1373. Monaco is a party to the Vienna Convention, the Palermo Convention and the International Convention for the Suppression of the Financing of Terrorism. The relevant provisions have been implemented to a large extent, even though a few minor deficiencies remain. In addition, although Monaco has not become a party to the Mérida Convention, the relevant provisions of it have been implemented to a large extent. **Principality of Monaco is rated Largely Compliant with Recommendation 36.**

Recommendation 37 - Mutual legal assistance

1374. The previous MER rated Monaco Largely Compliant with this Recommendation (the former Recommendation 38). This rating was due to the fact that an advance payment of costs could be required from the requesting country as a condition of execution of requests for mutual legal assistance.

Criterion 37.1

1375. Monaco has a legal basis that allows it to provide a wide range of types of mutual legal assistance. The articles of domestic law governing the receipt and execution of international letters of request are Articles 203 to 206 of the CCP. Monaco is also a party to many international ML/TF co-operation conventions. Where there is no legal basis between countries for mutual legal assistance, customary international law applies. In this event, requests for mutual legal assistance go through diplomatic channels and are executed in Monaco subject to reciprocity. However, the non-criminalisation of income tax evasion in Monaco has repercussions in practice on its ability to provide mutual legal assistance for this type of offence (see c.37.4). Monaco has demonstrated that it is nonetheless capable of executing most requests for mutual legal assistance in relation to this offence by reclassifying it as fraud or scamming.

Criterion 37.2

1376. The DSJ within the Ministry of Justice is the central authority for international judicial co-operation, except for requests for mutual legal assistance from France, which are passed on directly to the judicial authorities.

1377. Monaco does not have clear processes for the timely prioritisation and execution of mutual legal assistance requests, nor does it have a case management system for tracking progress made on requests. However, since the admissibility and execution process is relatively straightforward, this deficiency has no impact in practice on timely execution of requests for mutual legal assistance.

Criterion 37.3

1378. Other than the possibility of rejecting requests for mutual legal assistance in relation to the offence of tax evasion (see c.37.4(a)), the law of Monaco does not make mutual legal assistance subject to unreasonable or unduly restrictive conditions.

Criterion 37.4

1379. (a) Monaco can, under Article 2 of the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30), refuse to provide mutual legal assistance if the request relates to offences regarded by the requested party as tax offences (Article 2 of SO No. 1.088). In practice,

Monaco has never rejected such requests for mutual legal assistance solely because they related to tax matters (see IO.2). In addition, the country can reject a request for mutual legal assistance containing coercive measures in relation to tax evasion (Article 3, paragraph 3, of SO No. 15.457). However, this provision is still a theoretical barrier to international co-operation, particularly in the light of the country risk, the scale of its financial sector and the international nature of its clientele.

1380. (b) Banking secrecy or confidentiality requirements cannot be relied on as grounds on which to refuse to execute a request for mutual legal assistance. See also R.9 with regard to FIs.

Criterion 37.5

1381. Once a request for mutual legal assistance has been executed by the GPO, all associated execution documentation must be made available to the lawyer of the subject of the request (Article 204-1 of the CCP²¹⁹), which constitutes a breach of the obligation to keep requests for mutual legal assistance confidential. The GPO can object to such disclosure on the grounds of the effects that it may have on the secrecy and effectiveness of the investigation, particularly due to the risk of disappearance of evidence which is requested or assets or items suspected of being of illegal origin. However, since this situation is an exception to the rule, the requesting authority must provide information to back up such a decision. In addition, if the GPO's objection is appealed against to Judge's Chambers at the Court of Appeal (CCCA), the person concerned will be a party to adversarial proceedings. However, it should be noted that by decision of 18 November 2021, the CCCA upheld for the first time a decision by the GPO to object to disclosure of a request for mutual legal assistance and the associated execution documentation. The GPO had objected to this disclosure on the grounds that the aforementioned request might compromise the secrecy and effectiveness of the investigation, to which the foreign judicial authorities had explicitly drawn attention.

Criterion 37.6

1382. Monaco has entered a reservation in respect of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 in relation to dual criminality solely with regard to coercive measures. As such, dual criminality can only be required for requests for mutual legal assistance involving coercive measures for their execution. Outside this Convention, Monaco operates on the basis of the Palermo Convention or the principle of reciprocity.

Criterion 37.7

1383. The principle of dual criminality is generally interpreted in an abstract manner by Monaco. Only the elements of the offence are considered, not the legal classification of the offence, which makes international co-operation possible in most cases and allows rejection solely for acts contained in the request for mutual legal assistance which do not constitute an offence under the law of Monaco (Articles 1, 2 and 5 of SO No. 15.457).

Criterion 37.8

1384. Requests for mutual legal assistance are executed in the same way as indictments from national authorities, and enable them to be executed by means of all investigative powers allowed under domestic law, such as production of documents, searches, collection of evidence, seizure of

²¹⁹ Art. 204-1 CPC was repealed on the 30 November and the decision published on Journal de Monaco on 16th December 2022

evidence, undercover operations, interception of communications, access to computer systems, controlled delivery, service of judicial documents or identification of property (Articles 1, 2 and 3 of SO No. 15.457). The deficiencies identified in R.31 apply.

Weighting and conclusion

1385. The addition of Article 204-1 to the CCP in 2018, which lays down rules governing the disclosure of documents pertaining to a request for mutual legal assistance to the lawyers of the persons concerned, is contrary to the requirement that the contents of requests for mutual legal assistance must be confidential. The theoretical possibility that a request relating to tax matters can be refused and the dual criminality requirement for income tax evasion offences are still barriers to co-operation. In view of the risk and the context of the jurisdiction as an international centre, these two deficiencies have a major potential impact on mutual legal assistance.

Principality of Monaco is rated Partially Compliant with Recommendation 37.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

1386. Monaco was rated Largely Compliant with this recommendation due to the barriers to the confiscation of property of equivalent value, the fact that an advance payment of costs could be requested as a condition of execution, and the lack of a mechanism for the management of frozen and seized assets.

Criterion 38.1

1387. Requests for mutual legal assistance concerning property freezing, seizure and confiscation measures are accepted in the same way as any other request for assistance (principle of dual criminality) and are executed on the same basis as those granted by the national courts. Monaco has the power to take precautionary measures in respect of proceeds, facilities, equipment and property which originate directly or indirectly from the offence or which were used to commit it (Articles 1 and 2 of SO No. 15.457). However, precautionary measures which form the subject of a request made by a foreign authority are ordered with the costs being paid in advance by the requesting state (Article 9 of SO No. 15.457). Although the authorities state that they have never requested advances on costs from requesting states in practice, this statutory provision is an obstacle to international legal co-operation.

Criterion 38.2

1388. Because Monaco has signed up to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 2005, it has the authority, on the basis of these instruments, to identify property without a prior conviction. With regard to temporary storage and confiscation measures, requests for mutual legal assistance are executed in the same way as decisions of the national courts, which means that confiscation by equivalence is permitted (Article 5 of SO No. 15.457). If the person is absent or on the run, an arrest warrant can be issued and accounts can be frozen. A judgment by default imposing a penalty of confiscation can also be passed if the individual did not attend the hearing or was not represented. There are no measures allowing for co-operation in confiscation and seizure proceedings in the event of death, which is a cause of termination of criminal proceedings (Article 11 of the CCP). Outside of this Convention, Monaco operates on the basis of the principle of reciprocity.

Criterion 38.3

1389. (a) No authority in Monaco is designated as competent to co-ordinate seizure and confiscation actions with other countries. Monaco does not have any agreements in place to co-ordinate such actions on the basis of bilateral or multilateral agreements. However, it is a member of the CARIN asset recovery network set up by Europol. In addition, Monaco (through the DSJ) has already successfully co-ordinated simultaneous temporary seizures with several countries under the Council of Europe conventions of 1959 and 1990.

1390. (b) Monaco has no mechanism for managing or disposing of property seized, frozen or confiscated (see c.4.4).

Criterion 38.4

1391. Decisions to confiscate assets are taken in favour of the state of Monaco, except where agreed otherwise with the requesting state (Article 8 of SO No. 15.457). It is thus possible that before proceedings begin, the DSJ may enter into a sharing agreement with a country that co-operated in the law enforcement action or ordered confiscation through international legal co-operation.

Weighting and conclusion

1392. The lack of a mechanism to manage property seized or confiscated by the authorities is a significant deficiency given Monaco's risk profile and context: an international centre where there are some complex types of personal property and where real property is dominant. The fact that the authorities are not competent to co-ordinate seizure and confiscation actions with other countries is a minor deficiency. The dual criminality requirement for requests for mutual legal assistance concerning property freezing, seizure and confiscation measures and the possibility of requesting an advance payment of costs from the requesting state for precautionary measures are obstacles to co-operation even though their impact is minor as a result of the way in which the law is interpreted by the authorities of Monaco. **Principality of Monaco is rated Largely Compliant with Recommendation 38.**

Recommendation 39 – Extradition

1393. The previous MER rated Monaco Largely Compliant with this recommendation and identified the fact that Monaco does not extradite its own nationals and the lack of information about processing times as deficiencies.

Criterion 39.1

1394. (a) The law of Monaco allows extradition for ML/TF of foreign nationals who are on its territory (Article 2 of Law No. 1.222).

1395. (b) Communication and exchange of information with the requesting state can take place through the central authority (the DSJ) or Interpol, and case files are sent within 40 days. However, Monaco does not have a case management system or any clear procedures for prioritisation of extradition requests. However, this has no impact in practice; having regard to the number of requests, they are dealt with immediately by the authorities.

1396. (c) The dual criminality requirement, which is the only condition of execution of extradition requests, does not appear to be unreasonable or unduly restrictive.

Criterion 39.2

1397. Monaco does not extradite its own nationals. Where extradition requests concern

nationals of Monaco, the requesting country can request prosecution of the offences set forth in the request for extradition in Monaco, sending the case file and exhibits to the GPO, who will inform the competent authorities of the requesting country of the outcome (Article 7 of Law No. 1.222). That is equivalent to delegated prosecution.

Criterion 39.3

1398. Although the law did not explicitly require this, it allows for the interpretation that the dual criminality obligation should be deemed to be satisfied, regardless of whether both countries place the offence within the same category of offence or denominate de offence by the same terminology, provided that both countries criminalise the conduct underlying offence.

Criterion 39.4

1399. The law of Monaco does not feature a simplified mechanism for extradition. There is only one extradition procedure, but it is relatively straightforward. In addition, communication can take place through Interpol, which speeds up the process.

Weighting and conclusion

1400. The restrictive interpretation of case law in relation to the dual criminality requirement in connection with bilateral agreements, particularly with the United States, is proving to be a significant deficiency. **Principality of Monaco is rated Largely Compliant with Recommendation 39.**

Recommendation 40 – Other forms of international co-operation

1401. In the last MER, the Recommendation was rated PC due to the deficiencies reported in relation to SICCFIN and the DSP.

General principles

Criterion 40.1

1402. The competent authorities (the GPO, investigating judges, the DSP and SICCFIN) can co-operate both spontaneously and on request. SICCFIN and the DSP are members of the main co-operation networks for the exchange of information, such as the Egmont Group and networks set up by Europol.

Criterion 40.2

1403. (a) The AML/CFT Law and SO No. 2.318, as well as memoranda of understanding and multilateral conventions (especially the Palermo Convention) concerning international co-operation, constitute an adequate lawful basis for the provision of spontaneous co-operation by all competent authorities.

1404. (b) Competent authorities can co-operate directly with their counterparts. There are no obstacles in the law to the use of the most effective means of co-operation.

1405. (c) Communication occurs through the secure ESW network, which is available to SICCFIN, and the law makes it subject to professional secrecy (Articles 51 and 51-1 of the AML/CFT Law). The DSP co-operates through Europol's SIENA and CARIN networks, which are secure and allow for rapid transmission of messages. The judicial authorities co-operate through the central authorities as provided in the conventions, or, in the case of France, with other judicial authorities directly through the Bilateral Convention of 8 November 2005.

1406. (d) There is no system or procedure for prioritising requests for informal co-operation from foreign counterparts.

1407. (e) Only SICCFIN has clear processes for safeguarding information received from foreign counterparts (Article 51 of the AML/CFT Law). The judicial authorities have no established process for informal co-operation, and hence safeguarding of information received from foreign authorities.

Criterion 40.3

1408. SICCFIN can co-operate with foreign counterparts without a bilateral or multilateral agreement. In addition, it has signed 61 agreements to facilitate co-operation with FIUs which need these arrangements in order to co-operate (Article 51 of the AML/CFT Law). As supervisor, SICCFIN has signed three agreements with its counterparts in France (2003), Switzerland (2017) and Luxembourg (2021). The DSP can co-operate with its foreign counterparts without a prior agreement (Article 1-5 of SO No. 765). Communication with their counterparts occurs through Interpol and Europol. The judicial authorities co-operate on the basis of the principle of reciprocity and therefore do not need a prior agreement to provide international assistance.

Criterion 40.4

1409. Where foreign FIUs which have provided information request that it does so, SICCFIN is required to provide feedback in a timely manner (Article 51 of the AML/CFT Law). However, there is no similar legislative provision applicable to prosecution authorities and the DSP.

Criterion 40.5

1410. International requests for mutual legal assistance made to SICCFIN can only be refused in exceptional circumstances, where such disclosure is detrimental to Monaco's fundamental interests (Article 51-1, paragraph 3, of the AML/CFT Law).

1411. (a) Competent authorities cannot refuse a request for assistance on the grounds that it involves fiscal matters.

1412. (b) The professional privilege or confidentiality that FIs and DNFBPs are required to maintain cannot be barriers to international co-operation.

1413. (c) Where a request for international assistance is made in circumstances where an inquiry or proceeding is already under way in Monaco in the same matter, the authorities of Monaco contact the requesting authorities in order to determine which party has jurisdiction over them. No legislative provision stipulates that the competent authorities should refuse to provide assistance where a proceeding is under way in the requested country.

1414. (d) No legislative provision requires that the nature or status of the requesting authority must be the same as that of its foreign counterpart for co-operation to take place.

Criterion 40.6

1415. With regard to SICCFIN, exchanged information can only be used for the purpose for which it was provided and can only be passed on to another authority or other executive department of the government or used for other purposes with prior permission from the FIU that provided it (Article 51, paragraph 2, of the AML/CFT Law). As a member of the Egmont Group, SICCFIN implements the confidentiality and data protection requirements set out in the Egmont Principles for Information Exchange. The rule concerning police co-operation, which is based on the treaties and international conventions signed by Monaco in this regard, is that all

information exchanged within this framework is to be used solely by the police and the courts and cannot be disseminated to third parties or for purposes other than the investigation to which the request relates or national co-operation with a view to the commencement of proceedings.

1416. With regard to the judicial authorities, the DSJ has established a practice whereby a reservation is written in requests for mutual legal assistance with regard to the fact that exchanged information can only be used for the purposes for which it was sought, unless prior permission to do otherwise is given by the requested authority. As for police authorities, the Europol and Interpol systems allow for possible restrictions on use. However, there is no national legislative provision ensuring that exchanged information is only used within the framework within which it was sought.

Criterion 40.7

1417. Competent authorities are subject to the data protection and privacy provisions of Law No. 1.165 on the protection of information. However, Monaco does not have any legislative provisions ensuring that information exchanged in the context of international co-operation has the same degree of confidentiality and protection as that which is given to similar information received from domestic sources. In addition, there is no provision allowing competent authorities to refuse to provide information if the requesting competent authority is unable to protect this information effectively.

Criterion 40.8

1418. SICCFIN can conduct inquiries on behalf of foreign counterparts on the same basis as under domestic law (Article 51 of the AML/CFT Law). The DSP can obtain information on behalf of foreign counterparts and exchange it with them (Articles 1-3 and 1-5 of SO No. 765). Under the Palermo Convention, prosecuting authorities can make requests to foreign counterparts and spontaneously exchange information that is in their records.

Exchange of information between FIUs

Criterion 40.9

1419. As part of AML/CFT efforts, SICCFIN can provide foreign FIUs exercising similar powers, at their request or on its own initiative, with information in relation to this law, subject to reciprocity, regardless of the type of associated predicate offence, even if the type of associated predicate offence has not been identified at the time when the exchange occurs (Article 51-1 of the AML/CFT Law).

Criterion 40.10

1420. Where foreign FIUs which have provided information request that it does so, SICCFIN is required to provide feedback in a timely manner (Article 51 of the AML/CFT Law). It is also required to provide feedback on request under Article 19 of the Egmont Principles for Information Exchange. In practice, SICCFIN provides feedback on both the use of the information provided and the outcomes achieved thanks to this information at the request of foreign counterparts and spontaneously during bilateral visits.

Criterion 40.11

1421. (a) In the context of its task and during investigations which it conducts, SICCFIN does not differentiate between investigations which it conducts in its own right and investigations and searches which it conducts at the request of a foreign authority. As for the processing of these

exchanges of information, it has the same powers as those given to it by the AML/CFT Law, including the right to object under Article 37. SICCFIN can provide foreign FIUs with information in relation to the AML/CFT Law at their request or at its own initiative, subject to reciprocity (Article 51-1 of the AML/CFT Law).

1422. (b) SICCFIN can exchange any information where it is used in relation to AML/CFT and does not infringe the fundamental rights and freedoms enshrined in the Constitution of 17 December 1962, with no reservations based on the principle of reciprocity (Article 51-1 of the AML/CFT Law).

Exchange of information between financial supervisors

Criterion 40.12

1423. The financial supervisor, SICCFIN, has a legal basis for providing co-operation with foreign authorities exercising powers similar to its own (foreign counterparts) and can co-operate and exchange information relevant to AML/CFT and corruption control efforts (Article 9-1 of Law 1.362). This legal basis requires all of three conditions to be met: (i) co-operation must be reciprocal, (ii) foreign counterparts must be subject to professional secrecy obligations similar to those of SICCFIN, and (iii) foreign counterparts must provide sufficient guarantees that the information disclosed cannot be used for purposes other than those of tackling ML/TF and corruption. Bilateral conventions authorising the exchange of information must be signed with foreign supervisory authorities and can allow some or all of the following: 1° the extension of on-site checks to overseas branches or subsidiaries of credit institutions, payment institutions, electronic money institutions, financial companies and undertakings, intermediaries and insurance agents and brokers under SICCFIN's supervision; 2° on-site checks conducted by SICCFIN at the request of a foreign authority at branches or subsidiaries of credit institutions, payment institutions, electronic money institutions, financial companies and undertakings, intermediaries and insurance agents and brokers subject to the supervision of this foreign authority. Checks can be carried out jointly with the foreign authority. SICCFIN can exchange AML/CFT information with three supervisory authorities with which bilateral conventions have been signed: ACPR (France), FINMA (Switzerland) and CSSF (Luxembourg). It cannot do this with other foreign supervisory authorities.

Criterion 40.13

1424. SICCFIN is able to exchange with foreign counterparts information domestically available to it, including information held by FIs, to the extent of their respective needs. The limits on co-operation identified under c.40.2 apply to this criterion.

Criterion 40.14

1425. SICCFIN is able to exchange relevant types of information for AML/CFT purposes, in particular with other supervisors concerned where they have a shared responsibility for FIs operating in the same group. The limits on co-operation identified under c.40.2 apply to this criterion.

Criterion 40.15

1426. SICCFIN is able to conduct inquiries on behalf of foreign counterparts and, as appropriate, to authorise or facilitate the ability of foreign counterparts to conduct inquiries themselves in the country, in order to foster effective group supervision. A joint inspection with a foreign supervisory authority took place in Monaco in 2017. The limits on co-operation identified under

c.40.2 apply to this criterion.

Criterion 40.16

1427. SICCFIN ensures that it has the prior authorisation of the counterpart financial supervisor that provided information to it for any dissemination of information or any use of it for supervisory or other purposes. Requests for authorisation are provided for in the agreements entered into by SICCFIN with its foreign counterparts (ACPR, FINMA, CSSF).

Exchange of information between law enforcement authorities

Criterion 40.17

1428. The international conventions to which Monaco is a party, including the Palermo Convention, allow law enforcement authorities to exchange information with regard to their case without a prior request for mutual legal assistance (United Nations Convention against Transnational Organised Crime adopted in New York on 15 November 2000 and European Convention on Mutual Assistance in Criminal Matters of 20 April 1959). The DSP can do likewise through the Interpol and Europol systems.

Criterion 40.18

1429. The law enforcement authorities can exchange information already obtained domestically under Article 18 of the Palermo Convention, which allows spontaneous co-operation between judicial authorities with international co-operation powers, including the GPO. The DSP can do likewise through the Interpol and Europol systems.

Criterion 40.19

1430. Competent judicial authorities can establish joint investigative teams with the prior agreement of the Head of the DSJ and the consent of the foreign state concerned, with no need for bilateral or multilateral agreements to be reached between states (Articles 596.2a and 596.4 of the CCP). The DSP can do likewise through the Interpol and Europol systems.

Exchange of information between non-counterparts

Criterion 40.20

1431. SICCFIN can indirectly exchange information with non-counterparts if requests are made by one of its foreign counterparts (Article 51-1 of the AML/CFT Law).

Weighting and conclusion

1432. Other than the FIU, Monaco does not have a system for prioritising requests for international assistance. The confidentiality requirements and measures in relation to information provided by foreign counterparts are not adequate. As supervisor, SICCFIN has limited powers in relation to international assistance. With the exception of SICCFIN, the authorities are not required to provide feedback to requesting authorities. **Principality of Monaco is rated Largely Compliant with Recommendation 40.**

Summary of Technical Compliance – Main Deficiencies

ANNEXE TABLEAU 1. CONFORMITÉ AVEC LES RECOMMANDATIONS DU GAFI

Recommendations	Rating	Factor(s) underlying the rating
1. Assessing risks and applying a risk-based approach	LC	<ul style="list-style-type: none"> • Risk-based reallocation of resources has not been implemented (c.1.5); • The action plan arising out of NRA 2 has not been drawn up (c.1.5); • Enhanced due diligence measures are not implemented on the basis of risks identified by the country (c.1.7(a)); • There is no obligation for FIs and DNFBPs to ensure that information concerning the most significant ML/TF risks is included in their risk assessments (c.1.7(b)); • The deficiencies identified in Recommendations 26 and 28 apply (c.1.9).
2. National co-operation and co-ordination	LC	<ul style="list-style-type: none"> • The AML/CFT/CPF strategy does not target the identified risks as such and the action plan has not been updated (c.2.1).
3. Money laundering offence	LC	<ul style="list-style-type: none"> • The predicate offences for ML cover only a limited range of tax offences owing to specific national features, while other tax offences are chiefly re-categorised as fraud or forgery offences, on condition of having documentary proof. However, where the <i>actus reus</i> of the offence entails false disclosure made verbally, no re-categorisation is possible in Monaco (c.3.2).
4. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> • Confiscation of property held by a third party and property of a corresponding value is not explicitly allowed for all predicate offences (c.4.1); • The scope of application of provisional measures does not cover all predicate offences (c.4.2); • It is not clear whether the rights of <i>bona fide</i> third parties are protected in the case of provisional measures (c.4.3); • There are no mechanisms for the management of frozen, seized or confiscated property (c.4.4).
5. Terrorist financing offence	LC	<ul style="list-style-type: none"> • Monegasque legislation does not cover “other goods” as defined by the FATF Standards. • The criminalization of TF should explicitly include the financing of travel for terrorist purposes.
6. Targeted financial sanctions related to terrorism and terrorist financing	PC	<ul style="list-style-type: none"> • The target identification process based on the designation criteria set in the UNSCRs is not clearly set out in the existing laws (c.6.1(b)); • The legal framework makes no provision for evidence falling short of the standard of proof required for a criminal conviction (c.6.1(c)); • There is no basis in terms of legislation or implementation in practice demonstrating that Monaco follows the procedures or standard forms for listing as adopted by the 1267/1989 or 1988 Committees (c.6.1(d)); • The legal framework does not specifically define “reasonable grounds to suspect or believe” as being less than the standard of proof required for a criminal conviction (c.6.2(d)); • The national mechanism for transposal introduced in May 2021 provides for the implementation of TFS for TF without delay for up to ten working days. However, there is no statutory provision or any other binding means of guaranteeing that the ministerial decision will be taken before the end of this 10-day period. The application of these measures in Monaco is at the Prime Minister’s discretion as it is not mandatory. Furthermore, with regard to UNSCR 1373, there is no obligation guaranteeing that this publication will occur without delay where a designation has been made at national level (c.6.4); • With regard to UNSCRs 1267/1989 and 1988, all natural and

Recommendations	Rating	Factor(s) underlying the rating
7. Targeted financial sanctions related to proliferation	PC	<p>legal persons in the country are required to freeze, without delay or prior notice, funds and economic resources of designated persons and entities for a period of 10 days. However, the application of this measure is provisional and must be confirmed by the publication of a ministerial decision, as the deficiencies identified under c.6.4 have an impact (c.6.5 (a));</p> <ul style="list-style-type: none"> • There are no warning or feedback mechanisms in relation to the implementation of freezing measures. Moreover, efforts to raise awareness are fragmented and do not appear to cover all categories of regulated entities or target those who find it most difficult to understand their obligations in relation to freezing measures (c.6.5(d)); • There are no publicly known procedures for submitting de-listing requests to the competent UNSC in the case of persons and entities that, in Monaco's view, do not or no longer meet the criteria for designation (c.6.6(a)); • There is neither any mechanism to notify all regulated entities of de-listing or unfreezing decisions nor any guidelines for them on this subject (c.6.6(g)).
8. Non-profit organisations	PC	<ul style="list-style-type: none"> • The national mechanism for transposal introduced in May 2021 provides for the implementation of TFS for PF without delay for up to ten working days. However, there is no statutory provision or any other binding means of guaranteeing that the ministerial decision will be taken before the end of this 10-day period. The application of these measures in Monaco is at the Prime Minister's discretion as it is not mandatory. Furthermore, with regard to UNSCR 1373, there is no obligation guaranteeing that this publication will occur without delay where a designation has been made at national level (c.7.1); • All natural and legal persons in the country are under obligation to freeze funds and economic resources of the designated persons and entities without delay and without prior notice for a period of ten days. However, the application of this measure is temporary and must be confirmed by the publication of a ministerial decision, as the deficiencies identified for c.7.1 have an impact (c.7.2(a)); • There are no publicly known procedures for submitting de-listing requests to the competent UNSC in the case of persons and entities that, in Monaco's view, do not or no longer meet the criteria for designation (c.7.4(d)).
9. Financial institution secrecy laws	LC	<ul style="list-style-type: none"> • In the absence of a decision by the competent data protection authority, it cannot be concluded that the legal uncertainties surrounding the conflicts between data protection rules and the sharing necessary for AML/CFT purposes have been fully resolved.
10. Customer due diligence	LC	<ul style="list-style-type: none"> • No explicit provision is made for the identification of occasional customers (10.3); • No obligation to identify the BOs of associations and foundations (NPOs) or the list of managerial functions within NPOs (10.5); • No explicit requirement to understand the purpose and nature of the business relationship with the customer (10.6); • Trusts created in Monaco are required to submit proof of

Recommendations	Rating	Factor(s) underlying the rating
		<p>compliance with the substantive requirements of the foreign law to which they are subject but there is no assurance that the aforementioned foreign law governing the trust will meet FATF standards (10.9);</p> <ul style="list-style-type: none"> • The concept of beneficial owner is not fully in line with the concept as understood by the FATF as it excludes persons who though not owning more than 25% of the capital or voting rights, hold a significant or sufficiently large proportion of the voting rights or capital enabling them to exercise control over the company or its governing bodies or the shareholders' meeting (10.10); • Deficiencies in the requirement to identify the BOs of associations and foundations (10.10); • There is limited provision for applying enhanced CDD measures for beneficiaries who have politically exposed person status, except in other enhanced due diligence situations (10.13); • No risk management requirement as provided for in sub-criterion (c) in c.10.14; • Verification may take place no later than the time when the first transaction takes place without a risk analysis of the business relationship being carried out (10.15); • There is no obligation for the risk analysis to be satisfactory with regard to the application of simplified due diligence measures (10.18); • No requirement for FIs to submit an STR although this is required by sub-criterion 10.19 b).
11. Record keeping	LC	<ul style="list-style-type: none"> • No obligation to keep the results of any analysis undertaken by FIs in relation to their clients;
12. Politically exposed persons	PC	<ul style="list-style-type: none"> • Limitation of the period applicable to PEPs who have stopped performing their duties to one year (12.1); • PEPs' duties do not include the notion of international organisation (12.2);
13. Correspondent banking	PC	<ul style="list-style-type: none"> • The law does not expressly refer to the understanding of responsibilities by FIs or whether they are AML/CFT responsibilities (13.(2)(d)); • Presumption that certain correspondent banking relationships to which the FATF's requirements are not applicable are governed by obligations equivalent to Monegasque law (13.2);
14. Money or value transfer services	C	
15. New technologies	PC	<ul style="list-style-type: none"> • No explicit obligation for Monaco to identify and assess ML/TF risks related to the development of new products and new business practices or the use of new or developing technologies (15.1); • No obligation for FIs to take appropriate measures to manage and mitigate new technology risks (15.2); • Insufficient VASP risk analysis (15.3); • The authorisations system for VASPs is based on consideration of a limited number of objective criteria related to good character and the required competences (15.4); • No specific measures to contribute actively to identifying natural or legal persons pursuing VASP activities without being approved or registered (15.5); • The digital asset activities concerned by the AML/TF obligations do not appear explicitly to cover all of the virtual asset activities referred to in R.15 (15.6); • No guidelines in relation to VASPs (15.7); • The new order on due diligence measures accompanying originator and beneficiary information for transfers has not extended the obligations concerning PSP transfers to transfers of virtual assets (15.9).

Recommendations	Rating	Factor(s) underlying the rating
16. Wire transfers	LC	<ul style="list-style-type: none"> • No requirement to send an STR to a foreign FIU concerned by a wire transfer (16.17).
17. Reliance on third parties	LC	<ul style="list-style-type: none"> • The document on supervision of measures to ensure that CDD and record-keeping obligations are performed is based solely on contractual clauses without any measures to govern these requirements (17.2); • No obligation to assess the ML/TF risk associated with third countries (c.17.2); • No obligation to ensure that the specific mitigating measures referred to in point 17.3(c) follow a risk-based approach and can mitigate the highest ML/TF risks (17.3).
18. Internal controls and foreign branches and subsidiaries	LC	<ul style="list-style-type: none"> • The presumption that all EU or EEA member States apply harmonised AML/CFT provisions does not meet FATF standards (18.3).
19. Higher-risk countries	LC	<ul style="list-style-type: none"> • No specific provision allowing Monaco to designate countries against which countermeasures should be applied independently of the FATF or EU lists (19.2).
20. Reporting of suspicious transactions	C	<ul style="list-style-type: none"> •
21. Tipping-off and confidentiality	C	<ul style="list-style-type: none"> •
22. DNFBPs: Customer due diligence		<ul style="list-style-type: none"> • The deficiencies in relation to due diligence for PEPs identified in the analysis of R.12 have the same effects on DNFBPs (22.3); • The deficiencies identified in the analysis of R.15 also apply to DNFBPs (22.4); • The deficiencies noted in R.17 apply (22.5).
23. DNFBPs: Other measures		<ul style="list-style-type: none"> • The supervisor of notaries and bailiffs is not a self-regulatory body as defined by the FATF (23.1); • The deficiencies identified in the analysis of R.18 are applicable to DNFBPs to the same extent (23.2); • Monaco does not have a mechanism allowing countermeasures to be imposed independently of any call from the FATF or the European Commission (23.3).
24. Transparency and beneficial ownership of legal persons		<ul style="list-style-type: none"> • There is no public information on obtaining basic information on economic interest groups (GIEs) and limited partnerships with shares (SCAs) (25.1); • No assessment of ML risks connected with associations and foundations (24.2); • No provision regarding entry in a registry for associations and foundations or requirement concerning their beneficial owners (24.3); • No obligation for companies or foundations to maintain the information set out in point 24.4; • Some basic information regarding companies is not entered in the RCI or RSC and the certificates of registration in the RSC of civil-law partnerships that the public can request contain little information (24.5); • There is no obligation in relation to information on beneficial ownership of associations and foundations, as provided for by sub-criterion 24.6; • There is no legal provision allowing SICCFIN to require a company to provide information that it holds on its beneficial ownership (24.6); • No requirement: a) for one or more natural persons resident in the country to be authorised by the company, and accountable to competent authorities, for providing all basic information and available beneficial ownership information, and for giving further assistance to the competent authorities, or b) for a DNFBP in the country to be authorised by the company, and accountable to the authorities, for providing all basic information and available beneficial ownership information and

Recommendations	Rating	Factor(s) underlying the rating
		<p>for giving further assistance to the authorities (24.8);</p> <ul style="list-style-type: none"> • No specification as to where information must be kept (24.9); • No obligation for RCI offices to keep information and records on beneficial ownership appearing in the RBO for commercial companies, civil-law partnerships and GIEs for five years after the date of their dissolution or liquidation (24.9); • The powers required by sub-criterion 24.10 are limited; • No measure making it mandatory to disclose the identity of a person who has nominated a shareholder to act on their behalf in the event of transfers of shares during the company's lifetime (24.12); • The amounts of the fines for failure to register or to declare changes to the RCI, RSC and Prime Minister are small and not dissuasive (24.13); • International co-operation in relation to swift access to basic information and beneficial ownership information pertaining to legal persons in Monaco is limited (24.14); • No provision making it compulsory to monitor the quality of assistance received from abroad in response to requests for basic information and beneficial ownership or requests for assistance in locating beneficial owners residing abroad (24.15).
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> • No explicit obligation for a trustee to hold basic information on other regulated agents or trust service providers or hence to update this information (25.1, 25.2); • The legislation does not provide for competent authorities to have timely access to information held by trustees and other parties (25.5); • The competent authorities are unable to provide international co-operation rapidly (25.6); • The sanctions applicable to trustees if they fail to perform their obligations are not considered proportionate or dissuasive (25.7, 25.8).
26. Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> • There are deficiencies in relation to measures to prevent criminals or their associates from holding or becoming the beneficial owners of a significant or controlling interest in an FI or from holding a managerial position in one (26.3); • It has not been demonstrated that the supervision of FIs must be carried out in line with Core Principles (26.4); • Risk-based supervision only concerns banks and management companies, not other FIs (26.5); • While a risk-based system makes it possible to determine the frequency of controls, it does not make it possible to decide their intensity (26.5).
27. Powers of supervisors	PC	<ul style="list-style-type: none"> • SICCFIN has been unable to carry out unannounced on-site inspections since the second half of 2021 (27.2); • The supervisory authority does not have the power to impose sanctions on FIs (27.4); • The sanction process does not make it possible in an isolated manner to sanction breaches identified during documentary checks or simple breaches (27.4).
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> • There is a deficiency in the legal provision concerning the regulation of TCSPs in Monaco in that the definition of TCSPs is narrower than the FATF's definition because it excludes persons and undertakings that provide third parties, outside of these situations, with a registered office, a business address or premises or an administrative or postal address to a legal person or legal arrangement, i.e. business centres where companies only provide business address services (28.2 et 28.3); • There are deficiencies in relation to measures to prevent criminals or their associates from holding or becoming the beneficial owners of a significant or controlling interest in a

Recommendations	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> DNFBP or from holding a managerial position in one (28.4); The Prime Minister is not required to implement sanction proposals made by the CERC and can ultimately decide not to impose a sanction at all (28.4); It is impossible to sanction DNFBPs in an isolated manner for simple breaches or breaches identified during documentary checks (28.4); The supervisory powers available to the Chairperson of the Monaco Bar Association are limited and those available to the GPO are not defined; The law does not make provision for the implementation of a risk-based supervision approach by the Chairperson of the Monaco Bar Association (28.5); There is no obligation for SICCFIN and the GPO to take account of the degree of discretion allowed to DNFBPs under the risk-based approach when assessing the relevance of their policies, controls and procedures (28.5).
29. Financial intelligence units (FIUs)	LC	<ul style="list-style-type: none"> SICCFIN does not act as a central office receiving disclosures from reporting entities (c.29.2(a)); The law does not make reference to any requirements to use dedicated, secure and protected channels for dissemination (c.29.5); SICCFIN does not have any specific rules on the security or confidentiality of information, including procedures for processing, storing, disseminating and viewing it (c.29.6).
30. Responsibilities of law enforcement and investigative authorities	C	<ul style="list-style-type: none">
31. Powers of law enforcement and investigative authorities	PC	<ul style="list-style-type: none"> Except in the context of searches, the authorities cannot take coercive measures to compel persons to produce documents (c.31.1); The scope for the use of some investigative techniques is limited (particularly undercover operations and controlled delivery) (c.31.2); There is no mechanism in place to identify assets without prior notification to the owner (c.31.3).
32. Cash couriers	LC	<ul style="list-style-type: none"> The competent authorities are not empowered to demand and obtain from the carrier additional information concerning the origin and destination of cash or BNI(s) (c.32.4); In the absence of legal provisions on minimum amounts, the sanctions cannot be regarded as proportionate and dissuasive (c.32.5); Monaco has no mechanisms for operational co-operation and does not carry out any strategic planning in relation to cross-border transportation of cash and BNIs (c.32.7).
33. Statistics	LC	<ul style="list-style-type: none"> There are no legal provisions or mechanisms to consolidate/pull together statistics on STRs (c.33.1(a)); For statistics on investigations, prosecutions and convictions with regard to ML and TF, the tools that are used are heavily dependent on manual queries and entry, which can make handling, extraction and updating more difficult (c.31.1(b)); It is not clear which authority is responsible for keeping statistics on property frozen as a result of financial sanctions and for keeping/updating these statistics (c.33.1(c)).
34. Guidance and feedback	PC	<ul style="list-style-type: none"> There is a lack of sector guidelines for several categories of regulated professionals; There are no specific or thematic guidelines to help all regulated entities to strengthen their AML/CFT systems and, in particular, to better detect and report suspicious transactions. Awareness-raising efforts are sporadic and informal.
35. Sanctions	PC	<ul style="list-style-type: none"> The amount of the fine for failure to comply with TFS obligations

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36. International instruments	LC	<ul style="list-style-type: none"> is not dissuasive for persons or undertakings with high income/revenue in particular (35.1); The sanctions for NPOs and the natural persons concerned are not dissuasive for the most part (35.1); The Prime Minister is not required to implement sanctions proposed by the CERC and can ultimately decide not to impose any sanction (35.1); The sanction process does not allow sanctions to be imposed in an isolated manner for deficiencies identified during documentary checks or simple breaches (35.1); Criminal penalties for failure to comply with AML/CFT obligations are not regarded as proportionate and dissuasive (35.1); No sanctions are applicable to the members of the governing bodies and senior management of companies created by lawyers for the purpose of pursuing their activities (35.2).
37. Mutual legal assistance	PC	<ul style="list-style-type: none"> Although most of the relevant articles of the Vienna Convention, the Palermo Convention, the International Convention for the Suppression of the Financing of Terrorism and the Mérida Convention have been implemented, some minor deficiencies remain, such as the limits on the confiscation of property of equivalent value (c.36.2). The non-criminalisation of income tax evasion in Monaco has repercussions in practice on its ability to provide mutual legal assistance for this type of offence (c.37.1); Monaco does not have clear processes for the prioritisation of mutual legal assistance (MLA) requests, nor does it have a case management system (c.37.2); The deficiencies identified under c.37.4(a) apply (c.37.3); Monaco can refuse to provide mutual legal assistance if the request relates to offences regarded by the requested party as tax offences (c.37.4); All the execution documentation associated with an MLA request must be made available to the lawyer of the subject of the request (c.37.5); Monaco may reject MLA requests relating to facts which do not constitute an offence under the law of Monaco (c.37.7); The deficiencies identified in R.31 apply (c.37.8).
38. Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> Precautionary measures which form the subject of a request made by a foreign authority are ordered with the costs being paid in advance by the requesting state (c.38.1); There are no measures allowing for co-operation in confiscation and seizure proceedings in the event of death (c.38.2); No authority in Monaco is designated as competent to co-ordinate seizure and confiscation actions with other countries (c.38.3(a)); Monaco has no mechanism for managing or disposing of property seized, frozen or confiscated (c.38.3(b)).
39. Extradition	LC	<ul style="list-style-type: none"> Monaco does not have a system for prioritisation of extradition requests (c.39.1(b)); There is no legal requirement to bring a prosecution for offences set forth in an extradition request to Monaco relating to a national of Monaco (c.39.2); The law does not explicitly require the dual criminality obligation to be satisfied, regardless of whether both countries place the offence within the same category of offence or denominate de offence by the same terminology, provided that both countries criminalise the conduct underlying offence (c.39.3); The law of Monaco does not feature a simplified mechanism for extradition (c.39.4).
40. Other forms of international		<ul style="list-style-type: none"> There is no system or procedure for prioritising requests for informal co-operation from foreign counterparts (c.40.2(d));

Recommendations	Rating	Factor(s) underlying the rating
cooperation		<ul style="list-style-type: none"> • The judicial authorities have no established process for safeguarding of information received from foreign authorities (c.40.2(e)); • The investigation and prosecution authorities are not required to provide feedback in a timely manner to their foreign counterparts (c.40.4); • The investigation and prosecution authorities are not required to ensure that exchanged information is only used within the framework within which it was sought (c.40.6); • Monaco does not have any legislative provisions ensuring that information exchanged has the same degree of confidentiality as that which is given to similar domestic information. The competent authorities cannot refuse to provide information if the requesting competent authority is unable to protect this information effectively (c.40.7); • SICCFIN may only exchange AML/CFT information with three supervisory authorities with which bilateral conventions have been signed: ACPR (France), FINMA (Switzerland) and CSSF (Luxembourg) (c.40.12); • There is no specific domestic system enabling investigating and prosecuting authorities to exchange information already obtained at domestic level (c.40.18).

GLOSSARY OF ACRONYMS²²⁰

DEFINITION	
ACPR	French Prudential Supervisory and Resolution Authority
AMAF	Monaco Association for Financial Activities
CA	Court of Appeal
CARIN	Camden Assets Recovery Inter-Agency Network
CCAF	Financial Activities Supervisory Commission
CCP	Code of Criminal Procedure
CERC	Audit Review Commission
CGD	Expenditure Control Authority
CC	Criminal Code
CSSF	Luxembourg Financial Supervisory Authority
DBT	Department of Budget and Treasury
DEE	Business Development Agency
DNFPB	Designated Non-Financial Businesses and Professions
DREC	Department for Foreign Affairs and Co-operation
DSF	Department of Tax Services
DSP	Police Department
ECHR	European Court of Human Rights
EU	European Union
FATF	Financial Action Task Force
FI	Financial Institution
FICOBAM	Central National Bank Account File -Monaco
FINMA	Swiss Financial Market Supervisory Authority
FIU	Financial Intelligence Unit
IJ	Investigating Judge
IMSEE	Monaco Statistics
JIT	Joint Investigation Team
MCFC	MC Financial Company (formerly SFE)
ML	Money Laundering
MLA	Mutual Legal Assistance
NPO	Non-Profit Organisation
NRA	National Risk Assessment
PEP	Politically Exposed Person
PF	Proliferation Financing
GPO	General Prosecutor's Office
PUD	French Customs Office in Monaco
RBA	Risk-Based Approach
RBO	Register of Beneficial Owners
RCI	Trade and Industry Registry
RdT	Register of Trusts
SAM	Monegasque Joint Stock Company
SARL	Private Limited Company
SBM	Société des bains de mer et du cercle des étrangers de Monaco
SEF	Financial Investigations Section (in DSP)
SFE	Société financière et d'encaissement (now MCFC)
SICCFIN	Monaco FIU
SO	Sovereign Order
STR	Suspicious Transaction Report
TF	Terrorist Financing
TFC	Targeted Financial Sanction
UNSC	United Nations Security Council
VASP	Virtual Asset Service Provider

²²⁰ Les acronymes déjà définis dans les 40 recommandations du GAFI ne sont pas inclus dans ce glossaire.

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Anti-money laundering and counter-terrorism financing measures
Monaco

Fifth Round Mutual Evaluation Report

This report provides a summary of AML/CFT measures in place in Monaco as at the date of the on-site visit (21 February – 4 March 2022). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Monaco's AML/CFT system